A/CONF.80/16

UNITED NATIONS CONFERENCE ON SUCCESSION OF STATES IN RESPECT OF TREATIES

First session
Vienna, 4 April-6 May 1977

OFFICIAL RECORDS
Volume I

Summary records of the plenary meetings and of the meetings of the Committee of the Whole

UNITED NATIONS

UNITED NATIONS CONFERENCE ON SUCCESSION OF STATES IN RESPECT OF TREATIES

First session
Vienna, 4 April-6 May 1977

OFFICIAL RECORDS
Volume I

Summary records of the plenary meetings and of the meetings of the Committee of the Whole

UNITED NATIONS

New York, 1978

INTRODUCTORY NOTE

This volume contains the summary records of the plenary meetings and of the meetings of the Committee of the Whole held during the first session of the Conference. The summary records of the second session and the documents of the Conference will be printed after the closure of the second session.

*
* *

The summary records of the plenary meetings were originally circulated in mimeographed form as documents A/CONF.80/SR.1 to SR.8 and those of the Committee of the Whole as documents A/CONF.80/C.1/SR.1 to SR.36. They include the corrections to the provisional summary records that were requested by delegations and such editorial changes as were considered necessary.

*
* *

Symbols of United Nations documents are composed of capital letters combined with figures. Mention of such a symbol indicates a reference to a United Nations document.

A/CONF.80/16

UNITED NATIONS PUBLICATION

Sales number: E.78.V.8

Price: $U.S. 14.00
(or equivalent in other currencies)

CONTENTS

RESOLUTIONS OF THE GENERAL ASSEMBLY CONCERNING THE CONFERENCE

Resolution 3496 (XXX) of 15 December 1975

SUCCESSION OF STATES IN RESPECT OF TREATIES

The General Assembly,

Having considered the item entitled "Succession of States in respect of treaties",

Recalling that, in its resolution 3315 (XXIX) of 14 December 1974, the General Assembly invited Member States to submit to the Secretary-General their written comments and observations on the draft articles on succession of States in respect of treaties contained in the report of the International Law Commission on the work of its twenty-sixth session,[1]

Taking note of the report of the Secretary-General[2] containing the comments and observations submitted by a number of Member States in accordance with General Assembly resolution 3315 (XXIX),

Taking note also of the views expressed by Member States during the debates in the General Assembly at its twenty-ninth and thirtieth sessions,

1. *Urges* Member States which have not yet been able to do so to submit to the Secretary-General as soon as possible their written comments and observations on the draft articles;

2. *Requests* the Secretary-General to circulate, before the thirty-first session of the General Assembly, the comments and observations submitted by Member States;

3. *Decides* to convene a conference of plenipotentiaries in 1977 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;

4. *Decides* to include in the provisional agenda of its thirty-first session an item entitled "Conference of plenipotentiaries on succession of States in respect of treaties".

2440th plenary meeting
15 December 1975

Resolution 31/18 of 24 November 1976

UNITED NATIONS CONFERENCE ON SUCCESSION OF STATES IN RESPECT OF TREATIES

The General Assembly,

Recalling that, by its resolution 3496 (XXX) of 15 December 1975, it decided to convene a conference of plenipotentiaries in 1977 to consider the draft articles on succession of States in respect of treaties, adopted by the International Law Commission at its twenty-sixth session,[1] and to embody the results of its work in an international convention and such other instruments as it might deem appropriate,

Recalling further that, in section II of its resolution 3315 (XXIX) of 14 December 1974, it expressed its appreciation to the International Law Commission for its valuable work on the question of succession of States in respect of treaties and to the Special Rapporteurs on the topic for their contribution to this work,

Believing that the draft articles adopted by the International Law Commission at its twenty-sixth session represent a good basis for the elaboration of an international convention and such other instruments as may be appropriate on the question of succession of States in respect of treaties,

Taking note of the reports of the Secretary-General[2] containing the comments and observations submitted by a number of Member States in accordance with General Assembly resolutions 3315 (XXIX) and 3496 (XXX),

Mindful of Article 13, paragraph 1 *a*, of the Charter of the United Nations, which provides that the General Assembly shall initiate studies and make recommendations for the purpose of encouraging the progressive development of international law and its codification,

Believing that 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,

Noting that an invitation has been extended by the Government of Austria to hold the United Nations Conference on Succession of States in Respect of Treaties at Vienna,

1. *Decides* that the United Nations Conference on Succession of States in Respect of Treaties, referred to in General Assembly resolution 3496 (XXX), will be held from 4 April to 6 May 1977 at Vienna;

2. *Requests* the Secretary-General to invite:

(*a*) All States to participate in the Conference;

(*b*) Representatives of organizations that have received a standing invitation from the General Assembly to participate in the sessions and the work of

[1] *Official Records of the General Assembly, Twenty-ninth Session, Supplement No. 10* (A/9610/Rev.1).

[2] A/10198 and Add.1-6.

[1] *Official Records of the General Assembly, Twenty-ninth Session, Supplement No. 10* (A/9610/Rev.1), chap. II, sect. D.

[2] A/10198 and Add.1-6, A/31/144.

all international conferences convened under its auspices, in the capacity of observers, in accordance with Assembly resolution 3237 (XXIX) of 22 November 1974;

(*c*) Representatives of national liberation movements recognized in its region by the Organization of African Unity, in the capacity of observers, in accordance with General Assembly resolution 3280 (XXIX) of 10 December 1974;

(*d*) The specialized agencies and the International Atomic Energy Agency, as well as interested organs of the United Nations and interested regional intergovernmental organizations, to be represented at the Conference by observers;

3. *Refers* to the Conference as the basic proposal for its consideration the draft articles on succession of States in respect of treaties adopted by the International Law Commission at its twenty-sixth session;

4. *Decides* that the languages of the Conference shall be those used in the General Assembly and its Main Committees;

5. *Requests* the Secretary-General to submit to the Conference all relevant documentation and recommendations relating to its methods of work and procedures and to arrange for the necessary staff, facilities and services which it will require, including the provision of summary records;

6. *Requests* the Secretary-General to arrange for the presence at the Conference, as an expert, of the International Law Commission's latest Special Rapporteur on the topic of succession of States in respect of treaties.

77th plenary meeting
24 November 1976

OFFICERS OF THE CONFERENCE AND ITS COMMITTEES

President of the Conferenee

Mr. Karl Zemanek (Austria).

Vice-Presidents of the Conference

The representatives of the following States: Argentina, Barbados, Bulgaria, Cuba, Ethiopia, France, India, Indonesia, Ireland, Italy, Ivory Coast, Malaysia, Mexico, Morocco, Pakistan, Romania, Sudan, Turkey, Union of Soviet Socialist Republics, United Kingdom of Great Britain and Northern Ireland, United States of America and Zaire.

General Committee

Chairman: The President of the Conference

Members: The President and Vice-Presidents of the Conference, the Chairman of the Committee of the Whole and the Chairman of the Drafting Committee.

Committee of the Whole

Chairman: Mr. Fuad Riad (Egypt)

Vice-Chairman: Mr. Jean-Pierre Ritter (Switzerland)

Rapporteur: Mr. Abdul Hakim Tabibi (Afghanistan).

Drafting Committee

Chairman: Mr. Mustafa Kamil Yasseen (United Arab Emirates)

Members: The Chairman of the Drafting Committee, Australia, Cuba, Democratic Yemen, France, Guyana, Ivory Coast, Japan, Kenya, Spain, Swaziland, Union of Soviet Socialist Republics, United Kingdom of Great Britain and Northern Ireland, United States of America and Yugoslavia.

Credentials Committee

Chairman: Mr. José Sette Câmara (Brazil)

Members: Brazil; Chile; Germany, Federal Republic of; Nigeria; Philippines; Qatar; Sudan; Sweden and Union of Soviet Socialist Republics.

Expert Consultant

Sir Francis Vallat, Special Rapporteur on succession of States in respect of treaties, International Law Commission.

SECRETARIAT OF THE CONFERENCE

Mr. Erik Suy, Under-Secretary-General, Legal Counsel of the United Nations (*Representative of the Secretary-General of the United Nations*).

Mr. Yuri M. Rybakov, Director, Codification Division, Office of Legal Affairs (*Executive Secretary of the Conference*).

Mr. Santiago Torres-Bernárdez, Deputy Director, Codification Division, Office of Legal Affairs (*Deputy Executive Secretary; Secretary of the Committee of the Whole*).

Miss Jacqueline Dauchy, Office of Legal Affairs (*Secretary of the Credentials Committee; Assistant Secretary of the Committee of the Whole*).

Mr. Eduardo Valencia-Ospina, Office of Legal Affairs (*Secretary of the Drafting Committee*).

Mr. Moritaka Hayashi, Office of Legal Affairs (*Assistant Secretary of the Drafting Committee*).

Mr. Jacques Roman, Office of Legal Affairs (*Assistant Secretary of the Drafting Committee; Assistant Secretary of the Credentials Committee*).

Mr. Alexander Borg Olivier, Office of Legal Affairs (*Assistant Secretary of the Committee of the Whole*).

AGENDA

First session (1977)

At its 1st plenary meeting, held on 4 April 1977, the Conference adopted the following agenda (A/CONF.80/7):

1. Opening of the Conference by the representative of the Secretary-General.
2. Election of the President.
3. Adoption of the agenda.
4. Adoption of the rules of procedure.
5. Election of Vice-Presidents.
6. Election of the Chairman of the Committee of the Whole.
7. Election of the Chairman of the Drafting Committee.
8. Appointment of the Credentials Committee.
9. Appointment of other members of the Drafting Committee.
10. Organization of work.
11. 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.
12. Adoption of a convention and other instruments deemed appropriate and of the final act of the Conference.
13. Signature of the final act and of the convention and other instruments.

At its 3rd plenary meeting, held on 14 April 1977, the Conference decided to add a supplementary item to its agenda entitled "Consideration of request of the United Nations Council for Namibia for active participation in the United Nations Conference on Succession of States in respect of Treaties" (General Assembly resolution 31/149).

RULES OF PROCEDURE

Document A/CONF.80/8*

CHAPTER I

Representation and credentials

Rule 1. Composition of delegations

The delegation of each State participating in the Conference shall consist of a head of delegation and such other accredited representatives, alternate representatives and advisers as may be required.

Rule 2. Alternates and advisers

An alternate representative or an adviser may act as a representative upon designation by the head of delegation.

Rule 3. Submission of credentials

The credentials of representatives and the names of alternate representatives and advisers shall be submitted to the Executive Secretary of the Conference if possible not later than 24 hours after the opening of the Conference. Any later change in the composition of delegations shall also be submitted to the Executive Secretary. The credentials shall be issued either by the Head of State or Government or by the Minister for Foreign Affairs.

Rule 4. Credentials Committee

A Credentials Committee shall be appointed at the beginning of the Conference. It shall consist of nine members, who shall be appointed by the Conference on the proposal of the President. It shall examine the credentials of representatives and report to the Conference without delay.

Rule 5. Provisional participation in the Conference

Pending a decision of the Conference upon their credentials, representatives shall be entitled to participate provisionally in the Conference.

CHAPTER II

Officers

Rule 6. Elections

The Conference shall elect a President and 22 Vice-Presidents, as well as the Chairman of the Committee of the Whole provided for in rule 46 and the Chairman of the Drafting Committee provided for in rule 47. These officers shall be elected on the basis of ensuring the representative character of the General Committee. The Conference may also elect such other officers as it deems necessary for the performance of its functions.

Rule 7. General powers of the President

1. In addition to exercising the powers conferred upon him elsewhere by these rules, the President shall preside at the plenary meetings of the Conference, declare the opening and closing of each meeting, direct the discussion, ensure observance of these rules, accord the right to speak, put questions to the vote and announce decisions. The President shall rule on points of order and, subject to these rules, have complete control of the proceedings and over the maintenance of order thereat. The President may propose to the Conference the closure of the list of speakers, a limitation on the time to be allowed to speakers and on the number of times each representative may speak on a question, the adjournment or the closure of the debate and the suspension or the adjournment of a meeting.

2. The President, in the exercise of his functions, remains under the authority of the Conference.

Rule 8. Acting President

1. If the President finds it necessary to be absent from a meeting or any part thereof, he shall designate a Vice-President to take his place.

2. A Vice-President acting as President shall have the powers and duties of the President.

Rule 19. Replacement of the President

If the President is unable to perform his functions, a new President shall be elected.

Rule 10. The President shall not vote

The President, or a Vice-President acting as President, shall not vote in the Conference, but shall designate another member of his delegation to vote in his place.

CHAPTER III

General Committee

Rule 11. Composition

There shall be a General Committee consisting of 25 members, which shall comprise the President and Vice-Presidents of the Conference, the Chairman of the Committee of the Whole and the Chairman of the Drafting Committee. The President of the Conference, or in his absence, one of the Vice-Presidents designated by him, shall serve as Chairman of the General Committee.

Rule 12. Substitute members

If the President or a Vice-President of the Conference finds it necessary to be absent during a meeting of the General Committee, he may designate a member of his delegation to sit and vote

* As adopted by the Conference at its 1st plenary meeting.

in the Committee. In case of absence, the Chairman of the Committee of the Whole shall designate the Vice-Chairman of that Committee as his substitute, and the Chairman of the Drafting Committee shall designate a member of the Drafting Committee. When serving on the General Committee, the Vice-Chairman of the Committee of the Whole or member of the Drafting Committee shall not have the right to vote if he is of the same delegation as another member of the General Committee.

Rule 13. Functions

The General Committee shall assist the President in the general conduct of the business of the Conference and, subject to the decisions of the Conference, shall ensure the co-ordination of its work.

CHAPTER IV

Secretariat

Rule 14. Duties of the Secretary-General

1. The Secretary-General of the United Nations shall be the Secretary-General of the Conference. He, or his representative, shall act in that capacity in all meetings of the Conference and its committees.

2. The Secretary-General shall appoint an Executive Secretary of the Conference and shall provide and direct the staff required by the Conference and its committees.

Rule 15. Duties of the Secretariat

The Secretariat of the Conference shall, in accordance with these rules:

(*a*) Interpret speeches made at meetings;

(*b*) Receive, translate, reproduce and distribute the documents of the Conference;

(*c*) Publish and circulate the official documents of the Conference;

(*d*) Prepare and circulate records of public meetings;

(*e*) Make and arrange for the keeping of sound recordings of meetings;

(*f*) Arrange for the custody and preservation of the documents of the Conference in the archives of the United Nations; and

(*g*) Generally perform all other work that the Conference may require.

Rule 16. Statements by the Secretariat

The Secretary-General or any member of the staff designated for that purpose may at any time make either oral or written statements concerning any question under consideration.

CHAPTER V

Conduct of business

Rule 17. Quorum

The President may declare a meeting open and permit the debate to proceed when representatives of at least one third of the States participating in the Conference are present. The presence of representatives of a majority of the States so participating shall be required for any decision to be taken.

Rule 18. Speeches

1. No one may address the Conference without having previously obtained the permission of the President. Subject to rules 19, 20 and 23 to 25, the President shall call upon speakers in the order in which they signify their desire to speak. The Secretariat shall be in charge of drawing up a list of such speakers. The President may call a speaker to order if his remarks are not relevant to the subject under discussion.

2. The Conference may limit the time allowed to each speaker and the number of times each representative may speak on a question. Before a decision is taken, two representatives may speak in favour of, and two against, a proposal to set such limits. When the debate is limited and a speaker exceeds the allotted time, the President shall call him to order without delay.

Rule 19. Precedence

The Chairman or Rapporteur of a committee, or the representative of a sub-committee or working group, may be accorded precedence for the purpose of explaining the conclusions arrived at by his committee, sub-committee or working group.

Rule 20. Points of order

During the discussion of any matter, a representative may at any time raise a point of order, which shall be decided immediately by the President in accordance with these rules. A representative may appeal against the ruling of the President. The appeal shall be put to the vote immediately, and the President's ruling shall stand unless overruled by a majority of the representatives present and voting. A representative may not, in raising a point of order, speak on the substance of the matter under discussion.

Rule 21. Closing of list of speakers

During the course of a debate the President may announce the list of speakers and, with the consent of the Conference, declare the list closed.

Rule 22. Right of reply

The right of reply shall be accorded by the President to a representative of a State participating in the Conference who requests it. Any other representative may be granted the opportunity to make a reply. Representatives should attempt, in exercising this right, to be as brief as possible.

Rule 23. Adjournment of debate

During the discussion of any matter, a representative may move the adjournment of the debate on the question under discussion. In addition to the proposer of the motion, two representatives may speak in favour of, and two against, the motion, after which the motion shall be immediately put to the vote.

Rule 24. Closure of debate

A representative may at any time move the closure of the debate on the question under discussion, whether or not any other representative has signified his wish to speak. Permission to speak on the closure of the debate shall be accorded only to two speakers opposing the closure, after which the motion shall be immediately put to the vote.

Rule 25. Suspension or adjournment of the meeting

During the discussion of any matter, a representative may move the suspension or the adjournment of the meeting. Such motions shall not be debated, but shall be immediately put to the vote.

Rule 26. Order of motions

Subject to rule 20, the motions indicated below shall have precedence in the following order over all proposals or other motions before the meeting:

(*a*) To suspend the meeting;

(*b*) To adjourn the meeting;

(*c*) To adjourn the debate on the question under discussion;

(*d*) To close the debate on the question under discussion.

Rule 27. Basic proposal

The draft articles on succession of States in respect of treaties adopted by the International Law Commission[1] shall constitute the basic proposal for discussion by the Conference.

Rule 28. Other proposals and amendments

Other proposals and amendments thereto shall normally be submitted in writing to the Executive Secretary of the Conference, who shall circulate copies to all delegations. As a general rule no proposal shall be discussed or put to the vote at any meeting of the Conference unless copies of it have been circulated to all delegations not later than the day preceding the meeting. The President may, however, permit the discussion and consideration of amendments, or motions as to procedure, even though these amendments and motions have not been circulated or have only been circulated the same day.

Rule 29. Decisions on competence

Subject to rule 20, any motion calling for a decision on the competence of the Conference to discuss any matter or to adopt a proposal or an amendment submitted to it shall be put to the vote before the matter is discussed or a vote is taken on the proposal or amendment in question.

Rule 30. Withdrawal of proposals, amendments and motions

A proposal, an amendment or a motion may be withdrawn by its proposer at any time before voting on it has commenced, provided that it has not been amended. A proposal, an amendment or a motion which has thus been withdrawn may be reintroduced by any representative.

Rule 31. Reconsideration of proposals

When a proposal has been adopted or rejected it may not be reconsidered unless the Conference, by a two-thirds majority of the representatives present and voting, so decides. Permission to speak on the motion to reconsider shall be accorded only to two speakers opposing the motion, after which it shall be immediately put to the vote.

Rule 32. Invitations to technical advisers

The Conference may invite to one or more of its meetings any person whose technical advice it may consider useful for its work.

CHAPTER VI

Voting

Rule 33. Voting rights

Each State represented at the Conference shall have one vote.

Rule 34. Majority required

1. Decisions of the Conference on all matters of substance shall be taken by a two-thirds majority of the representatives present and voting.

2. Decisions of the Conference on matters of procedure shall be taken by a majority of the representatives present and voting.

3. If the question arises whether a matter is one of procedure or of substance, the President of the Conference shall rule on the question. An appeal against this ruling shall be put to the vote immediately and the President's ruling shall stand unless overruled by a majority of the representatives present and voting.

Rule 35. Meaning of the expression "representatives present and voting"

For the purpose of these rules, the phrase "representatives present and voting" means representatives present and casting an affirmative or negative vote. Representatives who abstain from voting shall be considered as not voting.

Rule 36. Method of voting

The Conference shall normally vote by show of hands or by standing, but any representative may request a roll call. The roll call shall be taken in the English alphabetical order of the names of the States participating in the Conference, beginning with the delegation whose name is drawn by lot by the President.

Rule 37. Conduct during voting

The President shall announce the commencement of voting, after which no representative shall be permitted to intervene until the result of the vote has been announced, except on a point of order in connexion with the process of voting.

Rule 38. Explanation of vote

Representatives may make brief statements consisting solely of explanation of their votes, before the voting has commenced or after the voting has been completed. The representative of a State sponsoring a proposal, amendment or motion shall not speak in explanation of vote thereon except if it has been amended.

Rule 39. Division of proposals and amendments

A representative may move that parts of a proposal or an amendment shall be voted on separately. If objection is made to the request for division, the motion for division shall be voted upon. If the motion for division is carried, those parts of the proposal or of the amendment which are subsequently approved shall be put to the vote as a whole. If all operative parts of the proposal or of the amendment have been rejected, the proposal or the amendment shall be considered to have been rejected as a whole.

Rule 40. Voting on amendments

When an amendment is moved to a proposal, the amendment shall be voted on first. When two or more amendments are moved to a proposal, the Conference shall first vote on the amendment furthest removed in substance from the original proposal and then on the amendment next furthest removed therefrom, and so on until all the amendments have been put to the vote. Where, however, the adoption of one amendment necessarily implies the rejection of another amendment, the latter amendment shall not be put to the vote. If one or more amendments are adopted, the amended proposal shall then be voted upon. A motion is considered an amendment to a proposal if it merely adds to, deletes from or revises part of that proposal.

[1] *Official Records of the General Assembly, Twenty-ninth Session, Supplement No. 10* (A/9610/Rev.1), pp. 16 *et seq.*, chap. II, sect. D.

Rule 41. Voting on proposals

If two or more proposals relate to the same question, the Conference shall, unless it decides otherwise, vote on the proposals in the order in which they have been submitted. The Conference may, after each vote on a proposal, decide whether to vote on the next proposal.

Elections

Rule 42

All elections shall be held by secret ballot unless otherwise decided by the Conference.

Rule 43

1. If, when one person or one delegation is to be elected, no candidate obtains in the first ballot a majority of the representatives present and voting, a second ballot restricted to the two candidates obtaining the largest number of votes shall be taken. If in the second ballot the votes are equally divided, the President shall decide between the candidates by drawing lots.

2. In the case of a tie in the first ballot among three or more candidates obtaining the largest number of votes, a second ballot shall be held. If a tie results among more than two candidates, the number shall be reduced to two by lot and the balloting, restricted to them, shall continue in accordance with the preceding paragraph.

Rule 44

When two or more elective places are to be filled at one time under the same conditions, those candidates, not exceeding the number of such places, obtaining in the first ballot a majority of the representatives present and voting shall be elected. If the number of candidates obtaining such majority is less than the number of persons or delegations to be elected, there shall be additional ballots to fill the remaining places, the voting being restricted to the candidates obtaining the greatest number of votes in the previous ballot, to a number not more than twice the places remaining to be filled; provided that, after the third inconclusive ballot, votes may be cast for any eligible person or delegation. If three such unrestricted ballots are inconclusive, the next three ballots shall be restricted to the candidates who obtained the greatest number of votes in the third of the unrestricted ballots, to a number not more than twice the places remaining to be filled, and the following three ballots thereafter shall be unrestricted, and so on until all the places have been filled.

Rule 45. Equally divided votes

If a vote is equally divided on matters other than elections, the proposal, amendment or motion shall be regarded as rejected.

CHAPTER VIII

Committees

Rule 46. Committee of the Whole

The Conference shall establish a single Committee of the Whole, which may set up sub-committees or working groups. The Committee of the Whole shall have as its officers a chairman, a vice-chairman and a rapporteur.

Rule 47. Drafting Committee

1. The Conference shall establish a Drafting Committee consisting of 15 members, including its chairman who shall be elected by the Conference in accordance with rule 6. The other 14 members of the Committee shall be appointed by the Conference on the proposal of the General Committee. The Rapporteur of the Committee of the Whole participates *ex officio*, without a vote, in the work of the Drafting Committee.

2. The Drafting Committee shall prepare drafts and give advice on drafting as requested by the Conference or by the Committee of the Whole. It shall co-ordinate and review the drafting of all texts adopted, and shall report as appropriate either to the Conference or to the Committee of the Whole.

Rule 48. Officers

Except as otherwise provided in rule 6, each committee, sub-committee and working group shall elect its own officers.

Rule 49. Quorum

1. The Chairman of the Committee of the Whole may declare a meeting open and permit the debate to proceed when representatives of at least one quarter of the States participating in the Conference are present. The presence of representatives of a majority of the States so participating shall be required for any decision to be taken.

2. A majority of the representatives on the General, Drafting or Credentials Committee or on any sub-committee or working group shall constitute a quorum.

Rule 50. Officers, conduct of business and voting

The rules contained in chapters II, V and VI above shall be applicable, *mutatis mutandis*, to the proceedings of committees, sub-committees and working groups, except that:

(*a*) The Chairman of the General, Drafting and Credentials Committees and the chairmen of sub-committees and working groups may exercise the right to vote, and

(*b*) Decisions of committees, sub-committees and working groups shall be taken by a majority of the representatives present and voting, except that the reconsideration of a proposal or an amendment shall require the majority established by rule 31.

CHAPTER VIII

Languages and records

Rule 51. Languages of the Conference

Arabic, Chinese, English, French, Russian and Spanish shall be the languages of the Conference.

Rule 52. Interpretation

1. Speeches made in a language of the Conference shall be interpreted into the other such languages.

2. A representative may speak in a language other than a language of the Conference. In this case he shall himself provide for interpretation into one of the languages of the Conference and interpretation into the other languages by the interpreters of the Secretariat may be based on the interpretation given in the first such language.

Rule 53. Records and sound recordings of meetings

1. Summary records of the plenary meetings of the Conference and of the meetings of the Committee of the Whole shall be kept in the languages of the Conference. As a general rule, they shall be circulated as soon as possible simultaneously in all the languages of the Conference, to all representatives, who shall inform the Secretariat within five working days after the circulation of the summary record of any changes they wish to have made.

2. The Secretariat shall make sound recordings of meetings of the Conference and the Committee of the Whole. Such recordings shall be made of meetings of other committees, sub-committees or working groups when the body concerned so decides.

Rule 54. Language of official documents

Official documents shall be made available in the languages of the Conference.

CHAPTER IX

Public and private meetings

Rule 55. Plenary meetings and meetings of committees

The plenary meetings of the Conference and the meetings of committees shall be held in public unless the body concerned decides otherwise.

Rule 56. Meetings of subcommittees or working groups

As a general rule meetings of a subcommittee or working group shall be held in private.

Rule 57. Communiqués to the press

A the close of any private meeting a communiqué may be issued to the press through the Executive Secretary.

CHAPTER X

Observers

Rule 58. Representatives of organizations that have received a standing invitation from the General Assembly to participate in the sessions and work of all international conferences convened under the auspices of the General Assembly in the capacity of observer

Representatives designated by organizations that have received a standing invitation from the General Assembly to participate in the sessions and work of all international conferences convened under the auspices of the General Assembly have the right to participate as observers, without the right to vote, in the deliberations of the Conference, the Committee of the Whole and, as appropriate, in other committees, sub-committees or working groups.

Rule 59. Representatives of national liberation movements

Representatives designated by national liberation movements invited to the Conference may participate as observers, without the right to vote, in the deliberations of the Conference, the Committee of the Whole and, as appropriate, in other committees, sub-committees or working groups.

Rule 60. Representatives of United Nations organs and agencies

Representatives designated by organs of the United Nations, the specialized agencies and the International Atomic Energy Agency may participate as observers, without the right to vote, in the deliberations of the Conference, the Committee of the Whole and, as appropriate, other committees, sub-committees or working groups.

Rule 61. Observers for other intergovernmental organizations

Observers designated by other intergovernmental organizations invited to the Conference may participate, without the right to vote, in the deliberations of the Conference, the Committee of the Whole and, as appropriate, other committees, sub-committees or working groups.

CHAPTER XI

Amendments to the rules of procedure

Rule 62. Method of amendment

These rules of procedure may be amended by a decision of the Conference taken by a two-thirds majority of the representatives present and voting.

SUMMARY RECORDS OF THE PLENARY MEETINGS

1st PLENARY MEETING

Monday, 4 April 1977, at 3.15 p.m.

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

Opening of the Conference by the representative of the Secretary-General
[Item 1 of the provisional agenda]

1. The ACTING PRESIDENT, speaking on behalf of the Secretary-General and the participants in the Conference, welcomed the Federal President of the Republic of Austria, whose work for, and continuing interest in, the development and codification of international law were known to all. The presence of the Federal President at the Conference would serve to stimulate the search for ways and means of furthering the process of development and codification in order to promote understanding among States.

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

The Conference observed a minute's silence.

3. The ACTING PRESIDENT, speaking as the representative of the Secretary-General, observed that the Conference was the eighth in a series called by the General Assembly for the purpose of drawing up, on the basis of articles drafted by the International Law Commission, international conventions embodying the efforts of the world community to comply with the task laid down in the Charter of the United Nations of "encouraging the progressive development of international law and its codification". The previous codification Conferences had done much to strengthen the legal bases of international co-operation and had been of particular importance for the consolidation and full realization of friendly relations and co-operation among States. The convention which the present Conference was called upon to formulate would codify the general rules applicable to succession of States in respect of treaties, that was to say, the rules governing the effects on previous treaty relations of the replacement of one State by another in the responsibility for the international relations of a territory.

4. The draft articles prepared by the International Law Commission for the Conference, which took fully into account the principle of self-determination enshrined in the Charter of the United Nations, contained a series of provisions dealing with succession resulting either from the attainment of independence by former dependent territories, in its various historical types, or from a change in the territorial composition of a State. Following, basically, the "clean slate" metaphor, those provisions respected the newly independent State's freedom to determine its own treaty relations, but at the same time provided means of achieving the maximum continuity in those relations for the benefit of the newly independent States themselves and of other States parties to their predecessor's treaties and, ultimately, of the international community as a whole. All those provisions were, therefore, particularly important for the States which had achieved independence since the Second World War as a consequence of the efforts of their peoples, of Member States and of the United Nations, to put an end to colonization.

5. But the International Law Commission's draft articles were also of considerable practical importance for all States, whether new or old, because they dealt, in a way which again balanced individual and general interests, with succession resulting from recurrent phenomena of international life, such as partial transfers of territory from one State to another and unions and separations of States. For reasons of interdependence, nations were moving to develop new forms of association or integration, and provisions such as those regulating unions of States could therefore become of particular practical value in the future.

6. The practical interest of the draft was further highlighted by the subject-matter of the succession dealt with, namely treaties. Within the international community, there was a steady increase in the number of treaties concluded each year, and international relations were now carried on more and more within the framework of treaties rather than that of customary international law. Treaties were the primary source of international law. That was so not only because contemporary conditions required more precise and clearly defined legal rules in areas traditionally regulated by international law, but also because political, economic, social, scientific and technological developments necessitated the legal regulation of

new areas, which could be achieved only by the adoption of multilateral treaties. Many of those treaties, which were often concluded under the auspices of the United Nations, were of great interest for the entire international community. The advantages and disadvantages of continuity in treaty relations on the occurrence of a succession of States would undoubtedly hold a central position in the debates of the Conference.

7. The basic proposal before the Conference was the result of several years of deep study by the International Law Commission, with the valuable assistance of its Special Rapporteurs, Sir Humphrey Waldock and Sir Francis Vallat, and its provisions had been commented on at the Sixth Committee of the General Assembly, as well as in written form by governments. The Conference was also privileged to have Sir Francis Vallat as its expert consultant. He was convinced that, with such excellent preparation and assistance, the Conference would fulfil the mandate entrusted to it by the General Assembly and would be able to embody the results of its work in a multilateral convention on succession of States in respect of treaties which would have immense significance for the whole future of international law.

8. He wished the Conference every success in its extremely important task and assured it that the Secretariat would give all possible assistance.

9. He then invited the Federal President of the Republic of Austria to address the Conference.

Address by the Federal President of the Republic of Austria

10. H.E. Dr. Rudolph KIRSCHSCHLAEGER, Federal President of the Republic of Austria, expressed his pleasure at being able once again to welcome a United Nations codification conference in Vienna, which had become a regular venue for such meetings. He hoped that participants in the Conference would find every technical facility they needed, and that both the city of Vienna and the country of Austria would once again prove successful meeting places.

11. It was not by chance that Article 13 of the Charter of the United Nations spoke, in the same subparagraph, of the need to promote international co-operation in the political field and to encourage the progressive development of international law and its codification; for the links between politics and law were indissoluble, and to disregard them could lead to threats to, and even breaches of, international peace. Thus the importance of the process of codification in ensuring the rule of law in international relations could not be overestimated.

12. The importance of the subject of the present Conference had rightly been emphasized by the General Assembly, when, by its resolution 31/18, it had decided to convene the Conference. The General Assembly had also stated that the articles prepared by the International Law Commission constituted a good basis for the work of the Conference, and he hoped that they would indeed serve to facilitate its deliberations.

13. The success of the Conference would be a success for all States and for the United Nations; he was sure that all representatives would join with him in wishing for such an outcome, since the world needed the United Nations. To his greetings to the participants in the Conference, to the peoples and governments they represented, and to the members of the Secretariat, he added the wish that there would be lasting peace for all nations.

The meeting was suspended at 3.40 p.m. and resumed at 4.50 p.m.

Election of the President
[Item 2 of the provisional agenda]

14. Mr. SETTE CAMARA (Brazil) nominated Mr. Karl Zemanek (Austria), a learned jurist known throughout the world for his writings on international law and, in particular, on State succession. Mr. Zemanek's impressive achievements as a professor of international law and international relations, as legal consultant to the Austrian Ministry of Foreign Affairs, as a judge on the European Nuclear Energy Tribunal, and as representative of Austria to the United Nations made him eminently qualified for the duties of President.

15. Mr. CASTRO RIAL (Spain) seconded the nomination.

16. Mr. YANGO (Philippines), Mr. IYANDA (Nigeria), Mrs. BOKOR-SZEGÖ (Hungary), Msgr. SQUICCIARINI (Holy See) and Mr. MARESCA (Italy) supported the nomination.

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

17. The PRESIDENT thanked the delegations for electing him President of the Conference. He interpreted his election as an honour to his country, which had a long tradition as host to United Nations codification conferences.

18. The Conference faced a delicate task, because the subject of succession of States in respect of treaties had never been an easy matter either in theory or in practice. Moreover, it had taken on a new dimension as a result of the process of decolonization which had begun after the Second World War, when, within roughly a decade, the international community of States had more than doubled in number. It might be asked whether it was not rather late to codify the law of State succession in respect of treaties

and whether it should not have been codified before the dawn of decolonization. To raise that question was, however, to misunderstand the function of codification, as distinct from the creation of new law in a hitherto unregulated field; for codification, though to some extent always combined with the progressive development of the rules of law, was dependent on previous State practice, from which it took its material and abstracted its rules. And its was only relatively recently that the material on States' succession after decolonization had become available and the effort of codification had thus been made possible.

19. Unfortunately, however, the material was complex and involved contradictory concepts, such as universal succession and the *pacta sunt servanda* rule, on the one hand, and the "clean slate" principle, on the other. It also reflected conflicting interests: for instance, in the case of general multilateral treaties of a law-making character, the interest of the international community in maintaining as wide an application as possible of its general rules encountered the interest of the newly independent State in having the same opportunity as the former metropolitan Power and all other States to shape its own treaty profile.

20. The International Law Commission had endeavoured to harmonize those contradictory concepts and conflicting interests with the assistance of its Special Rapporteurs, Sir Humphrey Waldock and Sir Francis Vallat, who would also assist the Conference with his expertise. It would, however, be unrealistic to suppose that those fundamental problems would not arise again during the Conference and that the parties concerned would not plead their cause with a view to obtaining a text more advantageous to their particular positions or interests. If the Conference was to succeed in producing a generally accepted and lasting convention, it must not lose sight of the interests of the international community as a whole and must co-operate constructively and in a spirit of compromise. He assured the delegations that, in discharging his duties, he would endeavour to serve and assist them to the best of his ability.

Adoption of the agenda
[Item 3 of the provisional agenda]

The provisional agenda (A/CONF.80/1[1]) was adopted.

Adoption of the rules of procedure
[Agenda item 4]

The provisional rules of procedure (A/CONF.80/2[2]) *were adopted.*

The meeting rose at 5.25 p.m.

[1] The agenda as adopted by the Conference was circulated as document A/CONF.80/7.

[2] The rules of procedure as adopted by the Conference were circulated as document A/CONF.80/8.

2nd PLENARY MEETING

Tuesday, 5 April 1977, at 10.45 a.m.

President: Mr. Zemanek (Austria)

Election of Vice-Presidents
[Agenda item 5]

1. The PRESIDENT said that, in conformity with rule 6 of the rules of procedure and the customary practice, the regional groups had met and had proposed the nomination of the representatives of the following 22 countries as Vice-Presidents: Argentina, Barbados, Bulgaria, Cuba, Ethiopia, France, India, Indonesia, Ireland, Italy, Ivory Coast, Malaysia, Mexico, Morocco, Pakistan, Romania, Sudan, Turkey, Union of Soviet Socialist Republics, United Kingdom of Great Britain and Northern Ireland, United States of America and Zaire. He proposed that the Conference should elect as Vice-Presidents the representatives of those 22 countries.

That proposal was adopted.

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

2. Mr. WAITITU (Kenya) nominated Mr. Riad (Egypt) as Chairman of the Committee of the Whole.

3. Mr. IYANDA (Nigeria) supported the nomination.

Mr. Riad (Egypt) was elected Chairman of the Committee of the Whole by acclamation.

4. Mr. NATHAN (Israel) said that if the proposal by the representative of Kenya had been put to the vote, he would have abstained.

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

5. Mr. ASHTAL (Democratic Yemen) nominated Mr. Yasseen (United Arab Emirates) as Chairman of the Drafting Committee.

6. Mr. SETTE-CÂMARA (Brazil), Mrs. THAKORE (India) and Mr. MARESCA (Italy) supported the nomination.

7. Mr. NATHAN (Israel) said that if the proposal was put to the vote, he would abstain.

Mr. Yasseen (United Arab Emirates) was elected Chairman of the Drafting Committee by acclamation.

Appointment of the Credentials Committee
[Agenda item 8]

8. The PRESIDENT said that, following consultations, the regional groups recommended that the Conference should appoint the representatives of the following nine countries as members of the Credentials Committee: Brazil, Chile, Germany (Federal Republic of), Nigeria, Philippines, Qatar, Sudan, Sweden and Union of Soviet Socialist Republics.

9. If there was no objection, he would take it that the Conference appointed the representatives of the countries he had mentioned as members of the Credentials Committee.

It was so decided.

The meeting was suspended at 11.10 a.m. and resumed at 12.40 p.m.

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

10. The PRESIDENT said that, in accordance with rule 47 of the rules of procedure (A/CONF.80/6), adopted by the Conference at its first meeting, the General Committee had met and had recommended that the Conference should appoint the representatives of the following 14 countries as members of the Drafting Committee: Australia, Cuba, Democratic Yemen, France, Guyana, Ivory Coast, Japan, Kenya, Spain, Swaziland, Union of Soviet Socialist Republics, United Kingdom of Great Britain and Northern Ireland, United States of America and Yugoslavia. If there was no objection, he would take it that the Conference appointed the representatives of the countries he had mentioned as members of the Drafting Committee.

It was so decided.

Organization of work
[Agenda item 10]

11. The PRESIDENT said that the General Committee had also recommended that the Conference should adopt the proposals contained in the memorandum by the Secretary-General entitled "Methods of work and procedures" (A/CONF.80/3), which was based on experience gained in earlier codification conferences. He drew the attention of the Conference to two changes in the document, namely, the deletion of the words "or the Economic and Social Council" in paragraph 3 and the replacement of the words "at all events" by the word "preferably" in paragraph 8.

12. If there was no objection, he would take it that the Conference adopted the suggestions contained in the Secretary-General's memorandum on methods of work and procedures, subject to the changes he had mentioned.

It was so decided.[1]

The meeting rose at 12.50 p.m.

[1] The document on "Methods of work and procedures" as adopted by the Conference was circulated as document A/CONF.80/9.

3rd PLENARY MEETING

Thursday, 14 April 1977, at 12.50 p.m.

President: Mr. ZEMANEK (Austria)

Question of adding a supplementary item to the agenda of the Conference

1. The PRESIDENT said that there was a matter pending before the Conference which was not included in its agenda (A/CONF.80/7). Although the rules of procedure (A/CONF.80/8) did not contain a provision concerning the supplementing of the agenda, such a step was not excluded. If there was no objection, he would take it that the Conference agreed to add to its agenda an item entitled "Consideration of the request of the United Nations Council for Namibia for active participation in the United Nations Conference on Succession of States in respect of Treaties (General Assembly resolution 31/149)".

It was so decided.

Consideration of the request of the United Nations Council for Namibia for active participation in the United Nations Conference on the Succession of States in respect of Treaties (General Assembly resolution 31/149)
[Supplementary agenda item]

2. The PRESIDENT recalled that, on 20 December 1976, the General Assembly, by 120 votes to none, with 7 abstentions, had adopted resolution 31/149, entitled "Action by intergovernmental and non-governmental organizations with respect to Namibia". In paragraph 3 of that resolution, the General Assembly had requested all "conferences within the United Nations system to consider granting full membership to the United Nations Council for Namibia so that it may participate in that capacity as the Administering Authority for Namibia in the work of those [...] conferences".

3. In a letter of 6 April 1977 addressed to him and in an oral communication the following day, the delegation of the United Nations Council for Nam-

ibia had referred to that resolution and had requested the Conference to make the following arrangements in order to ensure its active participation therein: the delegation concerned should be seated with the delegations of States, albeit after them; it should have the right to make statements at meetings of the Committee of the Whole and of the Conference; and such statements should appear in the summary records and should be reflected, where necessary and appropriate, in the report of the Committee of the Whole to the Conference.

4. He had consulted the Chairmen of the regional groups on that matter and they, in turn, had consulted their groups. The regional Chairmen had now informed him that many delegations actively supported the request concerned and that in none of the groups was there any basic objection to it. Such being the case, he would take it that the Conference agreed to the request of the United Nations Council for Namibia.

It was so decided.[1]

5. The PRESIDENT said that the secretariat would see to it that, as from the following meeting, the delegation of the United Nations Council for Namibia was seated in accordance with the decision of the Conference.

The meeting rose at 1 p.m.

[1] See also the 4th plenary meeting, para. 1, the 7th plenary meeting, paras. 23-48, and the 8th plenary meeting, paras. 1-5.

4th PLENARY MEETING

Wednesday, 27 April 1977, 5.50 p.m.

Chairman: Mr. ZEMANEK (Austria)

Consideration of the request of the United Nations Council for Namibia for active participation in the United Nations Conference on Succession of States in respect of Treaties (General Assembly resolution 31/149)

[Supplementary agenda item](*concluded*)

1. The PRESIDENT recalled that under the agenda item under consideration and upon the request of the delegation of the United Nations Council for Namibia referring to General Assembly resolution 31/149, the Conference had taken a decision concerning that delegation's participation in the Conference. In the context of the implementation of that decision, the delegation of the United Nations Council for Namibia had requested that the Conference should state explicitly that it had the right to submit proposals and amendments. If there was no objection, he would take it that the Conference recognized that the delegation of the United Nations Council for Namibia had the right to submit proposals and amendments.

It was so decided.

2. Mr. STEEL (United Kingdom) said that if the draft decision which the Conference had just adopted had been put to the vote, his delegation would have been obliged to abstain. His delegation did not consider it appropriate to grant such a right to a subsidiary body of the General Assembly such as the United Nations Council for Namibia; it was a right which was appropriate only for the government of a State, particularly since the Conference was in fact preparing an instrument which concerned the succession of States. He wished to make it clear that his delegation's position was without prejudice to the attitude of the United Kingdom Government with regard to the United Nations Council for Namibia and the territory of Namibia itself.

3. Mr. HOFSTEE (Netherlands) said that if the Conference had voted on the draft decision, his delegation would have abstained for the same reasons as those which had prompted it to abstain in the General Assembly during the vote on resolution 31/149. However, that position in no way affected his Government's sympathetic attitude towards the United Nations Council for Namibia.

4. Mr. MUSEUX (France) informed the Conference that his delegation, too, would have abstained if a vote had been taken on the draft decision. His Government's position with regard to the United Nations Council for Namibia was well known, and his delegation shared the view expressed by the United Kingdom delegation that participation in a diplomatic conference should be reserved for the governments of States.

5. Mr. TREVIRANUS (Federal Republic of Germany) said that his delegation would also have had to abstain if the draft decision had been put to the vote for the reasons already mentioned by the representatives of the United Kingdom, the Netherlands and France. However, the Federal Government fully recognized the political mandate which had been given to the United Nations Council for Namibia and the role which it should play in the interests of the Namibian people. It was none the less true that the United Nations Council for Namibia had been invited to participate in the Conference as an observer in accordance with the provisions of paragraph 2(*d*) of General Assembly resolution 31/18 on the Conference, whereby the General Assembly requested the Secretary-General to invite the "specialized agencies, the International Atomic Energy Agency, as well as interested organs of the United Nations and interested regional intergovernmental organizations, to be represented at the Conference by observers". He

recalled, however, that as a non-permanent member of the Security Council, the delegation of the Federal Republic of Germany had associated itself with the appeals made to the South African Government to allow the Namibian people to exercise its right to self-determination.

6. Mr. RITTER (Switzerland) said that his delegation would have abstained if the Conference had voted on the draft decision, since, as Switzerland was not a Member of the United Nations, his delegation was not entitled to take a position on the question of the implementation of General Assembly resolution 31/149.

7. Mr. KATEKA (United Republic of Tanzania) said that he did not regret the delay caused to the work of the Conference because it was normal to resolve the question of the status of a participant at the Conference, before continuing its consideration of the draft. It went without saying that his delegation fully supported the request of the delegation of the United Nations Council for Namibia, whose full and active participation in the work of the Conference was in accordance with the General Assembly resolution 31/149.

8. Referring to the argument adduced by some delegations which had said that they would have abstained in the event of a vote because the Council was a body of the General Assembly and as such was not entitled to participate in the deliberations of the Conference and in particular to submit amendments, he stressed that the United Nations Council for Namibia was the authority entrusted with the administration of Namibia on behalf of the United Nations, which was itself mandated by the international community. He was therefore surprised to see the international community call into question a body which it had requested to perform certain functions on its behalf, particularly since the United Nations Council for Namibia had already participated in the work of other United Nations conferences as well as in the deliberations of the Security Council, without the right to vote, in the same way as any United Nations Member which was not a member of the Security Council.

9. Consequently, if such a problem had arisen at the Conference, it was because of the fascist South African régime which illegally occupied Namibia with the support and connivance of certain western Powers, in particular some members of the North Atlantic Treaty Organization. Not satisfied with helping South Africa to build military bases, those Powers had made investments in Namibia, in violation of the resolutions of the General Assembly and the Security Council and of the advisory opinion of the International Court of Justice. In conclusion, he said that the Namibian people would continue its struggle until it achieved liberation.

10. Mr. FONDER (Belgium) said that his delegation would have abstained if the draft decision had been put to the vote for the reasons given by the representatives of the United Kingdom, the Netherlands and France.

11. Mr. ROSENSTOCK (United States of America) said that his delegation had not objected to the decision to permit the delegation of the United Nations Council for Namibia to make known its views on the draft and even to submit amendments. Indeed, the Conference could authorize any person or group of persons to express a point of view without, however, affecting its status as a conference of plenipotentiaries consisting of representatives of governments entrusted with the task of elaborating a convention binding States which became parties thereto. Similarly, the Security Council could hear any person or group of persons that had information of special value. His delegation had taken a position on the question of the status of the delegation of the United Nations Council for Namibia in the Conference without prejudice to the status of the Council or to the views which it had expressed on the occasion of its abstention in the vote on General Assembly resolution 31/149.

12. Mr. YIMER (Ethiopia) said that he welcomed the decision taken by the Conference, which constituted a great victory for the liberation struggle waged in that part of the African continent, but deplored the fact that, because of its faithful allies, South Africa had succeeded in making the Conference lose time.

13. Mr. YACOUBA (Niger) said that he failed to understand the attitude of the delegations which had said that they would have abstained if the Conference had taken a vote. In his delegation's opinion, the solution to the so-called problem created by the participation in the Conference of the delegation of the United Nations Council for Namibia was very simple and did not require such a waste of energy. The United Nations Council for Namibia enjoyed certain rights conceded to it by the General Assembly, a principal organ of the United Nations whose authority could not be called into question. Moreover, by acceding to the wish of the delegation of the United Nations Council for Namibia, the Conference was not setting a precedent, since that delegation had already participated in international conferences, in particular the United Nations Water Conference. His delegation also welcomed the decision taken by the Conference and regarded it as a victory in the struggle waged for many years by the oppressed people of Namibia. It hoped that that measure would mark the beginning of the effective recognition of all the rights of the United Nations Council for Namibia.

14. Mr. BRECKENRIDGE (Sri Lanka), speaking on behalf of his delegation and as Chairman of the

Group of Non-Aligned Countries, expressed satisfaction with the decision taken by the Conference and hoped that in future it would no longer be necessary to hold such lengthy consultations on the status of the United Nations Council for Namibia.

15. Mr. SCOTLAND (Guyana) welcomed the results of the consultations, but expressed surprise at the reaction of several delegations which had stated that they would have abstained in the event of a vote. Without contesting the right of those delegations to express such a point of view, his delegation would have welcomed a more positive attitude to the question of Namibia. It regretted that such lengthy deliberations had been necessary to resolve a purely formal matter, since, if the delegation of the United Nations Council for Namibia had been entitled to submit oral amendments by virtue of its right to take the floor, there was no reason why it should not have been able to submit written amendments as well.

16. Mr. EL ZOEBY (United Nations Council for Namibia) said that his delegation had not intended to delay the work of the Conference; but the situation had been such that it had been obliged to request the Conference to clarify its position on the important issue of the participation and representation of the delegation of the United Nations Council for Namibia in conferences within the United Nations system, on behalf of the territory of Namibia.

17. When the Council had been invited to participate in the Conference, it had decided to accept that invitation and to send a delegation entrusted with the task of participating fully in the work, in accordance with General Assembly resolutions 3111 (XXVIII), 3295 (XXIX) and 31/149. The Council had also decided to give the delegation a mandate which included ensuring that the Conference took decisions in accordance with the interests of the Namibian people, by reserving its right to sign the convention. The decision taken by the Conference at its third meeting on 14 April 1977 was therefore entirely in accordance with paragraph 3 of General Assembly resolution 31/149, as the President had confirmed earlier.

18. Subsequently, however, the delegation of the United Nations Council for Namibia had been informed that it was not authorized to submit formal amendments but merely to make statements. It was impossible for it, in those circumstances, to fulfil its mandate, a mandate unanimously approved by the 25 member countries of the Council.

19. The delegation of the United Nations Council for Namibia thanked all the delegations which had supported the Council's right to benefit from the provisions laid down by the General Assembly in paragraph 3 of its resolution 31/149, but also noted that some delegations which would have abstained in the case of a vote had nevertheless demonstrated a sympathetic attitude towards the Council and recognized its political mandate.

20. He wished, lastly, to point out to the representative of the Federal Republic of Germany that the delegation of the United Nations Council for Namibia had not been invited to participate in the work of the Conference as an observer but in pursuance of General Assembly resolution 31/149, under paragraph 3 of which the Council was to be granted "full membership[...] so that it may participate in that capacity as the Administering Authority for Namibia in the work of those [...] conferences".

21. Mr. HASSAN (Egypt), speaking on behalf of his delegation and of the other member countries of the Arab Group, said that the Conference's decision was a wise one and would have been supported by virtually all members if it had been put to the vote. It was certainly a victory for the liberation movements which, it was to be hoped, would lead to other victories. It was nevertheless regrettable that the work of the Conference had been delayed by a question on which the Conference had already taken a decision.

22. Mr. KAPETANOVIĆ (Yugoslavia) welcomed the decision which the Conference had just taken. He was convinced that the presence of the delegation of the United Nations Council for Namibia and its full participation in the work would enable the Conference to adopt a draft convention in keeping with the interests of all new States, in particular Namibia.

23. Mr. MUDHO (Kenya) said that the Conference had been witness to the shameful scorn with which certain countries treated United Nations resolutions, while claiming to adhere to the principle of sovereignty. In the view of those countries, the Conference was a conference of plenipotentiaries entrusted with the task of examining the question of the succession of States in respect of treaties, and the United Nations Council for Namibia was precisely not a State. But those countries also claimed that all countries were equal. They therefore flouted United Nations resolutions whenever the latter did not suit them. As certain delegations had already observed, such a reaction was what one might have expected.

24. Kenya's policy with respect to South Africa was well known and if the question had been put to the vote, his delegation would have expressed its support for the United Nations Council for Namibia. It was to be hoped, as other delegations had said, that no more time would be lost and that the work of the Conference would not be further delayed.

25. Mr. MIRCEA (Romania) said that his delegation was satisfied with the decision taken by the Conference. Indeed, the full participation of the delegation of the United Nations Council for Namibia in the work of the Council was entirely warranted, not only by the mission assigned to the Council as Adminis-

tering Authority of the territory and by General Assembly resolution 31/149, but also by the very purpose of the Conference.

26. Mr. KALANDA (Zaire) welcomed the fact that the delegation of the United Nations Council for Namibia was actively participating in the work of the Conference and could submit amendments in the same way as all the other delegations.

27. Mr. ALMODOVAR SALAS (Cuba) said his delegation would remember that the Conference had been delayed because of the non-recognition by certain delegations of the right of a people to participate in the work of the Conference. The Cuban delegation welcomed the decision which the Conference had just taken and which was in conformity with the mandate entrusted to the United Nations Council for Namibia by the international community, through the resolutions of the General Assembly. The Cuban delegation was therefore entirely in favour of the participation of the Council in the work of the Conference.

28. Mr. SIMMONDS (Ghana) said that the Conference, faced with the delaying tactics of the allies of the fascist régime of South Africa, had taken a wise decision by granting the United Nations Council for Namibia, within the context of General Assembly resolution 31/149, a status identical with that of States, with the same rights and obligations. Any decision that infringed those rights would have harmed the work of the Conference. If the question had been put to the vote, his delegation would have requested a roll-call vote.

29. Mrs. OLOWO (Uganda) said her delegation had been truly shocked by the fact that the proposal concerning the United Nations Council for Namibia had not been approved unanimously. The Council could certainly make a useful contribution to the work of the Conference and her delegation welcomed the decision which had just been taken.

30. Mr. KATEKA (United Republic of Tanzania) said that one delegation had impudently said that the Conference had lost time in irrelevant polemics. But it was precisely that delegation which had delayed the consultations of one of the regional groups. Coming from that country, the comment was therefore misplaced.

31. The PRESIDENT thanked all delegations which had helped to resolve the question of the participation of the United Nations Council for Namibia in the work of the Conference.

The meeting rose at 6.40 p.m.

5th PLENARY MEETING

Thursday, 5 May 1977, at 11.05 a.m.

President: Mr. ZEMANEK (Austria)

Organization of work
[Agenda item 10]

1. In reply to the representative of the Philippines, the PRESIDENT said that the General Committee had recommended that the Conference should adopt the articles approved by the Committee of the Whole at the current session, on the understanding that any changes which had to be made to them as a result of the adoption of other articles at the next session of the Conference, would not be considered as being equivalent to a reconsideration of the articles already adopted and hence would not require a decision taken by a two-thirds majority.

2. Mr. TABIBI (Afghanistan) said that, while he was not opposed to the recommendation of the General Committee, he would prefer the Conference to leave governments time to reflect on the articles approved by the Committee of the Whole and not to adopt them finally until its next session, thus following the example of the United Nations Conference on the Law of Treaties. In his view, such a period of reflection would be very useful for newly independent States.

3. Mr. OSMAN (Somalia) supported the proposal of the representative of Afghanistan. He would, however, accept the decision of the majority.

4. Mr. SATTAR (Pakistan) said that he approved of the recommendation of the General Committee as presented by the President.

5. The PRESIDENT invited the Conference to vote on the recommendation of the General Committee.

The recommendation of the General Committee was adopted by 77 votes to none, with 2 abstentions.

Consideration of the question of succession of States in respect of treaties in accordance with resolutions 3496 (XXX) and 31/18 adopted by the General Assembly on 15 December 1975 and 24 November 1976
[Agenda item 11]

ARTICLES 1, 3 TO 5, 8 TO 11 AND 13 TO 15 APPROVED BY THE COMMITTEE OF THE WHOLE[1] (A/CONF.80/10)

6. The PRESIDENT invited the Conference to adopt articles 1, 3 to 5, 8 to 11 and 13 to 15 as ap-

[1] For the consideration of these articles by the Committee of the Whole see the summary records of the following meetings: article 1: 2nd and 31st meetings; article 3: 4th and 31st meetings; article 4: 4th and 31st meetings; article 5: 4th to 6th, 8th and 31st

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

Articles 1, 3, 4 and 5

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

Article 8

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

Article 8 was adopted without a vote.

Article 9

8. Sir Ian SINCLAIR (United Kingdom) said that he was in no way opposed to the text of article 9 as approved by the Committee of the Whole, but wished to point out that at the 15th meeting of the Committee of the Whole his delegation had submitted an amendment to that article (A/CONF.80/C.1/L.12), the purpose of which had been to make clear, as in the case of article 8, that the provisions of article 9 should not be interpreted as precluding the application of the general rules of international law governing the type of transaction to which the draft article referred, quite apart from any question of succession of States. His delegation had not pressed its amendment, since the debate on article 8 had shown that the Committee of the Whole did not consider it necessary to include an express provision to that effect in the body of the draft articles and preferred to deal with the matter in a general provision to be incorporated in the preamble. His delegation wished to emphasize, however, that it shared the point of view expressed by the International Law Commission in paragraph (17) of its commentary to article 9 and that it was in that sense that it would interpret the article adopted by the Conference.[3]

Article 9 was adopted without a vote.

Article 10

Article 10 was adopted without a vote.

Article 11

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

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

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

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

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

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

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

[3] *Ibid.*

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

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

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

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

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

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

19. Mr. MUSEUX (France), supported by Mr. MARESCA (Italy), said he would welcome the adoption of article 11 by the Conference, especially as the text before it was more satisfactory than the original version submitted by the International Law Commission. Subparagraph (*b*) remained ambiguous, however, since a succession of States in fact entailed a certain number of consequences affecting the rights and obligations established by a treaty and relating to a boundary régime, in that the subjects of those rights and obligations were no longer the same. The French delegation therefore considered that the phrase "does not as such affect . . . obligations and rights established by a treaty" should be interpreted as referring to the actual content of those rights and obligations.

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

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

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

[4] See 17th meeting, paras. 45-49.

[5] See 17th meeting, paras. 23-27.

[6] See 19th meeting, paras. 41-44.

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

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

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

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

Against: Somalia.

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

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

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

Article 13

Article 13 was adopted without a vote.

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

Articles 14 and 15

Articles 14 and 15 were adopted without a vote.

ARTICLES 16 TO 29 APPROVED BY THE COMMITTEE OF THE WHOLE[7] (A/CONF.80/11)

26. The PRESIDENT invited the Conference to adopt articles 16 to 29, which the Committee of the Whole had approved at its 35th meeting on 4 May 1977, and which appeared in document A/CONF.80/11.

Articles 16 and 17

Articles 16 and 17 were adopted without a vote.

Article 18

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

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

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

Article 19

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

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

Article 19 was adopted without a vote.

[7] For the consideration of these articles by the Committee of the Whole see the summary records of the following meetings: article 16: 23rd and 27th and 35th meetings; article 17: 27th and 35th meetings; article 18: 27th and 35th meetings; article 19: 27th, 28th and 35th meetings; article 20: 28th and 35th meetings; article 21: 28th and 35th meetings; article 22: 29th and 35th meetings; article 23: 29th and 35th meetings; article 24: 29th and 35th meetings; article 25: 30th and 35th meetings; article 26: 30th, 32nd and 35th meetings; article 27: 30th, 32nd and 35th meetings; article 28: 30th, 32nd and 35th meetings; article 29: 32nd to 35th meetings.

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

Articles 20 to 23

Articles 20 to 23 were adopted without a vote.

Article 24

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

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

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

Article 24 was adopted without a vote.

Articles 25 to 27

Articles 25 to 27 were adopted without a vote.

Article 28

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

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

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

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

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

37. Mr. MUSEUX (France) said that his delegation had voted against retaining that provision because the text adopted by the Committee of the Whole at the 35th meeting—which was the direct opposite of that proposed by the United Kingdom and supported by the French delegation—was wrong in substance and too inflexible. There was no justification for maintaining a limited treaty provisionally in force for a newly independent State if one of the States parties to the treaty did not wish it.

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

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

The meeting rose at 1.05 p.m.

6th PLENARY MEETING

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

President: Mr. ZEMANEK (Austria)

Consideration of the question of succession of States in respect of treaties in accordance with resolutions 3496 (XXX) and 31/18 adopted by the General Assembly on 15 December 1975 and 24 November 1976
[Agenda item 11] (*concluded*)

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

Article 29

1. Mr. KRISHNADASAN (Swaziland) said that he would not ask for a separate vote on paragraph 3 of article 29, but he wished to associate himself with the statement, made by the Swedish representative on article 18.[2]

Article 29 was adopted without a vote.

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

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

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

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

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

Tribute to the memory of Ambassador Edvard Hambro

3. The PRESIDENT, paying a tribute to the memory of the late Ambassador Edvard Hambro, said that his international career had begun by participation, as a member of the Norwegian delegation, in the San Francisco Conference on International Organization which had adopted the Charter of the United Nations. Subsequently, he had held the posts of Chief of the Legal Section in the United Nations Secretariat and Registrar of the International Court of Justice. As Permanent Representative of Norway to the United Nations, he had served as President of the General Assembly in 1970. He was widely known as a legal scholar, who had written several standard works of reference. His combination of diplomatic experience and legal knowledge had made him a valuable member of the International Law Commission.

On the proposal of the President, the members of the Conference observed one minute's silence in tribute to the memory of Ambassador Edvard Hambro.

4. Mr. AMLIE (Norway) thanked the President and the participants in the Conference for their tribute to his fellow countryman.

The meeting rose at 5.20 p.m.

7th PLENARY MEETING

Friday, 6 May 1977, at 10.45 a.m.

President: Mr. ZEMANEK (Austria)

Report of the Credentials Committee (A/CONF.80/12)

1. Mr. SETTE CÂMARA (Brazil), Chairman of the Credentials Committee, said that the report of the Credentials Committee (A/CONF.80/12) required no introduction. He wished to point out, however, that after the meeting of the Credentials Committee on 3 May 1977, the Secretariat had received credentials in good and due form for the delegations of the following countries: Chile, Libyan Arab Jamahiriya, Mongolia, Romania and Sri Lanka.

2. Mr. NATHAN (Israel) pointed out that the Credentials Committee had accepted his delegation's credentials after finding them to be in due form and in conformity with rule 3 of the rules of procedure. His delegation therefore objected to the reservations made by the representatives of Qatar and the Sudan, which were recorded in paragraph 5 of the report under consideration. Such reservations were inadmissible; they were not relevant and were intended only to introduce political elements into the work of the Conference.

3. Under rule 4 of the rules of procedure, the Credentials Committee was required to examine the credentials of representatives and report to the Conference. The purpose of that examination was to ensure that the credentials satisfied the procedural requirements stated in rule 3 of the rules of procedure. Consequently, reservations of a political nature, such as those contained in paragraph 5 of the report, had absolutely nothing to do with the Credentials Committee's terms of reference and had no place in its report.

4. The delegation of Israel was participating as of right in the Conference, by virtue of the invitation which the Secretary-General of the United Nations had sent to the State of Israel in accordance with General Assembly resolution 31/18, in which the Secretary-General had been requested to invite all States to participate in the Conference. Consequently, his delegation's right to take part in the work of the Conference could not be called in question.

5. Referring in particular to the reservations made by the representative of Qatar, he said that his delegation did not claim to represent "Palestine". It represented the State of Israel and the Jewish, Arab and other inhabitants of that State. His delegation also rejected all the other allegations contained in the reservations made in the Credentials Committee. The Government of Israel had already stated its views on those matters in the General Assembly, the Security Council and other bodies. Moreover, the Conference was not competent to discuss them.

6. Although his delegation would not request that a separate vote be taken on paragraph 5 of the report, it nevertheless categorically rejected the reservations recorded in that paragraph.

7. Mr. AL-WITRI (Iraq) supported the reservations made on behalf of the delegations of the Arab countries and the Palestine Liberation Organization. His Government did not recognize the entity called Israel, which had been created in defiance of the right to self-determination of the Palestinian people, which had thus been prevented from exercising a right recognized by the Charter of the United Nations and by contemporary international law.

8. Mr. NATHAN (Israel), speaking on a point of order, said that, since the State of Israel was a Member of the United Nations, it could not be described as "an entity called Israel". He asked that the representative of Iraq be invited to withdraw his remark.

9. The PRESIDENT, referring to rule 18 of the rules of procedure, said that he could call a speaker to order only if his remarks were not relevant to the subject under discussion. In the present instance that

was not true of the remarks made by the representative of Iraq.

10. Mr. ZAKI (Sudan) said that he shared the view of the representative of Iraq. In paragraph 5 of its report, the Credentials Committee had merely recorded the point of view of the delegations of the Arab countries which had taken part in its work.

11. Mr. SAHRAOUI (Algeria) fully supported the reservations made in the Credentials Committee by the representatives of Qatar and the Sudan concerning the entity called Israel.

12. Mr. OSMAN (Somalia) associated himself with the views expressed by the representatives of Algeria, Iraq and the Sudan. The statements of the representative of Israel were out of place because the Conference had before it the report of a committee, which recorded what had occurred during that committee's discussions. The reservations which two delegations had made in the Credentials Committee could not be called in question.

13. Mr. AL-SERKAL (United Arab Emirates) endorsed the comments of the Arab delegations which had expressed their views on the reservations made in the Credentials Committee by the representatives of Qatar and the Sudan.

14. Mr. KEARNEY (United States of America) said he regretted that a political discussion had developed, when the Conference's specific task was to develop universally applicable legal standards, observing rules of law, including the rules of procedure. Israel was a Member of the United Nations which had been duly invited to take part in the Conference, and the Credentials Committee had only to determine whether the Israeli delegation's credentials were in good and due form. The question raised by the representatives of Qatar and the Sudan had no connexion with the terms of reference of the Credentials Committee.

15. Mr. SATTAR (Pakistan) said he thought the discussion was pointless, since the report under consideration must certainly reflect what had happened in the Credentials Committee. Moreover, he shared the view expressed by the representative of the Sudan in the Credentials Committee that the participation of a State in a conference should not be considered as implying its recognition by countries which had not recognized that State.

16. The PRESIDENT put the report of the Credentials Committee (A/CONF.80/12) to the vote.

The report was adopted by 79 votes to none, with 2 abstentions.

Draft recommendation by the Conference

17. The PRESIDENT said that, after consultations with the chairmen of the regional groups and interested delegations, it had been possible to prepare a draft recommendation for transmission to the General Assembly. The text had only been drafted in English, however, and since delegations had not yet had time to study it, he suggested that the meeting should be suspended to enable them to do so.

The meeting was suspended at 11.10 a.m. and resumed at 11.20 a.m.

18. Mr. HERNDL (Austria) observed that, in resolution 31/18 of 24 November 1976, the General Assembly had accepted the Austrian Government's offer to accommodate the present Conference at Vienna. As a matter of course, that invitation extended to a resumed session. Austria, which had a long tradition of acting as host to codification conferences, would be happy if the Conference would continue its work at Vienna, and he hoped that the Austrian Government's invitation would be mentioned in the report of the Conference.

19. Mr. SNEGIREV (Union of Soviet Socialist Republics) said he regretted that the Conference had not been able to complete its work within the time allotted by the General Assembly and thought it essential to organize the next session in such a way as to entail only minimal expenditure from the United Nations budget.

20. Mr. SEPÚLVEDA (Mexico) said that he was satisfied with the draft recommendation, which reflected the spirit of co-operation of all delegations.

21. The PRESIDENT said that, if there were no objections, he would take it that the Conference adopted the draft recommendation, which read as follows:

The United Nations Conference on Succession of States in respect of Treaties,

Bearing in mind General Assembly resolution 3496 (XXX) of 15 December 1975 by which the General Assembly decided to convene a conference of plenipotentiaries in 1977 to consider the draft articles on succession of States in respect of treaties, adopted by the International Law Commission at its twenty-sixth session, and to embody the results of its work in an international convention and such other intruments as it might deem appropriate,

Having met in Vienna from 4 April to 6 May 1977, in accordance with General Assembly resolution 31/18 of 24 November 1976,

Expressing its deep appreciation and gratitude to the Government of Austria for making possible the holding of the Conference in the capital of Austria,

Noting that due to the intrinsic complexity of the subject-matter it has not been possible for the Conference in the time available to conclude its work and to adopt an international convention and other appropriate instruments, as requested by the General Assembly in the above-mentioned resolution,

Taking note of the statement of the representative of Austria that the invitation of the Government of Austria referred to in General Assembly resolution 31/18 would extend to a resumed session of the Conference, which would make it possible for the Conference to continue its work in Vienna in 1978,

Convinced that one more session would enable it to conclude its work as envisaged by the General Assembly,

1. *Adopts* the report on its work for the period 4 April to 6 May 1977;

2. *Requests* the Secretary-General to transmit that report to the General Assembly at its thirty-second session;

3. *Recommends* that the General Assembly decide to reconvene the Conference in the first half of 1978, preferably in April in Vienna, for a final session of four weeks.

The draft recommendation was adopted.

Draft report of the United Nations Conference on Succession of States in respect of Treaties (A/CONF.80/13)

22. Mr. BRECKENRIDGE (Sri Lanka), referring to paragraph 19 of the draft report (A/CONF.80/13), said that his delegation had been absent when article 11 had been put to the vote at the fifth meeting of the Conference; had it been present, it would have voted in favour of that article.

23. With regard to paragraph 14 of the report, relating to the agenda of the Conference, he considered that the decision taken by the Conference at its third plenary meeting, to add to its agenda a supplementary item concerning the request of the United Nations Council for Namibia, should be recorded in a separate paragraph. He was not satisfied with the wording of that item and thought that the word "active" should be replaced by the word "full", since the United Nations Council for Namibia, in its letters to the United Nations Legal Counsel and to the President of the Conference, had requested "full" participation in the Conference. He was not satisfied, either, with the way in which the report reflected the decisions the Conference had taken on that matter and thought that the text of paragraph 14 should be amended.

24. Mr. YACOUBA (Niger) said he agreed with the representative of Sri Lanka that the part of the report dealing with the United Nations Council for Namibia did not accurately describe the Council's status and the decision the Conference had taken on it. He therefore proposed that the word "active" should be replaced by the word "full" in the agenda item relating to consideration of the request made by the United Nations Council for Namibia. He also proposed that the last two sentences of paragraph 14 should be replaced by the following text:

> "Under that item, the Conference, upon the request of the United Nations Council for Namibia, decided, at its third plenary meeting held on 14 April 1977, that the delegation of the United Nations Council for Namibia would be allowed to take part in the Conference. At its fourth plenary meeting, held on 27 April 1977, the Conference, in the context of the implementation of the decision adopted at the third plenary meeting, took the view that that decision also meant that the United Nations Council for Namibia had the right to submit proposals and amendments."

25. Mr. KATEKA (United Republic of Tanzania) supported the proposal by the representative of the Niger.

26. Sir Ian SINCLAIR (United Kingdom) said he thought that the report faithfully reflected decisions taken by the Conference. It was therefore difficult for him to accept the proposed amendment.

27. Mr. SAHRAOUI (Algeria) agreed with the representatives of Sri Lanka, the Niger and Tanzania. He thought that, in the last sentence of paragraph 14 of the French text, the word *"aurait"* was inappropriate, because the United Nations Council for Namibia had already had the right to submit proposals and amendments and the decision taken by the Conference on 14 April 1977 had merely confirmed a pre-existing situation.

28. The PRESIDENT observed that the first amendment proposed by the representative of Niger, which would change the wording of an agenda item adopted by the Conference, involved reconsideration of a decision already taken by the Conference and therefore required a two-thirds majority.

29. Sir Ian SINCLAIR (United Kingdom) said that the report merely reproduced the wording which had in fact been adopted by the Conference at its third plenary meeting. It would therefore be necessary to add, after paragraph 14, a new paragraph indicating that, at its seventh plenary meeting, the Conference had decided to amend that wording.

30. Mr. SCOTLAND (Guyana) said that the wording had been incorrect from the outset, since the United Nations Council for Namibia had requested "full" participation in the Conference. Hence it was only a matter of correcting an error which had been made at the outset.

31. The PRESIDENT read out the following letter, dated 1 April 1977, which had been sent to the Secretary-General of the Conference by the President of the United Nations Council for Namibia:

> At its 250th plenary meeting, the United Nations Council for Namibia decided to accept the invitation to participate in the United Nations Conference on Succession of States in respect of Treaties to be held from 4 April to 6 May in Vienna, Austria.
>
> The delegation of the Council will consist of: Mr. Abdelhamid Semichi, representative of Algeria, and Mr. Leslie Robinson, representative of Guyana. The delegation of the Council will be accompanied by Mr. Ernest Tjiriange, representative of SWAPO.
>
> In accepting the invitation, I should also like to draw your attention to[...] paragraph 3 of General Assembly resolution 31/149, which runs as follows:
>
> "*The General Assembly,*
>
> "*Requests* all specialized agencies and other organizations and conferences within the United Nations system to consider

granting full membership to the United Nations Council for Namibia so that it may participate in that capacity as the Administering Authority for Namibia in the work of those agencies, organizations and conferences."

Observance of this paragraph would facilitate the participation of the Council in the United Nations Conference on Succession of States in respect of Treaties.

...

32. He then read out the following extract from the letter sent to him on 6 April 1977 by the delegation of the United Nations Council for Namibia:

... the delegation of the United Nations Council for Namibia would like to bring to your attention the contents of the attached copy of a letter dated April 1st, 1977, from the President of the United Nations Council for Namibia addressed to Mr. Erik Suy, the Secretary-General for the United Nations Conference on Succession of States in respect of Treaties.

It is within the context of the vital importance of this Conference to the future status of an independent Namibia that our delegation seeks to be accorded such status as would permit our full participation in the deliberations of this Conference. The delegation of the United Nations Council for Namibia would be grateful if, in accordance with[...] paragraph 3 of General Assembly resolution 31/149 of February 10th, 1977, arrangements could be made to ensure the active participation of the United Nations Council for Namibia in the work of the Conference on Succession of States in respect of Treaties. It is perhaps apposite to observe that the United Nations Council for Namibia participated as a full member in the work of the recently concluded United Nations Water Conference held at Mar del Plata, Argentina.

...

33. Mr. KATEKA (United Republic of Tanzania) asked that, if a vote was taken on the amendment proposed by Niger, the vote should be by roll-call.

34. Mr. MUDHO (Kenya) endorsed that request. In his opinion, the words "active participation", which appeared in the letter sent to the President of the Conference by the United Nations Council for Namibia referred to administrative arrangements, and it was quite clear that the Council had asked for "full" participation in the Conference.

35. Mr. BRECKENRIDGE (Sri Lanka) was also of the opinion that the two letters which the President had read out clearly showed that the United Nations Council for Namibia had requested full participation in the Conference.

36. Mr. YACOUBA (Niger) said he thought those two letters did indeed reflect the position of the United Nations Council for Namibia. Since the Conference had agreed that the Council should participate, its participation must be full and complete.

37. Mr. MBACKE (Senegal) said he thought the competence of the United Nations Council for Namibia in conferences organized by the United Nations was not clearly defined, for the words "full member" were open to different interpretations. Thus, in the present case, the United Nations Council for Namibia had the right to submit proposals and amendments, but the question of its right to vote had not been settled. General Assembly resolution 31/149 suggested that the Council had the same rights and obligations as States at conferences organized by the United Nations; in his opinion the General Assembly should take a clear position on the meaning of the words "full member".

38. He also noted a certain lack of objectivity in the draft report. Paragraph 5 listed first the States which had taken part in the Conference, and then the States represented by observers; the United Nations Council for Namibia, which had participated fully in the work of the Conference, was only mentioned afterwards. Moreover, the word "further" in the antepenultimate line of paragraph 14 gave the impression that, after having granted certain rights to the United Nations Council for Namibia, the Conference had generously granted it other favours. Lastly, the word "*aurait*", in the penultimate line of the French text, left some doubt about the right of the United Nations Council for Namibia "to submit proposals and amendments".

39. Mr. YIMER (Ethiopia) stressed that the Conference should not overlook the importance of United Nations resolutions, in particular, General Assembly resolution 31/149, which referred to the status of the United Nations Council for Namibia as a full member of conferences held within the United Nations system. It was clear that, by virtue of that resolution, the Council took part in such conferences on the same footing as States.

40. Mr. KEARNEY (United States of America) said he thought the question at issue was how the item considered at the third meeting of the Conference had been worded. He believed that the wording on which the Conference had based its decision was indeed that reproduced in paragraph 14 of the draft report, and whatever was done now would not change what had happened in any way. Moreover, at its third meeting, the Conference had taken decisions only on the seating of the delegation of the United Nations Council for Namibia in the conference room and on the right of that delegation to submit proposals and amendments.

41. Mr. MUSEUX (France) agreed with the representative of the United States and observed that the Conference should adopt a simple report which faithfully recorded what had happened during its meetings. It might be an extremely serious matter to amend the wording of the item which the Conference had been called upon to add to its agenda, for the decision to include that item had been taken advisedly, after long consultations between the participants. His delegation was surprised at such methods of work. How could the Conference seek to amend, at that stage in its work, the wording of an item which had already been on its agenda for a long time? It was at the third or fourth meeting that the question should have been raised. Of course, the

Conference could now take any decision it deemed appropriate, by a two-thirds majority of the participants, but his delegation could not approve of that procedure.

42. Referring to the statement by the representative of Niger that the Conference had granted the right to vote to the United Nations Council for Namibia, he said that he could not agree, because States alone enjoyed the right to vote as was shown by rule 33 of the rules of procedure, which read: "Each State represented at the Conference shall have one vote". It would not be appropriate to grant a body such as the Council a right which was the prerogative of States.

43. Mr. KATEKA (United Republic of Tanzania) said that even if the draft report accurately reflected what had happened at the meetings of the Conference, as some delegations believed, it was still necessary to correct a mistake. He therefore suggested the addition, at the end of paragraph 14, of a sentence indicating that, at its seventh plenary meeting, the Conference had decided to correct the error in the wording of the supplementary item on its agenda.

44. Mr. SCOTLAND (Guyana) said that the arguments advanced against the proposal to amend the draft report were certainly logical, but other important elements should also be taken into account. The last sentence of paragraph 14 reproduced the substance of the statement made by the President at the fourth meeting of the Conference, but neither that paragraph nor the summary record of that meeting made it clear that the President's statement had been an interpretation of the decision taken at the third meeting of the Conference, which, besides other rights granted to the United Nations Council for Namibia, had concerned its right to submit proposals and amendments. His delegation therefore doubted whether it was advisable to enumerate the Council's rights, at the risk of not faithfully reflecting what had happened, and thought it might be better simply to indicate that the United Nations Council for Namibia had been allowed to take part in the work of the Conference.

45. The PRESIDENT said that, in the hope of facilitating the discussion, he would read out the statement he had made at the fourth meeting, which ran:

> The PRESIDENT recalled that under the agenda item under consideration and upon the request of the delegation of the United Nations Council for Namibia referring to General Assembly resolution 31/149, the Conference had taken a decision concerning that delegation's participation in the Conference. In the context of the implementation of that decision, the delegation of the United Nations Council for Namibia had requested that the Conference should state explicitly that it had the right to submit proposals and amendments.

He suggested that the full text of that statement, and of the statement he had made at the third meeting of the Conference, should be reproduced in the report.

46. Mr. SNEGIREV (Union of Soviet Socialist Republics) said that his delegation had been entirely in favour of the implementation of General Assembly resolution 31/149 and, consequently, of the full participation of the delegation of the United Nations Council for Namibia in the Conference within the context of the application of that resolution. He noted that the letters from the United Nations Council for Namibia, which the President had read out, referred both to "full" and to "active" participation by the Council and that no delegation had raised any objections when the Conference had decided by consensus to place on its agenda the question of "Consideration of the request of the United Nations Council for Namibia for active participation in the United Nations Conference on Succession of States in respect of Treaties (General Assembly resolution 31/149)." His delegation thought that, if some delegations considered it necessary, it might be possible, not to reconsider a decision already taken, but to adopt a new decision.

47. Mr. KATEKA (United Republic of Tanzania) said he did not think the President's suggestion would solve the problem raised by the inaccurate wording of the supplementary item on the agenda of the Conference. It was the duty of the Conference to correct the error which had crept in.

48. The PRESIDENT pointed out that the statements to which he had referred related not to the wording of the agenda item, but to the decisions taken by the Conference. He suggested that consideration of that matter should be continued at the next meeting.

The meeting rose at 12.50 p.m.

8th PLENARY MEETING

Friday, 6 May 1977, at 5.10 p.m.

President: Mr. ZEMANEK (Austria)

Draft report of the United Nations Conference on Succession of States in respect of Treaties (A/CONF.80/13) (*concluded*)

1. The PRESIDENT said that, following consultations between the regional groups, it had been agreed that the latter part of paragraph 14 of the draft report (A/CONF.80/13), starting with the words "At its third plenary meeting...", should be recast to form two new paragraphs reading:

> 15. At its third plenary meeting, held on 14 April 1977, the Conference decided to add a supplementary item to its agenda entitled "Consideration of request of the United Nations Council for Namibia for active participation in the United Nations Conference

on Succession of States in respect of Treaties" (General Assembly resolution 31/149). Under that item the President reminded the Conference that paragraph 3 of General Assembly resolution 31/149 entitled "Action by intergovernmental and non-governmental organizations with respect to Namibia", reads:

> "Requests all [...] conferences within the United Nations system to consider granting full membership to the United Nations Council for Namibia so that it may participate in that capacity as the Administering Authority for Namibia in the work of those [...] conferences."

The Conference took a decision in favour of participation as requested by the United Nations Council for Namibia.

16. At the fourth plenary meeting, held on 27 April 1977, the President stated the following:

> "The Conference will recall that under this item and upon the request of the delegation of the United Nations Council for Namibia referring to General Assembly resolution 31/149, it took a decision concerning that delegation's participation in the Conference. Now, in the context of the implementation of that decision, the delegation of the United Nations Council for Namibia has requested that the Conference should state explicitly that the delegation of the United Nations Council for Namibia has the right to submit proposals and amendments."

The Conference so decided.

2. Mr. OSMAN (Somalia) said that, at the 7th plenary meeting there had been some opposition to a proposal concerning full participation of the delegation of the United Nations Council for Namibia in the work of the Conference, with the right to submit proposals and amendments. The full participation of the lawful representative of the people of Namibia was a matter of the utmost importance and one that affected other issues in the world of today. He urged the Conference to consider the question realistically, in the light of the realities of the political situation in southern Africa.

3. Mr. SAHRAOUI (Algeria) pointed out that the last part of paragraph 15, as read out by the President, gave the impression that the Conference had taken a decision in favour of the participation of the Council for Namibia, at the request of the Council itself. In fact, the decision had been taken in conformity with General Assembly resolution 31/149. Similarly, the words "in the context of the implementation of that decision" in paragraph 2, were equally ambiguous. It would be preferable to say that the decision had been taken in accordance with the relevant resolution of the General Assembly.

4. Mr. FARAHAT (Qatar) supported the comments of the representative of Algeria. The last part of paragraph 15 should state that the Conference had taken a decision "in conformity with the above-mentioned resolution". However, he simply wished to clarify the text and it was not his intention to submit a formal amendment on that point.

5. The PRESIDENT said that, if there were no objections, he would take it that the Conference adopted the wording he had read out.

It was so decided.

The draft report (A/CONF.80/13) as a whole, as amended, was adopted.

Closure of the session

6. Mr. SEPULVEDA (Mexico), speaking on behalf of the Latin American Group, said that, despite the difficulties that had been encountered, the Conference could meet any criticism successfully, for agreement had been reached on matters that were not only politically sensitive, but juridically complex. It could also be said that, in principle, considerable progress had been made with the remaining draft articles submitted by the International Law Commission. Consequently, he was moderately optimistic about the outcome of the next session.

7. The achievements at the present session could be attributed in large measure to the extremely able guidance of the President. Gratitude was also due to the Expert Consultant, to the Chairman and the Vice-Chairman of the Committee of the Whole, to all participants for their co-operation and to all members of the secretariat for their unfailing assistance.

8. Mrs. BOKOR-SZEGÖ (Hungary), speaking on behalf of the socialist countries of Eastern Europe, said that although the Conference had not been able to complete its consideration of the question of succession of States in respect of treaties, the draft articles prepared by the International Law Commission had served as a solid basis for the discussions in the Committee of the Whole and she was sure that, at a future session, the Conference would be able to reach agreement on a convention which would meet the needs of the international community as a whole. Her delegation was grateful to the President of the Conference, to the Chairman and the Vice-Chairman of the Committee of the Whole and to all members of the Secretariat for the untiring efforts they had made and the assistance they had provided to delegations during the consideration of the very complex topic of succession of States in respect of treaties.

9. Mr. YACOUBA (Niger), speaking on behalf of the African Group, expressed appreciation to the President of the Conference, the Chairman and the Vice-Chairman of the Committee of the Whole and the secretariat for the efforts they had made to facilitate the solution of the problems which his Group had encountered. He hoped that, at the next session of the Conference, a spirit of co-operation would continue to prevail among all groups so that it would be possible to adopt a convention acceptable to all countries.

10. Mr. YANGO (Philippines), speaking on behalf of the Asian Group, thanked the President of the Conference for work well done at the current session. He also expressed appreciation to the Chairman and

the Vice-Chairman of the Committee of the Whole and to all members of the secretariat for the efforts they had made to ensure the success of the Conference. Lastly, he expressed gratitude to the Government of Austria and to the people of Vienna for the warm hospitality with which they had received all participants.

11. Sir Ian SINCLAIR (United Kingdom), speaking on behalf of the Western European and Others Group, congratulated the President of the Conference on the qualities of leadership, courtesy and tact with which he had guided the Conference in its difficult task of considering the question of succession of States in respect of treaties. He thanked the Chairman and the Vice-Chairman of the Committee of the Whole, the Expert Consultant, the Chairman of the Drafting Committee and all members of the secretariat for the untiring efforts they had made to ensure the success of the work carried out at the current session. He also thanked the Government and people of Austria for the hospitality with which they had received everyone taking part in the Conference.

12. Mr. OSMAN (Somalia) thanked the President of the Conference and the Chairman and the Vice-Chairman of the Committee of the Whole for the masterly way in which they had guided the work of the Conference. He also expressed appreciation to all members of the secretariat for the assistance they had given to delegations in order to ensure the success of the work.

13. The Conference had indeed made a valuable contribution to the codification and progressive development of international law, which was, at present, however, still an international law that had been formulated and applied by the colonialist countries and had served imperialist interests. The International Law Commission was composed of only 25 members, who did not represent the sentiments and aspirations of the modern world, and parts of its commentaries to the draft articles on succession of States in respect of treaties were redolent of the colonial past. In the future, international law must be based on a different system and must not be made to serve colonialist theory. The Conference would not have discharged its responsibilities towards progressive countries if its efforts were designed only to develop the law which had made colonialism possible. He therefore expressed the hope that, at a future session, the Conference would be able to adopt a convention on succession of States in respect of treaties which would meet the needs of the entire international community.

14. Mr. NAMEK (Egypt), speaking on behalf of his delegation and of the Chairman of the Committee of the Whole, thanked the President of the Conference for his wise leadership and the staff of the secretariat for the untiring efforts they had made throughout the session. He also expressed appreciation to the Government of Austria and the people of Vienna for their welcome and hospitality.

15. Mgr. SQUICCIARINI (Holy See) commended the President for the skill and wisdom with which he had guided the work of the Conference, thus enabling it to overcome the difficulties it had encountered.

16. Mr. MARESCA (Italy) said it was entirely appropriate that the Conference convened to prepare a draft convention laying down procedures which were regulated by the oldest and most fundamental branch of international law, namely diplomatic law, should have been held at Vienna, a city which in 1815 had been the birthplace of diplomatic law and had subsequently become the centre for its further development. After congratulating the President and the other officers of the Conference on the efficiency with which they had performed their duties, he thanked the city of Vienna and the Austrian Government for their hospitality and expressed the hope that the Conference would reconvene in Vienna to complete its work.

17. Mr. ARIFF (Malaysia) paid tributes to the President of the Conference, the Chairman, Vice-Chairman and Rapporteur of the Committee of the Whole, the Chairman of the Drafting Committee, the Expert Consultant and all members of the secretariat. While the Conference might not have achieved all that it had set out to do, it had accomplished outstanding results in the time available and had made great progress towards its goal. He had no doubt that the Conference would be fully equal to the task ahead.

18. Mr. HERNDL (Austria) said that, in an earlier statement in the Committee of the Whole, he had already paid a tribute to the officers of the Conference and to the secretariat, and had presented some thoughts concerning the work of the Conference. He wished to thank all delegations for their expressions of gratitude, made in the recommendation adopted at the 7th plenary meeting, and for also having recommended Vienna as the venue for a resumed session of the Conference in line with the invitation of the Austrian Government. He thanked participants for their friendly attitude towards Austria and expressed the hope that the Conference would reconvene in Vienna in 1978.

19. The PRESIDENT thanked all representatives who had congratulated him on his conduct of the Conference. His task as President had been greatly facilitated by the spirit of co-operation and understanding shown by all delegations and by the assistance rendered by the secretariat. He then declared closed the first session of the United Nations Conference on Succession of States in respect of Treaties.

The meeting rose at 6.50 p.m.

SUMMARY RECORDS OF MEETINGS OF THE COMMITTEE OF THE WHOLE

1st MEETING

Tuesday, 5 April 1977, at 4 p.m.

Chairman: Mr. RIAD (Egypt)

In the absence of the Chairman, Mr. Zemanek, President of the Conference, took the Chair.

Election of the Vice-Chairman of the Committee of the Whole and of the Rapporteur

1. The TEMPORARY CHAIRMAN declared open the first meeting of the Committee of the Whole, and invited nominations for the post of Vice-Chairman.

2. Mr. PASZKOWSKI (Poland) nominated Mr. Jean-Pierre Ritter (Switzerland).

Mr. Ritter (Switzerland) was elected Vice-Chairman by acclamation and took the Chair.

3. Mr. SEPÚLVEDA (Mexico) nominated Mr. Abdul Hakim Tabibi (Afghanistan) for the post of Rapporteur.

4. Mr. TEPAVAC (Yugoslavia), Mr. KAMIL (Indonesia), Mr. PANCARCI (Turkey) and Mr. ARIFF (Malaysia) supported the nomination.

Mr. Tabibi (Afghanistan) was elected Rapporteur by acclamation.

5. Mr. TORNARITIS (Cyprus) said that, since his delegation would be unable to attend all the meetings of the Conference, it wished to express forthwith its satisfaction with the appointments made to the posts of Chairman, Vice-Chairman and Rapporteur of the Committee.

6. It also wished to congratulate the International Law Commission on the draft articles it had prepared for the Conference.

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]

7. The CHAIRMAN invited the Committee to consider the draft articles on succession of States in respect of treaties adopted by the International Law Commission at its twenty-sixth session.[1]

8. If there was no objection, he would invite the Committee to begin by discussing article 1, on the understanding that any general statements by delegations would be made during consideration of article 2.

9. Mr. SETTE CÂMARA (Brazil) said that at the meeting of the General Committee it had been decided that general statements would be made during consideration of article 2. But it was customary, at codification conferences, to leave the discussion of articles containing definitions of terms until the end of the session, because many amendments affecting them might be adopted during the discussions. He would like to know, therefore, whether it was intended to have the statements of principle made at the end of the Conference.

10. The CHAIRMAN said that, as he understood it, delegations would be invited to submit statements during consideration of article 2 but it was not intended to postpone consideration of that article. Having consulted the Secretariat, he understood that article 2 would be submitted for adoption not immediately after its discussion, but later in the session.

11. Sir Ian SINCLAIR (United Kingdom) said that his delegation shared the Chairman's interpretation. In its view, consideration of article 2 might provide a useful opportunity for delegations to make general statements relating to the draft articles, but article 2 need not be adopted immediately following its discussion. Indeed, it would be difficult for the Committee of the Whole to adopt that article until it had considered all the other articles of the draft convention and examined the definitions of the terms proposed.

The meeting rose at 4.25 p.m.

[1] *Official Records of the General Assembly, Twenty-ninth Session, Supplement No. 10* (A/9610/Rev.1), chap. II. (The report of the International Law Commission on the work of its twenty-sixth session also appears in the *Yearbook of the International Law Commission, 1974*, vol. II, part one, pp. 157 *et seq.*) The Conference had before it a reprint of chapter II of that report (A/CONF.80/4) and a working paper (A/CONF.80/WP.1) containing the draft articles adopted by the International Law Commission in English, French, Spanish and Russian. In this volume, for practical reasons, Conference document A/CONF.80/4 is used as the reference for the draft articles adopted by the International Law Commission and for the commentaries on them.

2nd MEETING

Wednesday, 6 April 1977, at 10.35 a.m.

Chairman: Mr. RIAD (Egypt)

In the absence of the Chairman, Mr. Ritter (Switzerland), Vice-Chairman, took the Chair.

Consideration of the question of succession of States in respect of treaties in accordance with resolutions 3496 (XXX) and 31/8 adopted by the General Assembly on 15 December 1975 and 24 November 1976.

[Agenda item 11] (*continued*)

ARTICLE 1 (Scope of the present articles)[1]

1. Mr. KEARNEY (United States of America) recalled that at the first meeting it had been agreed that there might be a short general debate on article 2. As article 1 seemed acceptable as drafted and served as the base of the draft articles, it would be appropriate to adopt it there and then, before taking up article 2, and thus lay the foundations of the future convention.

2. Mr. MARESCA (Italy) observed that article 1 was well drafted because it indicated clearly that the future convention would apply only to the succession of States in respect of treaties and that only States would be regarded as subjects of succession. The words "The present articles apply" should, of course, be replaced by the words "The present Convention applies". Furthermore, the future convention would govern only the legal effects of successions of States, although a succession of States could have other than legal effects. For instance, in addition to purely legal effects, the succession of the Austrian Empire to the treaties concluded by the Most Serene Republic of Venice with Eastern Powers had had effects which could be attributed to Venice's Adriatic or Mediterranean role.

3. Mr. MIRCEA (Romania) said that the reference to the "effects of a succession of States" was a source of difficulty for his delegation. It approved the pragmatic approach adopted by the International Law Commission, which had decided to deal with the subject of the succession of States in respect of treaties within the general framework of the law of treaties. It noted, however, that that approach was not reflected satisfactorily in all the draft articles, particularly article 1. Emphasis should be placed on the maintenance, or establishment of the non-application, of certain treaties, on the basis of agreements, including agreements in simplified form between successor States and other parties to such treaties, or on the basis of certain characteristics of those treaties, particularly in the case of general multilateral treaties or treaties with restricted participation. Consideration of article 2 would show that it was very difficult to give a generally acceptable definition of the succession of States and, above all, to determine what "effects" a succession might have. That was why his delegation had submitted the amendment in document A/CONF.80/C.1/L.2, the purpose of which was to replace article 1 by a provision based on articles 1, 3 and 4; paragraph 1 read: "The present Convention applies to treaties concluded between States in written form, including treaties constituting international organizations".

4. Mr. YASSEEN (United Arab Emirates) thought that article 1 should be maintained as drafted, because it had the merit, not only of delimiting the scope of the future convention, but also of establishing the links between that instrument and the 1969 Vienna Convention on the Law of Treaties.[2] The treaties covered by the draft convention were precisely those to which the 1969 Vienna Convention applied.

5. The CHAIRMAN, referring to the Romanian amendment (A/CONF.80/C.1/L.2), observed that the amendment related mainly to article 4 and suggested that consideration of it be deferred until article 4 was taken up. He suggested that article 1 should be adopted subject to consideration of the Romanian amendment in due course.

Article 1 was adopted.[3]

ARTICLE 2 (Use of terms)[4]

6. The CHAIRMAN reminded members that it had been agreed that there might be a brief general debate on the article.

7. Mr. STUTTERHEIM (Netherlands) said that the draft articles, which had been meticulously prepared by the International Law Commission (A/CONF.80/4), were of course, a compromise but that, as a whole, they were, with a few exceptions, acceptable to his delegation.

8. He emphasized that one of the Members of his delegation came from the Netherlands Antilles, a country which already enjoyed complete internal in-

[1] The following amendment was submitted: Romania, A/CONF.80/C.1/L.2.

[2] 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), pp. 287 *et seq.*

[3] For resumption of the discussion of article 1, see 31st meeting, paras. 2-3.

[4] The following amendments were submitted: Netherlands, A/CONF.80/C.1/L.35; France and Switzerland, A/CONF.80/C.1/L.41, and Cuba, A/CONF.80/C.1/L.46.

dependence and was preparing for external independence in order soon to become a "new State".

9. As to the relationship between the future convention and the 1969 Vienna Convention, he recalled that under the terms of its article 73, the latter instrument did not prejudge "any question that may arise in regard to a treaty from a succession of States".[5] Moreover, several articles of the draft under consideration presupposed application of the provisions of the 1969 Convention, particularly those relating to reservations. The Drafting Committee might, therefore, be requested to supplement the draft by a general provision specifying the relationship between the two instruments.

10. His delegation earnestly hoped that the question of the settlement of disputes would be dealt with in a much fuller provision than draft article 32.

11. Mr. AL-KATIFI (Iraq) pointed out that whereas some passages in article 2 were too detailed and could be abbreviated, elsewhere the article had lacunae which should be filled. For instance, subparagraphs (*a*), (*i*), (*k*), (*l*), and (*n*) of paragraph 1, which reproduced the definitions of the 1969 Vienna Convention, could be replaced by a reference to those provisions. Such an approach would be consistent with the International Law Commission's idea that the future convention should supplement the Vienna Convention.

12. Subparagraph (*f*), which defined the expression "newly independent State", referred to one of the categories of succession adopted by the International Law Commission. Indeed, after examining State practice, the International Law Commission had deemed it necessary to divide cases of succession of States into three broad categories, namely, succession in respect of part of a territory, succession in the case of newly independent States and succession resulting from a union of two or more existing States or the separation of part of an existing State. Hence, it could be asked whether article 2 should not contain, in addition to a definition of a newly independent State, definitions relating to the other two categories of succession. He pointed out that, in article 33, the case of separation of a part or parts of a State to form one or more States was presented in a way likely to lead to confusion between such cases and that of a newly independent State. Such confusion would, moreover, be inevitable if, by reason of its date, the succession in question was governed by established international law, which regarded the territory of a colony as an integral part of the territory of the colonizing State. Such confusion would be extremely serious, since each of the categories of succession distinguished by the International Law Commission was subject to a special legal régime.

13. He suggested, therefore, that more precise definitions should be given of each category of succession and that those definitions should be inserted in article 2 or at the beginning of each part concerning the various categories of succession.

14. Mr. MARESCA (Italy) expressed the hope that the Committee would consider article 2, paragraph 1, subparagraph by subparagraph. In paragraph 1, subparagraph (*b*), the concept of "replacement of one State by another in the responsibility for the international relations of territory" was indeed correct from the historical or political point of view, but it was not really satisfactory from a purely juridical point of view. In paragraph (4) of the commentary on that provision, the International Law Commission had duly pointed out that the word "responsibility" should be read in conjunction with the word "for the international relations of territory" and that it did not intend to convey any notion of "State responsibility", a topic currently under study by the Commission and in respect of which a general reservation had been inserted in article 38 of the draft (A/CONF.80/4, p. 17). Article 73 of the 1969 Vienna Convention also contained an express reservation concerning the international responsibility of a State.

15. With regard to the closing words of paragraph 1, subparagraph (*b*): "in the responsibility for the international relations of territory", he wondered whether a State could assume the responsibility for the international relations of territory. A territory, as such, had no international relations of its own. If the International Law Commission had had in mind treaties relating to territory, it ought to have limited the scope of the draft convention to that kind of treaty. However, that was not the case and the Drafting Committee should try to improve the last phrase of subparagraph (*b*).

16. The CHAIRMAN said that the concept of international relations of territory played such an important role in the scheme of the draft that it was not enough to refer the matter to the Drafting Committee. It would be necessary to draw up guidelines, perhaps in the form of an amendment.

17. Consideration of article 2, paragraph 1, subparagraph by subparagraph, might give rise to difficulties since subparagraphs (*b*) to (*g*) all employed the concept of succession or successor State. He suggested that the Committee should consider together subparagraphs (*a*) to (*g*), which concerned the specific vocabulary of the draft, and then take up subparagraphs (*h*) to (*n*), which concerned the general vocabulary of the draft, in other words, concepts taken mostly from the 1969 Vienna Convention.

18. Mr. HERNANDEZ ARMAS (Cuba) said that, in preparing the draft articles, the International Law Commission had taken into consideration recommendations made by the General Assembly in resolutions 1765 (XVII) and 1902 (XVIII) to the effect that the

[5] *Official Records of the United Nations Conference on the Law of Treaties, Documents of the Conference* (op. cit.), p. 299.

Commission should take into account the views of States which had achieved independence since the Second World War. Another merit of the draft articles was that they also took into account the fundamental principles embodied in the Charter of the United Nations, relating more particularly to newly independent States, the sovereign equality of States, and self-determination of peoples. Newly independent States could in no sense be bound by obligations contracted by the predecessor State, but it should be remembered that they suffered from a serious shortage of specialist personnel and were sometimes compelled to agree to conditions which jeopardized their future development. The Commission had therefore been right to enunciate in draft article 15 the right of those States to apply the "clean slate" principle in their international relations.

19. However, the draft articles posed serious difficulties for his delegation; if adopted in their present form, they would not be of sufficient benefit for newly independent States to agree to be governed by them in their relations in the field under consideration. Although it was true that the draft articles codified international practice in the succession of States in respect of treaties, his delegation felt that, with the present pace of developments of the international situation, it was conceivable that by the time the draft articles came into force, the chief beneficiaries of the instrument, namely, the newly independent States, could no longer be qualified as newly independent. Consequently, the wording of draft article 7 should be altered so as to provide for an exception to the principle of non-retroactivity.

20. Again, the International Law Commission had not covered the case of States that were freeing themselves from neo-colonialist domination. The draft did not afford any solution for the very many States which, after great struggles, were breaking free from that subtle form of domination. His delegation had not been convinced by the arguments the Commission had adduced to justify the absence of a provision in that connexion. He mentioned the comments made by his Government (A/CONF.80/5, p. 84), and added that there could be no confusion between a social revolution and a mere *coup d'état*. The obstacle encountered by the Commission was easy to overcome, since the behaviour of the State itself would demonstrate whether a *coup d'état* or the birth of a newly independent State was involved. His delegation would in due course be submitting a draft paragraph, for insertion in draft article 2, on the situation of States achieving independence after a social revolution.

21. Draft article 12 also gave cause for some concern: the institution that the article sought to govern was not very clear. It required a further paragraph specifying that treaties, pacts entered into or concessions granted under conditions of inequality which ignored or restricted the sovereignty of the successor State over any part of its territory, particularly if military bases were installed or to be installed therein, did not fall within the scope of the draft article, since they were deemed illegal and violated the principles of the Charter of the United Nations.

22. As to draft article 2, the definition of the term "treaty" in paragraph 1, subparagraph (*a*) was inadequate in that it did not sufficiently highlight the subjective element present in any treaty, namely the will of the State to assume obligations. Consequently, he proposed that the word "validly" should be inserted before the word "concluded", so as to resolve the problem of treaties that were concluded in due form but under coercion from the predecessor State, Paragraph 1, subparagraph (*b*) also raised difficulties and the words "in the responsibility for the international relations of territory" should be replaced by "in the rights and obligations resulting from the international relations of territory".

23. Mr. EUSTATHIADES (Greece), drawing attention to paragraph 1, subparagraph (*b*) of draft article 2, said that the terms "succession", and "responsibility" and "territory" could raise difficulties and that it would be preferable to consider the provision at a later stage. In that subparagraph, the term "succession" meant an act, whereas reference was made later on to another aspect of succession. Moreover, the phrase "responsibility for the international relations" was drawn from Anglo-Saxon terminology and was not very satisfactory in French.

24. He endorsed the idea of differentiating between paragraph 1, subparagraphs (*a*) to (*g*) and the remainder of draft article 2.

25. Instead of the term "notification of succession" defined in paragraph 1, subparagraph (*g*), his delegation would have preferred the more useful and practical term "declaration of continuity". However, since the draft centred on the idea of notification of succession, he would not press the proposal if it was too late.

26. Mr. MUSEUX (France) said that many actual cases of succession of States in respect of treaties did not really appear to have followed any consistent rule of law or established practice and that the efforts to codify and develop international law in that sphere were welcome, although instances of succession were likely to be much rarer in the coming years than during the period of decolonization.

27. Explaining why the French Government had received the idea of a convention on the topic with caution, and even a certain coolness, he said that the first difficulty in his Government's opinion was the very form of the instrument which the Conference was called upon to adopt, and which the International Law Commission and the majority of States thought should be a convention. The French Government had not advocated a specific form, but had asked "what value there would be in codifying the

law of the succession of States in respect of treaties in the form of a convention, in view of the fact that under the general law of treaties a convention is not binding upon a State unless and until it is a party to the convention" (A/CONF.80/5, p. 13). Moreover, it had not been convinced by the arguments put forward by the International Law Commission in paragraph 63 of chapter IV of its report on the work of its twenty-sixth session (see A/CONF.80/4, p. 11), and feared that a convention would give the false impression that it would settle actual cases as they arose, whereas it would not, since it did not even entirely resolve the problems of the predecessor State. He therefore suggested that the delegations which were particularly interested in the matter should consult with a view to finding a solution acceptable to all concerned.

28. The French Government also had misgivings about the "clean slate" rule on which the draft articles were based. It did not seem to conform with current practice or necessarily serve the interests of newly independent States or the international community. Upon mature reflection, his Government had nevertheless decided to support it. He was unable to recommend an invariable rule and felt that the efforts to classify treaties had not really produced satisfactory results.

29. The International Law Commission had based the "clean slate" rule on the principle of self-determination, but his delegation felt that it would be more appropriate to invoke the principle of the equality of sovereign States, as it was clear that one sovereign State could not commit another and that all treaties concluded by the predecessor State applicable to the territory of the successor State became invalid. There was of course no need to make a distinction in that context between bilateral treaties and multilateral treaties or between political treaties and technical or economic treaties. But a certain number of exceptions should be allowed for when applying the "clean slate" principle. Thus the international Law Commission correctly provided for an exception when defining the principle itself by specifying that newly independent States simply had the option of not being bound by the treaties of the predecessor State. Other exceptions were inherent in the very principle of State sovereignty, inasmuch as the sovereignty of any State was limited by the sovereignty of other States, and to a certain extent by general international law. It should be borne in mind in particular that a State succeeded another on a given territory, whose area could not be changed by succession; hence, territorial demarcation treaties inevitably remained in force and boundaries and special provisions limiting the predecessor State's exercise of sovereignty according to specific geographical data, for example freedom of passage, were generally maintained. In that respect the French delegation approved draft articles 11 and 12, although it felt that the Conference should perhaps go further, allowing for humanitarian law and financial treaties which obliged States parties to accept financial responsibilities directly connected with the rights of communities or individuals belonging to the territory transferred.

30. On the other hand, his delegation felt that certain exceptions to the "clean slate" principle should not be mentioned, for example general treaties of a universal character which did not warrant special treatment and the special cases of secession dealt with in the inappropriate provisions of draft article 33, paragraph 3. Secession in general, however, should, in his opinion, be mentioned in draft article 2, paragraph 1, subparagraph (*f*).

31. Finally, there were a number of gaps in the draft articles which the Conference should fill in. The International Law Commission had not considered the position of predecessor States in relation to treaties. The matter had indeed been dealt with in article 34, but only in the case of a State which continued to exist after separation of part of its territory. It was necessary to include an article on changes in terminology inasmuch as in the event of succession the parties to a given treaty would no longer be the same and the situation would have changed. It would also be necessary to specify the date on which certain financial obligations would take effect or terminate. At the present stage of the discussion the French delegation wished to reserve its position on the question of the settlement of disputes.

32. His delegation would confer with the other delegations which had doubts about some of the concepts contained in article 2, in particular those of newly independent States and responsibility, which in the present case might be replaced by the idea of competence.

33. Mr. FLEISCHHAUER (Federal Republic of Germany) observed that as a consequence of the process of decolonization, the last 20 years had been marked by an unprecedented number of cases of State successions, each of which had had its effect on the network of international treaties which linked the whole community of nations. As an industrialized country, the Federal Republic of Germany was directly concerned with the effects of most of the State successions on international treaties; therefore it felt directly concerned by the draft convention under consideration.

34. His delegation was struck by the rigidity with which the Commission applied the "clean slate" rule in the draft articles to cases of State succession involving newly independent States. Although it well understood the conclusions drawn by the Commission from the principle of self-determination with regard to the contractual position of newly independent States (all the more so as the practice of newly independent States showed a general trend towards maintaining existing international treaty links), it felt that

in some respects the "clean slate" rule had been overstated by the Commission.

35. With respect to State succession not resulting from the emergence of a newly independent State, his delegation had the impression that the Commission wanted to re-establish the balance by stating the principle of *pacta sunt servanda* as strongly as the "clean slate" rule had been stated for newly independent States. It accepted the Commission's decision in favour of *pacta sunt servanda,* but again felt that the principle had been overstated with regard to bilateral treaties, which, according to the draft articles, were to continue for the successor State without the other State party being asked or even formally informed. The rules regulating the emergence of a new State formed out of two or more predecessor States required further discussion and he reserved the right to make appropriate comments at a later stage.

36. He felt that the question of the non-retroactivity of the convention posed a double problem: how to make the convention applicable to a successor State which had not existed when the convention entered into force, especially if the predecessor State was not a party to the convention, and the relationship between a successor State and a State party to a given multilateral treaty but not party to the Convention on the Succession of States in respect of Treaties, when other States parties to the same multilateral treaty were parties to the Convention.

37. The Federal Republic of Germany was strongly in favour of additional articles on the settlement of disputes as it was afraid that the practical application of a Convention on the Succession of States in respect of Treaties, even if limited to inter-State treaties, would by no means be easy. It wished to draw attention in particular to the fact that the draft convention contained in articles 14 *et seq.,* in many places, a derogatory clause, which provided a loophole where "the application of the treaty in respect of the successor State would be incompatible with its object and purpose or would radically change the conditions for the operation of the treaty". Those terms were vague and open to divergent interpretation.

38. Mr. HELLNERS (Sweden) congratulated the International Law Commission on its excellent work; it was to be regretted, however, that, whereas the great majority of the draft articles submitted to the Conference were devoted to the situation of newly independent States, the most typical example of which was that of a colonial territory that had acceded to independence, the Conference was being held at a time when the process of decolonization was almost at an end. He wondered, therefore, whether the International Law Commission had been right to attach so much weight to that part of the future convention. Moreover, if, as was provided for in the International Law Commission's draft, the future convention had no retroactive force, it was difficult to see what practical value articles devoted to newly independent States would have. Provision should, therefore, be made for some machinery which would enable the newly independent States to apply the convention retroactively.

39. As the International Law Commission had shown in its report, all that existed in the area of the succession of States in respect of treaties was a chaotic web of bilateral treaties, devolution agreements and unilateral declarations by various States regarding their treaty relations. State practice in the matter was relatively meagre and the International Law Commission had had to rely mainly on the practice of certain depositaries of convention, mostly the United Nations but also some States. He emphasized, in that connexion, that a depositary, as such, was not competent to take up a position on disputed points concerning the succession of States in respect of treaties.

40. According to the International Law Commission's report, the "clean slate" doctrine on which the draft articles were based, derived from State practice, which was confirmed by the principle of self-determination. In his opinion, however, existing practice, as described in the International Law Commission's report, did not point to such a conclusion, because it was, rather, an incoherent practice with many lacunae on important points. He wondered, moreover, whether the "clean slate" doctrine could be based on the principle of self-determination, because, although it was true that the principle was in some respects vague and could be interpreted in various ways, what it meant, in substance, was that nations or peoples had the right to political independence. He also failed to see why the principle of self-determination should be applied only to newly independent States and not to States created by the uniting of States or the dissolution of States. He considered, therefore, that in the matter of the succession of States in respect of treaties, where State practice was ambiguous, considerations of a practical nature should for the most part influence the preparation of rules of international law.

41. In view of those considerations, his Government had already stated on earlier occasions that it would have been preferable to work out an alternative system based, not on the "clean slate" principle, but on the opposite principle, namely, that the new State would continue to be bound by the treaties concluded by the predecessor State but would have the right to denounce them if it so wished. Since the International Law Commission had decided to base the draft convention on the "clean slate" principle, he had no intention of dwelling on that point. He pointed out, however, that the International Law Commission had not followed that principle consistently: in articles 30 to 33, for instance, it had, with some exceptions, adopted the principle of continuity when there was no justification for that change in attitude.

42. He considered that it would be advisable to add, to the International Law Commission's draft, provisions concerning the settlement of disputes, of the kind to be found in the 1969 Convention on the Law of Treaties. The International Law Commission had introduced into its draft certain notions, such as incompatibility with a treaty's object and purpose, radical change of conditions for the operation of a treaty and even newly independent States, which could become the subject of disputes between States and which would provide sufficient justification, if needed, for the introduction of such provisions.

43. His delegation viewed with some sympathy a suggestion that had been considered by the International Law Commission and concerned the status of multilateral treaties of a world-wide nature, for example, conventions of a humanitarian character. Judging by governments' comments on the draft articles, opinions seemed to be very divided on the subject of such treaties. He realized that it was difficult to define that group of treaties satisfactorily, but hoped that it would be possible to solve the difficulties, because separate treatment for that kind of treaty would be in the interest of all States.

44. Mr. MANGAL (Afghanistan) said that, despite the analogy drawn between them, the provisions of the Vienna Convention on the Law of Treaties were quite different from those of the draft articles on the succession of States in respect of treaties; the former were concerned mainly with the relationship between two parties, whereas the latter dealt with a situation involving three parties: the predecessor State, the successor State and the other State party to a treaty. Account must be taken of that essential difference in the definitons given in article 2, since most of the terms defined in that article had been taken from the Vienna Convention on the Law of Treaties.

45. His delegation's understanding of the definition of the word "treaty" given in article 2, paragraph 1, subparagraph (*a*), was that the word "States" used in that definition related to sovereign and fully independent States in the context of a succession of States occurring in conformity with international law, in accordance with article 6 of the draft.

46. His delegation considered, further, that the definition of the words "succession of States", in subparagraph (*b*) should be clarified because the time at which the succession of States occurred was not clear. The replacement of a State by another State did not automatically constitute a succession of States: a succession of States occurred only with the express agreement of the parties to the treaty and when certain fundamental principles of international law were applied.

47. His delegation considered that the agreement of the parties to the treaty was also the basic requirement to be applied in the matter of the date of the succession of States, which was defined in subparagraph (*e*).

48. Mr. ARIFF (Malaysia) said that according to the definition in article 2, paragraph 1, subparagraph (*b*), the successor State replaced the predecessor State only in "the responsibility for the international relations of territory", not in the responsibility for the actual administration of territory; the latter was a domestic question with which international law should not be concerned. Thus, the question of the succession of States as the result of a revolution should not be taken into consideration in the draft convention.

49. His delegation fully approved the meaning and scope of the definitions given in article 2, which it considered perfectly clear. The definitions were intended solely to facilitate understanding of the main articles of the Convention and should not be too detailed.

50. Mr. KEARNEY (United States of America) thought that the definitions given in article 2, paragraph 1 should not be modified. However, the definitions must be general and the terms defined would necessarily give rise to various interpretations which might lead to serious problems. In subparagraph (*b*), for instance, the meaning of the word "responsibility" was complicated by the fact that the replacement of one State by another could extend over a relatively long period, in the course of which the decline in the responsibilities of the predecessor State would be accompanied by the increase in those of the successor State.

51. As to the date of the succession of States, which was defined in subparagraph (*e*), it was difficult to determine precisely the date on which the successor State replaced the predecessor State in the responsibility for the international relations of territory. The main criterion to be applied in that connexion rested on the fact that, prior to the succession of States, the successor State had been a dependent territory. There were, however, various degrees of dependence, and the successor State could have had a share in the responsibility for the international relations of the territory even before acceding to independence. It would never be possible, even with more elaborate and more detailed definitions, to eliminate such problems of interpretation. The International Law Commission had considered various possible definitions but had ultimately concluded that the simplest definitions were the best.

52. Interpretation of the Convention would certainly give rise to disputes between States and it would be lacking in foresight not to make the necessary arrangements for the settlement of such disputes. The Vienna Convention on the Law of Treaties provided (art. 66) that disputes concerning the application or interpretation of articles of *jus cogens* should be submitted to the International Court of Justice "unless

the parties by common consent agree to submit the dispute to arbitration",[6] and that disputes concerning the application and interpretation of other articles should be settled in accordance with a procedure for conciliation. His delegation would prefer problems concerning the interpretation of the future Convention to be settled by the International Court of Justice, but was prepared to support the opinion of the majority of States and try to find, with other delegations, a solution acceptable to all.

53. Mr. GILCHRIST (Australia) said that the draft articles as a whole were acceptable and that the Conference should be very prudent in any amendments it might make. He considered, however, that some articles could be modified and others eliminated.

54. Article 2 was not a source of any major problem for his delegation. The improvements which might be made to subparagraph (*b*) of paragraph 1 were, in its opinion, a matter for the Drafting Committee. With respect to subparagraph (*c*), it appreciated the difficulties to which the representative of the United States had referred, but did not consider that a better definition of the "date of the succession of States" would facilitate determination of that date in practice and would have no objection to deletion of that definition.

The meeting rose at 12.50 p.m.

[6] *Ibid.*, p. 298.

3rd MEETING

Wednesday, 6 April 1977, at 3.40 p.m.

Chairman: Mr. RIAD (Egypt)

In the absence of the Chairman, Mr. Ritter (Switzerland), Vice-Chairman, took the Chair.

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*)

ARTICLE 2 (Use of terms) (*continued*)[1]

1. The CHAIRMAN invited delegations to make general comments on the draft articles[2] and to discuss article 2 paragraph 1, subparagraphs (*a*) to (*g*).

2. Mr. SNEGIREV (Union of Soviet Socialist Republics) said that the draft articles constituted a good basis on which to work out a final instrument, though it could be improved in a number of respects. The preparation of such an instrument was one step among others in the progressive development of international law and its codification, a substantial measure to strengthen the foundation upon which modern co-operation between States must be based. The convention to be drawn up at the present Conference was a multilateral treaty of a universal character, and it would be wholly logical for the question of succession of States in respect of such treaties to find appropriate reflection in it.

3. Draft article 2 was acceptable to the USSR delegation in the form proposed by the International Law Commission in the draft text before the Conference.

4. Mrs. THAKORE (India) said that article 2 was of overriding importance for interpreting the provisions of the draft articles and determining their scope. Her delegation approved of the definitions excepting that of the term "newly independent State" in paragraph 1, subparagraph (*f*). That definition, which determined the circumstances in which the "clean slate" principle would apply to successor States, had a rather restrictive meaning in that it excluded cases of a "new State" emerging as the result of separation of part of an existing State or the union of two or more existing States, to which the rule of *ipso jure* continuity of treaty obligations would apply. Her delegation held the view that the term "newly independent State" should be defined to include all new successor States. She recalled that in his statement to the 1495th meeting of the Sixth Committee, the Indian representative had observed that the adoption of the principle of *ipso jure* continuity in some cases and of the "clean slate" principle in others would require further careful consideration and that it would be preferable to apply the same principle for the transmission of treaties to all States (A/CONF.80/5, p. 122).

5. She drew attention to the definition of the term "newly independent State" suggested by the Government of the United Kingdom, namely, that it should mean "a successor State the territory of which immediately before the date of the succession of States was part of the territory of the predecessor State".[3] That definition would solve the problem arising from the use of the phrase "dependent territory for the international relations of which the predecessor State was responsible" to which several speakers had already drawn attention.

6. She noted that the Government of the Federal Republic of Germany had also expressed the view that the distinction whereby the assumption of a new State's obligation to continue existing treaties would

[1] For the amendments submitted to article 2, see 2nd meeting, foot-note 4.

[2] See above, 1st meeting, paras. 9-11.

[3] *Official Records of the General Assembly, Twenty-ninth Session, Supplement No. 10 (A/9610/Rev.1), p. 163, annex I.*

not apply to newly independent States would have far-reaching consequences and should be reconsidered from the point of view of equal treatment (*ibid.*, p. 54). And in its study on the subject, the Asian-African Legal Consultative Committee had suggested that the definition of the term "newly independent State" should be extended to cover cases of States becoming independent in circumstances other than decolonization.

7. Mr. SEPULVEDA (Mexico) said that his country was in favour of codifying the existing arbitrary and scattered rules on the succession of States, as that would provide a guarantee for newly emerging States. He congratulated the International Law Commission on having achieved a broad consensus in its draft articles, which his delegation found generally acceptable. It was reasonable that they should ultimately be cast in the form of a convention, since they constituted a complement to the 1969 Vienna Convention on the Law of Treaties.[4]

8. His delegation had a clear preference for the adoption of the "clean slate" principle, as being more specific and practical; he could not share the view of the Federal Republic of Germany that States could denounce treaties they found unacceptable: denunciation of treaties was a difficult process which often involved additional obligations. He agreed, however, with the exceptions to the "clean slate" principle in respect of boundary and other territorial régimes, set out in articles 11 and 12 of the draft, though the limitations proposed in paragraph 1 of article 12 were not acceptable.

9. Article 7 should be deleted, since non-retroactivity of treaties was dealt with in article 28 of the Vienna Convention on the Law of Treaties; it was, however, open to discussion whether the matter was fully covered in that article. He thought that the draft articles should contain a reference to the Vienna Convention and that they should be interpreted in the light of the provisions of that Convention.

10. With regard to article 2, he urged that too much time should not be spent on the futile quest for perfect definitions. His delegation was disposed to accept those proposed in article 2 with the exception of the use of the word "responsibility" in paragraph 1, subparagraph (*b*), which was inappropriate in Spanish.

11. Sir Ian SINCLAIR (United Kingdom) paid a tribute to the meticulous preparatory work of the International Law Commission and said that his delegation's attitude to the draft articles was generally positive. It could also support the principle that they should be embodied in a multilateral convention. There might be some doubt about the utility of such a step, since the era of decolonization was rapidly drawing to a close and there was force in the argument that codification in such a form would not necessarily provide solutions to all the treaty problems arising from a succession of States; nevertheless, his delegation believed that the conclusion of a multilateral convention on the topic would be a step forward.

12. One specific point for the Conference to consider was how to ensure, without damage to the principle of partial non-retroactivity embodied in draft article 7, that a successor State could apply the provisions of the future convention to its own succession. By definition, a successor State could not express its consent to be bound by the convention until after the date of the succession of States. His delegation hoped to table a proposal for a procedural mechanism to overcome that difficulty.

13. The United Kingdom had previously expressed misgivings about the "clean slate" principle which, in its view, ignored the many examples of uncontroversial succession to treaties by newly independent States. It recognized, however, that such examples did not invalidate the "clean slate" principle which, founded upon the notion of free choice on the part of newly independent States, met the need to find some appropriate underlying principle for the draft articles. His delegation was therefore prepared to accept the "clean slate" principle as a basis, but he would emphasize that it continued to attach the utmost importance to the retention of the exceptions provided for in draft articles 11 and 12 and would be prepared to consider other proposals for exceptions provided they could be applied objectively.

14. The "clean slate" principle was also relevant to the precise wording of article 2, since a distinction was drawn in the draft articles between the régime applicable to a newly independent State and that applicable to other cases of succession of States, including a separation of States. The definition of a "newly independent State" in paragraph 1, subparagraph (*f*) presented difficulties because it dealt with an inherently elusive concept; there were various stages and mechanisms by which dependent territories achieved independence. In that connexion, he had noted with interest the statement made by the Commission in paragraph (7) of its commentary to article 2 (A/CONF.80/4, p. 17), that in the case of "associated States" the rule to be applied would depend on the particular circumstances of each association. He agreed with the observation of the representative of Iraq that in the application of the articles, it would not be easy to differentiate between the emergence of a newly independent State and the separation of part of an existing State;[5] in that context, article 33, paragraph 3 presented particular problems. For that reason, his delegation attached particular importance to the incorporation into the proposed convention of

[4] *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. 287.

[5] See above, 2nd meeting, para. 12.

satisfactory provisions relating to the settlement of disputes.

15. It was necessary for the Conference to proceed on certain general assumptions; in particular, it was necessary to have a clear understanding of the concept of the succession of States. His delegation endorsed the Commission's view that the essential ingredient was the factual replacement of one State by another in the responsibility for the international relations of territory. He had noted that some delegations had difficulty with the word "responsibility". No doubt the Drafting Committee would wish to consider possible alternative wording; but his delegation would oppose any extension of the scope of the definition to cover internal economic or social changes in a State.

16. Mr. NAKAGAWA (Japan) said that both State practice and theoretical writings on succession of States in respect of treaties had hitherto been characterized by diversity, so that the formulation of clear-cut rules on the subject would contribute to the orderly development of the international community and hence to the maintenance of peace and security.

17. In view of the diversity of State practice in the matter, the task of the Conference could not be confined to a mere codification of existing law, but would involve its progressive development, with due regard for the fundamental principles of equality of States, self-determination, consent and good faith. For example, the principle of equality of States required that no State, whether a predecessor, a successor or a State party to the future convention, should be placed in either a privileged or unfavourable position by the formulation of the rules. In general, the basic structure of the draft articles prepared by the Commission, including the balance between the principle of continuity and the "clean slate" principle, was reasonable and he commended the International Law Commission and the Special Rapporteurs for their work.

18. His delegation wished to comment on three issues.

19. The first was the problem of form. Some delegations seemed to favour a declaration of legal principles rather than a convention. But while he appreciated the difficulties involved in applying a convention to a new State not a party to it, he believed that those difficulties could be overcome; moreover, a just and reasonable convention, which would be complied with because of its own merits, and not only because it was binding, could serve as a basis for the development of customary law.

20. Secondly, the rules to be formulated should not prejudice existing treaty relations between States. His delegation proposed to speak in further detail during the consideration of article 7, and at present simply stressed the need for a clear-cut rule of non-retroactivity.

21. Thirdly, it was important to establish an adequate system for the settlement of disputes, because some rules might lead to complications in application—for example, those relating to compatibility with the object and the purpose of the treaty and to a radical change of conditions for its operation, and the rules contained in article 33, paragraph 3.

22. In general his delegation had no difficulty with the various subparagraphs of article 2, paragraph 1, and it welcomed the close relationship maintained between the draft articles and the Vienna Convention on the Law of Treaties. For the moment it would only express the view that paragraph 1, subparagraph (*f*) might well be reformulated to take into account the various types of dependencies and their stages of progress towards independence.

23. Mr. SATTAR (Pakistan) congratulated the International Law Commission on its excellent work in preparing the draft articles.

24. With regard to article 2, on the use of terms, his delegation noted with satisfaction the choices made by the International Law Commission between various alternatives. For example, it endorsed the choice in paragraph 1, subparagraph (*b*) of the term "responsibility", which was commonly used in State practice and hence should not be lightly discarded.

25. As noted by some previous speakers, a number of the terms and expressions used in the draft articles had been previously defined in the Vienna Convention on the Law of Treaties, following extensive discussion; in order to save time, the Conference should not repeat that work, and to do so might in any case result in differing definitions in two closely related instruments—an outcome which would be contrary to the basic purpose of codification.

26. His delegation hoped that common understanding on the definitions of key terms could be reached at the outset, so that subsequent discussion on the articles could proceed without vagueness.

27. Mr. TORNARITIS (Cyprus) reiterated his delegation's support, subject to certain modifications, of the draft articles, which should take the form of a convention.

28. His delegation had no objections to the definitions proposed in article 2, beyond observing that the definition of a "newly independent State" did not seem consistent with the intended distinction between dependent territories, as described in paragraph (7) of the commentary (*ibid.*, p. 17) and new States arising from separation of territories. He suggested that that point should be clarified by the Drafting Committee.

29. Mr. MIRCEA (Romania) said that the efforts made by the Romanian Head of State and by the Romanian Government for the purpose of elaborating principles to govern the rights and duties of States and to guide international relations were well known.

30. His delegation believed that the Conference should strive to formulate generally acceptable rules and principles, in line with contemporary world conditions; with regard to the codification of rules to govern the succession of States, Romania was among those countries which considered that such rules should be so drawn up as to be easily and swiftly applicable, taking into account the various categories of States and in particular the problems which newly independent States had to face.

31. The adoption of a convention on succession of States in respect of treaties would provide a valuable guideline, but considerable prior consultation would clearly be necessary. His delegation agreed with those which had stressed the need for more specific definitions—for example, of the word "succession" itself and of the principle of non-retroactivity of the articles. It was to be hoped that such matters could be finalized before a convention came into force.

32. With regard to article 2 of the draft, his delegation shared the view that the text might be cross-referenced to the Vienna Convention on the Law of Treaties. Although the comments made by the International Law Commission on article 2, paragraph 1, subparagraph (*b*) were pertinent (*ibid.*), the text as it stood was not fully satisfactory, since the question at issue was not simply one of replacement.

33. His delegation would prefer to see a specific definition of succession of States, which would define the continuity or non-continuity of a treaty. For example, the final text might be worded to say that a predecessor State was one which had secured the application of a particular treaty and that a successor State had the right to assume or renounce that application.

34. With regard to paragraph 1, subparagraph (*f*) of the same article, he would prefer a more neutral text, with the word "successor" and the words following "dependent territory" deleted. His delegation, too, thought that further definitions should be agreed upon to cover such matters as multilateral and general treaties.

35. Mr. DE VIDTS (Belgium), referring to article 2, said that in his Government's view the International Law Commission's draft met the undeniable need for clarity in instruments governing present-day international relations. The Belgian delegation believed that a parallel should be established, as far as possible, between the draft articles and the Vienna Convention on the Law of Treaties.

36. His Government had noted with satisfaction the genuine attempts to arrive at a suitable compromise between the principles of the "clean slate" and *pacta sunt servanda*. In its view, the former principle meant that a newly independent State had the right to decide whether or not to become a party to a treaty entered into by its predecessor, not that it would automatically be deprived of the right to become a party.

37. It was important, of course, to ensure as far as possible that rules governing the succession of States to treaties should avoid any disruption or compromise of current international law and relations between States. The Belgian Government realized that the "clean slate" principle could well entail some problems—for example, some imbalance with regard to continuity—but it was nevertheless prepared to accept the draft articles as a basis for consideration.

38. Mr. NATHAN (Israel) said that one of the cornerstones of the proposed convention would be the "clean slate" principle, which implied that a newly independent State would not automatically be bound by former treaties relating to its territory. His Government acted on that principle in its multilateral and bilateral treaty dealings with other States.

39. The complex nature of the Conference's task made it necessary to give careful consideration not only to the substance, but also to the form of the draft articles. For example, any attempt to give a measure of non-retroactivity greater than that in the present draft could subsequently lead to confusion whenever, following the entry into force of the convention, newly independent States became parties to it. Article 16 provided another example; it might be considered whether a newly independent State should be required to give notification of succession within a reasonable time in order to avoid uncertainty; on the other hand, once such notification had been filed, any party which raised objections on the grounds of incompatibility, in accordance with paragraph 2 of that article, should likewise be required so to notify the other parties or the depositary in good time.

40. The International Law Commission, in drafting paragraphs 2 and 3 of article 19, had simply referred to certain provisions of the Vienna Convention on the Law of Treaties. Some doubts might arise, because that method had not been adopted in other parts of the draft articles, where certain formulations relating to the Vienna Convention had been reproduced almost verbatim.

41. With regard to articles 29 and 30, difficulties might arise from differing or even conflicting treaty provisions, because of the proposal that the treaties of each predecessor State should remain in force only in respect of that part of the territory of the union for which it was in force prior to the union, and not to the united territory as a whole.

42. A clause was needed to govern settlement of disputes. Such a clause might be modelled on the annex to the Vienna Convention, providing for settlement by conciliation on an optional basis.

43. His delegation could, in general, agree to the draft of article 2, but would like paragraph 1, subparagraph (*b*) to be amended in order to make it clear that the territory for which responsibility in international relations was assumed was the territory to which the succession related. There were also grounds for misgivings with regard to paragraph 1, subparagraph (*f*); the draft distinguished clearly, with regard to succession of States, between newly independent States, on the one hand, and a union or merger on the other, and the distinction should not be blurred.

44. The CHAIRMAN said that the Israeli representative's remarks concerning article 2 would be noted by the Drafting Committee.

45. Mr. SETTE CÂMARA (Brazil) observed that the draft articles represented the distillation of long study by the International Law Commission, masterly reports by its two Special Rapporteurs, and debates in the Sixth Committee of the General Assembly, which had given them additional substance; there could be no doubt, therefore, that the Conference was starting its work on very sound and well prepared ground. His delegation was in full agreement with the general philosophy of the basic proposals and considered them to represent a very realistic approach to the question of succession of States in respect of treaties.

46. In the current age of decolonization, it was right that the draft articles had not retained the municipal law principle of the automatic inheritance of rights and obligations. No country would accept engagements entered into by another without first expressing its own will and that of its people as properly ascertained, for to do otherwise would be to accede to independent life bound by foreign commitments. The basic principle of the draft was, therefore, that a newly independent State was born free and began its life with a clean slate. With one or two exceptions, that principle had been accepted by all the governments which had submitted written or oral comments on the draft articles. It was fully consistent with the general law of treaties, according to which the will of the State was the decisive element in treaty-making procedures.

47. The draft articles before the Conference also preserved another essential feature of the 1972 version,[6] namely, the principle of the continuity *ipso jure* of treaties in the case of a succession relating to territory which had previously enjoyed sovereignty. Such cases were dealt with in part IV of the draft. The balance between the principle of the "clean slate" and of continuity *ipso jure* was the key to the economy of the whole draft. Conflicts between predecessor and successor States had been common in the past, but his delegation believed that the draft articles proposed by the International Law Commission succeeded in harmonizing the successor State's complete lack of obligations and almost absolute possession of rights in respect of succession to treaties, with the requirements of international life.

48. While it was undoubtedly the process of decolonization which was the most frequent source of successions in modern times, the broad and flexible wording employed in article 2 offered the advantage of also covering successions arising in other circumstances. It was also an advantage that the draft defined succession as the "replacement" of one State by another. As other delegations had said, that definition was not perfect, but it should be borne in mind that behind it, as behind the concept of the "newly independent State", lay the problem of sovereignty. The International Law Commission had deliberately chosen the present wording in order to avoid discussing that complex subject.

49. Article 2 went far beyond a mere explanation of the meaning of terms. The phraseology of the article and the commentary to it prepared by the International Law Commission (*ibid.*, pp. 16-18) showed that the task before the Conference was to be understood as being contained within the borders of the general law of treaties. Once it was admitted that succession of States relating to treaties was part of the law of treaties, rights and obligations could derive from no other source than the expressly stated will of the contracting parties.

50. It would certainly be necessary to return to the question of the definition of terms at a later stage in the Conference. He shared the opinion that the draft convention should include a section on the settlement of disputes.

51. Mr. BENBOUCHTA (Morocco) observed that in 1975 his delegation had said that it would prefer the subject matter of the draft to be presented in the form of a declaration of principle or a General Assembly resolution, rather than a convention (A/CONF.80/5, p. 26). It had held that view for a purely practical reason: as many other delegations had pointed out, a convention would raise the problem of its applicability to newly independent States.

52. Morocco believed firmly that the articles should not be retroactive. But since non-retroactivity was a general principle of international law, there was no need for an article restating it. If the article in question (article 7) was retained, it should be redrafted to remove all ambiguity.

53. Morocco supported the adoption of the "clean slate" principle in the convention, since it had al-

[6] *Official Records of the General Assembly, Twenty-seventh Session, Supplement No. 10* (A/8710/Rev.1), chap. II, sect. c.

ways upheld the concept of contractual freedom. It considered, however, that that principle should have been more flexibly stated in the present case, and that the interests of the international community would be better served if the draft referred to automatic succession to multilateral law-making instruments.

54. The International Law Commission had given too much weight to the question of the emergence of newly independent States as the result of decolonization—a process which was drawing to its close. More importance should have been attached to the new forms of succession arising out of unions of States and the like.

55. With regard to article 2, his delegation agreed with that of Romania that the concepts of the "predecessor State" and the "successor State" should be more clearly defined. With respect to paragraph 1, subparagraph (*f*) of the article, it agreed with the delegation of Iraq[7] that the mention of other cases or forms of succession would make the draft more balanced.

56. The CHAIRMAN said that, if there were no objections he would take it that the Committee agreed to the request from the Observer from the United Nations Council for Namibia that he be permitted to make a statement on article 2 at the following afternoon's meeting.

It was so agreed.

57. After a procedural discussion in which Mr. DAMDINDORJ (Mongolia), Mrs. BOKOR-SZEGÖ (Hungary), and Mr. MANGAL (Afghanistan) participated, the CHAIRMAN suggested that the Committee should resume consideration of article 2, paragraph 1, subparagraphs (*a*) to (*f*) at the following afternoon's meeting and that the deadline for submission of amendments to that part of article 2 and to articles 3 to 6 should be Friday, 8 April, at 1 p.m. He further suggested that delegations should be free to submit, at any time, amendments to any part of article 2 which derived from amendments to later articles.

58. Mr. MARESCA (Italy), supported by Mr. MUSEUX (France), suggested that no deadline should be set for the submission of amendments to any part of article 2 until the Committee was in a position to take a firm decision on the content of that article.

59. Mr. SATTAR (Pakistan) said that he found the Chairman's suggestions concerning the submission of amendments to article 2 reasonable, since the subsequent work of the Committee would be made very difficult if no understanding was reached at an early stage on at least the key terms in the article.

60. Sir Ian SINCLAIR (United Kingdom) said he agreed with the representative of Pakistan that the Chairman's suggestion concerning amendments to article 2 was fair and reasonable. Moreover, he thought that the Committee must reach agreement promptly on the meaning of the terms to be used in the draft convention, so that the Drafting Committee could begin its work as soon as possible.

61. Mr. YANGO (Philippines) said that his delegation shared the views of the delegations of Pakistan and the United Kingdom concerning possible amendments to article 2. It also agreed with the representative of Brazil that it would be necessary for the Committee to come back to article 2 later in its work.

62. Mr. MUSEUX (France) said that his delegation also supported the Chairman's suggestion, which was reasonable and allowed some latitude in the submission of amendments.

63. The CHAIRMAN said that, if there were no objections he would take it that the Committee decided to follow the suggestion he had made concerning amendments to article 2.

It was so decided.

64. The CHAIRMAN invited the Committee to consider article 2, paragraph 1, subparagraphs (*h*) to (*n*), and paragraph 2.

65. Mr. EUSTATHIADES (Greece) said that paragraph 2 added nothing to article 2. It was unnecessary to include that paragraph in the article because it would, in any case, not be possible to prevent States from using terms other than those embodied in the draft convention. Moreover, the inclusion of such a paragraph would be an invitation to anarchy among contracting States, which should simply be required to use the terms adopted in the draft convention.

66. Mr. YASSEEN (United Arab Emirates) said he shared the view of the representative of Greece concerning article 2, paragraph 2. He wished, however, to remind the representative of Greece that that paragraph was taken from article 2, paragraph 2, of the Vienna Convention on the Law of Treaties, and he feared that its deletion might give rise to confusion in the interpretation of the future convention.

67. Sir Francis VALLAT (Expert Consultant) said that there were two technical reasons why paragraph 2 had been included. First, certain terms, such as "ratification" and the term "treaty" itself, had in some States different meanings in internal law and in international law. Secondly, article 2, paragraph 2, of the Vienna Convention on the Law of Treaties contained a provision with the same wording, and doubt and confusion might arise if it were omitted from the draft convention.

[7] See above, 2nd meeting, para. 12.

68. Mr. EUSTATHIADES (Greece) said he realized that the Expert Consultant and the representative of the United Arab Emirates attached considerable importance to article 2, paragraph 2, but he did not see why the draft articles under consideration had to embody the same mistake as had been made in the Vienna Convention on the Law of Treaties. He did not think that the deletion of paragraph 2 would give rise to confusion, because the terms used in the draft articles were very specific and had a particular meaning.

69. Mr. MIRCEA (Romania) said he fully supported the view expressed by the representative of Greece concerning article 2, paragraph 2. He did not think the Committee was obliged to use the exact wording of the 1969 Convention on the Law of Treaties; it was free to decide what provisions should be included in the draft articles, provided that it could agree on the meaning of the terms used.

70. Mr. ARIFF (Malaysia) said that, since the terms used in the draft articles might have different meanings in internal law and in international law, it was necessary to include article 2, paragraph 2, in the draft articles. Moreover, he believed that that provision ensured respect for the sovereignty of all States.

The meeting rose at 5.50 p.m.

4th MEETING

Thursday, 7 April 1977, at 10.30 a.m.

Chairman: Mr. RIAD (Egypt)

In the absence of the Chairman, Mr. Ritter (Switzerland), Vice-Chairman, took the Chair.

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*)

ARTICLE 3 (Cases not within the scope of the present articles)[1]

1. Mr. KOECK (Holy See) said that his delegation was ready to do everything in its power to ensure the successful outcome of the Conference and to lend its support to other delegations, in keeping with the Holy See's particular mission in the world and its intention to keep aloof from political quarrels. His delegation attached the highest importance not only to draft article 3 as such but also to the principle embodied therein, particularly since the international community would be inclined to consider the provisions of the convention as applicable in practice, regardless of whether or not the convention was in force. Evidence of that could be seen in the fact that the International Court of Justice had already adopted a similar position concerning the Vienna Convention on the Law of Treaties, for the very reason that, although it was not in force, the Convention reflected to a large extent the traditional law in that field. One might even be tempted to take the view that the adoption of codification conventions was more important than their ratification.

2. The Holy See not only concluded agreements that were in the nature of treaties between States when it acted on behalf of the Vatican City State—it also entered into such agreements as the supreme organ of the Catholic world. Consequently, his delegation attached particular importance to draft article 3, for it considered that subparagraph (*a*) took into account cases in which the Holy See, not as a State but in its capacity as representative of the Catholic world, concluded concordats with States, i.e. treaties concerned mainly with religious matters. However, the reference in that provision to general international law might raise difficulties in practice, because the draft did not specify whether particular provisions constituted new rules of law or merely reflected existing customary international law. For that reason, the Holy See would have to examine separately each case of State succession in respect of concordats, having regard to the particular circumstances of every case. It was his understanding that that position was in keeping with the international practice that had developed over the centuries, i.e. that concordats were international treaties of a special character.

3. Mr. MIRCEA (Romania), explaining why his delegation had submitted amendments to articles 1, 3 and 4 (A/CONF.80/C.1/L.2), said that it had sought to include in the scope of the convention the case of treaties concluded between States and other subjects of international law. While it was true that some bodies studied the law of treaties concluded with international organizations, they did not, however, cover the problem of succession to such treaties. As to draft article 3, his delegation had preferred to delete subparagraphs (*a*) and (*b*); firstly, because it would be difficult to draw a distinction between the provisions which were obligatory and the provisions which reflected the progressive development of international law; secondly, because the provision contained in subparagraph (*b*) appeared to be restrictive and it would be advantageous to the international community if subjects of international law other than States could avail themselves of the provisions of the convention.

4. It was his understanding that adoption of draft article 3 by the Committee would in no way prejudge the fate of his delegation's amendment.

[1] The following amendment was submitted: Romania, A/CONF.80/C.1/L.2.

5. Mr. HELLNERS (Sweden) suggested that the Committee should instruct the Drafting Committee to alter the title of draft article 3, which did not appear to be fully in keeping with the content of the provisions of the draft.

6. Mr. MARESCA (Italy) considered that draft article 3 simply reiterated rules already set forth in the Vienna Convention on the Law of Treaties and he wondered about the advisability of pointing out that cases not within the scope of the convention were still subject to the international law in force. Moreover, it was difficult to draw a distinction between the relationships between States and the relationships between States and other subjects of international law. Consequently, he wondered whether subparagraph (*b*) of the draft article was really indispensable. His delegation reserved the right to return to that draft article when the Committee came to consider the Romanian amendment.

7. Mr. USHAKOV (Union of Soviet Socialist Republics) took the view that the amendment proposed by the Romanian delegation was of a drafting nature. He therefore proposed that it should be referred to the Drafting Committee.

8. The CHAIRMAN felt that the Romanian amendment did not relate solely to drafting matters and that it deserved to be considered and put to the vote.

9. Mr. MIRCEA (Romania) said that the Committee could not adopt draft article 3 without first considering both draft article 4 and the amendment thereto.

10. Mrs. BOKOR-SZEGÖ (Hungary) said that she appreciated the concern of the Romanian delegation to simplify the text of the draft article, but drew its attention to the fact that paragraph 3 of the article proposed by Romania was more limited in scope than subparagraph (*a*) of article 3 of the draft articles, since it eliminated the rules of customary law.

11. The CHAIRMAN proposed that the Committee should close the debate on draft article 3 and, after considering draft article 4, should proceed to the vote on the Romanian amendment and on draft articles 3 and 4.

It was so decided.

ARTICLE 4 (Treaties constituting international organizations and treaties adopted within an international organization)[2]

12. Mr. MIRCEA (Romania) said that, by combining the provisions of the draft articles dealing with the scope of the convention, his delegation had sought to propose a text that was closer to reality and easier to understand. For example, it had referred to "treaties concluded between States in written form" and had preferred to omit from its draft definitions that were already contained in the Vienna Convention on the Law of Treaties. It had also felt that treaties constituting international organizations were no different from other treaties but that, in such cases, the rules of the international organizations should be taken into account. Again, his delegation had, in the provision corresponding to subparagraph (*b*) of draft article 4, replaced the words "without prejudice to" by "jointly with"; there was no contradiction between the rules resulting from the progressive development of international law and the rules of international organizations, since the former took account of the latter. In addition, paragraph 3 of the Romanian draft article resolved the difficulties raised by subparagraph (*a*) of the International Law Commission's draft article 3, for it was questionable that the Conference could specify that a particular provision was a rule of customary law and was applicable regardless of whether or not a State was a party to the convention. He also pointed out that, so far as his delegation was concerned, the use of the words "as between States" in subparagraph (*b*) of draft article 3 limited the possibilities of application of the convention.

13. In reply to the comment by the representative of Hungary, he said that paragraph 3 of the Romanian draft article was in fact wider in scope than subparagraph (*a*) of the International Law Commission's draft article 3, for it was not possible to assert from the outset that some provisions of the convention constituted peremptory norms of international law.

14. Lastly, his delegation would prefer a consensus on its amendment and would not press for a vote. It none the less hoped that the Drafting Committee would, as far as possible, take it into account.

15. Mr. YASSEEN (United Arab Emirates) considered that the Romanian amendment raised not only questions of drafting but also questions of substance, since it touched on the problem of the sources of law and on the law of international organizations. Codification involved the enunciation of rules that were already obligatory under various sources of international law. The text prepared by the International Law Commission reflected rules that were already in existence, reconciled rules from different sources and also prepared new rules. In his view, compared with the International Law Commission's text, paragraph 3 of the Romanian draft article lacked precision.

16. As to the question of the law of international organizations, by specifying that the convention would apply jointly with the relevant rules of each organization, the Romanian delegation was placing those rules on an equal footing with the convention, whereas the rules of the organizations should prevail. Consequently, he wondered how any conflicts be-

[2] The following amendment was submitted: Romania, A/CONF.80/C.1/L.2.

tween those rules and the convention would be resolved.

17. For those reasons, his delegation would not be able to support the Romanian amendment.

18. Mr. USHAKOV (Union of Soviet Socialist Republics) was in favour of maintaining articles 3 and 4 as they stood. Those two provisions were closely interrelated and served to elucidate the definition of the term "treaty" which appeared in article 2, paragraph 1, subparagraph (*a*). It might be thought from that definition that the convention would not apply either to treaties concluded between States and other subjects of international law or to treaties not in written form. Doubts might also arise as to whether agreements concluded between States in order to constitute an international organization or adopted within an international organization formed a special category of treaties outside the scope of the proposed convention. Articles 3 and 4 provided answers to those questions.

19. Article 4, subparagraph (*a*) stipulated that the future convention would apply to any treaty which was the constituent instrument of an international organization but without prejudice to any relevant rules of the organization. In fact, it was vitally important that the law of international organizations should take precedence over the rules laid down in the draft convention. If it was decided that those two classes of provision applied "jointly" as proposed in the Romanian amendment that would derogate unduly from the law of international organizations.

20. Article 4, subparagraph (*b*) was quite clear on the subject of treaties adopted within an international organization: in the event of conflict, the law governing the international organization would take precedence. However, the Romanian amendment did not refer to that category of treaties despite their great importance.

21. Turning to article 3, which dealt with the application of the draft convention to treaties concluded between States and other subjects of international law and treaties not in written form, clearly an international organization could not be bound, without its consent, by the provisions of the future convention. The convention would only be binding on subjects of international law which were parties to the convention, and for the time being opening of the convention to signature by international organizations was not being contemplated. However, there were certain rules of international law concerning succession which could be applicable to international organizations independently of the convention. Article 3 also made it clear that, for agreements not in written form, the rules of the future convention deriving from general international law would apply.

22. Thus, articles 3 and 4 adequately covered the questions to which the definition contained in article 2, paragraph 1, subparagraph (*a*) might give rise and their form should not be altered since they were modelled on the corresponding provisions in the 1969 Vienna Convention. The slightest drafting change could create problems of interpretation both of the Vienna Convention and of the future convention.

23. Mrs. THAKORE (India) noted that paragraph 1 of the Romanian amendment, which was based on draft Article 1, did not refer to the effects of a succession of States and she wondered why. Paragraph 2 of the amendment, which was based on article 4, did not touch upon the rules concerning acquisition of membership of an international organization. But those rules were so important that they ought to be mentioned. Furthermore, the word "jointly" in paragraph 2 of the amendment might create difficulties where the provisions of the future convention conflicted with the relevant rules of an international organization. It must be made clear that in such instances the relevant rules of the organization would prevail.

24. Paragraph 3 of the Romanian amendment, which derived from article 3, lacked the safeguard whereby all the rules set forth in the convention to which States would be subject under international law independently of that convention would be applicable. Her delegation thought that that clause should be maintained for the reasons given by the International Law Commission in paragraph (2) of its commentary on article 3 (A/CONF.80/4, p. 18). It also believed that article 3, subparagraph (*b*) was necessary and should not be deleted.

25. In conclusion, she stated that the Romanian amendment was imprecise and that articles 1, 3 and 4 should be retained, as they stood.

26. Mr. PASZKOWSKI (Poland) emphasized that the purpose of the Conference was to continue the work of codifying international law which had begun with the elaboration of the 1969 Vienna Convention on the Law of Treaties. Although not yet in force, that instrument occupied an important and authoritative position in international life. It was already having a direct influence on State practice. That demonstrated the great value of the efforts made by the United Nations in regard to codification. As to the question whether it was too late to codify the law of State succession in respect of treaties, he endorsed the reply given by the President of the Conference in the statement he had made after being elected.[3]

27. He himself believed that the future convention should stand on its own. Consequently, he saw no objection to adopting the first four articles proposed by the International Law Commission, subject to possible amendments to article 2 consequential on modifications which might be made in other draft articles. The amendments submitted so far did not

[3] See above, 1st plenary meeting, para. 18.

seem to provide any improvement in articles 1, 3 and 4.

28. Mr. MIRCEA (Romania) said that it would be desirable to ask the Expert Consultant to give examples of mandatory rules of existing international law that were applicable to States without their consent. He might also cite examples of treaties adopted within international organizations and indicate what were the special characteristics which would place them outside the scope of the future convention.

29. He was astonished that certain delegations, in the desire to incorporate the idea of a multilateral treaty of a universal character in the convention, should assert that the constituent instruments of international organizations, which by definition constituted such treaties, should be subject to a special régime. Such an approach might form an obstacle to new States joining international organizations.

30. Sir Francis VALLAT (Expert Consultant), replying to the Romanian representative's first question, explained that the International Law Commission had as a regular practice refrained from clearly demarcating the dividing line between codification and the progressive development of law when a specific rule of law was formulated. Indeed, since customary international law was in a constant process of development, what was conventional law one day could become customary law the next. He therefore preferred to follow the International Law Commission's practice and not try to give specific examples of rules which were rules of customary international law at present. However, he was bound to add that the provisions of the draft relating to newly independent States were essentially based on State practice and although such rules might not be rules of customary international law at present they might become such soon.

31. Turning to the type of treaties provided for in article 4, subparagraphs (*a*) and (*b*), he mentioned as examples the United Nations Charter, the Convention of the World Health Organization or that of other specialized agencies on the one hand and the conventions elaborated by the International Labour Organisation and the agreements drawn up by the International Civil Aviation Organization on the other.

32. Mr. MIRCEA (Romania) said that his amendment need not be put to the vote: his delegation would be satisfied if it was taken into consideration by the Drafting Committee.

33. The CHAIRMAN pointed out that if the Romanian amendment was not put to the vote it could only be transmitted to the Drafting Committee as a mere suggestion that would in no way be binding, so that it would only be examined from the point of view of form and not of substance.

On that understanding, the Romanian amendment (A/CONF.80/C.1/L.2) was referred to the Drafting Committee.

34. The CHAIRMAN stated that in the absence of any request for a vote on article 3, he assumed that the Committee had approved the article and had decided to refer it to the Drafting Committee.

It was so decided.[4]

35. The CHAIRMAN stated that in the absence of any request for a vote on article 4, he assumed that the Committee had approved the article and had decided to refer it to the Drafting Committee.

It was so decided.[5]

ARTICLE 5 (Obligations imposed by international law independently of a treaty)[6]

36. Mr. MIRCEA (Romania), referring to the title of the article under discussion, stressed that a rule of international law might be applicable by virtue of a treaty or custom. The expression "obligations imposed" seemed to go too far and it would be better to model the title of article 5 on the 1969 Vienna Convention to read: "Rules in a treaty applicable by virtue of international custom".

37. Turning to the article itself, he suggested that the words "the duty of that State" should be replaced by the words "the duty of the successor State or of the other party or parties" to apply the rules set forth in the treaty which derive from international custom.

38. Mr. EUSTATHIADES (Greece) said that he hesitated to propose the deletion of article 5 since his proposal, made the previous day, to delete another article had received scant support, but in fact article 5 merely reproduced an article in the 1969 Vienna Convention and had no place in the future convention. Its inclusion would only be justified if it was drafted not as a general principle but as one applicable in the matter of succession.

39. Mr. MUSEUX (France) said that, on the contrary, article 5 had the virtue of dealing with one of the cases when a treaty would cease to be in force for the successor State by reason of the application of the proposed convention. The difficulty already pointed out by the French representative would then arise: the provision in article 5 would only come into effect legally if the successor State was released from its obligations under the treaty to which it was a party. The problem of what machinery would produce

[4] For resumption of the discussion of article 3, see 31st meeting, paras. 4-5.

[5] For resumption of the discussion of article 4, see 31st meeting, paras. 6-7.

[6] The following amendment was submitted: Romania, A/CONF.80/C.1/L.4.

that result would arise in respect of other provisions in the draft.

40. Mr. HELLNERS (Sweden) agreed with the Greek representative and observed that it was apparent from paragraph (1) of the commentary on article 5 (A/CONF.80/4, p. 22) that the International Law Commission had only been able to justify that provision on the ground that it was axiomatic. As it was self-evident, it could be dropped.

41. Mr. MARESCA (Italy) said that article 5 was not very clear. It was for the 1969 Vienna Convention to determine when treaties entered into force, and repetition of a provision on that point in a convention dealing with the succession of States would only cause confusion.

42. Mr. KRISHNADASAN (Swaziland) agreed with the Swedish representative that the content of article 5 was self-evident. But it also addressed a warning to newly independent States by reminding them of their obligations to be fulfilled under international law. Thus it was less innocuous than it appeared, and he believed that it should be deleted.

43. Mr. USHAKOV (Union of Soviet Socialist Republics) pointed out that article 5 of the draft convention reproduced verbatim the second part of article 43 of the Vienna Convention on the Law of Treaties, which stated that "the invalidity, termination or denounciation of a treaty, the withdrawal of a party from it, or the suspension of its operation [...] shall not in any way impair the duty of any State to fulfil any obligation embodied in the treaty to which it would be subject under international law independently of the treaty".[7] The article of the Vienna Convention did not apply to the succession of States. Article 5 thus filled in a gap by stating that the fact that a treaty was no longer in force in respect of a State owing to a succession of States in no way exempted that State from fulfilling the obligations imposed on it by general international law. It was consequently a necessary article, as it completed article 43 of the Vienna Convention on the Law of Treaties.

44. Mr. MANGAL (Afghanistan) said he shared the doubts expressed by other delegations concerning article 5, which he felt was both ambiguous and superfluous. The article would impose obligations on a State derived from a treaty which was no longer in force for that State; it also took no account of every State's basic right to decide whether it should continue to consider itself bound by a treaty which was no longer in force in respect of it. He felt that no principle of international law should impose any obligation on a State which, acting as a sovereign body, had decided it was no longer bound by the provisions of a treaty which had become invalid. He consequently favoured deletion of article 5.

45. Mr YASSEEN (United Arab Emirates) said he agreed with the representative of Greece that article 5 stated an obvious rule, which it was not necessary to demonstrate, in that it affirmed that a State could not be released from obligations imposed on it by international law. That did not mean, however, that the article was superfluous, as special circumstances argued in favour of its being maintained in the draft convention. As the representative of the Union of Soviet Socialist Republics had noted, the wording of article 43 of the Vienna Convention, "the invalidity, termination or denunciation of a treaty [...] shall not in any way impair the duty of any State to fulfil any obligation embodied in the treaty to which it would be subject under international law independently of the treaty",[8] did not cover the succession of States. It therefore did not apply to the situation referred to in article 5 of the draft, whereby a treaty was "not considered to be in force in respect of a State by virtue of the application" of the future convention. The conclusion could thus be drawn that when a treaty did not apply to a new State, owing to a succession of States, that State was released from the obligations to which it would be subject under international law. It would therefore be very wise to maintain article 5 in order to avoid confusion and any resultant quibbling.

46. Mr. USHAKOV (Union of Soviet Socialist Republics) said that article 5 did not refer to obligations imposed by any particular treaty, but to obligations imposed by general international law, independently of any treaty. Under article 43 of the Vienna Convention, a treaty might lapse, but any obligations under international law which it incorporated would remain valid for all States, whether the treaty existed or not. Thus, if a treaty was no longer in force in respect of a State, that State was no longer bound by the specific obligations contained in the treaty, but it did remain bound by any general obligations which the treaty contained, as those obligations were imposed on it by general international law independently of the treaty. Article 5 therefore did not impose any illegal obligation on any State whatever.

47. Mr. ARIFF (Malaysia) said he fully endorsed the principles set forth in article 5 but proposed in the interests of clarity that the words "the fact that" should be deleted and "which" inserted between "treaty" and "is not"; the beginning of the article then would read: "a treaty which is not considered...".

48. Sir Ian SINCLAIR (United Kingdom) said that he understood the doubts expressed by some delegations regarding the usefulness of article 5, but he had reached the conclusion that the article should be maintained. The process of codification and progressive development of international law which would

[7] *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. 295.

[8] *Ibid.*

lead to the adoption of the convention on the succession of States in respect of treaties must be viewed in the context of general international law, which was based not only on the rules of the law of treaties but also on rules of customary law existing independently of treaties. It was important therefore to preserve the operation and the universally binding nature of the rules of customary international law.

49. Mr. MAKAREVICH (Ukrainian Soviet Socialist Republic) said that he considered that article 5 completed and clarified article 43 of the Vienna convention on the Law of Treaties by affirming that when a State ceased to be bound by a treaty following a succession of States it remained bound by any obligation embodied in the treaty to which it was bound by international law. Such a provision would be very useful as part of the future convention, as it would contribute to a stable international order.

50. Mr. MUSEUX (France) said that he felt the question arising in connexion with article 5 was more complex than it had appeared to be at first, as the article did not simply transpose the corresponding article in the Vienna Convention on the Law of Treaties to the succession of States. As the representatives of Swaziland and Afghanistan had pointed out, there was a basic difference between the situation referred to in article 43 of the Vienna Convention and that covered by article 5 of the draft under consideration. The Vienna Convention was concerned with States which had long been in existence and were therefore already bound by a number of rules of customary law, accepted as rules of general international law. For those States the rules of international law derived not only from treaties, but also from customary law. They continued to exist, therefore, once their contractual basis had disappeared—e.g. owing to the termination of a treaty.

51. The draft under consideration, on the other hand, was concerned with newly independent States, which had not had time to become bound by rules of customary law. For such States, the rules of international law did not have their source in customary law, but solely in treaty law. The treaty law basis of an international obligation disappeared when, as a result of a succession of States, the treaty in which it was embodied was no longer in force. Thus for the States referred to in article 5, the international obligation was no longer based on a treaty, nor was it derived from common law as they were newly independent States. The idea of a rule of international law was consequently not at all the same in that draft article as in the Vienna Convention on the Law of Treaties.

52. The rule set forth in article 5 obviously posed no problem with regard to the predecessor State. With regard to the successor State, however, two alternatives might be considered. A successor State might decline to accept responsibility for a treaty some of whose provisions it found inacceptable, while at the same time it might accept some other provisions which would then become obligations for it. It might also be held that in accordance with article 53 of the Vienna Convention on the Law of Treaties, there were peremptory norms of general international law which were norms accepted and recognized by the international community of States as a whole as norms from which no derogation was permitted and which were binding on all States without exception. The second interpretation posed a tricky problem. In that connexion he recalled that at the Vienna Conference on the Law of Treaties, the French delegation had expressed doubts about the concept of *jus cogens* and had consequently voted against the Vienna Convention on the Law of Treaties. However, without denying that some norms of international law might be obligatory, it felt that it was risky to affirm that principle in a general way without qualifying it.

53. It was consequently clear that article 5 was not a simple transposition of article 53 of the Vienna Convention as it might have appeared to be. He would therefore prefer to see it deleted, as its ambiguity could give rise to confusion.

54. Mr. MARESCA (Italy) said that the lack of clarity of article 5 could be eliminated and the article prevented from encroaching on the Vienna Convention on the Law of Treaties if the word "successor" was placed before the word "State". Specifying that it applied solely to the succession of States would restore the article to its proper context.

55. The representative of France had rightly observed that newly independent States had not yet had access to the rules of general international law with which article 5 was concerned. But a new State was the direct and mandatory recipient of the rules of general international law. Those rules applied to it directly and automatically. There was no way for it to free itself from the obligations deriving from them, as it was a natural subject of international law.

The meeting rose at 1 p.m.

5th MEETING

Thursday, 7 April 1977, at 3.30 p.m.

Chairman: Mr. RIAD (Egypt)

In the absence of the Chairman, Mr. Ritter (Switzerland), Vice-president, took the Chair.

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 and 24 November 1976
[Agenda item 11] (*continued*)

ARTICLE 2 (Use of terms)[1] (*resumed from the 3rd meeting*).

1. The CHAIRMAN invited the Committee to continue its consideration of draft article 2 and to make general comments on the draft articles as a whole.[2]

2. Mr. DAMDINDORJ (Mongolia) said that the decision to prepare draft articles on succession of States in respect of treaties had been the result of the process of decolonization and the achievement of independence by States, and that the future convention would help to promote the codification and progressive development of international law.

3. His delegation considered draft article 2, which was based on article 2 of the Vienna Convention on the Law of Treaties, to be of great importance and was in favour of adopting it as it stood. Draft article 5, which was also of vital importance to the future convention, should be given the highest priority and should be adopted without change.

4. Mr. DOH (Ivory Coast) said that his delegation was grateful to the International Law Commission for having struck a balance in the draft articles between the principle of *de jure* continuity and that of the "clean slate". In so doing, the Commission had safeguarded the principle of the sovereign equality of States and the right of States to self-determination, and had made it clear that it did not believe States could be obliged to be bound by treaties without their express consent.

5. Draft article 2 would be entirely acceptable to his delegation if it were not for the wording of paragraph 1, subparagraph (*b*). The word "responsibility", which had a specific meaning in international law, might give rise to conflicting interpretations. If a colonial territory enjoyed internal autonomy, but was not competent to conduct its own foreign affairs, when it achieved independence and national sovereignty such competence would be transferred to it from the predecessor State. His delegation would therefore like the word "responsibility" to be replaced by the word "competence" in paragraph 1, subparagraph (*b*). If the word "responsibility" was retained in that subparagraph, draft article 2 should contain a clear definition of its meaning for the purposes of the convention.

6. Mr. TABIBI (Afghanistan) thanked the delegations for the honour they had done to him and his country by electing him Rapporteur of the Committee of the Whole. He congratulated the International Law Commission and its special rapporteurs on the excellent draft before the Conference and commended the Legal Department of the Secretariat, particularly the Director and Deputy Director of the Codification Division, for publishing so many scientific documents, which would greatly facilitate the Conference's work of codification.

7. He then paid a tribute to the late Mr. Edvard Hambro of Norway, who had served as Chairman of the Drafting Committee in 1974, when the final reading of the draft convention before the Conference had been concluded; he suggested that a special meeting of the Conference should be dedicated to the memory of Mr. Hambro.

8. He would not comment on the substance of the draft article by article at that stage, but would merely make some brief observations on article 2. Although the terms defined in article 2, paragraph 1, were similar to the terms contained in the Vienna Convention on the Law of Treaties, the way in which the Vienna Convention operated was different from the way the draft convention would operate. That difference was due to the fact that the Vienna Convention covered relationships between equal parties having equal interests, whereas in the case of State succession, the treaty régime was spread over two stages and covered relations between the predecessor State, the successor State and another party, in the case of bilateral treaties, or other parties, in the case of multilateral treaties. It was therefore necessary to take account not only of relations between predecessor and successor States, but also of relations with other parties to treaties, since all arrangements between the predecessor State and the successor State were subject to the will of all the parties to the treaty in question. It was not the predecessor State alone which decided on a succession; it was also subject to the will of other parties to the treaty, which had an equal legal claim to the treaty régime. His delegation was therefore of the opinion that in article 2, subparagraphs (*l*) and (*m*) of paragraph 1, defining the parties to a treaty, should be placed after subparagraphs (*c*) and (*d*), because those three elements—the predecessor State, the successor State and other parties to the treaty—were closely related.

9. His delegation fully supported the proposal of the representative of Cuba that the word "validly" should be inserted before the word "concluded" in paragraph 1, subparagraph (*a*),[3] since article 2 dealt only with "valid" treaties, not with colonial or unequal treaties. Although article 6 covered that point, his delegation was concerned with the relationship between article 2 and articles 11 and 12, relating to boundary régimes and other territorial régimes which were recognized by international law and were in keeping with the principles of the United Nations Charter.

10. With regard to the "clean slate" principle, although a newly independent State should have free choice, its freedom was naturally subject to the interests of the world community, and to those of the other

[1] For the amendments submitted to article 2, see 2nd meeting, foot-note 4.

[2] See above, 1st meeting, paras. 9-11.

[3] See above, 2nd meeting, para. 22.

parties to the treaties to which it might succeed. Moreover, a new State should succeed not only to the privileges, but also to the responsibilities arising from treaties.

11. As to article 2, paragraph 2, he did not agree with the representative of Greece[4] that it should be deleted. His opinion was based not on the fact that a similar provision was embodied in the Vienna Convention on the Law of Treaties, but rather on the fact that such a provision would enable many States Members of the United Nations to overcome their constitutional problems.

12. If the Conference ultimately adopted a convention on succession of States in respect of treaties, he thought it would have to include machinery for the settlement of disputes, as had been done in other conventions.

13. His delegation supported the Soviet proposal concerning humanitarian and other types of convention operating on a world-wide scale.

14. Mr. PANCARCI (Turkey), noting that the codification and progressive development of international law had become urgently necessary as a result of changes in the composition of the international community, said that codification of the rules relating to succession of States in respect of treaties would help to promote the development of relations between States.

15. The draft articles were clear and well balanced, though some of the provisions included were superfluous because they had already been embodied in the Vienna Convention on the Law of Treaties. His delegation was of the opinion that the inclusion of such provisions would only weaken the draft convention and give rise to doubts and conflicting interpretations. It understood, however, that caution had prompted the inclusion of those provisions in the draft, which was the result of attempts to reconcile various interests and points of view.

16. His delegation took the view that the draft convention should embody two basic principles, namely, the "clean slate" principle and the principle of *de jure* continuity, though the exceptions to those principles provided for in the draft should be maintained.

17. Article 2, paragraph 1, subparagraph (*f*), dealt with territories which had had a special legal status before independence, and a distinction should be made between territories which separated from an existing State and should therefore not benefit from the "clean slate" principle, and dependent territories which had had the same status as the metropolitan Power before independence and should benefit from the "clean slate" principle.

18. The Committee should also give careful consideration to draft article 30, which related to the uniting of States and provided, in principle, that treaties concluded by a predecessor State continued in force in respect of the successor State. As it now stood, that draft article did not provide a solution to the problem of conflicting treaties concluded by predecessor States and the Committee should therefore study it closely.

19. Mr. KRISHNADASAN (Swaziland) said that the draft articles, which were basically acceptable to his delegation, gave clear expression to the principles of self-determination and sovereign equality cherished by newly independent States. When such States looked at the draft articles, they were aware of the bitterness of former colonial Powers and the personal humiliation experienced by peoples and their leaders. Thus, account had to be taken not only of the legal aspect, but also of the psychological aspect of the principle of self-determination. His delegation welcomed the fact that the International Law Commission had been aware of that psychological element and had adopted a pragmatic approach in order to enable newly independent States to continue treaties concluded by predecessor States.

20. His delegation was somewhat concerned about the question of non-retroactivity dealt with in draft article 7. It hoped that the draft convention would be able to apply to successor States which had already been independent for a number of years when the future convention came into force. Such a possibility seemed to be implied in article 7, by the words "except as may be otherwise agreed", but the final articles should explicitly state that the draft convention applied to such States, especially as the lists of applicable treaties provided by predecessor States were often incomplete.

21. Referring to article 2, which was more or less acceptable to his delegation as it stood, he drew attention to paragraph 1, subparagraph (*b*). His delegation had no difficulty in understanding the use of the word "responsibility", but if that word gave rise to problems in French, it might be necessary to replace it by another term. He suggested that any such problems might be solved by replacing the words "responsibility for" by the words "responsibility with respect to".

22. With regard to article 2, paragraph 2, his delegation supported the view expressed by the representatives of Greece[5] and Romania,[6] namely, that that paragraph need not necessarily be included in the draft articles and that the Committee was not always bound to follow the example of the Vienna Convention, especially as one of its tasks was to promote the progressive development of international law. Some delegations had expressed the view that that para-

[4] See above, 3rd meeting, paras. 65 and 68.

[5] See above, 3rd meeting, para. 68.

[6] See above, 3rd meeting, para. 69.

graph would ensure respect for the sovereignty of States, but the Committee did not need to highlight terms used in internal law. On the contrary, one of the functions it could perform was to encourage uniformity in the use of terms.

23. Mr. SUCHARITKUL (Thailand) said that Thailand was neither a successor nor a predecessor State in any of the categories proposed in the draft articles. However, as a succession of States might be deemed to have occurred in the territories of its immediate neighbours, his country would be interested to know the precise meanings of the various terms used in the articles and wished to be assured about the continuation or termination of treaty rights and obligations relating to neighbouring newly independent States. The progressive development of principles of international law on the subject would be in the interests of certainty in international relations and the draft articles should be adopted, after appropriate revision, subject to the limitations on the scope of their application laid down in articles 3, 4, 7 and others.

24. As a general observation, his delegation considered that the law of treaties should offer guidance regarding the principles governing State succession in respect of treaties, and that particular attention should be paid to the principles of freedom of contract, privity of treaties and the "clean slate". The desirability of the continuance of treaties should not be identified with the maxim *pacta sunt servanda*. Continuance or perpetuity did not necessarily mean stability or certainty; it was not a virtue to be sustained at any cost, including cost to third parties to the succession of States. In all cases, the consent of the parties should be the determining factor. The proposals in the draft articles concerning the classification of principles to be applied to various categories of succession of States appeared to be practical and in harmony with the prevailing views of writers and with State practice.

25. Mrs. DAHLERUP (Denmark) reaffirmed that her Government was satisfied with the scope and structure of the draft articles and that it was in favour of adopting a legally binding convention.

26. The course of the debate had shown the difficulties of finding comprehensive definitions and her delegation considered that the draft should also contain provisions for the settlement of disputes. Since the draft articles were intended to complement the Vienna Convention on the Law of Treaties, it would be appropriate to base the procedure for the settlement of disputes on the corresponding provisions annexed to that Convention. Her delegation was prepared to join other delegations in working out a suitable proposal.

27. Mr. TODOROV (Bulgaria) congratulated the International Law Commission and its Special Rapporteurs on the draft articles, which were acceptable as a basis for discussion. His delegation shared the basic philosophy of the draft, since it was based on the law of treaties, on the general principles of international law and on the Charter of the United Nations.

28. The International Law Commission had succeeded in maintaining a balance between the principle of the "clean slate" and that of *ipso jure* continuity. His delegation supported the "clean slate" principle, because the population of a territory under colonial domination could not be bound by treaties to which it had not consented. But to protect the interests both of the newly independent States themselves and of the international community, some exceptions, such as those provided for in articles 11 and 12, were required. The text of article 7, which had been adopted by a narrow majority, required further study.

29. Two other important matters were participation in multilateral treaties of a universal character after a succession of States and the settlement of disputes. His delegation considered that the "contracting-out" system would strengthen the role of international law in the interests of the international community as a whole.

30. Mr. MUDHO (Kenya) said that the draft articles were broadly acceptable, with the exception of article 7, the utility and desirability of which were doubtful. In view of the fact that the International Law Commission had devoted years of study to the draft articles, which had also been commented on by most of the governments represented at the Conference, he trusted that it would not be necessary to introduce any new principles or to depart from those on which the draft articles were based.

31. He reiterated his Government's support for the "clean slate" principle as being consistent with the Charter of the United Nations and, in particular, with the principle of self-determination. He also urged the retention of the exceptions formulated in articles 11 and 12; he had doubts about the proposals by certain delegations to consider other exceptions, particularly exceptions relating to multilateral treaties of a universal character.

32. His delegation was open minded about the inclusion of provisions for the settlement of disputes.

33. His delegation found the definitions in article 2 acceptable—a view which had remained unaffected by the suggestions for changes in paragraph 1, subparagraphs (*b*) and (*f*). However, it remained open to any proposal to improve any article in the draft, and would study the specific proposals for amendment made by a number of delegations in connexion with the difficulty they held to exist in reconciling article 2, paragraph 1, subparagraph (*f*) with article 33, paragraph 3.

34. Mr. SCOTLAND (Guyana) said that, without dwelling on the manifold ramifications of the draft,

its relationship to the Vienna Convention on the Law of Treaties, its treatment of the principle of self-determination or its concept of succession of States, his delegation would observe by way of general comment that, while in some quarters it might be wished that the draft articles should be in harmony with the 1969 Vienna Convention, care should be taken to avoid the impression that that was the primary consideration. The paucity of State practice on certain aspects covered by the draft articles and its incoherent nature made any rigid formulation of principles from such practice inadvisable. Furthermore, the incorporation by reference in article 19, paragraphs 2 and 3 of articles 19 to 23 of the Vienna Convention, was likely to be a source of difficulty.

35. He had some misgivings about the definition of "succession of States" in article 2, paragraph 1, subparagraph (*b*). In paragraph (3) of the International Law Commission's commentary to that paragraph it is stated that the term referred "exclusively to *the fact of the replacement* of one State by another in the responsibility for the international relations of territory, leaving aside any connotation of inheritance of rights or obligations" (A/CONF.80/4, p. 17) paragraph (3). In his view, the reality of the incidence of succession might be more accurately described by a reference to a replacement in the exercise of competence for the international relations of the territory concerned. As was acknowledged in articles 10, 15, 16 and 17, the successor State was required to perform some act before it could properly be said to exercise its competence for international relations. The successor State might or might not exercise that responsiblity in respect of particular treaties. It could therefore be seen that on a succession of States, the successor State had competence to discharge the responsibility devolving upon it by virtue of having replaced the predecessor State.

36. He also had some misgivings about article 2, paragraph 1, subparagraph (*f*) for two reasons. First, the definition used the term "dependent territory" which itself required a definition. Secondly, the definition was not exhaustive, since it did not appear to take into account the situation envisaged in article 33, paragraph 3, nor did it cover the reality of United Nations practice as it had developed in relation to international territory. If the Conference accepted the last premise, paragraph 1, subparagraphs (*b*) to (*f*) might require slight amendment. It also appeared that the limitation to multilateral treaties of the definition of "notification of succession" in paragraph 1, subparagraph (*g*) might require examination in view of paragraph (14) of the International Law Commission's commentary to article 10, which referred to formulating the provisions of article 10 "in general terms in order to make them applicable to all cases of succession of States and to all types of treaty" (*ibid.*, p. 37).

37. In article 2, paragraph 1, subparagraph (*m*), he had no difficulty with the term "other State party", which was appropriate. Although he had no reservations about the substance of the definition, he thought it would be clearer if reworded to read:

> "Other State party" means, in relation to a successor State, any party to a treaty in force at the date of the succession of States in respect of territory to which that succession relates, other than the predecessor State.

38. It was claimed that paragraph 2 of article 2 was designed to safeguard rules or usages governing the classification of international agreements under national law. In his view, the Conference had no competence to disturb such matters and a State would be unlikely to regard the definitions in article 2 as applying within its borders unless, as it was at liberty to do, it expressly incorporated them into its national law. His delegation therefore regarded the provision as superfluous, but would not press for its deletion if other delegations, *ex abundanti cautela*, would prefer its retention.

39. Mr. MANZ (Switzerland) said that his country, which had traditionally attached great importance to the primacy of law in international relations had always taken an active part in the work of codification which had been undertaken for many years under the auspices of the United Nations and acknowledged the valuable work done by the International Law Commission and its two Special Rapporteurs in preparing the draft articles which the Conference was considering.

40. The Swiss delegation was in the main satisfied with the draft Convention. Of course, it would comment on specific points in due course.

41. The Swiss Government was in favour of the "clean slate" principle, which was derived not so much from the right of peoples to self-determination but from one of the basic general principles of law, namely, the principle of *res inter alios acta*. In the nature of things, the effects of legal acts could apply only to their authors. Hence, it was surprising that the International Law Commission had seen fit, regarding the application of treaties to successor States, to institute two different legal régimes (articles 15 and 33 of the draft) concerning two situations between which, in strictly legal terms, it would be hard to distinguish. Indeed, the International Law Commission seemed to have seen the difficulty because, in article 33, paragraph 3, the presumption of continuity disappeared when a State separated in circumstances having the same nature as those attending the formation of a newly independent State. In making that observation, his delegation was well aware that a satisfactory solution would be hard to find.

42. The Swiss Government hoped that the proposed convention would give a special place to treaties affecting the common interests of mankind, including the humanitarian conventions proper, which embraced almost the entire international community and occupied a place apart among conventions of a

universal character, in other words, it hoped that a presumption of continuity would be established for those treaties. On the other hand, a proposal to make an exception in favour of any treaty of a universal character would, in the Swiss delegation's view, make too wide a breach in the "clean slate" principle on which the draft articles were centred.

43. The Swiss delegation hoped that the outcome of the International Law Commission's efforts and the Conference's deliberations would not be a mere academic exercise, but that they would lead to the adoption of a useful instrument, in the form of a convention even more widely applicable than was envisaged in draft article 7. The Swiss delegation would also support efforts to include in the convention a procedure for settlement of disputes.

44. Mr. ESTRADA-OYUELA (Argentina) said that his Government greatly appreciated the work of the International Law Commission and the importance of its contribution to the task of codifying international law and thereby strengthening international peace and security.

45. It was already clear that the decision to link consideration of draft article 2 with the making of general comments had been sound. His delegation was among those which hoped that the outcome of the Conference's work would take the form of a convention on succession of States in respect of treaties, as a complement to the Vienna Convention on the Law of Treaties. It believed, too, that the Conference should strive, particularly in the Drafting Committee, to achieve greater precision in a number of the provisions embodied in the draft articles—the Committee of the Whole, of course, remaining responsible for questions of substance.

46. Once the other articles had been discussed, it might be possible further to clarify the definitions in article 2, particularly the new definitions relating to succession of States. Although definitions had been a problem ever since the time of Roman law, there were now further aids, such as formal logic, which would be a great help in many cases where a definition was desirable.

47. The new definitions in article 2 were, in general, of a type capable of covering all possible cases. That was the ideal type of definition, but if it failed to provide the degree of perfection required, the indicative method could be adopted. Improvements could be made continually as the work progressed. In saying that, he was not overlooking the difficulties inherent in the preparation of any legal text.

48. A number of delegations had stressed the need to establish a procedure for the settlement of disputes, which they thought were bound to arise because of imperfections in the texts of the articles. His delegation was of the opinion that the topic should be considered separately from the present deliberations; to talk about the settlement of disputes arising out of imperfect drafting during the drafting work itself was not the best way to carry out codification.

49. Mr. YANGO (Philippines) expressed his delegation's appreciation of the work of the International Law Commission in preparing the draft articles. For the time being, his delegation could express its general satisfaction with draft article 2 and with the way in which the draft articles had been linked to the Vienna Convention on the Law of Treaties.

50. His delegation would express its views later on article 2, which it deemed highly important. It the meantime, it would closely associate itself with the work on the draft articles as a whole, which must be as thorough as possible.

51. Mr. MITCHELL (Papua New Guinea) said that his country, as a new member of the international community, had a particular interest in the work on succession of States in respect of treaties. His delegation thought that the draft articles provided a useful basis for the negotiation of a convention.

52. Since gaining independence, on 16 September 1975, Papua New Guinea had been carefully examining all the previous treaties relating to its territory. After studying the draft articles, the Government had also declared the policy it intended to pursue in regard to treaties; it had adopted a variant of the "clean slate" principle, its aim being to avoid a doctrinaire approach to treaty relations, and had emphasized the need to reach a consensus on the future status of agreements previously in force.

53. He reiterated his Government's support for the draft articles before the Conference.

54. Mr. ROBINSON (Observer for the United Nations Council for Namibia), speaking at the Chairman's invitation, said that despite the constant emergence of newly independent States during the past 20 years, not all peoples had yet achieved self-determination in accordance with the aims of the United Nations Charter and the Declaration on the Granting of Independence to Colonial Countries and Peoples. For example, Namibia was still occupied illegally by South Africa, in defiance of those instruments and of international law.

55. The United Nations, pursuant to General Assembly resolutions 2145 (XXI) and 2248 (S-V), had assumed direct responsibility for the territory of Namibia. That country was therefore a *sui generis* case, in that its predecessor within the meaning of article 2, paragraph 1, subparagraph (*f*), would be the United Nations itself. The delegation of the United Nations Council for Namibia therefore hoped that special case of Namibia would be taken into account and that article 2, paragraph 1, subparagraph (*f*) would be amended to cover it.

56. His delegation hoped to have an opportunity of addressing the Committee again during discussion of the articles relevant to the situation in Namibia.

57. Mr. ZAKI (Sudan) said that his Government was satisfied with the draft articles as a whole; his delegation would approach their discussion in a spirit of co-operation, in the hope that the Conference would succeed in completing its task. His delegation agreed entirely with the definitions proposed by the International Law Commission in article 2 and, in view of the importance of the observance by the international community of obligations which formed part of international law, supported the retention of article 5 in its present wording.

58. The CHAIRMAN announced that the Committee had concluded its consideration of article 2 and the hearing of statements of principle.

ARTICLE 5 (Obligations imposed by international law independently of a treaty) (*continued*)[7]

59. Mr. NAKAGAWA (Japan) said his delegation continued to believe that article 5 was useful, if not indispensable, and supported its retention in its present wording. The article clarified the situation with regard to the application of rules of general international law to a new State and was therefore of value in view of the incorporation of the "clean slate" principle in the draft as a whole. It would also make it easier to deal with multilateral treaties of a universal character by clarifying the scope and nature of the issues involved in that question. The article should apply to successor States and to predecessor States and other States parties as well.

60. Mr. FLEISCHHAUER (Federal Republic of Germany) said that his delegation had first considered article 5 to represent a mere transposition of the axiom contained in article 43 of the Vienna Convention on the Law of Treaties; the discussion in the Committee had, however, shown that the problem was in fact more complex. On balance, his delegation believed that article 5 should be retained, since it showed that there was a limit to the application of the "clean slate" principle, which had sometimes been too rigidly stated in other draft articles. Article 5 did not say what obligations international law imposed or what rights it conferred in a particular case, but stated clearly that there were certain provisions of that law which could exist independently of a treaty which had lapsed.

61. Mr. RASSOLKO (Byelorussian Soviet Socialist Republic) said his delegation was firmly of the opinion that article 5 should be retained. That article was needed in order to consolidate the provisions of article 43 of the Vienna Convention on the Law of Treaties and because the convention which the present Conference was trying to adopt must state clearly, in the interest of the entire international community, that the termination of a treaty did not release the parties to it from compliance with the obligations incumbent upon them under the rules of contemporary international law. The article would serve as an indication for all States, including newly independent States, that normal relations between States would be impossible without respect for international obligations and principles, and particularly the Principles set forth in the United Nations Charter.

62. For those reasons, and also bearing in mind that article 5 was linked with the following articles in the draft convention, his delegation agreed that it should be retained, in the form proposed by the International Law Commission.

63. Mr. EUSTATHIADES (Greece) stated that, since the discussion in the Committee had shown that article 5 served to do more than merely restate a fundamental principle adopted in the Vienna Convention on the Law of Treaties, which would in any case have remained valid even if not expressly mentioned in the draft convention, his delegation would not object to its retention.

64. Mrs. BOKOR-SZEGÖ (Hungary) considered it essential for the entire international community that article 5 be maintained in its present form. It might be, for example, that a treaty which was terminated had imposed obligations of interest to all countries, and perhaps to newly independent States in particular; the deletion of article 5 would have the effect of releasing all the parties to such a treaty even from obligations as important as those deriving from the Declaration on the Granting of Independence to Colonial Countries and Peoples (General Assembly resolution 1514 (XV)).

65. Mr. MEISSNER (German Democratic Republic) strongly supported all the speakers who had called for the retention of article 5 in the form in which it had been drafted by the International Law Commission. His delegation was firmly convinced that the article was of paramount importance for the entire draft and understood it to set the convention in the framework of existing international law.

66. Mr. AL-KATIFI (Iraq) observed that the effect of article 5 would be to bind States by a rule which was not a treaty rule, but one of customary international law. As the representative of France had pointed out,[8] that immediately raised the problem of the applicability of such a rule to a newly independent State, which by definition would not have participated in its elaboration. While the traditional view was that the rule would automatically apply to the new State, it was also maintained that the State must explicitly or implicitly consent to be bound by it. His

[7] For the amendment submitted to article 5, see 4th meeting, foot-note 6.

[8] See above, 4th meeting, para. 39.

delegation thought it very desirable to settle the question of the applicability of the rule in the convention and therefore favoured the incorporation of a version of article 5 redrafted so as to fulfil that purpose.

67. Mrs. SLAMOVA (Czechoslovakia) associated her delegation with those which favoured the retention of article 5 as it stood. Many international agreements embodied progressive legal rules, such as those relating to the sovereign equality of States, the right of peoples to self-determination, and the principle of non-interference in internal affairs, which constituted the body of general international law and which every State must uphold even if, following a succession, it was no longer a party to a treaty in which those rules were explicitly stated. Article 5 removed all possibility of uncertainty in that respect.

68. The CHAIRMAN, observing that opinions had been expressed for and against the retention of article 5, asked whether the Committee wished to vote on the article, as would seem to be necessary, at the present meeting.

69. Mr. MIRCEA (Romania) urged that, instead of a vote, an attempt should be made to draft a compromise text acceptable to all delegations.

70. The CHAIRMAN pointed out that the Committee was obliged, by virtue of its rules of procedure (A/CONF.80/8), to vote on proposals which had been contested. The Drafting Committee would naturally take account in its discussion of any article, however adopted, of the range of views expressed in the Committee.

71. Mr. YACOUBA (Niger), speaking as Chairman of the African Group, asked that the decision on article 5 be postponed until the following day to give members of the Group time for consultations.

72. Mr. MIRCEA (Romania) said he thought the rules of procedure had been adopted on the basis of a general understanding that proposals would be put to the vote only as a last resort and that the Committee would, as far as possible, work by consensus. More time was needed, and available, for consultations between delegations with differing views, and for study of the links between individual articles. If the Committee voted too hastily on the proposals before it, the convention would not be acceptable to all, and his delegation would be unable to sign even the Final Act of the Conference.

73. The CHAIRMAN said that he appreciated the concern of the representative of Romania, but that voting on contested proposals was not only authorized by the Committee's own rules of procedure, but also formed a part of the practice of previous codification conferences. He observed, however, that all the decisions which the Committee had taken so far concerning proposals had been adopted by consensus.

74. Mr. MUSEUX (France) and Mr. ARIFF (Malaysia) proposed that, in view of the complexity of the problems to which the content of article 5 had given rise, the decision on the matter should be postponed until the following day.

It was so decided.

The meeting rose at 6.05 p.m.

6th MEETING

Friday, 8 April 1977, at 10.40 a.m.

Chairman: Mr. RIAD (Egypt)

In the absence of the Chairman, Mr. Ritter (Switzerland), Vice-Chairman, took the Chair.

Consideration of the question of succesion 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*)

ARTICLE 5 (Obligations imposed by international law independently of a treaty) (*continued*)[1]

1. Mr. SATTAR (Pakistan) endorsed without reservation the principle set forth in article 5, which was based on existing international law and State practice. Article 5, by affirming that every State must fulfil any obligations imposed on it by international law independently of any treaty, helped to restore the necessary balance in the draft convention and should therefore be retained.

2. Mr. FARAHAT (Qatar) also believed that article 5 restored the balance between the "clean slate" principle and the principle of continuity. Accordingly, he could support the article in its present form.

3. Mr. SETTE CÂMARA (Brazil) said that he had at first had the impression that article 5 was completely neutral and merely reflected article 43 in the Vienna Convention on the Law of Treaties, so that it would be immaterial whether it was retained or deleted. However, he had now come round to the view that the article was useful and should be retained. In fact, article 43 in the Vienna Convention was only concerned with "the invalidity, termination or denunciation of a treaty, the withdrawal of a party from it, or the suspension of its operation" and did not deal with the succession of States. But the succession

[1] For the amendment submitted to article 5, see 4th meeting, foot-note 6.

of States, particularly in the context of part III of the draft convention, which dealt with newly independent States, involved the termination of numerous treaty provisions which included rules of international law that could not be regarded as having been abrogated. Thus, article 5 did serve a purpose in so far as it could prevent misinterpretation of the draft convention.

4. Mr. MANGAL (Afghanistan) considered that article 5 was inherently dangerous, because if a State no longer regarded itself as bound by a treaty on the ground that the treaty was unjust it should not be bound by any of the obligations embodied in that treaty unless they were in conformity with the United Nations Charter and other rules of international law, as the Byelorussian representative had aptly pointed out.[2] Therefore, he suggested that the Drafting Committee should modify the text of article 5 slightly so as to specify that a State was not bound to fulfil any obligation embodied in a treaty which was no longer in force in respect of that State except in so far as that obligation was in conformity with the rules of general international law. That change would make it clear that article 5 was not intended implicitly to assure the maintenance in force of a treaty that had become invalid.

5. Sir Francis VALLAT (Expert Consultant) drew the Committee's attention to the connexion between article 5 in the draft convention and article 43 in the Vienna Convention on the Law of Treaties. In his view, the fundamental principle that a State was subject to customary law was not in question. The problem was whether or not that principle should be set out in the draft convention. The need for such a provision became clearer if article 5 was compared with article 43 in the Vienna Convention; for the latter did not cover the case of a treaty being considered as not in force in respect of a State by reason of a succession of States. Consequently, if there was no article 5, it might be concluded that the rule embodied in article 43 of the Vienna Convention did not apply in that particular instance and that consequently States were released from the obligations to which they were subject under customary law.

6. Mr. PANCARCI (Turkey) considered that article 5 did fill a gap and should be retained in the draft convention. That article, like many others, was the result of a compromise between different interests and views and its deletion would affect other articles. If retained, it would be easier to interpret the provisions of the future convention.

7. Mr. KRISHNADASAN (Swaziland) asked in what instances article 5 would apply to a predecessor State.

8. Sir Francis VALLAT (Expert Consultant) replied that it would apply in cases of disagreement concerning treaty relations between a predecessor and a successor State. If a treaty was not considered to be in force between them, the predecessor State's obligations were in question on exactly the same ground as the successor State's obligations, so that article 5 covered the predecessor State as well as the successor State.

9. Mr. SCOTLAND (Guyana) considered that the wording of article 5 should be amended so as to make the meaning clearer. It referred to "a State" when in fact it concerned at least three categories of States: the predecessor State, the successor State and other States parties to the treaty. Thus the general expression "a State" might be misunderstood.

10. Mr. MARESCA (Italy) also considered that the wording of article 5 was far from clear and should be amended by the Drafting Committee.

11. Mr. MIRCEA (Romania) formally proposed that the text of article 5 should be amended to read:

Article 5. Obligations deriving from generally accepted principles and rules of international law independently of a treaty

The fact that a treaty is not considered to be in force by virtue of the application of the present Convention shall not in any way impair the duty of the successor State and other States concerned to fulfil any obligation embodied in that treaty under generally accepted principles and rules of international law independently of the treaty.

12. The CHAIRMAN asked whether members of the Committee were willing to proceed with the examination of the text proposed by the Romanian representative as an oral amendment or whether they would prefer to take it up at the following meeting after it had been circulated in writing.

13. Mr. SNEGIREV (Union of Soviet Socialist Republics) said that he preferred to wait until the amendment had been submitted in writing.

14. Mr. MIRCEA (Romania) said that he would submit his amendment in writing at the following meeting.

15. The CHAIRMAN suggested that, in the circumstances, further examination of article 5 should be postponed until the following meeting and in the meantime the Committee would proceed with article 6.

16. Replying to a question by the Pakistan representative concerning the procedure to be followed for examining amendments, he explained that any delegation could always ask for an amendment to be circulated in writing in its working language but that the Committee could also examine an oral amendment provided no objection was raised. As for suggestions directed to the Drafting Committee, he also reminded the Committee that if a proposal had not been submitted as a formal amendment and had not

[2] See above, 5th meeting, para. 61.

been put to the vote, the Drafting Committee could only consider it from the drafting point of view and could not make any change of substance in the text.

ARTICLE 6 (Cases of succession of States covered by the present articles)[3]

17. Mr. GILCHRIST (Australia) said he understood the arguments in favour of draft article 6 advanced by the International Law Commission in paragraphs (1) and (2) of its commentary (A/CONF.80/4, pp. 22 and 23). Nevertheless, although the rule set out in the draft article was derived from customary law, it was likely to give rise to practical problems. States would apply that rule subjectively, and that would necessitate efficient machinery for the settlement of disputes. His delegation therefore shared the Argentine delegation's view that the Conference should deal with the question of the settlement of disputes independently and not merely to camouflage the shortcomings of the Convention.[4] As now worded, draft article 6 ran the risk of perpetuating differences of opinion arising from the subjective application of international law by States. In the past, States had shown flexibility in their attitude towards the legal status of new governments and States according to the circumstances, but it was not certain that a State which abided by draft article 6 would enjoy such latitude. On the contrary, once a State had subjectively qualified a succession of States as unlawful, the Convention would not be applicable to that case of succession. To ensure respect for international law, the Conference should recognize that article 6 would be applied subjectively and should therefore adopt a provision allowing the opinions of States concerning the status and lawfulness of a new State to develop in accordance with the circumstances. That was why his delegation had submitted the amendment in document A/CONF.80/C.1/L.3.

18. Mr. SUTTERHEIM (Netherlands) said that his delegation was concerned by the provisions of draft article 6, since it was not impossible for a new State created under conditions contrary to international law to invoke that article in claiming that the provisions of articles 11 and 12 on boundary régimes and other territorial régimes did not apply to it. He suggested that article 6 should be placed after articles 11 and 12 and that it should be stipulated that it referred only to articles 13 *et seq.*

19. Mr. AL-KATIFI (Iraq) said that, if article 6 related to the legitimate concern of recognizing in the case of territorial changes only successions occurring in conformity with international law, his delegation would be in favour of retaining the article. He was not sure, however, whether the non-application of rules concerning the succession of States to the unlawful transfer of territories might not prejudice the legitimate rights of innocent States or even of the victims of such a transfer. It was self-evident that, apart from the principle of self-determination of peoples and the principle of the prohibition of the use of force in violation of the United Nations charter, international law did not lay down rules for the creation of States, unlike private law, which comprised detailed regulations for the establishment of associations or limited companies.

20. He therefore did not consider that the Australian amendment met his delegation's concern. Moreover, the draft article prepared by the International Law Commission should be so amended as to provide that a State benefiting by an unlawful succession could not evade the treaty obligations relating to the territory which was the object of the unlawful transfer and to set out the relevant principles of international law, such as the principles of self-determination of peoples, respect for the territorial integrity of States and prohibition of the unlawful use of force in international relations.

21. Mr. YIMER (Ethiopia) said that he was in favour of retaining draft article 6 in the convention but that he preferred the wording proposed by the Australian delegation (A/CONF.80/C.1/L.3). Article 6 was not drafted in the same terms as the corresponding provision—article 52—of the Vienna Convention on the Law of Treaties and, moreover, was imprecise. The International Law Commission could have given examples illustrating the provisions of article 6, as it had done in the case of other articles. He would therefore be grateful to the Expert Consultant if he would give examples of cases where succession of States had not occurred in conformity with international law and, in particular, with the principles embodied in the Charter of the United Nations. He also wished to know what particular situations were to be excluded by article 6 from the area of application of the draft convention.

22. Sir Francis VALLAT (Expert Consultant) said that, owing to the possible political implications, he did not think he could give specific examples of situations in which a succession of States had not occurred in conformity with international law. On the other hand, it did not seem difficult to imagine, especially in the framework of article 14 of the draft, cases of succession resulting from unlawful acts—for instance, where a State wished to dismember another for political reasons.

23. Mr. EUSTATHIADES (Greece) said that, in comparison with the Australian amendment, article 6 dealt with the question of cases of succession of States covered by the draft articles from the theoretical rather than the practical point of view. On the other hand, he wondered whether in practice there was really any difference between the text of the In-

[3] The following amendments were submitted: Australia, A/CONF.80/C.1/L.3; Romania, A/CONF.80/C.1/L.5; Ethiopia, A/CONF.80/C.1/L.6; Union of Soviet Socialist Republics, A/CONF.80/C.1/L.8, and Singapore, A/CONF.80/C.1/L.17.

[4] See above, 5th meeting, para. 48.

ternational Law Commission and the Australian amendment. At first sight, there was the essential difference that draft article 6 condemned and provided sanctions against unlawful acts whereas the Australian amendment gave States the option of applying or not applying the Convention according to the circumstances, but his delegation was not convinced of the need for the realistic provisions proposed by the Australian delegation and preferred the logical, abstract and juridical terms of the text prepared by the International Law Commission.

24. Mr. KEARNEY (United States of America) said he agreed with the preceding speaker that article 6 as proposed by the International Law Commission certainly entailed more clear-cut consequences than did the Australian amendment. Nevertheless, he thought it would be difficult to assess the effects of article 6 accurately in view of the scope of the rule proclaimed in that article. Moreover, any succession of States originating in the use of force was accompanied by violations of law by both the parties concerned. His delegation therefore believed that article 6 would have unduly draconian effects which the Committee could not foresee. To remedy that shortcoming, an attempt could be made to define the situations to which article 6 would apply, but any enumeration involved a certain amount of risk. Alternatively, a list could be made of the principles of international law which were embodied in the Charter of the United Nations and violation of which would prevent the application of the draft articles, but that would be a difficult task. That was why the Australian amendment had the great advantage of assuming a tolerant attitude on the part of States, while retaining respect for the principles set out in article 6. The United States delegation therefore considered that the amendment should be adopted.

25. Mr. MARESCA (Italy) said that he supported the idea of preserving international lawfulness, on which the International Law Commission had based article 6, but wondered whether that legal text took historical and political realities into account. There were indeed very few States which had been formed under ideal conditions, without the use of force or foreign intervention. The independence so greatly prized by States had in fact been attained at the cost of circumstances and events which had not always been in conformity with international law. The International Law Commission had clearly been aware of that problem in drafting article 7, which seemed to be calculated to "wipe away" processes which could be considered as not in conformity with international law and which should therefore be taken into account in considering article 6. There was no doubt that it would be highly desirable to introduce moral principles into legal provisions but that would hardly prevent States from adopting the attitude which suited them and which would be based, not on moral, but on political considerations; now that was the very idea embodied in the Australian amendment, which was realistic and legally sound, but if the Committee wished to retain the article prepared by the International Law Commission it should try to improve the text so that it expressed the idea that a State formed in violation of international law had no acquired rights or powers.

26. Sir Ian SINCLAIR (United Kingdom) recalled that in its observations of 1972 his Government had expressed doubts about retaining article 6 on the ground that it might give rise to uncertainty about the application of the convention in particular cases. Furthermore, though there was a link between articles 6 and 7, that did not help since article 7 also gave rise to problems. His delegation did not dispute the fact that cases of succession could result from an act of aggression or a breach of peace but considered that the consequences of such wrongful acts was a matter for the competent bodies of the United Nations. His delegation was concerned about the possible secondary effects of article 6 in its present form, if it was adopted. It would support the Australian amendment, which sought to attenuate some of those secondary effects, if the Committee judged it really necessary to retain an article on that matter.

27. Mr. SEPÚLVEDA (Mexico) said he had doubts about the Australian amendment because it only amounted to changing the order in the wording of article 6 and was open to misunderstanding. His delegation preferred the more lucid text worked out by the International Law Commission.

28. Mr. MANGAL (Afghanistan) said that obviously the purpose of codifying rules of international law was to apply them only to situations established in conformity with the principles of the United Nations Charter and other rules of international law. Thus the draft articles should be confined to normal situations where treaties had been validly concluded between sovereign and independent States. Article 6 clearly ensured that a predecessor or successor State party to an unjust and unlawful treaty could not benefit from or rely upon the draft articles. For that reason his delegation considered that article 6 was essential to the balance of the whole of the draft articles and that any move that would upset that delicate balance might have serious consequences not only for the discussion of other draft articles but also for the ratification of the convention itself by many States.

29. The main purpose of the codification and progressive development of international law was to make legality prevail in international relations and not to produce recognition of situations or facts that were contrary to the principles of international law. If some delegations had to insist on deleting article 6 or modifying its substance, the Committee might consider elaborating a declaration instead, setting out the principles applicable to the succession of States in respect of treaties. It would be worth exploring that possibility if the articles which his delegation regarded as fundamental to the balance of the draft

had to be deleted. The difficulties that the implementation of a convention on succession of States in respect of treaties might create could induce some States to refrain from ratifying or acceding, so that it would not become universal in character.

30. Referring to the Australian amendment, he said that each delegation was certainly entitled to submit amendments but it also had the duty to seek the best means of codification. The Australian amendment could only be interpreted as seeking to relieve States of their fundamental obligation not to recognize the existence of certain unlawful situations and for that reason his delegation regarded the amendement as unacceptable and declared itself in favour of article 6 as proposed by the International Law Commission, since that text appeared to be quite satisfactory.

31. Mr. KAMIL (Indonesia) considered that the scope of article 6, as now worded, was fairly limited since it implied that the draft convention would not apply when a State came into being in a manner contrary to the principles of international law embodied in the Charter of the United Nations. But it would be difficult to decide who was competent to pronounce on the lawfulness or unlawfulness of any given situation. For that reason his delegation supported the suggestion made by the Asian-African Legal Consultative Committee at its eighteenth session in Baghdad, in 1977, to the effect that the concept of a lawful situation must be defined in the draft. In addition he proposed that the word "only" in the draft article should be replaced by the word "normally".

32. Mr. SCOTLAND (Guyana) observed that various problems had emerged from the debate and his delegation would attempt to identify the issues which confronted the Conference in relation to article 6.

33. Those issues were the following: Firstly, how to exclude from the scope of the draft articles a succession of States achieved in a manner which was not in conformity with international law and in particular the principles of international law embodied in the Charter of the United Nations? If the above premise were accepted, then the successor State, which in that case might be described as the "aggressor State", was free to disregard treaties applying to a territory before its illegal act, even if that territory was not incorporated into the State of the "aggressor State".

34. Secondly, how far, and how, did the Conference give overt recognition to political realities? The latter might be a matter of drafting but the former was a substantive issue.

35. Thirdly, how far would the Conference adopt flexibility in a text to permit the kind of auto-interpretation of obligations which was the basis of the Australian amendment?

36. Should the Conference present, as part of a treaty, an article which suggested support for the replacement of one State by another in circumstances which might not be in conformity with international law and in particular the principles of international law embodied in the Charter of the United Nations?

37. His delegation had many difficulties with the Australian amendment. The absence of certainty in draft article 6 was implicit in the practices of States and previous speakers had already alluded to it. In the Australian draft the uncertainty was explicit and it was a matter for consideration whether the Conference should approach the question in that manner.

38. He wondered whether, in addition to its illegal act, the State acting illegally should find support for its action in a provision of the convention which was being drafted by the Conference. That was a possibility which could arise from adoption of the Australian amendment. His delegation was therefore regrettably unable to support that amendment.

39. Mr ARIFF (Malaysia) questioned whether article 6 in its present form need be included in the draft convention. He noted that the draft did not contain any definition of a succession of States occuring in conformity with international law. Therefore, that expression might lend itself to differing interpretations and give rise to misunderstandings. Without impugning the good intentions of the International Law Commission, he wondered how a distinction could be drawn between events in conformity with international law and those that were not. In view of the definition of the term "succession of States" contained in article 2, paragraph 1, subparagraph (*b*), namely "the replacement of one State by another in the responsibility for the international relations of territory", whatever the circumstances in which that replacement occurred, he was unable to understand why the application of the future convention had to be confined to the effects of succession of States occurring in conformity with international law.

40. Therefore, either the expression "succession of States occurring in conformity with international law" must be defined or the words "international law and, in particular", in draft article 6 must be deleted. In fact the reference to principles of international law embodied in the Charter of the United Nations was quite enough to cover all the situations that the International Law Commission had had in mind.

41. The Australian amendment sought to clarify and simplify article 6, but although the phrase "a succession of States occurring in conformity with international law" had been replaced by a reference to events which had occurred contrary to international law, that amendment was just as ambiguous.

42. Mr. HASSAN (Egypt) considered that the difficulties to which article 6 might give rise did not jus-

tify its deletion. An imperfect draft was preferable to one shorn of so vital a provision.

43. Mr. MUPENDA (Zaire) expressed a preference for article 6 as proposed by the International Law Commission. While that provision sought to condemn the effects of any events contrary to the principles of international law embodied in the Charter of the United Nations, the Australian amendment appeared to sanction the acts of aggressor States. There was a danger that the amendment might prove to be a source of misunderstanding.

44. Mr. HELLNERS (Sweden) said that at the beginning of the discussion he had thought that the principle set out in article 6 would be accepted by all delegations as one which should be fundamental to the Committee's work. It had then seemed to him that the provision could be dropped since it was self-evident and the mere fact of repeating such an axiomatic principle might give the impression that it was in doubt. However, after listening to the discussion and studying the Australian amendment he had concluded that the principle was not as self-evident as he had thought and might be included in the draft convention.

45. The Australian amendment was not altogether clear. It would not suffice, in order to remove difficulties of interpreting the phrase "in conformity with international law" which appeared in the draft article, to replace it as proposed in the Australian amendment. The latter seemed to open the door to accepting a great many types of situation. Certainly States were not bound to accept them but the amendment produced the surprising impression that the future convention could apply to unlawful acts provided the State concerned raised no objection. For that reason his delegation could not accept the amendment.

46. He had the same doubts about the suggestion made by the representative of Indonesia to substitute the word "normally" for the word "only" in draft article 6 as he had about the Australian amendment. Moreover, any other change in the wording proposed by the International Law Commission was liable to produce more confusion rather than clarity.

47. Undoubtedly, article 6 was closely linked with article 7 and the latter would attenuate the purport of the former. On the other hand, the principle set forth in article 6 might also be incorporated in the preamble to the draft convention.

48. Mr. FARAHAT (Qatar) considered that the wording of article 6 as framed by the International Law Commission was free of ambiguity. While he understood the reasons which had prompted the Australian amendment, he thought that there might be a danger that such a formulation might legitimize unlawful situations. As that amendment raised doubts and uncertainties he would support article 6 as it stood, in principle, but would welcome any drafting improvements that might be made.

The meeting rose at 1 p.m.

7th MEETING

Tuesday, 12 April 1977, at 10.30 a.m.

Chairman: Mr. RIAD (Egypt)

In the absence of the Chairman, Mr. Ritter (Switzerland), Vice-Chairman, took the Chair.

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*)

ARTICLE 6 (Cases of succession of States covered by the present articles) (*continued*)[1]

1. Mr. MIRCEA (Romania), introducing his delegation's amendment to article 6 (A/CONF.80/C.1/L.5), said he thought that it would be premature to regulate, in a specialized convention, the highly complex question of the conformity of a succession of States with the principles of international law. If the article in question was to be retained, it would be essential to indicate the basic criteria needed to define the concept of succession of States. Since a number of delegations wished to keep article 6, his delegation had submitted an amendment which departed only slightly from the text proposed by the International Law Commission. The reference to "international law and, in particular, the principles of international law embodied in the Charter of the United Nations" had been replaced by the words "fundamental principles embodied in the Charter of the United Nations, in the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States (General Assembly resolution 2625 (XXV)) and in other international instruments". It could not be denied that the Declaration contained some provisions of direct concern to the succession of States in respect of treaties and that the application of those provisions, particularly the principle of self-determination, ought to help with the solution of certain problems. Among the "other international instruments" which his delegation had in mind were the Charter of Economic Rights and Duties of States (General Assembly resolution 3281 (XXIX), of which his country had been one of the first advocates, the

[1] For the amendments submitted to article 6, see 6th meeting, foot-note 4.

Charter of the Organization of African Unity,[2] the Final Act of the Conference on Security and Co-operation in Europe,[3] and any other instruments relating to the succession of States.

2. He welcomed the fact that other delegations had also submitted amendments to improve article 6, and pointed out that his delegation's proposal was not a rigid one.

3. Mr. YIMER (Ethiopia), introducing his delegation's amendment (A/CONF.80/C.1/L.6), said that it was simply a drafting variant of article 6, which changed none of the substance of that provision. In view of article 52 of the Vienna Convention on the Law of Treaties which stated: "A treaty is void if its conclusion has been procured by the threat or use of force in violation of the principles of international law embodied in the Charter of the United Nations",[4] his delegation thought it would be more striking if article 6 was drafted in a negative form. If the Committee wished to retain article 6 but was not particularly attached to the International Law Commission's wording, his delegation's proposal might be referred to the Drafting Committee.

4. Mr. YANGO (Philippines) said that the task of the Committee of the Whole was clear: it was to promote the codification and progressive development of international law and, in particular, of the principles embodied in the Charter of the United Nations. To that end, the International Law Commission had emphasized, in its draft article 6 and its commentary thereon, that the future convention should be based on lawfulness. Article 6 was thus essential in that it embodied a principle of lawfulness which the United Nations had taken pains to establish in other codification conferences and in various declarations. The concepts of normality and lawfulness introduced in that way were very important for the draft as a whole. Any dispute concerning the normality or lawfulness of a succession in terms of the future convention would have to be settled in conformity with international law and, more particularly, with the principles of international law incorporated in the Charter of the United Nations. In the circumstances, his delegation was doubtful whether the Australian amendment (A/CONF.80/C.1/L.3) was a pertinent one, although it could understand the desire of its sponsors to take certain realities into account. It was important, however, to specify that the future convention would apply to normal cases of succession of States, and the Committee should not be afraid to state that such cases had to be in conformity with international law and, more particularly, with the principles of international law embodied in the Charter of the United Nations. The Australian amendment introduced a subjective element which could well cause some confusion. It was necessary, however, to spell out how the convention would be applied. Consequently, his delegation could not support the Australian amendment and preferred the draft article 6 prepared by the International Law Commission.

5. As for the Ethiopian and Romanian amendments, they were similar to draft article 6 in that they were based on the concepts of normality and lawfulness. The Ethiopian amendment would only make a change in the form of article 6, while the Romanian amendment added some further details concerning the substance of the provision. Since other amendments could still be submitted, his delegation reserved its position concerning both those amendments.

6. Mr. JELIĆ (Yugoslavia) said that the principle contained in article 6 was such an obvious one that his delegation had, at first, thought it unnecessary to incorporate such a provision in the future convention. Subsequently, however, the numerous calls for political realism made in the course of the discussion had convinced it that it was absolutely essential to spell the principle out, as had been done by the International Law Commission.

7. The Australian amendment was not an acceptable one since it opened the door to *de facto* recognition of unlawful situations by presenting such recognition virtually as the rule, with non-recognition as the exception, and thus tended to legitimize unlawful situations and to encourage other situations of the same kind. It was true that, in the name of political realism, a State might be led to recognize unlawful situations, but in doing so it assumed a moral, political and legal responsibility which should not find its justification in any United Nations convention.

8. As for the Ethiopian and Romanian amendments, the former was an interesting one but concerned the Drafting Committee, while the latter deserved more thorough consideration than his delegation had as yet been able to give it. For the moment, therefore, it was unable to take a position on the subject.

9. Mr. ZAKI (Sudan) said that it was important to retain article 6, because it stated an obvious fact, namely, that the convention could not be applied to situations not in conformity with international law. The presence of that provision would dispel doubts. In fact, a State could always find excuses to act contrary to international law in respect of succession of States. In his delegation's view, it was not necessary to specifiy which rules were and which rules were not in conformity with international law. Although not all the rules on the subject had as yet been codified, it was clear that a succession of States was not

[2] United Nations, *Treaty Series*, vol. 479, p. 70.

[3] See *Conference on Security and Co-operation in Europe, Final Act* (Helsinki, 1975), Imprimeries Réunies, Lausanne, p. 76.

[4] *Official Records of the United Nations Conference on the Law of Treaties, Documents of the Conference* (United Nations publications, Sales No. E.70.V.5), p. 296.

in conformity with international law when it resulted, for instance, from force or from an act of aggression.

10. The Ethiopian amendment had the same meaning as draft article 6, but it was drafted in a negative form. It was not acceptable, however, in that it would be out of step with other articles which were drafted in a positive form. The Romanian amendment referred to the Charter of the United Nations and to the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States. There were a number of contradictions between those two texts as well as some ambiguities and, consequently, they should not be referred to together.

11. Mr. SETTE CÂMARA (Brazil) said that he was in favour of retaining the article 6 proposed by the International Law Commission. The presumption that it stated was very important, although not entirely accurate. As appeared from the International Law Commission's commentary on article 6 (A/CONF.80/4, pp. 22-23), certain situations called for specific treatment, particularly in the case of treaties entered into under constraint or treaties conflicting with the norms of *jus cogens*. There were certain areas of law which lent themselves to codification and which related solely to lawful situations, as in the case of the responsibility of States, hijacking of aircraft and the protection of diplomats. In the case of the draft convention under consideration, the difficulty stemmed from the fact that the expression "succession of States" was not qualified in the definition given of it in article 2, paragraph 1, subparagraph (*b*). From that subparagraph it might be deduced that the convention was also intended to apply to unlawful successions. When the International Law Commission had reconsidered its draft articles in the light of the comments submitted by governments, it had studied a suggestion by the Government of the United States of America[5] that a distinction should be made between rights and obligations under the future convention: in the case of unlawful succession, the obligations would still apply. The Special Rapporteur had even submitted a text taking account of that suggestion,[6] but the International Law Commission had preferred to retain the original wording of article 6.[7] It would, in fact, be dangerous to accept the principle that unlawful successions could have certain effects in the matter of the succession of States, even if those effects were limited to obligations. Moreover, a distinction between rights and obligations would be a source of confusion and could give rise to divergent interpretations of the various articles of the future convention.

12. He was doubtful as to the suitability of the Australian amendment, which contained a subjective element, since it would be for the interested State to decide as to the lawful or unlawful nature of a succession of States. As for the Ethiopian amendment, it could be referred to the Drafting Committee since it would merely give article 6 a negative form similar to that of article 13. Although the Romanian amendment contained some important elements, it would make the test of article 6 cumbersome. Furthermore, it should not be forgotten that the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations did not have the mandatory force of a convention, although it contained some very important provisions.

13. In short, therefore, he hoped that the Committee would retain the article 6 proposed by the International Law Commission and that it would refer the various amendments to the Drafting Committee for its consideration.

14. Mr. SATTAR (Pakistan) said that he found article 6 basically acceptable. At first sight, it might seem unnecessary, since nothing in the future convention could be interpreted as obliging a party to apply it to the effects of occurrences contrary to international law and, in particular, the Charter of the United Nations, but the reaffirmation it contained would help to ensure respect for the principles of international law and, in particular, those embodied in the United Nations Charter. It was unnecessary and even undesirable to refer to the violation of those principles. On the other hand, the Australian amendment contained a saving clause which enabled, rather than obliged, a State to apply the convention to the effects of situations contrary to international law and to the United Nations Charter. It would be manifestly absurd for a codifying convention to enable States parties to it to apply the law thus codified for the benefit of those who infringed the convention. That result would be contrary to the spirit and letter of the United Nations Charter, article 2 of which provided that Members of the United Nations should act in accordance with the principles set out in that article. The Charter also contained provisions designed to discourage States from acting in violation of those principles. There could be no doubt that the Australian delegation did not wish its amendment to have such effects.

15. The Romanian amendment seemed at first sight to contain some useful elements, especially the reference to the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations. Nevertheless, the amendment required a certain amount of clarification, especially with regard to the concept of "fundamental" principles and what was meant by "other international instruments".

16. To sum up, he supported article 6 as drafted by the International Law Commission, but would like

[5] *Yearbook of the International Law Commission, 1974*, vol. II, part one, p. 328, document A/9610/Rev.1, annex I.

[6] *Ibid.*, p. 35, document A/CN.4/278 and Add. 1-6, para. 177.

[7] *Ibid.*, vol. I, p. 192, 1285th meeting, paras. 15-16.

the text to contain a reference to the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States.

17. Mr. SANYAOALU (Nigeria) said that draft article 6 contained a subjective element which made a provision on the settlement of disputes all the more necessary. He could not accept the suggestion to replace the word "only" by "normally",[8] since the change would in no way remedy that subjectivity. The Australian amendment was also unacceptable, since it introduced no objective element. Likewise, he could not support the other two amendments and was in favour of the text proposed by the International Law Commission, on the understanding that the future Convention would contain a provision on the settlement of disputes.

18. Mr. SIMMONDS (Ghana) said his delegation was convinced that the future convention must apply only to the effects of successions of States occurring in conformity with international law. Draft article 6 sought to avoid any confusion; the amendments submitted seemed unlikely to accomplish that, since none of them elaborated on or clarified the draft article. Since article 6 as drafted by the International Law Commission was designed to ensure and promote the stability and coherence of law, it must be retained.

19. Mr. SIEV (Ireland) said he had some doubts concerning the need to specify that "the present articles apply only to the effects of a succession of States occurring in conformity with international law". He therefore supported the Australian amendment, which respected the principle of the sovereignty of States and recognized the international practice, established by new States, of leaving each State free to accept or reject a treaty.

20. Mr. TABIBI (Afghanistan) said that article 6 was the most important saving clause of the draft articles, since it safeguarded the legality of all the provisions of the future convention by limiting their application to the effects of lawful succession to valid treaties. It was specified in part V of the Vienna Convention on the Law of Treaties that that instrument applied only to facts occurring and situations established in conformity with international law. Article 6 covered in a single principle the whole question of validity which was dealt with in many articles of the Vienna Convention. As the International Law Commission had stressed in paragraph (2) of its commentary on article 6, that saving clause was particularly important in connexion with transfers of territory, since "only transfers occurring in conformity with international law would fall within the concept of 'succession of States' for the purposes of the present articles" (A/CONF.80/4, p. 23). Accordingly, the provisions of the future convention would not apply to unlawful transfers which were contrary to the will of the people and to the principle of self-determination.

21. He reminded the Committee that, at his request, the Expert Consultant to the Vienna Conference on the Law of Treaties had confirmed that under article 62 of the Vienna Convention, the provisions of part V of that instrument also applied to unlawful treaties.[9] He therefore asked the Expert Consultant now to confirm expressly that the future convention would not serve to support unlawful colonial treaties and that that was the real meaning of article 6. He also asked the sponsors of the various amendments not to insist on changing the text of the article, which had been carefully drafted and the balance of which should not be disturbed.

22. Sir Francis VALLAT (Expert Consultant) said he could unreservedly assure the representative of Afghanistan that the International Law Commission had in no way sought to sanction any unlawful treaties whatsoever. Moreover, it should be concluded from the principle set out in article 13 that the convention conferred no validity on a treaty deemed to be legally invalid.

23. Mr. USHAKOV (Union of Soviet Socialist Republics) said that the difficulties arising from article 6 related to the wording rather than the substance of the article, since the Australian, Romanian and Ethiopian amendments had been submitted with a view to improving the wording.

24. Like the whole of the draft convention, article 6 did not relate to the succession of States as such, but only to the effects of that succession or its legal consequences. In the context of the general definition of the succession of States given in article 2, paragraph 1, subparagraph (*b*), several hypotheses could be envisaged—succession which might result from the transfer of part of the territory of one State to another State (part II of the draft), from the creation of a new State—for example, as a result of the decolonization process (part III) or from the uniting or separation of States (part IV). The question of succession properly so-called was not dealt with in the draft articles, since the legality of the succession of States was determined by rules of international law. The draft articles were therefore concerned only with lawful succession of States and, in particular, the lawful transfer of the territory of one State to another State. Thus, if article 6 was omitted from the draft, it would be impossible to conclude that the convention could apply to unlawful succession. Even if the article did not appear in the convention, that instrument would apply only to lawful succession from the point

[8] See above, 6th meeting, para. 31.

[9] See *Official Records of the United Nations Conference on the Law of Treaties, Second Session, Summary records of the plenary meetings and of the meetings of the Committee of the Whole* (United Nations publication, Sales No. E.70.V.6), pp. 121-122, 22nd plenary meeting, paras. 50-52. (Article 62 of the Vienna Convention corresponded to article 59 of the draft considered by the United Nations Conference on the Law of Treaties.)

of view of the principles of international law, especially those embodied in the United Nations Charter, which was the keystone of all international conventions.

25. That did not mean, however, that article 6 should be deleted, although he thought that its wording should be clarified to avoid any confusion. Article 6 was a saving clause which related to other rules of international law and, in particular, to the principles of international law embodied in the Charter. On the other hand, the article did not state which rules of international law should in practice govern the succession of States and determine the lawfulness of a territorial transfer.

26. Article 1 provided that "the present articles apply to the effects of a succession of States in respect of treaties between States". It should of course be taken for granted that the reference was to lawful treaties, since it would be absurd to suppose that the convention could relate to unlawful treaties; but that *a priori* assumption did not exclude the introduction of a saving clause.

27. Like article 6, article 13 related to other norms of international law, since the validity of a treaty was determined by the Vienna Convention on the Law of Treaties. Both those articles concerned the question of validity, article 6 dealing with validity of a succession of States and article 13 with the validity of treaties. Although the two articles concerned analogous situations, their wording was very different, and it would be more logical to draft them in the same manner. He was in favour of aligning the text of article 6 on that of article 13, which he preferred, and he therefore proposed that article 6 be replaced by the following text:

Article 6. Questions relating to the validity of a succession of States

Nothing in the present articles shall be considered as prejudicing in any respect any question relating to the validity of a succession of States as such.[10]

28. That amendment would in no way change the meaning of article 6, but would have two advantages: on the one hand, aligning the text of article 6 on that of article 13 would stress the parallelism between those two articles and, on the other hand, that wording of article 6 would give rise to no difficulty of interpretation. He was aware, however, that his amendment was not merely a drafting proposal and was prepared to submit it in writing if the members of the Committee so wished. The idea of the amendment had come to him during the debate, when he had realized from the statements of other delegations that the wording rather than the substance of the article was creating problems.

29. The CHAIRMAN suggested that the amendment submitted by the Soviet Union should be discussed as an oral amendment.

30. Sir Ian SINCLAIR (United Kingdom) said he would prefer the amendment to be submitted in writing and the debate on article 6 to be deferred to a later meeting.

31. Mr. MARESCA (Italy) said that the proposal of the Soviet representative was of major importance and would alter the whole tenor of the discussion. He therefore joined the United Kingdom representative in requesting that the amendment should be submitted in writing, as it would be unfortunate to have to forgo a formal debate on such an important proposal.

32. Mr. MUDHO (Kenya) said that earlier he had seen no purpose in retaining article 6 in the draft convention, as the draft contained no provision whereby the lawfulness of a State succession could be determined. He was now, however, convinced of the usefulness of the article and favoured its retention unchanged. The Australian amendment was unacceptable owing to the dangerously subjective element it introduced, which could impair the coherence of the convention and create a degree of instability. Article 7 should also be retained, as it was necessary to stipulate that the provisions of article 6 applied without prejudice to those of articles 11 and 12.

33. Mr. KOECK (Holy See) said the fact that a number of delegations had submitted amendments to draft article 6 showed that the article did not really meet with the wishes of the Committee members who, without thereby taking a decision as to the validity of a succession of States, nevertheless wished to make clear that the articles were not intended to apply to an unlawful succession. However, those amendments did not solve the problem which article 6 posed for the delegation of the Holy See. On the other hand, it supported the Soviet proposal, which should enable the Commission to find a solution and would help to bring the wording of article 6 into line with the other provisions of the draft, particularly articles 1, 2 and 13.

34. Mr. SAMADIKUN (Indonesia) said he was in favour of maintaining article 6 as it stood, taking into account the suggestion made by his delegation at the 6th meeting.[11] He was unable to endorse the Australian amendment, as it altered the idea which the International Law Commission had sought to embody in article 6. As to the Romanian amendment, the Indonesian delegation understood it, but left it to the Commisson to take the relevant decision. It would be appropriate to bring the Ethiopian amendment to the attention of the Drafting Committee. The Indonesian delegatin reserved the right to develop its ideas regarding the Soviet amendment at a later stage.

[10] This amendment was subsequently issued as document A/CONF.80/C.1/68.

[11] See above, 6th meeting, para. 31.

35. Mr. MUSEUX (France) reminded the meeting that his delegation was one of those which had misgivings about the usefulness of article 6, as it either said too much or too little. Article 6 was vague in that it limited the scope of the convention to successions occurring in conformity with international law and the principles set forth in the Charter of the United Nations, without further explanation; hence the difficulties which its implementation might entail. The article reflected a praiseworthy concern; nevertheless, if the International Law Commission had refrained from providing for an article on the matter, it would not thereby have endorsed the violation of international law which the article was intended to sanction. The written amendments to the draft article did not solve the problems which the French delegation had encountered. On the other hand, it welcomed the Soviet oral amendment, which dealt with its concerns; the parallel established between the question of the validity of treaties and that of the validity of a succession of States was a very interesting idea. As the Soviet amendment made clear, the Committee could of course only be concerned with the effects of the succession of States.

36. Mr. MARSH (Liberia) was in favour of maintaining the original version of article 6, and could not support the Australian amendment, which set forth criteria of a subjective nature. His delegation could also endorse the Ethiopian amendment, which did not affect the ideas expressed in article 6, but it reserved the right to state its position on the Soviet amendment at a later stage.

37. Mr. KRISHNADASAN (Swaziland) agreed with the representative of Afghanistan that article 6 was the keystone of the draft articles. In the absence of provisions concerning treaties whose conclusion had been procured by the threat or use of force and treaties which conflicted with a peremptory norm of general international law, article 6 would perform an important function. As the Romanian amendment added an element of uncertainty to article 6 he could not support it. Although the Ethiopian amendment did not affect the substance of the draft article, the Swaziland delegation preferred the positive version of the International Law Commission to the negative version proposed by the Ethiopian delegation. As it could be assumed from the Australian amendment that the convention might be applied to a succession which occurred in violation of international law, the Swaziland delegation could not endorse it. The Soviet proposal was extremely interesting in that it clarified the draft article; the question arose, however, as to whether the proposed text, instead of replacing article 6, might not form an additional paragraph.

38. Mr. HASSAN (Egypt) said that most delegations seemed willing to accept the clear and explicit text of the International Law Commission. Perhaps the Soviet amendment, instead of replacing the text of article 6, could be used to complete article 13 for, as could be seen from the revised title proposed by the Soviet delegation, it dit not deal with quite the same point as article 6.

39. Mr. GILCHRIST (Australia) shared the misgivings expressed by the representative of Malaysia at the 6th meeting[12] concerning the clause "occurring in conformity with international law" used by the Commission. As he had noted that several delegations were afraid that the Australian amendment would conflict with the principle embodied in article 6, he again wished to assure the Committee that there was no reason to suppose that the amendment would weaken international law or condone acts of aggression. His delegation remained convinced that article 6 lacked precision; it would, for instance, provide no solution in regard to a succession which occurred in conformity with the spirit of international law, but in violation of certain formal or technical rules. However, in view of the misgivings expressed by some delegations, his delegation withdrew its amendment A/CONF.80/C.1/L.3 in order to facilitate examination of draft article 6.

40. Referring to the idea put forward at an earlier meeting by the representative of Sweden[13] and taken up by the representative of the Soviet Union, i.e. that it might be well to set out in the preamble to the draft the principle stated in article 6, he said that he still had doubts about the wording of the article, which had to be precise. His delegation was prepared to examine any proposal which would improve the wording of article 6, any proposal concerning the preamble, and the Soviet proposal, which seemed likely to gain the approval of a great many Committee members.

41. Mrs. BOKOR-SZEGÖ (Hungary) supported the Soviet proposal and said she also felt that the preamble to the convention should mention the fact that the succession of States was governed by the peremptory norms of international law.

42. Mr. HERNDL (Austria) said that the successions covered by the future convention could obviously only be those occurring in conformity with international law. As no delegation had disputed that basic assumption, he doubted whether there was any point in expressly stating it in the convention. Although the Ethiopian amendment had been sent to the Drafting Committee it deserved to be examined by the Committee. His delegation would like to have clarification concerning the clause "other international instruments" in the Romanian amendment. At first sight, he found the Soviet oral amendment satisfactory, as it broached the question objectively and made a distinction between succession as such and the consequences resulting from it. The Soviet amendment was more in keeping with the body of the draft than the original article.

[12] *Ibid.*, paras. 39-40.

[13] *Ibid.*, para. 47.

43. Mr. PANCARCI (Turkey) said that the Turkish delegation, like many other delegations, was uncertain about the need to maintain article 6; after having heard the Soviet representative, however, it was convinced of the general importance of such a clause. The Soviet amendment clarified the idea expressed by the Commission in article 6 and should be studied closely.

44. The CHAIRMAN pointed out that the representatives of Swaziland and Egypt had suggested that the Soviet oral proposal, instead of replacing article 6, could be used to supplement either article 6 or article 13. In view of the procedural consequences such proposals could have, the Chairman invited the Soviet delegation to express its views on the matter.

45. Mr. USHAKOV (Union of Soviet Socialist Republics) said that the purpose of his proposal was not to supplement article 6 but to replace it, inasmuch as it did not differ from it in substance. Nor could his proposal be used to supplement article 13 as the latter, although dealing with a principle related to that contained in his proposal, referred to a different matter. There could be no question of merging into one article proposals dealing with two distinct situations, particularly as drafting the title of the new article would cause problems. It would also be difficult to know where to insert such an article, whereas articles 6 and 13 fitted smoothly into the draft. The Soviet proposal was intended to improve the wording of article 6 by aligning in with the text of article 13, but without affecting the substantive provisions.

The meeting rose at 12.55 p.m.

8th MEETING

Tuesday, 12 April 1977, at 3.25 p.m.

Chairman: Mr. RIAD (Egypt)

In the absence of the Chairman, Mr. Ritter (Switzerland), Vice-Chairman, took the Chair.

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 [Item 11 of the agenda] (*continued*)

ARTICLE 5 (Obligations imposed by international law independently of a treaty)[1] (*resumed from the 6th meeting*)

1. Mr. MIRCEA (Romania), introducing the Romanian amendment to article 5 (A/CONF.80/C.1/L.4), said that although the International Law Commission had based the draft article on article 43 of the Vienna Convention on the Law of Treaties, his delegation believed that the case of States, especially the successor State, involved in a succession was not the same as that of States which sought to terminate a treaty. In the case of succession, a newly independent State could invoke the "clean slate" principle, and, as the comments of other delegations showed, it was a fairly general practice not to refer to the imposition of obligations on States which were entering the international arena for the first time. With that in mind, his delegation had attempted to lighten the text of article 5 of the draft by modifying the second part of the sentence. The amendment did not entail any great change in the substance of the article and its wording could, no doubt, be improved by the Drafting Committee.

2. Mr. SHAHABUDDEEN (Guyana) said that article 5, as drafted by the international Law Commission, was useful and should be retained in substance. He had some comments to make on it, however, which also applied to the amendment submitted by Romania.

3. The International Law Commission had modelled article 5 on article 43 of the Vienna Convention on the Law of Treaties, but that provision was addressed to States which were parties to both the Vienna Convention and a treaty which had been terminated, whereas comments made in the Committee showed that draft article 5 was seen as being directed, perhaps chiefly, to newly independent States, which, by definition, could not yet be parties either to the proposed convention or to any treaty concluded by the predecessor State. In view of that difference there was a need to reconsider the formulation of article 5, and especially its legislative aspect in regard to newly independent States.

4. A distinction should be made between the provisions of the convention, considered as a convention, and the principles of international law which those provisions embodied as currently existing, or of which they might ultimately succeed in promoting general acceptance. The provisions of the convention could not apply to States which were not parties to that instrument and it might, therefore, be more appropriate to provide, in article 5, that the question whether or not a treaty was in force for a State would turn not on "the application of the present articles", but on the "application of the principles embodied in the present articles" or words to that effect, as in article 7.

5. The basic principle stated in article 5 would apply to States which were not parties to the convention by virtue of the fact that it was a generally accepted principle of international law. That being so, it might be best to replace the word "shall" by the word

[1] For the amendment submitted to article 5, see 4th meeting, foot-note 6; for earlier discussion of article 5, see 4th to 6th meetings.

"does", in order to avoid the impression that the Conference was seeking to establish a new rule and to apply it to such States irrespective of their consent. Precedents for such a change were to be found in the wording of article 8, paragraph 1, and article 9, paragraph 1.

6. Mr. MUSEUX (France) said that the doubts he had earlier expressed concerning the usefulness of article 5 would be entirely dispelled if the Drafting Committee would align the French version of the article with the English text, by replacing the phrase *"il est soumis"* by the words *"il serait soumis"*.

7. Mr. EUSTATHIADES (Greece) asked whether it would not be more appropriate to align the English with the French text. As it stood, the French version of article 5 was the more categorical.

8. Mr. YASSEEN (United Arab Emirates), speaking as Chairman of the Drafting Committee, said that the point raised by the representative of France was not a mere drafting matter and should be settled in the Committee of the Whole.

9. Mr. MUSEUX (France) said he remained convinced that the matter he had raised was one for the Drafting Committee. He observed that there was identity between the French and English versions of article 3, subparagraph (*a*), in which wording similar to that in article 5 appeared in a similar context.

10. Sir Francis VALLAT (Expert Consultant) explained that, in each language, the text of article 5 had been modelled on that of article 43 of the Vienna Convention on the Law of Treaties. In his view, there was no difference between the meanings of the English and French versions of the article.

11. Mr. MUSEUX (France) reiterated his surprise at the fact that different moods were employed in article 3, subparagraph (*a*), and article 5. Was that difference due to an error of drafting or some substantive reason?

12. Sir Ian SINCLAIR (United Kingdom), speaking as a former member of the Drafting Committee for the Vienna Convention on the Law of Treaties, said it was possible that the discrepancy noted by the representative of France was due to a lapse by that Committee. In his view, the issue could be settled by the Drafting Committee of the present Conference in the light of the similar expressions used in both articles 3 and 5.

13. Mr. YASSEEN (United Arab Emirates), speaking as Chairman of the Drafting Committee, said he still believed that the difference in question corresponded to a substantive difference between the two articles. But the Committee of the Whole would nevertheless be able to refer the question to the Drafting Committee for its consideration.

14. Mr. SAHRAOUI (Algeria) said that there was not only a difference in the wording between the French and English versions of article 5, but also a difference in substance between article 3, subparagraph (*a*), and article 5. The use of the conditional in both language versions of article 3, subparagraph (*a*), implied that a State would have a greater freedom of choice in matters to which that provision referred than it would under article 5. A solution must be found to the problems of both the drafting and the substantive differences.

15. Mr. MARESCA (Italy) stressed that, while it might be acceptable to use the conditional in English, it was essential to employ the indicative mood in French in both article 3 and article 5, because a legal obligation either was or was not in force for a State.

16. Sir Ian SINCLAIR (United Kingdom) reiterated his belief that the problem of the difference between the French and English versions of draft article 5 was essentially linguistic. However, the Drafting Committee might be asked to consider it in all its ramifications, comparing the various language versions of draft article 5 with article 43 of the Vienna Convention on the Law of Treaties and those of draft article 3, subparagraph (*a*) with the corresponding provision of the Vienna Convention.

17. Mr. MIRCEA (Romania) said that if the Drafting Committee was to be entrusted with the discussion of matters of substance, he also wished it to discuss, as a drafting suggestion, the amendment proposed by his delegation, taking into account the comments made by the representative of Guyana.

18. The CHAIRMAN said that, if there was no objection, he would take it that the Committee provisionally adopted article 5 and agreed to refer it to the Drafting Committee for consideration in the light of the comments made at the present meeting.

It was so decided.[2]

ARTICLE 6 (Cases of succession of States covered by the present articles) (*continued*)[3]

19. The CHAIRMAN said that the delegation of Australia had withdrawn its amendment to draft article 6 (A/CONF.80/C.1/L.3).

20. Mr. AMLIE (Norway) said it had been stated that the basic assumption for the Committee's work was that the future convention must apply to the effects of a succession of States which was a legal and lawful occurence and not to the effects of a succession which occurred in violation of international law.

[2] For resumption of the discussion of article 5, see 31st meeting, paras. 4-5.

[3] For the amendments submitted to article 6, see 6th meeting, foot-note 3.

It had also been stated that, as a consequence of that assumption, draft article 6 was redundant and might just as well be deleted.

21. His delegation agreed with the assumption that the future convention must apply only to successions of States which were lawful, but it could not agree with those delegations which had suggested that article 6 could be deleted, because the preparation of the draft convention was not merely a juridical and academic exercise; it had political and emotional overtones which involved national sensitivities. Moreover, draft article 6 should not be relegated to a place in the preamble or in the definitions; it definitely deserved a place in the body of the future convention.

22. It was therefore necessary to decide how to formulate the principle of draft article 6. Several alternatives had been submitted, in the basic text prepared by the international Law Commission and the amendments submitted by Romania (A/CONF.80/C.1/L.5), Ethiopia (A/CONF.80/C.1/L.6) and the Soviet Union (A/CONF.80/C.1/L.8). His delegation could not accept the Romanian amendment, which diluted the substance of the article. There was nothing to be gained by referring to the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations (General Assembly resolution 2625 (XXV)), and the reference to "other international instruments" might give rise to conflicting interpretations.

23. The Ethiopian amendment expressed the same idea as the International Law Commission's text, but in stronger terms and embodied an important drafting change. It should therefore be voted on in the Committee and not automatically referred to the Drafting Committee.

24. The amendment submitted by the Soviet Union should definitely have a place in the future convention, but it could not replace article 6. He hoped that the Soviet delegation would be able to agree that its amendment should either be combined with the International Law Commission's text, or be added to the draft as a new article. If the Soviet delegation could not agree to either of those two suggestions, his delegation would propose a subamendment to the Soviet amendment.

25. Mr. MEISSNER (German Democratic Republic) said that his delegation supported the amendment submitted by the Soviet Union and agreed with what the representative of Austria had said,[4] namely, that State succession was a phenomenon which must be distinguished from the effects following from it. The Soviet amendment was fully in keeping with the definition in article 2, paragraph 1, subparagraph (*b*), and there was nothing to prevent the principle of draft article 6 from being included in the preamble of the future convention.

26. Mr. MARESCA (Italy) said that his delegation had serious doubts about accepting draft article 6, because any succession of States resulting from the emergence of a new State was an undeniable historical fact which had legal consequences in international law, and there were no legal rules governing the legitimacy of the emergence of a State or a succession of States.

27. His delegation had given careful consideration to the proposed amendments to draft article 6. The Ethiopian amendment merely expressed in negative form what had been positively expressed in draft article 6. The Romanian amendment had the advantage of avoiding the use of the words "in conformity with international law", but it contained a reference to the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States, which was not, and could not be considered as, a source of international law. Furthermore, the words "in other international instruments", in the Romanian amendment, looked to the future, and a reference to such instruments would only lead to difficulties and conflicting interpretations. His delegation therefore had serious reservations concerning the Romanian amendment.

28. The intellectual approach adopted in the amendment submitted by the Soviet Union was entirely different from that adopted in the International Law Commission's draft article 6, which laid down rather vague and unconvincing legal rules. The wording of the Soviet amendment clearly expressed the idea that the emergence of a new State, whether legitimate or not, was a fact which could not be denied. That principle was closely related to the principle stated in article 13 relating to the validity of treaties. And if it was true that nothing in the present articles should be considered as "prejudicing in any respect any question relating to the validity of a treaty", it was also true that nothing in those articles should be considered as "prejudicing in any respect any question relating to the validity of a succession of States".

29. The purpose of the future convention was not to decide whether a succession of States was valid or not, and the Committee must bear that fact in mind when it decided how draft article 6 was to be worded.

30. Mr. MUPENDA (Zaire) said his delegation was of the opinion that draft article 6 should be adopted as it stood. He could not support the amendment submitted by the Soviet Union, which failed to take account of the need to ensure respect for the rules of international law and the principles of the United Nations Charter and contained the same subjective elements which had prevented his delegation and most other delegations from supporting the amend-

[4] See above, 7th meeting, para. 42.

ment submitted and subsequently withdrawn by Australia.

31. He noted that the Soviet amendment referred to the question of the validity of a succession of States, which might give rise to problems concerning the legitimacy of a State. His delegation believed that the validity of a treaty was a matter of concern mainly to the States parties to the treaty in question, whereas the validity of a succession of States was closely related to the sovereignty of States, which were free to recognize a succession that occurred in violation of international law and of the basic principles embodied in the Charter of the United Nations.

32. His delegation would therefore support the amendment submitted by Ethiopia, which closely resembled the International Law Commission's text and should be given careful considereation by the Drafting Committee.

33. Mr. NAKAGAWA (Japan) said his delegation shared the concern expressed by a number of other delegations that the inclusion of draft article 6 in the future convention might involve an element of subjective judgment regarding the applicability of the draft articles to particular cases of succession of States, as defined in article 2, paragraph 1, subparagraph (*b*). It also agreed with the Soviet delegation that the principle to be expressed in article 6 was not that of the lawfulness or unlawfulness of a succession of States, but, rather, that of the effects of a succession. The delegation of Japan nevertheless believed that the idea expressed in article 6 was worth retaining, and it could accept the International Law Commission's text as it stood.

34. The amendment submitted by Ethiopia contained a useful drafting suggestion and should be referred to the Drafting Committee. The Romanian amendment complicated the issue by diluting the reference to the principles of international law and by adding a reference to "other international instruments". With regard to the Soviet amendment, his delegation considered that it changed the purpose of draft article 6, because it referred to the "validity of a succession of States"—a new concept which could give rise to conflicting interpretations and confusion. It would be better to refer to the legality of a succession of States, rather than to its validity. Consequently, his delegation could not agree that the Soviet amendment should replace draft article 6. It might, however, be combined with the International Law Commission's text to provide the basis for a compromise solution which would be acceptable to all delegations.

35. Mr. DOH (Ivory Coast) said that draft article 6 related to successions of States which occurred in conformity with international law and, in particular, with the principles of international law embodied in the Charter of the United Nations. Hence it did not apply to situations resulting from the use of force, such as cases of aggression, the occupation of territories and unilateral declarations contrary to the principles of *jus cogens*.

36. The amendment submitted by the Soviet Union failed to express the idea of the objective legitimacy of a succession of States and to make a distinction between a succession occurring in conformity with international law and a succession occuring in violation of international law. Consequently, his delegation could not support the Soviet amendment, to which it formally proposed the following subamendment:

> Nothing in the present articles shall be considered as prejudicing in any respect any questions relating to the validity of a legitimate succession of States occurring in conformity with the principles of international law and the Charter of the United Nations as such.

37. That proposed subamendment would cover the amendments submitted by Romania and Ethiopia, both of which took account of the principles of international law and the principles embodied in the Charter of the United Nations. If the Soviet Union could not agree to refer to those principles in its amendment, his delegation would support the text of draft article 6.

38. Mr. ESTRADA-OYUELA (Argentina) commended the constructive attitude shown by the Australian delegation in withdrawing its amendment.

39. A number of speakers had already expressed the view that the Soviet Union amendment did not deal with the subject-matter of draft article 6. The Soviet representative's explanation that it had been modelled on article 13 tended to substantiate that view and in fact both texts referred to matters it was desired to exclude from the future convention, namely, the validity of treaties and the validity of a succession of States. The Soviet representative had pointed out that article 1 provided that the draft articles applied to the effects of a succession of States; however, his amendment said nothing about the effects of a succession: it merely stated that the future convention should not prejudice any question relating to the validity of a succession.

40. Although it might well be desirable to include such a principle in the draft articles, it was clear that the Soviet Union amendment was not a satisfactory substitute for the International Law Commission's draft of article 6, which was intended to limit the application of the future convention to the effects of a succession of States occurring in conformity with international law and to preclude its application to any succession violating that law. The argument that the Conference was engaged in drafting provisions concerning lawful successions did not obviate the need for such an article, since it was generally held that acts violating international law required provisions to deal with their effects. Article 6 constituted a sanction in the form of the non-application of the future

convention. He did not think the Conference should be prevented, on procedural grounds, from ascertaining whether there was support for the suggestion that the Soviet text should be considered as an addition to the draft articles rather than an amendment of article 6.

41. With regard to the other proposals, he did not consider that the subamendment proposed by the Ivory Coast was a useful addition to the present draft of article 6 and since the Romanian amendment said nothing about a succession of States occurring in violation of international law, it did not solve the problem. The Ethiopian amendment, which was close to the orgiginal International Law Commission's draft, had some advantages of style which should be considered by the Drafting Committee.

42. Mr. SHAHABUDDEEN (Guyana) said that the Romanian amendment had the disadvantage that the phrase "other international instruments" introduced uncertain criteria for determining the validity of a succession of States.

43. The approach adopted in the Soviet Union amendment left open the question whether the future convention would be applicable in the case of an invalid succession of States—a matter which was dealt with in draft article 6. It might be inferred by a process of deduction from other provisions that the intention was that the future convention should not apply to cases of invalid succession, but any reference to the question of validity made it necessary to include an explicit ruling in the text. He did not consider that the parallel with article 13 sufficed to outweigh the disadvantages of the Soviet Union proposal, to which he preferred the International Law Commission's.

44. Although the Ethiopian amendment was essentially a variant of the text of the draft, it had the merit, by virtue of its negative formulation, of laying stress on the exclusion from the application of the future convention of successions of States occurring in violation of international law. That amendment should be referred to the Drafting Committee.

45. Mr. JELIĆ (Yugoslavia) said that he had already spoken in favour of draft article 6. He could support the Soviet Union amendment, if, as had been suggested, it appeared as a complement to article 6 or article 13 or as a new independent article; but he could not accept it as a replacement of the present article 6, since it did not deal with the same subject-matter.

46. Mr. HELLNERS (Sweden) said that the discussion had confirmed him in the view that the text of draft article 6 was to be preferred; the amendments did not offer any more clear-cut formula.

47. The Ethiopian amendment had the doubtful advantage of transposing the formulation into the negative; the phrase "in violation of international law", however, still retained the imprecision which had been criticized in the phrase "in conformity with international law", used in the draft. He would not object to the Ethiopian text being referred to the Drafting Committee.

48. The Romanian amendment had merit in so far as it followed the layout of the original International Law Commission draft, but it added further imprecision.

49. It had already been pointed out that the Soviet Union amendment did not deal with the same subject-matter as draft article 6, although it had some bearing on it. Like other speakers, he could accept both the draft article and the Soviet Union amendment, but he could not support the latter as a replacement for draft article 6.

50. Mr. HASSAN (Egypt) said that the Soviet Union amendment contained two proposals: first, to replace the present draft article 6, which meant the deletion of that article, and second, to introduce a new principle regarding the validity of a succession of States, which was not related to the subject-matter of draft article 6. In his view, a vote should be taken on the proposal to delete the present draft article 6 and the proposal concerning the validity of a succession of States should be considered in conjunction with article 13.

51. He agreed with other speakers that the Romanian amendment weakened the prinicple stated in draft article 6 and that the Ethiopian amendment, which did not markedly differ from the International Law Commission's text, should be referred to the Drafting Committee.

52. The CHAIRMAN observed that the Soviet Union amendment had not been submitted as a complement to article 6 or to article 13: it proposed a text to replace draft article 6, which must necessarily entail its deletion. Hence a vote could not be taken on the issue of deleting article 6 unless a subamendment was proposed to the Soviet Union amendment.

53. Mr. ARIFF (Malaysia) said that, as his delegation saw it, the intention in article 6 was to confine the future convention to the effects of a succession of States occurring in conformity with international law and, in particular, with the principles embodied in the Charter. His delegation fully supported that intention, but it considered that the effects referred to in the present text should either be defined—in article 2, for example—or not mentioned at all.

54. The Romanian amendment was an attempt to clarify the reference to interntional law. The Ethiopian amendment, which used the words "in violation of " instead of "in conformity with", also aimed at greater clarity. In his view, however, neither text would solve the problem of deciding whether an

event had violated or conformed with international law.

55. The Soviet Union amendment introduced a new element. If that text replaced draft article 6, the article as reworded could no longer be applied to questions of validity once a succession of States had become a *fait accompli;* for whereas draft article 6 referred to the application of the present articles, the Soviet amendment spoke of a succession of States as such. The Malaysian delegation thought that the Soviet text could indeed form part of article 6, the present text of which could perhaps be extended by wording to the effect that the present articles did not prejudice in any respect any question relating to the validity of a succession of States as such. However, his delegation could not agree to the adoption of the Soviet amendment as a replacement for draft article 6.

56. Mr. MANGAL (Afghanistan) said his delegation had thought that the draft of article 6 as it stood was deemed acceptable by consensus. However, several amendments had now been proposed, and his delegation felt bound to express its views on them.

57. His delegation fully supported the text of the Soviet Union amendment, since it could add to draft article 6 by incorporating in it a meaning not adequately conveyed by the present text. But since that amendment dealt with subject-matter different from that of draft article 6, his delegation shared the view that great care was needed in considering the proposed place for the amendment.

58. His delegation would welcome a provision making the future convention applicable only to successions of States which had occurred in conformity with international law. The basis of article 6 should remain as it was, but the text of the Soviet amendment might well appear elsewhere in the draft convention.

59. The Romanian amendment would detract from the clarity of draft article 6, and, if adopted, could lead to difficulties in interpreting and applying the future convention. His delegation agreed with previous speakers that the principles of the United Nations Charter could not be categorized as fundamental and non-fundamental, as was done in the Romanian draft amendment. It also considered that the reference to the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States would add nothing useful to the reference to the Charter. Moreover, the Declaration mentioned might not constitute a source of law applicable to situations of the sort seemingly envisaged in the Romanian amendment. The wording "and in other international instruments" could lead to ambiguities which would not arise out of the text of draft article 6 as it stood.

60. The amendment proposed by the Ethiopian delegation seemed to be of a drafting nature. His delegation would have no objection if it was referred to the Drafting Committee, but still believed that the text of article 6 was clear enough as it stood.

61. Mr. SATTAR (Pakistan) said that his delegation would hope that the Soviet delegation could reconsider its amendment in the light of the comments and suggestions made by many speakers, particularly the constructive and creative suggestion that the Soviet amendment should add to rather than replace article 6. His own delegation saw no contradiction between draft article 6 as it stood and the Soviet amendment; but it could not agree to the replacement of the present text of article 6.

62. His remarks were intended not only as an appeal to the Soviet delegation, but also as an explanation of his vote if the Committee decided to take a decision by voting.

63. Mr. YACOUBA (Niger) said that his delegation supported the proposal that the Soviet draft amendment should be incorporated in the existing text of article 6 rather than replace it, since it was necessary that any unlawful succession of States should be declared null and void.

64. Mr. KEARNEY (United States of America) said that the Committee could either reject the Soviet amendment or adopt it to replace draft article 6, but could not have both texts together. The Soviet amendment was not complementary, but contradictory to article 6 as it stood. Even if it was desired to maintain a quasi-criminal sanction, as implied in the present text—and there was no definition of illegality—it would be illogical to append the wording contained in the Soviet amendment—in which the word "prejudicing" in the English version should perhaps have been "prejudging"—since the first part of the resultant text would still imply that certain acts contrary to international law could not be covered.

65. With regard to the Romanian draft amendment, his delegation considered that the text up to and including the words "in the Charter of the United Nations" was more useful than the text of draft article 6 as it stood, since the former avoided the implicit need to decide whether a particular event had been in violation of international law. The remainder of the text, however, particularly the words "and in other international instruments", was vague, and his delegation could not support its adoption.

66. The negative form of wording used in the Ethiopian amendment had the avantage of illustrating the punitive element in the present text of article 6. He reiterated his delegation's view that the text of that amendment would be better than the present text of article 6 if the wording after "in violation of" were simply "the principles of international law embodied in the Charter of the United Nations".

The meeting rose at 6 p.m.

9th MEETING

Wednesday, 13 April 1977, at 10.30 a.m.

Chairman: Mr. RIAD (Egypt)

In the absence of the Chairman, Mr. Ritter (Switzerland), Vice-Chairman, took the Chair.

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*)

ARTICLE 6 (Cases of succession of States covered by the present articles) (*continued*)[1]

1. Mr. WAITITU (Kenya) said that, of the three amendments before the Committee, his delegation found the Ethiopian amendment (A/CONF.80/C.1/L.6) the most acceptable; stated in the negative, the idea embodied in article 6 came out more strongly than it did from the present wording of article 6. His delegation also found some merit in the Romanian amendment (A/CONF.80/C.1/L.5), and only if it had to make a choice between the Romanian and Ethiopian amendments would it opt for the latter. It would be preferable to request the Drafting Committee to take both amendments into consideration with a view to working out an acceptable article.

2. His delegation considered the Soviet amendment (A/CONF.80/C.1/L.8) to be more in the nature of a fresh proposal than an amendment; it would eliminate completely the fundamental idea embodied in article 6, and his delegation found that unacceptable.

3. His delegation did not consider it possible to work out an entirely satisfactory wording; it was therefore open to any proposal concerning the settlement of disputes.

4. Mr. SIMMONDS (Ghana) observed that his delegation had already expressed its support for the text drawn up by the International Law Commission; it would therefore confine itself to expressing its views on the Soviet amendment. His delegation was not in any real disagreement with that amendment and would have been prepared to accept it as mere embroidery to article 6; it could not, however, subscribe to the idea that the proposed text should completely replace article 6. It was necessary to stipulate that the convention would not apply to case of succession not occurring in conformity with the norms of international law and the principles set forth in the Charter of the United Nations. While aware that the Soviet amendment had the support of a large number of delegations, his delegation nevertheless felt that it related to a different matter than that dealt with in article 6. That seemingly innocuous proposal might, indeed, have serious implications for many articles of the draft. It also appeared to be an abridged version of the amendment submitted and later withdrawn by the Australian delegation (A/CONF.80/C.1/L.3). Therefore, his delegation could accept the Soviet amendment only as a supplement to article 6 and not as a replacement for it.

5. Mr. KOH (Singapore) observed that it was clear from the discussion that members of the Committee were not opposed to the principle set forth in article 6 but some delegations had doubts concerning the wording of that provision. In order to reconcile the Soviet amendment with the text worked out by the International Law Commission, he wished formally to propose the following amendment:

> The present articles apply to the effects of a succession of States only in cases where such succession is valid in accordance with international law and in particular the principles of international law embodied in the Charter of the United Nations.[2]

6. That amendment would take into account the Soviet proposal without overlooking the initial text for the draft article and might make it possible to resolve the problem which the words "occurring in conformity with" in the draft article posed to several delegations. The wording of the amendment was also consistent with the style adopted by the International Law Commission.

7. Mr. EUSTATHIADES (Greece) said that, while reserving the right to address itself to the Singapore proposal at a later stage, his delegation had not changed its position on article 6 and continued to support the original text for the draft article. It might have been thought that the draft convention was applicable to cases of succession of States not occurring in conformity with international law, since private law regulated a number of unlawful situations, such as the situation of illegitimate children and since, despite the prohibition of the use of force in international relations, there was a law of war; by limiting the application of the convention to cases of succession occurring lawfully, article 6 seemed to offer the best solution. There still remained the question as to who would determine the legitimacy of a succession—hence the need for an effective mechanism for the settlement of disputes. His delegation continued to favour article 6, since it condemned the *fait accompli* and was the product of lengthy reflection by the International Law Commission. It did, however, wonder whether it was appropriate to retain the term "only" and whether there was any need to include a reference to international law, since the principles

[1] For the amendments submitted to article 6, see 6th meeting, foot-note 3.

[2] This amendment was subsequently issued as document A/CONF.80/C.1/L.17.

of international law embodied in the Charter of the United Nations now formed part of general international law and must be respected both by States Members of the United Nations and by States which were not members or which had ceased to be members.

8. Mr. SUCHARITKUL (Thailand) said that he was in favour of retaining article 6, subject to a few drafting changes. In that connexion, he saw merit in the Ethiopian amendment. He would, however, prefer the Soviet amendment to supplement article 6 rather than to replace it.

9. Mr. AL-SERKAL (United Arab Emirates) supported article 6 as drafted by the International Law Commission; without being opposed to the Soviet amendment, he did not consider that it could replace article 6. The Ethiopian amendment did not affect the substance of article 6 and should be referred to the Drafting Committee.

10. Mr BEDJAOUI (Algeria) said that he had no difficulty in accepting article 6, all the terms of which had been carefully weighed by the International Law Commission, but that the Ethiopian amendment was not without value. He understood those delegations which, while endorsing article 6, feared that it might be the subject of interpretations alien to the spirit in which it had been drawn up. The Soviet amendment introduced a new element, being designed not to modify article 6 but to replace that article by another one. He therefore suggested that the existing text for article 6 should be made to form paragraph 1, and the Soviet amendment paragraph 2, of a new article 6.

11. Mr. HELLNERS (Sweden) said that he was sympathetic to the idea put forward by the representative of Algeria; he would, however, like that representative to explain whether he had merely been making a suggestion or whether he had formally submitted a subamendment to the Soviet amendment.

12. Mr. BEDJAOUI (Algeria) said that he found the draft article submitted by the International Law Commission entirely satisfactory; however, in order to assist the Committee, he wished formally to propose, as a subamendment to the Soviet amendment, that the latter proposal should be made to form a paragraph 2 of article 6, since it could not wholly replace article 6.

13. Mr. USHAKOV (Union of Soviet Socialist Republics) said that the Soviet amendment was in no way designed to modify the International Law Commission's text in substance but was in fact intended to maintain the principle set forth in that provision, while at the same time taking into account the wording of article 13. In drafting its amendment, his delegation had started from the idea, first, that the question of succession of States as such did not fall within the scope of the draft and that it was therefore necessary to include a saving clause, namely article 6; second, that the rules of international law governing treaties between States did not directly concern the draft and that article 13 was therefore of crucial importance; and, third, that the question of the legitimacy of a succession of States was equally as important as that of the legitimacy of an international treaty. Consequently, to combine the existing text of article 6 with the Soviet amendment would be to refer to the same idea in different terms. Such a repetition would merely complicate the interpretation of article 6. Since the original text of the draft article did not, in principle, pose any difficulties to his delegation, it would withdraw its amendment. It wished to thank those delegations which had expressed support for the text which it had submitted.

14. The CHAIRMAN thanked the representative of the Soviet Union for the spirit of co-operation which he had shown. In view of the fact that the Soviet amendment had been withdrawn, the oral subamendment proposed by the Algerian representative no longer applied. He asked the representative of Singapore whether he wished to maintain his amendment, in view of the fact that it seemed to have been prompted by the Soviet amendment and to be in the nature of a compromise.

15. Mr. KOH (Singapore) said that the object of his delegation's amendment was to produce a more acceptable wording for article 6. Since the Soviet delegation still appeared to have some diffulty with the wording of that provision, the Singapore amendment might still be of some use to it.

16. Mr. AL-NOURI (Kuwait) said that article 6 had been drafted with a high degree of precision by the International Law Commission; he was in favour of retaining that provision.

17. The CHAIRMAN observed that the Committee still had before it the amendments of Ethiopia (A/CONF.80/C.1/L.6), Romania (A/CONF.80/C.1/L.5) and Singapore, the latter amendment not yet having been circulated. He therefore suggested that the debate on article 6 should be suspended.[3]

Mr. Riad (Egypt) took the Chair.

ARTICLE 7 (Non-retroactivity of the present articles)[4]

18. The CHAIRMAN said he very much regretted that, for reasons beyond his control, he had so far

[3] For resumption of the discussion of article 6, see 34th meeting, paras. 7-8.

[4] The following amendments were submitted: Byelorussian SSR, A/CONF.80/C.1/L.1; Malaysia, A/CONF.80/C.1/L.7; Cuba, A/CONF.80/L.10 and Rev.1 and 2 (the latter also co-sponsored by Somalia), and United States of America, A/CONF.80/C.1/L.16. The United Kingdom of Great Britain and Northern Ireland submitted a working paper in connexion with article 7, A/CONF.80/C.1/L.9.

been unable to perform his duties as Chairman of the Committee of the Whole. He thanked members of the Committee for having elected him to the post of Chairman and emphasized the undoubted importance of the current stage in the work of codification and progressive development of international law.

19. Amendments to article 7 had been submitted by the Byelorussian Soviet Socialist Republic (A/CONF.80/C.1/L.1), Malaysia (A/CONF.80/C.1/L.7), Cuba (A/CONF.80/C.1/L.10) and the United States of America (A/CONF.80/C.1/L.16). In addition, the United Kingdom delegation had submitted a working paper in connexion with article 7 (A/CONF.80/C.1/L.9). The annex to that working paper contained a draft article for inclusion in the final clauses of the convention being elaborated and hence related to a matter which was not, for the time being, on the Committee's agenda. However, it appeared from that document that the United Kingdom delegation would welcome the opportunity to hear forthwith the views of other delegations regarding the participation in the convention of a future successor State. It would therefore be appropriate for the United Kingdom representative to explain his delegation's position on that matter, so that that procedural problem could be settled before the Committee proceeded to discuss article 7 and the amendments submitted by other delegations.

20. Sir Ian SINCLAIR (United Kingdom), introducing document A/CONF.80/C.1/L.9, said that his delegation acknowledged the need for an article dealing with the temporal application of the convention. In its proposed article 7, the International Law Commission had endeavoured to strike a balance between two requirements: the need to work out a set of provisions which would be operative in the future and the need not to impair solutions already achieved or to lay down new and perhaps different guidelines for the discussion of treaty problems still outstanding as a result of a succession which had occurred in the past.

21. His delegation had no basic objection to article 7, although its title was perhaps misleading. As currently drafted, that article did not seek to establish the concept of non-retroactivity in all its rigour; rather, it permitted a limited degree of retroactivity, since it allowed the convention to apply to any succession occurring after its general entry into force. In that respect, article 7 marked an advance on article 28 of the 1969 Vienna Convention, relating to non-retroactivity of treaties. That would be the provision that would be applicable if article 7 did not exist, and as the International Law Commission had observed in paragraph (3) of its commentary to article 7 (A/CONF.80/4, pp. 23-24), article 28 of the 1969 Vienna Convention would, if literally applied, prevent a successor State from applying the future convention to its own succession. His delegation favoured the retention of article 7, but was nevertheless conscious of the doubts which that provision had prompted certain delegations to express, particularly during the debate on article 2. The article under consideration might, indeed, give the erroneous impression that the convention was largely irrelevant to the current interests of many States. Some delegations had also expressed the view that non-retroactivity was a matter that should be dealt with in the final clauses of the convention.

22. During the debate on article 2, his delegation had already indicated its intention to propose at a later stage a procedural mechanism enabling successor States to apply the convention to their own succession, without opening the door to unlimited retroactive application.[5] Such a mechanism could most appropriately be provided for in the final clauses.

23. It was for that reason that his delegation had submitted working paper A/CONF.80/C.1/L.9, containing a draft article for inclusion in the final clauses which was designed to temper some of the more rigorous consequences of the rule laid down in article 7. Since the time had not yet come to consider the final clauses, his delegation did not ask the Committee to take a decision on its proposal. It had, however, thought it desirable already to give delegations an idea of the mechanism which it envisaged.

24. The CHAIRMAN noted that members of the Committee appeared to agree that article 7 should be considered in the light of document A/CONF.80/C.1/L.9.

25. Mr. RASSOLKO (Byelorussian Soviet Socialist Republic), introducing his delegation's amendment (A/CONF.80/C.1/L.1), emphasized that the object of the future convention was to regulate the transfer of rights and obligations deriving from treaties in cases involving the establishment of a new, independent State or a uniting or separation of States. The draft was prompted by the need to give newly independent States the option of deciding which treaties of the predecessor State should be maintained in force. In general, the International Law Commission's draft was consistent with the general principles of international law, particularly those laid down in the Charter of the United Nations, such as the principle of the sovereign equality of States.

26. The International Law Commission had been justified in drafting a provision of the kind contained in article 7. However, the title of that provision was inadequate and could more appropriately be drafted in the form proposed by his delegation in its amendment. The title of article 7 proposed by the International Law Commission was based on the title of article 4 of the 1969 Vienna Convention. However, the resemblance between those two articles was merely apparent. While the opening phrase of each of those articles was similar, the second was quite different.

[5] See above, 3rd meeting, para. 12.

The Vienna Convention applied only to treaties concluded by States after its entry into force with regard to such States, whereas the article under consideration provided that the future convention would apply to successions of States occurring after its entry into force. Once it had entered into force, therefore, the prospective convention would apply to the succession of a new State before that State became a party to it. In such a case, there would therefore be retroactive application. That was why article 7 was of vital importance. Without such a provision, article 28 of the 1969 Vienna Convention would apply, and the future convention would be deprived of practical value.

27. Mr. ARIFF (Malaysia), introducing his delegation's amendment (A/CONF.80/C.1/L.7), observed that the commentary to that provision appeared to be based on the commentary to article 4 of the 1969 Vienna Convention. While that precedent could serve as a model as far as substance was concerned, it was less appropriate to use it as a basis in matters of form.

28. The article under consideration consisted of a saving clause based largely on the corresponding article of the 1969 Vienna Convention, followed by a provision limiting the application of the future convention to cases of succession occurring after its entry into force. While subscribing to the substance of article 7, he would submit that its drafting could be improved, as was proposed in his delegation's amendment, by expressing the general principle before the saving clause. Since that amendment related exclusively to form, it could be referred to the Drafting Committee.

29. Mr. HERNANDEZ ARMAS (Cuba), introducing his delegation's amendment (A/CONF.80/C.1/L.10), stressed the importance of article 7 for the future convention as a whole. He expressed the hope that the constructive spirit which had so far prevailed during the consideration of the draft articles, particularly articles 2 and 6, would be maintained and that due account would be taken of the interests of the developing countries. The article under consideration was a case in which it was necessary to take into account the special situation of the newly independent States, which often lacked skilled technical personnel and sometimes had to accept conditions which were real obstacles to their development.

30. His delegation welcomed the International Law Commission's acceptance of the fact that the "clean slate" principle should be applied to newly independent States, but noted that that principle had its limits. For that reason, it proposed to add to article 7 a paragraph embodying the principle of retroactivity for new States which acceded to independence as a result of the decolonization process or the liberation struggle, under United Nations auspices. There was a danger that article 7, as currently worded, would deprive the future convention of much of its potential value for newly independent States. Those States had no desire to overlook their international commitments. They were willing to respect all treaties which did not run counter to their own interests and were not detrimental to international peace. Nevertheless, they wished to be free to choose the treaties which could be maintained in force. As the representative of an African State had recently observed, a newly independent State could sometimes be kept waiting for a considerable period of time before the former metropolitan power informed it of the existing treaties which concerned it. As Mr. Fidel Castro, President of Cuba, had recently stated, one had to have travelled through Africa to understand what colonialism and racism really were.

31. The object of his delegation's amendment was to limit the retroactive application of the convention to cases of succession of States which had attained their independence as a result of the decolonalization process or the liberation struggle, so as to avoid misinterpretations based on analogy and to fulfil the mandate entrusted by the United Nations General Assembly to Member States—namely, to permit newly independent States to decide freely which treaties might facilitate their development and which might hamper it.

32. Mr. KEARNEY (United States of America), introducing his delegation's amendment to article 7 (A/CONF.80/C.1/L.16), said that, although that amendment might appear to be a radical one, since it began by proposing the replacement of the title "Non-retroactivity of the present articles" by "Application of the present articles", it did not, in fact, entirely reject the principle of non-retroactivity.

33. In the view of the United States Government, article 7 placed unduly strict limitations on the application of the future convention. The first question to ask was why such limitations were necessary and why the future convention should not apply to successions occurring before its entry into force. Experience showed that a considerable period of time generally elapsed before a codification convention entered into force. It was questionable whether the application of the future convention needed to be limited as was done under the provisions of article 7. A further question to be considered was whether the convention being elaborated was so innovative and such a departure from custom that it should apply only to situations occurring after its entry into force. The fact was that the convention was based on State practice and was designed to formulate procedural rules capable of resolving the treaty problems which arose on the occurrence of a succession of States. The convention was intended to facilitate the process of succession. That being the case, it would be highly advisable to limit the scope of the principle of non-retroactivity to situations in which the application of that principle would not raise more difficulties than it would resolve.

34. The International Law Commission seemed to have adhered too slavishly to the rule set forth in article 4 of the 1969 Vienna Convention, by adopting the same cut-off date. In that connexion, he recalled that, at the 1969 Vienna Conference, the entry into force of the Convention had been regarded as decisive because some States considered the Convention had augmented the law of treaties in certain basic aspects. In the present instance, it should not be forgotten that successions of States could occur in widely differing circumstances which could require a different frame of reference than the action of two States in agreeing to conclude a treaty, which was far more volitional in character.

35. As the representative of Cuba had rightly pointed out, it was in the interests of newly independent States that the provisions of the convention should apply to the successions. In its written comments on article 7 submitted in 1975, the United States Government had stated that there "does not seem to be any basis, in principle, for preventing a State, which becomes newly independent prior to entry into effect of the draft articles, from becoming a party thereto after their entry into effect and making use of these provisions in regulating its treaty relationships to the fullest extent possible in light of the situation as it exists at the time the articles become applicable to the successor State" (A/CONF.80/5, p. 129). However, there was no reason to grant that advantage only to States "which have attained their independence as a result of the decolonization process or the liberation struggle", as the representative of Cuba was proposing, instead of extending it to all newly independent States, regardless of how they acquired independence.

36. The amendment proposed by the United States provided that, on the occurrence of a succession of States, the successor State and the other parties to a treaty were free to take a decision on the application of the convention. Under that amendment, the present articles would apply to all successions of States occurring *after* their entry into force; however, in the case of a succession occurring *before* their entry into force, they would not apply when the status of the successor State in relation to the treaty had been resolved prior to that entry into force. That restriction was designed both to facilitate the application of the convention and not to upset all the arrangements which a great many States would have worked out prior to the entry into force of the present articles by allowing parties the freedom to themselves work out a solution if they so desired. The word "resolved" had been used in preference to a more precise and more technical term in order to cover all possible types of succession.

37. To sum up, he took the view that the convention should apply to all cases of succession of States, with two exceptions: it would not apply if the States parties and the successor State did not wish to apply it or preferred to apply some other solution; and it would not apply when its application was unnecessary or would merely have the effect to throwing into question a situation which had already been settled before its entry into force.

38. Mrs. THAKORE (India) said that she had some doubts concerning the usefulness of the provision embodied in article 7. That article consisted of two parts.The first, corresponding to the first part of article 4 of the Vienna Convention on the Law of Treaties, was a saving clause which made it clear that the non-retroactivity of the future convention would be "without prejudice to the application of any of the rules set forth in the present articles to which the effects of a succession of States would be subject under international law independently of these articles". The second part, based on article 28 of the Vienna Convention, limited the application of the present articles to cases of succession of States occurring after their entry into force "except as may be otherwise agreed".

39. It was the first part of article 7 which her delegation found particularly objectionable. The reference to "the rules set forth in the present articles to which the effects of a succession of States would be subject under international law independently of these articles" raised the question of the content of the rules of customary international law. By virtue of articles 5 and 7, the future convention would apply as customary law to successions occurring before its entry into force and as conventional law to successions occurring after its entry into force. It was somewhat doubtful whether the convention, which contained a substantial number of new rules, truly represented existing customary international law. As far as succession of States was concerned, State practice was often conflicting. It would therefore be difficult to identify the existing rules of customary international law on succession of States which would govern problems of succession of States in respect of treaties until the entry into force of the convention.

40. Consequently, while an article on non-retroactivity had been needed in the Vienna Convention in as much as that Convention reflected customary international law, the same was not true of the convention under consideration. Article 7 was therefore unjustified. Its inclusion in the convention would create more problems than it would solve. Moreover, if the principle of non-retroactivity were adopted in the form proposed in article 7, it was doubtful whether the restricted meaning given to the term "newly independent States" would have any utility. The problem might perhaps be solved by authorizing the parties to the future convention to apply it retroactively from the date of the succession, but, if that were done, article 7 would lose its justification.

41. She recalled that article 7 had been adopted by a narrow majority in the International Law Commission, that it had also given rise to divergent views in the Sixth Committee and that, in their written com-

ments, Governments had expressed reservations about it. She therefore favoured the deletion of that article.

42. Mr. FLEISCHHAUER (Federal Republic of Germany) said that, in his view, article 7 raised an important problem of a practical, legal and intellectual nature. The article dealt with the question of the applicability of the convention in time, a question which was intimately linked to that of the application of the convention to a successor State. That question presented no difficulty when a treaty was to continue in force for the successor State because the predecessor State had acceded to the convention prior to the succession. It did, however, pose a grave problem in all cases in which the predecessor State was not bound by the convention or where there was to be no automatic continuity—namely, in all cases involving newly independent States. In such cases, the successor State could not, by definition, be a party to the convention at the date of the succession, and some degree of retroactivity seemed inevitable. The question therefore arose whether the solution offered by article 7 enabled those problems to be satisfactorily resolved.

43. In his opinion, article 7 was satisfactory in that it made it clear that the rule of simple non-retroactivity set forth in article 28 of the Vienna Convention on the Law of Treaties did not apply. Article 7 stipulated that the convention applied to all successions occurring after its entry into force *"except as may be otherwise agreed"*. Had the International Law Commission remained silent on the question of the applicability in time of the present articles, that question would have been settled by reference to article 28 of the Vienna Convention, which applied the principle of non-retroactivity to all parties to a treaty. In that case, the future convention would not have been applicable to newly independent States and to other cases of succession of States in which the predecessor State had not been a party to the convention prior to the date of succession, for as the International Law Commission had rightly observed in paragraph (3) of its commentary to article 7, "a successor State could not become a party to a convention embodying the articles until after the date of succession of States" (A/CONF.80/4, p. 23). He felt the International Law Commission had been right to choose as a deadline the general entry into force of the convention; that seemed a valuable criterion for establishing a general rule.

44. However, article 7 made no mention of the procedure enabling the convention to be applied to a successor State which did not inherit from the predecessor State the status of party to the convention. The article needed to be supplemented in that respect through the inclusion of an appropriate provision in the final clauses. In the interests of successor States, the mechanism for their accession to the convention should be as simple and smooth as possible.

45. The question also arose whether it would be in the interests of the community of States to authorize *all States* to accede to the convention with retroactive effect to the general entry into force of the convention. It could well be argued that the accession of a successor State at a time far removed from the succession, or the accession of other States at a time very distant from the general entry into force of the convention, might reopen situations already settled. Article 7 was silent on that aspect of the question, which needed to be examined. In his delegation's view, it would be preferable to examine that point during the debate on the final clauses, which would inevitably involve discussion of the accession mechanism.

46. He did not see why individual States should not be given the possibility of applying the provisions of the convention from an earlier date than that of its general entry into force. Multilateral conventions often took a good deal of time to enter into force, and the practical importance of the future convention would probably be much enhanced if individual States could apply its provisions prior to their formal entry into force. The expression "except as may be otherwise agreed" was not very clear on that point. It would seem neither possible nor advisable to impose upon a State wanting to apply the draft convention before its general entry into force the obligation to reach agreement beforehand with all other States parties which had accepted that draft convention. In order not to disturb the unity of treaty relations, it would be preferable, in his opinion, to consider the possibility of applying the convention on a provisional basis, in accordance with article 25, paragraph 1, of the Vienna Convention on the Law of Treaties, which provided that "A treaty or a part of a treaty is applied provisionally pending its entry into force if: (*a*) the treaty itself so provides; or (*b*) the negotiating States have in some other manner so agreed."[6]

47. Nor did article 7 regulate the question of the provisional application of the convention; there again, it might perhaps have to be supplemented by the inclusion of provisions in the final clauses. The time-limit to be established for the provisional application of the convention should not in any case go further back than the date on which the convention was opened for signature.

48. To sum up, his delegation considered that article 7 should not be deleted, as had been suggested by some members of the Committee, for if that were done article 28 of the Vienna Convention would apply and the future convention would become ineffective. However, it felt that article 7 was incomplete and needed to be supplemented by provisions to be included in the final clauses of the draft articles. In its view, it was necessary first to determine whether

[6] *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. 292.

the rule of limited retroactivity was as such acceptable to the States participating in the Conference. The drafting of article 7 was another matter, which would to some extent depend on the final clauses.

49. His delegation agreed with the delegation of the Byelorussian SSR that the title of article 7 should be altered, but it did not consider the formula proposed by the Byelorussian delegation to be satisfactory. His delegation supported the suggestion made by the United Kingdom in its working paper and felt that they should be used as a basis for further work. It would also be willing to seek a solution along the lines indicated in the United States amendment, which pursued, by more radical means, the same objective as the United Kingdom by endeavouring to make the rule set forth in article 7 more flexible. The Cuban amendment was also designed to introduce greater flexibility into that article, but the solution which it envisaged to achieve that end would be difficult to apply in practice. The Malaysia amendment was of a purely drafting nature and did not seem essential.

50. Mr. WALKER (Barbados) said that he had difficulty in accepting article 7 as currently worded, since it did not appear to be relevant to States which had already attained independence. He was not happy with the words "except as may be otherwise agreed" at the end of the article, in that they did not specify by whom. He then raised the question whether it was intended that an agreement concluded outside the scope of the convention could activate a provision in the convention.

51. Concerning the amendments he said he could not support the amendment submitted by the Byelorussion SSR, as it appeared to have no relevance to States which had already attained independence, nor the Malaysian amendment, which he did not consider to be one of substance but rather of a drafting nature which did not alter the meaning of draft article 7. While understanding the concern which had prompted the Cuban amendment, he did not consider its form to be satisfactory. In contrast, he found merit in the United States amendment, the proposed title of which was satisfactory. He thought the amendment sought to clarify the expression "except as may be otherwise agreed". The amendment incorporated both instances of succession, namely succession after entry into force of the convention and succession prior to the entry into force of the convention. But he was not happy with the words, at the end of the amendment, "except when the status of the successor State in relation to the treaty has been resolved prior to the entry into force of these articles". It was his view that in those circumstances the question of succession would not arise at that point in time, as it would have already been settled.

52. Mr KATEKA (United Republic of Tanzania) agreed with the representative of India that article 7 should be deleted. He was, however, sympathetic towards the amendment submitted by Cuba, which enabled States that had attained their independence as a result of the decolonization process or the liberation struggle before the entry into force of the convention to utilize its provisions. He thought it fair to make an exception to the principle of non-retroactivity for such States, which had often found themselves in an unequal position vis-à-vis the colonial Power at the time of the succession of States and must therefore be given the opportunity to avail themselves of the provisions of the convention in order to correct the injustice to which they had been subject and to free themselves from colonial status.

53. He endorsed the title proposed in the United States amendment, but felt that that amendment made an unfair distinction by referring solely to the successor State. The successor State might have accepted an unjust situation, under pressure from the predecessor State, because of its eagerness to achieve its independence.

54. He would state his position on the working paper submitted by the United Kingdom during the consideration of the final clauses; however, he could already say that he had doubt concerning the usefulness of the proposals contained in that document. At the time of acceding to independence, most new States reserved their position with regard to a treaty by requesting a respite enabling them to accede to that treaty subsequently without any interruption occurring.

55. In conclusion, he said that he would prefer article 7 to be deleted; if, however, that article were to be retained, he would like the text to be amended along the lines of the Cuban amendment.

The meeting rose at 1.05 p.m.

10th MEETING

Wednesday, 13 April 1977, at 3.40 p.m.

Chairman: Mr. Riad (Egypt)

Consideration of the question of succession of States in respect of treaties in accordance with resolutions 3496 (XXX) and 31/18 approved by the General Assembly on 15 December 1975 and 24 November 1976 [Agenda item 11] (*continued*)

ARTICLE 7 (Non-retroactivity of the present articles) (*continued*)[1]

1. Mr. MANGAL (Afghanistan) said that his delegation supported the provisions of draft article 7. Al-

[1] For the amendments submitted to article 7, see 9th meeting, footnote 4.

though non-retroactivity was a general principle of treaty law it should nevertheless be included in the present articles for a number of reasons, such as the recognized differences between the rules of the law of treaties and the principles of international law governing succession of States in respect of treaties, which were of a crucial and controversial nature.

2. Non-retroactivity should not, however, be so interpreted as to prejudice a State's position regarding the validity of the effects of a succession of States which occurred before the convention had entered into force; that applied particularly to colonial treaties, including those which established boundaries, and to successions of States involving the right to self-determination of peoples under colonial domination.

3. His delegation had no objection to the reference to agreements at the end of article 7, but it feared that the unlimited scope allowed for the application of that clause might cause difficulty and confusion, and possibly lead to the suppression of basic questions relating to the validity of the effects of a succession itself, when it occurred before the convention had entered into force. He considered that article 7 should guarantee the avoidance of such consequences.

4. His delegation was satisfied with the position of the article on non-retroactivity in the draft; its subject-matter logically followed that of draft article 6.

5. Mr. SHAHABUDDEEN (Guyana) said that the biggest theoretical and practical problem in drafting the future convention was that although it was intended to apply to the effects of a succession of States from the date of the succession, it might be difficult to apply where the successor State was a new State, which could, *ex hypothesi* only accede to the convention after the date of the succession. For under article 28 of the Vienna Convention on the Law of Treaties, the future convention would not ordinarily apply to facts occurring before the date of the new State's accession to it. The provision in article 22 of the draft for certain treaties to apply to a newly independent State from the date of independence probably did not extend to the future convention itself, and attempts to fill the gap by means of article 7 seemed to him circuitous and unsafe.

6. It seemed, from paragraph (3) of the International Law Commission's commentary (A/CONF.80/4, pp. 23-24), that the intention was to reverse the situation in the case of States achieving independence after the general entry into force of the convention, so that it would apply to successions which occurred when States became independent, even though they would be acceding to the convention after the succession had occurred. To that extent, therefore, the intention in draft article 7 was to displace the ordinary operation of article 28 of the Vienna Convention and permit partial retroactivity. Since, under the said article 28, the new convention would ordinarily operate only prospectively, draft article 7 would in effect provide, not for non-retroactivity, but for retroactivity in certain cases; hence, as the United Kingdom representative had observed,[2] the title of the article was a misnomer.

7. The simple reference to a succession of States occurring after entry into force of the articles seemed to imply displacement of the operation of the general rule in article 28 of the 1969 Vienna Convention, in regard to any succession of States occurring after the new convention entered into force, even if the succession took place before the successor State acceded to the convention. As presently worded, however, the draft articles could consistently apply, in the case of a newly independent State, to any succession in which it might become involved after the convention had entered into force and after it had become independent and acceded to the convention; for instance to subsequent acquisitions or transfers of territory to or from another State. It was thus possible to fulfil the reference in the draft to a succession of States occurring "after the entry into force of these articles" and otherwise give reasonable effect to draft article 7 without having to curtail the application of article 28 of the Vienna Convention. The implications in the draft might thus be insufficient to restrain the seemingly fundamental provisions of the latter article from preventing the new convention from reaching a succession of States occurring upon independence and before the new State acceded to the convention.

8. The words "as may be otherwise agreed" were presumably intended to allow the convention to apply either from a date prior to that on which it would ordinarily enter into force, or, in the case of a new State emerging after the convention's entry into force, from a date other than that of its emergence. However, since a new State was faced with a multitude of treaties, perhaps a safer method of providing for agreement on the date of application of a multilateral convention would be to deal specifically with the matter, probably in the articles on entry into force of the convention. It could be stated explicitly that where a State achieved independence after the convention entered into force, when it became a party the convention would apply from the date of independence; where independence was achieved before the convention entered into force an option to apply the convention from the date of independence might be given, such option to be exercised at the time of becoming a party to the convention. The problem was to decide whether States achieving independence before the convention was opened for signature must necessarily be excluded.

9. With regard to the amendments submitted, that of the Byelorussian SSR (A/CONF.80/C.1/L.1) seemed to be a shortened version of the text of article 7 of the draft; it did not settle the question of

[2] See above, 9th meeting, para. 21.

partial retroactivity by implication. It deleted the concluding words of the text of the draft article, which his delegation agreed were inadequate, but substituted nothing to help newly independent States. The Malaysian amendment (A/CONF.80/C.1/L.7) was a verbal variation of the text of the draft, and his delegation's comments on that text were again applicable. His delegation appreciated the Cuban amendment (A/CONF.80/C.1/L.10) and the role it assigned to the decolonization process and the struggle for liberation. He wondered, however, whether what was being excepted from the text of the draft was the provision for partial retroactivity or the exclusion of the application of the convention to any succession of States occurring before the convention entered into force.

10. The United Kingdom working paper (A/CONF.80/C.1/L.9) contained much of interest to his delegation. Paragraph 1 of the annex seemed intended to apply to new States emerging after the date on which the convention was opened for signature, but the reference to "a succession of States" seemed to include previously existing States which thereafter acquired territory from another State; he was not sure whether that was the intention in the draft. Not every succession of States involved the emergence of a new State, and not every successor State was a new State. The reference in paragraph 2 to "its own succession" required definition. A newly independent State might, in the course of time, become a party to several successions of States, as the term was defined, other than that involved in its achievement of independence. He believed, too, that paragraph 5 of the United Kingdom draft might need a stipulation concerning the time with effect from which a provisional application of the convention would commence; it would presumably be the date of the declaration of provisional application, but the time ought to be specified.

11. His delegation saw much value in the United States amendment (A/CONF.80/C.1/L.16), but thought that certain clarifications were necessary. Subparagraph (*a*) failed to deal with the problem of partial retroactivity by implication, and he was not sure whether subparagraph (*b*) could apply to a succession occurring before the convention was opened for signature, as in the case of ex-colonial countries which had achieved independence in recent decades.

12. The CHAIRMAN said that since the Byelorussian SSR's amendment dealt only with the title of article 7 and did not affect the text itself, he would suggest that the Expert Consultant be invited to speak on the International Law Commission's drafting of that article.

13. Sir Francis VALLAT (Expert Consultant) said he thought he reflected the majority view of the International Law Commission in believing a text on the lines of the present draft article 7 to be a necessary part of the future convention, whatever form the provision might take, if the effect of the rule of non-retroactivity contained in article 28 of the Vienna Convention on the Law of Treaties was to be avoided.

14. Referring to the work of the International Law Commission, he drew attention to the comments of the then Chairman of the Drafting Committee,[3] to the effect that the last phrase of article 28 of the Vienna Convention referred not to the entry into force of a treaty as such, but to its entry into force with respect to each party, and that if the international instrument resulting from the draft articles contained no provisions on retroactivity, the said article 28 would apply to it, so that the whole of part II, concerning newly independent States, would be completely inoperative. Although his own original view had been that the text of article 7 (article 6*bis* at that time) was unnecessary, he now believed, for the reasons set out in paragraphs 42 to 45 of the same summary record, that such an article would be necessary and that consideration would also have to be given to the introduction of some machinery for accession by new States to the instrument that would result from the draft articles.

15. His remarks were, of course, confined to the legal connotations, which it was essential that the Conference should grasp, although he was well aware that there were political aspects which many delegations rightly had in mind.

16. Mr. MARESCA (Italy) observed that, as in internal law, there was a need in the codification of international law not only for rules which legislated *pro futuro,* but also for transitional provisions dealing with circumstances arising shortly before those rules came into force. Article 7 as proposed by the International Law Commission took account of that need by stating, first, that the articles would apply only in respect of a succession of States which occurred after their entry into force and, secondly, that they would so apply "except as may be otherwise agreed". While he was sure everyone would agree that the convention should not legislate solely for the future, he wondered whether the provision made in article 7 for situations arising *medio tempore* would prove sufficient in practice, and whether it might not deprive the whole convention of all meaning. For those reasons, he considered that the text of article 7 should be changed.

17. Of the amendments submitted to the article, he found the Byelorussian SSR's proposal too straightforward to provide the flexibility which was required. The proposal submitted by Malaysia was essentially a drafting amendment and might well be taken into account by the Drafting Committee. The Cuban amendment had the merit of stating clearly that there was at least one category of States to which the

[3] *Yearbook of the International Law Commission, 1974,* vol. I, p. 193, 1285th meeting, paras. 20-21.

principle of non-retroactivity would not apply. The interests of newly independent States had, however, been provided for at other points in the draft, and the language of the amendment was such as to create a danger of political disputes.

18. It was the United States amendment which his delegation found the most attractive, for it recognized that there were situations which arose *medio tempore* and provided a clear rule to deal with them. His delegation considered the second most appropriate amendment to be that contained in the working paper submitted by the United Kingdom, which was entirely compatible with the principle of non-retroactivity and sought to place transitional rules in their natural position in the final clauses of the convention.

19. Mr. SETTE CÂMARA (Brazil) observed that the International Law Commission had originally intended the present article 7 as a follow-up to the provisions of article 6; and that article 7, which the Commission had adopted only by a small majority, embodied elements of articles 4 and 28 of the Vienna Convention on the Law of Treaties. Some members of the Commission had considered the inclusion of article 7 undesirable, because non-retroactivity was a general principle of the law relating to treaties and was duly reflected in article 28 of the Vienna Convention, while others had been of the opinion that its inclusion would cause newly independent States to view the entire draft with some scepticism, since it did not conform to their current interests.

20. Article 7 departed substantially from article 28 of the Vienna Convention on the Law of Treaties by providing that the draft articles would apply only in respect of a succession of States which occurred after their own entry into force; whereas article 28 of the Vienna Convention provided that there would be non-retroactivity with regard to situations which no longer obtained on the entry into force of a treaty with respect to a particular party. That difference was very important, since a newly independent State might ratify an instrument after it had already been in force for some time, and in such a case article 7 could entail retroactivity of the instrument for that State for the entire period which the agreement had already been in force for other States.

21. The answers to the questions whether that was the result the International Law Commission had been seeking and whether it would be in the interests of third States or of newly independent States, would vary from case to case, and it was for that reason that his delegation was uncertain of the wisdom of the provision proposed. There was, however, a need for some degree of retroactivity of the convention in some respects, for it had to be admitted that its entry into force might take so long that the entire process of decolonization would be completed without the newly independent States having been able to take advantage of the help offered to them in part III. His delegation had no misgivings about the general principle of the non-retroactivity of treaties as laid down in the Vienna Convention, but it shared the general opposition to article 7 in its present form.

22. The amendment submitted by the Byelorussian SSR was very clear, but caused his delegation some concern because it related only to the title of the article, though it sounded very much like a substantive provision. Perhaps that problem could be solved by the Drafting Committee. The amendment submitted by Malaysia, which was most ingenious, mainly affected the drafting of the article and could be sent to the Drafting Committee. The proposal put forward by Cuba was very clear, but it perhaps provided for too rigid an exception, which might not always be in the interests of the newly independent States it sought to help.

23. The Working Paper submitted by the United Kingdom was a very elaborate and important document, but, as its authors had said, it was intended for careful study in connexion with the final clauses of the convention. With regard to article X, proposed in the annex to the working paper, his delegation feared that the authorization, in paragraph 1, of the expression of consent solely by signature would raise problems in States where the ratification of international agreements was required by the Constitution. It also had misgivings concerning the declarations mentioned in paragraph 2 of the proposed article, which it seemed would be similar to the non-binding unilateral declarations mentioned in article 9 of the convention.

24. While it had some reservations concerning the actual wording of the United States amendment, his delegation considered that the proposal had many positive elements and constituted a possible key to the solution of the problem of ensuring an appropriate degree of retroactivity of the convention.

25. Mr. SEPÚLVEDA (Mexico) observed that his delegation had already declared itself in favour of the deletion of article 7, because of the difficulties it raised. But in the event of such deletion it would not be sufficient merely to apply the provisions of article 28 of the Vienna Convention on the Law of Treaties, since that would not provide the help to newly independent States which was the main object of the convention. It was necessary to find ways of making the convention operational before the requisite number of ratifications had been received, for that might well take many years and it would not be right to apply to States which came into being during that period a régime less favourable than that which would apply thereafter.

26. He suggested that the Committee might consider a few cases which illustrated the need to establish such a transitional régime. One was the case of a newly independent State which did not yet benefit from the treaties concluded by the predecessor State,

perhaps because it did not know of the existence of such treaties; another was the case of States which achieved independence between the time when the draft convention was signed and the time when it entered into force; yet another was the case in which a State attained independence after the draft convention had entered into force, but the predecessor State was not a party to it or to the Vienna Convention on the Law of Treaties. Those were three important cases to which the future convention would not apply because of the lack of a transitional régime. The Committee should try to fill that gap by seeking exceptions to the traditional principle of non-retroactivity.

27. In view of the number of amendments which had been submitted, it was clear that draft article 7 was not fully satisfactory and that it gave rise to objections and reservations. The amendment submitted by the Byelorussian SSR expressed, in a rather brutal and rigid form, the principle of the non-retroactivity of treaties and was therefore unacceptable to his delegation. The Malaysian amendment also failed to provide a solution to the problem of exceptions to that principle. The Cuban amendment retained the International Law Commission's text of article 7 and proposed the addition of a new paragraph which did not take account of the need for the future convention to apply to newly independent States. The United States amendment was a very positive contribution which represented an improvement on the International Law Commission's text of article 7, but it did not meet all his delegation's concern about the need for a transitional régime. Lastly, the United Kingdom working paper was also a positive contribution, but it was out of place in the present discussion.

28. His delegation was not at all satisfied with draft article 7 or with the amendments proposed. It therefore urged that that draft article should be deleted.

29. Mr. KRISHNADASAN (Swaziland) said his delegation agreed with the Expert Consultant that it was necessary for the draft convention to contain some provision relating to the retroactivity or non-retroactivity of the draft articles. As he had said earlier,[4] his delegation was particularly concerned about draft article 7 because, if it was adopted as it stood, most of the future convention would not be applicable to States which were now independent, but which could well qualify as newly independent States, since they had achieved independence only in the last few years. He was therefore of the opinion that draft article 7 should either be deleted or changed entirely so as to be applicable not only to a succession of States occurring after the entry into force of the future convention, but also to a succession occurring before the entry into force of the convention.

30. He noted that although the words "except as may be otherwise agreed" provided some flexibility, they were not adequate and not sufficiently clear in the present context. Moreover, the words "after the entry into force of these articles", which provided for a selective measure of retroactivity, seemed to go against the general principle of non-retroactivity.

31. From what he had just stated, it was clear that the amendment submitted by the Byelorussian Soviet Socialist Republic was unacceptable to his delegation. It also found the Malaysian amendment unacceptable, even though it merely proposed drafting changes. His delegation could accept the substance of the Cuban amendment, but thought it should be worded in a different way, especially as the last part of the proposed new paragraph might not provide alternate solutions to any problems of State succession that might arise.

32. He would make a more detailed statement on the working paper submitted by the United Kingdom during the discussion on the final clauses of the draft; but at present he was of the opinion that the approach adopted was not sufficiently far-reaching and that the words "on or after the date on which the present convention is opened for signature", in paragraph 1 of article X, proposed in the working paper, would prevent the future convention from applying to a succession which occurred before the date on which the convention was opened for signature.

33. The amendment submitted by the United States of America appeared to meet most of his delegation's wishes in regard to draft article 7. It particularly appreciated the fact that that amendment began with the words "Except as may be otherwise agreed", thus reversing the normal approach to an article of that kind. It had no quarrel with subparagraph (*a*), but it agreed with the representative of Brazil that the word "status" and the words "successor State" in subparagraph (*b*) might give rise to some difficulties.

34. He hoped that the United States delegation would explain why it had confined the exception to the successor State, when in fact it should also apply to the other parties to the treaty in question. He also hoped that the United States delegation would explain the use of the words "has been resolved prior to the entry into force of these articles", in subparagraph (*b*), and indicate whether the exception provided for could be subsumed under the opening words "Except as may be otherwise agreed". Despite those difficulties, however, he shared the view of the representative of Brazil that the United States amendment seemed to be the key to a satisfactory solution to the problems raised by draft article 7.

35. Mr. MUDHO (Kenya) said that his delegation's position with regard to draft article 7 remained the same as the position it had described at the 1493rd meeting of the Sixth Committee during the

[4] See above, 5th meeting, para. 20.

twenty-ninth session of the General Assembly (see A/CONF.80/5, p. 124).

36. Thus, his delegation continued to be of the opinion that draft article 7 was unnecessary in view of the provisions of article 28 of the Vienna Convention on the Law of Treaties. It had, however, listened carefully to the arguments advanced by delegations which wished draft article 7 to be retained and which considered that article 28 of the Vienna Convention would not adequately cover the situations envisaged in draft article 7 because parties to the future convention might not necessarily also be parties to the Vienna Convention and because, even if both conventions were in force for the parties to a dispute or potential problem relating to a succession of States in respect of treaties, the future convention would not be available for most newly independent States, which would have come into being before the entry into force of the future convention. The advocates of draft article 7 had also argued that newly independent States might well wish to take advantage of the future convention in order to avoid the undesirable consequences of unequal treaties and that the draft articles should therefore provide for a certain amount of flexibility in retroactive application.

37. His delegation had tried to determine to what extent the text of article 7 prepared by the International Law Commission met those needs, and had come to the conclusion that it did not fulfil its purported purpose; first, because the effect of the saving clause referring to rules of international law to which a State would be subject independently of the draft convention was far from certain, since the practice of States with respect to succession was by no means uniform and, secondly, because the words "except as may be otherwise agreed" did not seem to lead anywhere at all. What remained of the article was already covered by article 28 of the Vienna Convention of the Law of Treaties.

38. His delegation had then tried to determine which of the proposed amendments would enable draft article 7 to fulfil its purpose. The amendment submitted by the Byelorussian SSR was unacceptable as it did not introduce any new elements. The Malaysian amendment really introduced only darfting changes and was therefore also unacceptable. His delegation had a great deal of sympathy for the Cuban amendment but regretted that it had the defects of retaining the text prepared by the International Law Commission and adding a new paragraph 2 which would probably create more problems than it solved. The amendment submitted by the United States of America had many merits and his delegation would have no difficulty in accepting the proposed title. As to the substance of that amendment, it would, however, welcome further clarifications concerning subparagraph (*b*). In particular, it wondered why the United States had decided to refer only to the "successor State" in that subparagraph. It also thought that the use of the word "resolved" might be ambiguous.

39. His delegation had not had time to give sufficient consideration to the working paper submitted by the United Kingdom. At first glance, however, it could see that the paper contained some useful elements and it would therefore reserve the right to comment on it later in the discussions.

40. Mr. DAMDINDORJ (Mongolia) said his delegation considered that draft article 7 was an extremely important part of the future convention, because it emphasized the sovereign right of newly independent States to determine their own status with regard to treaties which had entered into force before the entry into force of the future convention. Moreover, article 7, which was based on the "clean slate" principle, particularly with respect to international treaties and contractual obligations, was closely related to articles 5 and 6. Taken together, those three draft articles constituted a general clause of the future convention. His delegation therefore shared the view of the Expert Consultant and many other delegations that the arguments in favour of deleting draft article 7 were not convincing.

41. With regard to the amendments, his delegation supported the amendment submitted by the Byelorussion SSR, which proposed a new title for draft article 7. Although the Cuban amendment did not really affect the substance of article 7, it stressed the non-applicability of that article to States which had attained their independence as a result of the decolonization process or a liberation struggle before the entry into force of the future convention, and was therefore very useful.

42. His delegation would speak on the other amendments to draft article 7 later, if necessary.

Mr. Ritter (Switzerland), Vice-Chairman, took the Chair.

43. Mr. ESTRADA-OYUELA (Argentina) said that there was no change in the position of his delegation in regard to article 7, which had already been explained in other fora by Argentina representatives. He was disposed to support the Mexican proposal that the article should be deleted.

44. One obstacle to the acceptance of article 7 was its present position: the International Law Commission had worked out a series of draft articles rather than a draft convention, and article 7 was not in its proper place. Another difficulty was that the draft article and all the amendments thereto referred to "entry into force" without making it clear whether they meant the general entry into force of the future convention or its entry into force for a particular State which became a party to it; the latter meaning would have immediate legal consequences. Another difficulty was the existence of article 28 of the Vienna Convention on the Law of Treaties.

45. The remarks of the Expert Consultant had clearly illustrated the problem of a principle which seemed to be both valid in general terms and difficult to apply in specific cases. The main point to consider was whether the provisions would work in practice and to what particular circumstances retroactivity or non-retroactivity would apply. The arguments about the definition of the term "date of succession of States" in article 2, paragraph 1, subparagraph (*e*) were relevant to draft article 7. It might, however, be useful to approach the question of retroactivity from another angle.

46. Article 28 of the Vienna Convention on the Law of Treaties laid down that the provisions of a treaty did not bind a party "in relation to any act or fact which took place or any situation which ceased to exist before the date of the entry into force of the treaty".[5] It might therefore be held that it was the continuation of the situation and not the date of succession which should be the determining factor, since it was generally recognized that some time must elapse before a newly independent State could sort out the treaty obligations it had inherited from the predecessor State. In that case, by using the concept of "situation" contained in article 28 of the Vienna Convention, it might be possible to reach a consensus on the application of the draft articles to an existing situation, irrespective of its date.

47. Mr. NAKAGAWA (Japan) said that article 7 was an important article dealing with a far from simple issue.

48. His delegation believed it essential to incorporate the principle of non-retroactivity in the convention in some form, so that the rules adopted would not call in question the effects of a State succession which had occurred in the past. The Conference was not engaged in a mere codification of existing law: although several articles, such as articles 11 and 12, largely reflected State practice and customary international law, in other cases the rules proposed differed from the practice of many States. If, therefore, the articles were applied retroactively, they might have the effect of destabilizing existing treaty relations which had been established on the basis of a concept of State succession different from that envisaged in the future convention.

49. The next question was how to formulate the principle of non-retroactivity in the draft articles. As had been pointed out in paragraph (3) of the International Law Commission's commentary to article 7, article 28 of the Vienna Convention on the Law of Treaties "would, if read literally, prevent the application of the articles to any successor State on the basis of its participation in the convention" (A/CONF.80/4, pp. 23-24), since such participation would inevitably come after its independence. In its draft of article 7, the International Law Commission had proposed the solution of partial retroactivity, namely, retroactivity to the date of entry into force of the articles.

50. His delegation appreciated the effort made by the International Law Commission to strike a balance between the need not to put in issue the effects of a past State succession and the need to enable a newly independent successor State to apply the future convention. However, it had some difficulty in accepting article 7 in its present form. For example, if a State which came into existence one month after the entry into force of the convention became a signatory to it 10 years later, it would theoretically be in a position to claim the right to apply a particular treaty retroactively on the basis of article 30 or article 33. Article 7 might, therefore, become a source of hindrance to the smooth application of the convention in cases where the principle of continuity was adopted in the draft. His delegation shared the hope expressed by the representative of the Federal Republic of Germany[6] that suitable provisions would be made in the final clauses to rectify that shortcoming of draft article 7.

51. With regard to the amendments, he considered that those submitted by the Byelorussian SSR and Malaysia should be referred to the Drafting Committee, as they were mainly drafting changes. The United States amendment opened the door too wide and would adversely affect the present balance of article 7. The same applied to the Cuban amendment. The working paper submitted by the United Kingdom was interesting, but he would defer his comments, since it related to the final clauses of the convention.

52. Mrs. BOKOR-SZEGÖ (Hungary) said that she was in favour of the present title of article 7 which corresponded to that of article 28 of the Vienna Convention on the Law of Treaties. However, she approved of the proposed Byelorussian amendment to the title, which should be referred to the Drafting Committee after the text had been harmonized in the different languages. In French, the present text did not read like a title.

53. She understood the desire of newly independent States that certain provisions of the future convention should apply to events which had occurred before its entry into force, since most successions of States had taken place during the process of decolonization. She hoped that they would find satisfaction in the fact that article 7, by referring to "international law independently of these articles", maintained all the customary law which had developed over the recent decades of decolonization, and which the future convention would serve to crystallize.

[5] *Official Records of the United Nations Conference on the Law of Treaties, Documents of the Conference* (United Nations publications, Sales No. E.70.V.5), p. 293.

[6] See above, 9th meeting, para. 45.

54. Mr. LANG (Austria) said that he shared the desire expressed by the Expert Consultant that the work of the Conference should have immediate application to concrete cases, in order to serve the needs of the peoples the participants represented. Deletion of article 7 would only be a last resort.

55. The Byelorussian SSR's amendment, after the question of its form had been settled, should be referred to the Drafting Committee, together with the Malaysian amendment, which contained useful textual improvements. The Cuban amendment had the merit of focusing attention on the political implications of the article; he asked the Cuban representative whether the amendment applied also to the first part of draft article 7. The wording of the United States amendment reflected the thinking of the Conference as regards the title of article 7 but some imprecision in the last two lines of subparagraph (*b*) might cause difficulty. The proposals put forward by the United Kingdom in its working paper might provide a way out of the difficulties, which could probably be resolved only in the context of the final clauses of future convention.

56. The CHAIRMAN announced that the President of the Conference had requested him to set up an informal consultations group, open to all delegations, to find solutions to the problems raised by particular articles.

The meeting rose at 5.55 p.m.

11th MEETING

Thursday, 14 April 1977, at 11 a.m.

Chairman: Mr. RIAD (Egypt)

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*)

ARTICLE 7 (Non-retroactivity of the present articles) (*continued*)[1]

1. Mr. NATHAN (Israel) said that he favoured retention of article 7. By stipulating that the convention under consideration applied only in respect of a succession of States which occurred after its entry into force, "*except as may be otherwise agreed*", the article excluded applicability to the convention of article 28 of the Vienna Convention on the Law of Treaties, which otherwise rendered it completely inoperative.

2. Since article 7 provided for the possibility of applying the convention retroactively, he proposed that the title "Non-retroactivity of the present articles" be replaced by another title more consistent with the contents of the article, such as "Applicability of the Convention". He considered that the Conference should avoid excessively rigid application of the rule of non-retroactivity, which would exclude many States from the scope of the convention.

3. The United Kingdom's proposal (A/CONF.80/C.1/L.9) should be examined very carefully and should be considered when the final clauses were taken up.

4. The relationship between article 7 and those provisions of the convention which governed the continuity of treaty relations, such as those in articles 10, 23, 28 and 30, should be made clear. He supported the suggestion of the representative of the Federal Republic of Germany[2] that a reasonable time limit should be established for accession to the convention after its entry into force so as to avoid problems that might be caused by tardy accessions occurring long after the date of the succession of States.

5. Mr. MEDEIROS (Bolivia) observed that, in the light of precedents, particularly articles 4 and 28 of the Vienna Convention on the Law of Treaties, the International Law Commission had deemed it appropriate to recall the principle of non-retroactivity in the draft convention under consideration. There were two aspects to the question: first, the principle of non-retroactivity applied only if the parties had not otherwise decided; and, secondly, it was important to find a solution that would be applicable during the interim period between the formation of a new State and the entry into force of the proposed convention. Although all delegations shared that point of view, they were not unanimous in thinking that a provision along those lines should be included in the convention; according to some, a reference to the general rule set forth in article 28 of the Vienna Convention on the Law of Treaties would suffice. His delegation considered that the importance of the principle of non-retroactivity and certain practical reasons justified a reference to it in the convention. Although connected to the Vienna Convention on the Law of Treaties, the convention on succession of States in respect of treaties should none the less be autonomous, particularly since it would be difficult to refer purely and simply to article 28 of the Convention on the Law of Treaties when article 73 of that Convention stipulated that the provisions of that Convention were not to prejudge "any question that may arise in regard to a treaty from a succession of States",[3] and the absence of a rule on non-retroactivity would be aggravated by the fact that it was impossible to apply

[1] For the amendments submitted to article 7, see 9th meeting, foot-note 4.

[2] See above, 9th meeting, para. 45.

[3] *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. 299.

a provision of an instrument that had not yet entered into force. Furthermore, when codifying provisions on such a delicate question, account must be taken of all relevant problems, by providing for all possible situations and avoiding the need to refer à decision to another body.

6. Article 7 set forth a residuary rule and hence protected the existence of sources of law other than treaties. The wording could be improved; what he had in mind, in particular, was the United States' amendment (A/CONF.80/C.1/L.16), which seemed to have attracted the attention of the majority of delegations. With regard to the amendment to the title proposed by the United States delegation on the basis of the Convention on the Law of Treaties, he reminded members that in the latter Convention the corresponding title covered provisions that were much wider in scope than those of article 7; he would, therefore, prefer to retain the title proposed by the Commission. Moreover, the role played by the will of the parties was not clear in the United States' amendment, subparagraph (*b*) of which gave the impression that the convention applied in any case "in respect of a succession that occurred before" its entry into force, whereas the Commission's text protected the autonomy of the will of the parties and provided for possible recourse to other sources of international law. In that connexion, he had in mind, too, the working paper submitted by the United Kingdom delegation, which made application of the convention dependent upon a declaration by the new State and on the consent of other States to be bound by the convention. His delegation reserved the right to revert to that document in regard to the option given to new States.

7. In conclusion, he said that he was in favour of retaining the original article 7, which dealt with essential aspects of the problem of non-retroactivity.

8. Mr. YASSEEN (United Arab Emirates) said that the question of "interim" law (*droit intertemporel*) was one of the most delicate problems of law in general. Non-retroactivity of a legal rule was a general principle of law, but, even in domestic law, with some exceptions, it was not a mandatory principle. It was possible for the legislator to waive it. In international law, States could also waive that principle by agreement and provide that a treaty provision would be retroactive. It was not, therefore, a question of *jus cogens,* but of a question left to the judgment of the parties. However, unless otherwise agreed, a rule of treaty law could not be retroactive. That was an undisputed principle in international law, because general customary law provided for the non-retroactivity of rules of international law. It might be thought, therefore, that it was not necessary to include in the draft articles a rule on the scope of the convention in time, and some delegations had proposed the deletion of article 7. Deletion of that article would, however, entail application of the general principle of the non-retroactivity of treaty rules, and it was questionable whether such application was desirable in the case of a convention on the succession of States in respect of treaties. There had been many cases of succession of States in the past 20 years following the process of decolonization. If the general principle of non-retroactivity was accepted, the convention could never be applied to such cases of succession, and there would be very few successions of States in the future. The convention would therefore lose much of its importance if its application were limited to successions which occurred after its entry into force.

9. Moreover, although article 7 was related to article 6, it was nevertheless of general scope and could be regarded as independent. It would, therefore, certainly limit the scope of the convention in time. The only difference between the principle set forth in that article and the principle set forth in article 28 of the Vienna Convention on the Law of Treaties, which reflected customary law, lay in the fact that article 28 of the Convention on the Law of Treaties considered the entry into force of the treaty with regard to the State Party, whereas article 7 considered the entry into force of the Convention *in abstracto,* and not necessarily with regard to the State Party in question.

10. He thought that the solution proposed in article 7 was inadequate and that provision would have to be made for other solutions if newly independent States were to benefit from the experience accumulated in the convention. He appreciated the concern of the United Kingdom, which had submitted a working paper, to enable certain newly independent States to benefit more easily from the convention and he would revert to the proposals in that document when the final clauses were taken up.

11. The United States' amendment went quite far to meet the needs of application of the convention to certain successions of States. Subparagraph (*a*) set forth the general rule of non-retroactivity by stating that the present articles applied "in respect of a succession of States which has occurred after the entry into force of these articles". By stipulating that the present articles applied also "in respect of a succession that occurred before the entry into force of these articles, except when the status of the successor State in relation to the treaty has been resolved prior to the entry into force of these articles", subparagraph (*b*) did not waive the principle governing application of that general rule, because a situation which had not been resolved before the entry into force of the convention was one which, in due course, could come within the scope of the convention. In that case, there would be no retroactivity, but an immediate application, because the convention would apply only to situations which had not been resolved and which subsisted after its entry into force. Subparagraph (*b*) clearly specified that the convention did not apply when the situation had been resolved before its entry into force, because in that case there would be retroactivity, which would be contrary to the general rule.

12. It was questionable, however, whether a situation that had already been resolved before the convention's entry into force should be excluded from the scope of the convention. As the representative of the United Republic of Tanzania had very rightly pointed out,[4] the treaty situation of the successor State might have been resolved inequitably, particularly in the case of former colonial territories which, at the time of their accession to independence, had not been completely free to manifest their will. Situations already resolved should, therefore, be called in question again, if they had not been resolved equitably in accordance with acceptable principles. The convention could make it possible to review such *bona fide* cases, in the light of the new rules set forth in it. Provision would also have to be made, however, for new solutions to determine the legitimacy of regulations adopted prior to the entry into force of the convention.

13. The Cuban amendment (A/CONF.80/C.1/L.10) proposed a solution by excluding from application of the rule of non-retroactivity, "States which have attained their independence as a result of the decolonization process or the liberation struggle". While appreciating the concern of the Cuban delegation, he considered that the amendment was too general, because it related to article 7 as a whole, whereas it should relate only to the second part of that article which concerned non-retroactivity. That amendment might not, therefore, be in conformity with the interests of newly independent States, as some delegations had pointed out.

14. He concluded by saying that it was not possible to provide as a general rule for the convention to have retroactive effect for all newly independent States, as the Cuban amendment proposed, or to exclude the possibility of reviewing situations already resolved before the entry into force of the convention, as would the United States' amendment. In his opinion, therefore, a middle approach would have to be found, taking accound of the interests of newly independent States by making it possible to rectify unjust settlements adopted before the entry into force of the convention, while preserving the stability of international relations.

15. Mr. HELLNERS (Sweden) said that the principle of non-retroactivity, embodied in article 28 of the Vienna Convention on the Law of Treaties, raised a very serious problem in connexion with the present articles. If that principle were applied to the convention under consideration, newly independent States would never be bound by the convention and, therefore, a large part of the provisions drawn up by the International Law Commission would have no direct effect on the situations they were intended to cover. It would be difficult to maintain that, apart from the convention, rules already existed which were similar to those provided for in the draft articles, inasmuch as many delegations had pointed out that State practice was inconsistent. Furthermore, it was clear that in some cases the convention established new rules of international law and did not confine itself to codifying them. It could therefore be asked whether the degree of retroactivity provided for in article 7 was enough to give the convention real value for newly independent States, as very few States would accede to independence after its entry into force. A provision should perhaps be added to the draft articles enabling a newly independent State to apply the rules of the convention voluntarily in connexion with its own succession. Obviously such a mechanism should also take into account third States affected by the treaties in question.

16. He considered that the Byelorussian SSR amendment (A/CONF.80/C.1/L.1) concerned only the title of the article and simply made minor changes to the content of the Commission's text, which did not go far enough. The Cuban and United States amendments had certain features in common. Both tended to introduce a certain amount of retroactivity into the draft articles in order to make the convention a workable proposition. Nevertheless, it was obviously impossible to introduce rules whereby all old treaties of a certain type could be retroactively denounced.

17. He wondered whether, in that context, the purpose of the Cuban amendment was actually to enable all treaties concluded by a certain type of State from the 1940s onwards to be denounced or renegotiated, or only "unequal" treaties. In the latter case, he felt that the problems posed by such treaties should be solved at the political level and not be used to challenge situations which might be perfectly legitimate.

18. The United States' amendment offered certain drafting advantages and set forth clearly the issues involved. The general rule laid down in subparagraph (*b*), whereby the convention could only be applied retroactively to situations which had not been resolved before it entered into force, would certainly be very useful to States which, for one reason or another, had not yet settled their treaty status.

19. He appreciated the general remarks in the working paper submitted by the United Kingdom, but felt that the amount of retroactivity proposed in the paper was not enough to be really effective. He would therefore have some difficulty in accepting the United Kingdom's proposals, which for practical purposes appeared to be rather complicated.

20. He was opposed to the deletion of article 7, proposed by some delegations: as many other delegations had pointed out, that would entail application of article 28 of the Vienna Convention on the Law of Treaties. Although he did not share the view of the delegations which felt that, without a clause on retroactivity, States would be free to apply the con-

[4] See above, 9th meeting, para. 53.

vention retroactively, he did not understand why those delegations were opposed to having their opinion clearly embodied in the text of the convention and preferred to leave the question unresolved. It was certain that if no express provision were made, the majority of countries would assume, in accordance with international practice, that the convention did not have retroactive effect.

21. Mr. BEDJAOUI (Algeria) said that article 7 did not entirely meet the needs of the international community, particularly newly independent States; however, he did not support the conclusion reached by several delegations that it should therefore be deleted. If the provision were deleted, there would be a reversion to the customary law of the Convention on the Law of Treaties and the disadvantages of a situation deplored by a number of delegations would be exacerbated. Article 7 qualified the principle of non-retroactivity by safeguarding the self-determination of States and providing for the possible application of rules of customary international law to the succession of States. However, the provision needed to be improved. Since many conventions had remained a dead letter from not having entered into force, it would be wise to provide for a certain amount of retroactivity and to apply some instruments in advance. Furthermore, as the draft under consideration characterized a certain stage in the development of law, and as political decolonization would shortly be complete, deferment of the application of the convention's provisions until it had entered into force would deprive it of some of its importance for the international community. However, care must be taken not to pave the way for generalized retroactivity and to avoid making the convention applicable to State succession dating back to the nineteenth century, as that would create the same interpretative difficulties as might arise in connexion with article 6. A sound version of article 6 would facilitate the drafting of article 7 and vice versa.

22. The Algerian delegation believed that the idea expressed in article 7 should be maintained, that the title proposed by the United States should be adopted, after modification to take the time factor into account, and that the basic elements of the Cuban and United States amendments should be incorporated in the Commission's text. It shared the views of the representative of the United Arab Emirates concerning subparagraph (*b*) of the United States amendment. The Drafting Committee might be instructed to recast the article.

23. Mr. HASSAN (Egypt) supported the proposal that a working group on article 7 be set up, and reserved the right to express his views once the Committee had received a new version of the article.

24. Mr. SHAHABUDDEEN (Guyana) recalled that at the 10th meeting his delegation had made preliminary observations on the draft article under consideration;[5] he wished to state the conclusions it had reached. It agreed in principle on the need for a provision along the lines of article 7 in the convention, whether article 6 was maintained or not, as the convention would lose much of its importance if no exception to the principle of non-retroactivity was provided for. The Commission's version of article 7 however did not provide for adequate retroactivity and in any event the language used was not sufficiently clear to achieve the partial retroactivity that was intended. His delegation was aware that the Commission had used the reference to entry into force in the provision as a drafting device to achieve retroactivity, but it was possible to retain that expression and still be within the general rule in article 28 of the Vienna Convention on the Law of Treaties. These was no inevitable irreconcilability between the two provisions and therefore nothing in the draft article which necessarily implied an intention to displace article 28 of the Convention. The latter would therefore apply normally and exclude retroactivity altogether. Whether or not the Convention on the Law of Treaties had entered into force or certain States had signed it did not affect the issue, inasmuch as article 28 of that instrument represented the prevailing relevant international law. For that reason, and those it had adduced at the 10th meeting, his delegation was not entirely satisfied with the Commission's text. The alternatives were the amendments of the United States and the United Kingdom, both of which required some changes. Guyana was in favour of a provision stating, first, that a dependent territory acceding to independence before or after the convention was opened for signature could apply the convention to the effects of its own succession; secondly, that if it became party to the convention before the latter entered into force, it could opt to apply it provisionally to the effects of its succession, with effect from the date on which it exercised that option; thirdly, that in all other cases where such a State became party to the convention, the latter would apply to the effects of its succession, with effect from the date on which the convention entered into force in respect of that State; and, finally, providing for a clearly defined mechanism for that purpose.

25. The United States amendment met those basic requirements, but unfortunately lacked precision and did not provide for the desired mechanism. In particular, the wording of the exception provided for in subparagraph (*b*) should be made clearer. The United Kingdom amendment might appear technically complex, but it made provision for a workable mechanism which was clear and explicit. Its only defect was that it ruled out for States which had acceded to independence before the convention was opened to signature the possibility of applying the latter to the effects of their succession. Consequently, if it were necessary to choose between the United Kingdom's amendment and that of the United States, his delegation would opt for the latter. The United King-

[5] See above, 10th meeting, paras. 5-11.

dom's text could however easily be adopted if paragraph 1 were altered and drafting changes where made elsewhere, as his delegation had already mentioned. Thus modified, the article could be placed among the provisions relating to the entry into force of the convention. If the Committee could not adopt that alternative, the Guyanese delegation would support the United States amendment.

26. Mr. SANYAOLU (Nigeria) said that if all delegations agreed with the principle of non-retroactivity, it should be stipulated in one way or another in the convention. Consequently, his delegation could not agree to the deletion of article 7, which was based on articles 4 and 28 of the Convention on the Law of Treaties. However, it shared the views of several delegations that article 7, as drafted by the Commission, rightly provided for a certain measure of retroactivity so as to allow for the situation of newly independent States, but that did not mean that the title given to the article was incorrect.

27. As for the amendments to the draft article, neither the amendment by the Byelorussian SSR nor the amendment by Malaysia (A/CONF.80/C.1/L.7) introduced any new element and they could thus be referred to the Drafting Committee. The Cuban amendment strengthened the element of retroactivity contained in the draft article. The amendment by the United States, while having the merit of providing for successions occurring before the entry into force of the convention, disregarded the cases in which a certain amount of time elapsed between the date of the succession and the moment at which the successor State became party to the convention.

28. All in all, his delegation had no fundamental objection to article 7 as drafted by the International Law Commission and thought that the articles under consideration should supplement the provisions of the Convention on the Law of Treaties. The Committee should remember that, if it drafted a provision differing from the corresponding article of the Convention on the Law of Treaties, it would be running counter to the very purpose of codification.

29. Furthermore, his delegation shared the idea that article 7 should not cover successions of States which occurred before the entry into force of the convention and thought that the United Kingdom proposal might offer a solution within the framework of the final provisions. It was not yet, however, able to take up a position regarding that proposal and reserved the right to revert to the matter when the final provisions came to be considered.

30. Mr. DOH (Ivory Coast) said that any draft article should be examined from the standpoint of the need to establish a balance between the "clean slate" principle and the principle of legal continuity. Draft article 7 defined the scope of article 6, the effect of which should not be retroactive. The principle of non-retroactivity in the matter of treaties was a principle of general international law which was enshrined in article 28 of the Vienna Convention on the Law of Treaties. That principle was such an important one that it could not be passed over in silence in the future convention and, consequently, article 7 could not be deleted, whatever difficulties it might present for some delegations. Deletion of that provision would undoubtedly render the application of the future convention more difficult and would lead to hopelessly entangled situations.

31. The article under consideration was based on three ideas. It began with a general saving clause concerning retroactive application of the convention by virtue of principles of international law other than those embodied in the instrument itself. Such other principles could stem from regional customs or from the international practice of States, provided that they were not contrary to the general principles of international law. To deny such a fact would be to deprive the future convention of all object and fail to recognize the varied sources of international law. Moreover, in becoming an *ipso facto* member of the international community, a successor State could not regard the "clean slate" principle as being subject to no legitimate exceptions, since that could be contrary to the natural laws of the international community.

32. The second part of article 7 enshrined the principle of the non-retroactivity of the future convention with respect to a succession of States occurring prior to its entry into force. That idea had already been amply developed during the current discussion.

33. The third part of the article under consideration contained another essential saving clause in that it entered a reservation concerning the sovereign will of the successor State and of the other parties to the treaties in question. In his own delegation's view, any arrangment whereby the predecessor State and the other parties to a treaty agreed to apply it to the successor State, without the latter having expressly stated its approval, should be regarded as null and void. No tendentious interpretation of article 7 in that sense was possible.

34. From the point of view of balance between the "clean slate" principle and that of legal continuity, article 7 seemed to give precedence to the principle of continuity. Nevertheless, since there was no rule without an exception, the article proposed by the International Law Commission was, after all, satisfactory.

35. The amendment by the Byelorussian SSR was designed solely to simplify the title of article 7 but, in that specific case, simplification was not synonymous with clarification. The proposed title duplicated the contents of the article and his delegation preferred the title proposed by the International Law Commission.

36. The Malaysian amendment contained the three ideas on which the amendment drafted by the International Law Commission was based and, being a purely formal amendment, should be referred to the Drafting Committee.

37. The Cuban amendment implied a distinction between various categories of succession, according to the historical and political process of accession to independence. By reason of the difficulties that such a distinction would inevitably create in practice, his delegation had some reservations concerning the amendment.

38. The amendment by the United States of America related to both the title and the contents of article 7. As far as the title was concerned, a reference should be made to the principle of non-retroactivity, since that principle was already incorporated in the Vienna Convention on the Law of Treaties. He had no objection to the body of the article, particularly subparagraph (*a*), but feared that the term "situation" in subparagraph (*b*) might be difficult to interpret. He wondered how the situation of a successor State in respect of a treaty to which it would not be a party could be determined. That concept of situation contained an element of subjectivity which could cause serious difficulties. Consequently, he proposed that the United States amendment should be referred to the Drafting Committee.

39. In short, he preferred the text proposed by the International Law Committee, although that provision did not establish a perfect balance between the "clean slate" principle and the principle of legal continuity.

40. The CHAIRMAN suggested that, since the Committee was already lagging behind the work programme it had set itself, representatives who had yet to speak on article 7 should make their statements as brief as possible. He reminded them that they would be able to express their views in greater detail during the informal meetings which would precede the voting on that provision. There were still 10 persons who wished to speak on article 7.

41. Mr. YANGO (Philippines), speaking on a point of order, recalled that a proposal had been made to set up a working party to examine article 7 and that the proposal had been supported by a number of delegations. In the circumstances, and with all due respect to the speakers who had not yet given their views on article 7, he proposed that the debate on the article under consideration should be closed.

42. The CHAIRMAN, having read out rule 24 of the rules of procedure (A/CONF.80/8), asked whether any delegations opposed the closure of the debate.

43. Sir Ian SINCLAIR (United Kingdom) said that, while he understood the concern of the representative of the Philippines, the debate in question was so important that it was too early to close it. Instead, he proposed that the list of speakers be closed.

44. Mr. HELLNERS (Sweden) agreed with the previous speaker and added that it would hardly be fair to prevent 10 delegations from giving their views. He would even be reluctant to limit the length of the statements.

45. The CHAIRMAN read out rule 21 of the rules of procedure, on closing of the list of speakers, and asked the representative of the Philippines if he would agree to the application of that provision.

46. Mr. YANGO (Philippines) said that, in the light of the opinions expressed by the representatives opposed to the closure of the debate and of the wish to take the floor informally expressed by other delegations, he accepted the suggestion.

47. Mr. AMLIE (Norway) said that it was customary, before reading out the list of speakers and declaring it closed, to invite any delegations which so desired to be included in the list.

48. Mr TODOROV (Bulgaria), speaking on a point of order, said that the time had come for the meeting to rise so as to enable the Conference to meet as arranged. To prevent any hasty decision concerning the debate on article 7, he requested the adjournment of the meeting in conformity with rule 25 of the rules of procedure.

49. The CHAIRMAN said that, if there was no objection, he would adjourn the meeting.

It was so decided.

The meeting rose at 12.40 p.m.

12th MEETING

Thursday, 14 April 1977, at 3.40 p.m.

Chairman: Mr. RIAD (Egypt)

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*)

ARTICLE 7 (Non-retroactivity of the present articles) (*continued*)[1]

1. Mr. MUPENDA (Zaire) said that his delegation had some difficulty with article 7. It was not appro-

[1] For the amendments submitted to article 7, see 9th meeting, foot-note 4.

priate to include in the future convention the principle of non-retroactivity, which was a general legal principle already embodied in article 28 of the Vienna Convention on the Law of Treaties. His delegation shared the view expressed by some members of the International Law Commission, in paragraph (2) of the commentary to article 1, that article 7 "might give an erroneous impression that the draft articles were largely irrelevant to the current interests of many States and that the text of the article was unduly wide and vague in its effect" (A/CONF.80/4, p. 23).

2. The Committee should certainly legislate for the future, but at the same time treaties were signed in order to be applied and the main field of application of the future convention would be the situation of newly independent States; cases of separation or annexation of territories were becoming increasingly infrequent and few dependent territories remained. There would be no point in concluding a convention which would be applied by only a few States. In his delegation's view, article 7 was rendered meaningless by the provisions of article 22, which restored retroactivity for newly independent States, and should be deleted unless a formula could be found which provided a certain measure of retroactivity for such States.

3. Among the amendments, his delegation had been particularly interested by those of Cuba (A/CONF.80/C.1/L.10) and the United States of America (A/CONF.80/C.1/L.16). It had considerable sympathy with the idea underlying the Cuban amendment, but as other speakers had said, it maintained the idea of retroactivity and its wording could raise more problems than it would solve for newly independent States. The United States amendment, with some clarification of subparagraph (*b*), might solve the problem of succession for newly independent States.

4. In conclusion, he said it would be helpful if the Expert Consultant could explain within what time-limit a State was regarded as being newly independent.

5. Sir Francis VALLAT (Expert Consultant) said that the term "newly independent State" had been provisionally defined in article 2, paragraph 1, subparagraph (*f*). So long as the convention was applicable, retroactively or otherwise, a State which satisfied that definition would be regarded as newly independent.

6. Mr. PANCARCI (Turkey) said that in his view the Committee should primarily codify the principles and rules of customary international law on the succession of States in respect of treaties. Succession was a particular aspect of the law of treaties and for that reason, the International Law Commission had followed the Vienna Convention on the Law of Treaties very closely and had taken over both terms and clauses from that Convention. The principle of non-retroactivity, a fundamental principle of customary international law, was confirmed in article 28 of the Vienna Convention. His delegation endorsed the view expressed by the International Law Commission and the Expert Consultant that the general provisions of the convention under consideration should also contain a non-retroactivity clause, in order to avoid uncertainty about its temporal scope.

7. He urged the Committee to set aside political considerations and to put the interests of the international community before national interests, in order not to fail in its task. Both the International Law Commission's draft and the discussions on it had been concerned mainly with the needs of newly independent States. But the era of decolonization was drawing to a close and the world was entering upon the era of uniting of nations at the regional level. The Committee should therefore act objectively in the interests of future generations and give attention in the future convention to the uniting of States.

8. With regard to the amendments, the Byelorussian proposal (A/CONF.80/C.1/L.1) was rather long for the title of an article and rather short for the text; the title of the draft article described the substance of the article better and should be retained. The Malaysian proposal (A/CONF.80/C.1/L.7), which was a drafting amendment, was clearer than the text of the draft. The United Kingdom working paper on the subject (A/CONF.80/C.1/L.9) required further study. With regard to the Cuban amendment, Turkey, as the first country which had fought desperately for its independence, unreservedly supported the liberation struggles of dependent peoples; but his delegation saw some difficulty in including a general clause of that nature in a purely legal text. It did not think the amendment would benefit newly independent States. The United States amendment was very widely drawn and profoundly changed the non-retroactivity principle of contemporary international law.

9. His delegation was in favour of draft article 7; its wording might be improved, but the substance should remain unchanged. The provisions of article 7 were in full conformity with the "clean slate" principle.

10. Mr. GILCHRIST (Australia) said that article 7 or something on the same lines was a necessary element in the future convention, for the reasons which had been explained by the Expert Consultant. However, some further machinery, preferably of a simple nature, was required to enable a successor State to become a party to the convention. The United Kingdom working paper should prove useful in that connexion.

11. Sir Ian SINCLAIR (United Kingdom) said he fully agreed with the representative of the United Arab Emirates that the question of the intertemporal law raised delicate problems and that the general rule of non-retroactivity in international law was not in

any sense *jus cogens*.[2] The problem was to avoid upsetting solutions which had been reached in past successions of States, while working out a convention responsive to the current preoccupations of many States and the long-term needs of the international community.

12. Article 7 had three aspects. First, there was the basic rule which was not a rule of non-retroactivity, but rather a rule of limited retroactivity. Secondly, there was the concluding exception, "except as may be otherwise agreed"; he agreed with those who considered that the exception was not relevant to the current preoccupations of many States. Thirdly, there was the opening phrase, "without prejudice to the application of any of the rules set forth in the present articles to which the effects of a succession of States would be subject under international law independently of these articles"; he thought the Committee had not given sufficient attention to that phrase.

13. The relevant rules of customary international law were not clear or precise. The International Law Commission had conducted a thorough survey and the draft articles conformed to preponderant recent practice. However, the adoption of the future convention would, in itself, have an impact on the handling of the problem in the future, as was shown by the influence exercised by the Vienna Convention on the Law of Treaties, although it had not yet entered into force. His delegation considered that the retention of article 7 was necessary and that many of the anxieties voiced might be dispelled by the impact of its opening phrase.

14. With regard to the Byelorussian amendment, his delegation agreed that the present title of article 7 was unsuitable and hoped that the Drafting Committee would reach agreeement on another title more closely reflecting the wording of the article. The Malaysian proposal was primarily a drafting amendment which should be considered by the Drafting Committee. He would comment on the Cuban amendment when the Cuban representative had introduced it in its revised form. His delegation had doubts about the United States amendment. Since it was not limited with regard to time, there was a risk it might re-open dormant disputes. Subparagraph (*b*), which was intended to limit that possibility, required tighter wording on the subject of past transactions.

15. Thanking speakers for the interest they had shown in the United Kingdom working paper, he said that the points raised by the representative of Guyana[3] would be taken into consideration. The working paper did not propose an amendment to article 7, but an addition to the final clauses of the future convention, designed to temper some of the rigorous consequences of that article.

16. Mr. LA (Sudan) said that draft article 7 contained three basic elements. The first was a saving clause which, his delegation thought, could be dispensed with. In an area in which precedents were few and conflicting and consensus non-existent, it would be difficult to identify any rules of international law to which the effects of a succession of States would be subject independently of the present articles. Moreover, since succession of States to treaties was the subject which, more than any other, had engaged the International Law Commission in progressive development rather than codification, consensus could not be hoped for on the basis of existing customary international law.

17. With regard to the second element, namely, the non-retroactivity provision, and the third element, which represented the International Law Commission's attempt to alleviate any harsh consequences of the second, the Expert Consultant had rightly said that something along the lines of the present text was needed in order to save the convention from the effect of article 28 of the Vienna Convention on the Law of Treaties or at least from its most rigorous consequences for newly independent States. The question was whether the draft article did that adequately; in his delegation's view, it did not.

18. In the light of those reservations, his delegation had examined the various draft amendments submitted. The Malaysian amendment was only a drafting change, and as such should be considered by the Drafting Committee. The amendment of the Byelorussian SSR summarized the non-retroactivity principle; and to the extent that the purpose of article 7 was to provide for limited or selective retroactivity of the present articles, the amended title would be as misleading as the present title of draft article 7. His delegation would therefore have difficulty in accepting that amendment. It had some sympathy for the Cuban amendment, which, however, seemed to set no limit to the retroactive application of the present articles. His delegation thought that the drafting could be improved, and since he understood that the Cuban delegation was revising its amendment, he would reserve further comment until later. His delegation had no objection to the United States amendment in principle. In subparagraph (*b*), however, it would have preferred a more technical term than "resolved", which left the status of the successor State open to various subjective interpretations. He hoped the Drafting Committee would bear that point in mind.

19. Mr. MIRCEA (Romania) said that his delegation took a position of principle with regard to article 7. In its view the International Law Commission, in drafting that article, had taken too strict a view of the Vienna Convention on the Law of Treaties. It was important that the new convention should find a common denominator for the practice of States, both legal and political, and should appropriately apply both to present and to future cases of succession

[2] See above, 11th meeting, para. 8.

[3] See above, 11th meeting, para. 25. See also 10th meeting, para. 10.

of States, in order to take due account of the interests of newly independent States—a problem which the International Law Commission had perhaps not overlooked, but had failed to solve in the present draft articles.

20. With regard to the first part of article 7, his delegation thought it was difficult at that stage to say which rules the effects of a succession of States would be subject to under international law independently of the articles; for the moment it stressed that a balance should be sought between the "clean slate" and continuity principles. The second part of article 7 did not apply in certain cases; States would be free to apply whatever rule they saw fit. It was difficult in any case to accept the idea that States could apply the convention before its entry into force.

21. With regard to the proposed amendments, those of the Byelorussian SSR and Malaysia were useful. In principle, his delegation could support the Cuban amendment, but it saw some difficulties, since due account ought to be taken not only of the interests of newly independent States, but also of the rights and duties of other States. The United States amendment was a praiseworthy effort to change the wording, and even the substance, of the text of the draft. The first sentence, however, contradicted the sense of the subsequent text and might lead to the conclusion that States could derogate from the articles after their entry into force—a meaning surely not intended by the United States delegation. Moreover, the Romanian delegation could not accept the last part of subparagraph (*b*), which could perhaps be re-phrased.

22. His delegation thought the problem raised by article 7 could be solved if the convention contained a clause allowing provisional acceptance without effect on agreements already concluded. Perhaps the General Assembly could adopt a recommendation to the effect that, even before the convention entered into force, States should try to act in accordance with its provisions and to standardize their practice in regard to succession to treaties.

23. Mr. HERNANDEZ ARMAS (Cuba) observed that, as the Kenyan representative had said in the Drafting Committee, the proposed convention was intended to deal, not with static legal situations, as was the Vienna Convention on the Law of Treaties, but with political realities. The General Assembly itself had recommended that the International Law Commission should take special account of the developing countries' views. As the Federal President of the Republic of Austria had said at the opening of the Conference,[4] politics and law could not be divorced without serious consequences.

24. He was grateful to those delegations—especially Brazil and the United Republic of Tanzania—which had supported the Cuban amendment. That amendment took account of the situation of developing countries which achieved independence as a result of decolonization. The intention was that countries which gained their independence as specified in the Cuban amendment would not require the predecessor State's agreement before acceding to the convention.

25. His delegation had no wish to disregard the tenets of international law, but it wished to affirm that non-retroactivity could not be acceptable in all cases. It was aware of the potential scope of the expression "except as may be otherwise agreed". As the Algerian representative had pointed out, the independence achieved by some countries might not really be complete. For example, a newly independent State, exhausted by its fight for freedom, might undertake, in exchange for material assistance and cessation of hostilities, to observe certain clauses in present international instruments, believing that the latter would ultimately be adjusted in favour of such States as itself.

26. Although it stressed the legitimacy of the political aspect, his delegation would nevertheless like to see the draft convention concluded on the basis of universality and subsequently ratified by most of the international community—something which the Vienna Convention on the Law of Treaties, with only 35 ratifications since 1969, had not achieved. The Cuban delegation was therefore submitting a revised amendment with a view to obtaining more widespread support.[5]

27. The Cuban amendment was not aimed at regulating the time factor referred to in the United Kingdom working paper. That paper reflected, in its introduction, the Cuban delegation's own view, but limited the application of the convention to successions of States that occurred after the convention had entered into force, whereas it ought also to apply to the many States which had already become independent since the Second World War, and indeed to all newly independent States within the meaning of the definition in article 2, paragraph 1, subparagraph (*f*) referred to by the Expert Consultant.

28. Mr. SAMADIKUN (Indonesia) said that in his delegation's view the principle of non-retroactivity introduced in article 7 provided an element of clarity and certainty for the other articles. Article 28 of the Vienna Convention on the Law of Treaties did not render draft article 7 superfluous; it provided for non-retroactivity with respect to any act or fact that took place before the entry into force of the treaty with respect to a party, whereas draft article 7 limited non-retroactivity to a succession of States which took place before the entry into force of the articles as a

[4] See above, 1st plenary meeting, para. 11.

[5] A first revised version of the Cuban amendment was subsequently issued as document A/CONF.80/C.1/L.10/Rev.1 and a second version, also sponsored by Somalia, was issued as document A/CONF.80/C.1/L.10/Rev.2 (see below, paras. 56-57).

convention, not with respect to an individual State when it became a party. Such a provision was necessary in order to deal with specific problems that might arise out of a succession of States, and his delegation shared the view that draft article 7 should be retained.

29. The amendments submitted by the Byelorussian SSR and Malaysia should be referred to the Drafting Committee. The United States amendment warranted serious consideration; a few changes might usefully be made to clarify the text. The Cuban amendment too was of great interest. The United Kingdom working paper introduced new elements for consideration in connexion with the final clauses of the draft convention, and his delegation would comment on them later.

30. Mr. USHAKOV (Union of Soviet Socialist Republics) said that the most important of the three parts of article 7, which was an important element of the convention as a whole, was the provision to the effect that "the present articles apply only in respect of a succession of States which has occurred after the entry into force of these articles". The need to include such a provision in the convention arose from the fact that it determined precisely to which cases of succession of States, i.e. the emergence of a new independent State, the uniting or separation of States, the future convention was to apply. If article 7 were to state that "the present articles apply in respect of any succession of States", that would mean that the convention would be applicable even in respect to successions in the most distant past, which was clearly intolerable. Similarly, on that assumption any State which had emerged in a dependent territory at any time in the past would be able to claim that it was a "newly independent State" within the meaning of article 2, paragraph 1, subparagraph (*f*), since that definition set no time-limit.

31. If article 7 were deleted altogether, application of the convention would be regulated by article 28 of the Vienna Convention on the Law of Treaties, and the convention would be pointless, since the events which gave rise to a succession would inevitably occur before the new State thus formed could become a party to the convention, and article 28 of the Vienna Convention precluded the application of a treaty to any act or fact which took place before the date of the entry into force of that treaty with respect to the specific party concerned.

32. He urged all delegations which had opposed article 7 to reflect on the situations he had mentioned in the light, *inter alia,* of the explanations of the need for the article given by the Expert Consultant. Article 7 was the only provision in the draft which contained temporal limitations on its application, and any change in its substantive content would be inadmissible. His delegation would, however, be willing to consider drafting amendments to the article and supported the amendment to the title proposed by the Byelorussian SSR which had the merit of stating clearly the exact sense of the provisions of article 7.

33. Mr. BENBOUCHTA (Morocco) said that, during the general debate, his delegation had advocated the deletion of article 7.[6] The present title was inappropriate, for it gave the impression that the article merely stated the general principle of the non-retroactivity of international law, whereas its purpose was to place some limit on the application of that principle. The first part of the text was superfluous, since it added nothing to a principle of international law which had already been stated in other instruments. And while the article had the merit of tempering the application of the principle of non-retroactivity so as to permit application of the future convention to newly independent States, its second part was too vague to show exactly when such application was possible. That could give rise to such wide and conflicting interpretations as to endanger the whole concept of non-retroactivity as a general principle of international law.

34. However, in view of the fact that the majority of the Committee favoured the retention of the ideas expressed in draft article 7, his delegation was prepared to consider carefully any amendments which took account of its objections to the present text. It would reserve its comments on the amendments which had so far been submitted to the article until a fresh text had been proposed by the informal consultations group.

35. Mr. AL-KATIFI (Iraq) said that the fact that the non-retroactivity of treaty rules, which was a well recognized principle of international law, had given rise to such wide differences of opinion on article 7 in the International Law Commission, in the comments of Governments (A/CONF.80/5), and in the Committee, could be explained by serious omissions in the drafting of the article, which could endanger the vital interests of nearly all States which had existed before the entry into force of the convention.

36. The text took insufficient account of one of the main objectives of codification—that of relieving States of the heavy burden of proving the existence of certain rules of customary international law; for once a customary rule had been incorporated in a written treaty, the question whether or not it existed no longer arose. In addition, the article seemed to distinguish between the rules of general international law and the new rules to be incorporated in the convention, and to apply the principle of non-retroactivity only to the latter. That distinction was a possible source of conflict, for one State might claim that a rule was already part of general international law, whereas another might claim that the same rule was new and, under article 7, could not apply retroactively.

[6] See above, 3rd meeting, para. 52.

37. It was possible that the present text of article 7 would give satisfaction to some States in their bilateral relations, but it seemed unwise to sacrifice the objectives of a universal convention to such considerations. His delegation considered that a saving clause of the type included in article 13 should suffice to give States the assurances they sought in regard to bilateral matters.

38. With regard to the amendments submitted to the article, his delegation considered that the United States proposal had the merit of filling the gaps in the original text and that, subject to drafting improvements in the latter part of subparagraph (*b*), it constituted a suitable basis for efforts to overcome the difficulties to which several speakers had referred.

39. Mr. SATTAR (Pakistan) said that his Government had no objection to the substance of article 7, which generally followed the model of article 4 of the Vienna Convention on the Law of Treaties, and considered that a provision of that nature was required in the convention. If article 7 was deleted, the Committee's task would become purely academic, for the operation of the articles which it was drafting would become subject to the provisions of article 28 of the Vienna Convention on the Law of Treaties.

40. His delegation believed, however, that article 7 should be made more flexible, in order to permit extension of the benefits of the future convention to as many newly independent States as possible, including those which achieved independence before the convention came into force. Such a change was all the more desirable as it would help to avoid the controversies which might otherwise arise as to which rules of international law were applicable to succession of States in respect of treaties.

41. The amendments submitted by the United Kingdom and United States delegations seemed to go some way towards extending the benefits of the articles to a larger number of cases of succession, but the apparent contradiction in the United States amendment with the principle of consent in respect of treaties would have to be eliminated. The revised Cuban amendment (A/CONF.80/C.1/L.10/Rev.1) aimed at bringing within the scope of the convention a category of successor States which had gained independence before the entry into force of the convention, but the logic of that amendment required that the benefits of the convention be available to newly independent States as defined in article 2, paragraph 1, subparagraph (*f*).

42. His delegation hoped that the informal consultations group would be able to produce a widely acceptable version of article 7, thereby enabling the Conference to complete its work on time.

Mr. Ritter (Switzerland), Vice-Chairman, took the Chair.

43. Mr. MUSEUX (France) said that, while his remarks were to be considered merely as preliminary comments, his delegation wished to make clear both the importance it attached to article 7, which was the key to the entire convention, and its desire to find a solution to the very difficult problems to which that article gave rise.

44. If such a solution was to be found, the convention must have a certain degree of retroactivity, for as many speakers, and the International Law Commission itself, had said, a mere repetition of the provisions of article 28 of the Vienna Convention on the Law of Treaties would mean that the convention would not apply to any successor State. His Government had already expressed its fears concerning the acceptance of retroactivity, but as the representative of the United Arab Emirates had rightly pointed out the principle of non-retroactivity was not immutable,[7] and there was in fact a legal precedent for its modification in article 28 of the Vienna Convention, in the words "Unless a different intention appears from the treaty or is otherwise established...".[8] The question was how great a degree of retroactivity could or must be permitted and how that could be done.

45. His delegation had not as yet taken any definitive position on article 7 or the amendments thereto, for they provided only partial solutions to its problems. Article 7 was only the "tip of the iceberg", and it was not until complete machinery for the implementation of the convention had been proposed that final judgements could be made on it. His delegation therefore suggested that the informal consultations group should study not only article 7 alone, but also the entire question of the application of the convention to predecessor, successor and third States.

46. In seeking a solution to the problem of article 7, his delegation would be guided by certain specific considerations, the first of which was that there could be no derogation from the principles laid down in section 4 of the Vienna Convention on the Law of Treaties, and particularly in article 34 thereof, which provided that "A treaty does not create either obligations or rights for a third State without its consent".[9] For the purposes of the convention which the Conference was drafting, a "third State" was one which had not completed the formalities for accession to that instrument; his delegation could not accept an article such as article 7 as being binding on any State other than those which had in fact completed such formalities, so that the retroactivity permitted by the article would be accepted, and not imposed.

[7] See above, 11th meeting, para. 8.

[8] *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. 293.

[9] *Ibid.*, p. 294.

47. The question of retroactivity related to the application of the draft convention to acts or facts which had taken place before its entry into force with respect to a given State. Such retroactivity was, of course, not possible unless the convention itself had entered into force. Retroactivity must have a legal basis and that legal basis was the draft convention itself. That point was particularly important in internal constitutional law, because retroactivity could be an exception to the legal provisions adopted by national parliaments. It was therefore the national legislative authority which was competent to decide whether such an exception could be allowed. In that connexion, he stressed that the Committee could not question the validity of acts or facts which had occurred in the past. That seemed to be what the United States delegation had intended to say in subparagraph (*b*) of its amendment, which could be made clearer by some drafting changes.

48. Referring to the words "except as may be otherwise agreed" at the end of draft article 7, he asked that the Expert Consultant might provide some clarification of the International Law Commission's reason for including those words in the article. He noted that the representatives of Barbados[10] and Cuba had also requested an explanation of the meaning of those words. His delegation did not, however, share the Cuban representative's view that those words would enable a predecessor State and a successor State to conclude an agreement providing that article 7 did not apply to a particular case of succession. Such an exception would, moreover, be contrary to draft article 8 of the future convention. The United States delegation had tried to make the meaning of the words "except as may be otherwise agreed" clearer and more specific by beginning its amendment with a reference to agreement between "the successor State and the party or parties to a treaty", but that wording did not really solve his delegation's problems, because the question at issue was not one of a succession of States to treaties in general, but, rather, one of a succession of States to a particular treaty; and he did not think that draft article 7 covered the case of special agreements reached on particular treaties.

49. His delegation reserved the right to comment on the proposed amendments to draft article 7 during the discussions in the informal consultations group, in which the United States amendment should be given priority.

50. Mr. MARSH (Liberia) said that his delegation was of the opinion that draft article 7 or a provision of a similar kind should be included in the future convention. The present wording of the draft article might, however, be amended to make it less restrictive.

51. The amendment submitted by the Byelorussian SSR was somewhat restrictive, in that it did not refer to cases of State succession which occurred before the entry into force of the draft convention. The same was true of the amendment submitted by Malaysia, and his delegation could not support either of those amendments. The Cuban amendment was attractive, although the exception for which it provided seemed to apply only to cases in which States had attained independence as a result of the decolonization process or a liberation struggle, and not to cases of voluntary cession of territory or of the uniting of two or more States.

52. The working paper submitted by the United Kingdom was of great interest, but his delegation would prefer to discuss it in connexion with the final clauses of the draft convention. The United States amendment seemed to be broad enough in scope to cover cases of State succession occurring before and after the entry into force of the draft convention. It would therefore be acceptable to his delegation, subject to a few drafting improvements.

53. Mr. OSMAN (Somalia) said it was a basic assumption of internal law that, when a law or regulation was formulated, it had no retroactive effect, unless it provided otherwise. The same basic assumption held true in international law. Thus, when a treaty was formulated, it applied to acts which occurred in the future unless it expressly provided otherwise. Article 28 of the Vienna Convention on the Law of Treaties laid down that treaties applied only to the future, not to the past, and the same was true of the rules governing succession of States, which could apply only to successions which occurred after the entry into force of the draft convention. His delegation believed that the Committee could not include provisions in draft article 7 which would be a departure from the model on which it should base its work, namely, the Vienna Convention on the Law of Treaties.

54. He was not implying that no convention could have any retroactive effect at all. Indeed, the provisions of Article 103 of the Charter of the United Nations made it clear that the Charter itself had a retroactive effect and nullified any prior obligations of States under any other treaty which conflicted with it. What the authors of the Charter had had in mind when they had formulated Article 103 was that rules of *jus cogens* and, in particular, the right to self-determination, should be safeguarded and not violated by prior existing treaties. The implications of the principle of non-retroactivity were extremely important for developing countries in Africa, Asia and Latin America. In Africa, for example, so many colonial treaties had been concluded by colonial Powers in defiance of the will and consent of the peoples concerned, that it would be idle for the Committee to take cognizance of such treaties, which had been concluded under the guise of customary law.

[10] See above, 9th meeting, paras. 50-51.

55. Referring to the amendement submitted by the United States of America, he drew attention to subparagraph (*b*), the last part of which stated that the present articles would apply in respect of a succession that occurred before the entry into force of the articles, "except when the status of the successor State in relation to the treaty has been resolved prior to the entry into force of these articles". In other words, if conflicts arising in connexion with colonial treaties had not been resolved, the future convention would apply. He did not object *a priori* to the contents of that amendment, which was an attempt to promote the progressive development and codification of customary international law, but he thought it would be acceptable only if it were drafted in a much more flexible manner.

56. His delegation fully supported the amendment submitted by Cuba (A/CONF.80/C.1/L.10/Rev.1) because it dealt with the consequences of the decolonization process and the liberation struggle occurring before the entry into force of the future convention and provided that emerging countries had the option of deciding, in the exercise of their sovereign rights, whether treaties concluded against their will and consent by colonial Powers should be maintained, rejected or modified. In order to make that point clear, he formally proposed that, in the Cuban amendment, the words "if they so wish and in the exercise of their sovereign rights" should be added between the word "may" and the word "avail".

57. Mr. ALMODOVAR (Cuba) said that his delegation had no difficulty in accepting the subamendment proposed by the representative of Somalia.

58. Sir Francis VALLAT (Expert Consultant), replying to the question raised by the representative of France concerning the meaning of the words "except as may be otherwise agreed" at the end of draft article 7, said he thought that question had been raised in the context of the relationship between draft articles 7 and 8, which, in his opinion, covered entirely different subject-matters. More specifically, however, he could say that the International Law Commission had decided that there were occasions when it was better to use the wording contained in draft article 7, no matter how vague it might be, than to try to identify the parties concerned, because such an attempt at identification could give rise to serious difficulties. Thus, the words "except as may be otherwise agreed" referred implicitly to the States concerned by, or involved in, a succession of States. A precedent for that wording was to be found in article 11 of the Vienna Convention on the Law of Treaties.

59. Referring in a general way to the discussion which had taken place on draft article 7, he said he thought that it was the kind of discussion the International Law Commission would have liked to hear on that article, which had been expected to give rise to considerable difficulties. He himself was more and more convinced that, quite apart from the provisions of article 7, the problem of the retroactivity or non-retroactivity of the draft articles needed to be solved by some procedural device to be included in the final clauses. In that connexion, he drew attention to article 24 of the Vienna Convention on the Law of Treaties and, in particular, to paragraph 4 of that article, which stated that "The provisions of a treaty regulating [...] other matters arising necessarily before the entry into force of the treaty apply from the time of the adoption of its text".[11] That article might be of interest and assistance to delegations in their efforts to solve the problems raised by draft article 7.

60. The CHAIRMAN said that the consideration of draft article 7 would be suspended in order to allow for informal consultations between the Vice-Chairman and interested delegations.

The meeting rose at 6.15 p.m.

[11] *Official Records of the United Nations Conference on the Law of Treaties, Documents of the Conference* (*op. cit.*), p. 292.

13th MEETING

Friday, 15 April 1977, at 10.40 a.m.

Chairman: Mr. RIAD (Egypt)

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*)

ARTICLE 8 (Agreements for the devolution of treaty obligations or rights from a predecessor State to a successor State)[1]

1. Sir Ian SINCLAIR (United Kingdom), introducing his delegation's amendment to article 8 (A/CONF.80/C.1/L.11), explained that its main purpose was to spell out the intention of the International Law Commission in proposing the article under discussion. Paragraph 1 of the article presented no difficulties for his delegation: it stated in clear terms the effects of devolution agreements. In reading the commentary to the article (A/CONF.80/4, pp. 24-29), he had noted that the International Law Commission emphasized the connexion between article 8 and articles 35 to 37 of the Vienna Convention on the Law of Treaties. In paragraph (22) of its commentary, the International Law Commission had ob-

[1] The following amendments were submitted: United Kingdom of Great Britain and Northern Ireland, A/CONF.80/C.1/L.11; Malaysia, A/CONF.80/C.1/L.15.

served: "The Commission, however, confirmed its view that article 8 is in accord with the principle that a treaty does not create an obligation for a third State unless the third State expressly accepts the obligation and that otherwise the possible effects of devolution agreements as treaties should be left to be governed by the relevant rules of international law. Throughout the Commission has proceeded on the basic assumption that the draft articles should be understood and applied in the light of the rules of international law relating to treaties, and in particular of the rules of law stated in the Vienna Convention, and that matters not regulated by the draft articles would be governed by the relevant rules of the law of treaties" (*ibid.*, p. 28). With those considerations in mind, his delegation had submitted an amendment designed to add, at the end of article 8, paragraph 2, a phrase reflecting the view taken by the Commission.

2. Mr. CHEW (Malaysia), introducing his delegation's amendment to article 8 (A/CONF.80/C.1/L.15), said that the article did not adequately reflect the practice adopted by a large number of States on their emergence from being colonial territories into independent statehood. Such States had often entered into devolution agreements the main aim of which had been to provide for continuity in respect of treaties concluded by the former colonial Powers. The Commission had cited a number of examples in its commentary to article 8. However, the article in its present form would nullify the effects of such devolution agreements. Certainly it should not be possible under international law for a treaty concluded between two States to pass rights and obligations to another State, but it seemed that third States should have the option of deciding whether or not to be bound by such a treaty.

3. Although he agreed with the spirit of article 8, he considered that it should cater for the cases where States were willing to accept the contents of a devolution agreement. His delegation had therefore proposed a change at the end of paragraph 1 of the article under discussion. That slight alteration would enable States which adopted the "clean slate" principle to elect to keep particular treaties in force with the consent of third States parties to those instruments.

4. Mrs. THAKORE (India) said that she was in favour of retaining article 8, as it stood. A unilateral declaration was a better expression of the free will of a newly independent State than a devolution agreement, but a devolution agreement could be useful because it enabled such a State to exercise certain rights and discharge certain obligations immediately after attaining independence. As devolution agreements were still being concluded, it was fitting that they should be dealt with in the draft.

5. The article under discussion had been well drafted. Paragraph 1 indicated that a devolution agreement did not constitute a notification of succession by a newly independent State, which must express its consent to be bound by a treaty, and that the same was true of third States. India had acted in conformity with that principle on attaining independence. The Indian Government had found that although it wished to be bound by certain pre-1947 treaties other parties to those treaties were not and that consequently the treaties in question could not be regarded as having devolved on India *ipso jure*. Other pre-1947 treaties had continued in force by express agreement between the parties. Article 8, paragraph 1, was therefore fully acceptable to her delegation.

6. Paragraph 2 established the primacy of the proposed convention over devolution agreements. It was useful to the extent that it emphasized the positive aspects of devolution agreements. She wished to point out that, although based on the same philosophy, unilateral declarations differed from devolution agreements and must be dealt with in a separate article. She therefore opposed the idea of merging articles 8 and 9. She was also against combination of paragraphs 1 and 2 of article 8 into a single paragraph. Article 8 in its present form seemed perfectly satisfactory.

7. Both the amendments to article 8 were constructive and useful. The United Kingdom amendment was based on the International Law Commission's commentary to the article and made explicit what was implicit. Her delegation favoured that amendment and the idea underlying the Malaysian amendment, which would benefit third States.

8. Mr. SETTE CÂMARA (Brazil) pointed out that article 8 was one of those which had given rise to prolonged debate in the International Law Commission. In dealing with the article, the first Special Rapporteur, Sir Humphrey Waldock, had concluded after examining the extensive practice of States and depositaries that since the practice in question differed so widely it was impossible to hold that a devolution agreement should be regarded as creating a legal nexus between a predecessor and a successor State or between a successor State and third States. The International Law Commission's final text had been accepted by most of the Governments that had made written or oral observations, and also by the second Special Rapporteur, Sir Francis Vallat. It embodied the generally accepted view that devolution agreements were no more than solemn declarations of intent concerning the maintenance in force of agreements concluded earlier by the predecessor State. As the recent practice of the Secretary-General and other depositaries confirmed, a new expression of the will of the successor State, in conformity with the normal procedure for the conclusion of treaties, was always required. In modern times it could no longer be held that devolution agreements implied a tacit consent or a novation of rights and obligations. Even supposing, as some writers still did, that such agreements justified a presumption of continuance, that presumption could not really be considered a legal presump-

tion. That was why the recent practice of the United Nations Secretariat had been restricted to inviting new States to become parties to treaties and protocols signed by the predecessor State.

9. Article 8, paragraph 1, stated the negative rule that the rights and obligations of the predecessor State did not pass to the successor State or other States parties by the mere fact that a devolution agreement existed. That view was consistent with the philosophy of the whole draft, which lay within the general framework of the law of treaties; by virtue of that law, there could be no treaty rights and obligations without the formal consent of the parties concerned.

10. However, devolution agreements undeniably served a purpose. They helped to fill the gap which inevitably occurred on independence, when all treaty links were automatically severed except as provided for in the proposed convention. Because of the complexities of modern international life, it was extremely difficult to re-create at once the web of treaty relations at present binding each country. Devolution agreements had often induced newly independent States to conclude treaties without which internal coexistence would be impossible.

11. Article 8, paragraph 2, embodied the principle of the primacy of the proposed convention over devolution agreements. In enunciating that principle, the International Law Commission had avoided expressing an opinion on the intrinsic validity of devolution agreements, which in fact had always been tainted with a presumption of political and economic coercion. As they were negotiated at a time when the territory in question was still in a position of dependence vis-à-vis the metropolitan State, they were naturally regarded as unfair bargains. If they were viewed as mere declarations of intent, the question of their intrinsic validity did not arise.

12. The two amendments to article 8 were provisos implicit in the article itself. As he had no particular views about them, he would express his full agreement with the International Law Commission's draft of article 8.

13. Mr. STUTTERHEIM (Netherlands) said that the International Law Commission, in paragraph (3) of its commentary to article 8 had mentioned the devolution agreement concluded between the Netherlands and Indonesia. He wished to point out that after the conclusion of that agreement, his Government had realized that devolution agreements served little purpose, and it had not concluded one when Surinam had attained independence.

14. Commenting on the Malaysian amendment, he said that it was not of great use since its content was already apparent from the article itself. On the other hand, he had no objection to the United Kingdom amendment.

15. Mr. YIMER (Ethiopia) said that he favoured article 8 in its present form. The United Kingdom amendment sought to add a proviso on a point already regulated in the Vienna Convention on the Law of Treaties. The Malaysian amendment was even less satisfactory; it appeared to give third States the right of deciding, on behalf of the successor State, whether devolution agreements would be applicable to it, regardless of its wishes in the matter. If that was indeed the intention of its sponsors, the amendment was unacceptable.

16. Mr. WALKER (Barbados) approved draft article 8. Paragraph 1 of the article reflected the existing practice according to which, in respect of devolution agreements, there was no legal nexus between the successor State and third States. Nevertheless, devolution agreements had certain merits; they clarified the position as between the predecessor State and the successor State; third States parties to a treaty were more ready to grant a new State the benefits of the treaty if the latter had solemnly undertaken to be bound by it; States and international organizations which drew up lists of parties to treaties or which were depositaries of multilateral treaties might be willing to accept a devolution agreement as evidence of a succession.

17. Mr. MARESCA (Italy) said that the principles underlying the proposed convention should be elaborated and put together in such a way as to constitute a coherent whole. The balance of the draft under examination depended on the weight given to the "clean slate" principle and the continuity principle respectively. In article 8, the Commission had favoured the "clean slate" principle, with devolution agreements being regarded as binding exclusively the States which had concluded them. That principle, already a clear one, had been further elucidated by the International Law Commission in its commentary. One of the soundest principles of the 1969 Vienna Convention on the Law of Treaties was that treaties must be respected but only by those States which had concluded them, and that they conferred no rights or obligations on third States. Nevertheless, there were other rules of customary international law which had been embodied in the 1969 Convention, such as the principle that treaties could produce certain effects for third States which consented to them. That principle was expressed in articles 35 and 36 of the 1969 Convention.

18. His delegation had examined the two amendments to article 8 from that point of view. The United Kingdom amendment was drafted extremely well; it safeguarded the application of the rules of international law governing the rights and obligations arising for a third State from a treaty as laid down in articles 35 and 36 of the 1969 Vienna Convention. The Malaysian amendment also improved article 8; it sought to safeguard the wishes of other States parties to the treaties in question.

19. Mr. FERNANDINI (Peru) approved article 8 of the draft, which had been drafted in the light of practice. Although his delegation did not oppose the Malaysian and United Kingdom amendments, it did not think they introduced any new material.

20. Sir Francis VALLAT (Expert Consultant) said that the amendment by Malaysia, like that by the United Kingdom, had presumably been drafted with a view to clarifying the intentions of the International Law Commission. In that connexion, he wished to point out that not all of the International Law Commission's discussions were reflected in the summary records of its meetings, since a great deal had been discussed in the Drafting Committee or in the corridors. The Commission had duly considered each of the questions involved in the two amendments to article 8. Generally speaking, it had taken the view that they were dealt with implicitly in article 8 and that any change in the provisions thereof would give rise to considerable difficulties.

21. With reference to the United Kingdom's amendment, he pointed out that the International Law Commission had at all times taken care to set the draft within the general framework of the 1969 Vienna Convention. That concern might well be reflected in the preamble to the future convention, since such a clarification would facilitate its interpretation. In principle, the Commission had not referred to particular aspects of the law on treaties and, in the circumstances, preferred the explanations contained in paragraph (22) of its commentary on article 8 to a specific reference of the kind proposed by the United Kingdom delegation. The point had already been considered in detail by the International Law Commission's Drafting Committee, although it could still be considered by the Drafting Committee of the Conference.

22. The Malaysian amendment raised more or less the same problem. Article 8, paragraph 1, had been drafted with great caution, in order to avoid adopting a negative attitude towards devolution agreements or to exaggerate their importance. But it was clear that article 8 did not preclude wider application of the devolution agreements in certain circumstances. However, it would be better to reflect further on the question of whether it sufficed for the other States parties to the treaties in question to agree to the application of such agreements. Again, that matter had been considered by the International Law Commission's Drafting Committee, but it could still be examined by the Drafting Committee of the Conference.

23. Mr. SCOTLAND (Guyana) said that, according to the International Law Commission's commentary on article 8, international law, unlike municipal law, did not recognize that a party to a contract could assign or transfer its rights under that contract without the consent of the other party to the contract. Therefore, a devolution agreement concluded between the predecessor State and the newly independent State immediately after the latter's accession to independence could not, by itself, substitute the newly independent State for the predecessor State as a party to the treaties concluded by the predecessor State with other States, for the other States parties had to consent to such substitution. Accordingly, the draft convention prescribed the cases in which the other parties were to be understood as giving their consent. In the case of multilateral treaties, the other parties could be deemed as giving their consent when the new State established its status in relation to the treaty in accordance with the notification procedure prescribed in the convention. In the case of bilateral treaties, under article 23 of the draft a party to a treaty was considered as consenting to the substitution of the successor State for the predecessor State when it did so expressly or when its conduct implied consent.

24. Some Governments had pointed out in their comments on the draft articles that, when it entered into force, the convention would govern the effects of a succession of States in respect of treaties and that devolution agreements and unilateral declarations would then become superfluous. They had therefore taken the view that article 8 should be deleted, together with its counterpart, article 9. But, in the absence of a specific provision in that regard, it could also be maintained that the intention of the convention was not to deal exhaustively with the matter and to invalidate a transfer of treaty obligations and rights by methods not expressly forbidden by the convention. Article 1 of the convention did say that the "present articles apply to the effects of a succession of States in respect of treaties between States". However, it did not say that the effects of a succession of States were governed exclusively by those articles; hence, it did not preclude the possibility of them being governed by rules other than those enunciated in the convention.

25. In order to prevent such arguments from being advanced later, it would be better to settle the matter now, in the convention, especially since devolution agreements had become an important aspect of succession of States as a result of the process of decolonization. The convention could not ignore their existence if its intention was to deal exhaustively with the effects of State succession in respect of treaties between States. He viewed paragraph 1 of article 8, as proposed by the International Law Commission, in that way and was ready to accept the principle set forth therein.

26. The Malaysian amendment to paragraph 1 stated, in effect, that a devolution agreement could be valid if the other parties to the treaty consented to it. But paragraph 1 of the draft article said quite simply that a devolution agreement alone was not enough to effect a valid transfer of treaty rights and obligations. It followed that, if the transfer was to be valid, it had to be based on something other than the actual devolution agreement. However, article 23 of

the draft convention showed that the consent of the other party to the treaty was sufficient basis for a valid transfer. It was pointless, therefore, to insert at the end of paragraph 1 an exception concerning cases in which the other parties agreed to the transfer. Hence, the Malaysian amendment was seeking to exclude from the scope of paragraph 1 cases to which the paragraph would never apply.

27. He was not fully convinced of the need for the provision in paragraph 2 of the article. If that paragraph was deleted, paragraph 1 would state that devolution agreements were not, by themselves, enough to effect a transfer of treaty rights and obligations, and article 23 and others would indicate how a transfer was to be made. Consequently, there appeared to be nothing to add to the provision in paragraph 1. He questioned the value of paragraph 2 and, in particular, of the words "Notwithstanding the conclusion of such an agreement", words which seemed to indicate that it was a safeguard clause. Such a clause would be warranted only if the aim was to limit the application of an agreement which, although recognized as valid by the convention, might conflict with the provisions of the convention, but it was pointless in the case of an agreement whose validity was not recognized by the convention itself. If the words "Notwithstanding the conclusion of such an agreement" were deleted, it was difficult to see how the remainder of paragraph 2 could conflict with any provision of the convention.

28. In his opinion, concern to emphasize a principle that had already been enunciated could not, alone, warrant the retention of paragraph 2. Retention of that paragraph was not only unjustified from the drafting point of view—it might even give the impression that the convention, in the final analysis, recognized that a devolution agreement could in some way suffice to produce a transfer. It was true that an agreement of that kind could have some effect on the relations between the predecessor State and the successor State. However, it was not those relations that were covered by article 2 but the transfer to the successor State of the treaty rights and obligations of the predecessor State towards other States parties to the treaties in question.

29. It was difficult, in any case, to explain why the words "Notwithstanding the conclusion of such an agreement" did not also appear at the beginning of paragraph 2 of article 9. There was a "difference in tone", which the International Law Commission had noted in paragraph (20) of its commentary on article 9 (*ibid.*, p. 34). The difference was probably due to the fact that the conclusion of a devolution agreement sometimes involved pressure by the predecessor State on the newly independent State. He appreciated those considerations, but could not allow them to influence the drafting of an international instrument in a way that might later give rise to difficulties of interpretation.

30. His delegation was, in principle, ready to accept paragraph 1 of article 8, without the Malaysian amendment, for which it saw no need. Paragraph 2 seemed superfluous, but if it was to be retained, he would propose the deletion of the words "Notwithstanding the conclusion of such an agreement".

31. Mr. HELLNERS (Sweden) approved the principle enunciated in paragraph 1 of article 8 and the way in which it was formulated. As to paragraph 2, like the representative of Guyana he felt that the words "Notwithstanding the conclusion of such an agreement" were pointless and might be interpreted wrongly. He therefore proposed that the Drafting Committee should deal with their deletion. The United Kingdom's amendment did not call for any comment. The Malaysian amendment, as the representative of Brazil had pointed out, was already covered in paragraph 1 by the words "in consequence only of the fact that".

32. Consequently, the two amendments were not necessary. However, if the Malaysian amendment met with acceptance, the word "other" should be deleted, for it might be misleading and give the impression that the successor State had no say in the matter of its own position regarding the treaty.

33. Mr. ESTRADA-OYUELA (Argentina) said that he was fully satisfied with article 8, as submitted by the International Law Commission. Like the representative of Brazil, he considered the two amendments to be not only pointless but also dangerous.

34. By stipulating that devolution agreements were not by themselves enough to transfer to the successor State the obligations and rights of the predecessor State towards the other parties to a treaty, article 8 took into account the fact that, at the time when such agreements were concluded, the successor State was not always free to manifest its will, since it might be under pressure from the predecessor State. For that reason, in the practice of the Secretary-General, mentioned in paragraph (13) of the International Law Commission's commentary on article 8, "Some further manifestation of will on the part of the newly independent State with reference to the particular treaty is needed to establish definitively the newly independent State's position as a party to the treaty in its own name" (*ibid.*, p. 26). The Commission also stated in paragraph (18) of its commentary that "The practice of States does not admit [...] the conclusion that a devolution agreement should be considered as by itself creating a legal nexus between the successor State and third States parties in relation to treaties applicable to the successor State's territory prior to its independence" and that "neither successor State nor third States nor depositaries have as a general rule attributed automatic effects to devolution agreements" (*ibid.*, p. 28).

35. In paragraph 1, of the draft article, the words "in consequence only of the fact that" opened up a

possibility, as the representative of Brazil had pointed out. The Malaysian amendment and the United Kingdom's amendment would be more far-reaching and would be dangerous in that they might create difficulties of interpretation. Accordingly, he would prefer to retain article 8 in its present form, but would not object to the proposal by Guyana to delete the opening words of paragraph 2.

36. Mr. SATTAR (Pakistan) said that he had no objection to article 8 as proposed by the International Law Commission.

37. Mr. KOH (Singapore) fully endorsed the explanation given by the Expert Consultant as to why article 8 had been drafted as it was without the qualification proposed by Malaysia in its amendment. He felt that article 8 stated quite clearly the principle that a devolution agreement alone was not sufficient to assign to a successor State the obligations or rights of a predecessor State vis-à-vis other parties to a treaty, and he considered it both unnecessary and undesirable to limit that principle by introducing the proviso suggested by Malaysia. Furthermore, the wording of the Malaysian amendment was unsatisfactory: the term "other States Parties" could give the impression that a devolution agreement might bind the successor State without its consent if third States so decided. He was therefore unable to accept that amendment.

38. Mr. PEDRAJA (Mexico) said that article 8 should be deleted, since it completely nullified devolution agreements, which conflicted with the "clean slate" principle, while half recognizing them. Moreover, the International Law Commission had stated in paragraph (21) of its commentary to article 8: "The validity of a devolution agreement in any given case should [...] be left to be determined by the relevant rules of the general law of treaties as set out in the Vienna Convention, in particular in articles 42 to 53" (*ibid.*, p. 28).

39. His delegation felt that the provisions in article 8 were out of place. The article stipulated that devolution agreements would be governed by the convention; that would be the case anyway, without it being necessary to say so expressly. It was unnecessary to repeat that irregular treaties should be governed by the convention, since it was quite evident that the convention would apply to them. Article 8 was therefore superfluous. Not only did it simply repeat an established principle, but also it might give rise to confusion which could be detrimental to newly independent States.

40. The Malaysian amendment would only increase the confusion arising from article 8 by compelling a successor State to act in a manner contrary to its sovereign will.

41. The United Kingdom amendment conflicted with the "clean slate" principle, on which the Commission's draft was based, in that it imposed burdens on the successor State in favour of the third State.

42. He felt that article 8 did not belonging in the draft convention and that the proposed amendments failed to correct its shortcomings. He would therefore be unable to support them.

43. Mr. TABIBI (Afghanistan) observed that article 8 provided for a mainly procedural régime designed to effect the smooth transfer of power from the predecessor State to the successor State. Consequently, it had no legal effect on the treaty and even less on the State or States parties to the treaty.

44. In addition, a devolution agreement was considered legal, firstly, if the treaty giving rise to the rights and obligations to be transferred from the predecessor State to the successor State was valid; secondly, if the treaty itself expressly provided that it should continue in force and devolve on the successor State; and, thirdly, if the other contracting parties agreed to the act of devolution. Unless those three conditions were met, a devolution agreement was not only without any legal effect but might in some cases violate international law, for a devolution agreement might be forced on the successor State by the predecessor State and represent the "price of independence". It could also create an unfavourable situation for the other contracting Parties. A devolution agreement could therefore have legal effects and in some cases affect the rights of third parties, particularly in regard to bilateral treaties. Articles 34 and 35 of the Vienna Convention on the Law of Treaties safeguarded the rights and interests of third States, since it was not just the intention of a single contracting party but the intention of all parties to the treaty which was the foundation of the legal rights and obligations deriving from a bilateral or multilateral treaty. A devolution agreement between the predecessor State and the successor State was therefore only a procedural agreement concluded solely for administrative purposes. Accordingly, he agreed with the view expressed by the Commission in paragraph (6) of its commentary to article 8 to the effect that "a devolution agreement is in principle ineffective by itself to pass either treaty obligations or treaty rights of the predecessor to the successor State" (*ibid.*, p. 25). In his view, that statement was particularly true in regard to bilateral treaties.

45. Regarding the assignment of rights, the Commission also said in paragraph (8) of its commentary that it was "crystal clear that a devolution agreement cannot bind the other States parties to the predecessor's treaties (who are "third States" in relation to the devolution agreement) and cannot, therefore, operate by itself to transfer to the successor State any rights vis-à-vis those other States parties. Consequently, however wide may be the language of the devolution agreement and whatever may have been the intention of the predecessor and successor States, the devolution agreement cannot of its own force

pass to the successor State any treaty rights of the predecessor State which would not in any event pass to it independently of that agreement" (*ibid.*).

46. A devolution agreement should therefore be considered solely as an act whereby the newly independent State manifested its intentions with regard to the treaties concluded by its predecessor and the predecessor State formally announced that it was no longer bound by the obligations arising from those treaties in respect of the territory which had become independent. As a result, the devolution agreement referred to in article 8 and the unilateral agreement referred to in article 9 had no bearing on the legal position of third States, any more than they had on the treaty itself. The situation was different in the case of article 10, as the treaties referred to in that article expressly provided that on the occurrence of a succession of States, a successor State should have the option to consider itself a party thereto. That was so in particular with the General Agreement on Tariffs and Trade,[2] the Second International Tin Agreement, 1960,[3] the Third International Tin Agreement, 1965,[4] the International Coffee Agreement, 1962[5] and the International Sugar Agreement, 1968.[6]

47. He was therefore inclined to support the United Kingdom amendment and, in principle, the Malaysian amendment, since they established a legal nexus between article 8, which was basically procedural, and the other draft articles. As article 9 was also concerned with procedure, the same link should be established between that article and the remainder of the draft.

48. Mr. MEDJAD (Algeria) said that he was entirely satisfied with article 8 inasmuch as it reflected an established international practice. The International Law Commission had considered that the decisions of the successor State were not entirely free at the time of a succession of States, owing to the pressure which the predecessor State could bring to bear on the successor State to pay a "price for its independence". Consequently, the International Law Commission had attributed only very limited effects to the devolution agreement and had regarded it as a simple declaration of intent by the successor State in respect of treaties concluded by the predecessor State in regard to its territory.

49. He was therefore unable to accept the Malaysian amendment to paragraph 1 of article 8, which would only impair the position of the successor State. In his view, the existing wording of draft article 8, paragraph 2 was perfectly adequate and the United Kingdom amendment to the paragraph contributed nothing new to the provision. He therefore hoped that article 8 would remain unchanged.

50. Mr. YASSEEN (United Arab Emirates) said that he favoured article 8 as proposed by the International Law Commission. Paragraph 1 of the article was in conformity with the general provisions of the law of treaties, since it confirmed that a succession of States in respect of treaties was not based on an agreement between the predecessor State and the successor State but involved other factors. The second paragraph was very important, as it made it clear that the assignment of the treaty rights and obligations of the predecessor State to the successor State should take place in accordance with the provisions of the proposed convention. He could therefore see nothing that warranted the amendments submitted by Malaysia and the United Kingdom.

51. The Malaysian amendment was not only unnecessary but likely to cause confusion. The United Kingdom amendment doubtless had it merits, but the safeguard it provided was self-evident; that safeguard applied to the entire draft and did not need to be repeated in each article. He therefore favoured leaving article 8 as it stood.

52. Mr. MIRCEA (Romania) said that he could go along with the view of the majority of the Committee and accept the Commission's proposal for article 8. He nevertheless wished to make a number of reservations. Paragraph 1 was generally acceptable to his delegation. However, although Romania regarded devolution agreements as simple declarations of intent, it was clear from paragraph 1, as the Malaysian amendment confirmed, that a devolution agreement had broader implications than a declaration of intent. As to the idea of assessing the validity of a devolution agreement, that should of course be done when the territory concerned acceded to independence, not only in order to take account of a possible "price of independence" but also from the legal point of view. Moreover, his delegation felt that there was a contradiction between paragraph 1 and paragraph 2 of the draft article: either the States parties to a given treaty would accede to the devolution agreement, thereby solving the problem of succession, or else the parties concerned would decide to apply the proposed convention.

53. Finally, his delegation was unable to accept the Malaysian amendment, which only compounded the difficulties raised by paragraph 1. As to the United Kingdom amendment, his delegation was uncertain whether the reference to a third State meant third States in relation to the proposed convention or third States in relation to the devolution agreement. It favoured the first idea but felt that it would be going too far to adopt the second. He hoped that the Expert Consultant would explain the reasons why the

[2] GATT, *Basic Instruments and Selected Documents*, vol. IV (Sales No. GATT/1969-1), p. 1.

[3] *United Nations Tin Conference, 1960 — Summary of Proceedings* (United Nations publication, Sales No. 61.II.D.2), p. 25.

[4] *United Nations Tin Conference, 1965 — Summary of Proceedings* (United Nations publication, Sales No. 65.II.D.2), p. 29.

[5] *United Nations Coffee Conference, 1962 — Summary of Proceedings* (United Nations publication, Sales No. 63.II.D.1), p. 56.

[6] *United Nations Sugar Conference, 1968 — Summary of Proceedings* (United Nations publication, Sales No. E.69.II.D.6), p. 56.

Commission had decided not to merge the two paragraphs of article 8 into a single provision.

54. Sir Francis VALLAT (Expert Consultant) said that he could not explain straightaway exactly why the International Law Commission had decided not to combine the two paragraphs of article 8. However, he would refer the Committee to paragraph 64 of the summary record of the International Law Commission's 1267th meeting, which might answer the question put by the representative of Romania. A member of the Commission had stated: "The proposal that the two paragraphs should be merged raised a number of problems, without removing the ambiguities the Commission was trying to eliminate."[7] Drafting considerations had made it difficult to combine the two paragraphs; one of the difficulties concerned the relationship between draft article 8 and draft article 15, entitled "Position in respect of the treaties of the predecessor State". The International Law Commission had finally decided that it was best to have two separate paragraphs in the interests of clarity.

55. Mr. JELIĆ (Yugoslavia) said that he favoured the Commisson's version of article 8. The Malaysian amendment, far from clarifying the article, greatly altered its meaning; as he saw it, the International Law Commission had considered devolution treaties as treaties whose purpose was solely to govern the relations between the predecessor State and the successor State and neither to impose obligations nor confer rights on third States. The idea underlying article 8 was that devolution agreements concerned only the intentions of the predecessor State and the successor Sate, and that the successor State should accept in a separate and additional act the rights and obligations arising from the treaties concluded by the predecessor State. Under the Malaysian amendment, devolution could become final simply through the acts of third States, and the Yugoslav delegation could not accept that. As to the United Kingdom amendment, it did not clarify article 8 and appeared unnecessary.

56. Sir Ian SINCLAIR (United Kingdom) said that the United Kingdom amendment was a technical one and that his delegation had submitted it solely with a view to sounding out the Committee's views on the matter. The amendment might therefore be referred to the Drafting Committee, which might bear in mind that it involved a more general problem, namely the relationship between the draft under consideration and the Convention on the Law of Treaties. The Drafting Committee might envisage that point being dealt with in the preamble. His delegation was prepared to accept whatever view the Drafting Committee took regarding its amendment.

57. Mrs. HUMAIDAN (Democratic Yemen) said that she favoured retention of article 8 of the draft; the amendments submitted were not particularly useful. She suggested, however, that the first phrase of paragraph 2 should be deleted, but would not insist on that point if the suggestion gave rise to difficulties.

58. Mr. NAKAGAWA (Japan) supported the idea expressed in article 8 that the *res inter alios acta* principle applied to devolution agreements. Furthermore, as the International Law Commission had stated in paragraph (6) of its commentary, "the institution of 'assignment' found in some national systems of law by which, under certain conditions, contract rights may be transferred without the consent of the other party to the contract does not appear to be an institution recognized in international law" (*ibid.*). Turning to a question which had not been explicitly dealt with in article 8, namely, the meaning of a devolution agreement for other States parties, he said that, first, article 8, paragraph 2, in no way detracted from the value of a devolution agreement as an expression of the successor State's intention to continue the treaty in question. Third States could regard it as indicating the intention of the successor State. Secondly, a devolution agreement could have certain legal consequences for the third State: that question was dealt with in the Convention on the Law of Treaties. Paragraph 2 should not, in any case, jeopardize application of the rules set forth in the Convention on the Law of Treaties to a devolution agreement. That was why his delegation welcomed the United Kingdom's amendment, but deemed unnecessary the Malaysian amendment, which quite obviously did not refer to the same question as paragraph 1 of the draft article.

59. Mr. YACOUBA (Niger) said that at first sight article 8 seemed satisfactory, because it ensured protection of a fundamental principle, namely, that of the autonomy of the will of the parties. The members of the Committee had expressed conflicting views on the question of whether the successor State should or should not succeed to the rights and obligations contracted by the predecessor State. The convention would therefore have the merit of resolving that problem if article 8 was maintained, because the International Law Commission had succeeded in establishing a balance between the two opposing theses. He endorsed the Commision's analysis of the system of specific notification of succession and agreed that notification was more important than the devolution agreement. He rejected the Malaysian amendment for the reasons given by other delegations, and considered that the United Kingdom's amendment, which did not in essence modify the scope of article 8 since it referred to a fundamental principle of international law, could be referred to the Drafting Committee.

60. Mr. HERNANDEZ ARMAS (Cuba) said that he shared the opinion of the International Law Commis-

[7] *Yearbook of the International Law Commission, 1974*, vol. I, p. 86, 1267th meeting, para. 64.

sion on the subject of devolution agreements, which were a price States acceding to independence had to pay to liberate themselves from the colonial Power. Article 8 was clear, precise and balanced. The International Law Commission could not be held responsible for the presence of the article in the draft, because devolution agreements definitely existed and it had to regulate them. Such agreements should be examined, not from the point of view of third States, as delegations favouring amendment of the article had done, but from the point of view of the successor State, on which harsh conditions were imposed in favour of a third State, which was generally acting in complicity with the colonial Power. His delegation deplored the fact that one delegation had proposed the deletion of paragraph 2, because it was a safeguard clause which the successor State could, once a devolution agreement had been concluded, invoke in order to put an end to treaties which were prejudicial to it but which it had had to accept by signing the devolution agreement.

61. Mr. KOECK (Holy See) said that if, as certain delegations proposed, article 8 was deleted because it might give the impression that devolution agreements enabled the predecessor State to transmit to the successor State rights and obligations which would not otherwise have been transmitted to it, there would be a serious gap in the convention from which it might be inferred that the International Law Commission had decided not to settle the question. It was desirable, therefore, that article 8 should be so worded as to make it clear that in itself the devolution agreement had no effect on international treaty relations; he suggested the deletion of the word "only" from the phrase "only of the fact" in paragraph 1.

62. Mr. KRISHNADASAN (Swaziland) said that, although a devolution agreement could be concluded under coercion, it was important to retain article 8 because it reflected past practice and, in view of the debate on possible retroactive application of the convention, clarified the question of the succession of States in respect of treaties. His delegation had no objection to the substance of article 8. Paragrpah 1 should be retained as drafted; he could not accept the Malaysian amendment because, in his opinion, the words "only of the fact" in paragraph 1 met the point made by the Malaysian delegation and the proposed addition would not facilitate understanding of the paragraph. The Holy See's proposal to delete the word "only" from the phrase "only of the fact" related to a question of substance, not of drafting, and ran counter to Swaziland's views. The United Kingdom's amendment to paragraph 2, which must be retained, should be referred to the Drafting Committee.

63. Mr. EUSTATHIADES (Greece), referring to the United Kingdom's amendment, said that his delegation wished to urge the Drafting Committee to examine thoroughly the question raised in that amendment, which, in his opinion, was not a drafting matter. Referring to paragraph (22) of the International Law Commission's commentary on article 8, he drew attention to the relationship between article 8 and the general law of treaties and, in particular, between that article and articles 35 to 38 of the Convention on the Law of Treaties. He hoped that the Drafting Committee would make its opinion on that point known to the Committee.

64. Mr. TJIRIANGE (Observer for SWAPO), speaking at the invitation of the Chairman, said that the organization he represented attached great importance to the Conference on Succession of States in respect of Treaties, because the oppressed people of Namibia, who had been deprived of their sovereign rights, considered that the question of succession of States in respect of treaties was currently one of the fundamental problems of the liberation movement. Although many countries and nations had obtained their independence during the past 30 or 40 years, millions of human beings were still subject to colonial and foreign domination and deprived of their sovereign rights. Most subject peoples had organized liberation movements to fight for national independence, and no power would stop their march to independence. Once they had regained their sovereign rights over their territories, those peoples would come up against the problems which formed the subject of the Conference.

65. He emphasized that Namibia was a special case and that the world community had special responsibilities with respect to it. The United Nations was supposed to assume responsibility for the territory until power had been transferred to the Namibian people, and, to that end, it had established a special body, the United Nations Council for Namibia. The United Nations had taken a number of legal measures with respect to Namibia. It had, in particular, terminated South Africa's mandate over Namibia, which meant that South Africa was no longer entitled to exercise authority over the territory. It continued to occupy the territory illegally, in violation of United Nations resolutions and against the wishes of the Namibian people. Any action by South Africa concerning Namibia was accordingly illegal.

66. South Africa could not, therefore, be regarded as a predecessor State of Namibia, within the meaning of article 8 and article 2, paragraph 1, subparagraph (*c*) of the draft. Only the United Nations Council for Namibia could claim the right to assume responsibility for the territory's treaty relations with other interested States. The convention under consideration did not take account of situations such as that of Namibia. SWAPO deplored that shortcoming and hoped that the Conference would give Namibia's case the attention it deserved.

67. Article 8 raised no problems for SWAPO and he fully shared the point of view expressed by the rep-

resentative of Algeria concerning the article. It was obvious, however, that peoples who were deprived of their sovereign rights and had no say in their country's affairs, could not be held responsible, once they had regained their sovereignty, for treaties which had been imposed on them. That did not mean that all treaties concluded by the predecessor State would necessarily be terminated with the accession to independence, but the Namibian people reserved the right, after examining the treaties, to take such decisions as they deemed appropriate in the light of their interests.

68. He drew the Commission's attention to the attempt made by South Africa, assisted by its allies, to annex part of Namibia's territory, namely Walvis Bay, which had formerly been occupied by United Kingdom colonial forces and the administration of which had been handed over to the Cape Colony. The territory of Namibia had been clearly defined in the course of the long struggle of the Namibian people and of the progressive forces supporting them. The future free and independent State of Namibia would cover the whole of the territory to which it was entitled, including Walvis Bay. South Africa was trying to impose its will on the Namibian people, but so far as SWAPO was concerned the problem of Walvis Bay did not exist or existed only in the minds of those who had created it. The fact was that the whole of Namibian territory was illegally occupied and one day it would all be liberated.

69. The CHAIRMAN said that unless he heard any objection he would consider that the Committee agreed to refer the United Kingdom's amendment to the Drafting Committee.

70. Mr. ESTRADA-OYUELA (Argentina) pointed out that the United Kingdom amendment was not merely one of drafting, and reminded members that the representative of the United Kingdom had suggested that account should be taken of it in the preamble to the draft.

71. Sir Ian SINCLAIR (United Kingdom) said that account could, indeed, be taken of his amendment in the preamble to the draft, but that it was up to the Drafting Committee to take a decision on the matter. He reiterated that his delegation would support any decision the Drafting Committee deemed appropriate concerning the amendment.

The meeting rose at 1.15 p.m.

14th MEETING

Friday, 15 April 1977, at 3.55 p.m.

Chairman: Mr. RIAD (Egypt)

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*)

ARTICLE 8 (Agreements for the devolution of treaty obligations or rights from a predecessor State to a successor State (*continued*)[1]

1. Mr. ARIFF (Malaysia) said that, as some delegations seemed to have misunderstood the purpose of the amendment to draft article 8 submitted by his delegation (A/CONF.80/C.1/L.15), he wished to make it clear that his delegation supported the general principle that a devolution agreement had no effect on other States parties to the treaties of the predecessor State. In other words, the obligations or rights of the predecessor State did not become the obligations or rights of the successor State towards other States parties to the predecessor State's treaties. That principle was, of course, correct, for as had been pointed out in paragraphs (5) and (6) of the International Law Commission's commentary to draft article 8 (A/CONF.80/4, p. 25), the assignment of obligations or rights by a devolution agreement could not bind other States parties to the predecessor State's treaties, since they were third parties or strangers to the devolution agreement.

2. There were, of course, always exceptions to the general rule. Devolution agreements had occasionally been concluded between predecessor States and successor States for the sake of continuity of the treaty régime, apart from other reasons. He noted that draft article 8, as it stood, completely ignored the existence of international relations as practised by predecessor States and successor States during the period of transition designed to ensure the continuity of the treaty régime. In international relations, there had been occasions when other States parties to the predecessor State's treaties had agreed to accept obligations or rights under previous treaties assumed by the successor State in the devolution agreement. When Singapore had separated from Malaysia, those two States had concluded a devolution agreement, as was mentioned in the International Law Commission's commentary to draft article 8 (*ibid.*, paragraph (3)), and a number of agreements which had been concluded between Malaysia's predecessor State and third States, and which had been applicable to the

[1] For the amendments submitted to article 8, see 13th meeting, foot-note 1.

former Federation of Malaya, now benefited Malaysia and other States parties.

3. Some form of option should therefore be given to third States to acknowledge the *bona fide* intention of the successor State, as expressed in a devolution agreement, to accept and be bound by the terms and provisions of treaties concluded by the predecessor State. The devolution agreement was a kind of notification to other States parties to the predecessor State's treaties, though in itself it had no effect on the other parties to those treaties; the tacit approval of third States was required before the devolution agreement could have any effect.

4. His delegation had believed that the amendment it had submitted would have the effect of making a devolution agreement valid in respect of States parties to the predecessor State's treaties if those States agreed that the successor State should replace the predecessor State in such treaties by subrogation. The statements made by a number of delegations had indicated, however, that his delegation's amendment had caused some confusion, and he therefore proposed that it be amended to read: "unless the other parties to the particular treaty agree to accept the obligations or rights of the predecessor State as the obligations or rights of the successor State". He hoped that subamendment would dispel any doubts about his delegation's intentions.

5. Mr. MUDHO (Kenya) said that, while he understood why the United Kingdom amendment (A/CONF.80/C.1/L.11) should be referred to the Drafting Committee, the same did not apply to the subamendment just proposed by the representative of Malaysia. In his opinion, the Committee should take a vote on the Malaysian subamendment.

6. Mr. SATTAR (Pakistan) said his delegation believed that the Drafting Committee could give adequate consideration to the subamendment proposed by the representative of Malaysia, and that the Committee of the Whole should not vote on that proposal.

7. Mr. OSMAN (Somalia) supported the view expressed by the representative of Pakistan.

8. Mr. MEDJAD (Algeria) said that the substance of the amendments proposed by the United Kingdom and Malaysia was very different. Moreover, the view that all amendments could conveniently be referred to the Drafting Committee was wrong. It would be a dangerous precedent for the Committee of the Whole to entrust the Drafting Committee with the task of solving its problems.

9. Mr. AMLIE (Norway) supported the view expressed by the representative of Algeria. If it was not clear whether an amendment involved drafting problems or matters of substance, the issue should be settled by the Committee of the Whole, not by the Drafting Committee.

10. Mr. KATEKA (United Republic of Tanzania) said that, as a result of the subamendment proposed by Malaysia, there was now some confusion concerning the United Kingdom amendment. He noted that, at the Committee's 13th meeting, no decision had been taken on the status of the United Kingdom amendment, which was as much a matter of substance as the Malaysian subamendment. He therefore proposed that the Committee should vote both on the United Kingdom amendment and on the Malaysian subamendment.

11. Mr. HELLNERS (Sweden) supported that proposal. His delegation was convinced that the Malaysian subamendment and the United Kingdom amendment raised substantive issues, and it was highly desirable for the Committee of the Whole to establish a precedent in regard to the role of the Drafting Committee. Reference to that Committee of amendments which clearly related to the substance of a draft article should be avoided at all costs.

12. Mr. TABIBI (Afghanistan) said that, as a matter of courtesy, the two amendments before the Committee, one of which had been submitted by a predecessor State and the other by a successor State, should be given equal treatment.

13. Mr. MUSEUX (France) urged that the rules of procedure should not be applied too pedantically. At the beginning of the Conference, there had been general agreement in the General Committee that every effort should be made to proceed by consensus. Both amendments should be referred to the Drafting Committee, which had so far succeeded in finding satisfactory solutions in most cases, including those raising substantive points. Frequent recourse to voting would produce a worthless convention.

14. Mr. MARESCA (Italy) and Mr. KAMIL (Indonesia) supported the views expressed by the French representative.

15. Mr. AMLIE (Norway) proposed that, in the interests of equality of treatment, a vote should also be taken on the United Kingdom amendment.

16. Mr. YIMER (Ethiopia) supported the Norwegian representative's proposal.

17. Mr. KEARNEY (United States of America) moved the closure of the debate under rule 24 of the rules of procedure (A/CONF.80/8). He further proposed that a vote should be taken on the amendments before the Committee.

18. After a procedural discussion in which Mr. TODOROV (Bulgaria), Sir Ian SINCLAIR (United Kingdom), Mr. ARIFF (Malaysia), Mr. KAMIL (Indonesia), Mr. KOECK (Holy See), Mr. SATTAR

(Pakistan), Mr. OSMAN (Somalia) and Mr. KATEKA (United Republic of Tanzania) took part, Mr. MUSEUX (France) moved the supension of the meeting, under rule 25 of the rules of procedure, for consultations between delegations.

19. Mr. AMLIE (Norway) opposed the French representative's motion.

20. Mr. ARAIM (Iraq) suggested that a vote might be taken in order to avoid a prolonged and confused debate on procedural matters.

21. The CHAIRMAN asked the Committee to take a decision on the motion to suspend the meeting.

The motion was carried.

The meeting was suspended at 5.15 p.m. and resumed at 5.35 p.m.

Mr. Ritter (Switzerland), vice-chairman, took the Chair.

22. Following a short procedural discussion in which the CHAIRMAN, Sir Ian SINCLAIR (United Kingdom) and Mr. ARIFF (Malaysia) took part, the CHAIRMAN suggested that the Committee should agree to refer the Malaysian amendment (A/CONF.80/C.1/L.15), as orally revised, and the United Kingdom amendment (A/CONF.80/C.1/L.11) to the Drafting Committee, on the understanding that it would make no changes in the substance of article 8.

23. Mr. AMLIE (Norway) said that his delegation objected to the reference of the Malaysian and United Kingdom amendments to the Drafting Committee. Many delegations considered that those amendments contained elements of substance as well as drafting changes and the Drafting Committee ought not to be made responsible for deciding which was which.

24. Mr. KATEKA (United Republic of Tanzania) supported the Norwegian representative. If, in the view of even one delegation, the amendments in question contained elements of substance, it was for the Committee of the Whole to deal with them or for the sponsors to withdraw them.

25. Mr. SATTAR (Pakistan) disagreed with the two previous speakers. To refer the two amendments to the Drafting Committee would simply mean that the Committee of the Whole approved the International Law Commission's text in substance, but that the Drafting Committee was being invited to consider whether any drafting elements in the amendments submitted might assist in clarifying the wording of the article.

26. Following a further short procedural discussion in which Mr. KEARNEY (United States of America), Mr. YIMER (Ethiopia), Mr. MARESCA (Italy), Mr. KAMIL (Indonesia), Mr. YAÑEZ-BARNUEVO (Spain) and Mr. CASTILLO (Peru) took part, the CHAIRMAN invited the Committee to vote on the Malaysian amendment to article 8 (A/CONF.80/C.1/L.15) as orally revised.

The Malaysian amendment was rejected by 43 votes to 2, with 23 abstentions.

27. The CHAIRMAN then invited the Committee to vote on the United Kingdom amendment to article 8 (A/CONF.80/C.1/L.11).

The United Kingdom amendment was rejected by 28 votes to 23, with 21 abstentions.

28. The CHAIRMAN said that, if there were no objections, he would take it that the Committee provisionally adopted the International Law Commission's text of draft article 8 and referred it to the Drafting Committee.

It was so decided.[2]

The meeting rose at 6.25 p.m.

[2] For resumption of the discussion of article 8, see 31st meeting, paras. 8-9.

15th MEETING

Monday, 18 April 1977, at 10.55 a.m.

Chairman: Mr. RIAD (Egypt)

Organization of work

1. The CHAIRMAN drew the Committee's attention to the fact that it was considerably behind in its work after the first two weeks, since according to the document on methods of work and procedures adopted by the Conference on 5 April 1977 (A/CONF.80/9) the Committee should currently be discussing draft article 16, whereas it had only reached article 9. He went on to express the hope that delegations wishing to submit proposals on the preamble and final clauses would do so as soon as possible.

2. Mr. TORRES-BERNARDEZ (Secretary of the Committee), referring to rules 3 and 4 of the rules of procedure (A/CONF.80/8), invited the members of the Committee to submit their credentials to the Secretariat as soon as possible for examination by the Credentials Committee; credentials should be issued either by the Head of State or Government or by the Minister for Foreign Affairs.

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*)

ARTICLE 9 (Unilateral declaration by a successor State regarding treaties of the predecessor State)[1]

3. Mr. STEEL (United Kingdom) said that his delegation's amendment to article 9 (A/CONF.80/C.1/L.12) was intended to make it clear, as in the case of article 8, that the provisions of article 9 should not be interpreted as excluding the application of the general rules of international law governing the type of transaction envisaged in the draft article, irrespective of any question of succession of States. It was a matter of rules by virtue of which, in certain cases, a third State or a State which was not initially party to the transaction in question might agree to acquire certain rights and obligations. In the case of article 8, i.e. devolution agreements, articles 34 to 37 of the Vienna Convention on the Law of Treaties defined the scope of the rules in question, but with regard to article 9, unilateral declarations, there was, of course, no comparable provision. However, international law was not completely silent on the point and, as it had not been the intention of the International Law Commission to depart from the general rules of international law, it had seemed desirable to his delegation to clarify the situation; that was the reason for its proposal on article 9, a provision to which, in itself, his delegation had no objection. The discussion on article 8 had shown however, that the Committee did not appear to share the United Kingdom point of view and preferred that the relationship between the draft and the general rules of international law concerning treaties should be dealt with in the preamble. His delegation would fall in with that approach and was happy to entrust the Drafting Committee with the task of elaborating a general provision to that effect for inclusion in the preamble. It was prepared to help in drafting such a provision when the time came. In the light of what he had said, the United Kingdom withdrew its amendment to article 9.

4. Mrs. SZAFARZ (Poland) said that between 1961 and 1974, 23 newly independent States had made unilateral declarations, whereas the last devolution agreement had been concluded in 1965. Yet both the wording of the unilateral declarations and subsequent practice showed that the declarations had not had a decisive effect on the fate of any particular treaty. It might therefore be concluded that paragraph 1 of article 9 reflected purely and simply the practice of newly independent States. Nevertheless, article 9 had been drafted in fairly general terms to cover not only the case of newly independent States but also all other categories of succession of States. As the International Law Commission had rightly pointed out in paragraph (16) of its commentary, "the declarations are *unilateral acts* the legal effects of which for the other parties to the treaties cannot depend on the will of the declarant State alone" (A/CONF.80/4, p. 33). In that connexion her delegation assumed that, quite independently of the provisions of a unilateral declaration with regard to treaties, the effects of a succession of States on treaties which at the date of that succession of States had been in force in respect of the territory in question were always governed by the present articles, as stated in paragraph 2 of article 9. It was on that assumption that her delegation supported the idea expressed in article 9.

5. Mr. SETTE CÂMARA (Brazil) said that articles 8 and 9 were closely connected and similar solutions should be adopted to the problems which they raised. The International Law Commission's commentary to article 9, describing the gradual replacement of devolution agreements by unilateral declarations during the decolonization era and explaining that the trend had started with the refusal of the Government of Tanganyika to enter into a devolution agreement with the Government of the United Kingdom, was very enlightening. Although varying in detail, the unilateral declarations were all founded on the principle of provisional application, on the basis of reciprocity, of the treaties concluded by the predecessor State in respect of the territory of the successor State, while at the same time establishing a time-limit for the period of negotiation. As unilateral declarations were not treaties, unlike devolution agreements, they were not subject to the procedures applicable to treaties and were transmitted to the United Nations Secretary-General because he was the convenient diplomatic channel for notifying the acts in question to all States Members of the United Nations and members of the specialized agencies. A unilateral declaration created a situation similar to that provided for in article 25 of the Vienna Convention on the Law of Treaties.

6. The fundamental principle of the whole draft was the need for a new formal nexus, as a source of rights and obligations, to be established between the successor State, the predecessor State and other States parties to a treaty. He pointed out that the International Law Commission had rightly explained in paragraph (16) of its commentary that "the legal effect of the declarations seems to be that they furnish bases for a *collateral* agreement in simplified form between the newly independent State and the individual parties to its predecessor's treaties for the provisional application of the treaties after independence" (*ibid.*). The fact was that the practice had proved very useful in helping newly independent States to cope with the difficulties of the first years of international life.

7. His delegation welcomed the withdrawal of the United Kingdom amendment, which it considered

[1] The following amendment was submitted: United Kingdom of Great Britain and Northern Ireland, A/CONF.80/C.1/L.12.

unnecessary, and favoured the text of article 9 as drafted by the International Law Commission.

8. Mr. SHAHABUDDEEN (Guyana) said that, in general, the observations made by his delegation on article 8 also applied to draft article 9. In principle, his delegation accepted paragraph 1, since a unilateral declaration did not imply the transfer of the treaty rights and obligations of a predecessor State to a successor State in relation to another party. However, the expression "or of other States parties" seemed to suggest that cases had occurred in which a successor State had sought by a unilateral declaration to transfer treaty rights and obligations to other States parties to a given treaty. His delegation was not aware of any attempt to do so and was of the opinion that a unilateral declaration should have as its sole objective the transfer of the rights and obligations of the predecessor State to the successor State. The corresponding provision of article 8 was worded differently and its terms should be repeated in article 9, namely the words "or of other States parties" should be replaced by the words "towards other States parties"; that would accord with the International Law Commission's observation in paragraph (17) of its commentary that "in relation to the third States parties to the predecessor State's treaties the legal effect of such a unilateral declaration would be analogous to that of a devolution agreement" (*ibid.*, p. 34). Moreover, for the reasons previously given by his delegation in regard to article 8, paragraph 2,[2] he was not convinced that paragraph 2 of article 9 was necessary, but as the question was not one of substance he would not press the point.

9. The CHAIRMAN said that the change which the representative of Guyana had suggested in the wording of article 9, paragraph 1, would be referred to the Drafting Committee.

10. Mr. STEEL (United Kingdom) supported the idea of altering the wording of article 9, paragraph 1, as suggested by the representative of Guyana.

11. Mr. AMLIE (Norway) said that article 9 as drafted by the International Law Commission was acceptable to his delegation and he welcomed the fact that the United Kingdom delegation had withdrawn its amendment. His delegation did not see any need in the present case to amplify or supplement the provisions drafted by the International Law Commission, although it was not opposed to the ideas put forward in the United Kingdom amendments to articles 8 and 9. At the same time, it was for the Committee of the Whole rather than the Drafting Committee to formulate the general provision to which reference had been made, and his delegation was prepared to collaborate with the United Kingdom delegation in drawing up proposals on the subject which the latter had raised.

[2] See above, 13th meeting, paras. 27-30.

12. Mr. NAKAGAWA (Japan) approved draft article 9 and said that his delegation had the same views on it as on article 8. He welcomed the suggestions by the United Kingdom representative concerning the general provision which should be included in the preamble.

13. Mr. KEARNEY (United States of America) said that he seemed to recall that the Commission had intentionally drafted article 8, paragraph 1, and article 9, paragraph 1, in different terms. Article 8 dealt with the principle *res inter alios acta,* whereas article 9 contemplated the effects of a unilateral declaration; if such a declaration had an effect on the continuance in force of a treaty, it obviously had an effect on the rights contracted by the other parties to the treaty.

14. Sir Francis VALLAT (Expert Consultant) said that, if his memory served him rightly, the International Law Commission had made a deliberate choice in adopting the present wording of article 9, paragraph 1; however, he thought the Drafting Committee might be asked to examine the suggestion made by the representative of Guyana.

15. The CHAIRMAN said that, if there were no objections, he would take it that the Committee provisionally approved the text of article 9 and referred it to the Drafting Committee.

It was so decided.[3]

PROPOSED NEW ARTICLE 9 *bis* (Consequences of a succession of States as regards the predecessor State)[4]

16. Mr. STEEL (United Kingdom), introducing the article 9 *bis* proposed by his delegation (A/CONF.80/C.1/L.13), said that the provision was designed to make explicit something that was clearly implicit in the draft articles. Whatever might happen to the treaty rights and obligations of a predecessor State, it was obvious that a succession affected its situation in that regard. It would be totally incompatible with the sovereignty of a new State over its territory or with the sovereignty of a State to which a territory had been transferred if the predecessor State remained capable of acquiring rights or assuming obligations under a treaty in respect of that territory. That was the position adopted by the International Law Commission in paragraph (7) of its commentary to article 8 (A/CONF.80/4, p. 25); its was also the negative implication of article 34. The general structure of the proposed convention would be improved by an express provision to that effect.

[3] For resumption of the discussion of article 9, see 31st meeting, paras. 10-24.

[4] The United Kingdom of Great Britain and Northern Ireland submitted a proposal for an article 9 *bis* (A/CONF.80/C.1/L.13) and an amendment (A/CONF.80/C.1/L.13/Rev.1), also designed to insert an article 9 *bis*.

17. Since the new article proposed by his delegation applied to all cases of succession except uniting of States, it should be included among the general provisions. The proposal was to insert it after article 9.

18. Since the circulation of article 9 *bis*, a number of delegations had commented to his own delegation that the drafting was open to criticism. In that connexion, he wished to point out that it was based on the language of paragraph (7) of the commentary to article 8, but he accepted that that was not necessarily the appropriate language for an article in a convention and he agreed with some of the criticisms that had been made. He suggested that the Drafting Committee might work out a formula more suited to the text of an article.

19. Mr. SHAHABUDDEEN (Guyana) said that his delegation could not support article 9 *bis*. The provision contained a new rule which invited acceptance on the assumption that it rested on the moving treaty-frontiers principle, according to which, when a territory underwent a change of sovereignty, it passed automatically from the treaty régime of the predecessor State to that of the successor State. The International Law Commission had expressed that principle in article 14. Article 9 *bis* not only duplicated article 14 but also had the effect of extending it to situations not covered by article 14, as appeared from paragraphs (1) and (2) of the International Law Commission's commentary to the latter provision (*ibid.*, p. 49).

20. It appeared that the moving treaty-frontiers rule had developed in pre-decolonization times. In the words of the International Law Commission, in paragraph (1) of its commentary to article 14, it was applicable where "territory not itself a State undergoes a change of sovereignty and the successor State is an already existing State" (*ibid.*). Consequently, as the International Law Commission had expressly stated, article 14 applied neither to a union of States, the merger of one State with another or the emergence of a newly independent State. By contrast, it was obvious that the new provision proposed by the United Kingdom delegation, coming immediately after articles 8 and 9, would cover the case of the emergence of a new State, and that was perhaps its sole objective. It was true that the proposal might reflect a new practice that had been followed when States emerged into independence, but his delegation did not feel that the practice in question was sufficiently clearly defined to justifiy an attempt to institutionalize it in such categorical terms as those employed in the United Kingdom proposal. When drafting article 14, the International Law Commission had deliberately refrained form extending its scope to the emergence of newly independent States.

21. At the current stage, there was no question of engaging in a searching debate on the position adopted by the International Law Commission with respect to the scope of the moving treaty-frontiers rule. His delegation did not doubt the soundness of the International Law Commission's reasoning. In paragraph (9) of its commentary to article 10 (*ibid.*, p. 36), the International Law Commission had, for instance, examined the case of a treaty concluded between the predecessor State and another State relating to a territory about to become independent, and providing that, on becoming independent, the new State would be a party to the treaty in addition to the predecessor State. In a case of that kind, it was clear that the predecessor State continued to have certain treaty obligations in relation to a territory that had become independent. The fact that such obligations could be kept in force conflicted with the contents of the article proposed by the United Kingdom delegation. His delegation therefore found the proposal unacceptable.

22. Mr. SETTE CÂMARA (Brazil) drew a parallel between the article under consideration and the "clean slate" principle and said that the article represented the other side of the coin. It was also linked with article 14, relating to the moving treaty-frontiers rule, although the latter provision concerned only succession in respect of part of a territory.

23. In paragraph (15) of its commentary to article 15, the International Law Commission had already catered for the present concern of the United Kingdom delegation by pointing out that, in its devolution agreements, the purpose of the United Kingdom "was to secure itself against being held responsible in respect of *treaty obligations* which might be considered to continue to *attach to the territory after independence under general international law*" (*ibid.*, p. 54).

24. In the view of his own delegation, the doctrine and practice of States were such that article 9 *bis* was not essential. Nevertheless, if the Committee adopted the United Kingdom proposal, the present wording, which was too categorical and might lead to misinterpretation, should be moderated by two provisos: "without prejudice to any relevant rules of international law" and "unless otherwise provided for in this Convention". In connexion with the first proviso, he would merely observe that, in the passage of the commentary to article 15 to which he had referred, the International Law Commission had pointed out that the unilateral declarations by Tanganyika and Uganda actually barred the application of the "clean slate" principle to treaties that, by virtue of the rules of customary international law, might be regarded as still in force.

25. In the second proviso which he had suggested, he was emphasizing the need to respect the provisions of the proposed convention. That need would reveal itself, in particular, in the case of frontier treaties or treaties establishing a frontier régime.

26. Mr. MUSEUX (France) said that he favoured the United Kingdom proposal. On reading article 9 *bis*, one might think it obvious that, following

a change in sovereignty over a territory, the rights and obligations of the predecessor State in respect of that territory would cease automatically. Nevertheless, since the discussion had shown that such a consequence was not so obvious, it was better to state the fact expressly.

27. In general, the draft convention was more explicit with regard to the situation of the successor State than that of the predecessor State, though both should be taken equally into account.

28. The United Kingdom proposal was very satisfactory. It flowed from the sovereignty of the newly independent State, if it was true that the predecessor State should not, after independence, possess rights or obligations in respect of the territory which was the subject of the succession. That had been the constant attitude of the Government of the United Kingdom and, in its commentary, the International Law Commission seemed to have shared that view.

29. As to the objections that had been raised to the proposed new article, they were not without some foundation. With respect to the relationship between article 9 *bis* and article 14, as brought out by the representative of Guyana, he wished however to point out that article 14 set forth a rule whose application was far wider than article 9 *bis*. The proposal by the United Kingdom delegation was not designed to offer a rule of succession as such. Article 9 *bis* concerned only the situation of the predecessor State, not that of the successor State. It dealt with the termination of the responsibility of the predecessor State in respect of the territory but did not imply that the treaties in question were to pass to the successor State; nor did it relate to the rights and obligations of the successor State. The provision in no way ran counter to the other provisions of the draft; particularly those which related to new independent States. Nevertheless, the example of the treaty concluded between the United Kingdom and Venezuela on the subject of the frontiers of British Guiana, referred to in paragraph (9) of the commentary to article 10 (*ibid.*, p. 36), would justify the addition to the United Kingdom proposal of a proviso reading "unless otherwise provided for in the treaty" or "unless a contrary intention arises from the treaty".

30. Mr. NATHAN (Israel) said that he doubted whether article 9 *bis* should be inserted in part I of the draft articles. The provision was very similar to article 14, relating to succession in respect of part of a territory. If it appeared among the general provisions, it might also conflict with articles 33 and 34, on the separation of parts of a State.

31. The draft articles distinguished four categories of succession according to whether part of a territory, newly independent States, the merger or uniting of States, or the separation of parts of States was involved. In the case of the first category, the existence of article 14, subparagraph (*a*), deprived the article proposed by the United Kingdom delegation of any point. It was clear that the United Kingdom proposal was not applicable to the second and third categories, as its sponsor had agreed. As to the fourth category, article 34 showed that, where the predecessor State continued to exist, any treaty which, at the date of the succession of States, had been in force in respect of that State continued in force in respect of its remaining territory. In such a case, the predecessor State retained its treaty obligations with respect to the territory. He therefore wondered to what extent the United Kingdom proposal would be applicable. It appeared that it would apply only to part III of the draft, either as a separate paragraph of article 15 or as a separate article placed after article 15.

32. In connexion with the comments made by the representatives of Guyana and Brazil, he wished to point out that article 9 *bis* would be something of a corollary to the "clean slate" rule, as set forth in article 15. As to the continuation in force of treaty obligations after independence by virtue of general international law—a point dealt with in the commentary to article 16—the devolution agreements which had provided for the continuation in force of obligations had been concluded at a period when the "clean slate" principle had not been clearly established. Nowadays, that principle was the basis of the proposed convention and, where it applied, the obligations of the predecessor State ceased automatically.

33. With respect to the wording of the United Kingdom proposal, he thought that the right of a predecessor State could hardly "be binding upon" it. He suggested that the text of the provision should be brought into line with that of article 14. Moreover, in connexion with article 9, paragraph 1, he suggested that the words "in respect of a territory" should be replaced by the words "in respect of the territory to which the succession relates".

34. Mr. KATEKA (United Republic of Tanzania) said that he endorsed the views expressed by the representative of Guyana and that he opposed the United Kingdom proposal, which he did not think could be made any better. The only possible course was to reject it. He feared lest predecessor States, while claiming to respect the sovereignty of new States, were actually endeavouring to free themselves from all obligations, as certain colonial Powers had done not so long before.

35. Mr. SHAHABUDDEEN (Guyana) said that he did not share the views of the representative of France concerning the relationship between article 9 *bis* and article 14. In his opinion, the two provisions dealt with the same matter. Article 9 *bis* concerned the cessation of the rights and obligations of the predecessor State at the time of succession, a subject which was already regulated by article 14. The sole difference between the two provisions was that article 14 did not extend to newly independent States. The practice followed when territories had

acceded to independence was not yet sufficiently settled to warrant its institutionalization in the unqualified terms proposed by the United Kingdom delegation.

36. Mr. STEEL (United Kingdom) said he agreed with the representative of Guyana that there might be some overlapping between his proposal and article 14 of the draft convention, but that was not, in his view, an adequate reason for rejecting article 9 *bis*, since article 14 applied only to successions concerning part of a territory, whereas article 9 *bis* would apply to all cases of succession of States except uniting of States.

37. The representative of Guyana was mistaken in saying that the moving treaty-frontiers principle did not apply to newly independent States. In fact, the International Law Commission had stated in paragraph (7) of its commentary to article 8, that as far as obligations were concerned, "it seems clear that, from the date of independence, the treaty obligations of the predecessor State cease automatically to be binding upon itself in respect to the territory now independent", adding that the rule "follows from the principle of moving treaty-frontiers which is as much applicable to a predecessor State in the case of independence as in the case of the mere transfer of territory to another existing State dealt with in article 14, because the territory of the newly independent State has ceased to be part of the entire territory of the predecessor State" (*ibid.*, p. 25). The treaty obligations and rights of the predecessor State in respect of a territory should thus cease automatically from the moment the territory became independent.

38. He also wished to clear up a misunderstanding on the subject of the agreement concluded in 1966 between the United Kingdom and Venezuela in respect of British Guiana, which was mentioned in paragraph (9) of the International Law Commission's commentary to article 10 (*ibid.*, p. 36). He had never meant to say that, when the predecessor State had assumed obligations on its own behalf in respect of a territory, those obligations should cease when the territory became independent. It was quite obvious, in fact, that, in the case of British Guiana, the obligations assumed by the British Government on its own behalf in respect of that territory had not been intended to cease when the territory became independent. It was only the obligations contracted by the predecessor State on behalf of the territory which were to have ceased. That misunderstanding was, perhaps, due to the ambiguity of the words "in respect of that territory" used in article 9 *bis*.

39. The representative of Tanzania also seemed to have misunderstood the purport of the United Kingdom amendment. It was aimed not at rights and obligations resulting from past situations but at rights and obligations which might arise in the future. Once a predecessor State had lost its sovereignty over a territory, it automatically ceased to be able to acquire treaty rights and obligations in respect of that territory.

40. He wished to reserve his position on the Brazilian proposals, but if they were such as to render the text of his draft article more precise and to avoid ambiguities, he would be ready to give them favourable consideration. He also wished to reserve his position on the proposal by Israel concerning the position of the new article. He still thought that the article should be placed among the general provisions of the convention, since it applied to all cases of succession of States except uniting of States. If, however, the Conference decided to give the article a less general form and place it in a more specific context, he would be ready to leave the matter to the Drafting Committee.

41. Mr. MARESCA (Italy) said that, in order to ensure a balanced convention and avoid the possibility of misinterpretation, each rule should be accompanied by its counterpart. The Conference had accepted the "clean slate" principle, but if that principle had consequences for the successor State, it should have consequences for the predecessor State as well. It was inconceivable that the successor State should be relieved of obligations arising from treaties concluded in respect of a territory and that the same should not apply to the predecessor State. Some had said that that was self-evident. However, if it was not spelt out in the draft convention, some doubt would remain, and the third States might turn to the predecessor State to ask it to honour the obligations which it had contracted, prior to the succession of States, in respect of a territory that had become independent. The lack of an explicit provision in that regard might therefore create an extremely dangerous legal vacuum which would have to be filled at a later stage by recourse to interpretation.

42. The article proposed by the United Kingdom was therefore justified and could facilitate the practical applicaion of the convention. The text could perhaps be made more flexible and its dogmatism removed by including the provisos suggested by the representatives of Brazil and France. He therefore associated himself with the French representative in recognizing the justification for the United Kingdom amendment, subject to a few drafting changes.

43. Mr. YANGO (Philippines) said he would like to know whether the practice of States to which the International Law Commission referred in its commentary warranted the application of the "clean slate" principle in favour of the predecessor State or whether, on the contrary, it indicated that an exception to that principle should be made in respect of that State.

44. Sir Francis VALLAT (Expert Consultant) said that State practice showed that the principle of the freedom of the predecessor State with regard to treaty obligations concerning the territory had generally been followed. That principle, which was the basis of

the United Kingdom amendment, had been set forth as clearly as possible by the International Law Commission in paragraph (7) of its commentary to article 8 (*ibid.*, p. 25).

45. Article 15 expressed the "clean slate" principle, but solely in respect of newly independent States, which were free of any treaty obligation but had the possibility, through a notification of succession, of continuing to be parties to treaties concluded by the predecessor State in respect of the territory. He did not think it was possible, in that regard, to grant the predecessor State the same benefits as the successor State. However, it was generally recognized that the treaty obligations and rights of a predecessor State in respect of a territory ceased automatically when the territory became independent.

46. Mr. MANGAL (Afghanistan) said that, as far as the cessation of the obligations and rights of the predecessor State was concerned, the same principle must be applied as operated with regard to the transfer of those rights and obligations from the predecessor State to the successor State. If it was agreed that a "unilateral declaration" by the successor State "providing for the continuance in force of the treaties" of the predecessor State "in respect of its territory" (art. 9 of the draft, para. 1) constituted a mere declaration of intent which could not affect the position of the other States parties to the treaty and that the consent of those third parties was essential to make the obligations and rights of the predecessor State become those of the successor State, it must also be agreed that the obligations and rights of the predecessor State did not automatically cease and that, in that case as well, the consent of the other parties to the treaty was essential. He was therefore unable to accept the United Kingdom amendment.

47. Mr. HELLNERS (Sweden) said that it might, in the final analysis, be best to exclude the article proposed by the United Kingdom representative, who in fact admitted that his text contained certain imperfections; those imperfections concerned the substance and not the form of article 9 *bis*. The provisos which the representative of Brazil had suggested adding would only obscure the meaning of the proposed article. It was difficult to reconcile the new article with the provisions of article 34, which dealt with the position "if a State continues after separation of part of its territory". He could not therefore see the point of article 9 *bis*, which would introduce more confusion than clarity into the convention.

48. Mr. SHAHABUDDEEN (Guyana) said that, while he agreed with the United Kingdom representative that the rule set out in article 9 *bis* was general in scope, he was concerned about the application of that rule to newly independent States, since that application was the principal objective of the United Kingdom proposal, as its sponsor had himself admitted. He thought that, particularly in view of the 1966 United Kingdom-Venezuelan Treaty, the practice concerning newly independent States had not been established in a sufficiently definitive manner to justifiy its institutionalization in the inflexible language of article 9 *bis*.

49. With regard to the general application of the moving treaty-frontiers rule, he noted that when the International Law Commission had specifically dealt with that doctrine in connexion with article 14, it had deliberately refrained from applying the rule to newly independent States. He also noted that the United Kingdom representative drew a distinction between treaty obligations which the predecessor State had accepted on its own behalf and those which it had accepted on behalf of a dependent territory. However, such a distinction did not appear in draft article 9 *bis*. He wished to reserve his position with regard to the amendments to that article.

The meeting rose at 1.10 p.m.

16th MEETING

Monday, 18 April 1977, at 3.25 p.m.

Chairman: Mr. RIAD (Egypt)

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*)

PROPOSED NEW ARTICLE 9 *bis* (Consequences of a succession of States as regards the predecessor State) (*continued*)[1]

1. Mr. AMLIE (Norway), speaking on a point of order, said that the proposal for a new article 9 *bis* submitted by the United Kingdom delegation in document A/CONF.80/C.1/L.13/Rev.1 constituted a new amendment. Whereas his delegation had been prepared to discuss the earlier United Kingdom proposal (A/CONF.80/C.1/L.13), it was not in a position to comment on the new amendment, which had been distributed only at the present meeting. In view of the importance of the proposed new article for ex-colonial, successor and third States, his delegation wished its discussion to be postponed, in order to comply with rule 28 of the rules of procedure (A/CONF.80/8).

2. The CHAIRMAN agreed that no decision should be taken on the United Kingdom proposal at the current meeting.

[1] For the amendment to proposed new article 9 *bis*, see 15th meeting, foot-note 4.

3. Mr. ARIFF (Malaysia) said he had understood the original United Kingdom proposal for a new article 9 *bis* to mean that if the obligations or rights of a predecessor State under treaties in force in respect of a territory at the date of a succession of States could not be transferred to a successor State either by a devolution agreement or by a unilateral declaration, neither of which would have any effect on other States parties, it was only natural that the successor State should wish to withdraw from such a treaty. He wondered, however, what the fate of the rights and obligations of a predecessor State would be when a succession of States took place and whether it was in fact the case, as the amendment seemed to suggest, that the rights and obligations of a predecessor State automatically lapsed upon a succession, or whether they were, so to speak, held in abeyance. There had, in practice, been a number of occasions on which predecessor States had entered into devolution agreements as interim measures until such time as the destiny of the treaty had been finally settled.

4. Those speakers who had opposed the original United Kingdom proposal for a new article 9 *bis* had also opposed his own delegation's amendment to article 8 (A/CONF.80/C.1/L.15), as orally amended at the Committee's 14th meeting,[2] which had been intended to keep alive, vis-à-vis third States, treaties beneficial to successor and third States. His delegation found that position inconsistent, for in its view rejection of the efficacy of devolution agreements with regard to third States implied recognition of the desire of the successor State to reject the rights and obligations of the predecessor State.

5. Mr. STEEL (United Kingdom) apologized to the representative of Norway for any inconvenience which the United Kingdom delegation had unwittingly caused him by submitting the revised version of its amendment at the current meeting. The United Kingdom delegation was quite willing for not only a decision, but also all discussion of its revised amendment to be postponed until the following day, if the Committee so wished. The intention of his delegation in submitting the revised text had not been to introduce a new amendment, but simply to restate its original proposal in a manner which was clearer and which took into account the comments made at the 15th meeting.

6. Thus the revised version of the amendment made it clear, in response to the very legitimate concern of the representative of the United Republic of Tanzania,[3] that the rights and obligations to which it referred were those arising subsequent to a succession in respect of events and situations which occurred after the date of the succession. A final saving clause had been added to cover the situation mentioned by the representative of Guyana,[4] in which it appeared from a treaty concluded between a predecessor and a third State that the intention was that the predecessor State should continue to have obligations in its own right after the date of the succession. The clause had deliberately been made general, in order to cover the widest possible range of provisos in the type of treaties in question. The reason why the revised amendment did not contain any saving clause of the type mentioned by the representative of Brazil,[5] relating to "other relevant rules of international law" was that the United Kingdom delegation believed there was general agreement in the Committee that such a clause should be included in a general provision applicable to the convention as a whole. His delegation would have no objection to the inclusion in the article of a saving clause of the second type mentioned by the representative of Brazil, to cover cases in which the convention itself provided otherwise than the proposed article 9 *bis*, but it had been unable to find any evidence of such cases during its rapid re-reading of the draft articles since the 15th meeting.

ARTICLE 10 (Treaties providing for the participation of a successor State)[6]

7. The CHAIRMAN invited the Committee to take up article 10, on the understanding that the discussion on article 9 *bis* would be resumed the following day.

8. Mr. TORRES-BERNÁRDEZ (Secretary of the Committee) pointed out that the word "so" should be inserted between the words "to be" and the word "considered" in paragraph 2 of the English text of draft article 10 (A/CONF.80/4; A/CONF.80/WP.1).

9. Mr. STEEL (United Kingdom) introduced his delegation's amendment to paragraph 2 (A/CONF.80/C.1/L.14). While the International Law Commission had decided on the present text of that paragraph for the reasons mentioned in paragraph (11) of its commentary (A/CONF.80/4, p. 36), his delegation thought it was unnecessary, and perhaps unwise, to assert that a successor State could express its consent to be bound by the type of treaty in question solely in writing. In its view, consent could also be made manifest by an oral, but public, statement by a member of the Government of the successor State, or could be unmistakably inferred from the conduct of that State. His delegation was not suggesting that a successor State should be considered a party to a treaty without having specifically expressed its consent; there was no question in the amendment of automatic succession or of any attempt to impose the acceptance of an agreement.

[2] See above, 14th meeting, para. 4.

[3] See above, 15th meeting, para. 34.

[4] See above, 15th meeting, para. 21.

[5] See above; 15th meeting, para. 24.

[6] The following amendment was submitted: United Kingdom of Great Britain and Northern Ireland, A/CONF.80/C.1/L.14.

10. That the amendment was not purely academic or speculative could be seen from the reference in paragraph (9) of the International Law Commission's commentary to article 10 (*ibid.*) to an Agreement on the frontier of the modern State of Guyana and perhaps also from the comments in paragraphs (2) and (3) of the same commentary (*ibid.*, p. 35). It should also be noted that the proposed amendment would be especially required if the Conference decided to give retroactive effect to the provisions of the convention, in order to avoid casting doubt on the validity of past transactions such as that mentioned in paragraph (9) of the International Law Commission's commentary on article 10.

11. Mr. MBACKE (Senegal) said his delegation found paragraph 1 of the article satisfactory, but paragraph 2 caused it a great deal of misgiving. The fact was that the type of treaty to which the paragraph referred was normally one concerning economic matters, concluded at a time when the predecessor State and the other parties knew that succession was imminent; and such a treaty often contained provisions which the successor State would find intolerable, as the parties were well aware. Treaties of that kind constituted a trap for the newly independent State, no matter how it was required to express its consent to be bound by them. Consequently, his delegation believed that the International Law Commission should have gone much further than it had in paragraph 2, by stating simply that the treaties in question were null and void. Such a provision would have the effect of discouraging predecessor and other States from concluding treaties which were unfair to successor States and would meet the need not merely to record existing customs, but to channel the practice of States in the right direction. His delegation therefore proposed that paragraph 2 should be amended to read:

> Any provision of a treaty which provides that a successor State shall be considered as a party to that treaty shall be null and void. In such a case, a succession of States shall be governed in accordance with the present articles relating to the effects of a succession of States on treaties which do not provide for the participation of the successor State.

Mr. Ritter (Switzerland), Vice-Chairman, took the Chair.

12. Mr. SETTE CÂMARA (Brazil) said that his delegation had no difficulties with draft article 10, which related to treaties providing for the participation of a successor State and dealt with the practice of States during the decolonization process, when contracting States left the door open for dependent territories whose emergence as independent States was an immediate possibility. Provisions similar to those contained in draft article 10 had been included in article XXVI, paragraph 5(*c*), of the General Agreement on Tariffs and Trade[7] and in several commodities agreements, such as the Second International Tin Agreement, 1960,[8] the Third International Tin Agreement, 1965,[9] the International Coffee Agreement, 1965[10] and the International Sugar Agreement, 1968.[11] Such provisions had also been included in bilateral agreements, such as the Agreement to resolve the controversy between Venezuela and the United Kingdom of Great Britain and Northern Ireland over the frontier between Venezuela and British Guiana, concluded by the United Kingdom and Venezuela, in consultation with the Government of British Guiana, and signed at Geneva in 1966.[12] Moreover, the machinery for the conclusion of treaties providing for the participation of a successor State was that specified in articles 35, 36 and 37 of the Vienna Convention on the Law of Treaties.

13. There was no controversy concerning draft article 10, paragraph 1, which established an option for the successor State to consider itself a party to a treaty which included a provision of that kind. There was, however, some controversy concerning paragraph 2, for which the representative of Senegal had just proposed new wording. His delegation fully supported the text proposed by the International Law Commission and could not accept the amendment proposed by the United Kingdom because it considered that the saving clause included by the International Law Commission at the end of paragraph 2 was of primary importance. After all, the consent of a contracting party was the most important element of the treaty-making procedure; that was why consent was always expressed in solemn form and required the formal stage of ratification, which was almost always preceded by legislative authorization. Even in cases such as those provided for in draft article 10, his delegation believed that tacit consent should not be permitted.

14. The rule embodied in paragraph 3, was also wise and logical. If the parties to a treaty had previously agreed that a newly independent State could be a party to the treaty when succession occurred, there should be no objection to the fact that, once that State's acceptance had been formally established, it was to be considered a party from the date of the succession. Any exception to that rule would be covered by the final saving clause: "unless the treaty otherwise provides or it is otherwise agreed".

15. His delegation approved of draft article 10 and thought that it was ready to be provisionally adopted and referred to the Drafting Committee.

---

[7] GATT, *Basic Instruments and Selected Documents*, vol. IV (Sales No. GATT/1969-1), p. 45.

[8] *United Nations Tin Conference, 1960—Summary of Proceedings* (United Nations publication, Sales No. 61.II.D.2), p. 25.

[9] *United Nations Tin Conference, 1965—Summary of Proceedings* (United Nations publication, Sales No. 65.II.D.2), p. 29.

[10] *United Nations Coffee Conference, 1962—Summary of Proceedings* (United Nations publication, Sales No. 63.II.D.1), p. 56.

[11] *United Nations Sugar Conference, 1968—Summary of Proceedings* (United Nations publication, Sales No. E.69.II.D.6), p. 56.

[12] United Nations, *Treaty Series*, vol. 561, p. 323.

16. Mr. NAKAGAWA (Japan) said that his delegation had no difficulty in endorsing article 10, in so far as those provisions applied to the case of newly independent successor States under the "clean slate" principle. However, article 10 was a general provision of the cases of State succession dealt with in part IV of the draft articles, where the principle of *de jure* continuity applied. There could be some conflict between draft article 10, paragraph 2, and part IV of the draft articles, as had been recognized by the International Law Commission in paragraph (12) of the commentary (*ibid.*, p. 37). The International Law Commission had apparently intended article 33, paragraph 1, to take precedence over article 10, paragraph 2, but his delegation had doubts whether that interpretation emerged logically and automatically from the present text. In any case, it considered that the draft articles should not contain any contradictory provisions. It therefore proposed that the contradiction might be eliminated by moving article 10 to part III, section 1, of the draft, as article 15 *bis*, so that it would apply only to the case of newly independent States.

17. The amendment proposed by the United Kingdom improved the International Law Commission's text and his delegation supported it.

18. The CHAIRMAN said he thought that oral amendments such as the one just proposed by the representative of Japan might be referred to the Drafting Committee.

19. Mr. YASSEEN (United Arab Emirates), speaking as the Chairman of the Drafting Committee, said that the amendment proposed by the representative of Japan was obviously designed to limit the scope of draft article 10 by making it apply only to newly independent States. Thus the amendment was of a substantive nature, and a decision on it should be taken by the Committee of the Whole.

20. The CHAIRMAN said that, if there were no objection, he would take it that, in accordance with the view expressed by the Chairman of the Drafting Committee, the Committee agreed to take a decision on the oral amendment proposed by Japan.

21. Mr. YASSEEN (United Arab Emirates) said that, in his delegations's opinion, draft article 10 did not raise any particular difficulties, because it merely reflected the basic principle of *res inter alios acta*, according to which two or more States which concluded a treaty could not create rights or obligations for third States. He believed that, for the purposes of succession of States in respect of treaties, the wisest course was to use the technique of collateral agreements and to consider an agreement creating rights and obligations as an offer to be accepted or rejected by third States. Thus, according to draft article 10, which was based on the system followed in the Vienna Convention on the Law of Treaties, a successor State was to be considered a party to a particular treaty only if it had expressed its consent to be bound by that treaty.

22. The oral amendment proposed by the representative of Japan, which would restrict the scope of the article by placing it in another part of the draft, raised a problem of a general nature, not merely a specific problem concerning the succession of newly independent States to treaties. Consequently, his delegation could not support that amendment.

23. The United Kingdom amendment raised the question of the form in which the offer made in an agreement concluded between two or more States could be accepted or rejected by a third State. In that connexion, he noted that the Vienna Convention on the Law of Treaties made a distinction between rights and obligations established by treaties. While it did not impose any strict requirements as to the way in which third States could express their consent to accept rights, it laid down that obligations arose for them only if expressly accepted in writing. His delegation could not accept the United Kingdom amendment, because it held that draft article 10, paragraph 2, should be based on the corresponding wording of the Vienna Convention and require express acceptance in writing. That requirement was particularly desirable, because it would safeguard the interests of newly independent States.

24. Mr. SHAHABUDDEEN (Guyana), referring to draft article 10, paragraph 1, said he presumed that the International Law Commission had intended a notification of succession to be the constitutive method by which a State exercised the option of considering itself a party to a treaty, not merely an informative measure which took effect when the option had been exercised in some other way, for example, by a unilateral public statement made by the successor State, the possibility of which had been referred to by the representative of the United Kingdom in connexion with paragraph 2. The present wording of paragraph 1 did not, however, reflect the International Law Commission's presumed intention. It seemed to provide that the notification of succession was not a constitutive method of exercising the option, but only an information procedure to be observed after the option had been exercised in some other way, and, even so, the provision did not in fact make it obligatory to inform. "Notification of succession" as defined in article 2, was constitutive and not merely informative, but the definition was limited to multilateral treaties. Further, that was not the expression used in article 10, paragraph 1, and there was no provision for the use of the municipal rule of statutory construction relating to cognates of defined expressions. His delegation therefore suggested that, since unnecessary disputes might arise about the meaning of article 10, paragraph 1, the Drafting Committee might be requested to improve the wording of that provision, which should clearly state that a notification of succession was to be constitutive, and not merely informative, of the exercise by a successor

State of the option to be considered a party to a treaty.

25. Article 10, paragraph 1, also stipulated that, if the treaty in question did not provide for any notification procedure, the notification was to be made "in conformity with the provisions of the present articles". Paragraph (10) of the International Law Commission's commentary stated that the provisions in question were articles 21 and 37 (*ibid.*, p. 36), but they seemed to be restricted to the case of multilateral treaties; thus the draft articles did not appear to contain any provisions for a notification procedure in the case of bilateral treaties.

26. That problem might have arisen because the commentary referred only to examples relating to multilateral treaties. According to paragraph (14) of its commentary, the International Law Commission had rightly decided "to formulate the provisions of article 10 in general terms, in order to make them applicable to all cases of succession of States and to all types of treaty" (*ibid.*, p. 37), but it had probably overlooked the fact that the examples upon which it had drawn did not in fact cover the case of bilateral treaties. It had thus failed to provide for a clear residual notification procedure in relation to such treaties, although it had included them within the scope of draft article 10, paragraph 1.

27. Article 10, paragraph 2, represented an understandable effort to protect emerging States. There did not seem to be much State practice in that area, and the commentary referred to only one case in which a successor State had in fact become a party to a treaty pursuant to the type of provision contained in paragraph 2. His delegation's understanding was that, in the case in question, namely, the Agreement concluded by the United Kingdom and Venezuela in consultation with the Government of British Guiana,[13] the successor State had made statements and had acted in a way which had shown that it considered itself a party to the Agreement, but that it had probably not said or done anything which could be regarded as express acceptance in writing.

28. Since a convention could change actual State practice only in marginal ways and there might, in future, be cases in which a successor State acknowledged its participation in a treaty otherwise than by an express statement to that effect, it could be asked what the legal effect of such an acknowledgement would be in the light of draft article 10, paragraph 2. If, as his delegation expected, such an acknowledgement was treated as valid under customary international law, all the Committee would have succeeded in doing, in the seemingly exclusive provision of paragraph 2, would have been to lay down a rule which would prove nugatory in practice, because it did not take due account of the way in which State practice could reasonably be expected to evolve.

29. Consequently, his delegation believed that it would be better to provide for cases in which successor States showed by their conduct that they agreed to be considered as parties to a particular treaty, as suggested in the United Kingdom amendment (A/CONF.80/C.1/L.14), the wording of which was more explicit than that of article 37, paragraph 1, of the Vienna Convention on the Law of Treaties, in which the final exception did not seem to except anything from the previously expressed requirement for consent, as it purported to do, but to be merely repeating that requirement.

30. The CHAIRMAN asked the Expert Consultant to explain the precise scope of article 10 in view of the fact that article 33, in providing for treaty rights and obligations to pass to successor States, imposed much stricter obligations on the latter than article 10. Might it not be concluded that the application of article 10 was limited to newly independent States?

31. Sir Francis VALLAT (Expert Consultant) said that the effective distinction between article 10 and other substantive articles in the draft was both fundamental and clear: article 10 was designed to deal with a particular kind of treaty containing particular provisions concerning the effects of succession of States. It was intended to apply to all kinds of succession. In his view, in those circumstances the effect of continuity, for example, under part IV, articles 30 and 33, did not necessarily have exactly the same effect as in the case of a treaty falling within the scope of article 10, which contained a special provision concerning the position of the successor State. He suggested that care should be taken in assuming there was no distinction of substance between those provisions or that in removing article 10 to part III of the draft articles, some changes of substance would not be implied. The distinction in the nature of the provisions was juridically perfectly clear and one which had been clearly in the minds of the International Law Commission.

32. Mr. CHEW (Malaysia) said that his delegation supported article 10 because it gave successor States the right to choose to be a party to a treaty entered into by the predecessor State and a third State. Consent was a fundamental rule in the law of treaties. It was also generally accepted that consent should be in solemn form, that was to say in writing. In the Vienna Convention on the Law of Treaties (art. 2, para. 1, subpara. (*a*)), a "treaty" was defined as "an international agreement concluded between States in written form".[14] His delegation therefore found it difficult to accept the United Kingdom amendment, since it would allow the consent of the successor State to be expressed otherwise than in writing. Subparagraph (*b*) of the United Kingdom amendment would create uncertainty, as conduct in a particular instance might be a debatable criterion.

[13] *Ibid.*

[14] *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. 289.

33. Mr. MUSEUX (France) said that his delegation supported the United Kingdom amendment, which was reasonable and met practical needs. Article 10 dealt with a limited field, since it related only to treaties providing for the participation of a successor State, and as the International Law Commission had observed in its commentary, such treaties were not numerous and little use had been made of the provisions in practice. Nevertheless, the text was useful and should be improved along the lines suggested in the United Kingdom amendment.

34. The use of the unqualified term "conduct" in subparagraph (*b*) of the amendment might give rise to difficulties, although in traditional international law, conduct was quite frequently cited as a source of obligations. Perhaps that subparagraph could be redrafted to make it clear that the conduct must unmistakably imply consent. The representative of the United Arab Emirates had rightly pointed out that international law did not require any fixed form of consent, and it would be bad drafting to attempt to fetter the freedom of a successor State as to its method of indicating consent to be bound.

35. The representative of the United Arab Emirates had advanced an objection based on article 35 of the Vienna Convention on the Law of Treaties, which laid down that "An obligation arises for a third State from a provision of a treaty" only if the said State "expressly accepts that obligation in writing."[15] That argument, although weighty, was not entirely convincing, since a successor State was neither legally nor psychologically in exactly the same position as a third State. Furthermore, article 36 of the Vienna Convention laid down that in the case of a right arising for a third State from a provision of a treaty, its assent should be presumed. Thus, the Vienna Convention provided different rules for obligations and rights for third States, and in its draft article 10, the International Law Commission had rightly adopted a slightly different machinery to give greater flexibility.

36. Several speakers had mentioned the position and role of draft article 10 which did constitute a problem. In cases of the uniting and separation of States, the principle of continuity applied and article 10 was silent about the position of the successor State. Paradoxically, in such cases, succession was more difficult when provision for it was made in the treaty than when there was no such provision. Draft article 10 would serve to facilitate the succession of newly independent States.

37. His delegation reserved the right to propose amendments to other draft articles in order to secure uniform treatment for identical cases of succession.

Mr. Riad (Egypt) took the Chair.

38. The CHAIRMAN enquired whether the Japanese delegation wished its oral amendment to draft article 10 to be put to the vote.

39. Mr. NAKAGAWA (Japan) said that since the amendment had only just been submitted, he would prefer the vote to be taken on the following day, so as to give time for consideration.

40. Mr. MUDHO (Kenya) said that the present text of draft article 10 was acceptable.

41. As to the United Kingdom amendment, he had little difficulty with subparagraph (*a*), because it provided for express agreement; but he would find it difficult to accept the tacit consent proposed in subparagraph (*b*). He suggested that separate votes should be taken on the two subparagraphs.

42. Mr. KRISHNADASAN (Swaziland) said he was in general agreement with draft article 10. He had, however, noted the comments of the representative of Guyana regarding the need to improve the drafting of paragraph 1. Furthermore, he wondered whether paragraph 2 was really necessary, since little use had been made of the option it offered. If that paragraph was retained, he concurred with paragraph (11) of the commentary to the draft article and with the statement by the representative of the United Arab Emirates about the need to retain the phrase "expressly accepts in writing".

43. He had difficulty, therefore, in accepting the United Kingdom amendment: even subparagraph (*a*) did not call for a form of consent as specific as that in writing and subparagraph (*b*) was open to the objection of uncertainty. If the Committee voted to retain article 10 in its present form he would agree, but he would have no objection if it decided to delete paragraph 2.

44. Mr. SAKO (Ivory Coast) said he had no difficulty with draft article 10 which maintained the successor State's freedom of choice. He could also support subparagraph (*a*) of the United Kingdom amendment which gave greater flexibility; but he could not accept subparagraph (*b*), which might cause difficulties in relations between States.

45. Mr. KATEKA (Tanzania) said he could accept neither subparagraph of the United Kingdom amendment. Subparagraph (*a*) was not in conformity with article 35 of the Vienna Convention on the Law of Treaties which, by its wording, had removed any doubt about the meaning of the term "expressly".

46. He questioned the desirability of postponing the vote on the Japanese oral amendment, in view of the many articles which were already pending.

47. Mr. YIMER (Ethiopia), speaking on a point of order, agreed with the previous speaker that there

[15] *Ibid.*, p. 294.

was no reason to postpone a vote on the Japanese oral amendment which was not complicated.

48. Mr. NAKAGAWA (Japan) said that he would withdraw his oral amendment.

49. Mr. BENBOUCHTA (Morocco) said that article 10 was generally satisfactory, but he agreed with the representative of Guyana and thought it would be better in paragraph 1 to change the wording to read "it may notify its acceptance of the treaty". The Drafting Committee should consider that point.

50. As he had already observed in connexion with article 7, the last clause of paragraph 3, "or it is otherwise agreed", was too vague and should be redrafted.

51. Mr. STEEL (United Kingdom) said that, with regard to the comments made by the representatives of Kenya and Ivory Coast, his delegation would have no objection to a separate vote being taken on the two subparagraphs of the United Kingdom amendment.

52. Mr. AMLIE (Norway) said that his delegation, unlike that of France, saw no reason why successor States should not be compared to third States; in his view, the former were entitled to the same protection as the latter under the provisions of the Vienna Convention on the Law of Treaties.

53. Article 10 dealt with successor States' participation in a treaty by virtue of a clause in the treaty itself, as distinct from provisions of the law relating to succession of States—a point which surely refuted the French representative's contention.

54. Article 10 concerned situations which could be dealt with only according to strict juridical criteria. In accordance with paragraph 1, the successor State could opt, under the treaty, to regard itself as a party thereto; that situation could be assimilated to one in which the treaty provided for the right of third States to become a party. According to article 36 of the Vienna Convention, if the treaty conferred a right on a third State, that State must assent thereto, and its assent was to be resumed if the contrary was not indicated. Since the type of treaty in question did confer a right, third States ran no risk if the presumption of assent was wrong. As could be seen, most of the treaties referred to by the International Law Commission as examples relating to paragraph 1 were very lax. The most that could be said, to judge from the latest formulation, was apparently that the State concerned should be deemed a contracting party on becoming independent.

55. The lenient nature of paragraph 1, however, had been abandoned in paragraph 2, which concerned cases in which a treaty provided that a successor State should be considered a party; in such cases an obligation on a third State, under article 35 of the Vienna Convention, came into force only if the third State expressly accepted it in writing. Thus in paragraph 2 the International Law Commission obviously concluded that, as distinct from the tenor of paragraph 1, the express written consent of a successor State was required before it could be considered a party to the treaty in question.

56. The United Kingdom amendment did not apply such strict juridical criteria, but relied on equity, flexibility and expediency. Moreover, it impinged on basic principles of international law by implying that conduct could be taken as a criterion for regarding a State as a party to a treaty. The Norwegian delegation considered that the text of that amendment would be against the interests of all States concerned and would vote against its adoption.

57. Mr. MUSEUX (France) said that, since some delegations' objections to the adoption of the United Kingdom amendment arose only from subparagraph (*b*), which they found too vague, he proposed that subparagraph (*b*) be amended to read: "by reason of its conduct, clearly manifested after the date of the succession of States, is to be considered as having so agreed".

58. He disagreed with the Norwegian representative concerning the assimilation of successor States and third States. If the two were to be treated in the same way, the provisions of the Vienna Convention would surely suffice and the task of the present Conference would be pointless. The provisions of the Vienna Convention, in accordance with its article 73, would not "prejudge any question that may arise in regard to a treaty from a succession of States"[16]—a circumstance which did in fact leave work for the Conference to do.

59. Mr. KEARNEY (United States of America) suggested that, in order to save time, the Committee should now vote on the United Kingdom amendment. In reply to a question from the Ethiopian delegation on a point of order, he said that his suggestion was not a formal move to close the debate under the rules of procedure.

60. Mr. STEEL (United Kingdom) said that his delegation accepted the French representative's oral amendment and would regard it as incorporated in the text of document A/CONF.80/C.1/L.14.

61. Mr. MIRCEA (Romania) said that his delegation could support the International Law Commission's text of article 10, although it had the same difficulty as the Moroccan delegation regarding paragraph 3. He would like to see the dates referred to in the first two paragraphs more clearly defined, since at present they might be taken to imply something different from the wording of paragraph 3.

[16] *Ibid.*, p. 299.

62. His delegation would have great difficulty in agreeing to the United Kingdom amendment, on account of its subparagraph (*b*).

63. Mr. YANGO (Philippines) said that his delegation supported the text of article 10 of the draft *in toto*.

64. In his delegation's view, the United Kingdom amendment did not match paragraph 2 in either content or style. With regard to subparagraph (*b*) of that amendment, his delegation had serious reservations about the possibility of assessing conduct, and the French delegation's oral amendment did not clarify the matter. His delegation would therefore vote against adoption of the United Kingdom amendment.

65. Mr. KAPETANOVIĆ (Yugoslavia) said that his delegation too would support the International Law Commission's text of article 10 as it stood, for reasons stated by other delegations. It would have to vote against adoption of the United Kingdom amendment for two reasons. First, the text was too flexible, which meant that it would be open to subjective interpretation; secondly, its application could give rise to difficulties for some States, whose constitutional law might provide unconditionally that acceptances of the kind in question must be given in writing.

66. The CHAIRMAN invited the Committee to vote on the United Kingdom amendment (A/CONF.80/C.1/L.14), taking the two subparagraphs separately, as suggested by the United States representative.

Subparagraph (a) of the United Kingdom amendment was rejected by 32 votes to 24, with 16 abstentions.

Subparagraph (b) of the United Kingdom amendment, as orally amended, was rejected by 45 votes to 13, with 18 abstentions.

67. The CHAIRMAN said that, if there was no objection, he would take it that the Committee of the Whole provisionally adopted the text of draft article 10 and referred it to the Drafting Committee for consideration.

It was so agreed.[17]

The meeting rose at 6.05 p.m.

[17] For resumption of the discussion of article 10, see 31st meeting, paras. 25-42.

17th MEETING

Tuesday, 19 April 1977, at 11 a.m.

Chairman: Mr. RIAD (Egypt)

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*)

PROPOSED NEW ARTICLE 9 *bis* (Consequences of a succession of States as regards the predecessor State) (*continued*)[1]

1. Mr. YANEZ-BARNUEVO (Spain) said that the new version of article 9 *bis* submitted by the United Kingdom (A/CONF.80/C.1/L.13/Rev.1) contained important changes which took account of the reservations of the representatives of Guyana[2] and the United Republic of Tanzania[3] and the suggestions of the representatives of Brazil[4] and France.[5] He therefore supported the new proposal which, in his opinion, filled a lacuna in the draft articles.

2. Mr. RANJEVA (Madagascar) appreciated the efforts of the United Kingdom to correct the imperfections of the first proposal, but was afraid that the new article 9 *bis* might be a source of confusion, since the article called in question the whole principle of the "clean slate" and the fact raised more problems than it solved.

3. The revised version of article 9 *bis* showed that the problem posed by the article was one of substance and not of form, as had been clearly pointed out by the representatives of the United Republic of Tanzania and Sweden. It was difficult to represent the provision of article 9 *bis* as a corollary of the "clean slate" principle, since, in so far as the convention allowed for different types of succession of States, there should be special machinery governing each type of succession and consequently special rules. He therefore doubted the usefulness of including article 9 *bis* in the draft convention.

4. Moreover, he was afraid that sanction of the "clean slate" principle with regard to the predecessor State might lead to two essential difficulties. It might be asked what would happen in law if, faced with the legal disappearance of the rights and obligations of the predecessor State, the successor State were to be confronted in practice with situations arising out of

[1] For the amendment submitted to proposed new article 9 *bis*, see 15th meeting, foot-note 4

[2] See above, 15th meeting, para. 21.

[3] See above, 15th meeting, para. 34.

[4] See above, 15th meeting, para. 24.

[5] See above, 15th meeting, para. 29.

the rights and obligations assumed by the predecessor State. It might also be asked what was the exact meaning of the words: "events or situations occurring thereafter". What would happen in the case of events or situations which occurred after the date of succession of States but whose origin was prior to that date—in the case, for example, of repayment of debts incurred by the predecessor State in respect of the territory before the succession of States? As a result of such difficulties, his delegation could not support article 9 *bis*.

5. Mr. SHAHABUDDEEN (Guyana) warned members of the Committee against the temptation of adopting, in the name of the sacrosanct principle of sovereignty of a newly independent State, any proposal asserting that the treaty obligations and rights of the administering Power in respect of the territory of the new State should automatically and instantly cease on the date of the succession of States. There was a case for making a distinction in that context between the treaty rights and the treaty obligations of the predecessor State, since it was the continuance of the treaty rights of the predecessor State in respect of the territory of the newly independent State which were really incompatible with the sovereignty of that State.

6. He did not see why, after centuries of imperial stewardship, the predecessor State should, on the emergence of the newly independent State, necessarily be regarded as instantly absolved from any further treaty obligations in respect of the territory of the new State. In most cases, no doubt, that would be the position adopted, but not in all. The continuance of the treaty obligations of the predecessor State in respect of the territory of the newly independent State was not necessarily inconsistent with the sovereignty of the new State, as was illustrated by the Agreement to resolve the controversy between Venezuela and the United Kingdom of Great Britain and Northern Ireland over the frontier between Venezuela and British Guiana, concluded by the United Kingdom and Venezuela, in consultation with the Government of British Guiana, and signed at Geneva in 1966.[6] Conceivably the continuance of such obligations might be very pertinent to the viability of the new State, far from being an afront to its sovereignty.

7. The fact that independence freed the colony of the political control of the predecessor State did not necessarily have the consequence of freeing the predecessor State of all its treaty obligations for the territory of the new State. However reciprocal such a consequence might appear to be, it was not compelled by any inherent logic in the situation. It should be borne in mind that the political situation resulting from the decolonization process was altogether different from the classical situation involved in the exchange of territories between long-established States. It was the latter situation which constituted the origin and natural context of the principle of moving treaty-frontiers. There, territory was passing from the control of one established sovereign State to another; it was not the welfare of the inhabitants of the territory which was of primary concern but the geopolitical considerations at the root of the continuing rivalries which opposed the Powers involved. In the context of decolonization, on the other hand, territory and people were passing out of the trusteeship of imperial authority into a separate and independent existence. For that reason the Conference should be slow to apply the rule of moving treaty-frontiers, in all its finality, to the particular phenomenon of decolonization, since the rule had originated in extremely different circumstances and was at present being applied to situations arising out of the new principle of self-determination.

8. His delegation felt that the arguments marshalled in support of the United Kingdom proposal were, in the last analysis, based on mere considerations of symmetry. Symmetry, however, should not be sought for its own sake, for if a rule was appropriate in the case of a newly independent State, its corollary was not necessarily justified in the case of the predecessor State. The value of a rule depended on the situation to which it applied and not on some *a priori* principle developed in a different context. The Commission had expressed great caution with regard to application of the moving treaty-frontiers rule contained in article 14. Far from applying the principle to the case of newly independent States, it had stated, in paragraph (1) of its commentary on article 14 that the article concerned "cases which do not involve a union of States or merger of one State with another, and equally do not involve the emergence of a newly independent State" (A/CONF.80/4, p. 49). In his opinion the Conference should exercise the same restraint in the matter as the International Law Commission. He therefore could not support article 9 *bis* proposed by the United Kingdom, either in its original or its revised form.

9. The CHAIRMAN put to the vote article 9 *bis* as proposed by the United Kingdom in document A/CONF.80/C.1/L.13/Rev.1.

Article 9 bis *was rejected by 32 votes to 13, with 32 abstentions.*

ARTICLE 11 (Boundary régimes)[7]

10. Mr. TABIBI (Afghanistan) said that the matter of territorial régimes, dealt with in articles 11 and 12, was "at once important, complex and controversial" as the International Law Commission had stated in paragraph (1) of its commentary on articles 11 and 12 (A/CONF.80/4, p. 38). The International Law Commission had further stated in paragraph (2) of its commentary that "in general [...] the diversity of the

[6] United Nations, *Treaty Series*, vol. 561, p. 323.

[7] The following amendment was submitted: Afghanistan, A/CONF.80/C.1/L.24 (to articles 11 and 12).

opinions of writers makes it difficult to find in them clear guidance as to what extent and upon what precise basis international law recognizes that treaties of a territorial character constitute a special category for the purposes of the law applicable to succession of States" (*ibid.*). Because of the complexity of territorial régimes, as acknowledged by the International Law Commission, Afghanistan since 1962 had adopted a very cautious approach to the question in the General Assembly, and he himself, as a member of the first Sub-Committee on the Succession of States and Governments, had repeatedly requested the Commission not to formulate rules which tended to legalize invalid and illegal situations, and would therefore create more obstacles to the solution of numerous territorial disputes currently under negotiation by Member States. He had also followed that cautious approach in his memorandum on the topic of succession of States and Governments to the Sub-Committee on Succession of States and Governments in 1963.[8]

11. The rules in articles 11 and 12 were the result of many years' preparation and discussion by the Governments as well as the International Law Commission and the Sixth Committee of the General Assembly. In his first report on succession of States and Governments in respect of treaties,[9] submitted in 1968, the then Special Rapporteur, Sir Humphrey Waldock, had proposed an article 4 entitled "Boundaries resulting from treaties". In articles 22 and 22 *bis*, which he proposed in 1972 in his fifth report on the succession of States in respect of treaties,[10] he had adopted a somewhat different wording, strongly influenced by article 62 of the Vienna Convention on the Law of Treaties, as he had felt that any rule concerning boundary régimes could only be a restatement of that article. In 1974, when the examination of the draft convention had been in its final stage, the International Law Commission had concluded that, after 15 years of in-depth study it would be dangerous to frame rules which could legalize unlawful treaties. It had therefore introduced the provision contained in article 13 (Questions relating to the validity of a treaty), as article 11 dealt only with the effects of succession as such and did not touch on questions concerning the validity of a treaty. As the boundary régime defined in article 11 was not the only territorial régime, the rule set forth in article 13 had been placed immediately after articles 11 and 12 in order to cover those two articles and the other draft articles whose purpose was the same as those of part V of the Vienna Convention on the Law of Treaties. Consequently, articles 11 and 12 should be examined in conjunction with article 13, as all three articles were closely linked and the provisions of articles 11 and 12 could be misinterpreted without the rule embodied in article 13.

12. In 1974, when submitting the provisions (arts. 29 and 30) now in articles 11 and 12, Sir Francis Vallat had commented that the provisions actually constituted "saving clauses of a limited nature, and no more".[11] The scope of the provisions was limited to the effects of succession and the words "established by a treaty" could only mean "validly established by a valid treaty".[12] The articles obviously referred to "situations lawfully and validly created" and in no way precluded "adjustment by self-determination, negotiation, arbitration or any other method acceptable to the parties concerned".[13] Although the Special Rapporteur's explanations, plus articles 6 and 13 concerning the validity of treaties, were a great improvement on the previous drafts, the Afghan delegation nevertheless still considered that it would be better to delete articles 11 and 12. Afghanistan was a peaceful country with a long-standing policy of non-alignment, strongly in favour of international peace and co-operation and opposed to the violation of agreed frontiers.

13. His delegation was in favour of deleting or merging articles 11 and 12, because it felt that their inclusion in the draft might have the effect of prejudging a boundary dispute where one of the parties challenged colonial or unequal treaties on the basis of the right of self-determination, and that the articles would therefore be prejudicial to the position of newly independent States when challenging a boundary on the grounds that it was established by a treaty which itself was invalid. The argument that articles 11 and 12 were intended to preserve the continuity of a boundary, as being important for maintaining peace, was not a convincing one. If the changing of boundaries could cause disputes, maintaining illegal boundaries against the wishes of border residents would in many cases be a permanent source of tension and friction between States. It was more important that disputes be solved by peaceful means such as direct and friendly negotiations between the parties concerned. The Afghan delegation also considered that the principle of continuity did not mean that boundary treaties, particularly if they were of a colonial and unequal character, should be considered sacred and inviolable.

14. Notwithstanding article III, paragraph 3, of the Charter of the Organization of African Unity,[14] which upheld respect for the sovereignty and territorial integrity of States, article XIX of that same Charter[15] provided for the establishment of a Commission of Mediation, Conciliation and Arbitration to deal with boundary disputes. There were at present many boundary disputes between African States, as there were between States in other parts of the world, that could be solved by peaceful means involving direct

[8] *Yearbook of the International Law Commission, 1963*, vol. II, pp. 284-285, document A/5509, annex II, appendix II.

[9] *Ibid.*, 1968, vol. II, p. 87, document A/CN.4/202.

[10] *Ibid.*, 1972, vol. II, p. 1, document A/CN.4/256 and Add.1-4.

[11] *Ibid.*, 1974, vol. I, p. 204, 1286th meeting, para. 51.

[12] *Ibid.*, para. 53.

[13] *Ibid.*

[14] United Nations, *Treaty Series*, vol. 479, p. 74.

[15] *Ibid.*, p. 80.

negotiations by the parties concerned. It would be dangerous to accept the theory that an unlawful treaty could establish a valid boundary régime. The Conference should not give the impression that it supported invalid boundaries in violation of human rights and the principles of *jus cogens*. It would also be dangerous to recognize purely *de facto* situations, as, in many cases, that might mean recognizing territories which had been occupied by military force. It would be a great mistake to adopt provisions which, despite article 13, could be interpreted in any way as discouraging negotiation, arbitration or any other type of peaceful settlement of disputes.

15. His delegation also had doubts about the interpretation and application of articles 11 and 12 because it was uncertain about the terms "boundary", "frontier", "demarcation line", "zone of influence", "neutral zone" and many others used in that context. As a boundary was not only a geometrical line, but comprised a human element which the term "boundary" did not take into account, it would be better to combine article 11 and article 12 so as to have a single article which covered territorial régimes.

16. It was also uncertain about including articles 11 and 12 in the draft convention, as the question of boundary and territorial régime was outside the scope of succession of States in respect of treaties; it belonged rather to the area of succession in respect of rights and duties resulting from sources other than treaties.

17. In his delegation's opinion articles 11 and 12 were not based on adequate judicial precedents. The cases mentioned in the commentary did not suffice to establish the rules under consideration. The International Law Commission itself had drawn attention to their weaknesses. Most of the examples cited failed to support the rules embodied in articles 11 and 12.

18. Despite the safeguards in articles 6 and 13, his delegation was reluctant to support articles 11 and 12, particularly article 11, and considered that it would be better to delete them. That cautious approach was also supported by the position adopted in 1948 by one of the Special Rapporteurs on the Law of Treaties, Sir Gerard Fitzmaurice.

19. He hoped that the Expert Consultant would confirm that, if the two articles were adopted, they would in no way prejudice the validity of treaties; that in subparagraph (*a*) of article 11 the words "boundary established by a treaty" meant nothing more than "boundary validly established by a valid treaty"; that the obvious intention of the rule was to refer to situations lawfully and validly created; and that there was nothing in the article which in any way precluded adjustment by self-determination, negotiation, arbitration or any other method accepted by neighbouring countries.

20. If, after confirmation of this interpretation, the Conference decided to retain articles 11 and 12, the Afghan delegation would support their combination in a single article entitled "Territorial régimes", as proposed in the amendment submitted in document A/CONF.80/C.1/L.24.

21. Mr. MBACKE (Senegal) stated that article 11 could not fail to be of interest to newly independent States, the boundaries of which had been drawn under agreements concluded by predecessor States without taking account of the interests of the peoples concerned. As a result, families were sometimes separated by a boundary, towns were divided in two, and villagers living on one side of a boundary had their fields on the other side. Regional organizations had turned their attention to the problem and had arrived at a *modus vivendi* by affirming the maintenance of boundaries regardless of such difficulties. In 1964, at Cairo, the Assembly of Heads of State and Government of the Organization of African Unity had adopted resolution 16 (I) according to which "all Member States pledge themselves to respect the borders existing on their achievement of national independence"[16] thus precluding any possibility of disputes on legal grounds.

22. However, the International Law Commission's draft implied that boundaries could not be challenged on grounds of a succession of States but that they might be on other grounds. The States Members of the Organizaion of African Unity were thus placed in a difficult position, since they were bound by the resolution adopted in 1964. Furthermore, the formula "does not as such affect" at the beginning of article 11 was not current legal language. If a State could not invoke a succession of States to dispute a treaty concerning a boundary régime, it might similarly be argued that a State could not invoke a succession of States to maintain a boundary. Thus the wording was ambiguous, although it appeared from a reading of the commentary that the International Law Commission supported the principle that boundaries were sacrosanct. In his view, the wording of article 11 was not rigorous enough.

23. Mr. OSMAN (Somalia) endorsed the views of the representative of Afghanistan on article 11, which touched upon one of the most delicate issues of the law pertaining to the succession of States. Recalling that article 11 had given rise to prolonged discussion at the thirtieth session of the General Assembly and that it created difficulties for many States, as indicated in the commentary of the International Law Commission and the working paper prepared by the Secretariat (A/CONF.80/5 and Corr.1), he made it clear that his own Government also did not support the draft article. In fact, that draft article contained an

[16] OAU, *Resolutions adopted by the Assembly of Heads of State and Government of independent African countries and Resolutions and Declarations adopted by the Assembly of Heads of State and Government, 1963-1972*, Addis Ababa (Ethiopia), 1973, p. 34.

entirely artificial exception to the "clean slate" principle and was not consistent with generally accepted principles of international law and the rules of *jus cogens* laid down in the Charter of the United Nations. Its legal basis was questionable and the International Law Commission itself admitted in its commentary that there was indeed no rule to support the theory that treaties dealing with a boundary régime constituted a special category of treaties.

24. Examining the basis of article 11 as reflected in the Commission's commentary, he said that the precedents and case law referred to by the Commission were not convincing and did not reflect the sentiment of the world community. The cases cited were not connected with the delimitation of a frontier or any territorial arrangement whatsoever and only related to situations which had arisen in the nineteenth century when the international community had been completely different from the contemporary world. Furthermore, the extracts from judgements cited in the commentary were mere *obiter dicta* and as such could not be considered as expressing fundamental principles of international law. The disputes mentioned concerned European countries and the International Law Commission had lamentably failed to substantiate its thesis by reference to the decisions of judicial organs from other regions. Moreover, as the decisions mentioned related to the relationships between a colonial Power and a former dependent country, his delegation regretted that the International Law Commission had placed undue emphasis on the attitude of the former colonial Power. For those reasons, his delegation considered that article 11 as well as article 12 were predominantly influenced by political considerations rather than doctrine. It was no coincidence that those provisions, in line with article 62 of the Vienna Convention on the Law of Treaties, merely reflected and justified the practice followed by the United Kingdom in the eighteenth and nineteenth centuries. Would it not be a setback in the codification of just and equitable principles to support provisions which future generations would regard as transitory? The codification of the exception in the form of a rule embodied in the draft article would violate a fundamental principle inasmuch as it would be prejudicial to the right to self-determination of peoples affected by boundary treaties which dated back to the colonial era and which should be regarded as null and void.

25. He pointed out that although the resolution of the Assembly of Heads of State and Government of the Organization of African Unity referred to[17] did not apply to disputes concerning existing boundaries and territorial régimes, in the course of discussion on that resolution, President Nyerere and President Nkrumah had placed on record that it would provide a mechanism for the resolution of boundary disputes in the future.

[17] See above, para. 21.

26. Summing up, he said that the adoption of the present text of article 11 would have serious consequences for the international community. The rule which it embodied was an artificial one, since it was impossible to separate the delimitation of a boundary from the treaty itself. Article 11 was contrary to the principle of *rebus sic stantibus* and to the right of peoples to self-determination. Nor was it made clear that the article did not apply to treaties involving transfers of territory concluded by colonial Powers and in general to inequitable colonial treaties. Finally, that provision would be prejudicial to peaceful negotiations for the settlement of boundary disputes inherited from the colonial past.

27. In order to promote the peaceful settlement of such disputes, that draft article should be more balanced in form, otherwise it must be deleted. Thus his delegation had serious reservations about the exception established by the rule laid down in articles 11 and 12.

28. Mr. YIMER (Ethiopia) emphasized the importance of article 11, which had already been widely accepted by Governments both in their written observations and in the Sixth Committee of the General Assembly. Its inclusion in the proposed convention would undoubtedly ensure the widespread acceptance of that instrument. Article 11 embodied the most important exception to the "clean slate" principle on which the whole draft was based. No amendment to one of the general provisions, particularly article 7, or any other provision of the draft could reduce the force of that overriding basic exception.

29. The importance of article 11 lay in the fact that it aimed at maintaining international peace and security by reaffirming the principle of respect for the territorial integrity of States as embodied in the Charter of the United Nations and the Charter of the Organization of African Unity. He wondered what would happen if a new State were to repudiate the boundaries it had inherited and were to claim the territory of another State. If such an option were allowed, the principle of the territorial integrity of States would be undermined and international peace and security would be endangered. Recent history provided examples of such action.

30. Clearly, the international community as a whole was against an absolute "clean slate" principle of State succession. Like any other principle of law, it was subject to exceptions, the most important of which being that contained in article 11. That exception had been admitted by most jurists and accepted in State practice. The Organization of African Unity as well as the Conference of Heads of State or Government of Non-Aligned Countries had also accepted it in 1964. But States which had thus confirmed the principle of respect for boundaries existing at the time of independence were precisely those which had inherited boundaries drawn, for the most part, by predecessor States. Yet, they had sought to act in the interests of peace and the stability of boundaries.

31. As the International Law Commission had pointed out in its commentary on article 11, the reasons justifying the provisions of article 62, paragraph 2, subparagraph (*a*) of the Vienna Convention on the Law of Treaties, according to which a fundamental change of circumstances might not be invoked as a ground for terminating a treaty establishing a boundary, were also valid for the article under discussion. The importance of the principle of inviolability of boundaries lay in the fact that article 62 of the Vienna Convention on the Law of Treaties had been one of those adopted by an overwhelming majority. Article 11 did no more than reaffirm the rule set forth in that provision of the Vienna Convention.

32. The arguments based on the principle of self-determination expounded by some delegations in order to rebut the principle embodied in article 11 were irrelevant. He would only point out that, by making the "clean slate" principle the cornerstone of the draft, the International Law Commission had given effect to the principle of self-determination, but had also brought out clearly its limitations by providing for exceptions such as the one in article 11. In view of the existence of article 62 of the Vienna Convention on the Law of Treaties, the deletion of article 11 would create an inconsistency in the codification of international law.

33. In conclusion, he said that the exception to the "clean slate" principle stated in article 11 was so fundamental that no other provision in the draft could be in conflict with it. Thus, the article must be adopted as drafted by the International Law Commission.

34. Mr. SUCHARITKUL (Thailand) requested clarification from the Expert Consultant on the meaning of the terms "régime of the boundary" and "boundary régimes". In its commentary, the International Law Commission gave no further explanation, but merely referred to boundary and other territorial régimes.

35. The Thai delegation did not dispute the need for certainty in international relations regarding frontiers already established by treaties between the parties concerned. It would, however, strongly protest against any suggestion that the frontiers already established could subsequently be altered through the application of a provision in an old treaty which had been abrogated or denounced by either of the contracting parties in accordance with the agreed procedure. Nor could it agree that unequal treaties concluded long before between colonial Powers and an Asian State, and subsequently abrogated, could be revived and invoked by a State claiming to succeed to the treaty rights of those colonial Powers. Thus, a treaty provision which had long been abrogated concerning future changes in a boundary at the expense of an Asian contracting party would be regarded as an unequal provision and, after its effective abrogation, could not be invoked to alter an already well-established boundary. In the Thai delegation's view, a frontier long established by treaty or otherwise should not be altered, regardless of any political provision in a treaty to the effect that a change in certain geographical elements such as a watercourse could move the frontier only in favour of the colonial Power and at the expense of the Asian State.

36. Lastly, he wished to reaffirm the principle of non-retroactivity, as expounded in article 7 of the draft, with regard to boundaries. His delegation could only accept the article under consideration if the term "boundary régime" was satisfactorily clarified and if reasonable safeguards against the possibility of reviving unequal treaties were given.

37. His delegation was able to support Afghanistan's amendment for the reasons put forward by its delegation.

38. Mr. PASZKOWSKI (Poland) said that a provision on boundary régimes was indispensable in the future convention. The increasingly advanced codification of international law often raised problems of the harmonization of various institutions and principles, so that their scope had to be accurately defined. International law was made up of a set of rules which had to be properly co-ordinated. The article under consideration was, indeed, a provision which must be co-ordinated with article 62, paragraph 2, subparagraph (*a*) of the Vienna Convention on the Law of Treaties. The article proposed by the International Law Commission was excellently drafted and the Polish delegation fully endorsed the commentary on that provision.

39. Boundary treaties were traditionally and universally regarded as having separate status because of their purpose and their legal effects. The aim of those treaties was, in essence, to determine in legal form the extent of States' sovereignty in space. Once a boundary treaty had been concluded, the boundary established and the boundary régime were protected, not only by the general law of treaties and, in particular, the principle that *pacta sunt servanda,* but also by other universally binding principles of international law such as the sovereign equality of States, the territorial integrity of States, the inviolability of frontiers and the prohibition of the threat or use of force. Moreover, it was generally admitted that boundary treaties created an essentially permanent, objective, factual situation which was effective *erga omnes.*

40. The succession of one State to another could not *per se* undermine the territorial rights of other States and, in particular, it could not alter the boundaries of other States. The very concept of succession was a barrier in that respect. The process of succession took place on a definite territory. The successor State could not acquire more territorial rights than had been possessed by the predecessor State, and it was clear that, because of its natural and legal limitations, a succession of States could not be a ground

for challenging existing boundaries and boundary régimes. The Polish delegation was therefore entirely in favour of article 11 as proposed.

41. The rule expressed in article 11 was almost unanimously supported by the literature. Some authors had referred, in that context, to "genuine succession". The article under consideration also reflected the general practice of States, including that of newly independent States. In that connexion, he recalled article III of the Charter of the Organization of African Unity[18] and resolution 16 (I) adopted by that organization in 1964.

42. He welcomed the fact that many States, representing various regions, had expressed similar views in their written comments. It was also clear from the present discussion that there was broad support for article 11 in the Committee. He regretted that he was unable to support Afghanistan's amendment, since he was convinced that the provisions of article 11 should be in a separate article.

43. Mr. POEGGEL (German Democratic Republic) said that article 11 should be retained in the form and place proposed by the International Law Commission. That article allowed a justified exception from the "clean slate" principle and was fully in accordance with article 62, paragraph 2, subparagraph (*a*) of the Vienna Convention on the Law of Treaties.

44. The succession of States in respect of boundaries went beyond the succession of States in respect of treaties; it should therefore be considered in relation to international peace and security. Disputes concerning boundaries had often given rise to wars in Europe. In the light of their experience, European States had accepted the principle of the inviolability of frontiers and had included it in their bilateral treaties. The States which had signed the Final Act of the Helsinki Conference[19] on I August, 1975 had also regarded each other's frontiers and the frontiers of other European States as inviolable. The delegation of the German Democratic Republic therefore considered article 11 as indispensable.

45. Mr. SATTAR (Pakistan) noted that only one amendment, which had been distributed shortly before the meeting, had been proposed to the article under consideration, and that amendment related only to the form, since it consisted of combining articles 11 and 12 into one provision. Consequently, the Commission should not consider that amendment until it had examined the substance of articles 11 and 12.

46. The present discussion and the commentary by the International Law Commission on article 11 had confirmed the view expressed by the Government of Pakistan at the twenty-ninth session of the General Assembly and in its written comments in 1975 (see A/CONF.80/5, pp. 164-165). Article 11 embodied a rule which was firmly entrenched in State practice, consistent with the principle of respect for territorial integrity as proclaimed in the Charter, and upheld by the majority of old and new States. In addition, that rule was indispensable for the maintenance of international peace and the promotion of amicable relations among neighbouring States.

47. In drafting article 11, the International Law Commission had preferred the view of modern jurists that, in the succession of States, the rule should be stated in terms of boundaries established by treaty rather than treaties establishing boundaries. He entirely endorsed that choice, since, when the successor State replaced the predecessor State, it did so in respect of a territory with certain boundaries. For the successor State, its boundaries represented a legal and factual situation which might be the product of a treaty, but a treaty whose boundary clauses had been implemented prior to the occurrence of the succession. In the context of succession, therefore, the main point was not so much the continuance in force of a treaty as the continuance of a territorial situation resulting from the prior implementation of the treaty. A succession of States as such could not confer validity on the boundaries of a successor State. But neither did it permit or justify any challenge to the boundaries of the successor State. Any demand for the revision of an old boundary settlement on the occasion of a succession of States had no connexion with the law of succession, as pointed out by the International Law Commission in paragraph (16) of the commentary on article 11 (A/CONF.80/4, p. 41). The other State party did not derive from the fact of succession any right to challenge or denounce the pre-existing boundary with the successor State. If that were not the case, the territorial integrity of a newly independent State would be jeopardized and threats to international peace as well as conflicts between neighbouring States would be encouraged.

48. It had been suggested that, in the article under consideration, the term "treaty" meant a valid treaty. The question of the validity of a treaty was a separate question covered by article 13. Of course that question would be decided, not unilaterally, but objectively, as laid down in the Vienna Convention on the Law of Treaties. Some had considered that the principle of the continuity of international boundaries contradicted the principle of self-determination. That objection had earlier been made during the discussion of article 62 of the Vienna Convention but, after due consideration, had been rejected, for the two principles were separate. The fact of succession could not set in action the principle of self-determination.

49. The principle of the continued validity of a boundary established by treaty following a succession of States was firmly established in practice, particu-

[18] United Nations, *Treaty Series*, vol. 479, p. 74.

[19] Conference on Security and Co-operation in Europe, *Final Act*, Lausanne, Imprimeries réunies, p. 76.

larly the practice of newly independent States. That principle had been enshrined in 1964 in resolution 16 (I) adopted by the Organization of African Unity and a similar resolution adopted by the Conference of Heads of State or Government of the Non-Aligned Countries. In their written comments, as set out in the analytical compilation of comments of Governments (A/CONF.80/5 and Corr.1), States had described article 11 as right, reasonable, balanced and realistic, incontestable, well-established and universally recognized, or in full harmony with State practice and the general principles of international law. His delegation considered that respect for the rule set out in article 11 was an essential prerequisite for peace and amicable relations between neighbouring States. The inclusion of that provision in the future convention was vital if that document was to be balanced, viable and acceptable.

The meeting rose at 1.05 p.m.

18th MEETING

Tuesday, 19 April 1977, at 3.30 p.m.

Chairman: Mr. RIAD (Egypt)

In the absence of the Chairman, Mr. Ritter (Switzerland), Vice-Chairman, took the Chair.

Organization of work: request for interpretation for meetings of regional groups

1. Mr. YACOUBA (Niger), speaking on a point of order, said that as Chairman of the African Group he must formally complain that interpreting services had been abruptly terminated during one of the Group's meetings. He drew the attention of the General Committee and of all delegations to the lack of respect being shown for the African Group—the group representing the region with which the Conference's work was primarily concerned.

2. Mr. KATEKA (United Republic of Tanzania) supported the Nigerian representative, and asked for an explanation from the secretariat.

3. Mr. MUDHO (Kenya) supported the previous speakers, and sought an assurance from the Representative of the Secretary-General that the incident in question would not be repeated. He requested that the African Group's complaint be recorded in the summary record of the meeting.

4. Mr. RYBAKOV (Executive Secretary of the Conference) assured the African Group he would immediately take up the matter with the interpretation service to find out what had happened. He described the situation concerning the interpretation servicing of the regional groups in addition to the regular and night meetings of the Committee of the Whole, of the Drafting Committee and of the informal consultational group. He promised to contact the Office of Conference Services at Geneva to explore the possibility of obtaining additional interpreters in spite of existing financial limitations.

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*)

ARTICLE 11 (Boundary régimes) (*continued*)[1]

5. Mr. NYEKI (Hungary) said that his delegation supported the draft of article 11, which was fully in conformity with the principles of international law and, in particular, with article 62, paragraph 2, subparagraph (*a*) of the Vienna Convention on the Law of Treaties. His delegation had noted the far-reaching analysis of State practice in the commentary provided by the International Law Commission, and wished to stress that the need for article 11 was linked with the need to establish international peace and security. The history of Europe showed that most conflicts in that region had stemmed from boundary disputes, and European States had learnt to respect the principle of the inviolability of international boundaries. That principle had been acknowledged in resolutions adopted in 1964 by the Assembly of Heads of State and Government of the Organization of African Unity[2] and by the Conference of Heads of State or Government of Non-Aligned Countries.

6. With regard to the amendment submitted by Afghanistan (A/CONF.80/C.1/L.24), his delegation considered that boundary régimes should remain the subject of a separate article 11.

7. Mr. SIMMONDS (Ghana) said that his delegation supported draft article 11, which was of overriding importance for the maintenance of international peace and security.

8. Many colonial boundaries had been arbitrarily fixed by, and in the interests of, colonial Powers, often without legal justification and with no geographical, ethnic, linguistic or historical basis. Nineteenth-century European history in particular had shown that, in general, strategic and political considerations

[1] For the amendment submitted to article 11, see 17th meeting, foot-note 7.

[2] OAU, *Resolutions adopted by the Assembly of Heads of State and Government of independent African countries and Resolutions and declarations adopted by the Assembly of Heads of State and Government, 1963-1972*, Addis Ababa (Ethiopia), 1973, p. 34.

had outweighed the principle of self-determination in the settlement of boundaries. That experience might be relevant to the similar territorial problems in the developing countries during the past two decades, which showed an extraordinary hostility to the notion of applying the principle of self-determination to the readjustment of colonial boundaries. The reaction had been so strong as to prompt the 1964 resolutions referred to by the Hungarian representative, affirming the validity of all borders as they existed at the date of independence. Boundaries thus remained the one legacy of colonialism still zealously upheld.

9. The revision of boundaries could lead to secession movements contrary to the aims of States to create multi-racial societies. Self-determination should be confined to the birth of free nations and did not justify a country's partition into fragments which were not politically or economically viable.

10. With regard to the difficulties of peaceful change, it should be noted, first, that the cause of strife was not the principle of self-determination, but a desire to resist it; if all were prepared to accept a result based on self-determination there was no reason to suppose that violence would ensue any more than it had, for example, in Togoland in 1956 or the Cameroons in 1961. On the other hand, resistance to a plea for self-determination often led to the formation of liberation movements and to costly internal strife.

11. Secondly, self-determination, in the context of territorial disputes between States, seemed sometimes to involve a novel concept in treaty law, by which colonialist boundary treaties were rejected because they were inconsistent with the principle of self-determination. It was almost as though the doctrine of intertemporal law was being developed so as to imply that title to territory, whatever its treaty origin, could be accepted only if consistent with the right of self-determination within the context of the Charter.

12. His delegation reiterated its full support for the policy reflected in draft article 11.

13. Mr. HASSAN (Egypt) said that article 11 set out the most important exception to the "clean slate" principle, and contained inherent safeguards for boundary régimes established by existing treaties. The principle involved was not new; it was reflected, for example, in the resolution adopted by the Assembly of Heads of State and Government of the Organization of African Unity to which previous speakers had referred.

14. The amendment submitted by Afghanistan was not a formal proposal to delete article 11. It might be seen simply as a drafting amendment, though the delegation of Afghanistan seemed not to regard it as such. In any case, the Egyptian delegation considered that article 11 should remain separate and could not support the proposed amendment.

15. Mr. BENBOUCHTA (Morocco) said that the International Law Commission, in its commentary on articles 11 and 12, had noted two types of situation: one typified by settlements in Europe, and the other by United Kingdom practice in the granting of independence to a number of the present developing countries. The International Law Commission had cited cases in which it was sought to establish a homogeneous régime—for example, the case of the United States base in Morocco which the United States had agreed to evacuate following Morocco's rejection, on gaining independence, of the treaty between the United States and the former colonial Power. However, the International Law Commission seemed to have opted in favour of régimes of the first type, which, being only partial settlements and reflecting the interests of neighbour Powers in Europe, did not really apply to situations in developing countries.

16. Consequently, his delegation could not support the International Law Commission's wording. It believed that the task of codification should go beyond the considerations reflected in the commentary and should be seen in its true context, which was political.

17. His delegation had noted the cogent arguments of the delegations of Afghanistan[3] and Somalia.[4] It could add nothing to them for the moment, but it reserved the right to speak again at the end of the debate.

18. Mr. MIRCEA (Romania) praised the work of the International Law Commission in preparing draft article 11, which had such an important bearing on international relations. His delegation had no difficulty in accepting the text, which was consistent with Romania's regard for the principle of the inviolability of boundaries—a principle whose importance was recognized in many bilateral agreements, as well as in multilateral instruments such as the Final Act of the Conference on Security and Co-operation in Europe.[5]

19. His delegation did not, however, agree with the International Law Commission's commentary in its specific reference to a territorial type of treaty. For the nations of the group to which his country belonged, the aim of maintaining common security was paramount; for example, in diplomatic relations they had abandoned the legal fiction which sought to justify diplomatic immunity on extra-territorial grounds.

20. The idea of effects resulting from certain treaties seemed to his delegation a derogation from classical rules. The frontier régime might apply to situations which differed widely, and it should be left to the successor State to decide whether or not to continue the methods employed before its succession.

[3] See above, 17th meeting, paras. 10-20.

[4] See above, 17th meeting, paras. 23-27.

[5] Conference on Security and Co-operation in Europe, *Final Act*, Lausanne, Imprimeries Réunies, p. 76.

That State should be enabled to negotiate peacefully with its neighbours and to challenge the validity of frontier treaties if it saw fit. Article 11 was particularly applicable in the case of newly independent States; in the case of a separation of States and in cases of succession involving a part of territory, the question of establishing a boundary immediately arose.

21. His delegation could understand the reasoning behind the Afghanistan delegation's amendment, but article 12 raised problems about which he would prefer to speak later.

Mr. Riad (Egypt) took the Chair.

22. Mrs. THAKORE (India) said that articles 11 and 12 were among the most important of the draft articles prepared by the International Law Commission. They dealt with treaties of a territorial character, also known as "dispositive", "real" or "localized" treaties, and expressed the well-established rule of customary international law that such treaties constituted a special category not affected by a succession of States. They dealt with rights and obligations "running with the land". Articles 11 and 12 also confirmed the decision taken by the Vienna Conference on the Law of Treaties, as reflected in article 62, paragraph 2, subparagraph (*a*) of the Vienna Convention on the Law of Treaties, of 1969, to exclude the treaties in question from the operation of the rule on fundamental change of circumstances.

23. Her delegation fully supported the principles underlying articles 11 and 12. Their formulation was balanced and realistic and represented a laudable effort by the International Law Commission to arrive at generally acceptable solutions. The fact that none of the amendments submitted to articles 11 and 12 challenged the basic principles set out therein bore eloquent testimony to the International Law Commission's success in that regard.

24. Articles 11 and 12 applied to all cases of succession of States, not merely to those resulting in the creation of newly independent States, which meant that boundaries and other territorial régimes established by treaties were in no circumstances affected. The articles thus sought to lay down general rules and applied to all types of treaties, whether bilateral, restricted or general multilateral treaties. They also provided that a treaty's validity was not affected by a succession of States; succession could neither validate nor invalidate a treaty. That was not to say that treaties governing boundaries or other territorial régimes were immutable; it was generally considered that the International Law Commission did not intend the two articles to prejudice the question of validity of treaties or the right of States to seek a change by lawful means available to them under international law. It was precisely to allay anxieties and misunderstandings on that score that article 13 of the draft included a categorical provision that nothing in the articles should be considered "as prejudicing in any respect any question relating to the validity of a treaty". The Commission had considered it psychologically more effective to include that provision in the text of an article rather than to refer to the point in the commentary, and it had recognized, in the first paragraph of its commentary to articles 11 and 12, that the question of "territorial treaties" was at once important, complex and controversial.

25. Her delegation was glad to note that the two articles had received general support in the Sixth Committee of the General Assembly and in Governments' written comments, which showed that the international community at large endorsed the principle of continuity in respect of territorial treaties. The application of the principles reflected in articles 11 and 12 was vital to the maintenance of world peace and security. The resolutions adopted by the Assembly of Heads of State and Government of the Organization of African Unity and the Conference of Heads of State or Government of Non-Aligned Countries, both held at Cairo in 1964, referred to by previous speakers, showed the international community's recognition that treaties establishing territorial régimes must be excepted from the "clean slate" principle, and that chaos would ensue if newly independent States unilaterally repudiated the boundaries they had inherited.

26. Her delegation endorsed the principle of continuity in regard to territorial treaties. States were entitled to challenge existing boundaries, but they should do so not by invoking the "clean slate" principle, but by peaceful negotiations under international law, in accordance with the Charter. Consequently, her delegation maintained that articles 11 and 12 should be retained as they stood, but would support amendments relating to those articles which improved their drafting.

27. Mr. WAITITU (Kenya) re-emphasized his delegation's acceptance of the exceptions to the "clean slate" principle, which were recognized by international law and were now embodied in article 11. Kenya, which had a great respect for international law, considered that any departure from the article as drafted by the International Law Commission would run counter to the interests of peace in the world, to which it was committed. Furthermore, it would be unable to accept any amendment at any point in the draft convention which made the provisions of article 11 less effective. The rejection of the article would create innumerable and insoluble problems in regard to the maintenance of international peace and security.

28. His delegation considered that there was some link between article 12 and article 11, but remained open to proposals for the improvement of article 12, particularly as it affected treaties establishing servitudes. It welcomed the comments made on that sub-

ject at the 17th meeting, especially those of Ethiopia[6] and Pakistan.[7]

29. His delegation was unable to support the amendment proposed by Afghanistan.

30. Mr. BEDJAOUI (Algeria) observed that, in view of their considerable importance, the "territorial treaties" dealt with in article 11 had always been subject to a special régime, in that they were considered to be unaffected by a succession. The concept of the inviolability of frontiers in the event of a succession was upheld by State practice, international jurisprudence, traditional and modern doctrine, and the decisions of regional institutions and meetings.

31. The International Law Commission had referred, in its commentary to articles 11 and 12, to the relevant decisions of the Permanent Court of International Justice, to the exception to the rule on fundamental change of circumstances provided for in article 62, paragraph 2, subparagraph (*a*) of the Vienna Convention on the Law of Treaties, and to the resolutions adopted in 1964 by the Assembly of Heads of State and Government of the Organization of African Unity and the Conference of Heads of State or Government of Non-Aligned Countries. In addition, the representative of the German Democratic Republic had pointed out at the 17th meeting[8] that the principle of respect for frontiers was embodied in the Final Act of the Helsinki Conference.

32. The situation could not, in fact, be otherwise, for it was easy to imagine the universal danger to which acceptance of the non-continuity of territorial treaties would give rise. Consequently, his delegation unreservedly supported article 11 as drafted by the International Law Commission.

33. Mrs. HUMAIDAN (Democratic Yemen) said that her delegation believed there were insufficient precedents to justify a claim that the principle set out in article 11 was an established rule of international law. It therefore saw that principle as a rule of progressive development which, as such, was unacceptable in a convention of the type the Conference was drafting. In addition, it had found the arguments advanced in support of article 11 inadequate and not entirely convincing. Consequently, it advocated the deletion of the article.

34. Mr. DAMDINDORJ (Mongolia) considered article 11 to be a well-balanced provision which took into account both the "clean slate" principle and the principle of continuity. The article constituted a significant component of the convention, for it expressly stated the principle of the inviolability of the boundaries of all the States involved in a succession.

35. Like most previous speakers, his delegation supported article 11 as drafted by the International Law Commission. It subscribed, in particular, to the opinions expressed at the 17th meeting by the delegations of Poland[9] and Ethiopia.[10] It considered that the questions of boundary régimes and other territorial régimes should be dealt with separately, and was therefore opposed to the amendment.

36. Mrs. SLAMOVA (Czechoslovakia) remarked that there were numerous examples in history of boundary disputes which had given rise to violations of international peace and security. It was, therefore, only natural that the question of treaties establishing boundaries had been settled in the Vienna Convention on the Law of Treaties and that the status of the boundaries established by such a treaty in the event of a succession should be considered in the present convention.

37. Article 11 provided for a justified exception to the "clean slate" principle, which underlay the entire draft. The wording proposed by the International Law Commission had many advantages, including that of not touching on the purely theoretical question whether treaties establishing a boundary were binding on a successor State or whether that State must respect a boundary as a legal fact created by the application of such a treaty.

38. The rule stated in the article was upheld by a wealth of international practice. If the examples cited by the International Law Commission did not as such appear to provide support for the proposed wording, that was because they illustrated rather the contradictions which could be found in the most concrete treaty. However, they in no case negated the rule that a boundary established by a treaty was not affected by a succession.

39. Her delegation considered article 11 to be one of the most important provisions in the draft and supported its retention in its present form.

40. Mr. RAZZOUQI (Kuwait) said that particular thanks were due to the International Law Commission for its efforts to provide, through the wording of article 11, a balancing provision in the first part of the draft convention.

41. International practice and jurisprudence had long held that territorial treaties should be placed in a special category with regard to the effects of succession of States, and that view had been confirmed in recent years by article 62, paragraph 2, subparagraph (*a*) of the Vienna Convention on the Law of Treaties. Furthermore, the representatives of the States members of the Organization of African Unity and of the Non-Aligned States, which represented two-thirds of the world's population, had expressed

[6] See above, 17th meeting, paras. 28-33.

[7] See above, 17th meeting, paras. 45-49.

[8] See above, 17th meeting, para. 44.

[9] See above, 17th meeting, paras. 38-42.

[10] See above, foot-note 6.

their support for the inviolability of territorial boundaries at their respective meetings at Cairo in 1964, and the overwhelming majority of States whose comments were recorded in document A/CONF.80/5 and Corr.1 were in favour of article 11 as drafted by the International Law Commission. At a time when there were many boundary problems between neighbouring States, acceptance of the contrary principle to that stated in article 11 would lead to unlimited chaos.

42. His delegation understood the word "treaty" as used in article 11 to mean any type of agreement concluded between States as defined in the Vienna Convention on the Law of Treaties and also in article 2, paragraph 1, subparagraph (*a*) of the draft. It wholeheartedly supported article 11 as drafted by the International Law Commission and would oppose any amendment to it and any version of the draft convention in which it did not appear.

43. Mr. ZAKI (Sudan) observed that article 11 embodied a rule already stated in article 62, paragraph 2, subparagraph (*a*) of the Vienna Convention on the Law of Treaties. In exempting treaties establishing a boundary from the effect of draft article 15, it complied with the views of States as expressed, for example, in the Charter of the Organization of African Unity and the resolutions adopted in 1964 by the Assembly of Heads of State and Government of the Organization of African Unity and the Conference of Heads of State or Government of Non-Aligned Countries.

44. His delegation did not believe that article 11 was contrary to the principle of self-determination, which it considered to be fully preserved in the draft convention. The inclusion of the article, as proposed by the International Law Commission, was essential to the maintenance of international peace and security.

45. Mr. MARESCA (Italy) remarked that, if the Committee had been dealing with law in abstraction from reality, both article 11 and article 12 would have been unnecessary, for the draft convention was intended to define the legal effects of succession on treaties in force and, once treaties relating to territorial matters had been applied, they ceased to exist in the legal sense. In terms of practice, however, omission of those articles would mean that, by virtue of the "clean slate" principle, any successor State would have the right to attempt to extend its boundaries as far as it wished, with all the adverse consequences for international peace which the Conference had been convened to avoid. Consequently, his delegation was convinced of the need for both article 11 and article 12, even though the rules they stated were already contained in the Vienna Convention on the Law of Treaties and the *rebus sic stantibus* clause.

46. In view of the definiton of a "succession of States" given in article 2, paragraph 1, subparagraph (*b*), it would be more appropriate, in the French versions of articles 11 and 22, to replace the words "*n'affecte pas*" by the words "*ne porte pas atteinte*". In all languages, the words "obligations" and "rights" should be preceded by the words "the content of" wherever they appeared, whether simply or in combination, in either of the articles.

47. Sir Francis VALLAT (Expert Consultant) emphasized that it was not the Expert Consultant, but the Conference and, subsequently, the States which would apply the convention which were the masters of that instrument. As Expert Consultant, he could do no more than give his personal ideas concerning the International Law Commission's motivations in drafting the articles and the proper interpretation of their provisions. It was in the light of those remarks that he would attempt to answer the question put to him at the 17th meeting.

48. In reply to the representative of Afghanistan,[11] he said that the International Law Commission had drafted articles 11 and 12 so as to avoid, as far as possible, prejudicing questions concerning the validity of treaties, and had confirmed that intention in article 13. As to the question whether the phrase in article 11, subparagraph (*a*), meant "a boundary validly established by a valid treaty", he thought he had covered the point concerning the validity of the treaty as far as possible in commenting on the International Law Commission's intention in drafting the article. As to whether or not the boundary was "validly established", he could only say that a treaty either established a boundary or it did not, and that if a boundary was in fact established, it was presumably validly established. The representative of Afghanistan had further asked whether the intention in article 11, subparagraph (*a*) was to refer to a situation "lawfully and validly created": that was in fact the wording he himself would have preferred to see in the article. Finally, the representative of Afghanistan had asked for confirmation that there was nothing in the article which in any way precluded adjustment of boundaries by self-determination, negotiation, arbitration or any other method accepted by neighbouring countries. In stating that that was so, he wished to point out that the governing phrase was "or any other method accepted by neighbouring countries", which should be taken to mean that the settlement, by the States concerned, of boundary disputes arising after a succession, of States, was in no way prejudiced by article 11 and that nothing in that article precluded the exercise in such disputes, where appropriate, of the principle of self-determination.

49. The answer to the question put by the representative of Somalia[12] concerning the effect of article 11 on cessionary as opposed to boundary treaties lay to some extent in his replies to the questions of the representative of Afghanistan and in the question

[11] See above, 17th meeting, para. 19.

[12] See above, 17th meeting, para. 26.

itself. That question turned on the distinction between a cessionary and a boundary treaty. A treaty which established a boundary would normally be called a "boundary treaty", but if the authority seeking to establish the boundary was in some way legally incapacitated from ceding the territory concerned, the treaty could be challenged as invalid.

50. Finally, in answer of the representative of Thailand,[13] who had asked about the distinction between the phrase "boundary régimes" in the title of article 11 and the phrase "the régime of a boundary" which appeared in subparagraph (*b*) of that article, he drew attention to the first part of paragraph (19) of the commentary, and particularly to the statement to the effect that some members of the Commission had considered that "a boundary treaty may contain ancillary provisions which were intended to form a continuing part of the boundary régime created by the treaty and the termination of which on a succession of States would materially change the boundary settlement established by the treaty" (A/CONF.80/4, p. 42). What the Commission had had in mind in that respect were provisions so closely related to the settlement of the boundary that they could be regarded as part of the boundary settlement itself and as being indivisible from it.

Mr. Ritter (Switzerland), Vice-Chairman, took the Chair.

51. Mr. MAKAREVICH (Ukrainian Soviet Socialist Republic) said his delegation considered article 11 to be of fundamental importance for the entire draft convention and to reflect the desire of States to stabilize frontiers, thereby contributing to the progressive development of international law. The discussion so far showed that the Commision's approach corresponded in essence to that adopted in contemporary State practice and that the article was satisfactory to the overwhelming majority of delegations. The failure to respect boundary treaties and the resultant disputes had been the main source of international conflicts in the past, but there had been a fundamental change in the procedure for the settlement of such disputes, thanks largely to the practice of the world's first socialist State.

52. The inclusion of article 11 in the draft was justified on the basis of the generally recognized principles of territorial integrity and inviolability embodied in the Charter of the United Nations and in various other decisions and resolutions of that Organization, in the Charter of the Organization of African Unity and in the resolutions adopted in 1964 by the Assembly of Heads of State and Government of that Organization and the Conference of Heads of State or Government of Non-Aligned Countries, and in the Final Act of the Helsinki Conference. That the exception to the "clean slate" principle provided for in article 11 was justified, was confirmed by article 62, paragraph 2, subparagraph (*a*) of the Vienna Convention on the Law of Treaties. Article 11 was confined solely to the question of the effects of a succession of States as such on boundaries and a boundary régime established by a treaty, and did not in any way relate to the validity of the treaty or to any other grounds which might exist for a subsequent change and revision of boundaries. For changing an existing treaty relating to boundaries, the successor State always retained the right to resort to means recognized by international law as legitimate for that purpose. His delegation wholeheartedly supported the retention of article 11 as a separate article, in the form in which it had been drafted by the International Law Commission.

53. Mr. JELIĆ (Yugoslavia) said that his delegation supported the retention of draft article 11 for the reasons advanced by the International Law Commission in its commentary and by previous speakers. It also believed that the article should be retained because it protected the right of third States bordering on territory to which a succession of States related to continue in existence within the frontiers established prior to the succession, until such time as these frontiers were adjusted by lawful means.

54. Mr. SEPÚLVEDA (Mexico) said that his delegation supported the International Law Commission's text of article 11, which was perfectly satisfactory because it clearly expressed the principle of the continuity and permanence of boundaries established by treaties. That fundamental principle of international law was essential to the maintenance of international peace and security.

55. His delegation was grateful to the Expert Consultant, who had pointed out that there would be few dangers in adopting article 11 as it stood, and to other delegations which had stressed that any treaty or boundary régime could be revised in accordance with the rules of international law, which rejected unequal treaties. The text of draft article 11 struck a balance between the principle of continuity and the "clean slate" principle and ensured the stability of international relations by providing a guarantee of the boundaries of the successor State and of neighbouring States.

56. His delegation could not adopt a position on the amendment to draft articles 11 and 12 submitted by Afghanistan until the Committee had discussed draft article 12.

57. Mr. SHAHABUDDEEN (Guyana) said that his delegation supported draft article 11. It understood that article to mean that, in accordance with the "clean slate" principle embodied in draft article 15, the successor State did not automatically inherit the treaties of the predecessor State which, at the date of succession, had been in force in respect of the territory to which the succession had related. It was therefore a matter of common sense that any boundaries which had actually been established under such

[13] See above, 17th meeting, paras. 34-36.

treaties, as distinct from the treaties themselves, would not cease to be valid with effect from the date of succession.

58. That view was based on consideration of stability, the overwhelming weight of State practice, accepted doctrine and the probably universal rule of municipal law that the repeal of a statute did not ordinarily operate to obliterate things done and situations established under the statute before its repeal. Thus, his delegation understood draft article 11 as stating that the mere fact that one State had replaced another in the responsibility for the international relations of a territory, did not affect the boundaries of the territory established under a previous treaty, even if the operation of the treaty itself ceased by virtue of the succession of States.

59. His delegation was confident, however, that if draft article 11 was not adopted, the situation in international law would not change. It accordingly considered that the article was substantially declaratory in nature, though it agreed with the International Law Commission that in giving effect to the "clean slate" principle, it was reasonable, sensible and practical to declare that situation explicitly.

60. As to the wording of article 11, his delegation had no particular difficulty with the words "as such", which had been used in countless instances of drafting usage and seemed to be conveying the idea that the mere fact of a succession of States was not to be understood to have certain consequences.

61. With regard to the relationship between draft articles 11 and 12, his delegation thought it should be borne in mind that, in accordance with the provisions of article 1, the draft convention dealt only with the effects of a succession of States in respect of treaties and that draft article 11, subparagraph (*a*) dealt only with boundaries established by treaties. Boundaries could be established either by treaty or by other means. Even if an existing treaty was considered to be invalid, the boundary it had established would still be valid. Such boundaries would therefore continue whether or not draft articles 11 and 13, or either of them, were included in the future convention.

62. Moreover, the position of States which wished to challenge the validity of a boundary established by a treaty on the grounds that the treaty was invalid, was satisfactorily safeguarded by article 13. Thus, in so far as article 11 applied, the position of States which opposed its retention was fully protected by article 13.

63. With regard to the principle of the right to self-determination referred to by the delegatons which were opposed to article 11, his delegation was not convinced that that principle operated in the same area as the principle of the continuity of established boundaries; hence it did not think that there was necessarily any conflict between those two principles. If an existing boundary was thought to divide a natural political unit in an unreasonable manner, the principle of the right to self-determination would apply in regard to the question whether the segment of the unit which was said to be "on the wrong side of the fence" should be given autonomy as a separate State or made a part of the claimant State to which it was related. If application of the principle of the right to self-deterination resulted in the establishment by the people concerned of a separate State, the old boundary would either remain as it had been or could be modified by the two parties concerned. If the result was that the autonomy of the people concerned took the form of incorporation into the claimant State, then the old boundary which had divided them would automatically disappear. In other words, the continuity of the established boundary did not preclude the operation of the principle of the right to self-determination.

64. Those considerations had convinced his delegation that draft article 11 was a sensible and desirable provision which should be adopted as it stood.

65. Mr. SANYAOLU (Nigeria) said that his delegation fully supported the principle embodied in draft article 11, because it was designed to maintain international peace and security and it confirmed the resolution adopted by the Assembly of Heads of State and Government of the Organization of African Unity held at Cairo in 1964.

66. Mr. KRISHNADASAN (Swaziland) said that articles 11 and 12 constituted the main exceptions to the "clean slate" principle embodied in article 15. Although the International Law Commission had endeavoured to ensure international peace and security by including those articles in the draft convention, its efforts were open to criticism because the articles in question did not take due account of the principles of self-determination and the sovereign equality of States guaranteed in article 15. Colonial boundaries had been established for strategic and economic reasons, without any regard to geographical or ethnic considerations and he agreed with the view expressed by the representative of Afghanistan[14] that it could be just as dangerous to maintain a boundary as to do away with it.

67. Many delegations had referred to the resolution adopted in 1964 by the Assembly of Heads of State and Government of the Organization of African Unity and to the resolution adopted in the same year by the Conference of Heads of State or Government of Non-Aligned Countries. But in his delegation's view, the future convention need not necessarily elevate to the status of a rule of international law the provisions of resolutions which had been adopted at a given moment in the history of a region with a view to ensuring international peace and the stability of international relations. While it was true that article 62

[14] See above, 17th meeting, para. 13.

of the Vienna Convention on the Law of Treaties laid down that a fundamental change of circumstances could not be invoked as a ground for terminating or withdrawing from a boundary treaty, that article had to be read in the light of other well-established rules of international law, because both the Vienna Convention and customary international law provided that a State could be bound by a treaty only if it had established its consent to be bound. Without that element of consent, there was no reason why a successor State should automatically succeed to a treaty of the predecessor State establishing a boundary or other territorial régime. His delegation did not deny the need for treaties of a territorial character, but believed that if it was necessary to formulate rules governing boundary or other territorial régimes, such rules should be in keeping with present realities and widely accepted rules of international law. It did not believe that there existed at present such widely accepted rules of international law justifying articles 11 and 12.

68. The inclusion of the words "as such" in the opening phrase of article 11 might, however, enable his delegation to accept the article; they represented an improvement over the wording of earlier drafts prepared by the International Law Commission. He noted, however, that some delegations had stated that if draft articles 11 and 12 were deleted, the result would be chaos. The representative of Guyana had replied that, if draft article 11 was not adopted, State practice with regard to boundaries would not change. His own delegation had taken that reasoning one step further and had reached the conclusion that article 11 need not be included in the draft at all.

69. He fully agreed with the views expressed by the Expert Consultant in his replies to the question asked by the representative of Afghanistan concerning self-determination and to the question asked by the representative of Somalia concerning the effects of cessionary treaties.

70. Mr. SETTE CÂMARA (Brazil) said that, during its discussions on the problems raised by treaties of a territorial character, the International Law Commission had agreed that such treaties could not be considered to be governed by the rules embodied in draft article 14 relating to moving treaty frontiers and those in draft article 15 relating to the "clean slate" principle. The legal basis for the special treatment of treaties of a territorial character could be traced back to the Roman law maxims *"nemo plus juris transferre potest quam ipse habet"* and *"res transit cum onere"*. Thus, the real rights established by a treaty created, in the territory in question, a legal situation which was intended to have a considerable degree of permanence.

71. His delegation thought that the International Law Commission had been right to deal with the cases of boundary régimes and other territorial régimes in separate articles, since a boundary treaty defining a frontier or establishing a special régime for it was instantly executed, whereas other territorial treaties entailed repeated acts of continuous execution.

72. There was little doubt that boundary settlements constituted an exception to the "clean slate" rule, and that doctrine and the virtually unanimous practice of States favoured the continuity of such settlements *ipso jure*. Throughout the decolonization process, which constituted the main body of modern State practice concerning succession, there had been no trace of any claim to the invalidity of boundary treaties based on the "clean slate" rule. Even the strongest defenders of the principle of absolute freedom of the successor State to maintain or terminate previous treaties had not hesitated to proclaim that boundaries previously established by treaty remained in force. Moreover, the resolution adopted by the Assembly of Heads of State and Government of the Organization of African Unity in 1964 provided that "all Member States pledge themselves to respect the borders existing on their achievement of national independence". The International Law Commission had, however, stressed time and time again that the rule of continuity did not mean that boundary treaties were sacred and untouchable. They were inherited together with any disputes and controversies relating to them, and could be challenged. Indeed, they had been challenged in the past, but on other grounds than that of the "clean slate" rule. Thus, a treaty could be attacked on any legal ground that might be available to the successor State under international law.

73. The exceptional nature of boundary treaties had also been recognized by the Vienna Conference on the Law of Treaties, which had decided to exclude treaties of that kind from the rule on fundamental change of circumstances. That exclusion of boundary treaties from the effects of the *rebus sic stantibus* rule showed that the special status of such treaties was in the interests of the international community as a whole. Accordingly, the basic principle of the rules proposed by the International Law Commission was that a succession of States should not be invoked as grounds for the unilateral modification or invalidation of boundaries, boundary régimes or other territorial régimes. According to the draft articles, it was not the treaty itself which was in a special category of treaties transmitted when succession occurred, but rather the legal situations resulting from the application of the treaty to boundaries and territorial rights. The International Law Commission had established that distinction in full awareness of the problems which might arise from the complex question of the separation of the dispositive and non-dispositive provisions of articles 11 and 12 and from a departure from the principle of the integrity of treaties, which was one of the cornerstones of the rules of interpretation established by the Vienna Convention on the Law of Treaties.

74. According to the comments of Governments on the draft articles (A/CONF.80/5 and Corr.1) and the report which the Special Rapporteur had submitted to the International Law Commission,[15] there was little doubt that the large majority of States supported the draft articles. The few reservations expressed by States had failed to attract his delegation's support. It considered that articles 11 and 12 must be retained because, if every newly independent State could unilaterally repudiate the boundaries which had constituted the material basis for its creation, the international situation would be chaotic. It should, however, be borne in mind that no State was bound to accept an inheritance of injustice or controversial boundary lines, because it would always be able to contest the legality of a treaty stipulation by the normal means established by the Charter of the United Nations for the settlement of international disputes. It had been in order to dispel any doubts on that specific point that the International Law Commission had decided to include draft article 13, which provided that "Nothing in the present articles shall be considered as prejudicing in any respect any question relating to the validity of a treaty".

75. His delegation fully supported articles 11 and 12, which were well-balanced and provided adequate solutions to problems of enormous international interest, such as those relating to international boundaries, rights of transit on international waterways, the use of international rivers and the demilitarization of certain territories. The text of articles 11 and 12 was cautious and extremely ingenious and the exhaustive commentary to those articles, which included a detailed examination of the evidence in support of the traditional doctrine of continuity and a review of State practice, was very convincing. His delegation was therefore prepared to vote in favour of the text of draft articles 11 and 12 as proposed by the International Law Commission.

76. Mr. GILCHRIST (Australia) said that his delegation supported the text of draft article 11, which reflected the opinion of the majority of international jurists that treaties of a territorial character fell within a special category which was not affected by a succession of States. Article 11 thus constituted a necessary exception to the "clean slate" principle. Moreover, as the representatives of Poland[16] and Italy had pointed out, a newly independent State was not born into a legal vacuum. It became a member of international society by virtue of the laws constituting and governing that society. The provisions of article 11 were therefore binding not only on newly independent States, but also on third States, which had to respect the territorial integrity of newly independent States.

77. He would not refer in detail to the cogent arguments advanced by the many other delegations which were in favour of article 11, but he thought the representative of Algeria had lucidly summed up the reasons why article 11 was important and justified. His delegation would vote in favour of articles 11 and 12, subject to the necessary qualification imposed by article 13. Taken together, those three draft articles were most desirable and in keeping with the general interests of the international community as a whole.

78. Mr. FERNANDINI (Peru) said that his delegation considered article 11 essential to the draft convention as a whole and believed that it should be maintained. Neverheless, it had some doubts about the wording of the first line of the article because, in Spanish, the words *"de por sí"* might lead to confusion and misunderstanding. The deletion of those words would certainly improve the text of the article. He agreed with the representative of Italy that the Drafting Committee might be able to find a way of making the wording of article 11 acceptable to all delegations.

79. Mr. EUSTATHIADES (Greece) said that his delegation fully supported article 11 because, if there was any one article in the draft which was the expression *par excellence* of general international law, it was certainly that article. The rule it embodied covered both partial and total territorial changes, such as partial successions or the creation of new States. He used the term "territorial change" as distinct from the term "succession of States", because a succession of States implied a change of boundaries. There was no doubt that the comment to that effect made by the representative of Italy should be borne in mind by the Drafting Committee when it considered the wording of article 11. His delegation did not believe, however, that the Drafting Committee would be able to make any great improvements in the wording proposed by the International Law Commission.

80. He also agreed with the representative of Italy that the rule in article 11 must be seen as a rule which mainly, if not exclusively, affected third States, whose interests it was designed to safeguard and protect.

81. Mr. MARSH (Liberia) said that his delegation supported the International Law Commission's text of article 11 and would vote in favour of its retention.

82. Mr. MEDEIROS QUEREJAZU (Bolivia) said that his comments would relate to both article 11 and article 12.

83. When any form of succession of States occurred, the question arose what territory was involved, how it should be defined and to what extent its power could be exercised without coming into

[15] See *Yearbook of the International Law Commission, 1974*, vol. II, part one, p. 1, document A/CN.4/278 and Add.1-6.

[16] See above, 17th meeting, para. 40.

conflict with the sovereignty of other States. It was thus in the general interest that a succession of States should take place within the framework of international law and that was the object of the proposed article 11. The experience of Latin America clearly illustrated the point: as they had achieved independence in the nineteenth century, the former Spanish colonies had realized the need to establish the general principle of *uti possidetis juris,* whereby the newly independent States accepted the territorial boundaries obtaining in 1810 under Spanish law. Similarly, with regard to frontiers with other ex-colonies, the Latin American States had constantly invoked treaties signed by Spain, such as those of Tordesillas and San Ildefonso concluded with Portugal.

84. It was true that some boundary treaties might be null and void or might not correspond to the economic and geographical facts of a given region. There had been many such instances in Latin America. But that was a separate issue, which did not affect the succession of States as such and which was dealt with in draft article 13. In paragraph (17) of its commentary to articles 11 and 12, the International Law Commission explicitly stated that its draft "would leave untouched any other ground of claiming the revision or setting aside of the boundary settlement" and that "the mere occurrence of a succession of States" would not "consecrate the existing boundary" (A/CONF.80/4, p. 42).

85. When a succession of States occurred, in addition to boundaries, "real" elements attaching to the territories concerned by virtue of multilateral or bilateral treaties also had to be taken into consideration; that point was covered by draft article 12. It was clear from the examples given in the commentary to articles 11 and 12, that the International Law Commission had adopted a broad definition of territory. His delegation wished to refer particularly to rights of free transit, which were of great interest to land-locked countries and which clearly fell within the purview of article 12. Rights of transit were legally attached to the territory across which they were exercised, and under that article they could not be affected by a succession of States. Similarly, the corresponding obligations of a transit State could not cease or diminish as a result of any form of succession which might occur in the territory concerned.

86. The recent accession to independence of a number of land-locked States had drawn attention to the difficulties hindering their economic and social development if they lacked free access to the sea. There had been two multilateral conventions establishing transit rights: the Convention on the High Seas (Geneva, 1958)[17] and the Convention on Transit Trade of Land-Locked States (New York, 1965).[18] It was hoped that the question of land-locked States would also receive due consideration in the future United Nations convention on the law of the sea. Freedom of transit was the subject of many bilateral treaties, from which it was possible to establish the legal relationship between the active party—the land-locked State—and the passive party—the transit State—and to distinguish the "real" element, which was a permanent obligation relating to the use of the territory through which transit took place. Other treaties dealt with free access to and from the sea by navigable rivers flowing through the land-locked country and the transit country, or forming the boundary between them. Many writers on territorial treaties regarded such rights as real rights, which were exercised *erga omnes,* but the International Law Commission had preferred to draft articles 11 and 12 in such a way that the rules laid down did not relate to the treaty itself, but to the legal situation consequent upon it, which should be maintained within the framework of international law when a succession of States occurred. That was not an exception to the "clean slate" principle, but rather the formulation of a general rule applicable to all cases of succession of States in respect of treaties. And that rule was in conformity not only with legal theory and State practice, but also with justice in international relations.

87. Mr. SAID (Libyan Arab Jamahiriya) said that his delegation had no objection to draft articles 11 and 12, since it believed that boundary treaties should be characterized by continuity, in order to promote stability in international relations and safeguard peace and security. He was convinced of the validity of the principles underlying those articles, but wished nevertheless to associate himself with the statements made by the representatives of Somalia[19] and Morocco, concerning treaties concluded between colonial Powers without regard to the geographical, economic or social ties of the territories concerned. However, draft article 13 contained a clear reservation on that point.

88. It was his delegation's view that the resolution adopted at Cairo by the Assembly of Heads of State and Government of the Organization of African Unity in 1964, to which paragraph (11) of the commentary to articles 11 and 12 referred (A/CONF.80/4, p. 40), must be understood in the context of the circumstances prevailing at the time of its adoption, which had subsequently led to the establishment of a committee to consider boundary disputes.

The meeting rose at 6.40 p.m.

[17] United Nations, *Treaty Series,* vol. 450, p. 82.

[18] *Ibid.,* vol. 597, p. 42.

[19] See above, 17th meeting, para. 26.

19th MEETING

Tuesday, 19 April 1977, at 7.25 p.m.

Chairman: Mr. RIAD (Egypt)

In the absence of the Chairman, Mr. Ritter (Switzerland), Vice-Chairman, took the Chair.

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*)

ARTICLE 11 (Boundary régimes) (*continued*)[1]

1. Mr. MUSEUX (France) said that his delegation supported the "clean slate" principle as the underlying rule of the future convention, but maintained that there should be precisely formulated exceptions, principally in regard to the continuity of boundary régimes. He therefore welcomed the principle laid down in draft article 11 and noted with satisfaction that it had been widely supported in the discussion. He merely wished to suggest some drafting points which might strengthen the text.

2. He agreed with the Greek representative[2] that the phrase "does not affect" was not particularly felicitous: in reality, nothing affected boundaries more than a transfer of territory from one State to its neighbour. He also agreed with the Italian representative[3] that, in subparagraph (*b*), it was the nature of the obligations and rights and not those exercising them which should remain unchanged. He had no doubt that the Drafting Committee could provide a satisfactory text.

3. Mr. TABIBI (Afghanistan) said he wished to record his appreciation of the constructive debate which had taken place on draft article 11.

4. Many speakers had referred to article 62 of the Vienna Convention on the Law of Treaties, which excepted boundary treaties from the possibility of termination by reason of a fundamental change of circumstances. However, the political climate had greatly changed for the better since the adoption of the Vienna Convention, and it had never been the intention that article 62 should apply to illegal or invalid treaties; that had been made abundantly clear by the explanations given at the United Nations Conference on the Law of Treaties, which had adopted the Vienna Convention, and by the fact that provisions dealing with such treaties were included in part V of the Convention, in particular article 53.

5. Fortunately, it had been possible to settle many territorial disputes by means of negotiation: in Africa, machinery for that purpose was provided by the 1964 Cairo resolution of the Assembly of Heads of State and Government of the Organization of African Unity,[4] to which frequent reference had been made.

6. He thanked the Expert Consultant for his clear statement that the rules laid down in draft article 11 did not touch on the question of the validity of treaties and did not prejudice machinery for the settlement of disputes.[5]

7. He agreed that the Afghan amendment (A/CONF.80/C.1/L.24) should be considered after the discussion on draft article 12.

8. Mr. HELLNERS (Sweden) said that, although he approved of the content of draft article 11, he agreed with the representatives of France and Greece on the desirability of improving the wording of its opening phrase. The negative formulation was inadequate. The same applied to draft article 12.

9. The CHAIRMAN put draft article 11 to the vote.

Draft article 11 was provisionally adopted by 55 votes to none, with 5 abstentions, and referred to the Drafting Committee.[6]

ARTICLE 12 (Other territorial régimes)[7]

10. Mr. HELANIEMI (Finland), introducing his amendment (A/CONF.80/C.1/L.18), said that it was concerned only with drafting. To simplify the text, his delegation proposed that paragraph 1, subparagraph (*a*) and paragraph 2, subparagraph (*a*) should be combined into a single subparagraph (*a*) and that paragraph 1, subparagraph (*b*) and paragraph 2, subparagraph (*b*) should form a single subparagraph (*b*).

11. Mr. SEPÚLVEDA (Mexico) said that, in general, the draft articles had succeeded in maintaining an excellent balance between the "clean slate" principle and the principle of continuity. The continuation of boundary treaties and other territorial régimes, as laid

[1] For the amendment submitted to article 11, see 17th meeting, foot-note 7.

[2] See above, 18th meeting, para. 79.

[3] See above, 18th meeting, para. 46.

[4] OAU, *Resolutions adopted by the Assembly of Heads of State and Government of independent African countries and Resolutions and declarations adopted by the Assembly of Heads of State and Government, 1963-1972*, Addis Ababa (Ethiopia), 1973, p. 34, resolution 16(I).

[5] See above, 18th meeting, para. 48.

[6] For resumption of the discussion of article 11, see 33rd meeting, paras. 18-26.

[7] The following amendments were submitted: Finland, A/CONF.80/C.1/L.18; Mexico, A/CONF.80/C.1/L.19; Cuba, A/CONF.80/C.1/L.20; Malaysia, A/CONF.80/C.1/L.21; Afghanistan, A/CONF.80/C.1/L.24 (to articles 11 and 12). Argentina submitted a subamendment, A/CONF.80/C.1/L.27, to the Mexican amendment (A/CONF.80/C.1/L.19).

down in draft articles 11 and 12, was completely acceptable in regard to obligations towards other States concerning normal trade, development and co-operation. But when such obligations related to military, naval or air bases which had been established for the benefit of the predecessor State or of other States, they constituted a threat of the use of force and of intimidation. Perhaps the Expert Consultant could be asked to explain why the International Law Commission had not concerned itself with that matter, apart from a brief reference in paragraph (25) of the commentary to articles 11 and 12 (A/CONF.80/4, p. 43-44). It was clear that such restrictions on the free use of its territory should not be transmitted to a successor State, since they did not promote stability or constructive continuity.

12. His delegation had accordingly submitted an amendment (A/CONF.80/C.1/L.19) to deal with the matter in article 12, by an additional paragraph. He was aware that there were difficulties: for example a military base might have been established by virtue of a document which was not technically a treaty. He was open to suggestions designed to improve the text and to harmonize it with other, similar amendments.

13. Mr. ALMODOVAR SALAS (Cuba), introducing his amendment to draft article 12 (A/CONF.80/C.1/L.20), said that the transition of many peoples from colonialism to independence would have been easier if the draft articles under consideration had been adopted as a convention long ago. If the future convention applied only to the effects of successions occurring after its entry into force, scarcely more than a dozen newly independent States would benefit, although there would continue to be case of succession by the uniting and separation of States.

14. His delegation was concerned to extend the application of the future convention to these States at present excluded, which might wish to use it in the exercise of their sovereignty. It was well known that the colonial Powers had imposed unequal treaties which limited the sovereignty of successor States. One form of such treaties, which jeopardized world peace, were those establishing military bases on territory which should be completely independent. His delegation had therefore proposed the addition of a new paragraph to draft article 12, excluding such arrangements from the effects of that article. It was open to suggestions for improving the text of its amendment.

15. Mr. ARIFF (Malaysia), introducing his delegation's amendment to article 12 (A/CONF.80/C.1/L.21), said that while it was not always desirable to draft legal provisions in too brief and concise a manner, he thought the wording proposed by the International Law Commission was unduly long and repetitious. The proposed text consisted of two paragraphs, each divided into two subparagraphs. Paragraph 1 dealt with obligations and rights relating to the use of any territory, or to restrictions upon its use, established by a treaty for the benefit of any territory of a foreign State. If, as his delegation believed, the only new element in paragraph 2 was the reference to a group of States or all States, the substance of article 12 could be adequately expressed in a single paragraph, divided into two subparagraphs, as proposed in his delegations's amendment.

16. He noted that the Finnish amendment was also designed to shorten the text, but he could not approve of the way in which the Finnish delegation proposed to achieve that aim. In his view, it was quite unnecessary to repeat twice, in each subparagraph, the expressions "for the benefit of" and "considered as attaching to". Since both the Malaysian and Finnish amendments were of a drafting nature, however, he would suggest that they should be referred to the Drafting Committee for consideration.

17. The Cuban amendment appeared to go beyond the scope of the International Law Commission's text and to have political overtones. For that reason, it was difficult if not impossible for his delegation to subscribe to it, although close scrutiny might perhaps reveal some substance worthy of consideration. The amendments proposed by Mexico and Argentina (A/CONF.80/C.1/L.27) were of much the same tenor as the Cuban amendment, so that his delegation's reaction to them was similar.

18. Mr. ESTRADA-OYUELA (Argentina) pointed out that the text submitted by his delegation (A/CONF.80/C.1/L.27) had been intended as a subamendment to the Mexican amendment, not as a separate amendment. Moreover, in the English text, the word "party" should appear without an initial capital, in order to conform with article 2, paragraph 1, subparagraph (*m*) of the draft.

19. The foundation of the draft convention was the "clean slate" principle, to which articles 11 and 12 established exceptions. During the discussion on article 11, a number of delegations had made the point that there was a very direct link between that article and article 62 of the Vienna Convention on the Law of Treaties. While that was true of article 11, it was not true of article 12, which dealt with an entirely different situation.

20. In paragraph (30) of its commentary to articles 11 and 12 (A/CONF.80/4, p. 45), the International Law Commission stated that, owing to the legal nexus which had existed between the treaty and the territory prior to the date of the succession of States, it was not open to the successor State simply to invoke article 35 of the Vienna Convention under which a treaty could not impose obligations upon a third State without its consent. That line of reasoning was not acceptable to his delegation from the point of view of the legal doctrine, because legal relations were between persons, not between things.

21. It had also been said that the proposed departure from the "clean slate" principle was necessary in order to assure the stability of the international community; but that conclusion had been drawn on the basis of legal precedents whose applicability his delegation did not accept. It would not appear that the legal precedents of nineteenth-century Europe were for the purpose in question a source of law within the meaning of article 38 of the Statute of the International Court of Justice; nor did it seem that the opinions of colonial Powers, as reflected in paragraphs (21) and (22) of the commentary (*ibid.*, pp. 42-43), could be used as a basis for formulating a general principle. Paragraph (25) of the commentary showed that military bases constituted an exception to the principle of treaty continuity, yet no reference was made to such bases in the text adopted by the International Law Commission. His delegation had sought to rectify that omission by its proposed subamendment, which provided that obligations relating to the use of any territory of a successor State, or to restrictions upon its use, imposed by a treaty relating to the establishment of military bases of the predecessor State or of another State party should be excluded from the application of the provisions of article 12.

22. Paragraph (29) of the commentary to articles 11 and 12 (*ibid.*, p. 45) referred to another type of exception, namely, treaties which conferred specific rights on nationals of a particular foreign State. Such treaties often led to the exploitation of a successor State's natural wealth and resources, thus impeding the full exercice of its sovereignty. His delegation's submendment also provided that the provisions of article 12 should not apply to treaties of that kind.

23. He believed that the exclusion of foreign military bases from the territory of a successor State and the safeguarding of its full sovereignty over its natural wealth and resources were essential to the viability of the successor State. The Fourth Committee of the United Nations General Assembly had had to deal with a number of cases of territories whose wealth had been plundered by the colonial Power. It was necessary to ensure that situations of that kind were not maintained through the applicaton of the principle of continuity of treaties.

24. Mr. TORRES-BERNARDEZ (Secretary of the Committee) said that the text submitted by Argentina would be re-issued in order to make it clear that it was intended as a subamendment to the Mexican amendment. The inconsistency in drafting to which the representative of Argentina had referred would also be corrected.

25. Mr. KATEKA (United Republic of Tanzania) said that, while recognizing the need for an exception to the "clean slate" principle in the case of article 11, his delegation did not see the need for a similar exception in the case of article 12. The international servitudes which article 12 sought to create in favour of other States in the territory of a successor State constituted an endorsement of former colonial situations and were inconsistent with the independent status of the successor State.

26. In paragraph (23) of its commentary to articles 11 and 12 (A/CONF.80/4, p. 43), the International Law Commission referred to the so-called Belbases Agreements of 1921 and 1951 between the United Kingdom and Belgium, under which Belgium, at a nominal rent of one franc per annum, had been granted a lease in perpetuity of port sites at Dar es Salaam and Kigoma in Tanganyika. No self-respecting nation could accept such an offensive encumbrance on its sovereignty, and Prime Minister Nyerere had reacted to that situation by stating that a lease in perpetuity of land in the territory of Tanganyika is not something which is compatible with the sovereignty of Tanganyika when made by an authority whose own rights in Tanganyika were for a limited duration. In paragraph (24) of its commentary, however, the International Law Commission had stated that "Tanganyika itself did not rest its claim to be released from the Belbases Agreements on the clean slate principle. On the contrary, by resting its claim specifically on the limited character of an administering Power's competence to bind a mandated or trust territory, it seems by implication to have recognized that the free port base and transit provisions of the agreements were such as would otherwise have been binding upon a successor State" (*ibid.*, p. 43). It was highly presumptuous of the International Law Commission to have put that interpretation on Tanganyika's action. Encumbrances of that kind were unacceptable in any circumstances, an even if Tanganyika had had colonial status as opposed to trust status, it would have rejected such provisions as being inconsistent with its sovereignty, independence and territorial integrity.

27. There were many similar cases relating to the countries of East Africa; for instance the Nile Waters Agreement of 1929 between the United Kingdom and Egypt,[8] mentioned in paragraph (27) of the commentary (*ibid.*, p. 44). The effect of that Agreement had been to impose encumbrances upon the riparian States to ensure that they did not reduce the quantity of water arriving in Egypt or lower its level. The United Republic of Tanzania maintained good relations with Egypt, and the fact of denouncing an agreement's colonial implication had not had any adverse consequences for the countries concerned. On the contrary, co-operation in the region had been enhanced and expanded; for example, the port facilities offered by the United Republic of Tanzania and the number of beneficiaries therefrom had increased substantially.

[8] See United Nations, *Legislative Texts and Treaty Provisions Concerning the Utilization of International Rivers for other Purposes than Navigation* (United Nations publication, Sales No. 63.V.4), pp. 101 *et seq.*

28. Thus there was no justification for the argument that article 12 was needed in order to ensure peace and stability. His delegation would prefer the article to be deleted altogether; failing that, the text should be improved by the incorporation of some of the amendments before the Committee. The amendments of Cuba and Mexico together with the Argentine subamendment to the Mexican amendment, served to clarify the status of the successor State in regard to its territory. He hoped that the sponsors of those amendments would consult one another with a view to working out a consolidated text.

29. He supported the attempt of the Cuban delegation to deal with the question of foreign military bases. The Argentine subamendment was even more explicit and, if it was incorporated into article 12, it would be possible for this delegation to accept that article. His delegation could not subscribe to the Afghanan proposal to merge articles 11 and 12 (A/CONF.80/C.1/L.24). The amendments submitted by Malaysia and by Finland were on similar lines, and he hoped that the delegations concerned would be able to work out an acceptable compromise text. In any event, the point raised by those two amendments were clearly matters for the Drafting Committee.

30. To sum up, his delegation did not see the necessity for article 12, which attempted to maintain the inequities arising from colonial situations by creating servitudes, but it could subscribe to the texts proposed by Argentina, Cuba and Mexico.

31. Mr ROBINSON (United Nations Council for Namibia) said that, while commending the International Law Commission for its useful commentary to article 12, and particularly paragraph (25) thereof, his delegation was nevertheless constrained to observe that article 12 did not appear to address itself adequately to the issues involved. There was ample documentary evidence that the global strategic aims, both military and economic, of certain predecessor States had more often than not been prejudicial to the sovereign rights of the emergent or successor State. Newly independent States sometimes found themselves saddled with treaties to which they had been neither party nor privy, concluded by the predecessor State with one or more States, which regulated the use of the territory of the successor State, thereby denying it the full exercise of its sovereignty. It was not difficult for his delegation to conceive of a situation in which a territory in transition might be the object of treaty arrangements determining the use of its territory which imposed upon the successor State military servitudes to be enjoyed by foreign States. Such arrangements might even have been concluded by a State purporting to act as administering authority in respect of a particular territory.

32. In the light of those considerations, his delegation wished to express its full support for the amendments submitted by Mexico and Cuba, which contained the same intrinsic elements, although differently expressed. His delegation also supported the Argentine subamendment, which went somewhat further than the Cuban and Mexican amendments in proposing provisions which would guarantee a successor State's exercise of sovereignty over its natural wealth and resources. That was a point of paramount importance, which was reflected in resolutions of the United Nations General Assembly. It seemed to him that it might be possible to merge those three proposals into a single text. To include their provisions in article 12 would be a major step towards ensuring that independent States, at the time of succession, were not denied their right to exercise full sovereignty over the use of their territory.

33. The amendments submitted by Finland and Malaysia appeared to be essentially concerned with drafting and could be referred to the Drafting Committee.

34. Mr. HERNDL (Austria) said that his comments would to some extent relate to article 11 as well as to article 12, since both provisions were part of a system devised by the International Law Commission, which was to be commended for the wisdom it had shown in drafting those articles. State succession was a specific phenomenon of international law which should be viewed in good faith. The principle of good faith was the basis of international relations and of negotiations on treaties in general. It was in the light of that principle that his remarks should be understood and that the International Law Commission had formulated its drafts of articles 11 and 12. When a State concluded a treaty, that treaty, by its very nature, limited the sovereignty of the State to some extent. The State undertook to perform certain commitments, and the principle of *pacta sunt servanda* was a fundamental concept of international law.

35. His delegation was very pleased with the solution which the International Law Commission had devised in articles 11 and 12. It was essential for the future convention to deal with the question of boundary régimes and other territorial régimes if it was to be relevant to the existing international situation. At the opening meeting of the Conference, the Federal President of Austria had drawn attention to the fact that Article 13 of the Charter of the United Nations established a close link between international co-operation in the political field and the progressive development and codification of international law;[9] there could be little fruitful co-operation in the political field, and the prospect for peace would be jeopardized, if boundaries remained uncertain and the territorial *status quo* could be easily challenged.

36. The International Law Commission had been wise to provide for continuity of treaties in that regard and equally judicious in deciding not to relate a succession of States directly to the treaties in ques-

[9] See above, 1st plenary meeting, para. 11.

tion, but rather to the obligations and rights created by the treaties. As was demonstrated by the case of the Free Zones of Upper Savoy and the District of Gex[10] and the case of the Åland Islands,[11] the principle of continuity would apply less to the treaties themselves than to the settlement achieved by them. On the basis of that principle, it must also be concluded that continuity would similarly apply to settlements or objective régimes created by way of complementary unilateral acts, in the event that obligations would arise from such acts.

37. A number of delegations had expressed concern over articles 11 and 12, saying that they did not wish their respective States to be considered as bound by treaties which they termed unequal, or otherwise unacceptable in the light of the principle of self-determination. His delegation believed that that point was adequately covered by article 13 of the draft; it was clear that the validity of a treaty had nothing to do with the fact of a succession of States, since the issue of validity had already been settled by the Vienna Convention on the Law of Treaties.

38. The concern to which he had referred was to some extent reflected in the amendments of Cuba and Mexico, as well as in the subamendment of Argentina. Given their very broad and general terms, those proposals could be considered as going beyond the scope of the questions of legality and validity with which the Conference was dealing. As a permanently neutral State, which would not allow the establishment of any foreign military base on its own territory, Austria viewed the parts of those three proposals which related to the question of foreign military bases with some degree of sympathy. Other parts, concerning restrictions on sovereignty in general, were more difficult to accept.

39. In the event of a succession of States, certain territorial principles must be safeguarded, and he feared that, for instance, certain transit rights of land-locked countries might be put in jeopardy if the principle of treaty continuity was not recognized. That remark also applied to other geographically disadvantaged countries. It should be borne in mind that the question of the termination of treaties was already the subject of exhaustive provisions in the Vienna Convention on the Law of Treaties; and some of the fears underlying the proposed amendments to article 12 could be allayed by reference to the well-known principle of international law that restrictions on sovereignty must be interpreted in a restrictive manner. To proceed along that line of thinking would lead to the conclusion that the expression used by the International Law Commission, namely, "the use of any territory", could be interpreted only in a restrictive manner. By implication, moreover, certain cases of exploitation of natural resources would not necessarily fall within the purview of article 12.

40. To sum up, he believed that the International Law Commission had made a praiseworthy effort to draft a broadly acceptable provision, keeping in mind the basic legal principles of *pacta sunt servanda* and good faith. He therefore hoped that the Conference would see fit to adopt article 12 basically as it stood.

41. Mr. YIMER (Ethiopia) said that article 12 was just as important as article 11, with which it was linked. Those articles were designed to preserve peace and the stability of relations between States; they dealt with international servitudes.

42. The provisions of article 12 could affect the vital interests of countries, particularly in the sphere of rights relating to water, navigation and transit, which could not be compromised without endangering peace and security. The article was more particularly concerned with economic questions, and to delete it might compromise the economic situation of the States concerned or even "strangle" certain countries. Since the rule stated in article 12 was firmly based on international law, and in view of the facts which had to be faced in regard to international servitudes, there was no alternative but to accept the International Law Commission's text.

43. The proposed amendments to article 12 were either concerned with drafting or called for the insertion of a new clause. On the question of military, naval and air bases, he emphasized that article 12 was not supposed to protect treaties of that kind, which were of a political nature and which sovereign States had an absolute right to denounce. Consequently, as the International Law Commission had rightly pointed out in its commentary, there was no need to include a clause on military bases in the article. His delegation would nevertheless be willing to accept a new paragraph on that question provided that it was drafted in explicit language.

44. The drafting amendments should be referred to the Drafting Committee.

45. Mr. SAKO (Ivory Coast) said that if articles 11 and 12 were examined in the light of article 13 of the draft, it could be seen that a succession of States in itself had no effect on the validity of treaties establishing boundaries, on rights and obligations relating to a boundary régime, or on rights and obligations relating to the use, or to restrictions on the use, of a territory.

46. His delegation found the Cuban amendment too vague and general, and was more in favour of the Mexican amendment, which was drafted in more precise terms and dealt only with treaties relating to military, naval or air bases. Such an amendment, which was designed to safeguard the independence of

[10] See P.C.I.J., series A/B, No. 46, p. 96.

[11] See League of Nations, *Official Journal, Special Supplement No. 3* (October 1920).

States, would be a useful addition to the text proposed by the International Law Commission.

47. Mr. RANJEVA (Madagascar) said he agreed that the International Law Commission had shown wisdom in its drafting of article 12. Nevertheless his delegation had some difficulty in interpreting, or even understanding that article, particularly where the text spoke of "obligations" relating to the "use" of a territory. Those were general concepts, and they might lead to surprising conclusions contrary to the "clean slate" principle, which was the basis of the régime of succession of States in respect of treaties, particularly where the fate of the predecessor State's obligations was concerned.

48. Article 12 constituted a real exception to the eradication of obligations deriving from treaties concluded by predecessor States, some of which involved a veritable *diminutio capitis* for the successor State. To think that such obligations could survive a succession was a legal and political absurdity, especially as those obligations affected two important aspects of the successor State's security: the laws of war and peace, with the problem of military bases; and the right to choose its mode of economic development, including the question of concessions and exploitation of natural resources.

49. His delegation believed that there were two reasons for the silence of the International Law Commission on that matter: first, it had excluded problems of war and peace from its field of study, so that it would have been difficult to devote an article to the question of military bases; secondly, the Commission had probably considered that economic problems came within the topic of succession of States in respect of matters other than treaties.

50. A number of delegations had already stressed the need for reflection on those questions and on the very principle of exceptions to the "clean slate" rule. If it was considered necessary to maintain such exceptions, they should be enumerated as exhaustively as possible. In that case, it would seem appropriate to adopt, with a few drafting changes, the amendments submitted by Argentina, Cuba and Mexico, which had the merit of dispelling all possible doubts about impairing the full territorial competence of successor States, in that they ruled out all obligations relating to non-peaceful uses of a territory. The "clean slate" principle should apply not only in theory, but also in fact. If, on the other hand, all exceptions to the full application of the "clean slate" principle were rejected, the provisions of article 12, and even those of article 11, would have no raison d'être.

51. Mr. MBACKÉ (Senegal) said he thought it was inevitable that article 12 should evoke a reaction from the newly independent States, because the International Law Commission's text ignored certain matters of vital importance to them and, indeed, to all developing countries. The wording of the article was too general and did not deal specifically with certain points raised by other delegations and taken up in the amendments submitted by Argentina, Cuba and Mexico, which had brought out the dangers of a draft article that established a system of continuity without specifying what it related to. His delegation therefore had some misgivings about the International Law Commission's text.

52. If it was decided to adopt the proposed amendments, which contained ideas attractive to his delegation, it would be desirable for the three countries concerned to agree on a joint text. Otherwise, his delegation would support the deletion of article 12. If that article was deleted, treaties establishing servitudes would be placed on the same footing as other treaties, and the "clean slate" principle would again apply for States wishing to free themselves from those treaties. Even though it would then be necessary to settle the question of the distinction between boundary régimes and territorial régimes, that would be only a minor disadvantage less serious than those presented by the existing text of the article.

53. It might be possible to combine the drafting amendments proposed by Finland and Malaysia. The French version of the Malaysian amendment was, in any case, not very elegantly drafted, and his delegation suggested that it should be revised.

54. Mr. OSMAN (Somalia) associated himself with the comments of the representative of Madagascar concerning boundary régimes and other territorial régimes. By adopting article 11, the Committee of the Whole had taken a disturbing decision; for the provisions of that article were not in conformity with international law and did not accurately reflect the current thinking of the developing countries. There seemed to be some confusion in the Committee between treaties establishing rights and obligations concluded between European States and similar treaties of colonialist and imperialist countries. At the end of the nineteenth century, certain African countries had entered into direct collusion with the European colonial Powers to colonize Africa, and one State in particular had overtly taken part in the partition of the Somali nation. His Government made no distinction between white and black colonial Powers.

55. In formulating draft articles 11 and 12, the International Law Commission seemed to have been guided by cases involving the interests of imperialist Powers, particularly the Åland Islands case (A/CONF.80/4, pp. 38-39, para. (5) of the commentary). It was questionable, however, to what extent a judgement rendered in the nineteenth century was applicable today. Attention might also be called to the problems which had arisen in regard to the Suez Canal in Egypt and the imperialist bases established by certain colonial powers in Libya. Those were certainly cases of agreements creating international servitudes which, once denounced by Egypt and Libya as sovereign States, had lapsed.

56. Draft article 12 was supported neither by doctrine nor by practice of States, and a distinction should be made between treaties and agreements concluded within the framework of certain situations in Europe and those concluded in favour of colonial interests. His delegation considered that draft article 12 should be deleted *in toto*.

57. Mr. YIMER (Ethiopia) said that a conference for the codification of rules of international law was not an appropriate occasion to bring up political controversies, as the representative of Somalia had just done. The Conference should not be used as a forum for airing unfounded claims and opinions relating to other States, even though it was true that a neighbouring State to the east of Ethiopia was participating in an international conspiracy to dismember Ethiopia.

58. Mr. OSMAN (Somalia), speaking on a point of order, said he failed to understand why his statement had caused such concern to the representative of Ethiopia, since he had confined himself to expressing his delegation's views on draft articles 11 and 12, without expressly mentioning Ethiopia.

59. Mr. YIMER (Ethiopia), speaking on a point of order, said that he had merely been replying to the insinuations of the representative of Somalia. While it was a fact that Somalia had committed aggression against Ethiopia, the Conference had not been convened to discuss political problems, but to make law. His delegation appealed to all States to refrain from interfering in the internal affairs of countries represented at the Conference, for otherwise it would be impossible to make any progress.

60. The CHAIRMAN, replying to a question by the representative of Somalia, said that the right of reply was recognized when one delegation mentioned another in such a way that it could be identified, even if it was not expressly named. He asked delegations to refrain from expressly mentioning other countries to call their conduct in question.

61. Mr. TABIBI (Afghanistan) moved the immediate adjournment of the meeting under rule 25 of the Conference's rules of procedure (A/CONF.80/8).

It was so agreed.

The meeting rose at 9.55 p.m.

20th MEETING

Wednesday, 20 April 1977, at 11.15 a.m.

Chairman: Mr. RIAD (Egypt)

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*)

ARTICLE 12 (Other territorial régimes) (*continued*)[1]

1. Mr. MUDHO (Kenya) said that, when expressing support for the retention of article 11, his delegation had made some reservations concerning article 12.[2] Subsequently, it had had a chance of hearing the statements of other delegations and had been particularly impressed by the views of the representatives of Austria[3] and the United Republic of Tanzania.[4] The former had sounded a word of caution by emphasizing the obvious political implications of the article under discussion, while the latter had shown that its literal interpretation and application would entail an unacceptable curb on the sovereignty of a successor State. Nevertheless, it appeared from a study of the commentary by the International Law Commission that a provision along the lines of the proposed article was desirable. As his delegation had pointed out in 1974 in the Sixth Committee, such a provision must always be interpreted to mean that "in cases of localized treaties a newly independent State did not inherit the territorial régime created but it did inherit an obligation where necessary to renegotiate the provisions of such a treaty so as to achieve the protection of the vital interests of a beneficiary State while not jeopardizing the successor State's independence" (A/CONF.80/5, p. 157). "A State in exercise of its sovereignty might confer any benefit or undertake any obligations it so desired with respect to its territory by treaty. It was for the State to judge for itself what it should receive in return. Once such a choice was made the States concerned must respect their mutual undertakings. It was, however, going too far to say that a newly independent State should, with respect to the enjoyment of its territory and use of its resources for the benefit of its peoples, be permanently fettered by servitudes imposed on the territory by the former colonial Power for the benefit of other States in consideration of motives which might have been satisfactory to the predecessor State but not consented to by the successor State. Such a proposal could hardly be

[1] For the amendments submitted to article 12, see 19th meeting, foot-note 7.

[2] See above, 18th meeting, paras. 27-29.

[3] See above, 19th meeting, paras. 34-40.

[4] See above, 19th meeting, paras. 25-30.

consistent with the principle of self-determination" (*ibid.*, p. 156).

2. He therefore believed that if the amendments proposed by Mexico (A/CONF.80/C.1/L.19) and Cuba (A/CONF.80/C.1/L.20), as well as the Argentine subamendment to the Mexican amendment (A/CONF.80/C.1/L.27), were combined into one provision, which might form a separate paragraph in article 12, the article would be more widely acceptable. Since the amendments proposed by Finland (A/CONF.80/C.1/L.18) and Malaysia (A/CONF.80/C.1/L.21) related to drafting points, they should be referred to the Drafting Committee.

3. Mr. SANYAOLU (Nigeria) said that he approved the contents of article 12, which complemented the relevant provisions of the Vienna Convention on the Law of Treaties. In formulating the article, the International Law Commission had adopted the same standpoint as in the case of boundary régimes. The rules stated in article 12 was another exception to the "clean slate" principle and the moving treaty-frontiers rule. His delegation, while not opposed to those exceptions being made, was not entirely satisfied with the language used in article 12. In particular, he wondered why the term "foreign State", which was not used in legal parlance, had been chosen instead of the term "third State", which appeared in the earlier articles.

4. Turning to the amendments, those proposed by Finland and Malaysia could help to improve the wording of the article, but the Malaysian amendment also contained the expression "foreign State" which caused his delegation concern. The Argentine subamendment had such political overtones that he was unable to see what role it could play in the article under discussion. With regard to the Mexican and Cuban amendments, he noted, with their sponsors, that the Commission had failed to indicate in its commentary what principle it attached to treaties concerning military bases. That question should therefore be examined by the Committee of the Whole with a view to amplifying article 12 to reflect the two amendments in question.

5. Mr. BADAR (Oman) said that his delegation was convinced of the need to strengthen relations between States and for States to become good neighbours. Consequently, it could accept article 12, as it had accepted article 11, although it shared the concern expressed by some delegations about the effects that article 12 might have on the sovereignty of some States. Interesting views had been expressed concering transit rights, navigation rights and other servitudes, but those issues were more a matter for the United Nations Conference on the Law of the Sea, as the International Law Commission had indicated in its commentary.

6. Mr. KEARNEY (United States of America) said that in 1972, as Chairman of the International Law Commission, he had submitted to the Sixth Committee the provisional draft on succession of States in respect of treaties.[5] Wording apart, articles 11 and 12 of that draft had not really differed from articles 11 and 12 of the present draft and had given rise to a discussion very similar to the one now taking place. Many delegations had drawn attention to the principle of self-determination and to that of permanent sovereignty over natural resources. When summing up the discussion, he had emphasized that a reference to those principles in article 12 would not bring about their general application because the article was confined to the obligations relating to the use of a territory and established by treaty for the benefit of any territory of a foreign State. Those obligations invariably attached to the territories of neighbouring States. Generally speaking they aimed at solving certain problems such as transit for land-locked States, the use of waterways, frontier traffic and movement of persons. The obligations and corresponding rights had a bearing on the relations between the neighbouring States concerned. Consequently, if the notion of self-determination were introduced into article 12, it would apply essentially to relations between two newly independent neighbouring States. The principle would not be invoked against a distant imperial Power but against a neighbouring State, usually another newly independent State. In point of fact, the scope of article 12 was restricted to relations between neighbouring States; it had nothing whatever to do with the usual application of the permanent sovereignty principle to natural resources held by a former imperial Power.

7. For a newly independent State, article 12 had the virtue of providing a basis for a request to open negotiations between neighbouring States concerning the use of certain resources. In the interests of peace and harmonious relations between States, it seemed that such negotiations ought to take account of the existing situation.

8. Those considerations showed that the amendment suggested by Mexico and the subamendment suggested by Argentina were irrelevant. After making it clear that he was not speaking from a nationalist point of view and that his country was always prepared, in the case of a succession of States, to renegotiate agreements concerning military bases, he warned the Committee against the dangers of incorporating in article 12 a notion that had no connexion with that provision. Article 12 dealt with the use of the territory of a State for the benefit of a territory of another State, and such a direct link did not exist when military bases were established. As the International Law Commission itself had found, article 12 had no connexion with the problem of military bases. Furthermore, the principle of permanent sovereignty over natural resources could not really come into play under article 12, which ought normally to apply to

[5] *Official Records of the General Assembly, Twenty-seventh Session, Sixth Committee*, 1316th meeting, paras. 8 *et seq.*

two newly independent States. Usually such States sought to resolve disputes concerning natural resources by reference to other principles than that of permanent sovereignty over natural resources.

9. The provision contained in the Mexican amendment, according to which treaties relating to military bases would cease to be in force by reason of a succession, had nothing to do with article 12. It concerned the validity of treaties, a question which the International Law Commission had wisely considered to be outside the scope of the proposed convention.

10. In his opinion, the procedural rules put forward by the Commission for purposes of solving succession problems connected with territorial treaties were admirable. They did not claim to provide a solution for all those problems, particularly political ones. If elements belonging to the law of treaties but unconnected with the law of succession were introduced into the draft, it might become less attractive to certain delegations and thus less likely to command widespread acceptance. Accordingly, article 12 should not be altered except in respect of the drafting amendments.

11. Mr. HELLNERS (Sweden) said that he was not entirely clear why the International Law Commission had adopted article 12 and he wondered what conclusions should be drawn from its commentary to the article. The cases mentioned by the International Law Commission in connexion with article 12 had been variously interpreted by some delegations, which was proof that the deductions to be drawn from them did not emerge very precisely from the commentary.

12. He therefore hoped that the Expert Consultant would explain whether, in stating the rule contained in article 12, the International Law Commission had essentially relied upon the practice of European States, as claimed by some delegations. Personally, he did not think that that was the case, seeing that the Commission had cited only two cases drawn from European practice, namely that concerning the Free Zones of Upper Savoy and the District of Gex[6] and that of the Åland Islands.[7] He therefore wished to know on what practice the International Law Commission had based the rule formulated in article 12 and to what extent it had been swayed by those two cases.

13. He also wished to know exactly what stand the Commission had taken on the question of agreements concerning military bases, which was dealt with in paragraph (25) of its commentary (A/CONF.80/4, pp. 43-44).

14. Finally, he would like to know the Commission's view, in the context of succession of States in respect of treaties, on the subject of State sovereignty over natural resources, dealt with in the Argentine subamendment. Personally, he doubted whether it was opportune to introduce into the draft convention such a wide notion, which might give rise to misunderstandings.

15. Mr. STEEL (United Kingdom) said that article 12, like article 11, embodied a correct principle which accorded with State practice and the interests of the international community. Treaties were rarely a one-sided proposition, and usually were mutually advantageous to all the parties concerned. The "clean slate" rule enabled a successor State to continue a treaty if it felt that it gained by so doing. It must be remembered that article 12 did not deal with the relations between a successor State and a predecessor State but with the relations between a successor State and the other parties to the treaty, which might be a group of States or even all the States of the international community. Those relations might arise from the particular position of the successor State itself (for example, if it controlled access to a specific region or passage through an international waterway) or from the particular position of other States, such as landlocked or other geographically disadvantaged States.

16. During the debate, emphasis had been given to the obligations of the successor State, but that was only one aspect of article 12, which also dealt with the rights of the successor State. In cases of succession of States, the question of the rights of the successor State arose as often as the question of its obligations, since the successor State was very often the beneficiary of the treaty. Often, therefore, the effect of article 12 would be to preserve for the benefit of the successor State a right which existed over the territory of a neighbouring State and had been obtained under a treaty concluded with that State by the predecessor State specifically for the benefit of what was now the successor State. If a territorial régime were challenged on a succession of States, it was not the predecessor State which would be affected by the problem but the successor State and the neighbouring States, or even the international community as a whole. Article 12 was thus necessary and in harmony with the rest of the draft.

17. The amendments proposed by Mexico and Cuba and the subamendment proposed by Argentina suffered, to a varying degree, from certain defects. All were unnecessary because they were irrelevant to the matter dealt with in article 12. Treaties concerning military bases, which were mentioned in the three amendments, did not come within the scope of article 12, which in no way sanctioned the continuance of such treaties.

18. Moreover, the three amendments in question, and particularly that of Cuba, were cast in extremely

[6] See P.C.I.J., series A/B, No. 46, p. 96.

[7] See League of Nations, *Official Journal, Special Supplement No. 3* (October 1920).

vague and subjective terms and their tone was too political. He was not altogether sure of the meaning of the following words in the Cuban amendment: "treaties which were concluded and concessions which were granted in conditions of inequality or which disregard or detract from the sovereignty of the successor State". Any treaty naturally imposed some limits on the sovereignty of the contracting parties and it was difficult to decide objectively whether a treaty had been concluded "in conditions of inequality". The treaties which were referred to in the Cuban amendment were actually treaties which had been concluded between the predecessor State and third States. If there was any inequality, it was that of the predecessor State and not the successor State. But that was surely not what the Cuban delegation had in mind.

19. Also, the Cuban amendment raised the question of the legality of treaties. It was therefore out of place in the draft, since the proposed convention dealt exclusively with the effects of a succession of States and not with the validity or legality of treaties, which fell within the scope of the 1969 Vienna Convention on the Law of Treaties. Moreover, draft article 13 stipulated that "nothing in the present articles shall be considered as prejudicing in any respect any question relating to the validity of a treaty".

20. Nor did article 12 deal with the question whether treaties which were not covered by it continued or ceased to be in force when a succession of States occurred. It simply provided an exception to the "clean slate" rule in regard to territorial régimes. Treaties which did not fall within the scope of that exception continued to be governed by the "clean slate" principle, expressed in article 15. Under that article, a successor State was free to succeed to a multilateral treaty if it wished or to a bilateral treaty if the other parties to the treaty consented. Quite obviously it would not avail itself of that opinion unless the treaty appeared beneficial. There was consequently no reason to deny a successor State that option.

21. In short, the question of the validity or legality of a treaty did not fall within the scope of the proposed convention; neither did the matter of the cessation or maintenance in force of a treaty come under article 12. The Cuban and Mexican amendments and the Argentine subamendment were therefore unjustifiable and would only create unnecessary difficulties.

22. With regard to the amendments submitted by the delegations of Malaysia and Finland, he appreciated the efforts made by those two delegations to make article 12 more concise and clear, but he did not feel they had succeeded; it would be difficult to formulate the rule embodied in article 12 more succinctly than the International Law Commission had done. However, he saw no reason why the two amendments should not be referred to the Drafting Committee if they could in fact improve the International Law Commission's text.

23. With regard to the Afghan amendment, under which articles 11 and 12 would be combined, he saw no harm in it but he had so far failed to understand what was thought to be its advantages. He looked foreward to hearing a fuller explanation from the delegation of Afghanistan.

24. Mr. SHAHABUDDEEN (Guyana) said first that his delegation's appreciation of the need for stability in international relations inclined it to accept the principle embodied in article 12. He agreed that it should be possible to shorten the wording of the article but, in doing so, care should be taken not to impair the substance of the basic text. Before examining the amendments before the Committee, it was necessary to look more closely at the type of situation contemplated in article 12.

25. Paragraph 1, subparagraph (*a*) seemed to deal with a situation where a servitude attached to part of the territory of one State—the servient territory—for the benefit of the territory of another State—the dominant territory. In paragraph 2, subparagraph (*a*), on the other hand, the International Law Commission had envisaged the case where a given territory was used for the benefit of a group of States or of all States, considered as States, and not for the benefit of any particular territory considered as territory. That was presumably why in paragraph 1, subparagraph (*a*) the International Law Commission had used the word "territories" in the plural, whereas in paragraph 2, subparagraph (*a*) it had used "territory" in the singular; and why it had made a deliberate distinction between the two situations.

26. On the assumption that the International Law Commission had had good reasons for its course of action, the Committee should maintain the distinction if it decided to abbreviate the text of the draft article. The Malaysian amendment did not preserve the distinction at all clearly, since in subparagraph (*a*) it referred not to obligations attaching to a particular territory, but only to obligations attaching to "territories"; the same objection applied to subparagraph (*b*). The Finnish delegation's amendment had got around the problem of the distinction but was a little ambiguous, since there was a doubt in his mind as to what territory was meant at the end of subparagraph (*a*). Was it the territory referred to at the beginning of that subparagraph or the one mentioned further on? The same question could be asked with regard to subparagraph (*b*).

27. Having said that, he agreed with the view of the Malaysian representative that the Committee should avoid prolixity, but not at the expense of clarity. Despite its lengthiness, the Finnish amendment retained the main concepts of the International Law Commission's text and could therefore serve the

Drafting Committee as a basis for combining the provisions concerned.

28. The amendments proposed by Mexico and Cuba and the subamendment proposed by Argentina, concerning the addition of a new paragraph to article 12, contained a principle which appeared acceptable to his delegation: that where there was a treaty by which the predecessor State granted another State rights relating to a dependent territory which were fundamentally inconsistent with the exercise of sovereignty by the newly independent State over its territory, those rights were automatically abrogated when the territory became independent. In accordance with article 1 as adopted by the Committee, the proposed convention would "apply to the effects of a succession of States in respect of treaties between States". Since the convention would thus deal with all the reasonable effects of a succession of States on pre-existing treaties, the Committee should take full account of any legal norms which operated to produce a succession of States, the most important such norm being the rule of *jus cogens* concerning self-determination. If a dependent territory could throw off the control of the predecessor State, it should also be entitled to end the control exercised by any other State in accordance with rights granted to that State by the predecessor State. It was not difficult to conceive of the case in which the predecessor State had, by treaty, granted another colonial State territorial and other concessions which greatly affected the day-to-day life of the people of the newly independent State. What would be the point in such a case in severing the bonds with the predecessor State if the concessions granted to the other State were not affected by the succession? The application of the principle of self-determination ought not to produce such an absurd result. In accordance with that principle, when a colonial State ceased to exercise its authority over a territory, all the lesser rights which the predecessor State had granted to other States in respect of the territory in question and which were fundamentally inconsistent with the sovereignty of the new State terminated automatically. In other words, as a rule of *jus cogens,* the right of self-determination restricted the sphere of competence of the administering Power, thus barring it from granting other States rights which would deprive the principle of self-determination of all its meaning. In the understanding of his delegation, the new paragraph under consideration was intended to make it clear that the provisions of paragraphs 1 and 2 of article 12 did not save from the operation of the "clean slate" principle the treaties concluded by the predecessor State which granted such rights to other States.

29. Concerning the observation made by several representatives that article 12 was not intended to save treaties establishing military bases, it would do no harm to state explicitly an idea that was already implicit in the draft article under consideration; it was proper not only to codify generally accepted rules but also to undertake the progressive development of international law, namely by reflecting in the draft the implications of the recognition of the right of self-determination as a rule of *jus cogens.* In conclusion, he considered that the three delegations which had proposed a new paragraph should collaborate in the preparation of a unified text.

30. Mr. RITTER (Switzerland) said that, following on the questions raised by the Swedish representative, he would like to ask the Expert Consultant two questions concerning in particular the juridical technique used by the International Law Commission in drafting article 12. The first related to the parallel drafting of the two paragraphs of article 12. His delegation wondered why the International Law Commission had not sought to reduce the four subparagraphs to two paragraphs, as the Finnish and Malaysian delegations had done in their amendments. The Committee was aware of the arguments put forward by those delegations and, in order to be able to judge the merits of their amendments, it might usefully know in addition the reasons why the International Law Commission had decided to draft article 12 in its present form.

31. With regard to paragraph 2, subparagraph (*b*) of the draft article, he supposed that the notion of rights established for the benefit of a group of States and relating to the use of a territory referred to situations of the kind created by the Convention of Constantinople of 1888.[8] He would therefore like the Expert Consultant to make it clear whether the International Law Commission's intention had been to imply that, in the event of a succession, the State benefiting from an international régime should transmit the benefit of that régime to each of the successor States; if so, the words "does not ... affect" had been curiously chosen, since the succession would in fact affect several States.

32. Mr. NAKAGAWA (Japan) pointed out that article 12 related not only to the interests of a given State but also to the interests of the international community. The rules set out in articles 11 and 12 reflected customary international law, which had been recognized both in the writings of jurists and in State practice. His delegation did not share the view that the provisions of article 12 were too wide in scope and should be drafted more stringently. He considered that qualifications contained in the article, such as "attaching to the territories" and "attaching to that territory" solved that problem by adequately limiting the scope of the provisions under discussion. Japan welcomed the position adopted by the International Law Commission, which had considered it preferable to deal with legal situations resulting from treaties rather than with treaties themselves. His

[8] Convention destinée à garantir en tous temps et à toutes les Puissances le libre usage du canal maritime de Suez, signée à Constantinople le 29 octobre, 1888. See G. F. de Martens, ed., *Nouveau Recueil général de Traités,* Gotinga, Dieterich, 1890, 2nd series, t. XV, p. 557.

delegation could therefore support the provisions suggested by the International Law Commission. He observed that there were certain legal situations created by treaty, for example the settlement of specific claims, which might have a dispositive character and ought not to be affected by a succession of States.

33. In conclusion, the Malaysian and Finnish amendments concerned points of drafting and should be referred to the Drafting Committee. However, he could accept neither the Argentine subamendment nor the Cuban amendment because they made too general an exception to the provisions of paragraphs 1 and 2, so that they might embrace any treaty of a territorial character, since nearly all territorial treaties could be interpreted as restricting the sovereignty of a State.

34. Sir Francis VALLAT (Expert Consultant) said that from the point of view of drafting and purport, article 12 was the most difficult of all the articles drafted by the International Law Commission, and he would therefore reply to the questions of the representative of Switzerland at the next meeting.[9]

35. With regard to the three questions put by the representative of Sweden, the answer to the first—whether the International Law Commission had relied mainly on the practice of European States in drafting article 12—was in the negative. The International Law Commission had in fact taken into account the principle underlying the practice of States not only in Europe but in other regions of the world; he drew the attention of the Committee to paragraphs (22) and (23) of the commentary (A/CONF.80/4, p. 43), where mention was made of situations which had occurred in North America and Africa and had weighed as heavily as European precedents in the Commission's decision with regard to article 12. In addition to the principle underlying the practice, the International Law Commission had taken into consideration the attitude of States with regard to territorial problems in general, the writings of jurists and the fundamental principles which should govern the codification of rules of law on the succession of States in respect of treaties.

36. Turning to the second question, concerning treaties relating to military bases, he said that there the International Law Commission had come up against a problem common to all codification work: whereas its task was to set forth rules and principles in general terms, it had had to consider how far it ought to go in dealing with particular cases. It was extremely difficult to strike a balance between the attention which should be paid to particular cases and the demands of codifying general rules. The International Law Commission had sought to limit the scope of article 12 to the effects of a succession of States and to avoid the questions of the validity of a treaty or a State's treaty-making capacity. That was why, as the representative of the United States had pointed out, the International Law Commission had not considered the case of treaties relating to military bases and had judged it best not to deal in its commentary with questions lying outside the subject matter of the draft articles.

37. Lastly, the question of the sovereignty of States over their natural resources in the context of succession of States was mentioned in passing in paragraph (29) of the commentary (*ibid.*, p. 45), but the remarks he had just made on the subject of treaties relating to the establishment of military bases applied equally to that question. The International Law Commission had decided that the problem had no connexion with article 12.

The meeting rose at 1 p.m.

[9] See below, 21st meeting, paras. 17-19.

21st MEETING

Wednesday, 20 April 1977, at 3.50 p.m.

Chairman: Mr. RIAD (Egypt)

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*)

ARTICLE 12 (Other territorial régimes) (*continued*)[1]

1. Mr. TABIBI (Afghanistan), replying to the request for further explanations made by the representative of the United Kingdom, said that his delegation's amendment (A/CONF.80/C.1/L.24) was merely of a drafting and procedural nature; it proposed that draft articles 11 and 12, which dealt with similar questions and formed the subject of the same commentary by the International Law Commission, should have the same title and be combined in a single article.

2. During the discussion of draft articles 11 and 12, however, he had noted that most delegations thought that boundary régimes and other territorial régimes should be dealt with separately. In order to respect the wishes of the majority of delegations, he would therefore withdraw subparagraph (*b*) of his delegation's amendment, but he would still prefer the two draft articles to have the same title, as proposed in subparagraph (*a*). He hoped the Drafting Committee would take that proposal into consideration.

[1] For the amendments submitted to article 12, see 19th meeting, foot-note 7.

3. Mr. KAPETANOVIĆ (Yugoslavia) said that although his delegation had been in favour of draft article 11, it could not lend its full support to article 12. It accepted the explanations provided by the International Law Commission in paragraph (44) of its commentary on articles 11 and 12 (A/CONF.80/4, p. 47), but considered that article 12 was too general and somewhat unclear, and that it might lead to misinterpretation and other problems. The International Law Commission had not paid sufficient attention to the fact that, in all cases in which disputes had arisen in connexion with territorial régimes, the will of the parties had been involved; such disputes should be considered in the light of the sovereign right of every State to accept or reject certain obligations. However, his delegation did not question the validity of territorial régimes which had been recognized by customary international law and the practice of States as being generally acceptable.

4. The amendments to draft article 12 submitted by the delegations of Cuba (A/CONF.80/C.1/L.20) and Mexico (A/CONF.80/C.1/L.19), with the subamendment to the Mexican amendment submitted by the delegation of Argentina (A/CONF.80/C.1/L.27) would enable his delegation to accept draft article 12, because they introduced a new element which made the article clearer. Those amendments embodied the principles which constituted the foundation of the non-aligned movement, to which his country was very strongly attached, and which had been confirmed by the fifth Summit Conference of Non-Aligned Countries held in 1976 in Sri Lanka. Although those principles were well known and easily understandable, it was sometimes necessary to repeat them in international conventions. Those who accepted them would see no harm in having them clearly expressed in the draft convention; for those who found them suspicious, their inclusion would provide double protection. Problems would, of course, arise if it was desired to include something in the draft convention that was illegal or difficult to recognize as a just and uncontested principle. But in the present case his delegation could foresee only the problem of the political will to accept the principles contained in the amendments under consideration. He felt sure that the delegations of Cuba, Mexico and Argentina would be able to reach agreement on a single amendment which would be acceptable to all delegations.

5. Some delegations had stated that the amendments in question were too political and therefore unacceptable. But since the members of the Committee were both jurists and representatives of their countries, it was only natural for them to present not only their legal views, but also their political positions. The purpose of the Conference was not to adopt an empty legal text with no political meaning, but to prepare a future convention which would have legal and political value. In that connexion, the views of the representative of the United Nations Council for Namibia,[2] which represented a people still under colonial domination whose interests would be affected by the substance of the future convention, were very pertinent and should be duly respected by the Committee. His delegation would do everything possible to help the delegation of the Council for Namibia to ensure that the people of Namibia would be able to benefit from the provisions of the future convention.

6. Mr SIEV (Ireland) said it was his delegation's understanding that draft article 12 did not relate to treaties of a political nature concluded by predecessor States. As Professor O'Connell would put it, the draft article was concerned with treaties the legal effect of which is to impress on a territory a status which is intended to be permanent and which is independent of the personality of the State exercising sovereignty.

7. His delegation was concerned about some of the amendments to draft article 12, which would limit or alter its scope and intention. When his country had gained independence, it had examined a large number of treaties and, in so doing, had made a distinction between treaties or agreements of a political nature and other types, such as commercial or administrative agreements. By making that distinction, his country had been in a position to accept certain treaties or agreements, such as those of a commercial character, and to reject others of a political character.

8. The amendments submitted by Mexico and Cuba and the subamendment submitted by Argentina dealt, in particular, with treaties relating to military bases. Those amendments seemed to imply the existence of, or the need to create, a separate category or régime for such treaties, which were of a political nature. His delegation believed that it was unnecessary, and might in fact be detrimental, to include a paragraph dealing with military bases in draft article 12. Hence it would not be able to support the amendments submitted by Cuba and Mexico and the subamendment submitted by Argentina.

9. His delegation agreed with the representative of Guyana[3] that the two paragraphs of article 12 dealt with two different sets of circumstances and that any attempt to fuse them could defeat the whole purpose of the article. It was therefore in favour of retaining draft article 12 as it stood. Nevertheless, he suggested that the Drafting Committee might consider deleting the words "considered as" in each subparagraph of the article. The use of those words was rather vague and their deletion might make for greater clarity.

10. Mr. MUPENDA (Zaire) said that draft article 12 clearly reflected current efforts to promote international co-operation for the maintenance of peace and security. In recent years, the efforts made by the international community within the United Nations,

[2] See above, 19th meeting, paras. 31-33.

[3] See above, 20th meeting, paras. 24-26.

the non-aligned movement and other regional groupings had been designed to stimulate economic co-operation, not only in the context of bilateral relations, but also and, in particular, in the context of regional economic integration. In dealing with the question of the law of the sea, the international community had, for several years, been trying to find suitable ways of providing land-locked countries with access to the sea and of guaranteeing them rights of passage and other navigation rights.

11. If the purpose of such servitudes was to strengthen the ties of friendship between peoples and to promote economic co-operation among States or the economic integration of a specific region, his delegation could only welcome the efforts made by the International Law Commission, But if the international community was using such servitudes to try to curb economic co-operation in various regions, it might be asked how the developing countries were ever to be able to solve the problems they encountered in their relations with the industrialized countries. His delegation was convinced that the establishment of a new international economic order was necessary and that it must be based on economic co-operation among neighbouring countries, which should be prepared to make certain sacrifices, particularly with a view to promoting regional economic integration.

12. For all those reasons his delegation supported draft article 12. It was, however, grateful to the delegations which had pointed out that the International Law Commission had not solved the whole problem of territorial régimes, and it therefore supported the amendment submitted by Mexico, which was specific and constituted a safeguard clause, particularly for newly independent States.

13. He hoped that the Drafting Committee would be able to make use of the drafting amendments submitted, in order to find wording for article 12 which would be acceptable to all delegations.

14. Mr MARESCA (Italy) said that article 12 was one of the most important articles in the draft. It was, however, also one of the least clear. It had every appearance of being a corollary to draft article 11 and yet the roles of those two articles were very different. Article 11 provided that the successor State was bound to respect treaties establishing boundaries concluded by the predecessor State and embodied the principle of peaceful and passive coexistence of States, whereas article 12 was designed to deal with specific situations and embodied the principle of active co-operation among States for the benefit of the international community as a whole.

15. As the representative of Switzerland had stated at the 20th meeting, article 12 was not a simple one. There was something disturbing, if not vaguely nightmarish, about it. Although the two paragraphs seemed to be the same because of the repetitive wording they contained, they were quite different and were designed to deal with different situations involving the obligations and rights established by treaties. In order to have a clear idea of the meaning of the draft article in its entirety, it was necessary to consider it as being aimed at the achievement of the higher goal of broad co-operation among all States.

16. His delegation was of the opinion that, since article 11 related to passive co-operation among States and article 12 to active co-operation, those two articles should be kept separate. Hence it could not support the amendment proposed by Aghanistan. It found the amendments submitted by Finland (A/CONF.80/C.1/L.18) and Malaysia (A/CONF.80/C.1/L.21) quite attractive, as they were designed to make the wording of draft article 12 clearer and more comprehensible. The amendments submitted by Cuba and Mexico and the subamendment submitted by Argentina introduced elements beyond the scope of the draft convention, in which it would be much wiser not to deal with such a controversial matter as military bases. At the previous meeting, the Expert Consultant had said that, in its discussions on draft article 12, the International Law Commission had never referred to the question of military bases and had not intended the draft convention to apply to such a specific matter.[4] His delegation was convinced that the present wording of the article was general enough to cover most, if not all, of the situations which might arise in connexion with territorial régimes and that its scope should not be limited to the type of treaty referred to in the amendments submitted by Cuba and Mexico and in the subamendment submitted by Argentina.

17. Sir Francis VALLAT (Expert Consultant), replying to the two questions asked by the representative of Switzerland at the previous meeting,[5] said that a partial answer to the question why the International Law Commission had divided draft article 12 into two paragraphs, each having two subparagraphs, rather than drafting it in a more compact form, had been given in paragraph (37) of the commentary to articles 11 and 12 (A/CONF.80/4, p. 47), which made it clear that the article dealt with two distinct and quite different cases. In the case of an agreement between two States relating to a right attaching to a territory, it was the attachment of the right to a territory which was the distinguishing feature of the right in question. For drafting purposes, it was convenient to keep that case separate from the case dealt with in paragraph 2, which concerned something done for the benefit of a group of States or of all States, when the right or obligation did not, as such, attach to the territory of the group of States or of all States.

18. It might then be asked why a distinction should be made between rights and obligations. The answer

[4] See above, 20th meeting, para. 35.

[5] See above, 20th meeting, paras. 30-31.

was that the rights and obligations were not really identical. Paragraph 1 of article 12 made it clear that there was a difference between the obligations dealt with in subparagraph (*a*) and the rights dealt with in subparagraph (*b*). In subparagraph (*a*), it was necessary to consider the obligations as attaching to the territories in question, namely, the territories for the benefit of which the obligation was created. In the case of rights, the situation was not quite the same, as shown in subparagraph (*b*). In paragraph 2, there was a similar difference between obligations and rights. Consequently, if an attempt was made to condense those two paragraphs, further drafting difficulties would be encountered and it would be no easy matter to maintain the exact balance which the International Law Commission had struck between paragraphs 1 and 2.

19. In his second question, concerning paragraph 2, subparagraph (*b*), the representative of Switzerland had referred to the case in which a right was created for the benefit of a group of States or for the benefit of all States, and in which the number of States concerned increased as a result of the division of one State and the consequent creation of a new State. He had asked whether that case involved a change in the obligation of the group of States or of all States, suggesting that it was not right to say that a succession of States did not affect the obligation. He (the Expert Consultant) wondered whether that was really so, for if a right was established for all States, it surely made no difference how many States were involved. If a right to use a sea were established for the benefit of the States bordering on the sea and by division of one of the States two new States were created, both of which bordered on the sea, it seemed to him that the nature of the obligation was not changed in the slightest. If, however, one of the States bordering on the sea divided into two States, one of which did not border on the sea, he did not think that paragraph 2, subparagraph (*b*) would operate for the benefit of that new State, because it would not be a member of the group for which the right had been established. The right would remain the same, but the new State would not benefit from it under the provisions of paragraph 2, subparagraph (*b*). It therefore seemed to him that the correct view was that the essence of the right as such was not altered in such cases.

20. Mr. KATEKA (United Republic of Tanzania) said that the Expert Consultant had perhaps been unaware of the objection made by the United Republic of Tanzania to the interpretation of the its Government's position on the Belbases Agreements recorded in paragraph (24) of the commentary to article 11 and 12 (A/CONF.80/4, p. 43). His delegation had made it clear that no self-respecting country could accept the idea of a lease in perpetuity of the type in question, which stemmed from an insulting provision by an administering authority. Since the Government of the United Republic of Tanzania had manifestly not accepted the obligation involved, it was wrong to invoke that instance as an example of State practice.

21. The United Kingdom and United States representatives had said that questions of military bases and of sovereignty over natural resources were irrelevant, and the Expert Consultant had deemed those questions extraneous. The delegation of the United Republic of Tanzania disagreed; article 12 as it stood could be so interpreted as to cover those questions.

22. His delegation was troubled too by the expression "foreign State", which, as the Nigerian representative had pointed out,[6] was not the sort of wording normally used in treaty language for provisions of that type. He was not satisfied by the explanation that the wording meant a neighbouring State.

23. His delegation supported the amendments submitted by Mexico and Cuba and the subamendment submitted by Argentina. As the Yugoslav representative had noted, the political aspect was a legitimate part of the Conference's work.

24. Mr. ESTRADA-OYUELA (Argentina) said he failed to see how certain previous speakers could infer that article 12 was mainly concerned with treaty relations between neighbouring States. The text contained nothing to warrant such an inference of to imply that treaties of a political nature should somehow be distinguished from other treaties.

25. Those who argued that the scope of article 12 did not extend to matters such as military bases and sovereignty over natural resources had implicitly invoked a conception of territory which was not used elsewhere in the draft convention and, if they were right, was being used in article 12 in a way that was not in keeping with legal doctrine. For territory, as such, was never a legal person and could not have benefits conferred on it; in that respect, therefore, the wording in paragraph 2 was inappropriate. Benefits would accrue not to a territory, but to its users.

26. The text as it stood was too wide in scope and required clarification by means of an amendment such as the one his delegation had submitted. The clarification just given by the Expert Consultant concerning paragraph 2, subparagraph (*a*) substantiated the Argentine delegation's argument. An obligation and a right must apply to one and the same entity; it was inadmissible to say that one related to a territory and the other to a State.

27. It might well be that the International Law Commission had not intended to include military bases and sovereignty over natural resources in the way that the Argentine subamendment did; but if that were so, the International Law Commission's text was defective. The point to consider was not what the International Law Commission had intended yet failed to say, but what the amendments

[6] See above, 20th meeting, para. 3.

of Cuba and Mexico and the subamendment of Argentina did say.

Mr. Ritter (Switzerland), Vice-Chairman, took the Chair.

28. Mr. STUTTERHEIM (Netherlands) said that his delegation could accept article 12 as it stood and thought that the amendments submitted by the delegations of Mexico and Cuba and the subamendment submitted by Argentina would detract from the value of the article. The amendments submitted by Finland and Malaysia were concerned with drafting and should be referred to the Drafting Committee.

29. Mrs. HUMAIDAN (Democratic Yemen) said there seemed to be general agreement that the provision for an exception to the "clean slate" rule should not apply to military bases and sovereignty over natural resources. However, article 12 as worded by the International Law Commission could be taken to mean that the exception did apply to those matters. It therefore appeared that an additional paragraph was needed, and her delegation thought that the text of the Mexican and Cuban amendments and the Argentine subamendment, if suitably merged, could provide appropriate wording. She hoped that the three delegations concerned would agree to pool their texts for that purpose.

30. The Finnish and Malaysian amendments concerned drafting only, and in any case did not, in her view, provide acceptable alternative wording.

31. Mr. TREVIRANUS (Federal Republic of Germany) said that article 12 must be viewed in close connexion with article 11. Both articles were considered to be a correct expression of customary international law, and article 11 had already been provisionally adopted by a majority decision of the Committee.

32. A number of members of the International Law Commission had explained the limited context of article 12. The obligations or rights in question must have been established by treaty for the benefit of a territory of a foreign State, generally a neighbouring State, and must be considered as attaching to the territory in question in order to fall within the category of dispositive treaties. His delegation endorsed the limitation placed by the International Law Commission on that conception of dispositive treaties; it thought that the substance of article 12 was sound and that the text should remain as it stood unless it could be shown that article 12 was superfluous.

33. In his delegation's view, the Finnish and Malaysian amendments were both useful and should be referred to the Drafting Committee. His delegation could not *prima facie* agree with the Irish representative that the words "considered as" should be deleted; perhaps that part of the text should be studied more closely.

34. His delegation found the Mexican and Cuban amendments and the Argentine subamendment unacceptable; they concerned the legal fate of treaties, which was not within the purview of article 12 at all. The International Law Commission had rightly refrained from taking up the matter of military base treaties—or of any other category of treaties. The three amendments in question did very little to serve the purpose of codification in the special field of succession of States to treaties, and his delegation could not support them.

35. Mr. BEDJAOUI (Algeria) said that his delegation found the International Law Commission's draft of article 12 somewhat heavy and not too clear, and it appreciated the efforts at clarification made by those delegations which had submitted drafting amendments. As noted by the Italian representative and other speakers, there was a certain parallelism between the subparagraphs of each of the article's two main paragraphs.

36. Whilst his delegation appreciated the Finnish and Malaysian amendments, it noted that in substance the purpose of article 12 was to promote good relations between neighbour States, while not losing sight of successor States' interests. The amendments submitted by Mexico and Cuba and the subamendment submitted by Argentina reflected a political approach which some Latin American, African and other delegations found appropriate but which others deemed contrary to the meaning and purpose of the article drafted by the International Law Commission. Where such an important article was concerned, it was important to find a solution acceptable to all delegations, so as to secure ratification of the resultant convention by as many States as possible. His delegation was prepared to suggest wording which might be found acceptable.

37. The question of self-determination was also involved in article 12, which *inter alia* would confer rights on a successor State. The problem of "unequal treaties" was not within the purview of the article; and in any case, preoccupation with that topic in the context of article 12 would imply that former colonial Powers had been weak in their dealings with third States and had left a legacy of disadvantageous treaties, which in general was surely not the case.

38. Undertakings in perpetuity by a former administering authority constituted a further problem. According to the Charter of the United Nations, an administering authority for a dependent territory had administrative and trusteeship power only; it would be contrary to the principle of self-determination for it to be able to assume external obligations on behalf of the territory concerned.

39. His delegation appreciated the efforts of the Mexican, Cuban and Argentine delegations in submitting their respective amendments and subamendment, but it appreciated the concern of other speak-

ers regarding a specific reference to military bases, and it also believed that the question of sovereignty over natural resources had been clearly accepted by the International Law Commission elsewhere. Perhaps a third paragraph could be added to article 12, to the effect that its provisions were without prejudice to the principle of sovereignty over natural resources; on that point, he suggested that the Mexican, Cuban and Argentine delegations might consult with colleagues on the Drafting Committee.

40. Mr. MIRCEA (Romania) said that his delegation's position of principle appeared in the Analytical compilation of comments of Governments (A/CONF.80/5, p. 167).

41. In his view, the commentary to article 12 was not convincing. The provisions of article 12 might impose on successor States conditions not in their best interests, particularly with regard to rights in their natural resources. The problem of the effect of treaties vis-à-vis third States had already been examined during the preparation of the Vienna Convention on the Law of Treaties. But as the Argentine delegation had noted, the philosophy of the "objective régime" reflected in that Convention did not appear in article 12. The International Law Commission's text of that article was not in accordance with the Vienna Convention. The question was whether, given the specific character of the present draft convention, the Conference had before it all the material necessary for studying the categories of treaties that would be involved; in his delegation's view, the Conference did not have the means to study them in depth without the risk of making errors or prejudging solutions elsewhere.

42. The approach of the International Law Commission to the question of obligations and rights attaching to a territory seemed different from that adopted in other international forums—for example, the United Nations Conference on the Law of the Sea, at which certain principles of contemporary international law had been invoked in connexion with freedom of transit. The susceptibility of the International Law Commission's text to differing Interpretations was shown by the submission of the Mexican and Cuban amendments and the Argentine subamendment, which his delegation could support.

43. Most delegations seemed to agree that the notions of "objective régimes" should be retained. His own delegation could accept the International Law Commission's text of article 12, but it was not convinced that such a provision was necessary, or that it was even acceptable to the majority of States.

44. Mr. AL-KATIFI (Iraq) said that article 12 as drafted by the International Law Commission faithfully reflected a well established rule of positive international law. In its statement, the delegation of Austria had clearly explained both the foundations of article 12 and why its retention was necessary for peace and stability in international relations.[7] Some delegations considered that articles 11 and 12 were based on article 62, paragraph 2, subparagraph (*a*) of the Vienna Convention on the Law of Treaties. His delegation was of the opinion that those articles were only an application of the general principle of law contained in article 70, paragraph 1, subparagraph (*b*) of the same instrument. The effect of that general principle was that, once a legal situation had been established by a valid treaty, it existed independently of that treaty and continued to apply even when the treaty itself had been terminated for any reason whatsoever, including a succession of States.

45. With regard to the proposed amendments to article 12, those of Finland and Malaysia concerned only its drafting and could be referred to the Drafting Committee, which would be assisted in its consideration of them by the explanations given by the Expert Consultant in answer to the representative of Switzerland. His delegation understood the motives which had led the delegations of Cuba, Mexico and Argentina to seek to exclude treaties concerning military bases from the category of real treaties, for those motives were entirely in keeping with the policy of its own Government. Considered from a purely legal standpoint, however, treaties concerning military bases were not real treaties, but political instruments, often of temporary effect, and as such they were not binding on a successor State.

46. His delegation also sympathized with the concern of Argentina over treaties restricting the full exercise by a successor State of its sovereignty over its natural resources, but he believed that the exception to article 12 proposed by Argentina was so broad that it might empty the article of all content and might also lead to difficulties, particularly between neighbouring States. Furthermore, the concept of permanent national sovereignty over natural resources was well recognized and had been repeatedly reaffirmed by the United Nations General Assembly and in existing international instruments. He doubted, therefore, whether any useful purpose would be served by mentioning it in a convention on succession in respect of treaties.

47. Mr. SNEGIREV (Union of Soviet Socialist Republics) said that the provisions of article 12, in the wording proposed to the Conference, defined with sufficient clarity the mutual rights and obligations of States in respect both of concrete territorial régimes applying in relations between two States, especially neighbouring States, and also of concrete régimes established in the interests of all States, such as the right of navigation in international canals and straits, and the neutralization and demilitarization of territory.

48. In that connexion, his delegation took the view that article 12 did not in any way relate to the ques-

[7] See above, 19th meeting, paras. 34-40.

tion of military bases, since bases could not be considered as régimes attaching to any specific territory. Accordingly, he regarded article 12 in its present wording as quite sufficient and acceptable to his delegation. However, if the majority of the participants in the Conference were in favour of including in the draft article a stipulation that its provisions did not apply to military bases in foreign territories, his delegation would have no objection, in principle, to such a stipulation. Nevertheless, it reserved its right to express its views at a later stage on the specific wording of the stipulation, since it regarded the present wording of the amendments as preliminary.

49. Mrs. DAHLERUP (Denmark) said she considered article 12 one of the most important provisions in the draft. The Committee's discussion of the article had left her more convinced than ever of the wisdom of the International Law Commission's draft, which, as the representative of Austria had said[8] had been prepared with the utmost care. While the text was somewhat abstract, and therefore a little difficult to understand, the explanations given by the representative of the United States of America[9] had shown that the article was limited in scope and applied only to relations between two or more newly independent neighbouring States.

50. As a consequence of its support for the original proposal, her delegation was unable to accept the amendments submitted by Cuba and Mexico and the subamendment submitted by Argentina, although it understood why they had been put forward. It was sure that account could be taken elsewhere of the considerations which underlay those amendments, but believed that the codification and progressive development of international law should not lead to overlapping of basic instruments, such as the Vienna Convention on the Law of Treaties and the draft convention before the Conference, as would to some extent occur if the amendments were accepted. The amendments of Finland and Malaysia could be referred to the Drafting Committee, whose consideration of them would be facilitated by the analysis made by the representative of Guyana.[10]

51. Mr. PANCARCI (Turkey) observed that the draft convention as a whole was based on the "clean slate" principle and that, if it was to be acceptable, the exceptions it permitted to that principle must be clearly stated. Furthermore, it should be borne in mind that the object of the efforts to codify the principles and rules of customary international law, which had been in progress since the end of the eighteenth century, was to eliminate misunderstandings between States and to consolidate international peace and stability. It was with that object in view that the third paragraph of the preamble to the Charter of the United Nations called for the establishment of "conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained".

52. It was understandable, therefore, that boundary treaties, which often put an end to a period of armed conflict, and the neglect or denial of which could lead to anarchy in the international community, occupied a special place in international law, and that article 12, like article 11, should be essential to the draft convention. The deletion of, or any substantial change in, article 12 would have a negative effect on all the other provisions and compromise the implementation of the entire draft. Finally, the article should be retained as it stood, since it reflected current State practice, jurisprudence and the rules and principles of contemporary international law.

53. The amendments submitted by Finland and Malaysia related essentially to the drafting of the article and should therefore be referred to the Drafting Committee. The amendments submitted by Cuba, and Mexico and the subamendment submitted by Argentina related to another sphere of international law from that with which the Conference was concerned, and his delegation was therefore unable to support them.

54. Mr. ROBINSON (United Nations Council for Namibia) considered the questions raised by the representative of Sweden[11] with regard to paragraph (25) of the commentary relating to article 12 (A/CONF.80/4, pp. 43-44) to be both pertinent and important. His delegation did not agree that, as had been claimed, matters relating to the cessation of treaties governing the establishment of military bases were "extraneous" to article 12; they would seem rather to be directly relevant to the article, for its present wording sought to establish rules governing, *inter alia,* obligations relating to the use of territory. That being so, to classify the implications of the article on the lines proposed in the amendments submitted by Cuba and Mexico and the subamendment submitted by Argentina could only improve it.

55. His delegation was much concerned at the fact that some speakers seemed to think that the question of military bases was no longer important. The United Nations Council for Namibia was well aware that there were military bases in Namibia established by the illegal occupier of the territory with the complicity of other States and contrary to the wishes and interests of the Namibian people. Since it was hardly likely that the illegal occupier would voluntarily dismantle those bases when the territory finally attained independence, there would seem to be great merit in the codification by the Conference of legal norms which would ensure that the dismantlement of military and other bases in the territory of a successor

[8] See above, 19th meeting, paras. 39-40.

[9] See above, 20th meeting, paras. 6-10.

[10] See above, 20th meeting, paras. 24-29.

[11] See above, 20th meeting, para. 13.

State was not left to the goodwill or morality of the predecessor State.

56. In the light of those remarks, he would like the Expert Consultant to explain what would be the status, following a succession, of a treaty relating to the use of the territory of the successor State for the establishment of military bases, if that treaty had been concluded with third States by an illegal occupier of the territory concerned, purporting to act as the administering authority.

57. Mr. HELLNERS (Sweden) said that, despite the explanations given by the Expert Consultant in answer to his own questions,[12] he still found the text of article 12 insufficiently clear and thought that, whatever the problems to which that might give rise, an attempt should be made to shorten and simplify it.

58. His delegation was, on the whole, very much in sympathy with the intended aims of article 12 as it stood. It also appreciated the importance of the questions of military bases and permanent sovereignty over natural resources raised in the amendments submitted by the delegations of Cuba and Mexico and in the subamendment submitted by Argentina, which the Expert Consultant had said the article was not at present intended to cover. In seeking to expand the scope of the article, however, great care must be taken not to empty it of its real content: as they stood, two of the substantive amendments would have the undoubtedly unintentional effect of making treaties such as demilitarization treaties null and void in the event of a succession, since such instruments inevitably fell into the category of agreements affecting the sovereignty of the territory concerned.

59. Of the three substantive amendments, his delegation preferred that of Mexico, although it considered the final sentence too categorical. He agreed with other speakers that the amendments submitted by Cuba and Argentina could give rise to excessive instability in treaty relations. In the Cuban amendment, the phrase "Treaties ... which disregard or detract from the sovereignty of the successor State" could be interpreted in widely different ways, and it would be very difficult to find any treaty which did not in some way detract from sovereignty. His delegation understood the Argentine subamendment to be an attempt to give effect, within the framework of article 12, to the numerous United Nations resolutions on the question of national sovereignty over natural resources, but it doubted whether the principle stated in those resolutions could be implemented in the way the amendment suggested. The consequences of the principle were broader than could be stated in a few lines and were, moreover, still the subject of difficult discussions in many United Nations bodies.

[12] See above, 20th meeting, paras. 35-37.

60. His delegation believed that, in view of the importance of article 12, an attempt should be made to find some common denominator between the views of those who favoured the expansion of the text and those who favoured its retention without change. His delegaion would be willing to participate in any efforts to reach a solution along the lines suggested by the representative of Algeria.

61. Mr. MANGAL (Afghanistan) said that the purpose of his statement was to elaborate further on his delegation's position regarding article 12, particularly paragraph 1 thereof, and to make a number of additional points which his Government considered to be of great importance for the interpretation of that article.

62. Afghanistan took the view that there were certain fundamental rights and obligations under international law which were unaffected by a succession of States: for instance, the right of free access to and from the sea of land-locked States and their right of free transit, which were based on firmly established and legally binding principles of international law, such as the freedom of the high seas and the newly established principle of recognition of the international area of the sea beyond the limits of national jurisdiction of States as the common heritage of mankind, rights which were so vital for their foreign trade and economic development. Afghanistan believed that the exclusion of the rights of land-locked countries from the application of the "clean slate" principle did not infringe the sovereignty of a successor State which was also a coastal or transit State. The establishment of such an exception in favour of land-locked States was in conformity with the provisions of the United Nations Charter and the spirit of international co-operation, and was conducive to the strengthening of friendly relations between States. That point, which was also covered by the draft articles on the most-favoured-nation clause prepared by the International Law Commission, was of vital importance for one fourth of the international community and should therefore be dealt with in the preamble to the future convention.

63. Mr. YANGO (Philippines) referred to the statement on articles 11 and 12 made by Philippines representative to the Sixth Committee of the United Nations General Assembly in 1975. That representative had observed that both articles might possibly be contrary to the right to self-determination and in some cases to the interests of newly independent States which challenged a boundary, but that if those matters were removed from the application of the principle of continuity, the stability of international relations could be jeopardized, so that his delegation had an open mind on articles 11 and 12 (A/CONF.80/5, p. 166).

64. Conscious of the need to promote international stability, security and amity, his delegation, at the 19th meeting of the Committee, had supported ar-

ticle 11 as drafted by the International Law Commission. In doing so, it had also taken into account, in particular, the clarifications provided by the Expert Consultant,[13] who had said that the provisions of article 11 were without prejudice to any agreements which might be reached by the parties concerned in accordance with the provisions for peaceful settlement of disputes embodied in the Charter of the United Nations.

65. His delegation could not, however, give similar support to article 12, for the reasons he had mentioned relating to the right to self-determination. The Committee had before it a number of amendments to that article, and he was inclined to agree with other delegations that those submitted by Malaysia and Finland could be referred to the Drafting Committee. However, substantive proposals had been submitted by the delegations of Cuba, Mexico and Argentina, on which a polarization of views had occurred. At the 20th meeting, it had been argued that the matters dealt with in those proposals—namely, foreign military bases and sovereignty over natural wealth and resources—were extraneous to article 12. He submitted that that was not the case, since what was proposed was to make certain exceptions to the rule laid down in article 12 concerning the continuity of restrictions upon the use of any territory and, as he saw it, foreign military bases were restrictions within the meaning of that article.

66. Paragraph (25) of the commentary to article 11 and 12 related to the West Indian bases granted by the United Kingdom to the United States in 1941. On the approach of the West Indies territories to independence, the commentary stated, "the United States took the view that it could not, without exposing itself to criticism, insist that restrictions imposed upon the territory of the West Indies while it was in a colonial status should continue to bind it after independence" (A/CONF.80/4, pp. 43-44). Thus, the United States had acknowledged that military bases constituted restrictions upon the territory of the successor State. The International Law Commission's commentary also referred to leases in perpetuity; if agreements of that kind were considered to be restrictions on sovereignty, it could equally well be argued that military bases leased by a sovereign State to a military power entailed such restrictions.

67. As to the question of permanent sovereignty over natural resources, it should be borne in mind that the Conference was endeavouring to promote the progressive development of international law, and that the concept of permanent sovereignty was gradually gaining acceptance as an established principle of international law. It was true that that matter was also being discussed in other United Nations forums, but the tendency was to consider it not only in connexion with trade negotiations, for instance, but also at gatherings such as the United Nations Conference on the Law of the Sea. The concept of permanent sovereignty over natural resources had the support of more than 100 States Members of the United Nations—a fact which the Conference could not ignore.

68. His delegation firmly believed that the purpose of promoting amity, co-operation and international peace and security would be served by the inclusion in article 12 of provisions establishing exceptions to continuity in the case of agreements relating to military bases and affecting permanent sovereignty over natural resources. Both of those matters were burning contemporary issues and the subject of growing concern. The non-aligned States favoured the abolition of all foreign military bases and were steadily gaining support, while the issue of permanent sovereignty over natural resources would inevitably assume increasing importance in the near future as a result of the efforts to establish a new international economic order.

69. To sum up, he was sympathetic to the substance of the proposals submitted by the delegations of Mexico, Cuba and Argentina and supported the idea that those three delegations should consult one another with a view to working out a consolidated text which would find general acceptance.

70. Mr. KRISHNADASAN (Swaziland) said that his delegation's comments on article 11[14] largely reflected its view on article 12. His delegation had abstained from voting on article 11 and, at present, would take the same position on article 12. It did not believe that the adoption of article 12 would ensure order or that its non-adoption would cause chaos.

71. He had understood the Expert Consultant, in answering a question put by the representative of Sweden, to say that it was unfair to maintain that the International Law Commission had based itself only on European legal practice,[15] since paragraph (22) of the commentary to articles 11 and 12 (A/CONF.80/4, p. 43) referred to the legal practice of Canada and Newfoundland. But the practice of Canada and Newfoundland differed little from European practice and the International Law Commission had been heavily, and in his view, unfortunately, influenced by the case of the Free Zones of Upper Savoy and the District of Gex[16] and the case of the Åland Islands.[17] The commentary also made mention of a number of cases, in particular, the Belbases Agreements and the Nile Waters Agreement, in which legal practice appeared to militate against the establishment of an exception to the "clean slate" principle. Both the Sudan and Tangyanika had declined to consider themselves bound by the latter Agreement. It appeared that the International Law

[13] See above, 18th meeting, para. 48.

[14] See above, 18th meeting, paras. 66-69.

[15] See above, 20th meeting, para. 35.

[16] P.C.I.J., series A/B, No. 46, p. 96.

[17] See League of Nations, *Official Journal, Special Supplement No. 3* (October 1920).

Commission had been influenced by pragmatic considerations and had acted out of a concern to ensure stability.

72. He had understood the Expert Consultant also to say that it was very difficult to strike a balance in the matter under consideration and that the International Law Commission had not attempted to deal with the questions of military bases and permanent sovereignty over natural resources. That very fact made it all the more important for the Conference to consider the proposals submitted by the delegations of Cuba, Mexico and Argentina. In his view if article 12 was to be retained, some form of addition along the lines indicated in those proposals was necessary. The United Kingdom representative had said[18] it was impossible to conclude that article 12 gave any authorization for military treaties; by the same token, that provision did not prohibit military bases, and the inclusion of a provision covering them would be advisable, if only *ex abundante cautela*.

73. With regard to the situation of land-locked countries, his delegation believed that customary international law, treaty law and the fundamental principles of international law all established a right of transit and a right of access to and from the sea for land-locked States. A provision covering that point would, it was to be hoped, be embodied in the future convention on the law of the sea. To that extent, he did not believe that the provisions of article 12 either made or broke the case concerning the transit rights of land-locked States.

74. He supported the substance of the proposals submitted by the delegations of Cuba, Mexico and Argentina and agreed that those three delegations should consult one another in order to formulate a joint proposal. He had also taken note of the Swedish representative's suggestion that he and the representative of Algeria might together prepare a compromise or consensus solution. His delegation thought it would be well for a group of some kind to meet and reconsider article 12 before a final decision was taken. The Swedish representative's suggestion that the substantive amendments to article 12 should exclude demilitarization treaties should be regarded with sympathy and put into effect.

75. Sir Francis VALLAT (Expert Consultant) said that the following question had been put to him by the representative of the United Nations Council for Namibia: "What would be the status of a treaty relating to the use of the territory of a successor State for the establishment of military bases, if that treaty had been concluded with other States, albeit excluding the successor State, by the illegal occupier of the successor State purporting to act as administering authority?"

76. While considering that question strictly outside his functions, he could express the personal opinion that a treaty of that kind could not be valid or legally binding on a successor State.

77. Mr. KEARNEY (United States of America) said he wished to clarify his earlier remarks concerning the amendment submitted by Mexico and the Argentine subamendment thereto.[19] He had not wished to cast aspersions on any particular delegation, but merely to suggest that it would be short-sighted and unwise to adopt a provision of the kind contained in the last sentence of those two proposals, which in effect declared that treaties concerning military bases—and, in the case of the Argentine subamendment, also treaties bearing some relationship to natural resources—would become invalid on the occurrence of a succession of States.

78. Such a provision would be quite contrary to the provisions of the Vienna Convention on the Law of Treaties, article 42, paragraph 1 of which stated that "The validity of a treaty or of the consent of a State to be bound by a treaty may be impeached only through the application of the present Convention".[20] The following articles contained a definitive list of circumstances which justified the invalidation of treaties. Part V of the Vienna Convention had been worked out with the utmost care and as a result of a thorough study of all available precedents and thinking on the subject. The draft articles on which that Convention was based had twice been considered by the General Assembly and had twice been the subject of comments by governments. He did not think it would be wise to attempt to modify part V of the Vienna Convention, by adding two further grounds for declaring a treaty invalid, under the conditions of the present Conference, without having first undertaken the detailed study and review necessary. The Conference was of course empowered to take any decision it wished, but it should be realized that its decisions had later to be accepted by States and that the addition of fresh grounds for invalidating treaties might seriously diminish the number of ratifications of the future convention. The Conference should refrain from such precipitate action.

79. Mr. GILCHRIST (Australia) said that in the light of the Expert Consultant's explanation, his delegation thought that the substance of article 12 was acceptable and deserved a place in the future convention, even if the text was capable of improvement. The amendments proposed by Cuba and Mexico and the subamendment proposed by Argentina would introduce further complications into an article which was already complex and was closely related to articles 11 and 13. Like other speakers, he thought there was a need for caution; the Committee should not

[18] See above, 20th meeting, para. 17.

[19] See above, 20th meeting, paras. 8-9.

[20] *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. 295.

take a final decision on article 12 without allowing itself further time for consultations.

80. Mr. SEPÚLVEDA (Mexico) said he had little imagined that in submitting his amendment he would be opening Pandora's box. He had merely intended to infuse substance into article 12, eliminate doubt and enlarge the scope of the future convention. Thanking the numerous delegations which had expressed support for the whole or for the first part of his amendment, he acknowledged that the last sentence was open to criticism. However, he was not wedded to the text.

81. He had been surprised by some of the assertions made during the discussion. It had been claimed that treaties relating to military bases were merely political and imposed no restrictions on the use of the territory. In his view, every treaty was political: international law was full of political considerations and he could see no distinction between treaties establishing military bases and those imposing other restrictions on the use of territory. On that point, he seemed to have the agreement of the International Law Commission, which in paragraph (25) of the commentary to articles 11 and 12 (A/CONF.80/4, pp. 43-44) referred to military bases as restrictions.

82. It had been asserted that the Latin-American amendments, which covered a spectrum of political ideas, had no place in a legal instrument. But the draft articles were impregnated with politics: the succession of States was in itself a political issue to which an attempt was being made to apply legal rules. Although the question of military bases was political, it had a legal character as well. It had also been said that since the Latin-American amendments were of a political nature, their incorporation would render the future convention less acceptable to States. He asked whether the Conference was aiming at an anodyne convention which avoided controversy at the cost of practical value.

83. He suggested that the Committee should defer a decision on article 12, so as to allow time to work out a common text combining some of the fundamental principles of the three Latin American amendments, together with some of the ideas expressed during the discussion, which commanded wide support. He was aware that there were a number of technical difficulties, since between them, in addition to the question of military bases, the three Latin American amendments covered natural resources and unequal treaties. Some delegations were more concerned with one of those matters than the others and a text should be found which was generally satisfactory. Some delegations had expressed their willingness to take part in consultations and his own delegation was prepared to assist in drafting a text which would serve the collective interests of the international community.

84. Mr. YIMER (Ethiopia) said that he was not opposed to postponing a decision on article 12, but he thought some time-limit should be set.

85. The CHAIRMAN observed that experience had shown that it was very difficult to forecast how long such consultations might take, so that a time-limit would be inadvisable. If there were no objections, however, he would take it that the Committee agreed to postpone a decision on draft article 12.

It was so agreed.

86. The CHAIRMAN asked the Committee whether it wished the consultations on a common text for the Latin American amendments to article 12 to proceed informally or to take place in the informal consultations group which was already discussing articles 6 and 7.

87. Mr. MARESCA (Italy) urged that the matter should be entrusted to the informal consultations group

88. Mr. MBACKÉ (Senegal), supported by Mr. YIMER (Ethiopia), thought it could be handled more expeditiously by the three delegations which had proposed the amendments.

89. Mr. KRISHNADASAN (Swaziland) suggested that the three delegations should first work out a common text and then submit it to the informal consultations group for comment.

90. Mr. ESTRADA-OYUELA (Argentina), while commending the suggestion of the representative of Swaziland, said that valuable ideas had also been advanced during the discussion. He suggested that the initial work on the text should be carried out by the three Latin American delegations concerned, in conjunction with those who had expressed a desire to collaborate with them.

91. Mr. HERNANDEZ ARMAS (Cuba) said that from their practical experience and legal knowledge, the African and Asian groups could also make a contribution. He supported the suggestions of the representatives of Swaziland and Argentina. The three sponsors of the amendments concerned should be assisted by those speakers who had taken up strong positions during the discussion. The text should then be referred to the more broadly based informal consultations group.

92. Mr. YACOUBA (Niger), speaking on behalf of the African Group, said that the silence of that group did not indicate lack of interest: it was endeavouring to find ways and means of making draft article 12 acceptable to all.

93. The CHAIRMAN said that, if there was no objection, he would take it that the Committee wished the delegations of Argentina, Cuba and Mexico to

work out a common text, which would then be submitted to the informal consultations group.[21]

It was so agreed.

PREPARATION OF A DRAFT PREAMBLE AND DRAFT FINAL CLAUSES

94. The CHAIRMAN drew the Committee's attention to the statement he had made at the 15th meeting requesting delegations which intended to submit proposals for the preamble and final clauses of the draft convention to do so as soon as possible.[22] In order to facilitate the Committee's work, he suggested that such proposals should be submitted direct to the Drafting Committee, which should be entrusted with the preparation of the draft preamble and draft final clauses for submission to the Conference.

95. If there was no objection, he would take it that the Committee decided to adopt that suggestion.

It was so decided.

The meeting rose at 7.45 p.m.

[21] See the report of the informal consultations group at the 34th meeting, paras. 7-8.

[22] See above, 15th meeting, para. 1.

22nd MEETING

Thursday, 21 April 1977, at 11.05 a.m.

Chairman: Mr. RIAD (Egypt)

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)*

ARTICLE 13 (Questions relating to the validity of a treaty)

1. Mr. TABIBI (Afghanistan) said that article 13, like article 6, stated a cardinal principle of the draft and constituted a proviso to articles 11 and 12. Furthermore, it served the aims of part V of the Vienna Convention on the Law of Treaties and met the requirements of the whole régime of conventions whose purpose was to deal with situations in accordance with international law and the Charter of the United Nations. The brevity of the International Law Commission's commentary to the article was due to the positive character of the rule which the article contained; it was a rule which did not require any explanation. The reasons why the International Law Commission had included the rule in the draft were explained in paragraphs (43) and (44) of the commentary to articles 11 and 12 (A/CONF.80/4, pp. 47-48), where it was pointed out that those two articles were not contrary to the principle of self-determination and had no effect on the validity of treaties establishing boundary or other territorial régimes or on the validity of such régimes themselves. His delegation therefore supported draft article 13, which the Committee should adopt and refer to the Drafting Committee.

2. Mr. SETTE CÂMARA (Brazil) observed that, in the International Law Commission's discussion of the provisions appearing in articles 11 and 12, it had been found necessary to include a saving clause of a general nature covering the draft as a whole and not just those two articles, for without such a proviso the other provisions of the draft might possibly have been interpreted as prejudicing a question relating to the validity of a treaty; it had also been thought necessary to include the saving clause in part I of the draft, entitled "General Provisions". Although his delegation did not feel that article 13 was indispensable, it had no objection to its inclusion in the draft and was prepared to support it.

3. Mr. RANJEVA (Madagascar) said that his delegation had no particular objection to article 13, but that at the same time it prompted a number of comments which should be brought to the attention of the Drafting Committee. In article 13, the International Law Commission had drawn a distinction between two basic questions, namely the validity of a treaty, a matter covered by the Vienna Convention on the Law of Treaties, and succession of States; in his view, however, making that distinction did not add anything new to the draft. He therefore hoped that the Expert Consultant would explain why the International Law Commission had found it necessary to restate a truism, for behind that truism lay the whole problem of the effects of a treaty. Although it was self-evident that a succession of States in no way prejudiced the validity of a treaty, on the other hand the effects of a treaty were directly influenced by a succession, since a new subject of law appeared on the international scene. Might there not arise a conflict between the provisions of a treaty and the rules of law governing succession of States? A treaty which was valid but incompatible with the rules of law relating to succession of States might be rendered inoperative. It would therefore be interesting to know how the International Law Commission had reconciled the following three factors: the validity of a treaty, the effects of a treaty and the problem of a succession of States *stricto sensu*.

4. Sir Francis VALLAT (Expert Consultant) said that in the first place several articles provisionally adopted by the Committee stated rules that were more or less obvious. The International Law Commission had

decided to include article 13 in the draft for the reasons given by the representatives of Afghanistan and Brazil. When the text of the provisions now constituting articles 11 and 12 had been submitted to Governments for comment in 1972, the great majority had found the provisions acceptable, but some Governments had expressed doubts and had considered that the International Law Commission should expressly stipulate that the continuance of territorial régimes on the occurrence of a succession should in no way prejudice any question relating to the validity of a treaty. The discussion of articles 11 and 12 had shown, moreover, that the majority of the Committee felt that the International Law Commission had been right to take account of those doubts. Furthermore, as it was rarely the case that a provision having a specific purpose did not affect other provisions of the draft, the International Law Commission had decided that article 13 ought to refer to the draft as a whole.

5. Mr. MUSEUX (France) said that article 13 did not present any problem to his delegation, but he would like some clarification on points analogous to those raised by the representative of Madagascar. The question of the validity of a treaty clearly had no connexion *per se* with the question of succession of States, whence the relevance of article 13, although doubts might be expressed as to the need for such an article. At the same time, his delegation was uncertain as to what relationship existed between the provision under discussion and the Vienna Convention on the Law of Treaties. The International Law Commission had stipulated that "nothing in the present articles shall be considered as prejudicing in any respect any question relating to the validity of a treaty", probably in the belief that part V of the Vienna Convention on the Law of Treaties regulated the question of the validity of the treaty, but he would like confirmation of that, especially as it did not appear to be completely self-evident in the light of article 73 of the Vienna Convention, which dealt with cases of State succession. Furthermore, certain provisions of the procedure for impeaching the validity of a treaty which were contained in part V of the Vienna Convention did not appear appropriate to cases of State succession; that suggested that the draftsmen had actually excluded from the scope of the Convention the question of succession of States from the point of view of the validity of treaties.

6. Mr. TABIBI (Afghanistan) said he felt that the explanations given by the Expert Consultant to the representative of Madagascar also answered the question raised by the French representative. Since the international community consisted of a large number of States, it was natural that a draft convention should pose different problems for each. The discussion on articles 11 and 12 in the Sixth Committee of the General Assembly and in the International Law Commission, and the comments made by Governments, had highlighted the importance of a saving clause. Madagascar was fortunate not to have a boundary problem, but those in favour of article 13 knew that one of the sources of dispute between a large number of nations was the question of boundary régimes.

7. Sir Francis VALLAT (Expert Consultant) pointed out that the question had been raised of the relationship between article 73 and part V of the Vienna Convention on the Law of Treaties; that very fact indicated the advisability of dispelling all doubts by including in the draft the proviso which constituted article 13. Article 73 of the Vienna Convention on the Law of Treaties made it clear that the Vienna Convention was not applicable to the effects of a succession of States, but that article did not refer to the question of the validity of a treaty as such. In its draft, the International Law Commission had taken care to ensure that no single provision could be interpreted as implying that a succession of States affected the validity of a treaty, but it had nevertheless deemed it best to say so explicitly. It was true that some of the procedures provided for in part V of the Vienna Convention on the Law of Treaties could not apply to cases of State succession, but the Committee might consider that question when it discussed the provisions relating to settlement of disputes.

8. Mr. GOULART DE AVILA (Portugal) said that, despite the arguments which could be advanced against including article 13 in the draft, it would be preferable to accept the text proposed by the International Law Commission. Referring to the position adopted during the discussion of article 11 by several delegations which had expressed concern over the inflexible manner in which the International Law Commission had formulated the exception to the "clean slate" principle, he said that it was a fact that article 11 did not provide for the possibility of revising boundary treaties. Boundaries had often been established by colonial Powers without regard to the ethnic, cultural or linguistic characteristics of colonial peoples, sometimes under pressure from another colonial Power. Article 13 therefore had an important role to play in counteracting such difficulties; it supported the conclusion that only validly concluded treaties were covered by article 11. Yet article 13 went still further. In the context of the draft, the question of the validity of a treaty did not arise solely in connexion with territorial régimes; account had to be taken of the case where, for example, a succession of States arose from the division of the territory of a State which had been established by a treaty concluded by the predecessor State when subject to political pressure from another State. According to article 6, such a situation could not be governed by the draft, but article 6 could not be applied without relying on article 13. His delegation therefore gave article 13 its unqualified support.

9. Mr. MARESCA (Italy) said that the article under discussion had the advantage of serving as a reminder that all questions relating to the validity of treaties had been regulated conclusively by the Vienna

Convention on the Law of Treaties. In article 73, the Vienna Convention stated that its provisions did not prejudge any question that might arise in regard to a treaty from, *inter alia,* a succession of States. Although a succession, considered as a juridical fact, was not governed by the Vienna Convention on the Law of Treaties, the latter nevertheless applied to any question relating to the validity of a treaty. From a purely legal point of view, therefore, the article under discussion was unnecessary, but it provided a useful clarification.

10. The juridical technique used in drawing up article 73 of the Vienna Convention on the Law of Treaties and the article under discussion was not new. The participants at the United Nations Conference on Diplomatic Intercourse and Immunities (Vienna, 1961) had debated whether a diplomatic mission could exercise consular functions. While some delegations had held that the matter fell within the competence of another conference, the majority had subscribed to a Spanish proposal that the Convention on Diplomatic Relations should include a provision to the effect that the Convention did not prevent the exercise of consular functions by a diplomatic mission.[1] The United Nations Conference on Consular Relations (Vienna, 1963) had subsequently been able to rely on that provision.

11. Mr. SATTAR (Pakistan) said that it was apparent from the explanations provided by the Expert Consultant that the article under discussion was not really necessary, since it enunciated a self-evident rule. Besides, no provision of the draft could be construed as in any way prejudicing any question in regard to the validity of a treaty. Still his delegation had no objection to the inclusion of article 13 in the draft. He would like to make two points, however.

12. Firstly, the subject of the validity of treaties was dealt with extensively in articles 46 to 53 of the Vienna Convention on the Law of Treaties; those articles codified the rules concerning factors which might invalidate a treaty under that Convention. The factors in question related to objective criteria which did not by any means confer upon a State the right to declare unilaterally that a treaty was invalid. Secondly, a succession of States did not provide occasion for questioning the validity of a treaty. It was not possible to invoke the *rebus sic stantibus* rule as embodied in article 62, paragraph 2, subparagraph (*a*) of the Vienna Convention on the Law of Treaties in order to terminate a pre-existing treaty establishing a boundary. Just as a succession did not legalize a boundary established by an invalid treaty, so it could not invalidate a boundary established by a valid treaty.

13. The CHAIRMAN noted that no other representative wished to express any views on article 13 and said that, unless there was any objection, he would take it that the Committee decided to adopt article 13 provisionally and refer it to the Drafting Committee.

It was so decided.[2]

ARTICLE 14 (Succession in respect of part of territory)

14. Mr. KOECK (Holy See) said that, in principle, he approved article 14 since the rules it expressed appeared to be firmly established in customary international law.

15. During the discussion on article 3, concerning cases not within the scope of the proposed convention, the delegation of the Holy See had expressed reservations regarding the wholesale application of articles of the draft to all treaties of whatever character.[3] In its view, article 3 could not bring about the unconditional application of any rule of the draft convention to international treaties which the Holy See concluded with States on religious matters i.e., without their special character being taken into account. The Holy See reserved for itself the right to examine individually each case that concerned a concordat. Consequently, the rules laid down in article 14 could not, through the door opened by article 3, apply to a concordatory régime. Concordats were closely related to the ecclesiastical structure of a particular region and that structure could not be modified by the simple fact that part of the territory of a State became part of the territory of another State. It was because of that territorial aspect that the moving treaty-frontiers rule could not apply to concordats. The concordatory régime applicable in part of a territory before the transfer of that territory could not cease to apply to it, just as the concordatory régime existing in the successor State could not be extended to the transferred part of territory.

16. The position of the Holy See was supported by international practice. Thus in 1871, when the territories of Alsace and Lorraine had been ceded by France to the German Empire, the concordatory régime instituted in the concordat between the Holy See and France in 1801 had continued in force in those territories. When Alsace and Lorraine had been returned to France after the First World War, the same concordatory régime had remained applicable even though in the meantime the concordat of 1801 had ceased to constitute the ground for the relationship between Church and State in France. Other examples could be adduced to show that the rules contained in article 14 were not applicable to concordats.

17. In conclusion, he said that the delegation of the Holy See did not object to article 14 provided it was

[1] See article 3, paragraph 2 of the Vienna Convention on Diplomatic Relations, in United Nations, *Treaty Series,* vol. 500, p. 98.

[2] For resumption of the discussion of article 13, see 34th meeting, paras. 1-2.

[3] See above, 4th meeting, paras. 1-2.

understood that the article could not be applicable to concordats through the operation of article 3.

18. Mr. TABIBI (Afghanistan) said that the rule contained in article 14 was again closely connected with article 6, which restricted the scope of the proposed convention to lawful situations, and with the saving clauses contained in articles 38 and 39 concerning the outbreak of hostilities and military occupation. In accordance with State practice, article 14 should only apply to lawful transfers of territory from one State to another, and it was subject to the principle of self-determination of the people residing in the territory where the change of sovereignty occurred. As the transfer of territory must be lawful, article 14 was also linked to article 13, relating to the validity of treaties.

19. In his view, it would be better if article 14 were included among the general provisions, i.e. in part I of the draft convention, so that it would be covered by articles 6 and 13. He would be interested to hear the comments of the Expert Consultant and of other delegations on that suggestion. His delegation would then concur with the view of the majority.

20. Mr. STEEL (United Kingdom) said that the substance of article 14 was acceptable but he had reservations about the wording of the clause in subparagraph (*b*) concerning the incompatibility of the application of a treaty with its object and purpose. An analogous clause was to be found in a dozen or so provisions elsewhere in the draft. The clause had resulted from the combining of two provisions of the Vienna Convention on the Law of Treaties, to be found in article 19, on formulation of reservations, and article 62, on fundamental change of circumstances, respectively. Such a combination gave rise to some technical difficulties. He wondered whether the proposed convention should use, in a somewhat different context, wording which concerned the formulation of reservations to a treaty and whether it might not be better to have recourse to other criteria. Referring to that part of the article which dealt with fundamental change of circumstances, he pointed out that the criterion appearing in article 62 of the Convention of 1969 differed slightly from the criterion which appeared in the corresponding wording of article 14. That might give rise to confusion especially in circumstances when both provisions might apply to the same treaty. It might be that no better formulation was possible, but an effort should nevertheless be made to devise an improved text.

21. In any event, whether the wording of article 14, subparagraph (*b*) could be improved or not, the idea underlying it appeared to depend on criteria that were too vague, and therefore disputes might arise. That was a further reason for including in due course a provision on the settlement of disputes.

22. Mr. BEDJAOUI (Algeria) said that he had no difficulty in accepting the rule stated in article 14, but he was worried by a problem which concerned the different kinds of succession. Part II of the draft, in which article 14 had been included, dealt with a particular type of succession, i.e. succession in respect of part of a territory. The case envisaged was that of a State ceding part of its territory to a neighbouring State. But article 14 covered not only that case but also an entirely different one, namely the case where "any territory, not being part of the territory of a State, for the international relations of which that State is responsible, becomes part of the territory of another State". That was the case where a dependent territory achieved decolonization not by becoming independent, but by being incorporated into a State that already existed. From the standpoint of purely juridical logic, those two hypotheses had nothing in common.

23. For a predecessor State to be able to cede part of its territory to a successor State, it must of necessity own that part. However, the territory of a dependent country was not the property of the administering Power, except perhaps according to the nineteenth century fiction of a colonial law, which was now completely out of date. The unfortunate assimilation of the two hypotheses in article 14 appeared to revive that fiction. As it appeared from contemporary international law and particularly from the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations (General Assembly resolution 2625 (XXV), the territory of a dependent country remained separate and distinct from that of the administering Power.

24. In his opinion, cases of succession in which a territory achieved decolonization by free and orderly incorporation into a neighbouring State should be dealt with in a different part of the proposed convention. It should be remembered that, at its last session, the International Law Commission had reverted to its earlier decisions in regard to the classification of types of succession in its study on succession of States in respect of matters other than treaties.

25. Mr. KEARNEY (United States of America) said that the draft convention contained a whole series of articles in which the application of a treaty depended on whether such application "would be incompatible with its object and purpose or would radically change the conditions for the operation of the treaty". Those conditions applied to both bilateral and multilateral treaties. The application of provisions of such a nature raised problems, because in many cases it was difficult to determine the object and purpose of a treaty. Some treaties had multiple objects and purposes and the application of the treaty under certain circumstances might be in accord with some of those objects and purposes but not with others. Friendship, commerce and navigation treaties, for example, generally had the object and purpose of improving relations between the parties, particularly in the field of commerce and trade. Many such treaties contained

provisions whose object and purpose was to place citizens of State A residing in State B in the same position as citizens of State B in regard to a number of commercial activities. If State B acquired a territory that had a different economic structure or level of development, the application of the national treatment might not be compatible with the general object and purpose of a friendship, commerce and navigation treaty. It was probable, however, that other activities provided for in the agreement, such as the establishment of consular activities in the new territory, would be compatible with the object and purpose of the treaty. State B, of course, might claim that the application of the treaty to the newly acquired territory would be contrary to its object and purpose or radically change the conditions for its application, while State A asserted the contrary.

26. Although the draft articles contained conditions for the application of treaties already in force to new situations resulting from a succession of States, they did not make any provision for what was to be done when a difference of that kind arose. Even if that purely procedural matter could be settled, and his delegation would be introducing an article to that effect in due course, serious insoluble problems would nevertheless remain. Those problems arose not only with regard to acquisition of territory, under article 14, but were also raised by articles 16, 17, 18, 26, 29, 30, 31, 32, 33, 34, 35 and 36. As those articles were among the most important provisions of the draft convention, the complete absence of any procedure for dealing with possible objections to the application of a treaty in the case of a succession was a serious weakness. At best, the Conference could only add articles to solve some of those problems, otherwise it would have to embark on a task that would prevent it from completing its work.

27. The questions concerning the procedure for raising objections were relatively simple in comparison with the questions raised by the substantive effects of an objection. Some articles raised even more problems than article 14 in that respect. In the case of a uniting of States under article 30, for example, if predecessor State A was party to a copyright convention to which predecessor State B was not a party, the unified State AB would, under article 30, maintain the copyright convention in force in the territory of former State A but not in that of former State B. If publishing houses in territory A then transferred much of their activity to territory B and State X objected that, as a result, the application of the copyright convention in territory A of State AB was incompatible with the object and purpose of the convention and radically changed the conditions for the operation of the treaty, what would be the effect of the objection? Should the copyright convention be suspended in its entirety throughout State AB? That hypothetical situation, along with many others, illustrated how difficult it was to determine the consequences of objecting to the application of the treaty and to work out the relevant rules.

28. The value of the proposed convention on succession of States in respect of treaties would be considerably diminished if no provision was made for solving the problems of objection to the application of a treaty. In his view, the best remedy would be to provide a workable and efficient system for settling disputes. Without such a system, newly independent States, successor States and States that had made territorial adjustments could find themselves in situations where it was completely unclear to them whether treaties did or did not apply in whole or in part to a part or the whole of their territories.

29. As the problem of objections to the application of treaties could give rise to serious differences among States concerning the interpretation and application of the Convention, a method of settling disputes should be adopted which was equitable, easily workable and broadly acceptable to States. The major difficulty was that of acceptability, since States' views differed widely with regard to what system of settling disputes should be selected. Some States favoured recourse to the International Court of Justice; others preferred arbitration or conciliation procedures, or leaving the entire subject to diplomatic negotiations. It was obviously impossible to satisfy all States, but it should be possible to devise a body of acceptable rules by turning to methods adopted by recent conferences in which a great many States had participated.

30. Mr. TREVIRANUS (Federal Republic of Germany) said that he fully endorsed the substance of article 14, which codified the moving treaty-frontiers rule, since that rule was applied in international practice and could be regarded as belonging to customary international law. Article 14 corresponded to article 29 of the Vienna Convention on the Law of Treaties, which dealt with the territorial scope of treaties and stipulated that "a treaty is binding upon each party in respect of its entire territory"—including newly acquired parts of its territory. The International Law Commission had been right to include that generally recognized rule in the draft articles. In his view, the question whether the case covered by article 14 was a genuine case of succession of States or simply a transfer of territory was a secondary one, which the International Law Commission had answered in paragraph (3) of its commentary to the article (A/CONF.80/4, p. 49).

31. The words "becomes part of the territory of another State" in the opening portion of article 14 described the transfer of a territory factually, in keeping with the definition in article 2, paragraph 1, subparagraph (*b*) to the effect that "'succession of States' means the replacement of one State by another in the responsibility for the international relations of territory". It was quite obvious that the answer to the question of the legality of a transfer of territory should not be sought in the draft convention. It was likely that, in most future cases involving article 14, the transfer of a territory would be the result of an

agreement between the States concerned and would therefore be of a contractual nature.

32. It might be asked then why article 14 did not contain one of the usual clauses providing for derogation from the established rules in cases where the parties agreed on different rules or where the treaty provided otherwise. Such clauses made it possible, in the case of general or individual consent or even tacit agreement, to derogate from the residuary rules of a convention. It was conceivable in the case of article 14 that, owing to agreements concluded between the predecessor State and the successor State, the predecessor State would continue to have financial obligations in respect of the ceded territory. Article 14 did not exclude that possibility and, in general, the draft articles did not set out to establish peremptory rules from which there could be no derogation by the freely expressed consent on the parties concerned. Nevertheless, the Drafting Committee should, wherever necessary, add clauses allowing derogation from the rules of the Convention if the parties so agreed, or else systematically eliminate such clauses from the entire draft in order to avoid any misunderstanding.

33. The exception proviso in subparagraph (*b*) of article 14 had been formulated in the same manner in 11 other articles of the draft convention. By such a formula, the International Law Commission had intended, as stated in paragraph (14) of its commentary to article 14, "to lay down an *international objective legal test of compatibility* which, if applied in good faith, should provide a reasonable, flexible and practical rule", and which would make it possible to "take account of the interests of all the States concerned and to cover all possible situations and all kinds of treaties" (*ibid.*, p. 51). Obviously, however, as the interests of States were not always identical, such provisos would inevitably give rise to divergent interpretations.

34. Provision should therefore be made for a procedure for the application of those provisos in the event of a dispute. There would undoubtedly be disputes about the criteria to be employed in determining whether the application of a treaty to a territory would be incompatible with its object and purpose or would radically change the conditions for the operation of the treaty. Settlement of disputes was consequently the indispensable corollary to the saving clauses appearing in the draft convention. The compatibility criterion had first been applied by the International Court of Justice in a genocide case; also, articles 62 and 66 of the Vienna Convention on the Law of Treaties should be seen in conjunction with each other.

35. Concerning the second part of the proviso, he noted that the formula used in subparagraph (*b*) of article 14—"would radically change the conditions for the operation of the treaty"—differed from that in article 62, paragraph 1, subparagraph (*b*) of the Vienna Convention on the Law of Treaties, from which only the word "radically" had been taken. He wondered whether the new formula should be interpreted differently from the old one and whether it would be feasible, in the event of a serious difference of opinion, to rely on one interpretation rather than the other. It would be best, he thought, to define—both in general and in this particular respect—the relationship that existed between the draft convention under consideration and the Vienna Convention on the Law of Treaties.

36. In conclusion, he said that the practical applicability of the proposed convention under considerations would depend to a large extent on how the problem of the provisos was solved. He felt they were indispensable, as the draft articles did not provide specific rules for the various types of treaty, apart from articles 14, 11 and 12, and relied on individual interpretation of the provisos to introduce a certain amount of flexibility into hard and fast rules. It was consequently the interpretation of the provisos that should ensure an equitable solution in doubtful and controversial cases of succession of States. His delegation felt that the formula proposed by the International Law Commission for cases of succession involving part of a territory was acceptable.

37. Mr. HASSAN (Egypt) said that he could accept article 14 as proposed by the International Law Commission, on the understanding that the article related only to lawful transfers of territory and excluded all illegal situations, as the International Law Commission had clearly indicated in its commentary.

38. Mr. KRISHNADASAN (Swaziland) said that he agreed with the representatives of the United Kingdom, the United States and the Federal Republic of Germany that the words "incompatible with its object and purpose" in subparagraph (*b*) of article 14 posed certain problems. At the Vienna Conference on the Law of Treaties, some delegations had opposed the inclusion of the words in question in subparagraph (*c*) of article 19 of the Vienna Convention on the Law of Treaties on the ground that the subjective nature of the clause could give rise to divergent interpretations. Furthermore, article 19 concerned the formulation of reservations—a limited aspect of treaties—whereas the scope of article 14 was much wider. He therefore proposed the deletion of the words "would be incompatible with its object and purpose or", which could give rise to controversy. He did not think that would harm article 14, as the second part of the proviso—"would radically change the conditions for the operation of the treaty"—took account of the first part. He also proposed that the words in question should be deleted from all the other articles in which they appeared.

The meeting rose at 1 p.m.

23rd MEETING

Thursday, 21 April 1977, at 3.50 p.m.

Chairman: Mr. RIAD (Egypt)

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)*

ARTICLE 14 (Succession in respect of part of territory) *(continued)*

1. Mr. ESTRADA-OYUELA (Argentina) said that his delegation fully agreed with the representative of Egypt that article 14 could not refer to an illegal situation.[1] He was also concerned about the point raised by the representative of Algeria concerning the situation of territories which were not really an integral part of the State responsible for their international relations[2] but he thought the present wording of the article made adequate provision for such cases.

2. Referring to the possible inclusion in the convention of a procedure for the settlement of disputes, he drew attention to the statement made by his delegation during the debate on article 2.[3]

3. Mr. EUSTATHIADES (Greece) said he foresaw no very serious objections to article 14, which repeated, albeit in innovative terms, the classical notion that the sovereignty of a State increased or diminished with the changes in its territory and that a treaty to which it was a party could therefore no longer apply in an area which it had ceded to another State. However, article 14 also dealt with the very special case of territory which became part of a State other than that which had formerly been responsible for its international relations. The principles to be applied in regard to the validity, for that territory, of the treaties of the State which had formerly represented it, would naturally be the same as in the first case mentioned in the article; but he agreed with the representative of Algeria that it would be preferable if, in keeping with the decision adopted by the International Law Commission in connexion with its study of succession of States in respect of matters other than treaties, the two questions were dealt with in separate parts of the draft convention.[4]

4. With regard to the wording of the article, a matter of secondary concern was the absence of any criteria for determining what was the "date of the succession of States", a phrase which appeared for the first time in article 14. The definition of that expression given in article 2, paragraph 1, subparagraph (*e*) did not explain how the precise moment at which responsibility passed from the predecessor to the successor State was to be identified.

5. Of primary importance was the question of the derogation from article 14 permitted by the second part of subparagraph (*b*) of the article. As the representative of the United Kingdom had said,[5] it would be better to word that provision differently, for it was not only incompatibility with the object and purpose of the treaty or a radical change in the conditions for its operation which could constitute grounds for an exception, but also a fundamental obstacle to its implementation extraneous to the circumstances obtaining at the time of its conclusion. He himself, however, could find no better wording than that proposed by the International Law Commission. Moreover, the problem was perhaps partly solved by virtue of the fact that the same clause appeared in other articles of the draft convention.

6. The real difficulty was that the criteria which States, and particularly third States, would apply in invoking an exception to article 14 would inevitably be subjective, whereas they should be objective. In view of that fact, and of the importance of article 14 for the entire convention, he fully supported the appeal made by the representative of the United States for the inclusion of provisions relating to the settlement of disputes.[6]

7. Mr. MIRCEA (Romania) said that his delegation had no great objections to the substance of article 14, but it had at first been surprised to see that part II of the draft convention consisted solely of that article, the provisions of which were closely linked with those of other articles. He was still not quite clear why article 14 departed from the question of succession of States in respect of treaties to deal with that of the succession of territories, which, as other delegations had objected, were not subjects of international law.

8. He thought it would be both politically and legally more appropriate to deal with the two very different situations covered by the article in separate parts of the draft convention. In his view, article 14 should be read in conjunction with articles 32 and 33 to give a full picture of the rights and obligations of all the States involved in a succession: as it stood, the article simply gave a "clean slate" to the predecessor State and, in subparagraph (*b*), offered an escape clause to the other parties to the treaties concerned.

9. He thought that better wording could be found for the phrase "for the international relations of which that State is responsible".

[1] See above, 22nd meeting, para. 42.

[2] See above, 22nd meeting, paras. 27-29.

[3] See above, 5th meeting, para. 48.

[4] See above, 22nd meeting, para. 29.

[5] See above, 22nd meeting, para. 25.

[6] See above, 22nd meeting, paras. 33-34.

10. Mr. SETTE CÂMARA (Brazil) said that article 14 represented an expression, in its simplest form, of the principle of "moving treaty frontiers", which, together with the "clean slate" principle, precluded the inheritance of treaties of a predecessor by a successor State. The rule provided that a territory undergoing a change of sovereignty, or in other words, a territory responsibility for the international relations of which was transferred from one State to another, passed automatically from the treaty régime of the predecessor State to that of the successor State. In fact, the article could be seen as a corollary of article 29 of the Vienna Convention on the Law of Treaties, in the sense that treaties were intended to apply to the whole of the territory of a State, and that treaties in force in the territory of one State were not binding in that of another.

11. There were two sides to the rule set out in article 14: a positive statement to the effect that treaties of the successor State automatically began to apply to the territory, as changed, from the date of the succession; and a negative statement to the effect that treaties of the predecessor State automatically ceased to apply to that territory at the same time. It had been contended that the problem lay outside the field of succession of States because there was succession only to part of a territory. But paragraph (3) of the commentary to the article (A/CONF.80/4, p. 49) made it clear that what was involved was a "succession of States" in the sense in which that concept was used in the draft articles, namely, a replacement of one State by another in the responsibility for the international relations of territory.

12. Article 14 was, of course, closely linked to article 6, which limited the application of the draft convention to lawful situations. Similarly, it should be read together with the saving clauses in articles 38 and 39, which dealt with cases of hostilities and military occupation.

13. O'Connell had contended, in his classic work *State Succession in Municipal Law and International Law,* that "The formulae of the 'clean slate' and 'moving treaty boundaries' tend to transform an interpretative guide into an inflexible criterion, and hence to prejudge the question both of emancipation of territory from the predecessor's treaties and of subjection of it to those of the successor. A rigidly negative rule with respect to treaty succession will tend to exaggerate the negative element in State practice."[7] The International Law Commission had drafted article 14 so as to avoid that rigidity, by including in the last part of subparagraph (*b*) a very elaborate saving clause based on the principles of articles 29, 61 and 62 of the Vienna Convention on the Law of Treaties. That saving clause naturally applied only to the situation described in the subparagraph in which it appeared, since there was no question, in the circumstances dealt with in subparagraph (*a*) of the article, of the application of treaties to the separated territory.

14. His delegation considered article 14 to be one of the major elements of the draft and had no difficulty in supporting it in the version proposed by the International Law Commission.

15. Sir Francis VALLAT (Expert Consultant), explaining the formulation of draft article 14, which dealt with the first case of State succession coming within the meaning of the draft articles, said that it had been placed separately in part II because it dealt with a case which was different from the other cases of succession of States dealt with in parts III and IV. That explanation was necessary in view of the suggestion by certain delegations that article 14 should have been included in the general provisions of part I of the draft.

16. Referring to the very difficult subject of the safeguard clause in subparagraph (*b*), he said that, as delegations were aware, the International Law Commission had tried to draft articles which were sound in principle and workable in practice. If it had adopted only the criterion of the "moving treaty frontiers" principle, the result in some cases would have been quite unworkable because, on the transfer of part of a territory from one State to another, the treaty might have been wholly inapplicable. The International Law Commission had been faced with the problem of trying to draft a safeguard clause which would make the "moving treaty frontiers" principle workable in all cases. In its 1972 draft, the safeguard clause had referred only to the case where the application of the treaty in the new circumstances would be incompatible with its object and purpose. In 1974, the International Law Commission had examined government comments on that clause with great care. The matter had been of very great importance to certain of its members, who had considered various ways of making the wording of the safeguard clause clearer. They had found, however, that whenever they tried to elaborate the detail of the clause, the draft became, if anything, even more difficult and more obscure. The International Law Commission had therefore fallen back on the present wording of draft article 14, which reflected the language of the Vienna Convention on the Law of Treaties.

17. The last part of the safeguard clause in subparagraph (*b*) had been inspired by article 62, paragraph 1, of the Vienna Convention, though the words "would radically change the conditions for the operation of the treaty" reflected only part of the provisions of that paragraph, some of which were clearly not applicable to the case of a succession of States dealt with in draft article 14, because they dealt with a fundamental change of circumstances following the conclusion of a treaty. Thus, there was a real difference between the circumstances dealt with in article 62, para-

[7] D. P. O'Connell, *State Succession in Municipal Law and International Law,* Cambridge, Cambridge University Press, 1967, vol. II, p. 25.

graph 1, of the Vienna Convention and the circumstances dealt with in draft article 14. That difference justified the wording used in draft article 14, which looked to the future in the light of the succession of States that was taking place, while article 62, paragraph 1, of the Vienna Convention related to circumstances which were fundamentally different from those existing at the date of the conclusion of the treaty.

18. Mr. HELLNERS (Sweden) said that, at the 22nd meeting, the representative of the Federal Republic of Germany had suggested that some phrase, such as "unless the parties otherwise agree", should be added to the text of draft article 14.[8] His delegation could not agree that such wording should be included, because it would change the meaning of the rule laid down in draft article 14. Thus the suggestion made by the representative of the Federal Republic of Germany was not merely a matter of a drafting nature and should not be referred to the Drafting Committee.

19. The safeguard clause now contained in draft article 14, subparagraph (*b*), had two parts which seemed to be intended to cover two types of exception. He agreed with the view expressed by the representative of Swaziland[9] that there was not a great deal of difference between those two types of exception and that the commentary did not provide an adequate explanation of why they were both needed.

20. He therefore proposed that the words "would be incompatible with its object and purpose or" should be deleted in order to make the text of the future convention clearer. That amendment was not intended to change the substance of, or to give a new meaning to, draft article 14, subparagraph (*b*).

21. Mr. MARESCA (Italy) said that the explanations provided by the Expert Consultant had helped to dispel some of his delegation's doubts about draft article 14. Those explanations would, however, be reflected only in the records of the Conference and would not directly benefit those who would subsequently have to apply the provisions of the future convention.

22. He therefore considered that the wording of draft article 14 should be improved and made clearer. It was, as the representative of Greece had pointed out, one of the most traditional articles in the draft. Nevertheless, it contained some new elements and it reflected confusion about the legal meaning of terms. The introductory part of the article combined two very different ideas, namely, the idea that part of the territory of a State became part of the territory of another State and the idea that one State ceased to be responsible for the international relations of the territory in question. He did not think that those two ideas should be combined in the same phrase because, historically and legally, they were two quite different things. Moreover, too much concision could lead to obscurity, which was the worst enemy of the law. His delegation was therefore of the opinion that the Drafting Committee should consider the possibility of separating those two ideas.

23. He drew attention to the fact that, in the French version of the introductory part of draft article 14, a comma should be added after the word "*responsable*", so as to correspond to the English, Spanish and Russian texts.

24. Referring to subparagraph (*b*), he said he was grateful for the Expert Consultant's explanations, but he still found the present wording unclear and thought it likely to give rise to confusion and possible misunderstandings.

25. The CHAIRMAN said that the drafting suggestions made by the representative of Italy would be taken into acount by the Drafting Committee.

26. Mr. ARIFF (Malaysia) said his delegation believed that every treaty had an object and purpose, without which it might never have been concluded in the first place. Thus, if a situation arose in which it was impossible to apply a particular treaty to a territory, or in which its application would defeat the purpose for which it had been concluded, it was only right that the treaty should be written off for good.

27. Consequently, his delegation could not support the Swedish proposal that the words "would be incompatible with its object and purpose" should be deleted from subparagraph (*b*) of article 14. It believed that those words were necessary and vital to the meaning of the article and that the words "would radically change the conditions for the operation of the treaty" had an entirely different meaning and purpose. The two phrases should both be retained.

28. Mr. AMLIE (Norway) said he agreed with the representative of Malaysia that the words "would be incompatible with its object and purpose" should be retained. Since those words appeared in many other places in the draft, if the Committee decided to delete them from article 14, it would also have to delete them from other articles.

29. His delegation considered that draft article 14 should be adopted as it stood, subject to consideration, during the discussion of subsequent draft articles, of the amendment proposed orally by the representative of Sweden.

30. Mr. MIRCEA (Romania) supported the amendment proposed by the representative of Sweden, because it provided a good means of shortening the text of several articles. His delegation would have no difficulty in accepting the safeguard clause in

[8] See above, 22nd meeting, para. 37.

[9] See above, 22nd meeting, para. 43.

subparagraph (*b*) if it contained only the phrase "would radically change the conditions for the operation of the treaty", which would adequately cover a large number of cases, in particular, those involving newly independent States.

31. Mr. SIEV (Ireland) said that in his delegation's view the deletion of the words "would be incompatible with its object and purpose" would create a lacuna. His delegation endorsed the Malaysian and Norwegian representatives' remarks.

32. Perhaps, however, article 14 might be easier to understand if the words "it appears from the treaty or is otherwise established that" were deleted from subparagraph (*b*); the Drafting Committee might consider that possibility.

33. The CHAIRMAN said that, in the absence of any objection, the Drafting Committee would be invited to consider the amendment to subparagraph (*b*) proposed by the representative of Ireland.

34. He invited the Committee to vote on the oral amendment proposed by the representative of Sweden to delete the words "would be incompatible with its object and purpose or" from subparagraph (*b*) of article 14.

The oral amendment proposed by the representative of Sweden was rejected by 43 votes to 4, with 27 abstentions.

35. The CHAIRMAN said that, if there was no objection, he would take it that the Committee of the Whole decided to adopt provisionally the text of article 14 as it stood and to refer it to the Drafting Committee.

It was so decided.[10]

ARTICLE 15 (Position in respect of the treaties of the predecessor State)

36. Mr. RANJEVA (Madagascar) said that his delegation agreed with the substance of article 15, which was a fundamental provision of the draft convention by reason of its statement of the "clean slate" principle.

37. The Drafting Committee's attention should perhaps be drawn to the article's wording. The International Law Commission had used a negative form, which might suggest that it was recommending the formulation of a new rule to facilitate the progressive development of international law. His delegation would applaud such an approach, but it was not wholly satisfied with the negative form of words, which suggested hesitancy and meant that the article stated no self-contained principle, but must be examined in the light of principles to be found elsewhere.

38. That the "clean slate" principle was universally and unconditionally accepted was shown not only by paragraph (3) of the commentary to article 15 (A/CONF.80/4, p. 52), which referred to that principle's traditional character, but also by the numerous and concordant instances of the practice in most States, which seemed also to indicate that the so-called continuity rule had hardly withstood the tests of time and practice.

39. Consequently, his delegation, while congratulating the International Law Commission on its work, would be pleased if the Drafting Committee could consider whether a less tentative form of words could be used to affirm the principle which, as practice had constantly revealed, was accepted as the fundamental guideline.

40. Mr. MBACKÉ (Senegal) said that his delegation did not question the substance of article 15, which proclaimed the "clean slate" principle. It was uneasy, however, about the allusion in the text to the principle of continuity, which entailed a lack of precision and gave the article an ambivalent character which ought to be avoided. His delegation would like the Drafting Committee to seek a form of words to make it clearer that a newly independent State was not obliged to maintain a treaty in force.

Mr. Ritter (Switzerland), Vice Chairman, took the Chair.

41. Mr. SETTE CAMÂRA (Brazil) said that article 15 was a cornerstone of the whole draft convention, on account of the "clean slate" principle it enunciated. During the Committee's deliberations on article 2, his delegation had stated its views on the meaning and substance of article 15, as well as on newly independent States, which in its view were "born free".[11]

42. The "clean slate" doctrine derived from two sources: the principle of self-determination and the underlying tenor of the Vienna Convention on the Law of Treaties, within the framework of which the set of draft articles under consideration had been prepared by the International Law Commission.

43. As noted in paragraph (3) of the commentary (*ibid.*), the "clean slate" rule had been long established in practice; and among the comments of governments, the United States representative, noting with satisfaction that the Commission had adopted the "clean slate" principle, had pointed out that "the United States was probably the first country to have enunciated that doctrine when it attained independence almost 200 years ago" (A/CONF.80/5, p. 213).

44. The principle became paramount, however, only on the emergence of a new State; such a State could not automatically take up the rights and obligations of the predecessor State. The text of article 15, how-

[10] For resumption of the discussion of article 14, see 34th meeting, paras. 3-4.

[11] See above, 3rd meeting, paras. 45-50.

ever, dealt only with the point that the newly independent State was not bound by any treaty by reason only of the fact that at the date of the succession the treaty was in force in respect of the territory to which the succession related. His delegation had carefully noted the International Law Commission's commentary on the interpretation of the "clean slate" rule, particularly paragraph (6) and paragraphs (8) to (14) of the commentary (A/CONF.80/4, pp. 52-54), including the question whether there were categories of treaties to be regarded as exceptions from the "clean slate" rule. The International Law Commission apparently believed that some difference existed between bilateral treaties and certain multilateral treaties, but as the question would be raised in connexion with article 16, his delegation would reserve its remarks until the Committee came to consider that article.

45. He noted, too, that the International Law Commission's text did not include the usual type of saving clause; the drafting technique was the same as in article 8, and again the use of the word "only" opened the way to specific exceptions to the rules governing the application of general international law to different express agreements between parties.

46. His delegation thought that article 15 was one of the most important in the whole draft; it was in favour of the text as it stood and would regret any attempt to amend it.

47. Mr. MUSEUX (France) praised the work of the International Law Commission in drafting article 15. The article was of fundamental importance, and although he appreciated the wish of the delegation of Madagascar to see a more affirmative form of wording, he thought that such a change would be only a matter of drafting and in any case his delegation was not prepared to support a change in the text.

48. The International Law Commission had clearly based article 15 on the "clean slate" principle. As his delegation had said during the Committee's discussion on article 2,[12] it could accept that principle provided that the International Law Commission's formulation, in its scope as well as its wording, was retained—in other words, that the "clean slate", which by itself was broad and categoric, should be seen in the light of existing State practice in domestic and constitutional law as well as in international law. Indeed, the categorical application of the "clean slate" principle would mean—certainly in France, for example—that international treaties, even if all the former provisions remained unaltered, would have to be returned to the State legislature for renewal.

49. Mr. FARAHAT (Qatar) associated himself with the previous speakers in supporting the retention of draft article 15 as it stood. It was simple and straightforward and assured the newly independent State of freedom of choice in regard to treaties, while implicitly ensuring continuity.

50. Miss OLOWO (Uganda) reaffirmed her country's support for the present text of article 15. She would reject any amendment, since that might lead to changes of substance.

51. Mr. MANGAL (Afghanistan) said that his delegation supported draft article 15, which clearly affirmed the "clean slate" principle. The newly independent State could not regard itself as entitled to the treaty rights of the predecessor State, particularly in the case of bilateral treaties. The article left without legal foundation any argument or dispute based on views conflicting with the "clean slate" principle.

52. Mr. MARESCA (Italy) said that his delegation fully supported draft article 15, which constituted the codification, in a masterly text, of a very old principle of international law. However, he wondered whether it would not be better to follow the practice employed in other articles, such as article 16, and introduce in an opening phrase a reference to articles based on a different principle, such as articles 11 and 12. That would serve to define the precise scope of article 15.

53. Sir Francis VALLAT (Expert Consultant) said that the International Law Commission had dealt carefully and deliberately with the point raised by the Italian representative. The 1972 text of draft article 15 had opened with the phrase "Subject to the provisions of the present articles". But the International Law Commission had considered that cross referencing might create confusion about the relationship between that article and other articles. It had therefore deliberately deleted the phrase and endeavoured, by the drafting and positioning of other articles, to make such cross references unnecessary. That was why certain articles appeared under the general provisions so that they should apply to all the draft articles. It would be noticed that draft articles 16 and 17 referred, not to other articles, but to other paragraphs of the articles themselves so that the references were self-contained.

54. The CHAIRMAN said that, if there were no objections, he would take it that the Committee decided to adopt draft article 15 provisionally and refer it to the Drafting Committee for consideration.

It was so decided.[13]

ARTICLE 16 (Participation in treaties in force at the date of the succession of States)[14] and PROPOSED NEW ARTICLE 16 *bis* (Participation in treaties of a

[12] See above, 2nd meeting, paras. 28-30.

[13] For resumption of the discussion of article 15, see 34th meeting, paras. 5-6.

[14] The following amendment was submitted: Netherlands, A/CONF.80/C.1/L.35; in addition, the Union of Soviet Socialist Republics proposed the insertion of an article 16 *bis*, A/CONF.80/C.1/L.22.

universal character in force at the date of the succession of States)

55. The CHAIRMAN said that the Netherlands amendment to draft article 16 (A/CONF.80/C.1/L.35) dealt with the same subject as the Soviet proposal for a new article 16 *bis* (A/CONF.80/C.1/L.22). If there was no objection, he would suggest that the Committee should consider the two amendments together in conjunction with draft article 16.

It was so agreed.

56. Mr. STUTTERHEIM (Netherlands), introducing his delegation's amendment, said that in contradistinction to the Soviet proposal for a new article, it was based on the "clean slate" principle. His delegation thought it useful to presume that newly independent States would want to be parties to multilateral treaties open to universal participation. The recent practice of such States had shown that they wished to play a full part in international life and often notified the Secretary-General of the United Nations of their intention to maintain the treaties and conventions applicable to their territory at the date of succession, subject to future consideration in order to decide which treaties they wished to adopt, to adopt with reservations or to terminate. His delegation knew no case in which a newly independent State had subsequently ceased to be a party to a multilateral treaty open to universal participation. Such treaties were well known to all newly independent States through publications, particularly those of the United Nations.

57. By obliging newly independent States to give written notification, signed by a minister, the well-established States would be imposing a burden on new States at a time when they were concerned with more urgent matters. Additional tasks would also be imposed on the Secretary-General of the United Nations and other depositaries of multilateral treaties.

58. His delegation was aware that, if its amendment was adopted, consequential changes would be required in other draft articles, which it would indicate to the Drafting Committee.

59. Mr. SNEGIREV (Union of Soviet Socialist Republics) said that he would prefer to introduce the Soviet proposal at the following meeting.

60. Mr. WERNERS (Surinam) said that his delegation supported the Netherlands amendment to draft article 16. It was a practical proposal which, in the new paragraph 4, paid a well-deserved tribute to the "clean slate" principle. It had to be admitted that after a succession of States, the political will of the newly independent State was the decisive factor in determining how clean the slate was to be. At the time of his country's accession to independence, it had been told by a representative of the Secretary-General of the United Nations that, subject to legal examination, the great majority of newly independent States acknowledged the rights and duties created by multilateral treaties open to universal participation to which their predecessor States had been parties. Mr. Jenks, a former Director-General of the International Labour Organisation, had even voiced the opinion that some multilateral law-making treaties should be regarded as customary international law and hence binding upon all new members of the international community, although such a view was without any strong legal foundation, given the stage of contemporary international law.

61. Mr. SHAHABUDDEEN (Guyana) said that the Netherlands amendment to draft article 16 and the Soviet proposal for a new article differed, but they had the common object, with which his delegation was in sympathy, of seeking to prevent the occurrence of an international vacuum, by providing that multilateral treaties should apply to a newly independent State from the date of its independence even though that State had not notified its intention to accede to them.

62. International life was conducted through a complex of treaty arrangements and a literal application of the "clean slate" rule would mean that those arrangements did not devolve upon a successor State without its consent and that of other States parties—a procedure which would take time and cause a lacuna inconvenient both to the newly independent State and to the international community.

63. Draft article 16 sought to remedy the situation in regard to multilateral treaties, but it did not entirely succeed in providing adequate machinery, since according to draft article 22, paragraph 2, the operation of the treaty was to be considered as suspended until the date of making of the notification of succession. It was true that provision was made for the treaty to be applied provisionally either in accordance with draft article 26 or "as may be otherwise agreed". However, according to article 26, provisional application of a multilateral treaty depended on notice being given by the new State, and the other exception under draft article 22, paragraph 2, would involve the agreement of interested parties, so that in both cases there would almost certainly be a lacuna.

64. It might be held that such lacunae, though undesirable, were the inevitable price of seeking to protect newly independent States by adopting the "clean slate" principle. His delegation considered, however, that it was unnecessary to act in a doctrinaire fashion, though care should be taken to avoid any approach which might appear to involve a negation of the requirement of consent by the newly independent State to be bound. For that reason, his delegation had reservations on the Soviet proposal in which the international community would seem to assume unilaterally the application of certain treaties to newly independent States before they had had an opportunity to express their wishes.

65. The essence of the problem was to strike a balance between continuity and the freedom of choice which was the basis of the "clean slate" principle. In the case of multilateral treaties, the need for continuity was pressing and the risk to the interests of the new State minimal. It could be argued that the consent of the new State depended on evidence to that effect, and that the experience of all States represented at the Conference probably indicated that any newly independent State would wish to have such treaties applied to it. It could therefore be laid down as a safe rule that the new State should be presumed to be desirous of having those treaties applied to it, unless it indicated otherwise and that the treaties should accordingly be considered as applying to it from the date of independence. Such a rule would not involve any negation of the need for consent and would therefore not be inconsistent with the "clean slate" principle.

66. The Netherlands amendment was in conformity with that approach and his delegation supported it in principle. However, subparagraphs (*b*) and (*c*) of the proposed new paragraph 4 might admit of some improvement. They might include provisions to the effect that a State which had never availed itself of the benefits of a treaty was free at any time to give notice of its desire not to have the treaty applied to it, and that in such a case the treaty would be treated as if it had never applied to that State; and that a State which by virtue of the new provisions had availed itself of the benefits of a treaty was free to discontinue the application of the treaty to itself only in accordance with the termination provision of that particular treaty.

67. It would also be necessary to bring the provisions of the Netherlands amendment into line with the provisions of draft article 26.

The meeting rose at 6.05 p.m.

24th MEETING

Friday, 22 April 1977, at 11.10 a.m.

Chairman: Mr. RIAD (Egypt)

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*)

ARTICLE 16 (Participation in treaties in force at the date of the succession of States) and PROPOSED NEW ARTICLE 16 *bis* (Participation in treaties of a universal character in force at the date of the succession of States)[1] (*continued*)

1. Mr. SNEGIREV (Union of Soviet Socialist Republics), introducing draft article 16 *bis* (A/CONF.80/C.1/L.22), observed that the proposal to include in the draft convention a provision dealing with treaties of a universal character was not new. A proposal of that kind had been submitted to the International Law Commission in 1974 but there had not been sufficient time to discuss it, as stated in paragraph 75 of the Commission's report on the work of its twenty-sixth session (A/CONF.80/4, pp. 13-14). On 14 December 1974, the General Assembly had referred the draft convention to Governments together with a draft article 12 *bis*, entitled "Multilateral treaties of universal character", in order to ascertain their views on the subject. The International Law Commission and the General Assembly had thus attached great importance to the question of succession of States to treaties of a universal character, and the article 16 *bis* proposed by his delegation was designed to fill a gap in the draft convention in that regard.

2. Treaties of a universal character were the outcome of international co-operation and embodied generally accepted principles and rules concerning contemporary international relations. The purpose of such treaties was to strengthen the legal order in international relations in important spheres; for example, the maintenance of international peace and security; the development of economic co-operation; the struggle against genocide, *apartheid* and racial discrimination; humanitarian law, particularly as set out in the 1949 Geneva Conventions;[2] public health; diplomatic and consular relations; and the law of treaties. Thus treaties of a universal character were of paramount importance for the whole international community, and particularly for newly independent States. It was therefore in the interests not only of newly independent States but also of the international community as a whole that a treaty of universal character should not cease to be in force when a new State attained independence. Yet, under article 22 (Effects of a notification of succession), the operation of a multilateral treaty was suspended from the date of independence of the new State until the date of the notification of succession. Such a suspension, which could last a very long time, was neither in the interests of the newly independent State nor in those of the international community as a whole. The Soviet Union therefore proposed removing that defect by the inclusion of a new article 16 *bis* entitled "Participation in treaties of a universal character in force at the date of the succession of States".

3. The essence of the Soviet Union proposal lay in paragraphs 1 and 4 of article 16 *bis*. Paragraph 1 provided that a treaty of universal character should remain in force provisionally for all States parties, including the newly independent State. Paragraph 4 further made it possible for the newly independent State to become a party to such a treaty definitively.

[1] For the amendment submitted to article 16, see 23rd meeting, foot-note 14.

[2] See United Nations, *Treaty Series*, vol. 75, pp. 31-419.

4. Under paragraph 1 of the proposal, "any treaty of universal character which at the date of a succession of States is in force in respect of the territory to which the succession of States relates shall be provisionally in force between the newly independent State and the other States parties until such time as the newly independent State gives notice of termination of the said treaty for that State"; the principle there set forth might perhaps engender a mental reservation, because in such a case it could not be said that the treaty remained in force by reason of the will manifested by the newly independent State. However, that was a minor drawback when measured against the enormous advantages that accrued to newly independent States from their automatic and provisional participation in treaties of a universal character. For if the effects of the treaty were interrupted from the date of the succession of States until the date of notification of succession, during that period the newly independent State would have no obligations to the other parties to the treaty and the latter would similarly be released from any obligation towards the newly independent State. Such an interruption would not be in the interests of either newly independent States or the international community in general.

5. The rule laid down in article 16 *bis* derived from the practice followed by the Secretary-General of the United Nations as depositary of numerous treaties of a universal character, as well as from the practice of other depositaries of treaties of that kind, which had not ceased to regard a newly independent State as being party to a multilateral treaty from the date of independence. Similarly, in a letter dated 16 April 1974 to the Chairman of the International Law Commission, the International Committee of the Red Cross had stated that, to the best of its knowledge, no State had ever claimed to be released from any obligation under the Geneva Conventions by virtue of attaining independence. Such a practice had not created difficulties for newly independent States.

6. It might be asked whether the provisions of article 16 *bis* were in conformity with the "clean slate" principle. In his opinion, they were, inasmuch as newly independent States had an option and their freedom of action was not fettered.

7. Since article 16 *bis* dealt with treaties of a universal character, his delegation considered that the expression "treaty of a universal character" should be defined in article 2. The definition it proposed reproduced the text of the first preambular paragraph of the Declaration on Universal Participation in the Vienna Convention on the Law of Treaties,[3] which formed an integral part of the Final Act of the United Nations Conference on the Law of Treaties; that Declaration had already been adopted by many States.

[3] *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. 285.

8. In conclusion, his delegation hoped that its proposal would be favourably received by the Conference. It was willing to collaborate with other delegations in devising a formula acceptable to all.

9. Mrs. SAPIEJA-ZYDZIK (Poland) said that her Government had always considered that general multilateral treaties should apply to as many States as possible and that access to such treaties should be as easy as possible. During the General Assembly debate on the draft articles prepared by the International Law Commission, a number of delegations had pointed out that the uninterrupted application of treaties in that category, such as the 1949 Geneva Conventions for the protection of victims of war, would be advantageous to newly independent States. Her delegation viewed the two amendments to article 16 in that context.

10. The purpose of the Soviet Union proposal was to ensure that universal rules of customary international law, as reflected in general multilateral treaties, survived all changes of sovereignty and continued to be binding on all States, newly independent as well as others. Her delegation therefore supported the proposed new article 16 *bis* and favoured all the consequential amendments it would entail. In the view of Poland, the practical problems that might arise with the continued application of general multilateral treaties as proposed in the Soviet Union amendment could be easily resolved if the depositary of any such treaty notified the newly independent State that the operation of the treaty had been extended to the territory to which the succession of States related. Her delegation would revert to that question when the Committee considered the proposed new article 22 *bis* (A/CONF.80/C.1/L.28).

11. Mr. MBACKÉ (Senegal) said that article 16, which was based on the principle of continuity, would make it easy for a newly independent State to accede to a multilateral treaty in force with respect to its territory at the date of a succession of States. Paragraphs 2 and 3 imposed certain quite understandable restrictions on the principle expressed in paragraph 1, as it would be rash to require that the successor State and the other States parties should act in a manner incompatible with the object and purpose of the treaty, or to radically change the conditions for the operation of the treaty because of the successor State's participation in it. A further restriction emerged from the provisions of article 4 on treaties constituting international organizations and treaties adopted within an international organization; under that article, the provisions of such treaties with regard to the admission of a new Member State took precedence over the procedures laid down in the convention under consideration.

12. Consequently, in spite of its practical value, article 16 was relatively limited in scope. Nevertheless, his delegation approved the present formulation of the article; the limitations it stipulated appeared un-

avoidable. He wished, however, to draw the Committee's attention to some drafting points. The words "in force in respect of the territory" in paragraph 1 of the article and in other draft articles seemed to personalize the notion of territory, as a treaty, to his mind, was in force "in respect of" an international legal person or any other entity having legal personality but "in" the territory of the State. His delegation therefore proposed the replacement of the words "in force in respect of the territory" by the words "applicable to the territory". It also proposed that in paragraph 3 the words "and the object" should be replaced by the words "or by reason of the object".

13. The Netherlands amendment and the proposal of the Soviet Union would add further exceptions to the important ones already appearing in article 16. Their purpose was doubtless praiseworthy, as they would increase participation by newly independent States in multilateral treaties of a universal character, but there was the possibility that they might further water down article 16 and impair its practical application by introducing too many exceptions to the principle which it set forth.

14. In his view, the Netherlands amendment and the proposal by the Soviet Union constituted two complementary exceptions. The first dealt with multilateral treaties open to universal participation, which it defined as international agreements "open to participation by at least all States Members of the United Nations", thereby applying a procedural criterion. The second concerned treaties of a universal character which it defined as multilateral treaties which deal "with the codification and progressive development of international law, or the object and purpose of which are of interest to the international community as a whole", thereby applying a substantive criterion. In his view, article 4 considerably limited the scope of the two amendments. Also by introducing the notion of presumed consent, the Netherlands amendment created a risk, since a newly independent State was not always aware of the treaties binding it when it attained independence. Those treaties might be purely political or contain reservations which would be opposable to the successor State. The presumption of consent, which could extend over a relatively long period, could thus have unexpected consequences for a newly independent State until it reached its final decision.

15. The proposal by the Soviet Union had the advantages of being more specific, since it defined the notion of a treaty of universal character in new terms, and of stipulating a provisional period of treaty operation before the definitive accession of a newly independent State. Consequently, if he had to choose between the proposal by the Soviet Union and the Netherlands amendment, he would favour the former.

16. Mr. MUDHO (Kenya) said that he found article 16 satisfactory as it stood. He wished to point out to the Committee the close link between that article and article 15, which it had already adopted, and warn it against any amendment which would conflict with the "clean slate" principle set forth in the latter article. He supported the Netherlands amendment, which established a presumption, not that multilateral treaties of universal character should continue in force—that would be contrary to the "clean slate" principle—but that a newly independent State desired them to remain in force in respect of its territory until it was in a position to make a pronouncement on the matter. However, in order to safeguard the "clean slate" principle, he proposed that the words "shall accordingly be presumed to apply" should replace the words "shall accordingly apply" in subparagraph (*a*) of the new paragraph 4 proposed by the Netherlands.

17. The proposal by the Soviet Union was not so readily acceptable, since it completely disregarded the "clean slate" principle, set forth in article 15, in respect of treaties of a universal character and gave the impression that such treaties conferred nothing but benefits on newly independent States, whereas any treaty involved both rights and obligations. The Soviet Union representative had said that his proposal was intended to fill a gap in the draft, in that article 22, concerning the effects of a notification of succession, provided that the operation of a treaty would be "considered as suspended as between the newly independent State and the other parties to the treaty until the date of making of the notification of succession". It was inconceivable, however, that a successor State should wait years before making known its desire to become party to a treaty which would bring it considerable advantages. Furthermore, as the International Law Commission had mentioned in paragraph (3) of its commentary to article 16, the practice followed by the Secretary-General of the United Nations was to send every newly independent State "a letter inviting it to confirm whether it considers itself to be bound" by the treaties concluded by the predecessor State in respect of its territory; that letter "is sent in all cases; that is, when the newly independent State has entered into a devolution agreement, when it has made a unilateral declaration of provisional application, and when it has given no indication as to its attitude in regard to its predecessor's treaties" (A/CONF.80/4, p. 56).

18. The Soviet Union representative had also said that article 16 *bis* gave a newly independent State freedom of choice. Whereas article 16 recognized a newly independent State's right to become party to the treaty by a notification of succession, article 16 *bis* conferred on it the right to give notice of termination of the treaty for that State. It might be asked, however, what would happen in the case of article 16 *bis* if a newly independent State notified neither its desire to accede to the treaty nor its wish to terminate it. If there was no notification to either effect, was the treaty presumed to remain in force provisionally for the newly independent State, as

paragraph 1 of article 16 *bis* would seem to indicate? For those various reasons he was unable to support the Soviet Union proposal in its present form.

19. Mr. TABIBI (Afghanistan) said that article 16 was important not only for newly independent States but also for the international community, in the interests of the maintenance of law and order. Article 15, provisionally adopted by the Committee, expressed the "clean slate" principle, namely the idea that a newly independent State was born free of any commitment entered into by the predecessor State under bilateral or multilateral agreements, whether restricted or universal in character. Nevertheless, a newly independent State must reckon with the needs of the international community, to which it belonged and in which it had a part to play; that was why article 16 called on newly independent States to participate in multilateral agreements. There were three types of treaties: bilateral treaties, whose continuation in force was subject to the consent of the other party; restricted multilateral treaties, participation in which by newly independent States depended in each case on the object and purpose of the treaty and the consent of the other interested parties; and finally multilateral treaties of universal character, or law-making treaties. The latter included conventions on human rights and conventions on diplomatic and consular relations; they established rules of *jus cogens* which had to be respected by the members of the international community. The exception to the "clean slate" rule was therefore based on the interest of the international community in certain treaties remaining in force. Unlike the first two types of treaties, treaties of universal character were not a matter of simply offering newly independent States an option; those States had no choice but to participate in them, in the interests of the international community. On that basis, his delegation endorsed article 16.

20. Mr. MUPENDA (Zaire), after explaining his delegation's interpretation of the "clean slate" rule, said that he welcomed the efforts made by the International Law Commission to reconcile that rule with the principle of continuity. The "clean slate" rule followed naturally from the principle of self-determination, which gave a successor State the sovereign right to refuse to be bound by a treaty concluded by the predecessor State. However, as a successor State should not be automatically derived of any benefits deriving from a treaty concluded before its accession to independence, nor be regarded as automatically bound by such a treaty by the supposed operation of the *pacta sunt servanda* rule, it should be free to decide which treaties it would apply and which it would denounce.

21. In the light of what he had said, his delegation felt that the Netherlands amendment and the Soviet Union proposal shared a common purpose, that of filling a legal vacuum. Unfortunately, Zaire could not support the Soviet Union amendment, as it conflicted with the "clean slate" principle and the principle of self-determination, which all members of the Committee had so far defended. If a newly independent State was committed to participation in treaties of a universal character, it would be confronted with a *fait accompli*, whereas the tendency in the Committee had been to protect the newly independent State, which should be free to take sovereign decisions concerning its future.

22. The Netherlands amendment was more constructive as it put a newly independent State under less constraint; his delegation could support it subject to certain drafting improvements.

23. Mr. RITTER (Switzerland) said that his delegation associated itself with all those which welcomed the efforts made to ensure that instruments concluded in the interests of humanity at large were applied. Switzerland had always co-operated in tasks contributing to the common good such as the progressive development of international law and humanitarian law. Once it was agreed that those instruments should remain in force, the question arose of what means were to be selected. Two things, one a principle and the other a practical matter, had to be considered. Firstly, the "clean slate" rule must be observed, since it was an expression of the principle of self-determination and also—a more compelling reason—because it was the logical outcome of the *res inter alios acta* rule. Secondly, as States several hundred years old needed at least two years to complete the formalities that preceded the ratification of an instrument concluded in the general interest, it was not feasible to require a newly independent State, confronted with manifold problems, to review all the treaties concluded by the predecessor State in respect of its territory. While it would be wrong to establish boldly that a treaty simply remained in force, it would be possible to introduce a presumption to that effect, as the Netherlands delegation had done in its amendment, thereby respecting the will and freedom of choice of the successor State. The Kenyan representative had accurately summed up the rationale of the Netherlands amendment and was right in suggesting that subparagraph (*a*) of the new paragraph proposed by the Netherlands should specify that "such treaty shall accordingly be presumed to apply". The Netherlands delegation had proposed the simplest arrangement and reduced the newly independent State's obligations to a minimum. His delegation therefore preferred the Netherlands amendment to the Soviet Union proposal.

24. Mrs. BOKOR-SZEGO (Hungary) observed that the notion of a treaty of universal character appeared both in the Soviet Union proposal, where the expression was part of the text, and in the Netherlands amendment, which referred to multilateral treaties open to universal participation. With regard to State practice, mention had often been made of treaties of a universal character at recent conferences held under the auspices of the United Nations and at the International Court of Justice itself, and there were a

considerable number of studies on the role and functions of such instruments. In her opinion, treaties of that kind could be classed under three main headings: treaties closely concerned with the maintenance of international peace and security; treaties for the codification and progressive development of international law; and treaties aimed at ensuring the protection of human rights.

25. With regard to draft article 16 itself, her delegation fully subscribed to the "clean slate" rule, which followed from the principle of self-determination, but it noted that an analysis of State practice revealed a customary rule to the effect that treaties of a universal character continued in force. It was necessary to bear in mind that newly independent States and the international community as a whole had a common concern in ensuring the continuity of treaties which were the very embodiment of their interests. In conclusion, she said that, in comparison with the Netherlands amendment, the Soviet Union proposal had two advantages: it did not limit the number of States entitled to become parties to a treaty of universal character and it used terminology which was already well known.

26. Mrs. THAKORE (India) said that her delegation found no difficulty with article 16 as it stood, since it codified an existing practice by conferring upon a newly independent State the option to become a party to a multilateral treaty by virtue of the legal nexus established by the predecessor State between the territory to which the succession of States related and the treaty. The Netherlands amendment and the Soviet Union proposal stemmed from practical considerations and sought to ensure that certain categories of treaties remained in force provisionally for a newly independent State until such time as the newly independent State gave notice of termination. While the Netherlands amendment defined such a treaty as "any multilateral treaty open to universal participation", the Soviet Union proposal defined it as "a multilateral treaty which deals with the codification and progressive development of international law, or the object and purpose of which are of interest to the international community as a whole".

27. While appreciating the idea underlying paragraph 4, subparagraph (*a*) which the Netherlands amendment proposed to add to article 16, her delegation felt that it was not sufficient to presume that the newly independent State was desirous of becoming a party to a multilateral treaty. Some manifestation of will on the part of the newly independent State was necessary. Also, the wording "shall be presumed to be desirous of being a party" was unsatisfactory for a legal text, a point which the Drafting Committee might perhaps consider. Furthermore, it should be made clear that the treaties covered by the provision were treaties of general interest.

28. Turning to the Soviet Union proposal, she said that it was an improvement on the original proposal made on the subject in the International Law Commission, but unfortunately, like the Netherlands amendment, it did not allow for any manifestation of will on the part of the newly independent State. While it was perhaps true that a newly independent State would find most of the treaties in question acceptable, account should be taken of those cases, however few, where it did not wish the treaty to continue in force even provisionally. Why in fact should a newly independent State have to wait several months in order to be free of the provisions of a treaty of the kind concerned? Some safeguard in that respect was essential. With regard to the definition of the expression "treaty of a universal character", her delegation felt that the Soviet Union proposal introduced a useful element by referring to instruments dealing with "the codification and progressive development of international law, or the object and purpose of which are of interest to the international community as a whole"; she preferred that formulation to the words "multilateral treaty open to universal participation", which would exclude conventions of general interest adopted under the auspices of the United Nations, such as the Vienna Conventions on Diplomatic Relations and Consular Relations.

29. In conclusion, if the Committee decided to adopt a provision along the lines of the Netherlands and Soviet Union proposals, it should allow the newly independent State the option of expressing its will, instead of stipulating that newly independent States would be automatically bound by treaties of a universal character. In that connexion, she drew the attention of the Committee to paragraph (8) of the commentary to article 15 (A/CONF.80/4, p. 53), where the International Law Commission had expressed a similar point of view. In addition, the Committee should ask the Drafting Committee to provide a more comprehensive definition of the term "treaty of a universal character", on the basis of the Soviet Union proposal.

30. Mr. SETTE CÂMARA (Brazil) said that he favoured the text of article 16 as drafted by the International Law Commission.

31. The article 16 *bis* proposed by the Soviet Union took account of the problems raised by law-making treaties, which several Governments considered as possible exceptions to the applicaton of the "clean slate" rule. If they were, newly independent States should be automatically bound by them. The right to "opt out" should then replace the right to "opt in" which was the basis of article 16. The International Law Commission's solution had the advantage of being consistent with the fundamental "clean slate" principle, while at the same time giving the newly independent State the possibility of notifying its succession to a treaty. The right to free choice was thus preserved. The contrary solution proposed by the Soviet Union would raise various difficulties. In the first place, the notion of a treaty of universal charac-

ter, like that of a law-making treaty, was rather vague. Even the Governments which had made the suggestion could not agree on a definition. For some, treaties of a universal character were treaties codifying international law, for others they were treaties relating to problems of interest to the international community as a whole, while for a number of other Governments they were treaties approved by the overwhelming majority of States members of the United Nations. The definition proposed by the Soviet Union in article 16 *bis* was taken from the preamble to the Declaration on Universal Participation in the Vienna Convention on the Law of Treaties. Although it was an improvement on other definitions, it was nevertheless couched in abstract terms. Its wording was no doubt appropriate to a provision of a final act of an international conference, but not for an article of a convention.

32. The strongest argument which could be invoked against article 16 *bis* was that no State could be considered as automatically bound by treaties of a universal character, no matter how laudable their aims. Every member of the international community had the right to choose whether or not to be bound by a treaty of that kind. Although the system established in article 16 *bis* allowed the newly independent State to opt out, it would unjustifiably place it in the difficult situation of having to take a rapid decision on participation in treaties without sufficient time for reflection. As was evident from an explanatory note reproduced in the International Law Commission's report on the work of its twenty-sixth session (A/CONF.80/4, p. 14, note 57), the treaties falling under the very vague definition in question could be counted by tens or even hundreds. Accordingly, if article 16 *bis* were adopted, the newly independent States would not start their international life with the freedom of action implied by the "clean slate" rule, but with a heavy burden of treaty commitments undertaken without any consultation of their wishes. In that connexion, many founding members of the United Nations were not parties to some of the treaties of universal character enumerated in the explanatory note to which he had referred. How then could a successor State be obliged to participate in them automatically?

33. The International Law Commission's position in article 16 was a prudent one. It would be wrong to depart from the fundamental rule laid down in article 15 and draw distinctions between treaties, a course which the Vienna Convention on the Law of Treaties had avoided.

34. The reasons which inclined his delegation against article 16 *bis* also compelled it to oppose the Netherlands amendment (A/CONF.80/C.1/L.35). Although that proposal was couched in more cautious terms, the statement that "a newly independent State shall be presumed to be desirous of being a party to any multilateral treaty open to universal participation" implied that the State had the right to opt out, which was inconsistent with the "clean slate" rule. His delegation was therefore in favour of article 16 as drafted by the International Law Commission.

35. Mr. SAMADIKUN (Indonesia) said his delegation was more convinced than ever that the "clean slate" rule, which was in conformity with the principle of self-determination recognized in the Charter of the United Nations, must underlie article 16. It was only logical and just that a newly independent State, as a sovereign State, should not be under any automatic obligation to continue in force treaties concluded by the predecessor State and applicable to its territory, since the successor State had not been in a position to give its consent when those treaties had been concluded.

36. His delegation therefore believed that article 16 was acceptable in principle and it could see no reason why the article should be reworded or deleted. The Netherlands amendment was an attempt to clarify the article while preserving its main substance, and could therefore be referred to the Drafting Committee. With regard to the new article proposed by the Soviet Union, his delegation reserved the right to revert to it later.

37. Mr. KATEKA (United Republic of Tanzania) said he was in favour of article 16 as it stood, for the reasons given by the Brazilian representative. Any addition to the article would be prejudicial to the "clean slate" principle as set out in article 15. The only exceptions to that principle which his delegation could accept were the ones represented by article 11 and, albeit unwillingly, the exception constituted by article 12. Where multilateral treaties were concerned, it should not be presumed that they continued in force with respect to newly independent States. On the contrary, the presumption should be that those States were released from such instruments.

38. The sponsors of the proposals under consideration seemed to be concerned with a non-existent problem. Draft article 22 showed that a notification under article 16 took effect as from the date of the succession of States, irrespective of the date on which the notification was made. Yet the passage in paragraph (2) of the commentary to article 22 which related to the practice followed by the Secretary-General of the United Nations as a depositary of treaties and by other depositaries showed that periods of delay were not regarded as applicable to notifications of succession (A/CONF.80/4, pp. 73-74). In practice, therefore, no problem arose which might justify the Netherlands amendment and the new article proposed by the Soviet Union. The Secretary-General habitually sent every newly independent State a letter asking it to make its position known with regard to the multilateral treaties of which he was the depositary. The effects of the reply were retroactive to the date of the succession, without the situation giving

rise to any of the difficulties that the Soviet Union and Netherlands delegations seemed to fear.

39. The notion of "treaties of a universal character", which appeared in article 16 *bis* proposed by the Soviet Union, was a vague one and might cause problems. His delegation recognized the concept of "general multilateral treaties", but did not consider that treaties of a universal character existed.

40. The article proposed by the Soviet Union delegation also provided that where the predecessor State had formulated reservations to a treaty, they should be provisionally valid for the newly independent State. Such a provision would be seriously prejudicial to the sovereignty of the successor State. In that connexion, an analogy might be drawn between the case under consideration and that covered by article 23, paragraph 2, of the Vienna Convention on the Law of Treaties, supporting the conclusion that the newly independent State should consider itself released from any reservation made by the predecessor State.

41. The Soviet Union proposal gave a newly independent State the faculty to opt out of multilateral treaties, but difficulties might arise if such a State denounced a multilateral treaty after a long period of provisional application. Certain States parties to the treaty might contend that the newly independent State had allowed a reasonably long period of provisional application to elapse and that it was consequently bound by the treaty. There might then be a conflict between the provisions of the proposed convention and the final clauses of the treaty in question.

42. In conclusion, he did not think it necessary or desirable to accept the proposals made by the Soviet Union and the Netherlands.

43. Mr. MARESCA (Italy) said that the problem under consideration could be examined from both the legal and the practical points of view.

44. From the purely legal point of view, it was rather disturbing to note the tendency to raise the "clean slate" principle to the level of the sole and basic dogma applicable to succession of States. It must be borne in mind that the topic under discussion concerned the legal effects of a succession of States and that those effects might be negative, where the "clean slate" rule was applied, or positive, in that the successor State enjoyed certain rights. With regard to multilateral treaties, article 16 provided that the successor State was entitled to become a party to any treaty of that kind. That was an effect of succession independent both of the final clauses of the treaty to which the newly independent State intended to become a party and of the will of the other parties to the treaty. It was by an act of unilateral will that a new State became a party to the treaty. Article 16 provided an exception for restricted multilateral treaties, including those concluded within international organizations.

45. The notification procedure provided for in article 16 made it necessary to consider that provision from the practical point of view as well. In that connexion, it was extremely difficult for the treaty section of a Ministry of Foreign Affairs such as that of his own country to comply with the necessary formalities on time in every case. The difficulty must be even greater for a State that had just become independent. That being so, should the Conference impose on newly independent States a notification procedure which would call for a great deal of work on their part? It was in order to remedy that shortcoming that the delegations of the Soviet Union and the Netherlands had made their interesting suggestions.

46. There were two possible expedients in legal practice: presumption and maintenance in force. The Netherlands amendment employed a neat presumption, although not an absolute one. The article proposed by the Soviet Union was based not only on a presumption but also on the fact that treaties remained in force provisionally. In that connexion, he pointed out that the Vienna Convention on the Law of Treaties contained a rule on the provisional application of a treaty and that the provisional maintenance in force of a treaty was therefore perfectly conceivable.

47. The difficulty which those two expedients raised for his delegation lay in the definition of the treaties to which they applied. The Netherlands proposal referred to "any multilateral treaty open to universal participation" and the Soviet Union proposal to "any treaty of universal character", and the two formulations were very alike. The second kind was defined by the Soviet Union in the light of the subtle "Vienna formula" devised by the Conference on the Law of Treaties, but it was difficult to define a treaty in such a way without reference to its final clauses. The examples of treaties of a universal charactor given by the Hungarian representative had only served to accentuate his misgivings. If the Vienna Convention on Diplomatic Relations[4] was obviously of a universal character, the Vienna Convention on Consular Relations[5] must be so as well. Certain international treaties, such as the humanitarian conventions, undoubtedly concerned the international community as a whole, but some chancelleries had questioned the universal character of other conventions, particularly those relating to the non-proliferation of nuclear weapons. From the point of view of diplomatic requirements, the proposed definitions therefore left certain problems unsolved.

The meeting rose at 1.10 p.m.

[4] United Nations, *Treaty Series*, vol. 500, p. 96.

[5] *Ibid.*, vol. 596, p. 261.

25th MEETING

Friday, 22 April 1977, at 3.40 p.m.

Chairman: Mr. RIAD (Egypt)

In the absence of the Chairman, Mr. Ritter (Switzerland), Vice-Chairman, took the Chair.

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)*

ARTICLE 16 (Participation in treaties in force at the date of the succession of States) and PROPOSED NEW ARTICLE 16 *bis* (Participation in treaties of a universal character in force at the date of the succession of States)[1] *(continued)*

1. Mr. MIRCEA (Romania) said that if it was not intended to call the "clean slate" principle in question, draft article 16 was a procedural article designed to make it possible for newly independent States to become parties to a certain category of treaties by the simplified procedure of notification of succession. On that interpretation, he found it difficult to understand the relevance of paragraph 2, which, as the representative of Senegal had observed,[2] appeared to be an additional limitation on the right of such States to choose whether or not to become party to a treaty. If the treaty had been applicable to the territory before succession, how could its application thereto subsequently be incompatible with its object and purpose, unless either the predecessor State or the other parties to the treaty had been acting in bad faith in the first place?

2. In paragraph 3 of article 16, it should be made clear that all the elements involved, namely, the number of States, the terms of the treaty and its object and purpose, must be considered jointly.

3. He congratulated the sponsors of the proposals before the Committee on producing texts which were compatible with the present draft article 16 and filled the lacuna left by the International Law Commission, which had failed to deal with the period between the date of the succession and the time when the successor State indicated its intention to accept or terminate a multilateral treaty.

4. The presumption provided for in the Netherlands amendment (A/CONF.80/C.1/L.35) entailed serious legal consequences for the newly independent State: under the last clause of subparagrah (*b*) of the proposed paragraph 4, it could forfeit the right to withdraw from a treaty. The proposed definition of the term "multilateral treaty open to universal participation" was acceptable, but it would not cover all cases; for example, treaties of a universal character not concluded within the framework of the United Nations would not contain a clause on participation by States Members of the United Nations.

5. The Soviet proposal for a new article 16 *bis* (A/CONF.80/C.1/L.22) adopted a different legal approach and was based on concepts such as provisional application and suspension, already employed in the International Law Commission's text. The proposed definition of the term "treaty of a universal character" was more complete than that of the Netherlands, since it included treaties the object or purpose of which were "of interest to the international community as a whole". That clause suggested a wider participation by newly independent States in treaties to which all States could become parties by reason of their purpose and provisions.

6. He would support amendment of the present text of article 16 along the lines proposed.

7. Mr. SHAHABUDDEEN (Guyana) said that the Soviet representative, in introducing his proposal for a new article 16 *bis*, had held it to be consistent with the "clean slate" principle[3] because a treaty would apply only provisionally in the first instance, and the newly independent State would be free to withdraw by giving notice. But those provisions were no substitute for the theoretical need for prior consent, since they referred to a stage after the treaty had begun to apply; the provisional aspect merely concerned the basis and duration of its operation. Hence, in principle, the consent of the newly independent State would seem to be required, as was shown by the provisions of draft article 26. For that reason, his delegation preferred the Netherlands amendment.

8. The suggestion by the Indian representative that a requirement of expression of consent by the newly independent State should be included,[4] seemed contrary to the object of both the Netherlands and the Soviet proposals, which took account of the fact that it was usually impossible to obtain such consent in time to avoid a break in the application of the treaty. Otherwise, the provisions already included in the draft articles would be adequate.

9. The representative of the United Republic of Tanzania had questioned the need for the proposals submitted by the Netherlands and the Soviet Union[5] in view of the provisions of draft article 22. However,

[1] For the amendment submitted to article 16, see 23rd meeting, foot-note 14.

[2] See above, 24th meeting, para. 11.

[3] See above, 24th meeting, para. 6.

[4] See above, 24th meeting, paras. 27 and 29.

[5] See above, 24th meeting, paras. 37-42.

paragraph 2 of that article provided that the operation of the treaty should be considered as suspended until the date of making the notification of succession, except so far as the treaty might be applied provisionally in accordance with article 26, which also called for the prior consent of the newly independent State. The inevitable delay in expressing that consent would cause a period of uncertain relations with other States parties and with international organizations, which the Netherlands and Soviet proposals were designed to eliminate.

10. Mr. NATHAN (Israel) said that draft article 16 was unobjectionable since it proceeded on the proposition stated in paragraph (2) of the commentary that "a newly independent State has a general *right of option* to be a party to certain categories of multilateral treaties in virtue of its character as a successor State" (A/CONF.80/4, p. 55). That proposition was amply supported by modern State practice.

11. The proposals by the Netherlands and the Soviet Union shared a certain identity of purpose. Both sought to avoid a vacuum in the treaty relations of newly independent States where multilateral treaties of a universal character were concerned. Such treaties were obviously of general importance to the international community as a whole, and it was useful that stability and continuity should prevail in their application. Nevertheless, certain difficulties might arise in applying the provisions of the proposals by the Netherlands and the Soviet Union to State practice.

12. Newly independent States were not always aware of all the multilateral treaties which had been made applicable to their territories by a variety of modes of application, and even less of the financial and other consequences of their participation, which it might take them some time to assess. Constructive notice of the contents of such treaties could not therefore be imputed to newly independent States. The Netherlands amendment took some account of those difficulties, in that it did not seek to impose on the new State a duty of participation in any multilateral treaty and that it gave the State the right to opt out by giving notice of termination, provided it had not invoked the benefit of the treaty.

13. In the proposal by the Soviet Union, treaties of the category in question were made applicable to newly independent States by a mandatory provision in paragraph 1; it was not clear, however, why the right of the State to opt out, rather than accept provisional application of the treaty, was not stated in equally definite terms. Indeed, in paragraph (2) of the commentary to draft article 26, the International Law Commission had expressed the view that "The provisional application of a multilateral treaty as such hardly seems possible, except in the case of a 'restricted' multilateral treaty and then only with the agreement of all the parties. The reason is that participation in a multilateral treaty is governed by its final clauses which do not, unless perhaps in rare cases, contemplate the possibility of participation on a provisional basis, i.e. on a basis different from that of the parties to the treaty *inter se*" (*ibid.*, pp. 84-85).

14. There was another point which, in principle, would commend the Netherlands amendment for adoption. The proposal by the Soviet Union would cover what was called a "treaty of a universal character", as defined in the first paragraph of the preamble to the Declaration on Universal Participation in the Vienna Convention on the Law of Treaties.[6] That definition might be open to a variety of interpretations. Treaties "the object and purpose of which are of interest to the international community as a whole", might include the Universal Copyright Convention, treaties on dangerous drugs, commodity agreements and other arrangements of an economic nature, to which, however, a large number of States had not become parties. The Vienna Convention on the Law of Treaties itself had wisely refrained from any specific categorization of treaties.

15. He wished to propose a number of drafting changes in the Netherlands amendment which might have some bearing on the underlying legal concepts. With reference to subparagraph (*a*) of the proposed paragraph 4, he did not think that a newly independent State could be presumed to "be desirous" of being a party; the presumption was rather that at the date of the succession it was already a party to the treaty in question. A similar presumption should be made with regard to the termination of the treaty provided for in subparagraph (*c*). The two phrases should therefore read respectively: "A newly independent State shall be presumed to be a party to any multilateral treaty..." and "A treaty referred to in subparagraph (*a*) of this paragraph shall be deemed not to have entered into force...". The wording of subparagraph (*a*) should also be tightened up by the addition of the words "at the date of succession" after the words "which was in force" in the third line, and of the words "as from the date of succession" after the words "other States parties to the treaty" in the sixth line. Subject to those changes, he was prepared to support the Netherlands amendment.

16. Mr. RANJEVA (Madagascar) said that his delegation had no objection to draft article 16, but there would be practical difficulties in applying it. That justified the submission of the two amendments which did not differ greatly in substance. The matter should not be considered on the theoretical plane, but in terms of practical problems.

17. There were two types of multilateral treaty: ordinary treaties with more than two parties and universal treaties. Paragraph 3 of article 16 made the distinction in its reference to "the limited number of negotiating States", but did not specify what that

[6] *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. 285.

number might be. The definition by the Soviet Union of a "treaty of a universal character" was interesting in that it related to the essence and functions of international law, but it should be supplemented by the Netherlands definition of a "multilateral treaty open to universal participation", preferably, however, in the form which that definition assumed in article 81 of the Vienna Convention on the Law of Treaties.

18. It was just conceivable that the continuity of universal multilateral treaties could be accepted as an exception to the "clean slate" principle by the transposition, *mutatis mutandis,* with respect to such instruments of the principles of customary law, so that they would be considered as a formal expression of an aspiration to a rule of law. However, there were limits in law, and particularly international law, to how far such transposition could be taken. Moreover, such treaties did not necessarily reflect either universal aspirations or the aspirations of the third world countries, and some provision should therefore be made for obtaining the consent of States to be bound by the treaties in question. Subject to the incorporation of a clear definition of what was meant by "treaty of a universal character", his delegation would, as a last resort, be prepared to consider the proposal by the Soviet Union. The principle by which the International Law Commission had been guided in drafting article 16 was valid and acceptable with regard to multilateral treaties of a regional character.

19. As it stood, article 16 made no mention of the important question of the time-limit for the notification by a successor State of its participation or otherwise in treaties. The proposal by the Soviet Union sought to fill that gap by providing that treaties should provisionally remain in force and by giving the successor State total discretion as to the time when it announced its decision concerning a treaty. But if all the treaties of the predecessor State continued to be valid, even provisionally, it would be impossible for the successor State to know just what its rights and obligations were. A newly independent State should not merely be told that it remained entirely free to participate in a multilateral agreement; it should be part of the duties of the depositary of such an agreement, whether it was of a universal or of a regional character, to inform the newly independent State of the advantages or and disadvantages of such participation. It would seem reasonable to require a newly independent State to notify its intentions in regard to a treaty six months after it had received that information.

20. His delegation considered that paragraph 3 of draft article 16 had no relevance to the question of succession of States, but was linked directly to that of accession to international treaties—a problem which could be automatically solved by recognition that successor States had the right to accede to such instruments in an exceptional manner.

21. He would like the Netherlands delegation to explain what it meant by the phrase "provided it has not invoked the benefits of that treaty after the date of succession of States", which appeared in subparagraph (*b*) of the proposed paragraph 4. The logic of the proposal by the Netherlands was that a successor State was bound by, and therefore necessarily benefited from, a treaty until such time as it gave notice of termination of it; and such notice could, at the earliest, be given on the date of succession.

22. Mr. MIKULKA (Czechoslovakia) said that his delegation had upheld the "clean slate" principle stated in article 15 at all stages of the discussion of the draft articles. Far from being contrary to that principle, the proposals of the Soviet Union and the Netherlands concerning article 16 were designed to help a newly independent State in dealing with multilateral treaties of a universal character, without the requirement of a notification of succession with respect to those treaties. During the often lengthy and complex process of succession of States, it might be difficult to determine the precise moment when such a notification of succession would be possible, whereas the successor State had a vital interest in preserving the treaties of a universal character without a temporary interruption.

23. Of the two proposals, his delegation preferred that of the Soviet Union: it fitted better into the existing text of article 16 and, unlike the Netherlands amendment, did not use the words "A newly independent State shall be presumed to be desirous", which was a somewhat unusual expression to employ in an international convention. In addition, it was only logical to deal in a separate provision with a category of multilateral treaties which were of such exceptional importance as those designed to promote international peace and security or the codification and progressive development of international law. The proposal by the Soviet Union could in no sense be construed as referring to all the treaties covered by draft article 16, which his delegation wished to see incorporated in the convention together with the proposed new article 16 *bis*.

24. Mr. MEISSNER (German Democratic Republic) observed that the International Law Commission had stressed (in paragraph (6) of its commentary to article 15), with regard to the relationship between the principle of self-determination and the law relating to succession in respect of treaties, that the "clean slate" metaphor was misleading if account was not also taken of other principles which affected the position of a newly independent State in relation to the treaties of its predecessor (*ibid.*, p. 52). It was the view of his delegation that the duty of States to cooperate with one another in accordance with the Charter of the United Nations was of paramount importance, and that the proposed article 16 *bis* was fully in keeping with the "clean slate" principle in that respect. His delegation saw the proposal by the Soviet Union as providing, not an exception to the "clean

slate" principle, but another means of applying it, through the mechanism of opting out. A provision of that nature was justified in view of the importance of multilateral treaties of a universal character for international co-operation and security, and his delegation therefore supported its inclusion in the future convention.

25. Mrs. OLOWO (Uganda) said that her delegation was unable to accept either the proposal of the Soviet Union or that of the Netherlands, although it appreciated the motives behind them. The proposal by the Soviet Union was clearly contrary both to the "clean slate" principle, on which the Committee as a whole had agreed, and to the principle of the self-determination of peoples. Furthermore, by offering newly independent States the possibility of opting out of treaties, the proposal placed pressure on them to define, within an inevitably limited time, their attitude to provisions in whose formulation they had taken no part.

26. With regard to the Netherlands amendment, her delegation would find subparagraph (*a*) of the proposed new paragraph 4 acceptable, if account was taken of the comments made by the representative of Kenya.[7] It could not, however, accept the subsequent subparagraphs, since they again put pressure on the newly independent State by presuming it to be bound by the treaty. Consequently, her delegation supported draft article 16 as it stood.

27. Mr. AMLIE (Norway) remarked that article 16 formed a corollary to article 15, in that it afforded newly independent States the possibility of accepting treaties, whereas the previous article provided that they were not bound by such instruments merely by reason of the fact of succession. Taken together, those two articles represented a very harmonious system, of which his Government fully approved.

28. The articles also gave the impression, however, that they did not altogether satisfy the requirement of continuity in international relations, and he had therefore been instructed to take a positive attitude to all proposals which sought to fill that apparent gap in the future convention. That was, in fact, the aim of the proposals submitted by the Netherlands and the Soviet Union, which were designed to establish a collateral system, whereby continuity would be assured by exempting certain treaties from the rules which normally applied in the event of a succession. He had studied those proposals with great care and had found that the sponsors were treading on dangerous ground. Moreover, having listened to the statements made by other delegations, he now saw a picture taking shape in which the "clean slate" principle, supplemented by the possibility for a newly independent State to accept a treaty, was being so tightly squeezed between two walls that its expression and application might become only an exercise in empty words.

29. The first wall was constituted by draft article 16, paragraph 3. His delegation accepted that paragraph because it provided that the newly independent State could establish its status as a party to the treaty only with the consent of all the parties. The second wall was constituted by the Netherlands amendment and the proposal by the Soviet Union, which provided that the newly independent State was bound by a treaty and could opt out only in certain circumstances. His delegation considered that the second wall should not be made so large and heavy that there would be no room for application of the "clean slate" principle. In deciding how that second wall was to be built, account should be taken of the scope of the treaties in question and of the machinery for their application.

30. With regard to the scope of the treaties to be included in the collateral system, the proposal by the Soviet Union was based on substantive criteria. It defined the treaties to be included as "treaties of a universal character in force at the date of the succession of States". That definition had been supplemented by the representative of Hungary,[8] who had provided a valuable survey of three categories of treaties. The representative of Brazil had also mentioned other categories of treaties which might be of a universal character.[9] His delegation could not, however, accept the proposal by the Soviet Union, because the definition it contained would never be sufficient; its scope was so wide that it would have no room for application of the "clean slate" principle embodied in draft articles 15 and 16.

31. The Netherlands amendment did not try to define the scope of the treaties to be included in the collateral system. It merely applied the formal criterion that the treaties were "open to participation by a least all States Members of the United Nations". But there were many international agreements open to universal participation, which, strictly speaking, were not of a universal character. Thus the Netherlands approach to the treaties to be included in the collateral system was even broader than the Soviet approach and would constitute an even greater danger to the application of the "clean slate" principle.

32. With regard to the machinery for the application of multilateral treaties proposed by the Netherlands and the Soviet Union, the Soviet system was that the treaty should be provisionally in force for the newly independent State until it gave notice of termination. That was a very strict provision to apply to newly independent States, which might be forced, without their knowledge, to become parties to treaties which were not in their interests. In addition, they would only be able to opt out by the machinery provided in

[7] See above, 24th meeting, para. 16.

[8] See above, 24th meeting, para. 24.

[9] See above, 24th meeting, para. 32.

those treaties, which could, *inter alia,* have unexpected financial implications.

33. The system proposed in the Netherlands amendment did not really represent a softer line. It provided that if a newly independent State gave notice of termination of a treaty within 12 months after the succession of States had taken place, the termination had retroactive effect to the date of the succession. His reaction to that provision was that no newly independent State could possibly ascertain within 12 months whether or not it wished to continue to be a party to a treaty, and that no newly independent State would be able to rid itself of its obligations under any treaty with retroactive effect to the succession of States. Consequently, the only thing the newly independent State could do would be to give notice of termination after the 12-month period had elapsed. It would then be in the same situation as it would be under the system proposed by the Soviet Union, as the representative of Uganda had pointed out.

34. The proposed new paragraph 4, subparagraph (*b*) of the Netherlands amendment contained the idea that, if a newly independent State had not invoked the benefits of a treaty after the date of the succession of States, it could terminate the treaty under the provisions of the future convention alone. The idea of invoking the benefits of a treaty was extremely vague and would only increase the probability of disputes between States.

35. His delegation accordingly considered that the proposals by the Netherlands and the Soviet Union were not likely to lead to the results desired by the majority of the Committee, and it could not support them.

36. Mr. HASSAN (Egypt) said that draft article 16 gave the newly independent State a general right of option to be a party to certain categories of multilateral treaties by virtue of its status as a successor State. That general right was based on State practice and was a clear-cut example of the application of the "clean slate" principle. The International Law Commission's text of the article was well-balanced and in keeping with article 15, and his delegation therefore supported it as it stood.

37. The amendment submitted by the Netherlands and the proposal by the Soviet Union were designed primarily to ensure continuity, but they provided for exceptions to the "clean slate" principle. Those exceptions could be justified only if it was considered that draft articles 16 and 22 did not fulfil their intended purpose. His delegation was, however, satisfied that they did fulfil that purpose. Hence it could not support the Netherlands amendment, which provided for an exception to the "clean slate" principle by the presumption that a newly independent State was desirous of being a party to any multilateral treaty open to universal participation in force at the date of succession, or the new article 16 *bis* proposed by the Soviet Union, which also provided for such an exception by providing that any treaty of universal character in force at the date of succession would be provisionally in force for the newly independent State.

38. It was clear to his delegation that both those proposals amounted to a negation of the will of the newly independent State, even if only for a limited period of time. They contradicted the general rule of option embodied in draft article 16 and did not take account of the difficulties which the new State might encounter in the early stages of independence. Moreover, the proposals could be taken to mean that the newly independent State was unable to take the appropriate decisions, and his delegation found it difficult to accept such an implication.

Mr. Riad (Egypt) took the Chair.

39. Mr. AL-SERKAL (United Arab Emirates) said that his delegation supported draft article 16, which reaffirmed the "clean slate" principle and allowed newly independent States to decide whether they wished to be parties to multilateral treaties in force at the date of succession.

40. By contrast, the amendment submitted by the Netherlands and the proposal by the Soviet Union provided for the continuity of the treaty relations of the newly independent State. They thus constituted exceptions to the "clean slate" principle by implying that a newly independent State's silence could be interpreted to mean that it consented to be bound by the treaties in force at the time of the succession. Those proposals were likely to create enormous difficulties and his delegation could not support them.

41. Mr. LA (Sudan) said his delegation was of the opinion that draft article 16 should be adopted as it stood because, in preparing the draft articles, the most significant step the International Law Commission had taken had been to give effect to the "clean slate" principle. Thus article 16, paragraph 1, provided that a newly independent State might, by a notification of succession, establish its status as a party to any multilateral treaty in force at the time of succession and gave it an option to decide whether it accepted or wished to terminate multilateral treaties. That option was perfectly in keeping with the "clean slate" principle embodied in article 15.

42. The amendment submitted by the Netherlands and the proposal submitted by the Soviet Union both presumed that multilateral treaties continued in force for the newly independent State unless it expressly signified its intention to terminate them. His delegation understood the motives of the Netherlands and the Soviet Union in submitting their proposals, which aimed at maintaining continuity in treaty relations, but it could not support them because they did not take account of the generally accepted practice of opting in.

43. Mr. KRISHNADASAN (Swaziland) said that his delegation was satisfied with draft article 16 and did not think that the amendment submitted by the Netherlands and the proposal by the Soviet Union would necessarily improve it. As it stood, the article did not go too far in the direction of continuity and safeguarded the "clean slate" principle established in favour of newly independent States by allowing them to opt out of any multilateral treaty in force at the date of the succession.

44. As to the kind of treaties to which the newly independent State's right to opt out applied, no matter whether a treaty was said to be "of a universal character" or "open to universal participation", treaties of a universal character seemed to be what was intended because, ultimately, treaties open to universal participation were of a universal character. The basic difficulty was one of definition: for example, the Treaty on the Non-Proliferation of Nuclear Weapons (General Assembly resolution 2373 (XXII)) seemed to some members of the international community to be of a universal character, while other members considered it as being loaded in favour of the nuclear Powers. Difficulties and confusion would arise if such a treaty were provisionally in force for a newly independent State after the date of the succession, as provided in the proposal by the Soviet Union, or if it were presumed that the newly independent State was desirous of being a party to it, as provided in the Netherlands amendment.

45. Many delegations seemed to have placed the strongest emphasis on the rights of States deriving from multilateral treaties. But account should also be taken of the obligations deriving from such treaties, particularly financial obligations, of which many newly independent States might not be aware and which they would need time to determine. Consequently, his delegation was of the opinion that it was important to maintain the freedom of choice provided by the "clean slate" rule, as had been done in the International Law Commission's text of draft article 16.

46. Paragraph 2 of the proposal by the Soviet Union provided that reservations to a treaty would be provisionally valid for the newly independent State under the same conditions as for the predecessor State. Experience had shown, however, that the way such reservations operated after a State had achieved independence was entirely different from the way in which they had operated before. For example, the predecessor State often applied treaties to a colony without necessarily realizing what the full implications of the treaties would be for the colony when it became independent. In the case of a humanitarian treaty such as the Convention relating to the Status of Refugees (General Assembly resolution 429 (V)), it might be found that, when the colony had achieved independence, many of the predecessor State's reservations would not be acceptable to it, or that it wished to make further reservations to that Convention in the interests of its security. Paragraph 3 of the proposal by the Soviet Union appeared to contain a contradiction: if the predecessor State had been bound by only part of a treaty, how could that treaty qualify as being of a universal character?

47. In the Netherlands amendment, the words "any multilateral treaty open to universal participation", in the new paragraph 4, subparagraph (*a*), had even wider implications than the equivalent wording of the proposal by the Soviet Union. Moreover, he shared the view expressed by the representative of India that the words "A newly independent State shall be presumed to be desirous of being a party" clearly constituted an inadequate criterion in a convention such as the one the Conference was trying to adopt.[10] The proposed new paragraph 4, subparagraph (*b*), stipulating that a newly independent State could terminate a treaty "provided it has not invoked the benefits of that treaty after the date of succession of States", did not make it clear how the international community was to know whether or not a newly independent State had in fact invoked the benefits of the treaty.

48. With regard to the proposed new paragraph 4, subparagraph (*c*), he agreed with the representatives of Uganda and Norway that that provision was similar to the corresponding provision of the proposal by the Soviet Union. His delegation also had some difficulty in understanding the effect of the proposed new paragraph 4, subparagraph (*c*) (i). Experience had shown that a period of several years would be much more realistic than the 12-month period provided for in that subparagraph. What would happen if the notice was given within 11 months? The Netherlands amendment did not make it clear whether the treaty would be applicable during those 11 months or not. Thus, one of the gaps which the Netherlands had sought to fill in submitting its amendment was still open.

49. Mr. BROVKA (Byelorussian Soviet Socialist Republic) said that his delegation was in favour of the inclusion of an article 16 *bis* in the draft and supported the adoption of the proposal by the Soviet Union. The provisions of that proposal would help to fill a legal vacuum and to solve the problems faced by newly independent States in the period immediately following their attainment of independence—a period when such countries had many difficult decisions to take and few people qualified to take them.

50. Article 16 *bis* would relate specifically to treaties of a universal character, which included treaties for the promotion of international co-operation, peace and security, which codified the generally accepted norms of present-day international law. Succession to such treaties of a universal character by newly independent States would therefore help them to promote their own national interests by enabling them to take

[10] See above, 24th meeting, para. 27.

their place as equal partners in the international community.

51. It was desirable to avoid even a short-term suspension of the application of such treaties to newly independent States, which should be given a chance to opt for the rights and advantages of those treaties. In the event of a suspension, as referred to in draft article 22, paragraph 2, not only the newly independent State, but all the other parties to a treaty of a universal character would be released from their obligations under the treaty—a circumstance which would benefit neither the newly independent State nor the international community in general.

52. Consequently, there was justification for a provision in the draft convention to the effect that any treaty of a universal character in force at the date of a succession of States should remain in force provisionally until such time as the newly independent State signified that it would not terminate the treaty provisions in respect of itself. The inclusion of such a provision did not contradict the "clean slate" principle, since the newly independent State would retain the right to notify termination or, as provided in paragraph 4 of the proposal by the Soviet Union, to establish its status as a party to the treaty.

53. The inclusion of a provision such as the proposed article 16 *bis* was desirable despite the fact that many provisions in international treaties of a universal character could be applied to newly independent States on the basis of customary international law. Experience had shown that it was better to have recourse to the unambiguous provisions of such treaties than to attempt the application of general rules, the interpretation of which in particular situations could give rise to difficulties.

54. In supporting the adoption of the proposed article 16 *bis*, his delegation likewise supported the corresponding amendments to articles 16, 19, 20 and 21 and the addition of a subparagraph (*a*) *bis* to paragraph 1 of article 2. The definition given in subparagraph (*a*) *bis* of paragraph 1 of article 2 reproduced the text of the first paragraph of the Declaration on Universal Participation in the Vienna Convention on the Law of Treaties, but the proposed definition of a treaty of universal character could possible be further improved.

55. Mr. SUTARASUWAN (Thailand) said that his delegation would prefer draft article 16 to be retained as it stood. The article upheld the principles of the "clean slate" and of self-determination, for the benefit of newly independent States. The amendment submitted by the Netherlands and the proposal by the Soviet Union would merely add to the procedures incumbent on a newly independent State; his delegation could not accept either of them.

56. Mr. SAKO (Ivory Coast) said that his delegation endorsed draft article 16 with the exception of the words "was in force in respect of the territory", which, as he had said, should be replaced by the words "was applicable to the territory". His delegation, too detected a note of presumption, to which the Kenyan representative had drawn attention,[11] in paragraph 2 of that article.

57. With regard to the amendment submitted by the Netherlands and the proposal by the Soviet Union, the problem was how to reconcile observance of the principles invoked by the International Law Commission and the need to give developing countries the best practical help. Not all multilateral treaties were useful to developing countries; on the other hand, there were some treaties of a special character which were most advantageous.

58. While recognizing all the efforts made to improve and clarify the article and to avoid jeopardizing its basic principle, of the two proposals submitted, his delegation would choose that of the Netherlands. The "walls" which it set up were not as formidable as the Norwegian representative had made out; the Ivory Coast delegation found them easy to surmount.

59. Mr. DAMDINDORJ (Mongolia) said that the "clean slate" principle was of the utmost importance, especially to newly independent States, and was a guarantee of international peace and security. His delegation had stressed the importance of that principle in accepting article 15, which stated it in the clearest possible form. Article 16, as previous speakers had noted, was an indispensable part of the draft convention, and in basing it, too, on the "clean slate" principle, the International Law Commission had produced a well-balanced text.

60. The amendment submitted by the Netherlands and the proposal by the Soviet Union represented different approaches to certain situations but had some features in common. Some delegations objected to the proposal by the Soviet Union because they seemed to think that it did not confine itself to the "clean slate" principle. His delegation, however, was one of those which supported that proposal; in its view, the text of the proposed article 16 *bis* in no way detracted from that principle; indeed, paragraph 4 provided that a newly independent State might establish its status as a party to a treaty of the type referred to in paragraph 1 at any time while such a treaty remained provisionally in force. The proposal by the Soviet Union related to multilateral treaties, which merited special attention, particularly on account of the growing role of such treaties in the promotion of international peace and security. In his delegation's view it was not possible to isolate a specific category of treaties of a universal character.

61. Mr. KATEKA (United Republic of Tanzania) said his delegation thought that article 16, taken in conjunction with article 22, made the amendment submitted by the Netherlands and the proposal by

[11] See above, 24th meeting, paras. 16 and 18.

the Soviet Union unnecessary. The notification provided for in article 22 related back to the date of succession or of entry into force of a treaty, so that even a suspension of the type referred to in article 22, paragraph 2, would not create a legal vacuum. In fact, the International Law Commission had said in paragraphs (13) *et seq.*, of its commentary to article 22 that it would be wrong to interpret suspension as having the effect of nullifying a treaty obligation (A/CONF.80/4, p. 76); and there were, of course, some exceptions whereby parties to the future convention would accept the application of a treaty retroactively from the date on which the successor State succeeded to the predecessor State's obligations.

62. His delegation would be grateful for the Expert Consultant's views on whether draft article 16 as it stood could deal with such situations or should be amended.

63. The International Law Commission had decided that the inclusion of time-limits was not desirable, since it was impossible to reach agreement on suitable periods.

64. His delegation thought that the expression "universal character" was misleading. There were certain types of treaty which some countries regarded as universal in character and others did not; for example, his delegation was among those which regarded arms limitation treaties as in no way universal in character, although some delegations had implied that they were. Even the Charter of the United Nations was not universal in the true sense of the word. Consequently, if a provision on the lines of the proposed article 16 *bis* was to be included in the draft convention, the meaning of the expression "treaty of a universal character" would need to be very carefully defined; otherwise, such a provision might only confuse the situation and prejudice the effects of a succession of States.

The meeting rose at 6 p.m.

26th MEETING

Monday, 25 April 1977, at 10.50 a.m.

Chairman: Mr. RIAD (Egypt)

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)*

ARTICLE 16 (Participation in treaties in force at the date of the succession of States) and PROPOSED NEW ARTICLE 16 *bis* (Participation in treaties of a universal character in force at the date of the succession of States[1] *(continued)*

1. Mr. HELLNERS (Sweden) said that he considered both the Netherlands amendment (A/CONF.80/C.1/L.35) and the Soviet Union proposal (A/CONF.80/C.1/L.22) constructive.

2. There was general agreement on the "clean slate" rule, as had been clearly shown by the positions taken on article 15. There was also, however, a desire to prevent a hiatus occurring after a succession of States in respect of universal conventions, and it had been observed that in practice most newly independent States continued to apply such conventions. The opponents of the Netherlands amendment and the proposal by the Soviet Union had argued that the "clean slate" rule would be virtually emptied of content if so many conventions were excepted from it. Some speakers had also referred to the possibility of newly independent States being faced with unexpected financial commitments.

3. The number of exceptions to the "clean slate" rule introduced by the Netherlands amendment and the proposal by the Soviet Union had been somewhat exaggerated. The rule would still apply to bilateral treaties and to many regional treaties. As to financial commitments, membership in international organizations, which entailed financial contributions, was outside the scope of the draft articles, and the financial implications of becoming party to diplomatic or humanitarian conventions should not be overstated.

4. Another point, which was mentioned in paragraph (8) of the commentary to article 15 (A/CONF.80/4, p. 53), was that much of the contents of the so-called universal conventions was regarded as existing international law, independently of those conventions. In many instances, it could be maintained that after their adoption, such conventions determined international law. That point was illustrated by the way in which countries which had not ratified the Vienna Convention on the Law of Treaties referred to it when the need arose.

5. The Netherlands amendment and the proposal by the Soviet Union could be improved, particularly in regard to the concept of presumption in the former and of temporary application in the latter. The definition of universal conventions also required further consideration, though it was a great improvement on earlier drafts.

6. His conclusion was that the differences and difficulties had been exaggerated. He was inclined to agree with the representative of the United Republic of Tanzania that draft articles 16 and 22 together might lead to a situation very similar to that sought by the Netherlands amendment and the proposal by

[1] For the amendment submitted to article 16, see 23rd meeting, foot-note 14.

the Soviet Union.[2] Although he would have welcomed the implementation of the ideas underlying them, he was prepared to accept the present draft article 16, in view of the fact that practice tended to confirm the continuity of the treaties in question and that to a large extent the same rules would apply in any case under international law independently of those treaties.

7. Mrs. DAHLERUP (Denmark) supported the views expressed by the Swedish representative.

8. Mr. DADZIE (Ghana) said that for the reasons already been given by previous speakers, his delegation supported draft article 16, which adequately fulfilled its purpose.

9. Mr SNEGIREV (Union of Soviet Socialist Republics), thanking those delegations which had supported his proposed new article 16 *bis*, said he still believed that the proposal did not limit the "clean slate" rule, which speakers rightly regarded as giving freedom to accede or not to accede to a particular treaty.

10. The representative of the United Republic of Tanzania had thought the proposal by the Soviet Union left some uncertainty about reservations made by the predecessor State in respect of a treaty applicable to the territory,[3] but the proposed consequential amendment to article 19 fully settled that point.

11. The Brazilian representative had urged that every State must have unfettered freedom of choice.[4] It was not clear, however, in what way the proposal by the Soviet Union sought to override the will of a newly independent State. The inclusion of article 16 *bis* in the future convention would not make it binding on such a State unless it chose to ratify the convention. Even then, the new State could make a reservation with respect to article 16 *bis*. What had been described as the "automatic operation" of a treaty meant that a universal treaty would continue to be in force without any specific notification on the part of the newly independent State; it did not mean that the treaty would be applied contrary to the will of that State.

12. Mr. ARIFF (Malaysia) said that the "clean slate" principle had been staunchly upheld by practically all the newly independent States, which had resisted any attempt to introduce exceptions. The basic principle underlying the present draft article 16 was undoubtedly that the "clean slate" rule should apply to multilateral treaties no less than to bilateral treaties. The non-obligatory nature of the newly independent State's participation in multilateral treaties was clearly shown by the words "may establish" in paragraphs 1 and 3, and by the provisions of paragraph 2, which made it impossible to apply a treaty to the territory of a newly independent State if that "would be incompatible with its objects and purpose or would radically change the conditions for the operation of the treaty", since in such cases the discretion of the newly independent State to opt into the treaty became wholly irrelevant.

13. In submitting its amendment, the Netherlands delegation had undoubtedly been motivated by the desire to uphold the "clean slate" principle, but the proposed text did not do so: it introduced a presumption that all newly independent States would accept as a *fait accompli* all multilateral treaties open to universal participation which had been in force at the time of the succession of States. It was true that the Netherlands amendment gave such States the option to terminate a treaty at a later stage, but that was not the same as the right to exercise the option immediately upon independence, as the prerogative of a sovereign State. The Netherlands amendment suggested that the newly independent State was saddled with obligations, and to that extent it eroded the idea of freedom of expression and self-determination to which all newly independent States subscribed and which lay behind the "clean slate" rule. The fact that, in subparagraph (*b*) of the proposed paragraph 4, conditions were attached to the newly independent State's right to terminate a treaty was a further departure from the "clean slate" principle and a constraint on the newly independent State.

14. The proposal by the Soviet Union for a new article 16 *bis* appeared to be a half-way house between draft article 16 and the Netherlands amendment. It purported to recognize the sovereign status of a newly independent successor State and, hence, the "clean slate" principle. It gave the newly independent State the right to contract out of treaties, subject to three months' notice of termination; it made treaties provisionally valid for the newly independent State under the same conditions as for the predecessor State and it gave the former State the right to become a party to treaties by notification of succession.

15. The proposal by the Soviet Union would, however, have the effect of undermining the "clean slate" principle, in that some treaties would be regarded as continuing provisionally in force irrespective of the views of the newly independent State. Furthermore, although it might be concluded from a cursory examination that there was not much to choose between the proposal by the Soviet Union and draft article 16, the proposal had the disadvantage of not covering the cases provided for in paragraphs 2 and 3 of the draft article. The draft articles, from article 16 onwards, and particularly article 26, adequately met the needs of newly independent States.

16. His delegation therefore supported draft article 16 as it stood.

17. Sir Francis VALLAT (Expert Consultant) said he would reply to the questions asked by the repre-

[2] See above, 24th meeting, para. 38.

[3] See above, 24th meeting, paras. 39-40.

[4] See above, 24th meeting, paras. 31 *et seq.*

sentative of the United Republic of Tanzania at the 25th meeting.[5]

18. First, the representative of the United Republic of Tanzania had sought an interpretation of article 16, when read together with article 22 and the International Law Commission's commentaries, concerning the continuance in force of a predecessor State's treaties by notification under articles 21 and 22, and had asked whether such notification had the effect of avoiding any lapse between the date of the succession of States and that of the notification.

19. The International Law Commission, in its deliberations on the present articles 16 and 22, had considered the various issues arising from the "clean slate" principle and the effects of notification of succession, and had grouped the issues under six headings: law-making treaties, time-limits, the international régime, grounds for excluding the application of paragraph 1 of the present article 16, objections to a notification of succession and questions of termination of suspension. The Committee was at present concerned with the first three of those headings. The interim régime was considered together with the effect of a treaty—especially a multilateral treaty—between the date of a succession of States and the date of notification of succession with respect to a particular treaty, including the question of the retroactive effect of such notification. In the 1972 draft articles, the effect of such notification would have been to consider the treaty in force from the date of the succession of States; but the International Law Commission had subsequently deemed it unrealistic to make notification retroactive, in its effect, to the date of the succession. The International Law Commission had been motivated entirely by the "clean slate" principle and had left it to a newly independent State to make its own choice in its own time.

20. As a corollary, the operation of a treaty could not, after a period of delay, be made retroactive to the date of a succession of States. The question of time-limits and that of the effects of notification were linked, therefore, and although notification of succession might be made at any time, the actual effect of such notification was as stated in the present article 22, paragraph 1. There would be an element of retroactivity, but the operation of the treaty would be considered as suspended in accordance with paragraph 2 of that article.

21. The lacuna, therefore, was only partly filled by article 22, which had been so drafted because it had been thought unrealistic to make the operation retroactive.

22. Secondly, the representative of the United Republic of Tanzania had asked whether, in any case, the proposed time-limits within which a successor State had to indicate its non-acceptance of the continuance of a treaty in force, did not have the same adverse effects as the International Law Commission had considered in regard to article 22. On that question, it would not be appropriate for him to comment on the substance of an amendment under consideration by the Committee, and he could only reiterate his remarks concerning the motivation of the International Law Commission.

23. Thirdly, the representative of the United Republic of Tanzania had asked what was meant by "treaties of a universal character" and whether such a concept would not introduce confusion in distinguishing between multilateral treaties. The International Law Commission had indeed had difficulty in trying to identify treaties which might be regarded as continuing in force for a newly independent State notwithstanding the "clean slate" principle; it had deemed it impossible to identify law-making treaties as such. The International Law Commission had considered the question of a suitable system to enable a newly independent State to opt in or out by a notification of succession—a matter which might be the crux of the whole issue at present under consideration—and had concluded that, bearing in mind the "clean-slate" principle as reflected in the present draft articles, it would be wrong to adopt a rule to provide for opting out.

24. He would not comment on the clarity of the definition in the proposal by the Soviet Union. In the Declaration on Universal Participation in the Vienna Convention on the Law of Treaties,[6] however, the text had been used to express the wish that treaties of that nature should be made open to universal participation; it had not been intended as a legal definition.

25. Mr. BOGAYEVSKY (Ukrainian Soviet Socialist Republic) said that the Conference should give serious attention to the question of preserving the stability of treaty relationships and the continuity of treaty rights and obligations in relation to the sovereign rights of newly independent States. A solution to that problem was called for in view of the need for adopting a differentiated approach to the different categories of treaty, and for taking into account the special role, importance and significance of treaties of a universal character in contemporary international law.

26. Treaties of a universal character dealt, for the most part, with matters of exceptional international importance, such as disarmament and narcotics control, matters covered by the conventions of the International Labour Organisation, etc., and many of them were a direct consequence of international co-operation between States with different economic and

[5] See above, 25th meeting, paras. 61-64.

[6] *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. 285.

social systems aimed at promoting international security and peaceful coexistence. Thus their provisions were formulated for the benefit of all States, and it was undoubtedly in the interests of newly independent States that such treaties should continue, for some time at least, to apply to their territories. Such was the intention underlying the proposal by the delegation of the Soviet Union. That proposal was in no way detrimental to the "clean slate" principle, since an independent State would retain the right to give notice of termination of the said treaty in respect of its territory. The underlying idea was by no means new but had been discussed in a preliminary manner in the Sixth Committee of the General Assembly during the consideration of the present draft articles.

27. In his delegation's view, fears about the difficulty of defining treaties of a universal character were somewhat exaggerated; the definition already contained in the Declaration on Universal Participation in the Vienna Convention on the Law of Treaties, which formed an integral part of the Final Act of the United Nations Conference on the Law of Treaties, could serve as the basis for such a definition.

28. The principle of defining a treaty of a universal character by reference to its substance and purpose was logical and fundamental, since such treaties were invaluable in solving problems affecting the interests of all countries, including newly independent States. It would not be fruitful, however, to attempt to define such treaties on the basis of the number of parties to them, as proposed in the Netherlands amendment.

29. The idea that treaties of a universal character should remain provisionally in force did not detract from the "clean slate" principle since, under the proposed article 16 *bis*, a newly independent State could either give notice of termination of such a treaty in respect of that State or establish its status as a permanent party to the treaty.

30. The proposed article 16 *bis* was aimed at removing the legal "vacuum" arising as a result of the categorical application of the "clean slate" principle in respect of newly independent States. Since there was indeed a likelihood, noted by some delegations, that a newly independent State might not always know which multilateral treaties had applied to its territory previously, the Czech, Polish and Ukrainian delegations had submitted a proposal (A/CONF.80/C.1/L.28) for the inclusion in the draft of a new article 22 *bis*, which would provide that the depositary of a treaty referred to in article 16, 16 *bis*, 17 and 18 should inform the newly independent States that the said treaty had been previously extended to the territory to which the succession related.

31. Mr. TODOROV (Bulgaria) said that the International Law Commission had had before it two proposals, as noted in paragraph 75 of the commentary (A/CONF.80/4, pp. 13-14), one of them relating to article 12 *bis*, which was the present article 16 *bis* (A/CONF.80/C.1/L.22) and which concerned participation in multilateral treaties of a universal character; the other proposal concerned the settlement of disputes. Unfortunately, the International Law Commission had not had time to consider those two proposals.

32. At the thirtieth session of the General Assembly Bulgaria had been one of the sponsors of a draft resolution (A/C.6/L.1019),[7] together with Cuba, Czechoslovakia, France, Ghana, Guyana, Liberia, Netherlands, Ukrainian Soviet Socialist Republic, United Kingdom of Great Britain and Northern Ireland and Sri Lanka, which had requested the International Law Commission to consider further those two proposals. The idea failed to obtain a majority in the General Assembly, although the Bulgarian delegation had expressed its view that the convening of the Conference would be untimely and that consideration of the draft articles by an international conference should have been preceded by two separate readings of those proposals by the International Law Commission at two different sessions. The Conference was consequently at a serious disadvantage in considering draft article 16, since it did not have the benefit of the International Law Commission's deliberations on a topic whose extreme importance had been made abundantly clear.

33. Treaties of a universal character reflected all the valid norms and principles of international law and friendly relations between States, and were drawn up in such a way that their objects and purposes were in the interests of the international community as a whole, including newly independent States. Such treaties must therefore be open to all States of the international community. The strict application of the "clean slate" rule to such treaties in the event of a succession of States could create a legal vacuum, which might last for years and would obviously be detrimental to any successor State's interests. As the representative of the Soviet Union had pointed out, however, the automatic application of a treaty of a universal character to a newly independent State would be on a provisional basis, and the State concerned would have the opportunity of accepting or rejecting participation later.

34. His delegation was one of the many which supported the proposal by the Soviet Union. But in view of the numerous suggestions for alterations to the text or the adoption of some of the ideas contained in the Netherlands amendment, he thought it might be useful, at a later stage, to set up a working group, even if only on an unofficial basis, to try to draft a generally acceptable text.

[7] *Official Records of the General Assembly, Thirtieth Session, Annexes*, agenda item 109, document A/10462, para. 4.

35. Mr. SIEV (Ireland) said that his delegation, in adherence to the "clean slate" principle, could not accept that any newly independent State was bound, unless it so declared within a reasonable time, by any international treaty previously in force in regard to its territory. Such a State had the right, under certain conditions, to establish itself as a party to any multilateral treaty, except one of a restrictive character, to which the predecessor State was a party at the date of succession.

36. Paragraphs 1 and 5 of the proposal by the Soviet Union could give rise to a situation that was unjustifiable under the "clean slate" rule if, for example, a newly independent State decided, on the very date of its independance, to notify its wish to terminate a treaty of a universal character, since according to paragraph 5, the treaty would remain in force in respect of the newly independent State for three months.

37. With regard to the Netherlands amendment, his delegation found a significant difference between the proposal in the new paragraph 4, subparagraph (*a*) and that in the new paragraph 4, subparagraph (*c*).

38. The proposal by the Soviet Union maintained the sovereign right of a newly independent State to pronounce its willingness to be bound by a multilateral treaty, and allowed reasonable time for consideration before the automatic declaration that a treaty applied to the newly independent State.

39. His delegation was satisfied neither with the definition of a "treaty of a universal character" in the proposal by the Soviet Union, nor with that of a "multilateral treaty open to universal participation" in the Netherlands amendment. Some satisfactory definition was needed, however, to provide a formula, along the lines of both amendments, which would apply to certain treaties of world-wide scale and operation. Something of the kind was urgently required at the present time, when newly independent States were often engaged in hostilities from the time of their independence, and were likely to need recourse to international instruments which regulated hostilities and made provisions for humanitarian operations under the auspices of the International Committee of the Red Cross.

40. Mr. BRACEGIRDLE (New Zealand), referring to the amendment submitted by the Netherlands, said that its present formulation posed several problems. The aim behind the proposed paragraph 4, subparagraph (*a*), namely, to balance concern for the sensitivities of newly independent States with concern for the preservation of those multilateral treaties which played a particularly important part in international relations, was commendable. The subparagraph was not entirely consistent with itself, however, in that it proceeded directly from a presumption to a categorical statement, without any reference to the manifestation by a newly independent State of its presumed desire. As the subparagraph stood, the presumption in the first sentence did not seem strong enough, in legal terms, to support the statement in the second sentence. Yet if the link between the two sentences was not a strong one, the first sentence had rather less meaning, and a very wide exception to the "clean slate" principle remained. One way of improving the formulation of the subparagraph would be to delete the word "accordingly", in order to make it clear that the second sentence was not dependent on the first, and to replace it by the word "furthermore". The second sentence should also state, to be consistent with the first, that the treaties with which the subparagraph was concerned should "be presumed to apply...".

41. The second problem in the proposed paragraph 4, subparagraph (*a*) was the stipulation that the treaty would apply to the newly independent State "under the same conditions as were valid for the predecessor State". That phrase effectively covered the same ground as paragraphs 2 and 3 of the new article 16 *bis* proposed by the Soviet Union, so that the proposals by both the Netherlands and the Soviet Union had consequences for the principles set out in draft articles 19 and 20. It might be, for example, that the reservations to a treaty which had been applicable to a territory prior to its independence became inappropriate thereafter, for the interests of the predecessor State and the successor State would often be very different. One obvious reason for that difference would be that the predecessor State, which would have entered those reservations, was usually a developed country, whereas the successor State was usually a developing country. It might, therefore, be preferable, as well as more consistent with draft articles 19 and 20, if the conditions under which a treaty would continue to apply to the successor State after succession were not those which had been valid for the predecessor State, but rather those which had applied to the territory to which the succession of States related.

42. The statement in the proposed paragraph 4, subparagraph (*b*) of the Netherlands amendment, to the effect that the newly independent State might terminate a treaty, provided it had not invoked the benefits of that treaty after the date of the succession of States, was a further potential source of difficulty. For example, where a treaty contained provisions which unquestionably embodied rules of customary international law, it might be unclear whether the newly independent State had relied on those rules as such or on the treaty; if it was held that the newly independent State had in fact invoked the benefits of the treaty, it would be bound by that instrument even if it did not agree with all of its provisions. Furthermore, it might be precluded by the Vienna Convention on the Law of Treaties from formulating reservations to or denouncing the treaty. Moreover, the fact that article 38 of the Vienna Convention provided that basic principles of international law, codified in major multilateral treaties, bound both

newly independent and other States independently of those treaties, perhaps made it less important to declare expressly that newly independent States would be bound by such instruments.

43. Finally, the imposition in the proposed paragraph 4, subparagraph (*c*) of time-limits for the notice of termination by a newly independent State of a treaty of its predecessor, could also raise problems, for accession to independence was above all a political phenomenon and there might be political reasons, particularly when independence occurred in a less orderly manner, why a territory might gain independence several years before it could evolve definite opinions concerning treaty relations. It might be unrealistic, even unjust, to expect independence to be delayed until the newly independent State had taken decisions on the treaties of its predecessor State. Provisions of the type proposed could also place small territories with limited recources at a particular disadvantage. Furthermore, the amendment itself precluded the cessation of the effect of a treaty from the date of succession if notice of termination was given more than 12 months after the date of the succession. Under article 70 of the Vienna Convention on the Law of Treaties, the obligations which a newly independent State had incurred under a treaty prior to terminating it could continue to be binding, even if that State had had no knowledge of those obligations at the time they had been incurred.

44. His delegation preferred the Netherlands amendment to the proposal for a new article 16 *bis* submitted by the Soviet Union, because it was possible to know with certainty to which treaties the Netherlands amendment applied. However, the Netherlands amendment seemed to provide for a wider exception to the "clean slate" principle than did the proposal by the Soviet Union, and one of a breadth his delegation was not yet fully convinced was necessary. While it agreed that the International Law Commission's text should be improved where necessary, it was also anxious that any alterations of substance to that text should not themselves give rise to problems either in the present or, as far as it was possible to know, in the future.

45. Mr. SATTAR (Pakistan) said that his delegation, like most others, supported draft article 16, which represented a clear and concise distillation of the practice of States. While the delegations of the Netherlands and the Soviet Union deserved praise for the submission of proposals designed to extend to new States, before they had acted to accede thereto, the benefits of treaties of a universal character, those proposals in each case entailed an implicit decision by the Conference to accept on behalf of future members of the community of States not only the rights, but also the obligations, which would be theirs as parties to such instruments. However, it was an underlying principle of the draft articles as a whole that a newly independent State had a right, but not an obligation, to establish itself as a party to an open-ended treaty, and it could be a contradiction of that principle not to allow the State itself to exercise that right. Both the proposals placed the new State in a situation in which it would have to act to contract out of a treaty into which it had never contracted in the first place.

46. His delegation believed that it would be neither morally nor legally justifiable to impugn the conduct of a newly independent State which, on the grounds that it had not established itself as a party thereto, refused to discharge an obligation deriving from a treaty which it had automatically been presumed to uphold. It would be better to avoid the embarrassment to which such a situation could give rise and leave it to the newly independent State itself to decide whether or not it wished to assume the contractual obligations of its predecessor.

47. That choice would not impose any hardship on new States, for they could become parties to their predecessors' treaties from the outset of their own existence through a mere notification of succession. Nor would the solution his delegation was proposing deprive new States of the benefits of the codification and progressive development of law: codification conventions largely comprised contemporary rules of international law, which would, in any case, apply to a new State by virtue of the provisions of article 5 of the future convention and article 3 of the Vienna Convention on the Law of Treaties. Provisions of codification conventions which did not qualify as rules of customary law did not apply to existing States which were not parties to those instruments, and it was only right and just that they should not be deemed to apply to new States without their agreement.

48. Mr. STUTTERHEIM (Netherlands) thanked the delegations which had commented on the Netherlands amendment, particularly those which had suggested drafting changes, nearly all of which his delegation found acceptable. The amendment aimed at balancing the interests of newly independent States with those of the existing members of the international community, who needed to know whether a treaty was applicable as between a newly independent State and themselves. The amendment referred to multilateral treaties open to universal participation in the sense in which it suggested that phrase should be defined, because a list of such instruments was already kept and could be readily updated by the Secretary-General of the United Nations, whereas it would be impossible to determine which treaties were or were not "of a universal character". The amendment was in no way intended to impose financial or other obligations on newly independent States.

49. Since there had been no general agreement on the amendment in the Committee, his delegation would be willing to join in further discussion of it in an informal working group, as suggested by the representative of Bulgaria. If, however, the Committee

rejected the Bulgarian suggestion, his delegation would withdraw the amendment, in order to facilitate the work of the Conference.

50. The CHAIRMAN suggested that interested delegations should be given time to consult, in the informal consultations group headed by the Vice-Chairman of the Committee, on article 16, the Netherlands amendment thereto, and the proposal by the Soviet Union for a new article 16 *bis*.

51. Mr. YIMER (Ethiopia) objected that draft articles had previously been referred to the informal consultations group mentioned by the Chairman only when there had been general agreement in the Committee that their underlying principle should be incorporated in the convention. No such agreement had been reached concerning the proposals by the Netherlands and the Soviet Union, and he therefore proposed that they should be put to the vote.

52. Mr. KATEKA (United Republic of Tanzania) said that in his view there was no chance of a consensus being reached on the inclusion in the convention of the principles embodied in the proposals of the Netherlands and the Soviet Union. He suggested that, as a gesture of courtesy towards their authors, the proposals should nonetheless be referred to the informal consultations group, which should be instructed to report back to the Committee within a maximum of two days. His delegation would ask for a roll-call vote on the proposals if they had not been withdrawn by the time the report was made.

53. Mr. STUTTERHEIM (Netherlands) pointed out that he had said he would withdraw his amendment if there was no real consensus in the Committee to discuss it further.

54. Mr. KRISHNADASAN (Swaziland) seconded the proposal made by the representative of Ethiopia.

55. Mr. SNEGIREV (Union of Soviet Socialist Republics) said that to vote as proposed by the representative of Ethiopia would be inappropriate, since some speakers had supported the proposal of his delegation and some the proposal of the Netherlands, while others had rejected the inclusion in the convention of anything resembling either proposal. He therefore proposed that a vote should be taken on the question whether or not to request the informal consultations group to prepare a compromise text based on the proposals of his own delegation and that of the Netherlands.

56. Mr. ARIFF (Malaysia) said that a vote should be taken on the proposal by the Soviet Union, since it concerned a matter of substance.

57. Mr. KATEKA (United Republic of Tanzania) said it was his understanding that the representative of the Netherlands had withdrawn his amendment. That being so, the only formal proposal which remained was that of the Soviet Union, and the Committee was therefore obliged by its rules of procedure to vote on that proposal.

58. Mr. SNEGIREV (Union of Soviet Socialist Republics) said he understood the representative of the Netherlands to have expressed his willingness, but not a decision, to withdraw his amendment; consequently, that amendment still stood. That being so, he reiterated his proposal for a vote on the referral to the informal consultations group of the proposals by his own delegation and that of the Netherlands.

59. Mr. YIMER (Ethiopia) said he understood the representative of the Netherlands to have withdrawn his amendment. Consequently, the only vote which the Committee could take was on the question whether or not to adopt the proposal by the Soviet Union.

60. Mr. STUTTERHEIM (Netherlands) said that he would maintain his amendment only if a majority of the members of the Committee wished to discuss it further. Otherwise, the amendment was to be considered as having been withdrawn as of that moment.

61. Mrs. BOKOR-SZEGÖ (Hungary) moved the adjournment of the meeting under rule 25 of the rules of procedure (A/CONF.80/8).

62. The CHAIRMAN said that, as there was no objection, he would take it that the motion was carried.

It was so decided.

Organization of work

63. The CHAIRMAN said, that before he adjourned the meeting, he wished to draw the attention of delegations to the situation now reached in their work. The Committee was at the start of the fourth week of its deliberations, that was to say its last and most crucial week, and it was no secret to anyone that it had fallen considerably behind the programme of work originally adopted. Nevertheless, it could legitimately hope to complete its task, namely, to consider all the articles of the basic draft and the amendments thereto and to report to the Conference the following week.

64. The Committee of the Whole had so far held 26 meetings, 25 of them devoted to consideration of the draft articles prepared by the International Law Commission and of the amendments submitted by delegations. Those 26 meetings represented a total of about 70 hours work. During those 70 hours the Committee had considered articles 1 to 16 of the draft, with the corresponding amendments, and also articles 9 *bis* and 16 *bis*—a total of about 18 articles. In addition, statements of principle had been made by a number of delegations during the consideration

of article 2 of the draft, in accordance with the decision adopted by the Conference.

65. The situation regarding the articles that had been discussed was the following:

(*a*) 11 articles had been adopted and referred to the Drafting Committee, namely, articles 1, 3, 4, 5, 8, 9, 10, 11, 13, 14 and 15;

(*b*) 3 articles, namely, articles 6, 7 and 12, had been discussed and referred to the informal consultations group, which was to report back to the Committee;

(*c*) the consideration of one article, namely article 2 (Use of terms), had been held over until a later stage in the work, as was customary at codification conferences;

(*d*) an article, proposed by one delegation, namely article 9 *bis*, had been rejected; and

(*e*) the Committee of the Whole had decided to entrust the preparation of the preamble and the final clauses to the Drafting Committee, which was to report direct to the Conference.

66. In view of that picture and of the number of hours that had been available, it could be concluded that the Committee had needed an average of approximately four hours for each article considered. That was rather a gloomy picture. However, it was necessary to look to the future—the number of articles that still had to be considered and the time available. As to the number of articles, the Committee still had to consider articles 17 to 39 of the basic draft, with the amendments thereto, and some additional articles proposed by delegations: in all, about 25 articles. Consideration of article 2 would also have to be completed and decisions taken concerning the articles held over for consultations. In addition, it would be necessary to adopt the text for all the articles to be submitted by the Drafting Committee.

67. As to the time factor, 36 hours, including the extended afternoon meetings, would be available during the week. If the Committee was able to hold a few meetings at the beginning of the following week, some extra time might be added. That question would be discussed when the Committee came to assess its progress at the end of the current week. In round figures, it could be said that the Committee had about 45 hours for approximately 25 articles, which meant that an effort would have to be made to halve the average time hitherto devoted to the consideration of each article. Henceforth, the Committee would have to make sure that the time taken for each article did not, on the average, exceed two hours.

68. That objective might, at first sight, seem difficult to attain. But although difficult, it was not entirely impossible. It must be recognized that most of the articles which posed major problems were, precisely, the early articles of the draft, which explained the seemingly slow progress of the Committee's deliberations during the first weeks of its work.

69. Moreover, an examination of the amendments submitted to the articles in part III of the draft showed that, except for those relating to articles 16 and 16 *bis*, they did not raise any problems likely to require much time. With some discipline, it would be possible to reach article 30 relatively quickly. For he had noted that the number and the length of statements had been substantial in the case of articles such as articles 2, 5, 6, 7, 11, 12, 16 and 16 *bis*, but not in the case of articles to which no important amendments had been submitted, such as articles 1, 3, 4, 9, 13, 14 and 15.

70. Lastly, the approach adopted by the Committee, namely, to go ahead with the articles that did not raise major problems, while isolating those that raised more difficult and delicate problems and holding them over for consultations, was perhaps essential in order to gain the necessary time.

71. In the light of those considerations, the first conclusion was that the Committee must start its meetings punctually, so as not to lose a single minute of its time. He therefore appealed to delegations and to the groups which met between the Committee's meetings to be punctual. Secondly, he appealed once again to delegations to speak as briefly as possible, particularly on articles to which no amendment had been submitted or which raised no special problems for them. At first sight that appeared to be feasible in regard to many of the articles in part III which followed articles 16 and 16 *bis*. However, he left it to the discretion of delegations to exercise the self-discipline which alone would enable the Committee to assume its full responsibility towards the international community.

The meeting rose at 1.05 p.m.

27th MEETING

Monday, 25 April 1977, at 4.05 p.m.

Chairman: Mr. RIAD (Egypt)

In the absence of the Chairman, Mr. Ritter (Switzerland), Vice-Chairman, took the Chair.

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*)

ARTICLE 16 (Participation in treaties in force at the date of the succession of States) and PROPOSED NEW

ARTICLE 16 *bis* (Participation in treaties of a universal character in force at the date of the succession of States[1] (*continued*)

1. The CHAIRMAN recalled that there were two procedural motions before the Committee: a motion by Bulgaria[2] which had asked for an informal working group to be set up to examine article 16 *bis* proposed by the Soviet Union (A/CONF.80/C.1/L.22) and a motion by Ethiopia that article 16 *bis* be put to the vote.[3] As there was no consensus on either he would have to put articles 16 *bis* to the vote.

2. Mr. TODOROV (Bulgaria) explained that his proposal consisted in setting up a working group to elaborate a consolidated text based on the Soviet Union's proposal and the Netherlands amendment (A/CONF.80/C.1/L.35), both of which had been supported by many delegations.

3. Mr. YANGO (Philippines) said that, as the Committee had already decided in similar situations to refer certain matters to an informal consultations group, it could set up an informal consultations group to examine article 16 *bis*, as proposed by Bulgaria, provided that it did not make a practice of doing so as that might delay progress.

4. Mr. MUDHO (Kenya) said he saw no reason why the Soviet Union's proposal should be treated differently from others and not put to the vote according to the usual procedure. The establishment of a working group would only further delay the Committee's work.

5. Mr. ARIFF (Malaysia) pointed out that his delegation's amendment to article 8 (A/CONF.80/C.1/L.15) had been put to the vote[4] because the Committee had regarded it as a substantive amendment which could not simply be referred to the Drafting Committee. Thus, he saw no reason why a vote should not be taken on the Soviet Union's proposal.

6. Mr. YIMER (Ethiopia) emphasized that article 16 *bis* was of no special interest to his delegation, which was simply anxious to expedite the Committee's work. His delegation had only proposed that a vote be taken on the Soviet Union's proposal in the belief that the Committee would lose time by referring it to a working group. However, as his delegation was now convinced that the Committee would never be able to adopt the draft convention at the present session, it would not insist on article 16 *bis* being put to the vote or object to its being referred to a working group.

7. Mr. DADZIE (Ghana) considered that the Committee should not waste any more time in procedural discussion and that it should first vote on article 16 *bis* proposed by the Soviet Union and then on article 16 proposed by the International Law Commission.

8. Mr. KRISHNADASAN (Swaziland) supported the proposal by Ghana.

9. Mr. USHAKOV (Union of the Soviet Socialist Republics) supported the Bulgarian proposal to postpone the vote on article 16 *bis* and refer that article for examination to a working group.

10. Mr. KATEKA (United Republic of Tanzania) observed that the Committee was faced with two conflicting motions: the first, for a vote to be taken on article 16 *bis*, had been withdrawn by Ethiopia, reintroduced by Ghana and supported by Swaziland; the second, to postpone voting on the article, had been proposed by Bulgaria and supported by the Soviet Union. He proposed that the Committee vote first on the first motion and asked for a roll-call vote.

11. Mr. MUDHO (Kenya) asked for details about the working group which the Bulgarian delegation was proposing should examine article 16 *bis*. Had it in mind the informal consultations group which already existed or the establishment of a new working group? If the latter, he would oppose such a procedure.

12. Mr. TODOROV (Bulgaria) believed it was preferable to entrust the examination of article 16 *bis* to the existing informal consultations group instead of creating a new working group as he had proposed at the outset.

13. Mr. KATEKA (United Republic of Tanzania) proposed that, if the Committee decided to refer the Soviet Union's proposal to the informal consultations group, the latter should report back to the Committee before 29 April.

14. The CHAIRMAN pointed out that, if the Bulgarian motion were adopted, that did not mean that the informal consultations group would reach a consensus on the Soviet proposal—divergences of opinion ruled that out—but that it would review the proposal in the light of other proposals made during the discussion. The proposal by the Soviet Union should in any case be put to the vote.

15. He invited the Committee to vote on the Bulgarian proposal to postpone voting on draft article 16 *bis* proposed by the Soviet Union and at the same time to refer it to the informal consultations group for priority study, requesting it to report to the Committee before 29 April.

The Bulgarian proposal was rejected by 29 votes to 19, with 31 abstentions.

[1] For the amendment submitted to article 16, see 23rd meeting, foot-note 14.

[2] See above, 26th meeting, para. 34.

[3] See above, 26th meeting, para 51.

[4] See above, 14th meeting, para. 26.

16. Mr. SNEGIREV (Union of Soviet Socialist Republics) withdrew draft article 16 *bis* submitted by his delegation.

17. The CHAIRMAN said that as the Netherlands and Soviet delegations had withdrawn their proposals, and if there was no objection, he would take it that the Committee wished to adopt article 16 provisionally and refer it to the Drafting Committee.

It was so decided.[5]

ARTICLE 17 (Participation in treaties not in force at the date of the succession of States)[6]

18. Mr. ARIFF (Malaysia) reminded the meeting that when his delegation had submitted its amendment to article 12, it had stressed the need to draft provisions which were as concise as possible. It therefore proposed in its amendment A/CONF.80/C.1/L.42 that paragraphs 1 and 2 of the Commission's text be combined and that the subsequent paragraphs be modified accordingly. However, it was entirely satisfied with the substance of the draft article and wished to make no changes to it in that respect.

19. Mr. KATEKA (United Republic of Tanzania) said he understood what had prompted the Malaysian delegation to propose that paragraphs 1 and 2 of the article under consideration be combined in a single provision, but felt that the wording of the proposal submitted would vitiate paragraph 1 of the Commission's text. The Malaysian proposal did not seem to make a distinction between the idea of party and that of contracting States, whereas the latter text did. Consequently, it would be difficult for the delegation of the United Republic of Tanzania to accept the amendment.

20. Mrs. OLOWO (Uganda) proposed the addition of the words "contracting State to a treaty" after the words "which is in force or" in the new paragraph 1 proposed by the Malaysian delegation, in order not to deprive paragraph 1 of the basic text of its meaning. She drew the Committee's attention to an error in the English text of article 17 in the penultimate line of paragraph 4, where the word *"contrasting"* appeared.

21. Mr. MBACKÉ (Senegal) pointed out that paragraphs 1 and 2 of article 17 dealt with the situation of a successor State in connexion with the entry into force of a treaty, and that, depending on whether a treaty was or was not in force, a new State notifying its succession became a party or a contracting State to such a treaty. According to the definitions in subparagraphs (*k*) and (*l*) of paragraph 1 of article 2 of the draft, "'contracting State' means a State which has consented to be bound by the treaty, whether or not the treaty had entered into force" and "'party' means a State which has consented to be bound by the treaty and for which the treaty is in force". The Malaysian amendment raised quite a serious problem inasmuch as, if it were adopted, a new State would need only to notify its succession in order to become party to a treaty which was not in force but which would become applicable to it.

22. Sir Francis VALLAT (Expert Consultant), drawing the Committee's attention to article 2, paragraph 1, subparagraphs (*k*) and (*l*), which defined "contracting State" and "party", said that the Commission had used those terms in article 17 in accordance with the meaning conferred on them in article 2. Paragraphs 1 and 2 of the draft article envisaged quite different situations. Paragraph 1 provided for the case of a successor State establishing "its status as a contracting State to a multilateral treaty which is not in force", and paragraph 2 provided for that of a successor State establishing "its status as a party to a multilateral treaty which enters into force ...". Although the Commission would have preferred to draft a single provision, it had felt that in the interests of clarity and simplicity the two situations should be dealt with separately.

23. Mr. MIRCEA (Romania) said that the Government of Romania had already taken a more or less unfavourable position on article 17 because it seemed unnecessary. The legal nexus which the International Law Commission considered necessary in the other articles did not exist between the territory of a successor State and a treaty in the case of article 17. Furthermore, what proof would there be that a predecessor State had signed a treaty with the intention that it should apply to territory under its administration? Should the Committee decide it was necessary to adopt provisions similar to those of article 17, a simpler formula would be preferable. If time were not running short for the Committee, the Romanian delegation would have formally proposed the following wording: "The provisions of article 16 shall apply *mutatis mutandis* to participation in treaties which are not yet in force but to which the predecessor State was a contracting State". If the Committee accepted the existing text of the draft article, it might consider how to deal with the drafting problem posed by the phrase "contracting State in respect of the territory" used in paragraphs 1 and 2, since the provision could only mean a contracting State in respect of a treaty.

24. Mr. MARESCA (Italy) said that article 17 did not directly deal with the question of the succession of States; in the cases envisaged, there was no legal nexus between the territory of the successor State and the treaty signed by the predecessor State. However, the justification for article 17 lay in considerations of a pratical nature. It raised no major difficulties for the Italian delegation, but he shared the Romanian representative's doubts about the phrase "contracting State in respect of the territory". The

[5] For resumption of the discussion of article 16, see 35th meeting, paras. 1-5.

[6] The following amendment was submitted: Malaysia, A/CONF.80/C.1/L.42 and Corr.1.

Malaysian amendment did not distinguish between the concepts "contracting State" and "party to a treaty". The Italian delegation therefore preferred the article drafted by the International Law Commission.

25. Mr. ARIFF (Malaysia) repeated that for him the shortest route was the best one and that it appeared preferable to have one rather than two paragraphs dealing with the situation of a new State establishing its status as a contracting State or as a party to a treaty. It had unfortunately been necessary to draft the Malaysian amendment hastily, and one or two words had inadvertently been omitted. There had been no intention of affecting the substance of the draft article in any way. In the second line of the amendment the words "as a contracting State" should be substituted for the words "as a party", and in the third line the words "which is not in force" for the words "which is in force".[7] With that correction the Malaysian amendment might be referred to the Drafting Committee.

26. The CHAIRMAN said that, if there was no objection, he would take it that the Committee wished to refer the Malaysian amendment (A/CONF.80/C.1/L.42), as modified, to the Drafting Committee, and provisionally to adopt article 17.

It was so decided.[8]

ARTICLE 18 (Participation in treaties signed by the predecessor State subject to ratification, acceptance or approval)[9]

27. Mr. KRISHNADASAN (Swaziland), presenting on behalf of his own delegation and the Swedish delegation amendment A/CONF.80/C.1/L.23 deleting article 18, pointed out that all the arguments which could be invoked in support of the proposal applied equally to the deletion of article 29, paragraph 3, article 32, and article 36. His delegation had already spoken in favour of deleting article 18 in the Sixth Committee of the General Assembly (See A/CONF.80/5, p. 224). In its commentary, the International Law Commission had itself recognized that the provision was not essential. Paragraph (2) of the commentary stated that "the question [...] arises whether a predecessor State's signature, still subject to ratification, acceptance or approval, creates a sufficient legal nexus between the treaty and the territory concerned on the basis of which a successor State may be entitled to participate in a multilateral treaty under the law of succession" (A/CONF.80/4, p. 61). With regard to practice, the Secretariat had commented in a memorandum of 1962 that "it is not yet clear whether the new State can inherit the legal consequences of a simple signature of a treaty which is subject to ratification" (*ibid.*), without, however, expressing a definite opinion. Moreover, as the International Court of Justice had stated on several occassions, a signature subject to ratification, acceptance or approval did not bind the State. That was also the law codified by article 14 of the Vienna Convention, although, as stated in paragraph (5) of the commentary, the International Court of Justice, in an opinion, and article 18 of the Vienna Convention, "recognize that a signature subject to ratification creates for the signatory State certain limited obligations of good faith and a certain legal nexus in relation to the treaty" (*ibid.*). He emphasized, however, that it was not possible to subscribe to such a point of view in the case of a successor State, since it was not itself a signatory State, and did not think that the proposed solution, which consisted in recognizing the option of a newly independent State to establish its consent to be bound by a treaty in virtue of its predecessor's simple signature of the treaty subject to ratification, was the most favourable both to successor States and to the effectiveness of multilateral treaties. Nor did he share the view of the International Law Commission, which, referring to the opinion of a State which had objected that the article would create inequality between the newly independent State and signatories to the treaty, because the newly independent State would not be bound by the good faith obligation incumbent on the predecessor State and other signatories, had not considered that that was, in itself, sufficient reason for omitting the article from the draft. Lastly, if, as stated in paragraph (9) of the commentary, the signature had particular significance (*ibid.*, p. 62), it was with regard to the predecessor State and not the new State. In view of the fact that the predecessor State had no obligations or rights under a treaty signed but not ratified at the time of succession, it could not transmit to the successor State any of the rights and obligations which it would have contracted by virtue of the treaty if it had ratified it. It was for those reasons that the Swazi and Swedish delegations proposed that the draft article under discussion should be deleted.

28. Mrs. THAKORE (India) said that article 18 created an unusual situation since it was not based on the practice of States or depositaries and since some members of the International Law Commission, including the Special Rapporteur, and some Governments had expressed doubts concerning its usefulness. Although fully aware of the difficulties created by the article, her delegation was not convinced of the necessity of deleting it. It did not see why the successor State should not be able to continue the process initiated by the predecessor State and enjoy the right of ratifying, accepting or approving the treaty in question on its own behalf. In the opinion of the International Court of Justice and according to article 18 of the Vienna Convention on the Law of Treaties, the signature of a treaty had a legal effect, and that justified recognition of the option of a newly independent State to establish its

[7] The correction was subsequently issued as document A/CONF.80/C.1/L.42/Corr.1.

[8] For resumption of the discussion of article 17, see 35th meeting, paras. 6-13.

[9] The following amendment was submitted: Swaziland and Sweden, A/CONF.80/C.1/L.23.

consent to be bound by a treaty in virtue of its predecessor's bare signature to the treaty subject to ratification, acceptance or approval. Consequently, the solution embodied in article 18 was the most favourable to successor States and to the effectiveness of multilateral treaties, and hence to international co-operation, while at the same time contributing to the progressive development of international law. The convention would be incomplete without such a provision. It should seek to cover all aspects of the question of succession so as to leave no room for uncertainty.

29. Furthermore, she considered the criticism that article 18 would create inequality between States unfounded and shared the opinion of the International Law Commission that it would not be appropriate to regard the successor State as bound by the obligation of good faith, contained in article 18 of the Vienna Convention on the Law of Treaties, until it had at least established its consent to be bound and become a contracting State. Clearly the provisions of article 18 of the Vienna Convention on the Law of Treaties could not be applied to a State which had not itself signed the treaty.

30. In the interests of the progressive development of international law, the effectiveness of multilateral treaties and international co-operation, and above all the newly independent States whose cause the Committee was trying to promote, the Committee should perhaps improve the text of article 18 rather than delete it.

31. Mr. YASSEEN (United Arab Emirates) said that the International Law Commission had wished to make it easy for newly independent States to participate in multilateral treaties in their own interests and in that of the international community. Draft article 18 concerned treaties signed by the predecessor State subject to ratification, acceptance or approval. Some delegations had claimed that signature subject to ratification, acceptance or approval did not express the intention of the predecessor State to be bound by the treaty and hence did not create any right which could be transferred to the successor State. But that argument was most certainly not conclusive, since it was a matter here of permitting the successor State merely to succeed to the option which the predecessor State had already possessed of ratifying, accepting or approving the treaty.

32. The technical difficulties invoked in favour of deleting the article were not convincing. If a newly independent State could succeed to treaties already in force with regard to the predecessor State, why could it not ratify treaties already signed by it? Why prevent it from continuing the process begun by the predecessor State? It was important to ensure the continuity of an international process, in the interests of the successor State itself, since no one obliged it to ratify the treaties signed by its predecessor.

33. The solution proposed in draft article 18 did not reflect positive international law; nevertheless, it was unquestionably desirable to accept it as progressive development of international law.

34. Mr. TREVIRANUS (Federal Republic of Germany) was in favour of deleting article 18 which, for lack of precedent, constituted an undesirable innovation. The bare fact of signature was not sufficient to justify the consequences which would arise from such a provision, which had no place in the draft convention.

35. Mr. MARESCA (Italy) said that, although all amendments submitted to the Conference merited respect and interest, proposals like those of Swaziland and Sweden were, to say the least disquieting. The proposal before the Committee to delete four articles of the draft convention was a radical measure which should only be resorted to in the case of necessity. Otherwise it was preferable to turn to less drastic remedies, in other words drafting changes where necessary.

36. Article 18 called for the same remarks as article 17. It did not refer to the succession of States in the strict sense, since treaties which were not ratified or not in force did not create the legal nexus which was the basis of succession as such. At the same time multilateral treaties were of general benefit both to the predecessor State and to the successor State, and it would be inappropriate to prevent the successor State from continuing a process already begun, both in its own interest and in that of other States parties to the treaties. His delegation was therefore not in favour of deleting article 18.

37. Mr. RANJEVA (Madagascar) said he could see no need for the article 18 proposed by the International Law Commission. A comparison between it and article 18 of the Vienna Convention on the Law of Treaties showed that, quite apart from the difficulties mentioned by other delegations, recognition of the successor State's right to become party to treaties necessarily implied the creation of an obligation for that State, that of being bound *ab initio* by those treaties. In practice such a provision was liable to give rise to problems if, in immediately ratifying a treaty on the grounds of succession, a successor State acted—perhaps quite innocently and unintentionally—in a manner incompatible with the object and purpose of the treaty in question. Could article 18 of the Vienna Convention on the Law of Treaties then be invoked to oppose such action? Article 18 proposed by the International Law Commission introduced confusion, infringed the "clean slate" principle and was likely to saddle the successor State with additional problems. It was therefore not desirable to include the article in the draft convention.

38. Mr. GOULART DE AVILA (Portugal) said that his delegation supported the proposal by Swaziland and Sweden to delete article 18. Articles 16 and 17

of the draft convention dealt with the accession of newly independent States to treaties to which the predecessor State was a party or a contracting State, in other words, with cases in which there existed a genuine legal nexus constituted by the rights and obligations of the predecessor State in respect of a given territory. It was quite reasonable that succession of States should apply in the case of treaties which were complete, in other words, treaties to which a State had already expressed its consent. Article 18, however, related to succession of States in respect of incomplete treaties, in other words, of treaties which had been signed subject to ratification, acceptance or approval, so that the most important act in their creation was still lacking. The successor State would thus be succeeding merely to an intention whose contents were not clearly known, since it was not certain that the predecessor State would in fact have accepted or ratified the treaty. Experience showed that States signed many treaties which were never ratified, accepted or approved.

39. As for the obligations of good faith created by the signature of a treaty for the signatory State, mentioned in paragraph (5) of the International Law Commission's commentary, in his delegation's view that was merely a general duty which should always be observed between members of the international community, both in their treaty relations and in simple matters of international courtesy to which article 18 could in no circumstances apply.

40. The deletion of draft article 18 would not, in practice, diminish the efficacy of multilateral treaties, since newly independent States would almost always have the possibility of acceding to those treaties, and the cases where that possibility was not available would, in the main, be covered by paragraphs 3 and 4 of draft article 18, which would prevent a newly independent State from ratifying, approving or accepting a given treaty. Furthermore, from a practical point of view, there was no great difference between the deposit of an instrument of ratification and that of an instrument of acceptance.

41. The Portuguese delegation therefore considered that no possibility should be given to a successor State to take advantage of acts of a predecessor State that had not established any juridical links with the territory for whose international relations the new State was assuming responsibility.

42. Mr. BRECKENRIDGE (Sri Lanka) thought that draft article 18 contributed to the progressive development of international law. Inasmuch as the proposal by Swaziland and Sweden called for the deletion of other articles of the draft convention as well, it would be preferable if the Commission waited until it had examined the other three articles concerned before taking a decision.

43. The CHAIRMAN said that it would be for the co-sponsors of the draft to explain at a later stage what connexion, if any, there was between the four proposals contained in that amendment.

44. Mr. STEEL (United Kingdom) believed that the proposal by Swaziland and Sweden was based primarily on considerations of convenience. Article 18 did indeed give rise to a certain number of difficulties. In the first place, as the International Law Commission had recognized, the article did not reflect current State practice. It therefore represented an exercise in progressive development of international law rather than in codification, and there was no sufficiently convincing reason to justify a departure from existing State practice.

45. Other difficulties arose in connexion with the impact of article 18 of the Vienna Convention on the Law of Treaties upon the proposed provision. Some delegations thought, like the International Law Commission, that the obligations of good faith which formed the subject of article 18 of the Vienna Convention on the Law of Treaties would not apply to a successor State which invoked article 18 of the draft convention. If they were right, inequality would thus be created between the signatories of the treaty and the successor State. Other delegations thought, on the contrary, that the International Law Commission's view was mistaken and that the successor State would, in fact, be bound under article 18 of the Vienna Convention. That too, would produce inconveniences and might not be welcome to some delegations.

46. Lastly, the draft article contained certain elements which would be difficult to translate into practice. He had in mind, in particular, the words "and by the signature intended that the treaty should extend to the territory to which the succession of States relates" in paragraph 1 of the draft. In United Kingdom practice, no firm intention was formed at the time of signature concerning the territory to which a treaty would eventually extend. It was usual to consult the government of each territory with a view to ascertaining its wishes in that respect before ratifying the treaty. That criterion was therefore devoid of practical meaning and based on a supposition which was not in accordance with reality.

47. There were thus three types of difficulty which stood in the way of applying the provisions of draft article 18. Since, moreover, those provisions were not more favourable to the successor State than the normal accession procedure, the United Kingdom delegation favoured the proposal by Swaziland and Sweden to delete the article.

48. Mr. FERNANDINI (Peru) thought that article 10 of the draft convention had practical advantages and that the text proposed by the International Law Commission, which gave the successor State the possibility of benefiting from the signature of the predecessor State in becoming party to multilateral treaties, should be retained. It was unusual for a

draft convention such as the one before the Committee to give advantages to the successor State. The Peruvian delegation was therefore in favour of keeping article 18 in its present form, paragraphs 2, 3 and 4 of the article being both clear and necessary. The argument that the article infringed the "clean slate" principle was unacceptable, since it gave the successor State only the possibility, not the obligation, to participate in treaties signed by the predecessor State.

49. The proposal to delete the article by Swaziland and Sweden was too radical. It should be possible to resolve the difficulties to which the article gave rise simply by making some drafting changes.

50. Mr. MIRCEA (Romania) favoured the deletion of article 18 proposed by the International Law Commission, which had a deeper political and legal meaning than might appear at first sight. In fact, no national constitution provided for the possibility of ratifying the signature of another State. On the external relations level, subparagraphs (*c*) and (*d*) of paragraph 1 of article 14 of the Vienna Convention on the Law of Treaties provided that the consent of a State to be bound by a treaty could be expressed by ratification, but only "when the representative of the State has signed the treaty subject to ratification" or "when the intention of the State to sign the treaty subject to ratification appears from the full powers of its representative or was expressed during the negotiation".[10] It was impossible to imagine a situation in which those conditions would be fulfilled, and newly independent States had nothing to gain, in practical terms, from the provisions of draft article 18 because they could always benefit from the procedure of accession to multilateral treaties. Lastly, as the representative of the United Kingdom had just pointed out, it was very difficult for the depositary State to guess the intention of the predecessor State at the time of signing the treaty. For all those reasons, the article should be deleted without hesitation.

51. Mr. HELLNERS (Sweden), replying to the question put by the representative of Sri Lanka, explained that the sponsors of the amendment relating to article 18 had not intended that the Committee should defer its decision on that proposal but, rather, that by expressing an opinion on article 18, it should adopt a position of principle. The Commission should therefore take a decision on article 18 forthwith.

52. The arguments advanced by certain delegations in support of retaining article 18 in the draft convention were no more convincing than the commentary by the International Law Commission. As the representative of Swaziland had remarked, the International Law Commission had, in a sense, actually opened the way to the proposal by Swaziland and Sweden by underlining the shortcomings of article 18 and articles 29, 32 and 36 which, apparently, had been inserted in the draft convention only for reasons of "logic". It could well be argued, however, that there existed several different kinds of logic. Furthermore, practical considerations sometimes had to outweigh those of logic, and it hardly seemed desirable to include in the draft convention a provision that would be so difficult to apply. Some delegations had already pointed out that the article related only to the question of succession to an intention whose content was quite uncertain. The draft amendment proposed by Swaziland and Sweden was therefore justified and did not in any way represent an infringement of the principles underlying the draft convention.

53. The CHAIRMAN suggested that the proposal by Swaziland and Sweden should be put to the vote. In reply to a question by the representative of France, he explained that the Committee could then take a decision on article 18 of the draft convention. In reply to a question by the representative of Algeria, he said that the vote would concern only the first of the four proposals in the amendment by Swaziland and Sweden, the one relating to article 18.

54. Mr. AMLIE (Norway), speaking on a point of order, said that the Committee should indeed vote first on the amendment and then on the article itself. Such a procedure would not give rise to difficulties unless the votes were equally divided in both cases.

55. Mr. ROSENSTOCK (United States of America), speaking on a point of order, said that his delegation had been prepared to vote on the whole of the amendment by Swaziland and Sweden, thus solving four problems at one stroke. If, however, the vote concerned only article 18, it would be preferable to vote on the article itself first and then on the amendment relative to it.

56. The CHAIRMAN confirmed that the proposed procedure would not give rise to difficulties unless the votes were equally divided in both cases. Unless the sponsors of the draft withdrew their proposal, the Commission had to vote on the draft amendment first. He therefore put to the vote the amendment by Swaziland and Sweden (A/CONF.80/C.1/L.23).

The amendment by Swaziland and Sweden was rejected by 36 votes to 25, with 17 abstentions.

57. The CHAIRMAN invited the members of the Committee of the Whole to vote on article 18 of the draft convention.

At the request of the representative of Greece, a separate vote was taken on paragraph 2 of article 18 as drafted by the International Law Commission.

Paragraph 2 of article 18 was adopted by 43 votes to 3, with 29 abstentions.

58. The CHAIRMAN said that if there were no objections he would take it that the Committee of the

[10] 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. 291.

Whole wished provisionally to adopt article 18 in its existing form and to refer it to the Drafting Committee.

It was so decided.[11]

ARTICLE 19 (Reservations)[12]

59. Mr. HERNDL (Austria), submitting his delegation's amendment to article 19 (A/CONF.80/C.1/L.25), stressed the need to seek practical solutions to legal problems, but without completely ignoring the concepts of logic. That was the spirit in which his delegation had submitted its amendment. In its commentary on the article, the International Law Commission had expatiated on the basic contradiction between the creation of treaty obligations as a result of a succession of States and the principle under which the State which inherited a treaty should be able to formulate new reservations. The Austrian amendment was intended to avoid the difficulties which might arise from the application of article 19, paragraph 2. It also had the advantage of simplifying the problem and facilitating the task of depositaries of multilateral treaties.

60. In its oral and written observations, the Austrian Government had always spoken against the capacity of formulating reservations as provided for in paragraph 2 of the article under discussion. The idea set out in that provision seemed to be based on an erroneous concept of succession. When a new State succeeded to treaties, they were all applicable to it under exactly the same conditions as to its predecessor, and it therefore succeeded to the reservations made by the predecessor State. It could withdraw those reservations, since that had also been the right of its predecessor, but it could not formulate new reservations, because its predecessor had not had that capacity. If a newly independent State wished to make reservations, it should use the ratification or accession procedure provided for becoming a party to a multilateral treaty. That view was shared by other governments, especially those of Argentina and Sweden.

61. There was, of course, a body of practice which might justify article 19, paragraph 2, but the few examples provided rather brought out the uncertainty of that practice. In most of those cases, the successor States had expressly declared that they maintained the reservations formulated by their predecessors. In the rare cases where new reservations had been made by the successor State, the depositary of the treaty had at once been faced with difficulties, since he had been obliged to apply the general law of treaties, in the absence of specific legal rules.

62. In paragraph (10) of its commentary to article 19 (A/CONF.80/4, p. 65), the International Law Commission referred to Zambia's notification of its succession to the Convention relating to the Status of Refugees.[13] In depositing its notification, Zambia had made no allusion to the reservations made by its predecessor, but had formulated its own reservations, in accordance with a provision of the Convention in question. The Secretary-General had considered that the Government of Zambia, on declaring formally its succession to the Convention, had decided to withdraw the old reservations and in future to remain bound by the Convention in the light of the new reservations, "the latter reservations to become effective on the day when they would have done so, pursuant to the pertinent provisions of the Convention, had they been formulated on accession" (*ibid.*). Those reservations were therefore to take effect on the 90th day after the deposit of the instrument of succession by the Government of Zambia. In that connexion, he pointed out that article 19, paragraph 2, if adopted, would create a legal void, since, under article 22 of the draft, a newly independent State which made a notification of succession was considered a party to the treaty from the date of succession. Under article 19, however, the successor State and the other parties to the treaty would not be bound until 90 days after the deposit of the instrument of succession. It was to fill that gap that his delegation had submitted its amendment.

63. The International Law Commission had, of course, not ignored the problem. That was why it had referred in paragraph 3 of the article to the relevant provisions of the Vienna Convention on the Law of Treaties. That was the only example in the draft of a reference to another legal instrument, and indicated that the question concerned the general law of treaties rather than the law of succession. That was why his delegation proposed to delete paragraphs 2 and 3 of the article.

64. He stressed that his delegation's amendment in no way prejudiced the sovereign right of newly independent States to formulate reservations when they acceded to multilateral treaties in accordance with the final clauses of those instruments.

Mr. Riad (Egypt) took the chair.

65. Mr. TREVIRANUS (Federal Republic of Germany), introducing his delegation's amendment to article 19 (A/CONF.80/C.1/L.36), pointed out that the proposal in no way altered the substance of the article and was in no way prejudicial to newly independent States. Its only purpose was to shed light on the legal nature of succession of States as it appeared from the article itself and from paragraph (2) of the International Law Commission's commentary to it. The option given to a newly independent State was based on the presumption that it continued to be

[11] For resumption of the discussion of article 18, see 35th meeting, paras. 14-15.

[12] The following amendments were submitted: Austria, A/CONF.80/C.1/L.25; Federal Republic of Germany, A/CONF.80/L.36.

[13] See the text of the Convention in United Nations, *Treaty Series*, vol. 189, p. 150.

bound by the treaty under the same conditions as the predecessor State, that it was bound in accordance with article 16, or that it continued to be bound *de jure* in accordance with part IV of the draft. In his view, the legal position was the same in all the cases: the newly independent State continued to take the place of the predecessor State, but could withdraw reservations and make new ones, in accordance with article 19, paragraph 2.

66. In the "additional points" made by the Rapporteur of the International Law Association it was stated *inter alia* that "A successor State can continue only the legal situation brought about as a result of its predecessor's signature or ratification. Since a reservation delimits that legal situation it follows that the treaty is succeeded to (if at all) with the reservation".[14] That point was in conformity with article 19. According to another "additional point", "A new State which does not wish to continue the reservations of its predecessor is free to withdraw these, or delimit them so as to enter more fully into the undertakings of the convention"[15] Article 19, paragraph 2, went further in providing that the newly independent State could formulate new reservations. Yet another "additional point" provided that "Since a new State takes over the legal situation of its predecessor, it takes over the consequences of its predecessor's objections to an incompatible reservation made to a multilateral convention by another party".[16] That provision had not been accepted by the International Law Commission. The last "additional point" provided that "A new State also takes over the effects of any interpretative declaration of its predecessor until it makes an alternative declaration, which it can do in its declaration of continuity".[17] In his view, those assertions, to which the International Law Commission seemed to have subscribed, were correct: a different concept would nullify the distinction between succession and accession.

67. The position taken by the International Law Commission could clearly be deduced from article 19, paragraph 1, article 20, paragraphs 1 and 2, and articles 23, 29, 30 and 33, and even articles 18 and 32. The only exception appeared in the wording of article 16, repeated in articles 17 and 31, under which the newly independent State had the faculty to "establish its status as a party to any multilateral treaty" by declaring itself bound by the treaty, and which might be regarded as a novation. On the other hand, it should be considered that succession implied continuation of the consent to be bound given by the predecessor State, or its reaffirmation in the case of articles 17 and 18. The successor State inherited the legal status of the predecessor State. Under article 16, it had a wide choice, since it was not obliged to declare itself bound by the treaty, but could accede to the instrument and create its own treaty relations. Once it chose to be bound by the treaty, it was presumed to continue the instrument with the declarations made by the predecessor State. That was the tenor of his delegation's amendment, which was in conformity with articles 19 and 20.

68. He asked delegations commenting on the amendment to make it clear whether they questioned the principle whereby the newly independent State took the place of the predecessor State.

69. He wished to reply in advance to objections which might be raised to his delegation's amendment. The clarifications it contained were useful, if not necessary, in view of the wording of article 16 and of the fact that the draft did not mention objections which were sometimes made to reservations. The amendment could have been submitted at some other stage and could well appear elsewhere in the draft, possibly even among the general provisions in part I. The wording of the amendment could no doubt be improved, and that could be done by the Drafting Committee.

70. Mr. STUTTERHEIM (Netherlands) asked the Expert Consultant whether paragraph 1 of article 19 also applied to the acceptance of and objections to reservations. The amendment of the Federal Republic of Germany seemed to cover those concepts and, in his opinion, that should be so.

71. Although he understood the reasoning behind the Austrian amendment, his delegation was in favour of retaining paragraphs 2 and 3 of article 19 for practical reasons, so that the newly independent State should not be obliged to conform with more complicated ratification procedures than those provided for by the International Law Commission.

72. Mr. DADZIE (Ghana) said he wished to know whether the article under discussion and the amendment of the Federal Republic of Germany applied only to newly independent States or whether they concerned all cases of succession of States.

73. Mr. SAHRAOUI (Algeria) said that his delegation was opposed to the amendment of the Federal Republic of Germany because it clearly affected the principle of self-determination, which should be placed in its real context, that of relationships involving domination. Once it became independent, a new State was not free to decide on its future, since social, political and economic disadvantages debarred it from free self-determination with regard to treaties, and especially with regard to reservations thereto. In his delegation's opinion, the "participation" of a newly independent State in a treaty was, by definition, a "tied" participation. The additional phrase proposed in the amendment of the Federal Republic of Germany seemed to bring the very principle of

[14] See *Yearbook of the International Law Commission, 1969*, vol. II, p. 49, document A/CN.4/214 and Add.1 and 2, section I, D, para. 17, point 10.

[15] *Ibid.*, point 11.

[16] *Ibid.*, point 13.

[17] *Ibid.*, point 14.

self-determination into question. His delegation could not accept the Austrian amendment for that reason.

74. Mrs. SZAFARZ (Poland) said that, in the view of her delegation, it was quite natural that newly independent States should have made such widespread use of reservations, which had enabled them to accept existing multilateral treaties, while at the same time preserving their specific interests. The practice of newly independent States in that regard was extremely diverse. There were cases in which such States had repeated or expressly confirmed all reservations of the predecessor State; had confirmed certain reservations, while expressly withdrawing others; had formulated additional reservations while at the same time corfirming the reservations of the predecessor State; had formulated new reservations only, while making no allusion to the reservations of the predecessor State; had formulated reservations notwithstanding the fact that the treaties in question had been extended to their respective territories without any reservation; or had made no allusion to the reservations, despite the fact that the treaties had been extended to their respective territories with those reservations. In addition, on one particular occasion, a newly independent State had expressly withdrawn the reservations of its predecessor.

75. Her delegation knew of no case in which that practice had met with opposition from the other States parties to a multilateral treaty; it might still, however, give rise to two important questions: Was the formulation of new reservations compatible with the notion of "succession"? And what was the proper presumption in the event that the notification of succession made no reference to reservations of the predecessor State?

76. On the basis of the "clean slate" principle, there were two solutions that could be adopted in that regard. First, it might be considered that the very concept of succession required the newly independent State to step into the shoes of its predecessor upon notifying succession in respect of a treaty; consequently, the formulation of new reservations would be inadmissible and, in the event that the notification of succession was silent with regard to the reservations of a predecessor State, they must be considered as devolving upon the newly independent State. Secondly, it might be considered that a notification of succession was equivalent to an instrument of accession; in that event, new reservations could be formulated by newly independent States and any reservations of the predecessor State not confirmed in the notification of succession would be considered as not being maintained by them.

77. Her delegation viewed the rules laid down in draft article 19 as an attempt to combine those two general solutions. When providing for the presumed continuance of the reservations of the predecessor State, the International Law Commission had relied on the requirements of the concept of succession itself; when providing for the formulation of new resvations, her delegation felt obliged to reserve its position on the Austrian amendment to article 19. It quirements. Thus, the Commission had provided for the possibility that a notification of succession could be treated, at least to some extent, as the independent act of will of a State expressing its consent to be bound by a treaty. Believing, as it did, that it was better to be realistic than puristic, her delegation was inclined to accept the text of article 19 as drafted by the International Law Commission.

78. In view of State practice in the matter of reservations, her delegation felt obliged to reserve its position on the Austrian amendment to article 19. It considered that the amendment submitted by the Federal Republic of Germany, which attempted to treat in a comprehensive way all possible statements and instruments of the predecessor State relating to a multilateral treaty, went too far and was not sufficiently clear. That amendment raised the questions whether the expression "any statement or instrument made in respect to the treaty in connexion with its conclusion" also comprised preparatory work, and whether all the statements or instruments of the predecessor State could properly be said to be relevant in respect of dependent territories and, thereafter, in respect of newly independent States. Moreover, the statements or instruments referred to in the amendment were hardly relevant in cases in which a multilateral treaty had simply been extended to the dependent territory concerned many years after the metropolitan Power itself had consented to be bound by that treaty. In view of those doubts, her delegation found if difficult to accept the amendment of the Federal Republic of Germany.

79. Mr. KATEKA (United Republic of Tanzania) said that his delegation would have preferred the presumption made in article 19, paragraph 1 to be reserved, so that a successor State, when accepting obligations under a treaty, would be considered to start with a "clean slate" in regard to reservations unless it expressed a contrary intention. While the acceptance of a treaty concluded by a predecessor State might be beneficial to a successor State, it did not necessarily follow that the acceptance of the reservations of the predecessor State was also in the interests of the successor State, since those reservations might have been greatly to the advantage of the predecessor State; many newly independent States lacked the necessary staff to review treaty reservations carefully and identify those which were not to their advantage. Since, however, article 22 of the Vienna Convention on the Law of Treaties provided that a reservation could be withdrawn at any time, he could reluctantly consider subscribing to the International Law Commission's text.

80. He reserved the right to comment at a later stage on the amendments submitted by Austria and the Federal Republic of Germany.

81. Sir Francis Vallat (Expert Consultant) observed that the Netherlands representative had asked whether the term "reservation" as used in draft article 19 also comprised objections to reservations and objections to objections, as provided for in articles 20 and 21 of the Vienna Convention on the Law of Treaties. What the International Law Commission had done in draft article 19 was to provide for the case of a reservation and to leave the situation regarding other aspects to be governed by the rules of international law, whether of a conventional or a customary character.

82. Attention should be drawn to the need for the provision embodied in draft article 19, which arose from the terms of the Vienna Convention. Article 19 of that Convention provided that, other than in certain specified circumstances, a State could formulate a reservation "when signing, ratifying, accepting, approving or acceding to a treaty".[18] That formulation did not include a notification of succession. The draft article under consideration made provision for newly independent States to establish their status as parties to a multilateral treaty by a notification of succession. Consequently, if the notification was, for that purpose, to be treated as similar to a ratification, acceptance or approval, the provisions of draft article 19 regarding reservations were necessary.

83. On the other hand, it could be seen from paragraphs (13) to (16) of the commentary to article 19 (A/CONF.80/4, pp. 65-66) that the Commission had considered the question of the effect of objections to reservations with a certain amount of care and that, partly for practical and partly for theoretical reasons, it had come to the conclusion that it was not necessary to deal expressly with the question of objections in draft article 19. That was partly because an objection, unless it was coupled with a notification that a treaty was not regarded as being in force between the objecting State and the reserving State, would take effect subject to the reservations formulated, but if there were such a notification, there would be no treaty relationship between the predecessor State and the reserving State to which the successor State could in that event succeed. The International Law Commission had concluded, in paragraph (15) of its commentary, that it would be better, in accordance with its fundamental method of approach to the draft articles, to leave the questions of acceptances of, or objections to, reservations to be regulated by the ordinary rules applicable to such matters, on the assumption that unless it was necessary to make some particular provision in the context of the succession of States, the newly independent State would "step into the shoes of the predecessor State" (*ibid.*, p. 66).

84. The representative of Ghana had asked whether article 19 was designed to apply only to newly independent States or whether its provisions were also available to any successor State and, if so, whether it would not be preferable to draft the article in more general terms. The answer was that article 19 related solely to newly independent States, as he believed was clear from the fact that that article appeared, not in part I under the general provisions of the draft convention, but in part III. In order not to complicate the Committee's deliberations, he thought it would be better to defer consideration of the question whether the provisions of article 19 should be made available to any successor State until the Committee took up part IV of the draft.

85. Mr. RANJEVA (Madagascar) said that, despite the explanations just given by the Expert Consultant, his delegation still had some doubts about the problem of objections to reservations. It believed that serious practical difficulties might arise in connexion with that problem, because it was not at all certain that the States parties to a multilateral treaty would adopt the same attitude towards the successor State as they had adopted towards the predecessor State. It was therefore regrettable that the International Law Commission had not included an explicit provision relating to objections to reservations in the text of draft article 19.

86. The Austrian amendment ran counter to the "clean slate" principle accepted by the Committee and failed to take account of the distinction made in draft article 19 between the successor State's right to maintain reservations formulated by the predecessor State and its right to formulate new reservations to a treaty. Hence he could not support the Austrian amendment.

87. He also had some difficulties with the amendment submitted by the Federal Republic of Germany, the wording of which was much too broad in scope, as the representative of Poland had said. In addition, he did not see why the Federal Republic of Germany had thought it necessary to create a special régime for reservations formulated by a successor State. Although he accepted the idea that there should be some continuity in reservations to treaties he could not agree that statements or instruments made with respect to a treaty by a predecessor State should be considered as remaining effective for a newly independent State.

88. His delegation therefore supported the Commission's text of draft article 19, which took account of the fact that a successor State could withdraw a reservation at any time and gave expression to the principle of the right of every newly independent State to self-determination.

89. Mr. SCOTLAND (Guyana), referring to the amendment submitted by Austria, said that his delegation did not agree with the Austrian delegation's view that, when a succession of States occurred, the newly independent State took on all the reservations

[18] *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. 291.

to a treaty formulated by the predecessor State. Bearing in mind that reservations to a treaty could be withdrawn at any time without the consent of any other State party, a debate on the question whether a treaty and the reservations made thereto formed one whole or were to be considered as separate but related documents could go on interminably and yet no firm conclusion would be reached. The Austrian amendment denied the newly independent State the right to formulate a reservation which related to the same subject matter as the reservation formulated by the predecessor State; that was a negation of the principle of self-determination, which found expression in the act of succession by the newly independent State.

90. It had been an understatement for the representative of the Federal Republic of Germany to say that the wording of his delegation's amendment was very strong. That amendment was designed to make a statement by the predecessor State with respect to the treaty in question binding on the successor State, even though the successor State would have to confirm that statement when it expressed its consent to be bound by the treaty. His delegation could not support the amendment submitted by the Federal Republic of Germany.

91. He would like the delegations of Austria and the Federal Republic of Germany to explain what the position would be if the maintenance of a particular reservation in the form in which it had been cast by the predecessor State was incompatible with the successor State's intentions, even though that State might wish to become a party to the treaty in question through an act of succession, rather than through an act of accession or ratification.

92. Although his delegation agreed with the representative of the United Republic of Tanzania that the International Law Commission's text of article 19, paragraph 1, might have been drafted in a different way, it was of the opinion that, as it stood, that provision represented the minimum possible derogation from the "clean slate" principle, which was the cornerstone of the draft articles.

93. Mr. MARESCA (Italy) said that, although reservations weakened international conventions and treaties, they were a necessary evil. Of course, no newly independent State was under any obligation to become a party to any of the predecessor State's multilateral treaties or to assume any of the reservations to those treaties formulated by the predecessor State. If the newly independent State remained silent, the legal presumption was that it maintained those reservations, whereas, if it expressed a contrary intention or formulated a reservation which related to the same subject-matter as the predecessor State's reservation, as stated in a very balanced way in draft article 19, paragrpah 1, it would not be considered as maintaining those reservations. His delegation fully supported the International Law Commission's text of draft article 19, which took account of all the possibilities regarding the problem of reservations to treaties.

94. In the amendment submitted by Austria, the proposal to delete the words "or formulates a reservation which relates to the same subject matter as that reservation", at the end of paragraph 1, was logical. Indeed, those words were unnecessary since paragraph 1 also stated that the newly independent State would be considered as maintaining any reservation to a treaty unless it expressed a contrary intention. His delegation could not, however, support the Austrian proposal to delete paragraphs 2 and 3 of draft article 19, because it was of the opinion that, from the practical point of view, repetition served a definite purpose in legal texts.

95. His delegation had some difficulty in supporting the amendment submitted by the Federal Republic of Germany, because of the very strong and inflexible wording of the last part of the proposed new paragraph 1, which probably did not reflect the real intentions of the sponsor.

The meeting rose at 8.05 p.m.

28th MEETING

Tuesday, 26 April 1977, at 11 a.m.

Chairman: Mr. RIAD (Egypt)

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*)

ARTICLE 19 (Reservations)[1] (*continued*)

1. Mr. KRISHNADASAN (Swaziland) said that draft article 19 reflected a pragmatic approach to the whole question of reservations and showed due regard for the normal practice of newly independent States.

2. His delegation would have difficulty in accepting the amendment submitted by the Federal Republic of Germany (A/CONF.80/C.1/L.36), in particular, the provision in the proposed new paragraph 1 that "any statement or instrument made in respect to the treaty in connexion with its conclusion or signature by the

[1] For the amendments submitted to article 19, see 27th meeting, foot-note 12.

predecessor State, shall remain effective for the newly independent State". Instruments of the type referred to were, of course, made in treaty practice; in his delegation's view, however, they could not always be considered binding, especially in relation to the terms of a succession of States.

3. With regard to the Austrian amendment (A/CONF.80/C.1/L.25), his delegation saw no real need to delete paragraphs 2 and 3 of article 19, though it had no strong views on the matter. It would have difficulty, however, in agreeing to the proposed deletion from paragrpah 1. Reservations of the type made by Zambia, and referred to in paragraph (10) of the International Law Commission's commentary (A/CONF.80/4, p. 65), were a striking example of the practice in making reservations, which the International Law Commission had borne in mind when drafting article 19.

4. His delegation endorsed the International Law Commission's approach in regarding specific forms of accession as being of greater help to newly independent States than succession as such. It did not think that the International Law Commission had failed to conform to the norms of international law; but it believed that newly independent States should, wherever possible, create new norms themselves.

5. Mr. NATHAN (Israel) thought that adoption of the Austrian amendment could lead to difficulties in implementing the future convention, since the amendment itself was based on legal premises which might well be incompatible with some of the basic concepts on which the draft convention was based.

6. The procedure outlined in draft article 19 was clear and convenient; it allowed a newly independent State to formulate new reservations when making a notification of succession, and provided for participation when that would not be possible by any other means than succession.

7. The legal basis of the Austrian amendment was apparently that a successor State would "step into the shoes" of the predecessor State. In his delegation's view, article 19 should be construed in the light of the provisions of article 16 and of the definition of succession of States in article 2, paragraph 1, subparagraph (*b*). It could be seen, from paragraph (3) of the International Law Commission's commentary to article 2 (*ibid.*, p. 17), that a succession of States was not a legal inheritance or a transmission of rights and obligations; a newly independent State, on exercising its right of option under article 16, would simply have the right of option to establish itself as a separate party to the treaty in virtue of the legal nexus established by its predecessor. Its right was to notify its own consent to be considered as a separate party to the treaty; that was not a right to step into the predecessor's shoes. The significance of article 19 was that a newly independent State should be "considered" as maintaining its succession to the treaty. In other words, notification of succession was an independent act of the successor State's own volition.

8. If the idea underlying the Austrian amendment was taken to its logical conclusion, the provision in article 20, which gave a new State the option to bring only part of a treaty into operation or to choose between differing provisions, would have to be deleted, since the draft articles allowed a new State the same right of choice, in the context of article 20 as in that of article 19.

9. His delegation could agree with the principles embodied in the amendment submitted by the Federal Republic of Germany, but the words "any statement or instrument", in the proposed new paragraph 1, should be clarified, so as to avoid conflicting interpretations.

10. The method of drafting by reference, used by the International Law Commission in article 19 and referred to in paragraph (21) of its commentary to article 19 (*ibid.*, p. 67), was normal in municipal law, but unusual in international law. The draft convention was not meant to be subsidiary to the Vienna Convention on the Law of Treaties; indeed, the International Law Commission had derogated in some way from the Vienna Convention on various occassions. It had not adopted the method of reference elsewhere; in article 2, for example, it had reproduced verbatim the definitions of terms contained in the Vienna Convention.

11. His delegation hoped that the Drafting Committee would give careful attention to those matters when considering article 19.

12. Mr. MIRCEA (Romania) said that his delegation's position of principle in regard to article 19 was that the article was an essentially practical one, intended to assist the participation of newly independent States in multilateral treaties altready in existence which related to their territories. The presumption seemed to be that the successor State would maintain its predecessor's reservations; but his delegation did not interpret that as an automatic succession according to the principle of succession of States. In addition to the reason given by the International Law Commission, his delegation thought there were two further considerations; first, that a newly independent State, simply by remaining silent, could have an obligation imposed on it; secondly, that if the maintenance of reservations was not presumed, there was a risk of going against a State's real intention.

13. In his delegation's view, the Committee should reason differently. In adopting the procedure for simplifying notification of succession, all were agreed that a succession was an independent act on the part of a successor State. That being so, his delegation thought the reverse presumption would be better,

since there was a stronger case for it. In the first place, the very nature of a reservation made the application of a treaty somewhat restricted, so that a restricted interpretation was called for. Secondly, automatic application of the general rule concerning all objections would give rise to practical difficulties, although the intention was to enable newly independent States to become parties to treaties without undue delay. It was left open to all the other parties to make objections with regard to the newly independent State. It was in that light that his delegation viewed the purpose of the Austrian amendment. Perhaps if the presumption were reversed, the last part of the first paragraph would be deprived of meaning.

14. In paragraph 3 of article 19, the International Law Commission had for the first time departed from the drafting practice it had used elsewhere. In his delegation's view, the cross-reference to the Vienna Convention on the Law of Treaties was not simply a drafting convenience, but entailed the application of all the rules in that Convention concerning reservations and objections to reservations.

15. Mr. NAKAGAWA (Japan) said his delegation had some doubts about the drafting of article 19, believing that it would have been better if based on the "contract-in" rather than the "contract-out" system, since automatic transmission of a reservation from a predecessor to a successor State was not in accordance with the "clean slate" principle. However, his delegation could go along with the International Law Commission's text.

16. It did so on the understanding that when a successor State succeeded to a reservation made by a predecessor State it did "step into the shoes" of that State; hence a State party which had objected to the original reservation which had been made by the predecessor State did not need to repeat the objection with regard to the successor State.

17. Mrs. THAKORE (India) said that the problem of reservations related to all types of succession, not merely to newly independent States. In her delegation's view, there was a gap which should be filled by adding an article on reservations to part IV of the draft, which dealt with the uniting and separation of States.

18. Her delegation could support draft article 19, although it saw merit in the suggestion that the presumption in paragraph 1 should be reversed.

19. There seemed to be nothing compelling in the legal reasoning behind the Austrian amendment, which sought to deny the right not only to formulate a new reservation, but also a reservation relating to the same subject matter as the one made by the predecessor State, and thus ran counter to the principle of self-determinaition. For the reasons stated in paragraph (20) of the commentary, her delegaion thought that paragraph 2 of draft article 19 was necessary. Paragraph 3, which would ensure that any reservation made by a newly independent State in exercise of the right conferred by paragraph 2 would be subject to the relevant rules of the Vienna Convention, was closely connected with paragraph 2 and hence should also be retained in order to avoid any ambiguity.

20. The amendment submitted by the Federal Republic of Germany sought to cover all possible cases and bring within the scope of article 19, paragraph 1 "any statement or instrument made in respect to the treaty in connexion with its conclusion or signature by the predecessor State". Her delegation thought that that provision was too wide in scope, and preferred the International Law Commission's text of paragraph 1.

21. Mr. TREVIRANUS (Federal Republic of Germany) formally withdrew the amendment to article 19 contained in document A/CONF.80/C.1/L.36.

22. Replying to a question asked by the Polish representative at the 27th meeting,[2] he said that his delegation had not intended the text of the proposed new paragraph 1 of article 19 to encompass, by the words "any statement or instrument", everything said in negotiations leading to a treaty, but only relevant legal documents and statements of the type referred to in article 31, paragraph 2 of the Vienna Convention on the Law of Treaties. Indeed, the language of the amendment had been modelled on the Vienna Convention.

23. The question raised by the representative of Ghana had been subsequently answered by the Expert Consultant.[3] The point was that the problem arising in connexion with article 19, would also arise in part IV of the draft articles, the legal nature of the succession being the same. Perhaps discussion on the subject would be resumed when the Committee came to consider part IV.

24. Neither his delegation's amendment nor the International Law Commission's draft offered any answer to the Guyanese representative's question concerning the possibility of a reservation being continued by a successor State and being subsequently found incompatible with the object and purpose of the treaty within the new context.[4] However, the lacuna could surely be filled by analogy or by reference to the general law of treaties.

25. Only some of the objections against the motivation of the amendment submitted by the Federal Republic of Germany seemed to be based on the denial that the notion of "stepping into the shoes" of the predecessor was sound if the successor State

[2] See above, 27th meeting, para. 78.

[3] See above, 27th meeting, paras. 72 and 84.

[4] See above, 27th meeting, para. 91.

chose to do so. On the other hand, there was clearly no widely held view in the Committee that a serious lacuna existed; his delegation felt sure, however, that the Drafting Committee could deal with the matter in the light of the discussion that had taken place. Although his delegation was withdrawing its amendment, it believed that the discussions it had prompted might be of value in clarifying that particular and rather complex sector of international law.

26. Mr. HERNDL (Austria) said it was precisely in order to include an element of legal logic in article 19 that his delegation had introduced its amendment. Contrary to some of the views expressed, that amendment was in fact consistent with the principle of self-determination. For that principle was confirmed by the "clean slate" rule, which was fully safeguarded by paragraph 1 of article 16, which had already been adopted; and if a newly independent State chose the procedure outlined in that paragraph, it could in no way be deemed contrary to the principle of self-determination to say that a treaty was to be inherited by a successor State as it was—in other words, with the existing reservations attached to it.

27. The solution offered by the Austrian amendment not only lay within the legal premises of the whole conception underlying article 19, but also offered a practical solution to the dilemma noted by the International Law Commission in paragraph (20) of its commentary (*ibid.*, p. 67). Of the two alternative ways of dealing with the inconsistency mentioned in that paragraph, the International Law Commission had opted for alternative (*b*), whereas the Austrian amendment had been submitted in the spirit of alternative (*a*). Both alternatives were possible, and both conformed to legal principles; the choice was a matter of legal logic. The International Law Commission, in making its choice, had felt the need to add the provisions of article 19, paragraphs 2 and 3, which referred to the Vienna Convention on the Law of Treaties. But the International Law Commission itself had recognized, in paragraph (21) of its commentary (*ibid.*), that there had been some opposition to drafting by reference, particularly because the parties to the different instruments concerned might not be the same States.

28. But perhaps the crucial point was that the International Law Commission, as could be seen by reference to paragraph (22) of its commentary (*ibid.*), had also avoided specific reference to the moment when a new reservation would become effective. Thus the fate of the reservations was basically governed by the provisions of the specific treaty to which the newly independent State wished to succeed. Under article 16, if a newly independent State chose to make notification of succession, it would become effective at the date of the succession and would thus be retroactive. But any new reservation made by the new State would become effective not at the date of the succession, but at a later date in accordance with the treaty provisions.

29. His delegation also had some difficulty with the fact that, while the filing of a notification of succession could conceivably be said to mean acceptance of a treaty, it was not among the actions mentioned in article 19 of the Vienna Convention on the Law of Treaties, which stipulated that a State might formulate a reservation "when signing, ratifying, accepting, approving or acceding to a treaty".[5]

30. He hoped that his remarks had illustrated the problems which his delegation saw in the present text of draft article 19. It believed that a newly independent State had a choice: it could either accede to a multilateral treaty, in which case it had an inherent right to make reservations at the time of accession; or it could succeed to the treaty, in which case it was bound to the instrument by virtue of the succession and must inherit it as it stood. A newly independent State would not necessarily have a right to formulate a reservation by virtue of the provisions of the future convention. The legal complications to which he had referred would be removed if the paragraphs 2 and 3 of article 19 were deleted, and he hoped that the Committee would agree to his delegation's proposal to that effect. He withdrew the part of his delegation's amendment relating to paragraph 1 of article 19.

31. He had been asked at the 27th meeting what would be the position with regard to a reservation of a predecessor State which was incompatible with the objects and purposes of a newly independent State, if all of article 19 except paragraph 1 was deleted. The answer to that question was to be found in article 22, paragraph 1, of the Vienna Convention on the Law of Treaties, according to which a reservation could be withdrawn at any time without the consent of a State which had accepted it.

32. Mr. STUTTERHEIM (Netherlands) said that the text of article 19, paragraph 1, did not make it clear that, as explained by the Expert Consultant, the intention behind the use of the term "reservation" in that paragraph was to indicate that the successor State "stepped into the shoes" of the predecessor State. He therefore proposed that the Drafting Committee should be asked to revise the paragraph so as to show that the term in question referred not only to reservations as such, but also to objections and objections to objections made by the predecessor State.

33. Mr. MUDHO (Kenya) said that his delegation considered article 19 to be inconsistent with both the "clean slate" principle and the principle of self-determination, inasmuch as paragraph 1 established a presumption of the continuance in force, irrespective of the wishes of the successor State, of reservations made by the predecessor State with regard to the territory to which succession related. Since at least some

[5] *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. 291.

of those reservations might be inimical to the interests of a newly independent State, paragraph 1 should be redrafted so as to reverse that presumption.

34. In view of that position, his delegation was unable to support the amendment submitted by the delegation of Austria.

35. Mr. HELLNERS (Sweden) said that, in essence, the position of his delegation in regard to article 19 was still as described by the representative of Austria at the 27th meeting, when introducing his amendment.[6] He was grateful to the representative of Austria for having withdrawn the first paragraph of that amendment; the second paragraph had some merit, since it simplified the present text of article 19, and the making of reservations should not be unduly encouraged.

36. The remaining part of the Austrian amendment did not seem to him to infringe the principle of self-determination. He did not wish to take a definite stand on the question whether the reversal of the presumption in article 19, paragraph 1, suggested by the representative of Kenya, would be more or less in keeping with that principle; but he did think that if that suggestion was accepted, it would be more logical to retain paragraphs 2 and 3 of the article. Referring to the comments contained in paragraph (21) of the commentary to article 19 (*ibid.*), he said that, if paragraph 3 was to be retained, the Drafting Committee should take up the question of how it fitted into the text.

37. Mr. KATEKA (United Republic of Tanzania) proposed that in paragraph 1 of draft article 19 the word "maintaining" should be replaced by the word "discontinuing" and the phrase "or formulates a reservation which relates to the same subject matter as that reservation" should be deleted.

38. Mrs. OLOWO (Uganda) supported the amendments to the first paragraph of the article proposed by the representatives of the Netherlands and the United Republic of Tanzania.

39. Mr. MUDHO (Kenya) supported the amendment proposed by the representative of the United Republic of Tanzania.

40. The CHAIRMAN invited the Committee to vote on paragraph 2 of the amendment submitted by Austria in document A/CONF.80/C.1/L.25, paragraph 1 having been withdrawn.

The amendment was rejected by 39 votes to 4, with 36 abstentions.

41. The CHAIRMAN invited the Committee to vote on the oral amendment to paragraph 1 of article 19 proposed by the representative of the United Republic of Tanzania.

The amendment was rejected by 26 votes to 14, with 41 abstentions.

42. The CHAIRMAN invited the Committee to vote on draft article 19.

Draft article 19 was provisionally adopted by 76 votes to none, with 6 abstentions, and referred to the Drafting Committee.[7]

43. Mr. HERNDL (Austria), explaining his vote, said that his delegation had had no choice but to abstain from voting on article 19 as a whole. None the less, it considered that the result of the voting should be taken as an expression of confidence in the action of the International Law Commission and its Special Rapporteur in choosing the second of the alternatives to which the International Law Commission had referred in paragraph (20) of its commentary. His delegation naturally accepted the Committee's decision, although, for reasons of legal logic, it would have preferred paragraphs 2 and 3 of the article to be deleted.

ARTICLE 20 (Consent to be bound by part of a treaty and choice between differing provisions)

44. Mr. SETTE CÂMARA (Brazil) said that draft article 20 dealt with partial application of multilateral treaties in the cases covered by article 17 of the Vienna Convention on the Law of Treaties. It was normal practice for parties to choose the provisions by which they were to be bound. Article 20 established the presumption that, on making a notification of succession, the newly independent State was on the same footing as the predecessor State—a presumption which was of benefit both to the new State and to the other States parties.

45. Nevertheless, "stepping into the shoes" of the predecessor State could not be regarded as an automatic action in which the will of the newly independent State played no part. Paragraph 2 of article 20 covered that point for cases in which the treaty permitted partial application. Paragraph 3 put the newly independent State on the same footing as the other States parties, in that reservations entered by the predecessor State could be inherited, but the essential element of treaty-making, the will of the new State, was fully preserved. That paragraph covered a situation which often occurred in practice as was evident from the examples given in the commentary to article 20 (*ibid.* pp. 68 *et seq*).

46. His delegation had no difficulty in accepting draft article 20.

[6] See above, 27th meeting, paras. 59-64.

[7] For resumption of the discussion of article 19, see 35th meeting, paras. 16-23.

47. Mr. MANGAL (Afghanistan) said that his delegation had no objection to article 20 and supported the basic rule embodied in it. The article made appropriate provision for the newly independent State to establish its status as a party to the type of treaty in question. The new State had the usual discretion to express consent to be bound by part of the treaty or make a choice between differing provisions.

48. However, article 20 did not make it clear whether the newly independent State was entitled to those two advantages if no specific provisions to that effect were included in the treaty concerned. Another point was that the newly independent State might find its will to be bound by part of a multilateral treaty constrained by the need to obtain the consent of the other States parties to the treaty.

49. Mr. MUSEUX (France) said that his delegation had no difficulty with the substance of draft article 20, but considered that paragraph 1 should make it clear that a newly independent State could express its consent to be bound by part of a treaty only if the treaty so permitted. He would therefore suggest that in the penultimate line of paragraph 1 after the word "provisions", the words "if the treaty so permits and" should be inserted. He thought that was only a drafting change.

50. Mr. MARESCA (Italy) and Mr. EUSTATHIADES (Greece) supported the French representative's suggestion as being a useful clarification of the text.

51. Mr. YANGO (Philippines) said that a similar change should be made in the title of article 20.

52. The CHAIRMAN said that, if there was no objection, he would take it that the Committee of the Whole provisionally adopted the text of draft article 20 and referred it to the Drafting Committee for consideration, together with the French representative's suggestion concerning paragraph 1. The Drafting Committee would make a proposal about the title of the article, in the light of the final text.

It was so decided.[8]

ARTICLE 21 (Notification of succession)[9]

53. Mr. GILCHRIST (Australia), introducing his amendment (A/CONF.80/C.1/L.29), said that his delegation supported the substance of draft article 21, which contained necessary procedural provisions concerning the making of notifications under articles 16 and 17, and a saving clause on the duties of depositaries to transmit information about a succession of States. His amendment was essentially a drafting point.

54. The close relationship between draft article 21 and similar procedural provisions of the Vienna Convention on the Law of Treaties, especially articles 16, 67 and 78, was clearly set out in paragraphs (8) to (14) of the commentary to article 21 (A/CONF.80/4, pp. 72-73). Articles 2, 7 and 77 of the Vienna Convention were also directly relevant.

55. The Australian amendment dealt with paragraph 3 of draft article 21 which had already been the subject of second thoughts by the International Law Commission. It was stated in paragraph (13) of the commentary that "The Commission replaced the somewhat vague expression 'transmitted [...] to the States for which it is intended' of the 1972 text by the expression 'transmitted [...] to the parties or the contracting States'" (*ibid.*, p. 73). His delegation wondered, however, whether the International Law Commission had chosen the right way to make the wording of paragraph 3, subparagraph (*a*) more precise. The terms "party" and "contracting State" were defined in article 2, paragraph 1, subparagraphs (*g*) and (*f*) respectively of the Vienna Convention, and from those definitions it appeared that all parties were contracting States, but not all contracting States need be parties; they might, for example, be States which had consented to be bound by a treaty not yet generally in force under the provisions of article 17, or they might be States which had consented to be bound by a treaty which was generally in force during the qualifying period following their formal adherence to it.

56. If it was correct that the term "contracting States" included "parties", it would be sufficient in paragraph 3, subparagraphs (*a*) and (*b*) to refer to contracting States only—a usage which would be consistent with articles 20 and 57 of the Vienna Convention, in which the context made it clear that the term "contracting States" included parties. The apparent disjunction between "contracting States" and "parties" in the International Law Commission's text did not appear in the Vienna Convention, which maintained a well-defined distinction not only between those two terms but also between "parties", "States entitled to become parties to the treaty", "signatory States" and "contracting States", as shown in article 79.

57. In formulating its amendment, his delegation had assumed that the International Law Commission's intention was that notification should be transmitted to all States which had consented to be bound by the treaty, whether it was in force for all of those States—in which case all the contracting States would be parties—or only for some of those States—in which case some of the contracting States would be parties and some would not.

58. If the amendment was adopted, there should be a consequential change to paragraph 4, but that could be left to the Drafting Committee. His delegation would be willing to accept the term "contracting

[8] For resumption of the discussion of article 20, see 35th meeting, paras. 24-36.

[9] The following amendment was submitted: Austria, A/CONF.80/C.1/L.29.

States" instead of the expression proposed in its amendment. He hoped that the Committee would agree to the amendment being treated as a drafting change.

59. In paragraph 5, it was not clear whether the phrase "such notification of succession" related back to the notification referred to in paragraphs 1, 2 and 3 or only to paragraph 4, where notification of succession was coupled with the phrase "or any communication". In the context, the latter reading seemed more likely, since notifications to parties or contracting States, as provided for in paragraph 3, subparagraph (*a*) were not relevant to paragraph 5. He suggested that the Drafting Committee should be asked to clarify that point.

60. Sir Francis VALLAT (Expert Consultant) said that in his view the point raised by the Australian amendment was one for the Drafting Committee. He agreed that the phrase "such notifcation of succession" in paragraph 5 of article 21 might be ambiguous.

61. The use of the terms "the parties or the contracting States" in paragraph 3, subparagraphs (*a*) and (*b*) had been a deliberate choice by the International Law Commission. Article 78 of the Vienna Convention on the Law of Treaties was a general provision, which dealt in its subparagraph (*a*) with cases in which there was no depository. The context was different from that of draft article 21.

62. It had been found useful in drafting provisions on the transmission of notification to specify "parties" and "contracting States" as separate classes, and those terms were used in draft article 21 to pick up the definitions given in draft article 2, paragraph 1, subparagraphs (*k*) and (*l*). Both definitions contained the common element of consent to be bound, but a "contracting State" was one that consented to be bound whether or not the treaty had entered into force, whereas a "party" was one that had consented to be bound and for which the treaty had entered into force. The question was whether the two classes of States should be kept distinct.

63. Mr. MARESCA (Italy) said that, although he did not intend to make a formal proposal on the matter, he would advise the deletion from article 21, paragraph 2 of the provision that the representative of the State communicating the notification of succession might, in specific cases, be called upon to produce full powers. The wording of that paragraph was modelled on article 67, paragraph 2 of the Vienna Convention on the Law of Treaties, which referred to instruments for declaring invalid, terminating, withdrawing from or suspending the operation of a treaty. Article 7, paragraph 2, subparagraphs (*b*) and (*c*) of the Vienna Convention, which explicitly did not require representatives to produce full powers, was more relevant to draft article 21, in that it dealt with the expression of consent to be bound. Experience had shown that insistence on a representative producing full powers was an unnecessary complication, which was open to misinterpretation.

64. The CHAIRMAN said that, if there was no objection, he would take it that the Committee of the Whole provisionally adopted draft article 21 and referred it to the Drafting Committee for consideration, together with the Australian amendment thereto (A/CONF.80/C.1/L.29).

It was so decided.[10]

The meeting rose at 1 p.m.

[10] For resumption of the discussion of article 21, see 35th meeting, paras. 37-40.

29th MEETING

Tuesday, 26 April 1977, at 4 p.m.

Chairman: Mr. RIAD (Egypt)

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*)

ARTICLE 22 (Effects of a notification of succession)[1]

1. Mr. LANG (Austria) said that the amendment to article 22 (A/CONF.80/C.1/L.26) proposed by his delegation was intended to clarify paragraph 2 of the International Law Commission's draft and to make it more consistent with the Vienna Convention on the Law of Treaties, although his delegation was entirely in agreement with the substance of the article drafted by the Commission.

2. The amendment sought first of all to indicate clearly the moment from which suspension of the operation of the treaty took effect. In paragraphs (6) and (11) of its commentary on the article (A/CONF.80/4, pp. 74-75), the International Law Commission had established that the decisive date was that of accession to independence, whereby it coincided with the date of succession. Nevertheless, his delegation felt that paragraph 2 of the article could specify more clearly when the suspension began.

3. In paragraph (13) of its commentary (*ibid.*, p. 76), the International Law Commission had itself admit-

[1] The following amendment was submitted: Austria, A/CONF.80/C.1/L.26.

ted that article 22 might not strictly comply with all the provisions of the Vienna Convention but it would be in accord with the spirit of article 28 and article 57, which provided for the suspension of the operation of the treaty by consent of the parties. The Commission had not sufficiently stressed the element of consent as a prerequisite for suspension. Although the two texts would achieve the same result, in order to align draft article 22 with article 57 of the Vienna Convention, the quasi-automatic suspension envisaged in the International Law Commission's text should be replaced by a presumption of consent. Greater emphasis on this idea would also indicate greater respect for the sovereign rights of the States concerned as well as their freedom of choice.

4. As its amendment concerned more the form than the substance of the International Law Commission's text, the Austrian delegation would certainly agree to its being referred to the Drafting Committee for possible inclusion in the final version of the draft convention.

5. Mr. RANJEVA (Madagascar) said that the explanations given by the Austrian representative in connexion with his amendment to paragraph 2 of article 22 were not sufficiently clear. Reference to a presumption of consent could give rise to many problems of interpretation and to practical complications, especially as it was very difficult to establish intent. The great advantage of the International Law Commission's text was that there was presumption, not with regard to an intention, but with regard to a direct legal result. In order to eliminate any ambiguity in paragraph 2, the Drafting Committee could for instance use the words "notification of succession takes effect"; they took better account of the distinction between the intrinsic validity of a treaty and its operation.

6. Mr. MBACKÉ (Senegal) expressed doubts about the words "from the date of succession" in the Austrian amendment. He asked whether its sponsor had deliberately avoided providing for the case where a treaty would enter into force after the date of a succession of States, which would not then coincide with the beginning of the suspension of the operation of the treaty.

7. Mr. LANG (Austria) said he was unaware that any particular practical difficulties—such as those referred to by the representative of Madagascar—could arise in connexion with the amendment proposed by his delegation.

8. On the other hand, the Senegalese representative's statement regarding the beginning of the suspension of the operation of the treaty was entirely relevant. It was clear that if the date of entry into force of the treaty was subsequent to the date of the succession, the former date would mark the beginning of the suspension of the operation of the treaty.

9. The CHAIRMAN said that, if there was no objection, he would take it that the Committee of the Whole wished to refer the Austrian amendment to article 22 (A/CONF.80/C.1/L.26) to the Drafting Committee, and to adopt provisionally the text of article 22 and also refer it to the Drafting Committee.

It was so decided.[2]

PROPOSED NEW ARTICLE 22 *bis* (Notification by a depositary)[3]

10. Mr. MAKAREVICH (Ukrainian Soviet Socialist Republic), introducing on behalf of his delegation and those of Czechoslovakia and Poland draft article 22 *bis* (A/CONF.80/C.1/L.28), observed that the proposal required no comment. "All other particulars relating to the treaty" mentioned in paragraph 1 meant information as to whether the treaty was applicable to the territory and such other information as might be communicated by the depositary. During the Committee's discussion of article 16 of the draft convention, some delegations had raised the point that in some cases a newly independent State might not know which treaties extended to it. The notification provided for in the proposed new article 22 *bis* would enable a successor State to take stock and decide what position to adopt towards such treaties. The new article could therefore be regarded as providing for the depositary's good offices vis-à-vis the successor State.

11. The proposal was consistent with current practice, particularly that of the Secretary-General of the United Nations, as the International Law Commission had noted in paragraph (3) of its commentary on article 16. The proposed new article 22 *bis* was of course linked to article 16 *bis*, proposed by the Union of Soviet Socialist Republics, but not adopted by the Committee. The reference to article 16 *bis* in paragraph 1 of article 22 *bis* should therefore be deleted. The delegation of the Ukrainian SSR hoped that the new article would be favourably received.

12. Mr. MEISSNER (German Democratic Republic) said that his delegation approved of the new article 22 *bis* introduced by the Ukrainian SSR; its provisions should greatly facilitate application of the future convention. In accordance with articles 76 and 77 of the Vienna Convention on the Law of Treaties, the new article filled a gap in the draft articles prepared by the International Law Commission. His delegation was well aware of the fact that the applicability of the future convention to succession in respect of multilateral treaties largely depended on how

[2] For resumption of the discussion of article 22, see 35th meeting, paras. 41-44.

[3] Czechoslovakia, Poland and the Ukrainian SSR submitted a proposal (A/CONF.80/C.1/L.28) for the insertion of a new article 22 *bis*; subsequently Czechoslovakia, Poland, Singapore and the Ukrainian SSR submitted a revised version of that text (A/CONF.80/C.1/L.28/Rev.1).

depositaries discharged their duties. The new article was consistent with the aim of the future convention and would facilitate the entry of newly independent States into treaty relations.

13. Mrs. SAPIEJA-ZYDZIK (Poland) said that many delegations had already referred to the difficulties commonly encountered by newly independant States in connexion with notification of treaties extending to them at the time of succession. As relevant information available on the date of succession was often incomplete, there were delays in the notification of succession. In some cases notification had come 20 or even 27 years after the accession of certain States to independence.

14. The Polish delegation felt that all opportunities for assisting newly independent States in that sphere deserved consideration, and it therefore supported the proposed new article 22 *bis*. The option offered by the article, moreover, corresponded to the procedure followed by the Polish Government as depositary of the Convention for the Unification of Certain Rules Relating to International Carriage by Air (Warsaw, 1929)[4] and the 1955 Hague Protocol to that Convention.[5] The Polish Government had informed all the newly independent States concerned that the Warsaw Convention extended to their territory and requested them to make known their position on the Convention. Thirty-one newly independent States had notified their succession to that treaty. The Secretary-General of the United Nations and the Swiss Government followed a similar procedure. Because it felt that the practice should be provided for in the draft convention, Poland had become one of the co-sponsors of the proposed new article.

15. Mr. STUTTERHEIM (Netherlands) said that the idea underlying the proposed new article 22 *bis* was sound. The Netherlands Government had already notified newly independent States in connexion with treaties in force. However, it was not clear how the provisions of new article 22 *bis* could be applied in the context of article 18 of the draft convention, as it was not usually known if the signature had been affixed for the territory concerned. It was not the function of the depositary State to ask the signatory State about the scope of such treaties. The words relating to communication "of all other particulars relating to the treaty" in paragraph 1 of the proposed new article also raised the question of the obligation imposed by the amendment. The sometimes limited ability of the depositary to carry out the notification provided for in the article should also be taken into account.

16. Mr. MUDHO (Kenya) expressed satisfaction that the Committee of the Whole had taken up the draft article, inasmuch as several delegations including his own had already, during discussions on previous articles, mentioned the difficulties encountered by newly independent States in determining which treaties were applicable to them. The practice of the Secretary-General of the United Nations, whereby newly independent States were notified, had not been enshrined in any convention. The intention underlying the proposed new article 22 *bis* was consequently a praiseworthy one.

17. Nevertheless, the wording of paragraph 1 of the proposed new article was ambiguous and could be interpreted in at least three ways. It might be taken to mean that the depositary would simply inform a newly independent State of the treaties whose application had been extended to its territory, leaving it the option of deciding whether or not to accede to them; or that it would inform newly independent States of treaties whose application had been extended to their territory and which remained in force; or finally that it would inform the newly independent State, once the latter had established its status pursuant to articles 16, 17 and 18 of the draft convention, of the treaties that would thenceforth apply to its territory. Kenya approved the first interpretation, which was also that of the sponsors of the proposed new article, and hoped that the article could be recast accordingly.

18. The Kenyan delegation was puzzled by the somewhat peremptory wording of paragraph 1 of the new article, which stipulated that the depositary "shall notify" a newly independent State that the treaty had been extended to the territory to which the succession of States realted. The question arose as to whether the Conference was legally competent to impose such an obligation on depositaries of multilateral treaties.

19. Despite those reservations, the Kenyan delegation would support the proposed new article 22 *bis*, although it hoped it would be redrafted with a view to facilitating interpretation.

20. Mr. SEPÚLVEDA (Mexico) said that his delegation was prepared to accept the draft articles submitted by the International Law Commission as a whole, subject to a few deletions and additions. Since that text was practically inviolable, any amendments proposed were bound to raise difficulties. Although his delegation appreciated the work of the International Law Commission, it could not help noting that the draft convention, in dealing with information, did not provide for the obligation to inform newly independent States of the particular features of the treaties concerning them. That was indeed a gap which the proposed new article was intended to fill.

21. Nevertheless, the proposed new article 22 *bis* gave rise to certain difficulties. In particular, the Kenyan representative had raised the question of imposing the obligation provided for in the article on a depositary who was not a party to the convention or

[4] League of Nations, *Treaty Series*, vol. CXXXVII, p. 11.

[5] United Nations, *Treaty Series*, vol. 428, p. 371.

on the Secretary-General of an international or regional organization. The Netherlands representative had also drawn attention to certain other difficulties. The Mexican delegation was, however, prepared to support the proposed new article.

22. Mr. CHEW (Malaysia) said that his delegation found it difficult to accept the proposed new article 22 *bis*, for two reasons. It was not in accordance with the principles of law to impose such an obligation on the depositaries of multilateral treaties. The depositary, who would not necessarily be a party to the convention, could not be bound by the obligations laid down in that convention. Secondly, all questions relating to notification were normally the subject of a separate treaty and it was therefore unnecessary to include a provision to that effect in the draft convention. His delegation thus found it very difficult to support the proposed new article 22 *bis*.

23. Mr. RANJEVA (Madagascar) said that his delegation had already drawn attention to certain practical problems in connexion with notification during the discussion of article 16 of the draft convention and had pointed out that the functions of a depositary should not be confined merely to keeping archives.[6] That idea was incorporated in the proposed new article 22 *bis*, which represented an innovation in assigning to the depositary the new task of informing and assisting the newly independent State. Moreover, the process of notification sometimes gave rise to practical problems. Thus, when Madagascar had attained independence and had requested France to provide it with a list of the treaties by which France was bound, that country had had difficulty in giving a reply. Article 22 *bis* should therefore promote international co-operation in the matter, but the depositaries would be given a greater incentive to carry out their functions if a provision to that effect was included in conventions other than those relating to treaties.

24. The Kenyan representative had rightly drawn attention to the problems of interpretation to which paragraph 1 of the proposed article gave rise. Since the intention of the sponsors was to entrust the depositary with a material task, it might be better to replace the phrase "shall notify the newly independent State", which was legally too specific, by "shall bring to the knowledge of the newly independent State" or "shall inform the newly independent State".

25. Mr. KRISHNADASAN (Swaziland) said that he was in favour of a provision drafted along the lines of article 22 *bis*, because that text was based on the practice followed by the Secretary-General of the United Nations in his capacity as depositary of multilateral treaties, as described in paragraph (3) of the International Law Commission's commentary on article 16 (A/CONF.80/4, p. 56). The article under discussion was a useful supplement to the draft; nevertheless, as the representative of Madagascar had pointed out, the term "notification" might give rise to difficulties and should be replaced by a more appropriate one.

26. For the sake of clarity, he suggested that the word "previously" be inserted before the word "extended". In the light of the wording of article 77, paragraph 1, subparagraph (*e*), of the Vienna Convention and also with a view to clarification, the words "and that it is entitled to become a party to the treaty" might be inserted before the last phrase of paragraph 1 of article 22 *bis*.

27. Mr. BUBEN (Byelorussian Soviet Socialist Republic) said that his delegation was in favour of the proposed new article for several reasons. In the first place, during the debate on part II of the draft, a number of delegations had stated that newly independent States often found it very difficult to determine which multilateral treaties of the predecessor State had been applicable to their territory before their accession to independence. Indeed, shortly after attaining independence, a new State was usually not in a position to determine which those treaties were, for lack of archives and experts in that kind of research. Moreover, the article under discussion took into account the practice generally followed by the depositaries of multilateral treaties. When the Secretary-General of the United Nations was the depositary of multilateral treaties which had been applicable to a territory before its independence, he informed the newly independent State accordingly and asked it to indicate whether it considered itself bound by those treaties. The International Law Commission's commentary on article 16 showed that other depositaries of international treaties followed the same practice. Not only was article 22 *bis* in conformity with the general practice, but it would benefit newly independent States by enabling them to determine more easily which international treaties had been applicable to them before their independence.

28. Mr. STEEL (United Kingdom) said he sympathized with the objective of article 22 *bis*, which was to reaffirm the practice followed by the Secretary-General of the United Nations and certain other depositaries of international treaties. Nevertheless, he doubted whether it was possible or necessary to give an obligatory character to that practice. In that connexion, he drew particular attention to article 77, paragraph 1, subparagraph (*e*) of the Vienna Convention on the Law of Treaties, under which one of the functions of a depositary was "informing the parties and the States entitled to become parties to the treaty of acts, notifications and communications relating to the treaty".[7] Since newly independent States were States entitled to become parties to multilateral treaties, the problem dealt with in article 22 *bis* was al-

[6] See above, 25th meeting, para. 19.

[7] *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. 299.

ready covered by that provision of the 1969 Vienna Convention. Moreover, the International Law Commission had indicated that at least the Secretary-General of the United Nations, as a depositary of international treaties, complied with that provision.

29. Several delegations had drawn attention to some very real difficulties connected with determining the treaties previously applicable to a territory which had become independent. The inclusion in the draft of a provision along the lines of the proposed article would raise further difficulties. The provision would impose on the depositary the obligation of sending certain communications to newly independent States as soon as possible after the succession of States. It should be borne in mind that the emergence of a newly independent State was sometimes disputed and that it would not be correct to oblige the Secretary-General, for example, to take a position on that issue.

30. Under the proposed article, the depositary would also have to notify the newly independent State that the treaty "has been extended to the territory to which the succession of States relates". That was another point on which the depositary should not be obliged to take a position, especially since in modern State practice, it was no longer usual for treaties to include territorial application clauses.

31. Certain delegations had pointed out that the predecessor State was sometimes unable to give a complete list of the treaties which had been applicable to the territory attaining independence. However regrettable that situation might be, the fact remained that it would be even more difficult for a depositary to provide such a list. In any case, article 22 *bis* seemed to impose on depositaries a function defined in terms which made it doubtful whether the task could be performed.

32. It was also questionable whether an obligation could be imposed on depositaries who might not be parties to the future convention and whose authority in any event derived not from that convention but from the treaties for which they would be the depositaries. The content of the proposed new article should be expressed in a declaratory form, like the corresponding provision of the Vienna Convention on the Law of Treaties.

33. For all those reasons, he did not think it was possible or desirable to adopt article 22 *bis*.

34. Mr. MARESCA (Italy) said that he had wondered at first whether article 22 *bis* had not come after its time. Indeed, newly independent States had so far not been fully aware of their rights with regard to succession in respect of treaties and had needed to be informed. That was the reason for the practice followed by the Secretary-General of the United Nations and other depositaries. It might seem that such information would no longer be necessary when those States had a convention clearly showing them what they could and could not do. On reflection, however, he had decided that the article under discussion had some practical advantages. The treaty service of the Ministry of Foreign Affairs of any State and more particularly that of a newly independent State would be glad to be reminded of certain important facts concerning treaties. From that point of view, the depositaries of international treaties certainly had a duty to assist newly independent States.

35. The article under consideration had given rise to serious doubts. Some delegations feared that an unduly heavy burden might be imposed on the Secretary-General of the United Nations. Yet the functions of a depositary under article 77, paragraph 1, subparagraph (*e*) of the Vienna Convention on the Law of Treaties lay precisely in informing the parties and the States entitled to become parties to the treaty of acts, notifications and communications relating to the treaty. It was only logical for the Committee to base itself on that provision in drawing up a similar rule with regard to the succession of States.

36. In connexion with the form of article 22 *bis*, a distinction must be made between the diplomatic procedure of notification and the concept of information. Moreover, the phrase "that the said treaty has been extended to the territory to which the succession of States relates" might give the impression that the treaty in question was a new one, not a treaty which had applied to the territory before its independence. Finally, he considered that it would be going too far to require depositaries to inform the newly independent State of "all other particulars relating to the treaty". Every treaty had its own history and the depositaries could not be given such a multifarious duty of information. It would be better to limit that duty to any information that might be useful for the purposes of articles 16, 17 and 18.

37. Mr. BRECKENRIDGE (Sri Lanka) said that his delegation approved of the proposed new article, in view of its sponsors' wish to promote application of the continuity principle. That application could only be furthered if a newly independent State had a better knowledge of the situation. An equitable balance should, however, be established between that principle and the "clean slate" principle, which might be said to rest on ignorance of the situation.

38. Newly independent States would benefit by the concept of assistance provided to them in the area covered by article 22 *bis* if that provision were the subject of a declaration or resolution. In its existing form, however, the article imposed on depositaries a kind of system which would disturb the balance between the "clean slate" principle and that of continuity.

39. Mr. YANEZ-BARNUEVO (Spain) stressed the positive aspect of article 22 *bis*. His delegation had some doubts, however, not so much on the sub-

stance as on the form of the text. Article 22 *bis* was manifestly in line with the position adopted by the International Law Commission, which consisted in respecting the freedom of the newly independent State as enshrined in the "clean slate" principle, while attempting nevertheless to encourage continuity of treaty relations within the framework of succession. The depositary of multilateral treaties was in the best position to supply a newly independent State with information on treaties which had been applicable to that territory before independence. It should be borne in mind, however, that the letter which the Secretary-General of the United Nations customarily sent to newly independent States did not constitute a notification; it was a communication accompanied by a request for a reply. In that connexion, he agreed with those delegations which had suggested that the word "notification" should be replaced by "communication" or "information", or any other term wit a less clear-cut legal connotation.

40. Attached to the letter which the Secretary-General of the United Nations sent to newly independent States was a list of multilateral treaties of which the Secretary-General was the depositary and which, whether or not they had been in force, had been applicable to the territory before independence. Instruments setting up international organizations and treaties made invalid or replaced by other treaties, for example, and also treaties signed but not ratified by the predecessor State, were not listed. He presumed that article 22 *bis* would extend to the communication of information, for example, on the identity of other States parties to the treaty or on reservations, as was implied by the words "all other particulars relating to the treaty". From that standpoint, the proposed new article went too far.

41. Those who opposed the idea that the practice followed by the Secretary-General of the United Nations and other depositaries should be formally laid down in the future convention claimed that the information function of depositaries had already been established in article 77, paragraph 1, subparagraph (*e*) of the Vienna Convention on the Law of Treaties. In his delegation's view, it was perhaps not entirely redundant to spell out that function in the future convention, since it was directly related to the treaty's objective. In that connexion, he remarked that the relevant article of the Vienna Convention contained the words "unless otherwise provided in the treaty", which clearly demonstrated the primacy of the Law of Treaties. That aspect of the problem might also be indicated in the article under consideration.

42. As far as the form of article 22 *bis* was concerned, in the Spanish version at least, the phrase "shall notify the newly independent State that the said treaty has been extended to the territory" was not clear. Coming straight after article 22, it might be understood to mean that such notification could be subsequent to the notification made by the newly independent State in accordance with article 21. In fact, it was preliminary information intended to enable the newly independent State to make a notification of succession. If the Committee decided to include article 22 *bis* in the draft, it would be preferable to insert it before the provisions relating to notification of succession. In conclusion, he observed that the two paragraphs of article 22 *bis* could easily be combined in a single provision.

Mr. Ritter (Switzerland), Vice-Chairman, took the Chair.

43. Mr. EUSTATHIADES (Greece) said he viewed with sympathy the proposed new article 22 *bis*, whose purpose was to help newly independent States in their succession to multilateral treaties applicable to their territory. If the Conference adopted the idea set forth in the article, it might envisage adopting it not only for newly independent States, but possibly for other cases of succession of States as well.

44. In some respects, the proposed new article 22 *bis* did not go far enough. He wondered why it dealt only with cases referred to in articles 16, 16 *bis*, 17 and 18 of the draft and did not also deal with those referred to in articles 19 (Formulation of reservations) and 20 (Acceptance of and objection to reservations) of the Vienna Convention. It could doubtless be argued that the reason why articles 19 and 20 were not mentioned was that they were covered by the words "all other particulars relating to the treaty". He did not, however, care for that expression and considered that the sponsors of the amendment should rather have been guided by article 77, paragraph 1, subparagraph (*e*) of the Vienna Convention on the Law of Treaties. He also thought that the word "notify" was unsuitable and should be replaced, as the representative of Madagascar had suggested, by another term such as "inform" or "bring to the attention of".

45. In other respects, however, the proposed new article 22 *bis* went too far. Article 77 of the Vienna Convention listed the functions of a depositary, but that list was not exhaustive. Besides, article 77 contained the reservation "unless otherwise provided in the treaty or agreed by the contracting States". That rider applied in the case under consideration, since the depositaries' functions were to be modified by another convention. There would, accordingly, be two categories of contracting States: States parties to the 1969 Vienna Convention on the Law of Treaties and States parties to the new convention on succession of States in respect of treaties, which would confer extended powers on depositaries. While the Secretary-General of the United Nations followed his own practice, which would remain unchanged, there were other depositaries, who might be States. Article 7 of the draft convention provided that the present articles "apply only in respect of a succession of States which has occurred after the entry into force of these articles except as may be otherwise agreed". However, the present convention would cover depositaries

of treaties which had come into effect long before the entry into force of the convention, and States which became independent after the entry into force of the convention would receive notification from depositaries of very long standing. A depositary should not therefore be blamed if the information he supplied to the successor State was incomplete.

46. Mr. SAHRAOUI (Algeria) welcomed article 22 *bis*, which filled a legal gap by making *de jure* what was practically a *de facto* situation. Even if the functions of the depositary were already laid down in the Vienna Convention on the Law of Treaties, it was not a bad thing to restate a fact which had hitherto proved most useful. Article 22 *bis* not only filled a legal gap but also proposed a new and dynamic view of the depositary's role, a proposal which deserved support.

47. However, he agreed with the representatives of Madagascar and Italy that the word "notify" was out of place in the proposed new article and that the words "all other particulars relating to the treaty" should be replaced by "all useful information relating to the treaty".

48. Mr. WYSE (Sierra Leone) asked why the sponsors of article 22 *bis* had deemed it necessary to introduce the new article into the draft convention when the functions of the depositary were already clearly defined in article 77 of the Vienna Convention on the Law of Treaties.

49. Mr. ROSENSTOCK (United States of America), observing that a large majority of the Committee's members agreed on the usefulness of the proposed provision in article 22 *bis*, said that the Conference should adopt a provision to that effect. In his view, however, it was for the Drafting Committee to decide whether that provision should take the form of a separate article, a paragraph added to another article, or a simple resolution. The sponsors of article 22 *bis* should accordingly leave the Drafting Committee to decide upon the form to be given to their proposal.

50. Mr. SATTAR (Pakistan) associated himself with those delegations which had supported the substance of the proposed new article 22 *bis* and had proposed that it should be referred to the Drafting Committee.

51. Mr. MUSEUX (France) considered the proposed new article 22 *bis* to be most useful, but noted that it gave rise to a certain number of problems of both a theoretical and a practical nature. As the representative of Malaysia had observed, the word "depositary" had a very general meaning; the depositary could be a State or an international organization. Mention had frequently been made of the practice followed by the Secretary-General of the United Nations in his capacity as the depositary of multilateral treaties. But the convention could not be binding upon the Secretary-General of an international organization because international organizations were not entitled to become parties to the convention. The scope of article 22 *bis* should therefore be restricted to depositary States. It was true that article 77 of the Vienna Convention relating to the functions of depositaries was applicable not only to States but indirectly also to international organizations; but it imposed direct obligations only on States. Under article 78 of the Vienna Convention, notifications and communications to be made by a State did not directly impose obligations on international organizations. It was obvious that international organizations had to continue to discharge their obligations as depositaries of multilateral treaties, but not because those obligations were imposed upon them by the Convention. It would therefore be preferable not to include international organizations among the depositaries referred to in article 22 *bis*, the more so as article 6 raised theoretical problems which might place the Secretary-General of the United Nations in an awkward position.

52. He believed, moreover, that only States parties to the convention should be depositary States, and proposed accordingly that the term "the depositary [...] of a treaty" should be replaced by the words "the State Party to the present Convention which is the depositary [...] of the treaty".

53. The proposed new article 22 *bis* also gave rise to problems of a practical kind. As the representative of Madagascar had said, on being asked to name the treaties applicable to Madagascar after its independence the French Government had had great difficulty in giving a precise answer, since constitutional rules relating to the application of treaties had varied in France according to the régime. If the predecessor State itself was not always able to reply with precision to the successor State's questions concerning the application of a treaty, how could the depositary State reply? A depositary State could not, therefore, be asked to inform the successor State of all the particulars relating to a treaty. The most that it could be asked to do was to supply the fullest possible information on the treaty.

54. He was consequently not opposed in principle to the idea contained in the proposed new article 22 *bis*, but felt, like the representative of Greece, that that idea should be expressed more loosely. It was not possible, in his view, to impose a strict obligation upon the depositary State, because the latter could not obtain precise information from the predecessor State. The depositary State should therefore be invited to supply the successor State with the fullest possible information, without, however, making a rigid legal rule to that effect which would involve the depositary State's responsibility. In that connexion, he agreed with the representatives of Madagascar and Algeria that the word "notify" which had a legal meaning that was too precise, should be replaced by a more general expression. Accordingly, he proposed

that article 22 *bis* should be replaced by the following text:

1. A State Party to the present Convention, when designated as the depositary of a treaty referred to in article 16, 16 *bis*, 17 and 18, shall endeavour to inform the newly independent State that the said treaty has been extended to the territory to which the succession of States relates and of all other particulars relating to the treaty.

2. The information referred to in paragraph 1 shall be communicated in writing as soon as possible.

55. Mrs. SLAMOVA (Czechoslovakia) said that, as some delegations had pointed out in connexion with article 16, the newly independent State might find itself in a dangerous situation if it was not provided with information on the multilateral treaties applicable to its territory. The proposed new article 22 *bis* therefore filled a lacuna by entrusting the depositary of multilateral treaties with a new task, consisting in informing the competent organs of a newly independent State of the fact that a treaty applied to the territory of that State and in providing them with all the necessary information on the subject of the treaty. Such information, relating in particular to the entry into force of the treaty and its signature or ratification by the predecessor State, was intended to help the newly independent State succeed to the multilateral treaties applicable to its territory.

56. The representative of Kenya had asked whether the Conference had the right to impose a new task on the depositary. In the Vienna Convention on the Law of Treaties, the list of functions of a depositary was not exhaustive. Article 77 stated that "the functions of a depositary [...] comprise in particular". The depositary could therefore have other functions besides those mentioned in article 77.

57. The representatives of the United Kingdom and Sierra Leone had said that the question dealt with in article 22 *bis* was already covered by the Vienna Convention. Nevertheless, the Vienna Convention did not discuss the matter in the context of the succession of States in respect of treaties. It even excluded cases of State succession. Article 73 stated that the provisions of the Convention "shall not prejudge any question that may arise in regard to a treaty from a succession of States".[8]

58. She was not opposed to the suggestions of the representatives of Italy, Spain, Greece and Algeria, which appeared extremely interesting. She was prepared to agree that article 22 *bis* should be sent to the Drafting Committee to be revised in the light of the ideas formulated in the course of the discussion.

59. The CHAIRMAN asked the Expert Consultant to indicate what was, in the present state of international law, the source of the obligations of the depositary State: was it the Convention of which the State was the depositary—but in that case the obligations of the depositary began before the entry into force of the Convention—or was it international customs? What indeed would be the relationship between a provision such as that proposed in article 22 *bis* and the existing sources of obligation of the depositary? Would the provision override the existing sources in the case of old treaties and in the case of new treaties?

60. Sir Francis VALLAT (Expert Consultant) said that he could not pretend it was easy to answer the questions put to him by the Chairman and recalled that, during the United Nations Conference on the Law of Treaties (1969), the United Kingdom delegation included among its members an expert in depositary practice, such was the complexity of the subject. With regard to the first of the two questions, it would be easy to say that the functions of the depositaries derived at the same time from international law, the conventions of which the States were depositaries and custom. Traditionally, the functions had developed with the practice of depositaries, and it was thus that formerly the United States of America and the United Kingdom in particular, and more recently the Secretary-General of the United Nations, had played a major part in the development of depositary functions. He drew attention to articles 76 and 77 of the Vienna Convention on the Law of Treaties, where the wording was very different from that of the other articles, since the provisions described facts instead of stating rules of an obligatory character, as was shown by the phrase "the functions of a depositary [...] comprise in particular", in paragraph 1 of article 77.

61. In that context he stressed the fundamental rule that it was necessary in the first place to look in the text of the treaty of which a State was a depositary in order to discover what functions the State was required to exercise. It might therefore be asked how far the convention could impose on a depositary of a treaty functions which were not expressly stipulated in the said treaty. On the other hand, provisions like paragraph 1 of article 77 of the Vienna Convention contributed towards the development of the rules of customary international law, as had been recognized by the International Court of Justice. It might be considered that the depositary functions described in article 77 were close to those which were incumbent on a depositary by virtue of customary law, in the absence of treaty provisions to that effect, but he found it difficult to give a firm reply on the subject.

62. Turning to the second question asked by the Chairman, which touched more closely on the proposal before the Committee, and recalling that the representative of Greece had asked how far the article under discussion would govern the depositary function of old treaties, he said that in his opinion it would be wrong to suppose that it only affected new treaties.

[8] *Ibid.*

63. He hoped that those general observations would facilitate the work of the Committee and put the problem in its proper perspective.

64. Mr. RAHHALI (Morocco) supported the idea of informing the successor State about the treaties which were in force in respect of its territory; but in order to obtain the desired result, it was necessary to take as a model the framework of the Vienna Convention on the Law of Treaties (1969) within which the depositary exercised his functions, and in particular subparagraph (*e*) of paragraph 1 of article 77 of that Convention. That suggestion might perhaps be sent to the Drafting Committee.

65. Mr. STUTTERHEIM (Netherlands) said he was in favour of the principle that a depositary must do everything possible to inform the newly independent State of all the facts concerning treaties which might be applicable to its territory, but that the discussion on article 22 *bis* had confirmed his impression that article 77 of the Vienna Convention on the Law of Treaties was a sufficiently clear statement of the obligations of the depositary. Moreover, the expression "all other particulars" in the proposed supplementary article was too broad and his delegation preferred the wording used in article 77, paragraph 1, subparagraphs (*a*) to (*f*) of the Vienna Convention. He did not share the opinion of the Czechoslovak delegation on the subject of article 18 and thought that that article and the proposed new article referred to different questions, since in the first case it was the depositary State which had to examine whether a particular treaty had been signed, for example, and in the second case it was the successor State which established whether a treaty which concerned it had been signed.

66. Mr. KOH (Singapore) thought that the idea on which the new article was based was good, but that it was difficult to draft a provision embodying that idea. For that reason, in order to lighten the burden on the depositary, he suggested the following wording:

> The depositary, if any, of a treaty to which articles 16, 17 and 18 apply, shall, as far as may be practicable, inform the newly independent State that the said treaty has been previously extended to the territory to which the succession of States relates, as well as of all other relevant particulars relating to the treaty.

67. Mr. MBACKÉ (Senegal) considered that the French amendment had the merit of correcting certain defects in the proposed new article 22 *bis*, notably by making it clear that only States parties to the Convention which were depositaries of treaties were affected by the article. On the other hand, substituting the expression "endeavour to inform" for the word "notify" was tantamount to replacing one evil by another, an obligation of result by an obligation of means, when it should be left to the State party to the treaty to judge what type of obligation was incumbent on it. If, however, the provision was transferred to the preamble, the word "endeavour" would not involve such consequences and would carry even more weight. The convention would be expressing a wish instead of stipulating an equivocal obligation.

68. Mr. SAKO (Ivory Coast) supported the proposed new article 22 *bis* but thought that the Drafting Committee should be asked to revise the wording. His delegation would not be able to support a text which did not contain a minimum obligation for the depositary State.

69. Mr. ROSENSTOCK (United States of America) recalled that he had already suggested that the question should be sent to the Drafting Committee, to which the text of any proposal of an editorial nature could be submitted in writing. He formally moved the closure of the debate.

70. The CHAIRMAN read rule 24 of the rules of procedure (A/CONF.80/8), under the terms of which "permission to speak on the closure of the debate shall be accorded only to two speakers opposing the closure, after which the motion shall be immediately put to the vote".

71. Mr. MARESCA (Italy) regretted having to oppose the motion of closure of the debate, but thought that the procedure was over-hasty and that members of the Committee should be allowed time to develop their ideas.

The motion of closure of the debate was adopted by 31 votes to 6, with 34 abstentions.

72. The CHAIRMAN pointed out that the Committee had to take a decision on the oral amendment presented by the French delegation, since, although the Drafting Committee could study amendments to article 22 *bis* of an editorial nature, it could not be required to examine an amendment which, as the author himself had recognized, concerned the substance of the proposed new article.

73. Mr. ROSENSTOCK (United States of America) considered it preferable to send all the amendments to article 22 *bis* to the Drafting Committee, which the Committee might exceptionally allow fairly wide room for manœuvre. In that way, it might consider whether the provision in question should be placed in the preamble, in the main body of the convention or in a separate resolution.

74. Mr. MAKAREVICH (Ukrainian Soviet Socialist Republic) said that, as a sponsor of article 22 *bis*, he had no objection to referring all the amendments, including the French amendment, to the Drafting Committee so that it could draw up a generally acceptable text.

75. Mr. RANJEVA (Madagascar) said that it would be sufficient for the Committee to decide on the nature of the obligations of the depositary, obligations of result or obligations of means, in order to solve

the problem. The Committee could then send all the amendments to the Drafting Committee.

76. Mr. ROSENSTOCK (United States of America) again drew the attention of Committee members to his proposal that all amendments to article 22 *bis* should be sent to the Drafting Committee.

77. Mr. MARESCA (Italy) said that however improvised it had been, the French amendment did not affect only the legal nature of the obligation imposed on the depositary, since it considerably limited the scope of the article by making clear that it only applied to depositary States which were parties to the convention. In the view of his delegation, the Committee could not confine itself to merely communicating the amendment to the Drafting Committee.

78. Mr. KATEKA (United Republic of Tanzania) pointed out that the debate had been closed and that the members of the Committee could therefore no longer express opinions concerning the substance of the French amendment.

79. Mr. YAÑEZ-BARNUEVO (Spain) considered that Singapore's amendment was valuable since it seemed to give more accurate expression to the ideas put forward in the course of the debate on the French amendment. Perhaps the Committee could look upon it as a compromise solution in view of the fact that it went some way towards bridging the gap between the obligation of result and the obligation of means which had been referred to.

80. Mr. SNEGIREV (Union of Soviet Socialist Republics) recalled that the authors of article 22 *bis* had agreed that all the amendments to their proposals should be sent to the Drafting Committee.

81. Mr. MUSEUX (France) said that, if he had understood correctly, the sponsors of article 22 *bis* had agreed that the amendment he had proposed be sent to the Drafting Committee. The best solution would therefore be not to vote on the amendment, although it was not entirely of an editorial nature. In order to get out of the difficulty, he proposed that the sponsors of the supplementary article and those of the amendments should consult with a view to drawing up a common text. If the Committee decided to put the matter to the vote, his delegation would withdraw its amendment in favour of Singapore's amendment. His amendment had been based on the unrevised version of article 22 *bis* and if the Committee put the amendment to the vote, it would be taking a decision on an inaccurate text.

82. The CHAIRMAN said that, if he heard no objection, he would take it that the Committee wished to ask the sponsors of article 22 *bis* and the amendments to that article to consult with a view to submitting a common text, which would be put to the vote on Thursday, 28 April.

It was so decided.[9]

ARTICLE 23 (Conditions under which a treaty is considered as being in force in the case of a succession of States) *and*

ARTICLE 24 (The position as between the predecessor State and the newly independent State)[10]

83. Mr. TORRES-BERNARDEZ (Secretary of the Committee) drew attention to a printing error in the English text of article 23 (A/CONF.80/WP.1), in which the words "was in force in respect of the territory to which the succession of States" appeared twice.

84. The CHAIRMAN invited the delegation of Finland to introduce its amendments to articles 23 and 24 (A/CONF.80/C.1/L.30) and the delegation of Australia its amendment to article 23 (A/CONF.80/C.1/L.33).

85. Mr. FREY (Finland) said that his delegation's amendment to article 23 combined the provisions of articles 23 and 24 of the International Law Commission's text; under the amendment, draft article 24 would become paragraph 3 of article 23, and the words "under article 23" in the Commission's text for article 24 had accordingly been replaced by the words "under this article". That change was of a purely technical nature and would not affect the actual contents of the proposal made by the International Law Commission.

86. The Finnish proposal concerning paragraph 1, subparagraph (*b*) of article 23 involved a minor substantive amendment, namely the addition of the words "by applying the treaty or otherwise" before "by reason of their conduct they are to be considered as having so agreed". While the International Law Commission's formulation for that subparagraph could be considered implicitly to include the application of a treaty, his delegation believed more explicit wording to be preferable to an implication that might in certain circumstances raise difficulties of interpretation. The application of a treaty was the primary, although by no means the only, form of conduct from which a bilateral treaty could be inferred to be in force. The word "otherwise" might cover a partial observation of the terms of a bilateral treaty by the successor State, as well as several other measures taken by that State. In his delegation's view, there was sufficient reason to mention the actual application of a treaty as a vital, although not exclusive, factor in defining the attitude of the successor State.

[9] For resumption of the discussion of article 22 *bis*, see 31st meeting, paras. 43-54.

[10] The following amendments were submitted: Finland (to articles 23 and 24), A/CONF.80/C.1/L.30, and Australia (to article 23), A/CONF.80/C.1/L.33.

87. Mr. GILCHRIST (Australia) said that his delegation wished to withdraw its amendment to article 23, but would nevertheless like to explain why it had put that proposal forward. The amendment had been drafted in the light of Australia's experience as a successor State to the United Kingdom and as a predecessor State in respect of the territories now constituting the newly independent States of Nauru and Papua New Guinea, experience which his delegation had considered to be of general relevance to succession problems; it had had in mind, in particular, the administrative convenience for a newly independent State of not having to take formal steps to confirm its status and the utility of providing relief, where practicable, from administrative burdens in the solution of its treaty succession problems.

88. It had, however, become apparent that a rule such as that proposed in the Australian amendment would run counter to the body of opinion which appeared disinclined to tamper with the International Law Commission's formulation of the "clean slate" principle. Moreover, it was possible that Austrialia's experience in that regard had already become anachronistic. Finally, upon further reflection, his delegation had wondered whether its amendment was in fact fully consistent with some other articles, such as article 10.

89. Mr. MANGAL (Afghanistan) said that his delegation was of the opinion that a bilateral treaty validly concluded between sovereign and fully independent States which was in force in respect of the territory to which a succession of States related could be considered as being in force between a newly independent State and the other State party only if that other party expressly so agreed and only if that party had not questioned the validity of the treaty, and hence its continuance in force, prior to the date of succession.

90. The basic principle underlying article 23 was that the newly independent State should begin its international life free of any general obligation to maintain in force treaties concluded by its predecessor. The legal nexus which, in the case of multilateral treaties, generated an actual right for newly independent States to establish themselves as parties thereto did not exist in the case of bilateral treaties, where the respective rights and obligations of the parties were fully identified and no succession could take place in the absence of mutual agreement. His delegation believed that there was no generally accepted rule of continuity regarding bilateral treaties concluded by a predecessor State. The key element in article 23 was the statement that a bilateral treaty was considered as being in force between a newly independent State and the other State party when they expressly so agreed.

91. His delegation had certain misgivings concerning article 1, subparagraph (*b*) of the International Law Commission's draft, which was vague and lacking in clarity and might lead to problems of interpretation and application. His delegation would prefer that provision to be deleted. Since, however, article 23 dealt only with lawful bilateral treaties, in accordance with draft articles 6 and 13, and was based on agreement between the parties and recognized succession on the basis of the provisions of treaties, it would not insist on that suggestion.

92. As his delegation understood it, article 24 did not cover cases in which a treaty contained clear provisions for its termination by either party. Such treaties would be considered as having lapsed if a contracting party, in accordance with such provisions and with other applicable principles concerning the validity of treaties, had declared the treaty to be terminated. No bilateral treaty already considered as terminated by one party could be considered as being in force in relations between a predecessor State and a newly independent State.

93. Mr. RANJEVA (Madagascar) said that he had some misgivings concerning article 23, paragraph 1, subparagraph (*b*). It was advisable to exercise even greater caution in matters relating to succession of States than in the case of treaties in general. Consequently, when referring to the question of "conduct", it might be advisable, in the light of the "clean slate" principle, to leave no room for any possible doubt concerning the desire of a successor State to maintain in force bilateral treaties concluded by its predecessor. In his opinion, subparagraph (*b*) was redundant and even dangerous. If, nevertheless, the Committee wished to retain the International Law Commission's text basically in its present form, he would like the notion of "conduct" to be clarified by the addition of a qualifying adjective such as "unequivocal" or "implicit".

94. Mr. TREVIRANUS (Federal Republic of Germany) said that, in the view of his delegation, article 23 was highly commendable, based as it was on the principle of consent underlying the whole law of treaties and especially the law relating to succession of States. Under the International Law Commission's text, the newly independent State and the other State party to a bilateral treaty could either agree to maintain that treaty in force, with or without modification, or refuse to do so. That freedom of choice reflected the personal relations between the parties to a bilateral treaty, the object of which was to recognize the mutual rights and obligations of the parties by reference to their individual relationship. The International Law Commission had been wise to lay down that rule, notwithstanding the fact that, in the practice of States, there was marked tendency towards continuity in regard to many categories of bilateral treaties. The recognition of the essentially voluntary nature of succession in respect of bilateral treaties also had implications for other parts of the draft convention and for the other State party to a bilateral treaty.

95. He felt that the expression "is considered as being in force" in the title and text of article 23 left room for improvement. First, if, under paragraph 1, subparagraph (*a*) of that article, two States expressly agreed to the continuance in force of a bilateral treaty, then the treaty *was* in force rather than considered as being in force. Moreover, that formula did not adequately reflect the legal character of succession in regard to bilateral treaties. Furthermore, it might be inferred that, instead of an existing treaty being maintained in force a new bilateral agreement was required; it would then probably be necessary for one or both parties to go through the process of ratification.

96. In conclusion, he believed that the drafting of articles 23 and 24 could also be improved by the adoption of the Finnish amendments.

97. Mr. MBACKÉ (Senegal) said that his delegation had a number of reservations concerning paragraph 1, subparagraph (*b*) of article 23. First, it should not be forgotten that the successor State had been subject to the application of the bilateral treaty prior to the date of its independence and might well continue to be influenced by ingrained habits for some time after that date. Secondly, there was a potential constitutional problem in that the *de jure* constitutional authorities of the newly independent State found themselves confronted with a bilateral treaty which was already, *de facto,* in force but on which they had not pronounced themselves. Lastly, who was to determine whether the conduct of a State was such as to constitute agreement to the continuance in force of a treaty? That matter could clearly not be left to the other contracting party, which would then be acting as both judge and jury.

98. Mr. YAÑEZ-BARNUEVO (Spain) said that article 23 was based on the fundamental principle underlying the draft of the International Law Commission—namely, the "clean slate" principle. Under that provision, a bilateral treaty which, at the date of a succession of States, was in force in respect of the territory to which that succession related, would be maintained in force only by agreement between the newly independent State and the other State party. The principle of voluntary consent was, in his view, reflected in both subparagraph (*a*) and subparagraph (*b*) of paragraph 1 of article 23. In effect, those provisions were two different forms of requiring the consent of both parties for a treaty to be maintained in force. While recognizing that subparagraph (*b*) might give rise to doubt in the minds of some delegations, he felt that the substantive element in subparagraph (*b*) was not so much "conduct" as agreement. Of course, such agreement could be inferred only from certain types of conduct having specific legal characteristics, including a common will to agree on the continuity of a treaty relationship. His delegation had no objection to the International Law Commission's text, although it would not be against the addition to subparagraph (*b*) proposed in the Finnish amendment in order to make it clear that the "conduct" concerned related fundamentally to the application of the treaty. It might also be pointed out that the International Law Commission, in paragraph (14) of its commentary to article 23 (A/CONF.80/4, p. 79), had itself recognized that difficulty might arise in the not infrequent case where there was no express agreement. On the other hand, his delegation was not in favour of deleting article 24 as such, since that article referred to a situation which was legally quite distinct from that covered by article 23. Article 24 should therefore be maintained as a separate provision in the draft convention.

99. His delegation was somewhat perplexed by the use of the words "in conformity with provisions of the treaty" in article 23, paragraph 1. That phrase had not been explained in the Commission's commentary, and had indeed been omitted from the summarized form of article 23, paragraph 1, given in paragraph (19) of the commentary (*ibid.* p. 80). The expression would appear to be unnecessary. Another drafting point which he wished to raise was the use of the present tense in the English text of article 23; instead of saying "is considered" and "applies", it would be preferable to use the future tense, as was done in the Spanish text of article 23 and, incidentally, in the English text of article 22.

100. Mr. SCOTLAND (Guyana) said it appeared to his delegation that article 23 of the International Law Commission's draft captured in reasonable measure the situation in bilateral treaty relations between the successor State and the other State party. Subparagraph (*a*) of paragraph 1 acknowledged the principle of the consent of the newly independent State to become a party to the bilateral treaty, a principle which must be seen as fundamental to the continuation and indeed the very existence of any bilateral treaty relationship.

101. Apart from the references in the International Law Commission's commentary on that article to the practice of newly independent States in continuing certain bilateral treaty relationships formerly created by a predecessor State with the other State party, there was no other form of State practice related by the commentary from which the consent of the State to the continuance of the treaty could be clearly inferred. Accordingly, subparagraph (*b*) of article 1 was acceptable to his delegation, subject to the incorporation of certain drafting amendments for the sake of greater clarity. Conduct by the newly independent State within the ambit of the treaty which ensured the continuance of that treaty offered unmistakable evidence of that State's desire for the treaty relationship to continue. Such conduct was exact, clear and certain and in no way left room for doubt. In the light of those considerations, the Finnish proposal to insert the words "by applying the treaty or otherwise" at the start of subparagraph (*b*) did not seem to his delegation to pay due regard to the cardinal principle of consent. He had hoped to receive from

the representative of Finland some illustration of the type of conduct from which consent to the continuance of a bilateral treaty could be imputed, other than that referred to in the provisions of the Commission's draft. That representative had referred to the possibility of partial observation of the terms of the treaty by the successor State and possible additional measures taken by that State. He would submit that a partial application of a bilateral treaty was still an application of that treaty, however limited, while the Finnish representative's second point was too vague for comment. Therefore, the Finnish amendment was not acceptable to his delegation.

102. He had no objection to the Finnish proposal to incorporate article 24 in article 23 in the form of a new paragraph 3, for article 23 related to the conditions under which a treaty was considered as being in force in the case of a succession of States. However, the text spoke of three possible parties, the newly independent State, the other State party and the predecessor State, but the relations between the predecessor State and the newly independent State had not yet been determined by the terms of the text itself. Again, the wording gave the impression that the treaty in question was a multilateral treaty, whereas it was evident from paragraph (3) of the International Law Commission's commentary on article 23 (*ibid.*, p. 77) that two separate bilateral relationships were involved, namely, between the successor State and the other State party, and between the predecessor State and the other State party. Hence, retention of the provision in its present form, whether as a new paragraph in article 23 or as a separate article, might suggest that it had been misplaced in a section of the draft which dealt with bilateral treaties. Nevertheless, the matter could, in his opinion, be dealt with by the Drafting Committee.

103. Mr. YASSEEN (United Arab Emirates) said that his delegation fully agreed with the text of article 23 as prepared by the International Law Commission. Consent could be expressed other than by specific agreement and, hence, paragraph 1, subparagraph (*b*) spoke of conduct, which did not signify an isolated act on the part of the newly independent State or the other State party but a series of acts carried out with full knowledge of the facts. Such conduct had to establish the consent of the two parties. In his view, paragraph 1, subparagraph (*b*) was carefully worded in order to safeguard the interests of newly independent States, for it dealt expressly with conduct that must reflect the State's agreement to continue to be bound by the treaty in question. The principle of national sovereignty enabled a State to express consent in a simplified manner, in other words, by its conduct, which was a reflection of its will.

104. The Finnish proposal was of a drafting nature, but was not perhaps sufficiently precise. The words "by applying the treaty or otherwise by reason of their conduct" meant that application of the treaty was not considered as conduct. However, in his opinion, the best evidence of a State's conduct was its application of the treaty—again, as a series of applications and not merely application in one particular instance. The Finnish amendment could be more clearly worded to read: "by reason of their conduct and particularly by applying the treaty", but that matter might well be referred to the Drafting Committee.

105. Similarly, the Drafting Committee could discuss the question of whether or not it would be preferable to retain articles 23 and 24 separately or to incorporate article 24 in article 23 in the form of a new paragraph.

106. Mr. MARESCA (Italy) said that the purpose of the Finnish proposal concerning article 23, paragraph 1, subparagraph (*b*) was to provide greater opportunity for ascertaining the intentions of a State with regard to a bilateral treaty, in other words, to determine whether or not the State in question consented to continued application of the treaty. International procedures were sometimes based on a State's actions and obviously its conduct could afford evidence of its consent—for example, when a State enacted a domestic law that took into account the provisions of an international treaty to which the State in question was a party. Consequently, his delegation experienced no great difficulties in merging the phrase contained in the International Law Commission's text: "By reason of their conduct" with the phrase employed in the Finnish amendment: "by applying the treaty".

107. While it was true that article 24 related essentially to article 23, it was none the less imperative to distinguish between relations with the predecessor State and relations with States other than the predecessor State. Therefore, it would be preferable to retain article 24 as a separate provision, in the form proposed by the International Law Commission.

108. Mr. MIRCEA (Romania) accepted article 23 in principle but thought that, compared with the other articles, the words "is considered as being in force" in paragraph 1 established a very strict rule, even for bilateral treaties. The Drafting Committee should bring the wording into alignment with the general scheme of the draft convention.

109. As to paragraph 1, subparagraph (*b*), it was difficult to determine whether a State's conduct reflected consent to provisional application of the treaty and, if it did, for what duration. While he could accept the idea that a State's conduct might validly indicate consent over a certain period, in other words, for the purposes of provisional application of the treaty, it was nevertheless essential to secure specific collateral agreement between the States if the treaty was to continue to apply. The Drafting Committee should therefore examine the wording of paragraph 1, subparagraph (*b*) and also of paragraph 2, which dealt

primarily with situations regarding collateral agreement by reason of conduct.

110. It might well be useful to establish a wider criterion than conduct alone. In the case of multilateral treaties, notification of succession, a process of signature and ratification, was required, whereas the conduct of a newly independent State was regarded as the equivalent of such notification for the purposes of bilateral treaties. He wished to reiterate that such an approach was acceptable for a certain period but, thereafter, written evidence of the newly independent State's agreement should be stipulated.

111. Miss WILMSHURST (United Kingdom) questioned the meaning of the words "in conformity with the provisions of the treaty" in article 23, paragraph 1, a matter that had been raised by her Government as far back as 1972. In its commentary the International Law Commission indicated that those words indicated that the treaty was in force definitively, as opposed to provisionally. If that was so, the wording was satisfactory, but it was not fully apparent from the phrase that the intention was to distinguish between definitive application and provisional application. Provisional application was in any case dealt with in part III, section 4. Indeed, she wondered whether the phrase was necessary, but would not press for its deletion. The best course would be for the Drafting Committee to consider whether article 23 was drafted in such a way as to indicate that it dealt with definitive application of a bilateral treaty.

112. Mr. KRISHNADASAN (Swaziland) approved article 23 as prepared by the International Law Commission and, like the representative of the United Arab Emirates, considered that paragraph 1, subparagraph (*b*) fully covered the questions of consent and manifestation of consent from the point of view of international law.

113. It appeared from the comments of Governments (A/CONF.80/5) and from the Committee's discussions that his delegation was the only one to take the view that article 24 was self-evident and unnecessary. The words "is not by reason only of that fact to be considered as in force also in the relations between the predecessor State and the newly independent State" seemed to imply that there was some other manner in which a bilateral treaty could be applicable between the predecessor State and the successor State. However, his delegation would not insist that the article should be deleted.

114. Mr. EUSTATHIADES (Greece) noted that the concept of consent or tacit agreement was already clearly embodied in paragraph 1, subparagraph (*b*) of article 23. The Finnish amendment used the words "by applying the treaty", an idea that was immediately eclipsed by the words "or otherwise by reason of their conduct". It was true that the idea could be clarified in the form of words suggested by the representative of the United Arab Emirates, but there was a large range of situations in which it would be very difficult to infer whether or not a State's conduct demonstrated its will to maintain the treaty in force. Hence he preferred the Commission's text but thought that, if it was to be retained, the Drafting Committee might well consider the possibility of using in the French version the word *"conduite"*, employed in article 45 of the Vienna Convention on the Law of Treaties, instead of the word *"comportement"*.

115. Mr. FREY (Finland) said that the form of words suggested by the representative of the United Arab Emirates was entirely acceptable, for it was wholly in keeping with his own delegation's purpose in submitting the amendment to paragraph 1, subparagraph (*b*).

116. The CHAIRMAN said that votes, if any, on articles 23 and 24 would be taken on the understanding that the Drafting Committee would consider the questions of the wording of article 23, paragraph 1, subparagraph (*b*) and the incorporation of article 24 in article 23.

At the request of the representative of Madagascar, a separate vote was taken on article 23, paragraph 1, subparagraph (b).

Article 23, paragraph 1, subparagraph (b) was adopted by 56 votes to 6, with 12 abstentions.

At the request of the representative of France, a vote was taken on article 24.

Article 24 was adopted by 57 votes to 8, with 7 abstentions.

117. Mr. MUSEUX (France) said that his delegation had voted against the adoption of article 24 not on grounds of substance but because the article seemed self-evident and pointless. Moreover, it had been necessary to draw the attention of the Committee to the fact that article 24 dealt with situations that did not exist, whereas the draft should deal with realities, in other words, the situation regarding predecessor States and third States.

118. Mr. MUDHO (Kenya) said that article 24 was a statement of the obvious, but his delegation which had abstained, had not experienced sufficient objections to warrant a vote against adoption of the text.

119. Mr. HELLNERS (Sweden) said that his delegation had voted against the adoption of article 24 for the same reasons as those explained by the representative of France.

The meeting rose at 9 p.m.

30th MEETING

Thursday, 28 April 1977, at 11.10 a.m.

Chairman: Mr. RIAD (Egypt)

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)*

ARTICLE 25 (Termination, suspension of operation or amendment of the treaty as between the predecessor State and the other State party)

1. The CHAIRMAN said that, since no amendments to article 25 had been submitted, if no delegation wished to speak he would take it that the Committee of the Whole decided to adopt the article provisionally and refer it to the Drafting Committee.

It was so decided.[1]

ARTICLE 26 (Multilateral treaties) *and*

ARTICLE 27 (Bilateral treaties)[2]

2. The CHAIRMAN said that since the Committee had before it an amendment by the delegation of Finland (A/CONF.80/C.1/L.31) which concerned both article 26 and article 27, those articles would be considered together. Before inviting the representative of Australia to submit his amendment to article 26, he would request the delegation of Finland to confirm that, in accordance with the textual changes made to its amendment to article 23 (A/CONF.80/C.1/L.30) at the Committee's 29th meeting, the text of its amendment to articles 26 and 27 should likewise be amended, to read:

Article 26

In paragraphs 1 and 3 of article 26, after the words "... by reason of its conduct..." add the words "... and in particular by applying the treaty..."

Article 27

In subparagraph (*b*) of article 27, after the words "... by reason of their conduct..." add the words "... and in particular by applying the treaty...".

3. Mr. FREY (Finland) said that his delegation fully accepted the textual amendments read out by the Chairman, and had no further comments.

4. Mr. GILCHRIST (Australia), introducing his delegation's proposed amendment to article 26 (A/CONF.80/C.1/L.34), said that his delegation, too, could accept the amended wording read out by the Chairman.

5. Australia was well aware that newly independent States, especially small ones, not only faced an immense burden arising from treaty arrangements, but often lacked the expertise to deal with it. The purpose of his delegation's amendment was to reduce the administrative problems of such States by placing the onus on the other parties, should they not agree to provisional application of a treaty as between themselves and the successor State, to reject such application expressly in writing. The procedure outlined in the Australian amendment was the opposite to that in the International Law Commission's text, but the effect, of course, would be the same.

6. The International Law Commission had regarded provisional application of a multilateral treaty as hardly possible, except in the case of a "restricted" multilateral treaty, and then only with the agreement of all the parties, since the final clauses of such treaties rarely contemplated the possibility of provisional participation; it had also noted, according to paragraph (2) of the commentary to article 26, that "multilateral" provisional application on a consensual basis did not appear to occur in practice (A/CONF.80/4, pp. 84-85). As noted in paragraph (3) of the commentary (*ibid.*, p. 85), the International Law Commission had preferred a different theoretical basis, namely, provisional application arranged bilaterally through collateral agreements.

7. That basis was the one adopted in the Australian amendment, which would lead to provisional application explicable as a network of collateral bilateral agreements between the successor State and all parties which had not expressly rejected provisional application by notice in writing.

8. The changes proposed in the Australian amendment were procedural and would obviate the presumption that conduct was in some cases to be regarded as agreement. They would lead to a reduction in the volume of communications needed to establish provisional application of a treaty, since only those States wishing to notify rejection—presumably a minority—would need to take any action. The procedure proposed would thus be of considerable practical help to successor States.

9. The Australian amendment should not be treated as a drafting proposal; it was an amendment of substance, though not, in his delegation's view, one of principle. His delegation hoped, therefore, that the

[1] For resumption of the discussion of article 25, see 35th meeting, paras. 51-52.

[2] The following amendments were submitted: Finland (to articles 26 and 27), A/CONF.80/C.1/L.31, and Australia (to article 26), A/CONF.80/C.1/L.34, the revised version of which (A/CONF.80/C.1/L.34/Rev.1) was also sponsored by Ireland.

Committee of the Whole would take a decision on its amendment at the end of the debate on article 26.

10. Mr. MARESCA (Italy) said that a newly independent State always began its existence with the good wishes of the international community, which would surely wish to see all multilateral treaty provisions concerning the new State's territory applied as flexibly and indulgently as possible.

11. In draft article 26, paragraph 1, his delegation thought the words "by reason of its conduct" might not be sufficiently explicit; not everyone took silence to mean consent. In that context, his delegation viewed the Australian amendment with sympathy; the element of certainty provided by the proposed new wording for paragraph 1, particularly the words "in writing expressly", would be an assurance to a successor State. In his delegation's view, those words were most appropriate and an improvement on the International Law Commission's text both technically and legally.

12. Mr. RANJEVA (Madagascar) said that the "clean slate" principle did not preclude provisional application of treaties, especially multilateral ones; some form of legal continuity was desirable.

13. His delegation was pleased to note that the International Law Commission's text referred to the express agreement of a party and thus avoided all ambiguity. The expression of consent was explicit in practice; the Australian amendment, however, sought to use another formula, namely, that of rejection. While his delegation appreciated the concern to avoid interrupting the continuity of international relations, it foresaw possible problems as a result of the Australian delegation's proposal.

14. In the first place, to require express rejection from other parties would destroy a right recognized by the principle of succession, namely, the right to participate in an international convention in accordance with *sui generis* modalities. A successor State would be hampered if it had to re-negotiate a treaty because of an express rejection; in particular, the attendant delays and periods of uncertainty could give rise to great difficulties for such a State. If the Australian delegation could so clarify its amendment as to remove that danger, his delegation could support the proposal.

15. Secondly, the proposed formulation was based on a purely theoretical speculation. The very fact that it might be difficult for one party to show its express will to exclude a newly independent State could mean that States which did not wish the treaty in question to extend to the newly independent State might destroy the effects of the treaty itself.

16. With regard to article 27, his delegation reiterated what it had said in the debate on article 22 concerning the difficulty of knowing what was to be inferred from different types of conduct.[3] The Vienna Convention on the Law of Treaties stated rules which gave rise to no difficulty. But when it came to the provisional application of treaties in the event of a succession of States, it would be dangerous to include the idea of inferring intentions from conduct.

17. As the representative of Senegal had said recently, treaties and other legal matters often failed to receive early attention by a newly independent State, which had many more pressing tasks before it.

18. Mr. ŠAKO (Ivory Coast) said that his delegation had no difficulty in supporting the Australian amendment because it introduced a presumption of the consent of the other parties to a treaty. It would thus facilitate the provisional application of treaties by the successor State, which would not be obliged to wait until the other parties had expressly agreed to provisional application.

19. Mr. MIRCEA (Romania) said that draft article 26 referred to the intentions of the successor State and the other States parties to the treaty in question. Any such reference to the intentions of the parties to a bilateral treaty was, however, lacking in draft article 27, which gave a good example of what was meant by tacit consent in a case of a succession of States in respect of treaties. His delegation would like the Expert Consultant to explain what kind of conduct could be taken as an indication of a State's intention to apply a treaty on a provisional basis.

20. In the amendment submitted by Finland, as orally amended, the words "by applying the treaty" did not make it clear whether the treaty would be applied definitively or provisionally. The amendment was, moreover, similar to the International Law Commission's text of draft article 27 in that it did not require the States parties to give notice of their intentions with regard to the application of the treaty. It was therefore unacceptable to his delegation.

21. The amendment to draft article 26 submitted by Australia had the advantage of eliminating the idea of tacit consent, but it introduced a presumption of consent to which his delegation could not agree. Indeed, it preferred the approach adopted by the International Law Commission in paragraph (3) of its commentary to draft article 26 (*ibid.*), where it referred to the case in which a multilateral treaty was, by a collateral agreement, applied provisionally between the newly independent State and a particular party to the treaty on a bilateral basis. The two parties thus had an opportunity of holding consultations to decide whether they would apply the treaty definitively or provisionally.

22. Mr. HELLNERS (Sweden) said that draft article 26 seemed to be based on the reasoning that the

[3] See above, 29th meeting, para. 5.

successor State should be given an opportunity to apply provisionally as many multilateral treaties as possible. Paragraph 1 accordingly provided that a multilateral treaty would apply provisionally between the newly independent State and any party which expressly so agreed or by reason of its conduct was to be considered as having so agreed. Thus, the International Law Commission's text imposed a definite requirement on the parties to the treaty in question. His delegation was generally favourable to the underlying idea. It thought that the amendment submitted by Australia which also favoured the successor State, merely said the same thing as the latter part of the International Law Commission's text, although in a different way.

23. Mr. SATTAR (Pakistan) said that, in principle, his delegation had no objection to the substance of draft article 26. It nevertheless wondered why the International Law Commission had considered it necessary, in paragraph 1, to introduce the idea of the express agreement of the other parties to a multilateral treaty, when it had not laid down the same condition in article 16. His delegation considered that, if a newly independent State could establish its status as a party to any multilateral treaty in force at the date of the succession of State without the consent of the other States parties, it should have the same right in regard to the provisional application of a multilateral treaty. He would like the Expert Consultant to explain why the International Law Commission had decided not to include the words "Subject to paragraphs 2, 3, 4 and 5" at the beginning of draft article 26, paragraph 1.

24. As to the question of the date when a multilateral treaty would begin to apply provisionally as between a newly independent State and the other States parties, the Australian amendment seemed to imply that the treaty would begin to apply provisionally as from the date of the notification of acceptance of the treaty by the newly independent State. His delegation believed, however, that it would be desirable for the multilateral treaty to apply provisionally from the date when the other States parties received notice of the newly independent State's intention that it should so apply, especially as some of the other parties might also be newly independent States. Subject to a clarification of that point, his delegation would be able to support the Australian amendment.

25. Mr. MEDJAD (Algeria) said that his delegation supported the Australian amendment, which wisely placed the burden of express rejection of provisional application on the shoulders of the other States parties to the treaty.

26. With regard to the question of "conduct" raised by the representative of Romania, his delegation also considered that the words "by reason of its conduct", at the end of draft article 26, paragraph 1, were likely to give rise to practical difficulties, and would be grateful to the Expert Consultant for an explanation of the meaning of those words.

27. Miss OLOWO (Uganda) said that, although her delegation supported the Australian amendment, it agreed with the representative of Sweden that the words "provided that a party may by notice in writing expressly reject provisional application as between itself and the successor State" had the same basic effect as the words "any party which expressly so agrees or by reason of its conduct is to be considered as having so agreed" at the end of paragraph 1 of draft article 26 in the International Law Commission's text. That would be even clearer if the Australian proposal was amended to read: "provided that a party does not expressly reject in writing provisional application as between itself and the successor State".

28. Sir Francis VALLAT (Expert Consultant), replying to the question raised by the representative of Pakistan, said he did not think there were any real substantive reasons for the differences in wording between draft article 16, paragraph 1, and draft article 26, paragraph 1. The two articles were, however, rather different in structure: in article 16, the provisions of paragraph 1 were in fact subject to the provisions of paragraphs 2 and 3, whereas in draft article 26, the provisions of paragraph 5 were subject to the provisions of the preceding four paragraphs.

29. Referring to the question raised by the representative of Romania, concerning the kind of conduct which would be relevant under draft articles 26 and 27, he drew attention to paragraph (2) of the commentary to draft article 27 (*ibid.*, p. 86). The point the International Law Commission had tried to make in those two draft articles was that, although two States parties to a treaty would not necessarily agree expressly on the provisional application of a treaty, it might clearly be their intention that the treaty should apply provisionally. The application of the treaty alone might not be sufficient; it could also be necessary to have some supplementary evidence to show that the conduct of a particular State indicated that it intended the treaty to apply provisonally.

30. For example, if the successor State informed the other State concerned that it intended to apply a customs treaty provisionally and the other State admitted goods from the successor State at the rates of duty provided for in the treaty, such conduct might constitute evidence of acceptance of the successor State's intention to apply the treaty provisionally, but it would not necessarily constitute sufficient evidence, because there would be little to connect the conduct with the provisional application of the treaty. If, on the other hand, the other State party wrote a letter stating that it was content to apply the treaty provisionally, then the actual admission of the goods, combined with the letter, would clearly be conduct which would show that there was an implicit agreement to apply the treaty provisionally. Such conduct

was quite normal in relations between States and it had been the thinking of the International Law Commission that it should be possible to provide for the provisional application of treaties by conduct of that kind. Of course, exactly what kind of conduct would be required in particular cases would vary, as was only to be expected when applying any general principle.

31. Mr. MIRCEA (Romania) said that the question he had asked seemed to have been misunderstood. It had in fact related only to draft article 27, although he had referred by way of comparison to draft article 26. Nevertheless, the example given by the Expert Consultant had confirmed the fact that express agreement was necessary and that conduct was not enough: the successor State must inform the other State party to the treaty that it intended to apply the treaty provisionally. That element of intention was missing in draft article 27.

32. Mr. EUSTATHIADES (Greece), Mr. MANGAL (Afghanistan) and Mr. HASSAN (Egypt) supported the Australian amendment.

33. Mr. SIEV (Ireland) said that he supported the Australian amendment, but wished to raise a few additional points.

34. It would be useful if, in paragraphs 1 and 3 of article 26, the newly independent State was required to give notice in writing of its intention that the treaty should be applied provisionally.

35. The Australian amendment did not fix any time-limit within which a State party might reject the provisional application of a treaty. It might reasonably be required to do so within six months of receipt of the newly independent State's notice in writing of its intention. A provision should also be included to the effect that written notice should be sent to the depositary of the treaty or to the contracting States as the case might be.

36. Mr. MUDHO (Kenya) said that he welcomed the Australian amendment which dealt with the practical difficulties newly independent States would encounter in applying article 26. He also agreed with the Irish representative's proposals, particularly with regard to fixing a time-limit for rejection of the provisional application of a treaty.

37. Mr. NAKAGAWA (Japan) said that, although he recognized the practical advantages of the Australian amendment, he preferred draft articles 26 and 27 as they stood. Any provisional application of a treaty required the consent of the parties concerned and it should be given in a positive rather than a negative form.

38. Mr. SAKI (Sudan) said that he, too preferred draft article 26 to the Australian amendment, which presumed the provisional continuation of a treaty unless it was expressly rejected; the International Law Commission's text assumed the contrary, and that was more in line with article 23.

39. Mr. GILCHRIST (Australia), thanking speakers for their support of the Australian amendment, proposed that the Committee should defer taking a decision on it until the following meeting to give his delegation time to produce a text which took account of the comments made by the representatives of Ireland and Pakistan.

40. The CHAIRMAN said that, if there was no objection, he would take it that the Committee wished to postpone further consideration of articles 26 and 27 until the following meeting.

It was so decided.[4]

ARTICLE 28 (Termination of provisional application)

41. Miss WILMSHURST (United Kingdom) said that since, in the case of treaties falling within the category mentioned in article 16, paragraph 3, the refusal of only one party would suffice to prevent provisional application to a newly independent State under article 26, paragraph 2, it was logical that notice by only one party or contracting State should likewise suffice to terminate provisional application. She therefore suggested the addition of the words "one of" before the words "the parties" and before the words "the contracting States", in the last two lines of paragraph 1, subparagraph (*b*) of article 28.

42. Mr. MIRCEA (Romania) said that article 28 was closely linked with articles 26 and 27 and proposed that further consideration of it should be postponed until a decision had been taken on the Australian amendment to article 26.

43. The CHAIRMAN said that, if there was no objection, he would take it that the Committee wished to postpone further consideration of article 28 until the following meeting.

It was so decided.[5]

The meeting rose at 12.45 p.m.

[4] For resumption of the discussion of articles 26 and 27, see 32nd meeting, paras. 14-36.

[5] For resumption of the discussion of article 28, see 32nd meeting, paras. 37-46.

31st MEETING

Thursday, 28 April 1977, at 4.10 p.m.

Chairman: Mr. RIAD (Egypt)

In the absence of the Chairman, Mr. Ritter (Switzerland), Vice-Chairman, took the Chair.

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)*

REPORT OF THE DRAFTING COMMITTEE ON THE TITLES AND TEXTS OF ARTICLES 1, 3 TO 5 AND 8 TO 10 ADOPTED BY THE DRAFTING COMMITTEE (A/CONF.80/C.1/1)

1. Mr. YASSEEN (Chairman of the Drafting Committee) said that the part of the report of the Drafting Committee under consideration (A/CONF.80/C.1/1) related to the titles and texts of articles 1, 3 to 5 and 8 to 10 adopted by that Committee; the Committee of the Whole had not yet formally referred the text of articles 2, 6 and 7 to the Drafting Committee. In considering the texts referred to it by the Committee of the Whole, the Drafting Committee had taken into account not only the drafting points which had been raised in connexion with proposed amendments and to which its attention had been formally drawn by the Committee of the Whole, but also; to the fullest possible extent, the suggestions made by particular delegations during the Committee's discussions. He would refrain from drawing attention in every instance to changes such as the replacement of the expression "the present articles" by the expression "the present Convention" wherever the former expression had been used in the titles and texts of the draft articles, or, as a general rule, to minor drafting changes such as questions of punctuation.

Article 1 (Scope of the present Convention)[1]

2. Mr. YASSEEN (Chairman of the Drafting Committee) said that the Drafting Committee had adopted without change the title and text of article 1 prepared by the International Law Commission and referred to it by the Committee of the Whole.

3. The CHAIRMAN said that, if there was no objection, he would take it that the Committee adopted on second reading the title and text of article 1 submitted by the Drafting Committee.

It was so decided.[2]

Mr. Riad (Egypt) took the Chair.

[1] For earlier discussion of article 1, see 2nd meeting, paras. 1-5.

[2] For the adoption of article 1 by the Conference, see 5th plenary meeting.

Article 3 (Cases not within the scope of the present Convention)[3]

Article 5 (Obligations imposed by international law independently of a treaty)[4]

4. Mr. YASSEEN (Chairman of the Drafting Committee) said that, taking into account the discussions in the Committee of the Whole and also the terms of reference expressly given to it by that Committee, the Drafting Committee had considered the question of the consistency as between the different language versions of the use of tenses in article 3, subparagraph (*a*), and article 5 in the expressions *"seraient [est] soumis"* (in French), "would be subject" (in English) and *"estuvieran sometidos [esté sometido]"* (in Spanish). The Drafting Committee had decided that, both in article 3 and in article 5, the present tense, which already appeared in the French and Spanish versions of article 5, should be used for all language versions: the Drafting Committee's decision on that point had been prompted solely by a concern for grammatical logic and marked no departure from the approach to similar questions taken by the Vienna Conference on the Law of Treaties. Consequently, the words "are [is]" would replace the words "would be" in article 3, subparagraph (*a*) and article 5, respectively, of the English version; the word *"sont"* would replace *"seraient"* in article 3, subparagraph (*a*) of the French version; and the word *"estén"* would replace the word *"estuvieran"* in article 3, subparagraph (*a*) of the Spanish version.

5. The CHAIRMAN said that, if there was no objection, he would take it that the Committee adopted on second reading the titles and texts of articles 3 and 5 submitted by the Drafting Committee.

It was so decided.[5]

Article 4 *(Treaties constituting international organizations and treaties adopted within an organization)*[6]

6. Mr. YASSEEN (Chairman of the Drafting Committee) said that the Drafting Committee had adopted without change the title and text of article 4, as referred to it by the Committee of the Whole.

7. The CHAIRMAN said that, if there was no objection, he would take it that the Committee adopted on second reading the title and text of article 4 submitted by the Drafting Committee.

It was so decided.[7]

[3] For earlier discussion of article 3, see 4th meeting, paras. 1-11.

[4] For earlier discussion of article 5, see 4th meeting, paras. 36-55; 5th meeting, paras. 59-74; 6th meeting, paras. 1-16, and 8th meeting, paras. 1-18.

[5] For the adoption of articles 3 and 5 by the Conference, see 5th plenary meeting.

[6] For earlier discussion of article 4, see 4th meeting, paras. 12-35.

[7] For the adoption of article 4 by the Conference, see 5th plenary meeting.

Article 8 (Agreements for the devolution of treaty obligations or rights from a predecessor State to a successor State)[8]

8. Mr. YASSEEN (Chairman of the Drafting Committee) said that the Drafting Committee had adopted the title and text of article 8 as referred to it by the Committee of the Whole, subject to a few minor drafting changes in two language versions. In paragraph 1 of the English version, the term "successor States" had been put into the singular ("successor State"), in view of the fact that the singular was used in related expressions in the same paragraph and that the term appeared in the singular in the other language versions. The word *"estén"* in paragraph 2 of the Spanish version had been replaced by *"estuvieran"*, since the sentence was expressed in the past tense and that tense was used in the other language versions.

9. The CHAIRMAN said that, if there was no objection, he would take it that the Committee adopted on second reading the title and text of article 8 submitted by the Drafting Committee.

It was so decided.[9]

Article 9 (Unilateral declaration by a successor State regarding treaties of the predecessor State)[10]

10. Mr. YASSEEN (Chairman of the Drafting Committee) said that the words "of a predecessor State" in the opening phrase of paragraph 1 had been deleted in all the language versions. In addition, the definite article appearing at the very start of the paragraph had been deleted from the English version, although, for purely linguistic reasons, it had been retained in the French and Spanish versions. The deletion of the words "of a predecessor State" had been prompted by a desire to bring out the underlying intention of the International Law Commission in adopting article 9, particularly where "other States parties" were concerned; the amended text of article 9 brought out more clearly the difference of emphasis which the Commission had sought to establish between that provision and the corresponding provision of article 8, a difference which reflected the distinction between unilateral declaration and devolution agreements. That change helped to dispel the mistaken impression, which might have been formed from a hasty reading of the previous wording, that the obligations or rights of a predecessor State could become obligations or rights of the "other States parties".

11. Also in paragraph 1, in the English version only, the expression "successor States" had been put into the singular ("successor State"), for the reason which he had already indicated in connexion with article 8. The Drafting Committee had made no other changes to the text of article 9.

12. Mr. MBACKÉ (Senegal) said he considered the expression "in force in respect of a territory" to be inappropriate and would prefer the expression "applicable in a territory". Furthermore, he believed that a unilateral declaration "affirmed" rather than "provided for" the continuance in force of treaties.

13. Mr. YASSEEN (Chairman of the Drafting Committee) said that the Drafting Committee had not considered it necessary to replace the expression "in force in respect of a territory" used by the International Law Commission. That expression existed in legal parlance, and it was quite possible to conceive of a treaty being in force "in respect of" a territory.

14. Similarly, the Drafting Committee had seen no need to change the term "providing for" used by the International Law Commission, since that term could be applied either to a unilateral declaration or to a treaty agreement.

15. Mr. RANJEVA (Madagascar) said that, in his opinion, the observation made by the representative of Senegal was not of a purely linguistic nature; there was perhaps a slight difference in meaning between the expression "in respect of a territory" and the expression "in the territory". A distinction could be made between two types of treaties: valid treaties which were actually applicable to the territory and treaties whose validity was not questioned but which did not necessarily apply to the territory. The expression "in the territory" had the virtue of simplicity: it covered treaties in force which were actually applicable in the territory, whereas the expression "in respect of the territory" covered not only treaties in force which were applicable in the territory but also other treaties which might not be applicable in the territory but by which the successor State had agreed to consider itself bound, with the possibility of extending them to the territory.

16. Mr. MIRCEA (Romania) agreed with the representative of Senegal that the term "providing for" could not appropriately be applied to a unilateral declaration. There was also a discrepancy between the title and the text of article 9: the Drafting Committee had decided to delete the expression "of the predecessor State" in the text of the article, whereas it had retained it in the title. He wondered whether the unilateral declaration dealt with in article 9 could be held to have no effects for the predecessor State, since, in the existing text, the predecessor State was treated on the same footing as other States parties.

17. Mr. YASSEEN (Chairman of the Drafting Committee) said that the text of article 9 made it clear that what was involved was a unilateral declaration by a successor State regarding treaties of the prede-

[8] For earlier discussion of article 8, see 13th and 14th meetings

[9] For the adoption of article 8 by the Conference, see 5th plenary meeting

[10] For earlier discussion of article 9, see 15th meeting, paras. 3-15.

cessor State. However, such a declaration had effects not only for the predecessor State but also for the other States parties; since a treaty of the predecessor State was concerned, the successor State could have relations with the other States parties only by the instrumentality of the predecessor State.

18. Mr. SETTE CÂMARA (Brazil) said he believed that the comment by the representative of Senegal applied only to the French text. In his opinion, the English text did not pose any problems. The Committee might therefore adopt article 9, on the understanding that the French version would be brought into line with the English version.

19. Mr. USHAKOV (Union of Soviet Socialist Republics) thought that the comment by the representative of Senegal was based on a misunderstanding. The article dealt with treaties applicable *in respect of* a territory and not *in* a territory — which was quite a different thing. The point raised by the representative of Senegal was a matter not merely of drafting but of substance, for the change that he was proposing would alter the very meaning of the article. Hence, the answer to the problem lay not with the Drafting Committee but with the Expert Consultant.

20. Sir Francis VALLAT (Expert Consultant) considered that the expression "treaties in force in respect of a territory" was perfectly clear.

21. Mr. YASSEEN (Chairman of the Drafting Committee) said that, in view of the statement by the Expert Consultant, there was no point in referring article 9 back to the Drafting Committee, which had already expressed its opinion. He therefore proposed that the Committee should vote on the Senegalese proposal.

22. Mr. MARESCA (Italy) said that he, too, thought it pointless to refer article 9 back to the Drafting Committee. In his opinion, the expression "in respect of a territory" covered all eventualities and could be applied to all cases. The expression "in a territory" would completely alter the meaning of the article, for the treaties in question did not strictly attach to a territory but related to that territory. Therefore, a general and neutral form of words should be used.

23. Mr. MBACKÉ (Senegal) said that he would not press for his proposal to be put to the vote.

24. The CHAIRMAN said that, if there was no objection, he would take it that the Committee adopted on second reading the title and the text of article 9 submitted by the Drafting Committee.

It was so decided.[11]

Article 10 (*Treaties providing for the participation of a successor State*)[12]

25. Mr. YASSEEN (Chairman of the Drafting Committee) said that the title and the text for article 10 adopted by the Drafting Committee followed those referred to it by the Committee of the Whole, with a few changes. In the Spanish version of the title, the word "*los*", had been inserted between "*en*" and "*que*", for reasons of style.

26. In paragraph 2, the words "as such" ("*en tant que telle*" in French and "*como tal*" in Spanish) had been inserted after the words "takes effect" ("*ne prend effet*" in French and "*surtirá efecto*" in Spanish). That change had been made in all versions for the sake of clarity. Consequently, the words "such a" and the Spanish word "*tal*" had been replaced by "the" and "*esta*", respectively. In each language version the indefinite article had been substituted for the definite article preceding the words "successor State" where those words appeared for the first time in paragraph 2; however, the definite article preceding the words "successor State", where they appeared for the second time in that paragraph, had been retained.

27. Lastly, in paragraph 3, in each language versions the words "of States" ("*d'Etats*" in French and "*de Estados*" in Spanish) had been inserted after the word "succession", since the expression "succession of States" had the merit of conforming to the definition contained in article 2, subparagraph (*b*) of the basic text before the Conference.

28. Mr. SEPÚLVEDA (Mexico) drew the attention of the members of the Committee to an error in paragraph 2 of the Spanish version of the text adopted by the Drafting Committee, where the word "*disponga*" should be replaced by "*dispone*".

29. Mr. TORRES-BERNARDEZ (Secretary of the Committee) said that that was a typing error which would be corrected forthwith.

30. Mr. MBACKÉ (Senegal) observed that, in French, the present indicative was normally used in drafting treaties. While the use of the future might be justified in the present instance, it would be better to use the present indicative, which would in no way alter the meaning of the article and would be more in keeping with the practice followed for drafting treaties in French.

31. Again, the wording of the phrase "it may notify its succession in respect of the treaty", in paragraph 1, left room for improvement. The words "in respect of" ("*à l'égard de*") should be replaced by "with regard to" ("*en ce qui concerne*").

[11] For the adoption of article 9 by the conference, see 5th plenary meeting.

[12] For earlier discussion of article 10, see 16th meeting, paras. 7-67.

32. Mr. KRISHNADASAN (Swaziland) asked the Chairman of the Drafting Committee to provide some further explanation as to why the Drafting Committee had decided to insert the words "as such" after the words "takes effect", in paragraph 2. He hoped that the expression did not in that instance have the same meaning as in articles 11 and 12, where, in his opinion, the phrase "A succession of States does not as such affect" meant "a succession of States does not affect in virtue of this fact". If, in the article now under consideration, the expression was to be interpreted as meaning "in fact", his delegation would be able to approve the wording of the provision.

33. Mr. YASSEEN (Chairman of the Drafting Committee) said that, in the opinion of the Drafting Committee, the addition of the words "as such" did not in any way alter the meaning of article 10; the Drafting Committee had simply sought to emphasize and clarify the idea underlying article 10.

34. Mr. KEARNEY (United States of America), supported by Mr. KRISHNADASAN (Swaziland), considered that the original text of paragraph 2 had been clearer than the revised version submitted by the Drafting Committee. In his view, there was a real difference between the expression "such a provision takes effect" and the expression "the provision takes effect as such", which implied that other provisions might be involved, something that ought not to be the case. For that reason, he was in favour of retaining the original wording.

35. Mr. SATAR (Pakistan) drew the attention of the members of the Committee to another change to paragraph 2 mentioned by the Chairman of the Drafting Committee, namely, the replacement of the definite article by the indefinite article before the words "successor State" in the second line. That change did not make for a clearer text, and he was inclined to agree with the representative of the United States that it would be better to retain the text prepared by the International Law Commission.

36. Sir Francis VALLAT (Expert Consultant), referring to the comments by the representatives of the United States of America and Swaziland, pointed out that the question of the relationship between article 10 and other provisions of the draft regarding the continuance in force of treaties in certain cases, together with the problem of inconsistency as between those provisions, of their parallel implementation or of the primacy of one over the other, had already been discussed by the Committee. Article 10 dealt with the provisions of a treaty, regardless of whether or not that treaty was maintained in force. He believed that paragraph 2, in its previous wording, had been sufficiently clear on that point. If the expression "as such" continued to raise doubts, it might be better to revert to the original text.

37. As to the replacement of the definite article by the indefinite article, he considered that the definite article might not cover every eventuality and that the indefinite article had been used for the sake of greater accuracy.

38. Mr. NAKAGAWA (Japan) endorsed the new wording of article 10. The addition of the words "as such" in no way altered the substance of the provision under consideration; it simply gave greater emphasis to the idea embodied in the article.

39. Mr. MIRCEA (Romania) welcomed the fact that the representative of Swaziland had raised the question of the insertion in paragraph 2 of the words "as such", which altered somewhat the meaning of the original text.

40. Mr. YIMER (Ethiopia) moved the closure of the debate in accordance with rule 24 of the rules of procedure (A/CONF.80/8).

41. The CHAIRMAN said that, if there was no objection, he would take it that the Committee wished to close the debate on article 10.

It was so decided.

42. The CHAIRMAN invited the Committee to vote on the text of article 10, as submitted by the Drafting Committee.

The text of article 10 was adopted on second reading by 17 votes to 13, with 36 abstentions.[13]

PROPOSED NEW ARTICLE 22 *bis* (Notification by a depositary)[14] (*resumed from the 29th meeting*)

43. Mr. MAKAREVICH (Ukrainian Soviet Socialist Republic), introducing the revised proposal for a new article 22 *bis* (A/CONF.80/C.1/L.28/Rev.1) on behalf of his own delegation and those of Czechoslovakia, Poland and Singapore, said that, as a result of consultations among interested delegations, it had proved possible to arrive at a text which should command very wide support. The text originally proposed (A/CONF.80/C.1/L.28) had raised difficulties for some delegations, including the delegation of Singapore, which was now one of the sponsors of the revised draft. The sponsors of the new text had replaced the word "notify" in paragraph 1 of the earlier text by the words "by writing inform" and had inserted the word "previously" before the word "extended". The new version did not purport to be perfect and, naturally, it would be for the Drafting Committee to work out a final text. He wished to thank the delegations which had taken part in the consultations on the draft article.

[13] For the adoption of article 10 by the Conference, see 5th plenary meeting.

[14] For the amendments submitted to the proposed new article 22 *bis*, see 29th meeting, foot-note 3.

44. Mr. STUTTERHEIM (Netherlands) said that, as he had already pointed out when the Committee had commenced its consideration of draft article 22 *bis*, his delegation had certain doubts regarding the words "all other relevant particulars relating to the treaty", at the end of the revised proposal. As a depositary, his Government already notified newly independent States, as far as possible, of treaties which had been extended to the territory to which the succession of States related, but exercised that function in accordance with the provisions of article 77 of the Vienna Convention on the Law of Treaties. He therefore proposed that the words "referred to in article 77, paragraph 1, subparagraphs (*e*) and (*f*) of the 1969 Vienna Convention on the Law of Treaties" should be inserted at the end of the revised text. Moreover, since such an article could be binding only on States parties to the future convention, it might be preferable to include such a proposal in the Final Act of the Conference. However, it was for the Drafting Committee to consider how the principle embodied in that provision could best be expressed—whether in an article or in the Final Act. Delegations would then be able to take a decision on the final proposal submitted by the Drafting Committee.

45. Mr. MUSEUX (France) said that, as pointed out by the representative of the Ukrainian SSR, the new version of article 22 *bis*, which was an improvement on the earlier text, had commanded wide support during the consultations among delegations. Nevertheless, it had not been possible to reach agreement on the suggestion made by his own delegation during the earlier debate on the new article to the effect that the obligations laid down in the provision should be confined, firstly, to *States*, since direct obligations could not be imposed on international organizations, and secondly, to States *parties* to the future convention. He therefore proposed that the words "The depositary" in the first line of the revised text should be replaced by the words "A State party to the present Convention which is a depositary" and that the words "if any", also in the first line, should be deleted. He supported the oral subamendment to the end of the text of the article proposed by the Netherlands representative, which helped to define more precisely the role of the depositary.

46. Mr. SATTAR (Pakistan) said that, judging from the debate, the majority of the members of the Committee were favourable to the proposed new article 22 *bis*. However, as other delegations had already pointed out, the only aim of the proposed article was to assist a newly independent State in deciding whether or not to become a party to a multilateral treaty, without any implication that the treaty continued in force in respect of the territory concerned. Consequently, his delegation proposed that, in the revised text, the words "the said treaty has been previously extended" should be replaced by the words "the said treaty was previously applicable", precisely in order to avoid giving such an impression of continuity. It would also be preferable to replace the words "the newly independent State" by the words "the successor State", in as much as the provison in question would apply to successor States in general, whether or not they were newly independent. The Drafting Committee could take account of those suggestions in preparing a final text.

47. Mr. BRECKENRIDGE (Sri Lanka) recalled that his delegation had already said that it appreciated the motives of the sponsors of the proposed article and recognized the need for a provision which would assist newly independent and successor States. None the less, it wondered if it would not be preferable to include such a provision in a declaration or resolution of the Conference, rather than in the convention itself. It was clear from the oral amendments proposed by the representatives of the Netherlands and France that, if the provision was incorporated in an article, it would not constitute an element in the progressive development of international law. Furthermore, the representative of Pakistan had emphasized the ambiguity of the proposed new article. For those reasons, his delegation, for one, would be unable to support the text of the proposed new article either as revised by its sponsors or with the addition of the amendments proposed by the representatives of France and the Netherlands.

48. Mr. ARIEF (Malaysia) considered that there could be no objection to the substance of the article: if it was intended that the depositary must, sooner or later, inform the newly independent State the phrase "as far as may be practicable" could lead to abuses by depositaries. If it was deemed absolutely necessary to qualify the duty of the depositary, it would be better to replace those words by the phrase "as soon as possible".

49. Referring to the English version of the revised proposal he remarked that the expression "in writing" would be preferable to the expression "by writing".

50. Mr. HASSAN (Egypt) endorsed the proposal by the representative of Pakistan to replace the words "the said treaty has been previously extended" by the phrase "the said treaty was previously applicable". Like the representative of Malaysia, he considered that the phrase "as far as may be practicable" made the duty of the depositary unclear. Such a limitation was desirable.

51. The sponsors of the proposed new article 22 *bis* should, perhaps, reconsider its wording in the light of the comments made during the debate.

52. Mr. MBACKÉ (Senegal) said he wished merely to point out that the addition proposed by the Netherlands delegation raised a problem of drafting. The insertion of the end of the revised proposal of a reference to article 77, paragraph 1, subparagraphs (*e*)

and (*f*) of the Vienna Convention on the Law of Treaties would have a restrictive effect, for depositaries might be willing to provide information other than that which was mentioned in those provisions of the Vienna Convention. Accordingly, he suggested that the words "including those" should be inserted at the beginning of the phrase which the Netherlands delegation proposed should be added to the end of the text under consideration.

53. Mr. EUSTATHIADES (Greece) recalled that he had already declared himself sympathetic towards the proposed article 22 *bis* and welcomed the fact that his concern over the scope of the duties of the depositary had led one delegation to propose that the words "the newly independent State" should be replaced by the words "the successor State". It would indeed seem that the depositary's duty to provide information should extend not merely to a newly independent State, but to any successor State, irrespective of the type of succession. Nevertheless, the original intention of the sponsors of the proposed article had be to specify the functions of the depositary with regard to newly independent States. That was clear not only from the wording of the proposal, but also from the position which they wished to give it in the draft. It went without saying that if the proposed article was designed to apply to all types of succession, it would have to be inserted at some other point in the draft convention. Like the representative of France, he thought it should be made clear that the proposed article was intended to apply to States parties to the future convention. It could be expected that, as depositaries of multilateral treaties, international organizations—and particularly the United Nations—could continue to discharge the duties mentioned in the proposed article. Any new organization acting as a depositary of multilateral treaties would undoubtedly follow their practice. In the final analysis, the proposed article should be addressed to States, especially those which had long been depositaries of multilateral treaties.

54. He favoured the deletion of the words "if any", which served no useful purpose. The final phrase of the proposed text was in contradiction with the expression "as far as may be practicable". It was obvious that the depositary would have to provide the newly independent State only with the relevant particulars it had at its disposal. In order to avoid misinterpretation of the provision, it might be advisable to delete the word "all" which now appeared before the words "other relevant particulars".

The meeting rose at 6.05 p.m.

32nd MEETING

Friday, 29 April 1977, at 11 a.m.

Chairman: Mr. RIAD (Egypt)

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)*

PROPOSED NEW ARTICLE 22 *bis* (Notification by a depositary)[1] *(continued)*

1. Mr. HERNANDEZ ARMAS (Cuba) said that when the United Republic of Tanzania had submitted an oral amendment to article 19 (Reservations), which would fully restore the "clean slate" principle,[2] his own delegation had refrained from comment because its position was well known and would be shown by its vote in favour of that important amendment. In the present instance, however, he wished to place on record his full support for the important proposal to insert a new article 22 *bis*, which provided for the necessary co-operation with newly independent States. He could not endorse the oral amendments proposed by France[3] and the Netherlands,[4] which ran counter to the intrinsic purpose of the proposed new article.

2. Mr. MEDJAD (Algeria) said he supported the substance of the proposed new article 22 *bis*. But the phrase "as far as may be practicable" implied that it might not, in fact, be entirely practicable to provide the necessary written information to the newly independent State, and it was difficult to see why not. That phrase should be replaced by wording which imposed an obligation on the depositary to inform the successor State in writing.

3. Mr. MARESCA (Italy) said that the discussion on the proposed new article might be described as the revenge of diplomatic law, in other words, of a system which governed not only the organs, but also the forms and the procedures of international relations. That system was also based on rules of international courtesy, to disregard which would be highly detrimental to diplomacy at the multilateral level.

4. With regard to substance, he was grateful that the sponsors of the amendment had been kind enough to consider his suggestions, namely, that the word "notify" should be replaced by the word "inform", and that the information provided to the

[1] For the amendments submitted to the proposed new article 22 *bis*, see 29th meeting, foot-note 3

[2] See above, 27th meeting, para. 79.

[3] See above, 31st meeting, para. 45.

[4] See above, 31st meeting, para. 44.

newly independent State should not necessarily include "all other particulars relating to the treaty", but only "relevant particulars".[5]

5. Like the representatives of Malaysia[6] and Algeria, he thought that the provision embodied in the proposed new article should be mandatory. Consequently, it would be advisable to replace the words "as far as may be practicable" by the words "as soon as possible", used in paragraph 2 of the ealier version of the proposal (A/CONF.80/C.1/L.28). It would also be better to say that the treaty "had been", rather than "has been" previously extended.

6. The oral amendment by the Netherlands to add the words "referred to in article 77, paragraph 1, subparagraphs (*e*) and (*f*) of the 1969 Vienna Convention on the Law of Treaties", would greatly clarify the text of the proposed article, which, as he had pointed out at the 29th meeting,[7] was very closely linked with article 77 of the Vienna Convention. He fully endorsed the French proposal to delete the words "if any", since multilateral treaties required at least one depositary, if not more. Similarly, the French proposal[8] to insert the words "A State party to the present Convention" before the word "depositary" was entirely logical from the legal point of view. If treaties were to be respected by the States parties thereto, obligations could be imposed only on those Parties.

7. It had been said that the Conference had no right to impose obligations on international organizations. Nevertheless, the Vienna Convention on the Representation of States in their Relations with International Organizations of a Universal Character[9] provided that its codification of international law was binding on such organizations, and it would therefore be advisable to include a reference to article 90 of that Convention.

8. Mr. STEEL (United Kingdom) said his delegation was grateful to the sponsors of the proposal under discussion for the manner in which they had sought, with some success, to meet criticisms of the earlier text. Objections could, however, be made regarding principle, in so far as the article sought to impose obligations on States which might not be parties to the Convention, and regarding practicability, in so far as the obligations in question might be difficult for a depositary to discharge. Those difficulties could perhaps be overcome if the Drafting Committee was instructed to modify the article in the light of the views that had been expressed, and also to consider the question of its position in the draft convention—for example, the preamble—or in a document forming part of the Final Act. In such an accompanying document, it might be possible to give more faithful expression to the sponsors' intentions.

9. Needless to say, if the text was to stand as an article of the convention itself, it would be imperative to consider very carefully the precise wording, the precise extent of the obligations and the precise conditions under which the obligations were to be fulfilled. At present, the proposed new draft article met with his delegation's general approval, on the understanding that the Drafting Committee would have greater freedom than was usual in considering its formulation, its position and its general status.

10. Mr. YANGO (Philippines) said that, although he favoured the purpose of the proposed new article, which was to assist newly independent States in deciding whether or not a treaty should be applicable to their territory, he thought the phrase "as far as may be practicable" might defeat that purpose.

11. He could support the logical proposal made by the representative of France. On the other hand, the proposal by the Netherlands to include a reference to article 77, paragraph 1, subparagraphs (*e*) and (*f*) of the Vienna Convention on the Law of Treaties would place limitations on the discretion of the depositary.

12. He had some doubts about the suggestion that the Drafting Committee should be given more freedom than usual in dealing with the text. The element of substance should be decided by the Committee of the Whole.

13. The CHAIRMAN observed that the questions which had arisen in connexion with the proposed new article 22 *bis* (A/CONF.80/C.1/L.28/Rev.1) had been thoroughly discussed. He suggested that the text of the article, together with all the oral amendments proposed, should be referred to the Drafting Committee, which should be instructed to formulate a new text calculated to command the widest possible support. The Committee of the Whole would decide on both the substance and the wording after the Drafting Committee had submitted its text.

It was so decided.[10]

ARTICLE 26 (Multilateral treaties)[11] (*resumed from the 30th meeting*)

14. Mr. GILCHRIST (Australia) expressed his appreciation of the tolerance and patience shown by delegations in allowing consideration of article 26 to be deferred until the Australian amendment could

[5] See above, 29th meeting, para. 36.

[6] See above, 31st meeting, para. 48.

[7] See above, 29th meeting, para. 35.

[8] See above, 31st meeting, para. 45.

[9] *Official Records of the United Nations Conference on the Representation of States in Their Relations with International Organizations*, vol. II, *Documents of the Conference* (United Nations publication, Sales No. E.75.V.12), p. 207.

[10] See the statement by the Chairman of the Drafting Committee concerning the proposed insertion of an article 22 *bis*, at the 35th meeting, para. 89.

[11] For the amendments submitted to article 26, see 30th meeting, foot-note 2.

be revised. The revised version (A/CONF.80/C.1/L.34/Rev.1), now co-sponsored by the delegation of Ireland, was unchanged in purpose, namely, if an individual party to a multilateral treaty did not agree to provisional application of a treaty between itself and a newly independent State, to require that party to give express notice in writing of its rejection of such application of the treaty.

15. During the earlier discussion, questions had been raised as to the effective date of a notice of intention to apply a treaty provisionally, the effective date of rejection of provisional application, and the addresses of notices of intention. It had also been suggested that a time-limit should be prescribed for rejection of provisional application. In his view, the answers to those questions lay largely in the general law of treaties.

16. Draft article 26 was concerned with multilateral treaties, which almost always had a depositary. While doubts might exist about the functions of depositaries in regard to notification and communications concerning provisional application of multilateral treaties, his country, as a contracting party to the Vienna Convention on the Law of Treaties, took the view that the provisions of articles 76, 77 and 78 of that Convention were sufficiently broad to cover the questions that had been raised, with the exception of the time-limit for rejection of provisional application. But it would not have been sufficient to include in the draft convention some reassuring generalizations about the general law on treaties, the Vienna Convention and the principles of law and equity. The Committee had been reminded several times that article 73 of the Vienna Convention provided that that Convention did not "prejudge any question that might arise in regard to a treaty from a succession of States".[12] That fact did not necessarily obviate the application, to treaties which were the subject of a succession of States, of the procedures which, in the Vienna Convention, were specified as applying to treaties in general.

17. Draft articles 21 and 37, as prepared by the International Law Commission, contained miniature codes of procedure concerning addressees and dates of notifications. Following that approach, which the Committee had endorsed by provisionally adopting article 21, the amendment now before the Committee specified that notices of intention to apply a treaty provisionally should be given in writing.

18. The reason for the changes proposed in paragraphs 1 and 3 of the revised amendment was that the sponsors believed that the subject matter of a notice of intention provisionally to appply a treaty was so important that the notice must be given in writing. It was proposed in paragraphs 2 and 4 of the amendment that a time-limit should be set for the rejection by a party or contracting State of the provisional application of a treaty as between itself and the successor State. He formally proposed that that limit be 12 months from the date of receipt of the notification.

19. The purpose of paragraph 5 of the amendment was to identify the initial addressee of notice by a newly independent State of its intention provisionally to apply a treaty; the procedure suggested was in accordance with article 78 of the Vienna Convention on the Law of Treaties. The proposed new paragraph also stipulated the date on which that notice would take effect. His delegation remained open to all suggestions which would make the language of the proposed new paragraph more precise, including the suggestion that the end of the paragraph should read: "on the date of its receipt by a party or contracting State".

20. In the new paragraph proposed in paragraph 6 of the amendment, the words "or contracting State" should be inserted after the word "party" in the third, sixth and seventh lines. The aim of the proposed paragraph was to define the effect of a notice of rejection given by a party or contracting State. The sponsors' intention was that such a rejection would, unless there had already been reliance on the treaty, eliminate completely the effect of a notice of provisional application given to the party making the rejection. Had there already been provisional reliance on the treaty, the notice of rejection would take effect from the date of its receipt by the newly independent State.

21. His delegation hoped that the revised version of the amendment took sufficient account of the criticisms which had been made of its original proposal. The amendment, as it stood, in no way represented a derogation from the "clean slate" principle or provided that there should be, be virtue of the fact of succession, and automatic presumption of the provisional application of multilateral treaties. The amendment concerned only the modalities whereby the newly independent State could exercise the right conferred on it by the International Law Commission, in paragraphs 1 and 3 of draft article 26, to make arrangements for the provisional application of only such multilateral treaties as it wished.

22. Mr. AMLIE (Norway) observed that article 26 concerned the provisional application of multilateral treaties, which was a far from infrequent phenomenon and one for which it was therefore very important to establish a correct procedure. The amendment proposed by Australia and Ireland caused him great misgivings in that respect, because article 26 had to be read in conjunction with article 22.

23. The scheme which the International Law Commission had devised in those two articles was a very simple and practicable one. Thus, article 22 began by

[12] *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. 299.

providing that a newly independent State which made a notification of succession would be considered as a party to a treaty of the predecessor State, but went on to state, in order to avoid giving retroactive effect to a legal situation, that the operation of the treaty "shall be considered as suspended" unless certain conditions were met. The statement that the operation of the treaty "shall be considered as suspended" established an objective régime. In the International Law Commission's draft, cancellation of the suspension was permitted by the provisions of article 26.

24. The amendment, however, took an entirely different course from that proposed in draft article 22, by providing that there would be not suspension, but provisional application of the treaty. Furthermore, the amendment gave retroactive effect to a legal situation, since, however long it came after the notification by the newly independent State of its intention to apply the instrument, the rejection of a treaty by a third State would revive the situation which had existed prior to that notification. The attempt made to overcome that objection by the inclusion in the proposed new paragraph 7 of the words "unless the treaty was provisionally applied" was unsuccessful, because those words were ambiguous.

25. For those reasons, his delegation would vote against the Australian amendment.

26. Mr. KRISHNADASAN (Swaziland) said that his objection to the amendment proposed by Australia and Ireland was based on a question of principle. While he could agree that the amendment did not necessarily infringe the "clean slate" principle in so far as newly independent States were concerned, it appeared to deny freedom of choice to third States, which his delegation believed should have equal rights with newly independent States. He supported the retention of article 26 in its present form.

27. Mr. BRECKENRIDGE (Sri Lanka) endorsed the comments of the representatives of Norway and Swaziland. He was convinced that, despite the great efforts made by the delegations of Australia and Ireland to reduce the difficulties which could arise for newly independent States, the International Law Commission's approach to the provisional application of treaties was far more acceptable than that adopted in the amendment.

28. Mr. MANGAL (Afghanistan), referring to the amendment submitted by Australia and Ireland, said it was the view of his delegation that the notice to be given by a newly independent State could take effect only if the status of that State as a party to the treaty had been established in conformity with the principles of international law, and if no other party to the treaty had expressly given notice of its rejection of provisional application. Subject to that understanding, his delegation had no difficulty in accepting the amendment proposed by Australia and Ireland.

29. Mr. SATTAR (Pakistan) said he would be very happy to support the amendment submitted by Australia and Ireland, since it took account of the points he had raised[13] in regard to the original Australian proposal (A/CONF.80/C.1/L.34).

30. Mr. MARESCA (Italy) recalled that his delegation had expressed support[14] for the original proposal made by Australia, because it had met the need for clarity regarding the régime for the provisional application of treaties. His support for the joint proposal by Australia and Ireland was all the stronger, because the new document went still further in that direction. His only objection related to the appearance in the proposed new paragraph 6 of the phrase "if there is no depositary" for, as he had already said, it was difficult to imagine a multilateral treaty which did not have a depositary.

31. The CHAIRMAN invited the Committee to vote on the proposal submitted by Australia and Ireland in document A/CONF.80/C.1/L.34/Rev.1.

There were 23 votes in favour, 23 against, and 29 abstentions.

The proposal was rejected.

32. The CHAIRMAN said that, if there was no objection, he would take it that the Committee of the Whole provisionally adopted draft article 26 and referred it to the Drafting Committee for consideration, together with the Finnish amendment thereto (A/CONF.80/C.1/L.31), as orally revised.

It was so decided.[15]

ARTICLE 27 (Bilateral treaties)[16] (*resumed from the 30th meeting*)

33. Mr. MANGAL (Afghanistan) said that, while his delegation found the clear statement made in subparagraph (*a*) of article 27, reassuring, it wished to reiterate the concern it had already expressed regarding the ambiguity of subparagraph (*b*). Under the terms of that subparagraph it was impossible to determine with confidence whether the newly independent State and the other State concerned had in fact agreed to the provisional application of a bilateral treaty. His delegation believed that, even if the newly independent State and the predecessor State expressly agreed that it should so apply, a bilateral treaty could not apply provisionally either before or after the succession if the other original party to the treaty had objected to the instrument, since that objection could have related to the continuance in force of the treaty once succession became imminent or had occurred;

[13] See above, 30th meeting, paras. 23-24.

[14] See above, 30th meeting, para. 11.

[15] For resumption of the discussion of article 26, see 35th meeting, paras. 53-55.

[16] For the amendments submitted to article 27, see 30th meeting, foot-note 2.

or if the other original party to the treaty had not specifically agreed to its provisional application, since its attitude to such application would then be unknown.

34. Mr. MIRCEA (Romania) said he continued to believe that there must be some expression of intent, on the part of either the successor State or the other State concerned, to be bound provisionally by a bilateral treaty after an occurrence of succession; tacit consent, as provided for in subparagraph (*b*) of the draft article 27 was insufficient. He reiterated the hope he had expressed the previous day that the Drafting Committee would consider rewording the article in a manner closer to that of draft article 26.

35. Mr. MBACKÉ (Senegal) said that his delegation would reserve its position on subparagraph (*b*) of article 27 until a decision had been reached on the Netherlands amendment to article 22 *bis* concerning the functions of the depositary of a treaty, for it would not be appropriate to assess the conduct of a newly independent State until it had been informed of the extension to its territory of a treaty previously applicable thereto.

36. The CHAIRMAN said that, if there was no objection, he would take it that the Committee of the Whole provisionally adopted the text of draft article 27 and referred it to the Drafting Committee for consideration, together with the Finnish amendment thereto (A/CONF.80/C.1/L.31), as orally revised.

It was so decided.[17]

ARTICLE 28 (Termination of provisional application) (*resumed from the 30th meeting*)

37. Miss WILMSHURST (United Kingdom) said that paragraph 1, subparagraph (*b*) dealt with a multilateral treaty to which, by reason of the limited number of parties thereto, a newly independent State could accede only with the consent of all the parties concerned, as provided for in article 16, paragraph 3. Similarly, under article 26, paragraph 2, the consent of all the parties to a multilateral treaty was required for that treaty to be provisionally applied to a newly independent State. Since, under article 26, paragraph 2 one party alone could prevent the inception of provisional application, it would be logical further to provide, in article 28, that one party alone could terminate the provisional application of such a treaty. Her delegation would therefore suggest that the words "one of" should be inserted before the words "the parties" and "the contracting States" in paragraph 1, subparagraph (*b*).

38. Mr. MUSEUX (France) said that the suggestion made by the United Kingdom representative was logical and had the full support of his delegation, although the change suggested was more one of substance than of form. It seemed essential to provide that a single party could terminate the provisional application of a multilateral treaty, although it was not, of course, conceivable that one party could similarly terminate the definitive application of such an instrument.

39. Mr. RANJEVA (Madagascar) said his delegation feared that the 12 months' notice provided for in paragraph 3 might be too short a period for a newly independent State; it might perhaps be desirable to provide for the possibility of that notice being extended, at least for a further period of 12 months.

40. His delegation would have some difficulty in accepting the suggestion made by the United Kingdom representative. It was necessary to distinguish between the provisional application of treaties in general, a matter to which the United Kingdom suggestion could justly apply, and the provisional application of treaties to successor States in particular. For a successor State just beginning its independent existence, the mechanisms of provisional application should be regarded as a device to facilitate its integration into international legal life. It would be a serious and perhaps inequitable step to provide for the termination of provisional application by a single party.

41. Sir Francis VALLAT (Expert Consultant) said that the International Law Commission had taken the view that, if the consent of all the parties to a restricted multilateral treaty was required for it to be provisionally applied, then the same rule should apply to the termination of provisional application. In paragraph (3) of its commentary to article 28, the International Law Commission had expressed the view that "in principle the termination of provisional application of a restricted multilateral treaty vis-à-vis a successor State was a matter that concerned all the parties, or contracting States", but that "it was not necessary to specify that the notice should be given by all of them (A/CONF.80/4, p. 87)."

42. Mr. MIRCEA (Romania) said he found the clause "Unless the treaty otherwise provides or it is otherwise agreed", in paragraphs 1 and 2 of article 28, somewhat in conflict with the substance of those paragraphs, and in particular with the ability of the newly independent State to terminate the provisional application of a multilateral treaty by giving reasonable notice. The conflict was perhaps even more marked in the case of paragraph 4, which dealt with two quite separate matters: the treaty as such and the notice by the successor State of its intention not to become a party to the treaty. The question arose whether the notice of intention or the provisions of the treaty or other collateral agreement would be considered to prevail.

43. He saw no reason why paragraph 4 should not cover bilateral as well as multilateral treaties. The dif-

[17] For resumption of the discussion of article 27, see 35th meeting, paras. 56-58.

ferences between those two types of treaty did not affect the question of provisional applicaton, and it should be provided that the provisional application of a bilateral treaty could be terminated if either party gave notice of its intention not to become a party to that treaty.

44. Mr. BRECKENRIDGE (Sri Lanka) said that his delegation preferred the text of draft article 28 as it stood, and would object to the inclusion of the words "one of", suggested by the United Kingdom representative.

45. Miss WILMSHURST (United Kingdom), replying to a question by the CHAIRMAN, said that her proposal should be viewed as a formal amendment of substance and put to the vote.

The United Kingdom amendment was rejected by 34 votes to 13, with 30 abstentions.

46. The CHAIRMAN said that, if there was no objection, he would take it that the Committee provisionally adopted the text of draft article 28 and referred it to the Drafting Committee for consideration.

It was so decided.[18]

ARTICLE 29[19] (Newly independent States formed from two or more territories)

47. The CHAIRMAN invited the delegations of Swaziland, Finland and Malaysia to introduce their amendments to article 29.

48. Mr. KRISHNADASAN (Swaziland) said that the reasons why the delegations of Swaziland and Sweden had proposed the deletion of article 29, paragraph 3, were similar to those which had prompted them to propose the deletion of article 18 (A/CONF.80/C.1/L.23).

49. During the discussion on the latter article,[20] it had been argued that the proposed deletion would deprive the successor State of a right. He did not think that the question of a right arose, either in article 18 or in article 29, paragraph 3. The appropriate procedure in both those cases was that of accession. The representative of Portugal had observed that, under article 18, the successor State would at best be succeeding to an intention, and had pointed out that there were many cases in which States signed treaties that were not subsequently approved. The United Kingdom representative had also expressed scepticism about article 18 and had said that it was the practice of his country not to infer an intention from the signature of a predecessor State, but to consult the Government of the successor State as to its participation in a treaty.

50. Parts of the International Law Commission's commentary to article 18 (A/CONF.80/4, pp. 61-62) were equally relevant to article 29.

51. Mr. FREY (Finland) said that his delegation's amendment (A/CONF.80/C.1/L.32) was essentially concerned with drafting. The insertion of the words "multilateral or bilateral" at the points indicated in paragraph 2 and subparagraph (*a*) of that paragraph, would make it clear to what type of treaty those provisions applied. His delegation had also proposed the deletion of the word "multilateral" in subparagraphs (*b*) and (*c*) of paragraph 3, because it was clear from the opening phrase of paragraph 3 that those subparagraphs applied only to multilateral treaties.

52. Mr. CHEW (Malaysia) said that his delegation's amendment (A/CONF.80/C.1/L.43) was consequential upon its amendment to article 17 (A/CONF.80/C.1/L.42 and Corr.1); as a suggestion relating only to drafting, it might appropriately be referred to the Drafting Committee for consideration.

53. Mr. SETTE CÂMARA (Brazil) said that, like the representative of Swaziland, he had some misgivings about the reference to "signature" in paragraph 3. Sir Humphrey Waldock, the first Special Rapporteur on succession of States in respect of treaties, had himself expressed doubt as to whether the signature of the predecessor State constituted a sufficient legal nexus between a treaty and the territory of the successor State to allow that State to treat the signature as if it were its own. The formula used in paragraph 3 was not very felicitous.

The meeting rose at 12.55 p.m.

33rd MEETING

Friday, 29 April 1977, at 4.35 p.m.

Chairman: Mr. RIAD (Egypt)

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*)

ARTICLE 29 (Newly independent States formed from two or more territories)[1] (*continued*)

1. Mr. MIRCEA (Romania) supported the proposal submitted by Swaziland and Sweden (A/CONF.80/

[18] For resumption of the discussion of article 28, see 35th meeting, paras. 59-85.

[19] The following amendments were submitted: Swaziland and Sweden, A/CONF.80/C.1/L.23; Finland, A/CONF.80/C.1/L.32, and Malaysia, A/CONF.80/C.1/L.43.

[20] For the discussion of article 18, see 27th meeting, paras. 27-58.

[1] For the amendments submitted to article 29, see 32rd meeting, foot-note 18.

C.1/L.23) to delete paragraph 3 of article 29. His position was in conformity with that taken by the Romanian delegation on article 18, concerning participation by a newly independent State in treaties signed by the predecessor State subject to ratification, acceptance or approval.[2] In the case of article 29, it was even more difficult to see how the newly independent State could ratify, accept or approve such treaties. Moreover, it would be very difficult to establish that the predecessor State or States had intended the treaty in question to extend to one or more of the territories from which the newly independent State was formed.

2. Mrs. THAKORE (India) expressed her full agreement with article 29, which provided that a newly independent State formed from two or more territories was subject to the same basic rules as any other newly independent State in regard to participation in multilateral or bilateral treaties or their provisional application. In her view, however, the same rule should apply to cases of uniting and separation of States. It was hard to see why the International Law Commission had applied the rule of continuity of treaty obligations to cases of uniting and separation of States, and the "clean slate" rule to other cases. Why should the principle of self-determination apply only to newly independent States and not to States formed by the uniting or separation of States?

3. Of the amendments to article 29, the Indian delegation supported that of Finland (A/CONF.80/C.1/L.32), which clarified the text of the article and could be referred to the Drafting Committee. It could not, however, accept the amendment by Swaziland and Sweden. The Malaysian amendment (A/CONF.80/C.1/L.43) was only consequential on the amendment to article 17 submitted by that country.

4. Mr. MUSEUX (France) supported the proposal of Swaziland and Sweden to delete paragraph 3 of article 29. It might seem illogical to maintain a proposal previously submitted in respect of another article and rejected; but he still hoped that the Committee might reconsider its decision. For the mere signature of a treaty by the predecessor State could not be regarded as a sufficient legal nexus to enable the newly independent State to succeed to the treaty. In addition, article 29, paragraph 3, introduced the predecessor State's intention. In criminal law, the notion of intention as applied to natural persons was already very difficult to grasp; one could imagine what difficulties that notion would raise if it had to be applied to States. He was therefore in favour of deleting paragraph 3 of the article, especially as there was no legal need for it.

5. Mr. STEEL (United Kingdom) said that his delegation had some difficulties with article 29. It seemed difficult to take a final decision on that article without having considered article 30 and the subsequent articles, with which it was closely linked. Moreover, it was open to question whether the formation of a newly independent State from two or more territories, and the uniting or separation of States, should really be placed under different legal régimes. Unnecessary anomalies should not be introduced into the draft.

6. The application of article 29 raised certain difficulties; first of all, where two territories forming part of a new State had been subject to different treaty régimes before the succession. For example, a treaty might have applied to territory A, which provided for the granting of certain facilities to a State C, whereas a treaty applying to territory B contained provisions incompatible with the granting of those facilities. The solution offered by article 29 consisted in giving the newly independent State the option, not the obligation, of succeeding to such treaties. But that solution did not solve all the problems, in particular where bilateral treaties were concerned. Moreover, the incompatibility between the two treaty régimes might only become apparent much later, at the time when the treaties were actually executed.

7. The application of article 29 also raised problems concerning reservations. A treaty in force in territory A might be subject to reservations which were incompatible with its application in territory B. It might be asked which reservations would take precedence when the treaty applied to the whole of the new State's territory. Those problems would arise in an even more acute form in connexion with article 30. His delegation was aware of the difficulties, but at the moment it had no solution to suggest.

8. He agreed with the French representative that it was artificial and unnecessary to ascribe an intention to the predecessor State at the time of signature, concerning the field of application of a treaty.

9. With regard to the amendments, those of Finland and Malaysia related only to drafting and could be referred to the Drafting Committee. His delegation supported the amendment submitted by Swaziland and Sweden, which dealt with substance, as it had supported a similar proposal relating to article 18.

10. Mr. NATHAN (Israel) also feared that the application of article 29 might cause difficulties, which would be even more serious in the case of article 30. Article 29, paragraph 2, subparagraph (*b*) gave the newly independent State the right to declare that the application of a treaty previously in force in respect of the territory to which the succession related would be restricted to the territory in respect of which it had been in force at the date of the succession. The application of that provision to law-making treaties, such as those relating to the traffic in narcotic drugs, copyright and industrial property, was likely to cause difficulties. In fact, such treaties could not be applied to only part of the territory of a newly independent

[2] See above, 27th meeting, para. 50.

State. For that reason he thought that the right which paragraph 2, subparagraph (*b*) conferred on a newly independent State should perhaps be restricted. Such restriction would not be contrary to the "clean slate" principle, on which the provision was based, since the new State could consent to be bound in conformity with articles 16 and 17.

11. With reference to the comments of the United Kingdom representative on the simultaneous application of different treaty régimes, he wondered whether the newly independent State should not have the right to choose which bilateral or multilateral treaty would apply in the event of incompatibility between the provisions of several treaties.

12. For the same reasons as the United Kingdom, his delegation supported the amendment of Swaziland and Sweden. The amendment submitted by Finland should be sent to the Drafting Committee.

13. Mr. FLEISCHHAUER (Federal Republic of Germany) said that he was not opposed to the substance of article 29, but he had doubts about its drafting. The article dealt with a special case of succession: that of a newly independent State formed from two or more previously dependent territories. The International Law Commission had provided for the application of the "clean slate" rule, but had given the new State the faculty of becoming bound. It might happen, however, that treaties, or reservations to treaties, which had been applicable to several territories, were incompatible. The solution provided by article 29, paragraph 2, subparagraph (*b*) was to give the new State the faculty of restricting the application of such treaties to the territories to which they had applied. That solution was not entirely satisfactory, since there might still be incompatibility, even if two treaty régimes did not apply to one and the same territory; and it did not seem that the saving clause in paragraph 2, subparagraph (*a*) was enough to solve the problem. Furthermore, a mixed treaty régime could raise serious domestic problems for the newly independent State.

14. All those problems were even more acute in the case of article 30, because that provision was based on the automatic continuation of treaty obligations. The Committee should not take a final position on article 29 until a satisfactory solution had been found for the case dealt with in article 30.

15. Mr. MANGAL (Afghanistan) said that the views expressed by his delegation on devolution agreements, referred to in article 8, and on unilateral declarations, referred to in article 9, also applied to the article under consideration.[3] The acceptance of bilateral or multilateral treaties by means of a devolution agreement or a unilateral declaration was a matter of procedure. Such acts by a newly independent State could be regarded as valid only on two conditions: if the establishment of the new State formed from two or more territories was in conformity with the principle of self-determination and was not the outcome of colonial arrangements; and if the treaties applied were lawful and the other parties to them agreed to their application. Subject to those two conditions, his delegation approved of article 29.

16. Mr. MARESCA (Italy) stressed the particular nature of article 29. It dealt with a special case of succession, which was subject to a rule embodied in article 29 of the 1969 Vienna Convention on the Law of Treaties: "Unless a different intention appears from the treaty or is otherwise established, a treaty is binding upon each party in respect of its entire territory."[4] It was that legal presumption which the International Law Commission had applied, to both bilateral and multilateral treaties, whether they were already in force or not. All such cases called for the same rule. Consequently, his delegation was not in favour of deleting paragraph 3 of article 29.

17. On the proposal of Mr. MALINGA (Swaziland), who drew attention to the large number of questions raised, the CHAIRMAN suggested that the Committee should defer taking a decision on article 29 and the amendments thereto until the 34th meeting.

It was so decided.

REPORT OF THE DRAFTING COMMITTEE ON THE TEXT OF ARTICLE 11 AND ON THE TITLES AND TEXTS OF ARTICLES 13 TO 15 ADOPTED BY THE DRAFTING COMMITTEE (A/CONF.80/C.1/2)

18. Mr. YASSEEN (Chairman of the Drafting Committee) said that the Drafting Committee's second report (A/CONF.80/C.1/2) related to the text of article 11 and to the titles and texts of articles 13 to 15. With regard to article 11, he observed that when, at its 19th meeting, the Committee of the Whole had adopted the text of that article proposed by the International Law Commission and had referred it to the Drafting Committee, it had been on the understanding that it did so without prejudice to the decision which the Committee of the Whole would take, during its consideration of article 12, on the amendment to articles 11 and 12 submitted by Afghanistan (A/CONF.80/C.1/L.24) which, *inter alia*, would change the title of article 11. Consequently, the Drafting Committee had not yet examined the title of article 11, which had, however, been retained in square brackets in document A/CONF.80/C.1/2 for the convenience of the members of the Committee of the Whole.

19. The Drafting Committee had adopted the text of article 11 which the Committee of the Whole had referred to it and which was in conformity with the

[3] See above, 13th meeting, paras. 43-47.

[4] *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. 293.

text proposed by the International Law Commission, though in the French version the words *"n'affecte pas"* had been replaced by the words *"ne porte pas atteinte"*, which seemed more in keeping with French usage. The words *"ne porte pas atteinte"* had, for example, been used in articles 70 and 71 of the Vienna Convention on the Law of Treaties, when the words "does not affect" appeared in English and the words *"no afecterá"* in Spanish.

20. Mr. TABIBI (Afghanistan) observed that it had been agreed that the Committee would wait until it had completed consideration of article 12 before taking a decision on the amendment submitted by his delegation,[5] which would change the titles and combine the texts of articles 11 and 12. He thought it would be preferable for the Committee to wait until it had completed consideration of article 12 before it adopted article 11, since both those articles dealt with territorial régimes and it would be logical to adopt them at the same time.

21. Mr. YIMER (Ethiopia) pointed out that the amendment submitted by Afghanistan, which would combine articles 11 and 12, was purely a drafting proposal and did not affect the substance of article 11. In his opinion, that article was in no way related to article 12; it was a separate article which the Committee had provisionally adopted by an overwhelming majority. He therefore proposed that article 11 should be put to the vote immediately.

22. Mr. SEPÚLVEDA (Mexico) said he too saw no reason to postpone the vote on article 11, which was a separate article that could stand on its own merits. Articles 11 and 12 did not deal with the same subject-matter: the former dealt with boundary régimes while the latter concerned the use of a territory. Moreover, it was unlikely that article 12 would be adopted at the current session. Here therefore supported the proposal made by the representative of Ethiopia.

23. Mr. TABIBI (Afghanistan) formally moved the adjournment of the debate on article 11.

24. Mr. MUDHO (Kenya) said that the adoption of article 11 would in no way prejudge the decision the Committee would take on the amendment submitted by Afghanistan. He therefore supported the proposal made by the representative of Ethiopia.

25. Mr. SATTAR (Pakistan) said that all the Committee had to do was to approve the draft submitted by the Drafting Committee. In clarification of his delegation's position, he referred to a statement made the previous day by the Prime Minister of Pakistan in the Parliament concerning his Government's intention to settle all border disputes with Afghanistan on an equitable basis.

[5] See above, 19th meeting, para. 7.

26. Mr. TABIBI (Afghanistan) said he would not press his motion for the adjournment of the debate, or his proposal that articles 11 and 12 should be combined.

27. The CHAIRMAN said that, if there was no objection, he would take it that the Committee of the Whole approved, on second reading, the text of article 11 proposed by the Drafting Committee.

It was so decided.[6]

The meeting rose at 5.40 p.m.

[6] For resumption of the discussion of article 11 and its adoption (without a title) by the Conference, see 5th plenary meeting.

34th MEETING

Monday, 2 May 1977, at 5. p.m.

Chairman: Mr. RIAD (Egypt)

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)*

REPORT OF THE DRAFTING COMMITTEE ON THE TEXT OF ARTICLE 11 AND ON THE TITLES AND TEXTS OF ARTICLES 13 TO 15 ADOPTED BY THE DRAFTING COMMITTEE (A/CONF.80/C.1/2) *(continued)*

Article 13 (Questions relating to the validity of a treaty)[1]

1. Mr. YASSEEN (Chairman of the Drafting Committee) said that the Drafting Committee had made only one change in article 13: it had replaced the word "prejudicing" by the word "prejudging" in the English text, the words *"préjudiciant [...] à"* by the words *"préjugeant [...] d'"* in the French, and the words *"en modo alguno en perjuicio de"* by the words *"de manera que prejuzgue de modo alguno"* in the Spanish, so as to bring out the meaning which the Committee of the Whole wished to give that article.

2. The CHAIRMAN said that, if there were no objections, he would take it that the Committee adopted on second reading the title and text of article 13 proposed by the drafting Committee.

It was so decided.[2]

[1] For earlier discussion of article 13, see 22nd meeting, paras. 1-13.

[2] For the adoption of article 13 by the Conference, see 5th plenary meeting.

Article 14 (*Succession in respect of part of territory*)[3]

3. Mr. YASSEEN (Chairman of the Drafting Committee) said that, in order to make article 14 easier to understand and to bring out the distinction between the two kinds of territory involved, the Drafting Committee had decided to change the order of the clauses in the introductory phrase of the article. In addition, in the French version the indefinite article "*un*" in the phrase "*Lorsqu'une partie d'un territoire*" had been replaced by the definite article, so as to bring the text into line with the versions in the other languages. In the English and the Spanish versions of subparagraph (*b*), in order to achieve greater clarity the Drafting Committee had replaced the phrase "its object and purpose [...] for the operation of the treaty" by "the object and purpose of the treaty [...] for its operation" and the phrase "*con su objeto y su fin ... las condiciones de ejecución del tratado*" by "*con el objeto y el fin del tratado [...] las condiciones de su ejecución*". That change would also be made in the text of other articles if necessary.

4. The CHAIRMAN said that, if there were no objections, he would take it that the Committee adopted on second reading the title and text of article 14 proposed by the Drafting Committee.

It was so decided.[4]

Article 15 (Position in respect of the treaties of the successor State)[5]

5. Mr. YASSEEN (Chairman of the Drafting Committee) said that, in order to bring the Spanish version of article 15 into line with the English and French versions, and with the Spanish text of other articles, the Drafting Committee had decided to replace the word "*esté*" at the end of the article by the word "*estuviera*".

6. The CHAIRMAN said that, if there were no objections, he would take it that the Committee adopted on second reading the title and text of article 15 proposed by the Drafting Committee.

It was so decided.[6]

REPORT OF THE INFORMAL CONSULTATIONS GROUP ON ARTICLES 6, 7 AND 12

7. Mr. RITTER (Vice-Chairman of the Committee of the Whole and Chairman of the informal consultations group) said that the informal consultations group, which had held seven meetings, had been instructed by the Committee to try to reconcile the different views on articles 6, 7 and 12. The group had thoroughly discussed the text of those articles, the amendments before the Committee and the suggestions made at the meetings. The group had reached the conclusion that it should recommend the Committee of the Whole to defer consideration of articles 6, 7 and 12 until a subsequent session of the Conference.

8. The CHAIRMAN suggested that the Committee should take note of the Vice-Chairman's statement concerning the informal consultations on articles 6, 7 and 12.

It was so decided.

ARTICLE 29 (Newly independent States formed from two or more territories)[7] (*continued*)

9. Mr. STEEL (United Kingdom) said that a number of delegations, including his own, had drawn the Committee's attention to the fact that article 29 was linked with article 30 and with some other articles. Since those delegations had pointed out that the Committee's decision on those later articles might influence its decision on article 29, he thought it might be advisable for the Committee to reserve its position on article 29 to some extent and to reconsider that provision at a latter stage, in the light of its decisions on the subsequent articles.

10. Mr. SEPÚLVEDA (Mexico) said he could see no link between articles 29 and 30, which dealt with entirely different questions. In his view, it would be placing an unfair restriction on the Committee to ask it to reserve its final position on article 29; his delegation would prefer the Committee to vote on the article without conditions.

11. Mr. STEEL (United Kingdom) observed that he had not formally proposed postponement of the decision on article 29 and that he had not meant to imply that articles 29 and 30 dealt with the same question. But it was a fact that those two articles had certain elements in common and raised similar problems, in particular, the problem of the incompatibility of certain treaty régimes and obligations, which should be very carefully considered. Consequently, the Committee might perhaps have to revert to article 29, depending on the decision it took on article 30; for the time being, therefore, it need do no more than adopt article 29 provisionally.

12. Mr. EUSTATHIADES (Greece) reminded the Committee of one element which articles 18, 29, 32, 36 and others had in common, namely, the intention manifested by the predecessor State through its signature. According to those articles, by signing a treaty the predecessor State showed that it wished to

[3] For earlier discussion of article 14, see 22nd meeting, paras. 14-38 and 23rd meeting, paras. 1-35.

[4] For the adoption of article 14 by the Conference, see 5th plenary meeting.

[5] For earlier discussion of article 15, see 23rd meeting, paras. 36-54.

[6] For the adoption of article 15 by the Conference, see 5th plenary meeting.

[7] For the amendments submitted to article 29, see 32nd meeting, foot-note 18.

be bound; under the terms of article 29, paragraph 3, the intention thus manifested by the predecessor State would have so much effect that the newly independent State would be bound by the treaty.

13. His delegation believed that the signing of a treaty should truly reflect the intention of a State to be bound by that treaty; it should annonce ratification or adhesion. But that was not the case in reality, and signing entailed no obligation, either moral or legal; although that practice might be attacked, it was the reflection of custom. That being so, simply to delete paragraph 3, as proposed by the delegations of Swaziland and Sweden (A/CONF.80/C.1/L.23), was perhaps not the best solution. However, the Committee might perhaps take a separate vote on that paragraph.

14. Mr. KRISHNADASAN (Swaziland) said he did not quite understand the distinction made by the representative of Greece between his suggestion that a separate vote be taken on paragraph 3 of article 29 and the proposal by the delegations of Swaziland and Sweden that the paragraph be deleted.

15. Mr. MARESCA (Italy) said that, as he saw it, whereas the amendment submitted by Swaziland and Sweden would delete paragraph 3 of the article entirely, the representative of Greece had merely expressed his doubts, from the legal and diplomatic viewpoints, concerning the inclusion of such a provision in the draft. He himself had also been convinced, by long years of diplomatic experience, that the signing of a treaty was intended only to authenticate the instrument and did not entail any undertaking on the part of the signatory State. That being so, it seemed difficult to deduce, from the mere signing of a treaty by the predecessor State, the intention of that State to extend the effects of the treaty to the whole territory of the newly independent State; nevertheless, he found the solution proposed by the delegation of Swaziland and Sweden too Draconian.

16. Mr. HELLNERS (Sweden) said that the arguments advanced by his delegation in favour of deleting article 18[8] carried even more weight in the case of article 29, paragraph 3. The representatives of Greece and Italy seemed to agree that it was difficult to attach any importance to signature. He therefore considered that paragraph 3 of article 29 should not be included in the future convention.

17. Mr. SEPÚLVEDA (Mexico) opposed the United Kingdom suggestion that a decision on article 29 should be deferred. He thought the Conference could hardly submit to the General Assembly articles whose consideration had not been completed.

18. Mr. FLEISCHHAUER (Federal Republic of Germany) said that article 29 raised many problems which had not been taken into account in the amendment submitted. The discussion had been very brief and had related mainly to the amendments, not to the main problems inherent in the article, which also arose in regard to article 30. Consequently, if the Committee voted on article 29 before it voted on article 30, it would be failing to take into account the complexity of article 29 and the work done on it by the International Law Commission. That would only make the work of the Conference more difficult at its next session.

19. Mr. KEARNEY (United States of America) said that, while sharing the concern of the representatives of the United Kingdom and the Federal Republic of Germany regarding the problems raised by article 29, he agreed with the representative of Mexico that the Committee should not defer the adoption of that article. The major problem raised by article 29 and 30 was that of incompatibility between the treaties applied in the different territories of which the new State was composed; but the solution to that problem did not lie in the proposed amendments to articles 29 and 30. The solution, if there was one—and that was doubtful, in view of the difficulty of the problem—would be to establish a procedure for resolving conflicts between treaties, which would form the subject of a new, separate article. The problem should be settled outside article 29 and 30. Consequently, the Committee could complete its consideration of article 29.

20. Mr. AMLIE (Norway) said that, in his view, article 29 raised many problems, some of which should be examined in connexion with article 30. Since the Conference no longer had any hope of producing the final text of a convention at its present session, there was no reason why it should not postpone the adoption of article 29, which required fuller consideration. He therefore formally proposed that further discussion and the vote on article 29 should be deferred until the next session of the Conference.

The Norwegian proposal to defer the vote on article 29 until the next session was rejected by 34 votes to 18, with 26 abstentions.

The proposal of Swaziland and Sweden to delete paragraph 3 of article 29 (A/CONF.80/C.1/L.23) was rejected by 35 votes to 18, with 24 abstentions.

The amendment to article 29 submitted by Finland (A/CONF.80/C.1/L.32) was rejected by 23 votes to 16, with 37 abstentions.

21. The CHAIRMAN observed that the Malaysian amendment to article 29 (A/CONF.80/C.1/L.43) related only to drafting; he therefore suggested that it be referred to the Drafting Committee.

It was so decided.

Article 29 was adopted provisionally by 69 votes to none, with 9 abstentions, and referred to the Drafting Committee.[9]

The meeting rose at 6 p.m.

[8] See above, 27th meeting, paras. 51-52.

[9] For resumption of the discussion of article 29, see 35th meeting, paras. 86-88.

35th MEETING

Wednesday, 4 May 1977, at 4 p.m.

Chairman: Mr. RIAD (Egypt)

Consideration of the question of succession of States in respect of treaties in accordance with resolutions 3496 (XXX) and 31/18 adopted by the General Assembly on 15 December 1975 and 24 November 1976
[Agenda item 11] (*concluded*)

REPORT OF THE DRAFTING COMMITTEE ON THE TITLES AND TEXTS OF ARTICLES 16 TO 29 ADOPTED BY THE DRAFTING COMMITTEE (A/CONF.80/C.1/3)

Article 16 (Participation in treaties in force at the date of succession of States)[1]

1. Mr. YASSEEN (Chairman of the Drafting Committee) said that the Drafting Committee had made only a few minor drafting changes in the International Law Commission's text of article 16, which had been referred to it by the Committee of the Whole.

2. At the end of paragraph 1 of the Spanish version, the word *"esté"* had been replaced by *"estuviera"* in order to bring the tense into line with that used in the other language versions, as had already been done in the case of other articles already adopted by the Committee of the Whole.

3. In paragraph 2 of the English and Spanish versions, the same change had been made as in article 14, subparagraph (*b*), for the reasons which he had given in introducing that article. Consequently, paragraph 2 of the English text now concluded with the words: "[...] would be incompatible with the object and purpose of the treaty or would radically change the conditions for its operation", while the corresponding phrase of the Spanish version read: *"[...] sería incompatible con el objeto y el fin del tratado o cambiaría radicalmente las condiciones de su ejecución"*. The French version, which remained unchanged, corresponded to the new English and Spanish versions.

4. In order to bring the final words of paragraph 3 of the French and Spanish versions into line with the English version, they had been amended to read: *"un tel consentement"* and *"tal consentimiento"*, respectively.

5. The CHAIRMAN said that, if there was no objection, he would take it that the Committee adopted on second reading the title and text of article 16 proposed by the Drafting Committee.

It was so decided.[2]

Article 17 (Participation in treaties not in force at the date of the succession of States)[3]

6. Mr. YASSEEN (Chairman of the Drafting Committee) said that in the International Law Commission's text of article 17 referred to it by the Committee of the Whole, the Drafting Committee had made a few changes designed to ensure consistency between the different language versions.

7. The change already decided upon in the case of article 14, subparagraph (*b*),[4] and article 16, paragraph 2, had also been made in the last part of paragraph 3 of the English and Spanish versions of article 17. Similarly, the final words of paragraph 4 of the French and Spanish versions had been changed in the same way as those of paragraph 3 of article 16, to read, respectively, *"un tel consentement"* and *"tal consentimiento"*.

8. In paragraph 4 of the French text, the words *"ne peut établir, à l'égard du traité, sa qualité de partie ou d'Etat contractant"* had been replaced by the words *"ne peut établir sa qualité de partie ou d'Etat contractant au traité"* in order to bring the French version as close as possible to the other language versions. In consequence of that decision, the corresponding change had been made in paragraphs 1 and 5 of article 17 and in subsequent articles where the expression *"Etat contractant à l'égard du traité"* or *"d'un traité"* had been used.

9. In paragraph 5 of the English version, the word "reckoned" had been replaced by "counted", which was closer to the French and Spanish versions and in keeping with the terminology commonly used in the practice of depositaries. In paragraph 5 of the French text, the words *"tout Etat"* had been replaced by *"un Etat"*, for the sake of consistency between the various language versions; that amendment involved no change in the meaning of the provision.

10. Speaking as representative of the United Arab Emirates, he said that he had some reservations regarding the phrase *"sa qualité de partie ou d'Etat contractant au traité"*, which the Drafting Committee had decided to use in paragraph 4 of the French version. While it was permissible to speak of a "party to a treaty", to refer to a "Contracting State to a treaty" was incorrect usage; the expression *"à l'égard de"* was preferable to *"à"*.

11. Mr. SAKO (Ivory Coast) said he thought that the formula chosen by the Drafting Committee had

[1] For earlier discussion of article 16, see 23rd meeting, paras. 55-67, 24th meeting, paras. 1-47, 25th meeting, paras. 1-64, 26th meeting, paras. 1-61 and 27th meeting, paras. 1-17.

[2] For the adoption of article 16 by the Conference, see 5th plenary meeting.

[3] For earlier discussion of article 17, see 27th meeting, paras. 18-26.

[4] See above, 34th meeting, paras. 3-4.

been *"sa qualité de partie au traité ou d'Etat contractant"*.

12. Mr. MUSEUX (France) suggested that the phrase referred to by the representative of the United Arab Emirates might be amended to read *"sa qualité d'Etat contractant ou de partie au traité"*.

13. The CHAIRMAN said that, if there was no objection, he would take it that the suggestion made by the representative of France was acceptable to the Committee and should also be applied to other provisions of the draft where the same expression was used in the French text. He assumed that the Committee adopted on second reading, with that amendment, the title and text of article 17 proposed by the Drafting Committee.

It was so decided.[5]

Article 18 (Participation in treaties signed by the predecessor State subject to ratification, acceptance or approval)[6]

14. Mr. YASSEEN (Chairman of the Drafting Committee) said that the Drafting Committee had made a few minor changes in the International Law Commission's title and text of article 18, which had been referred to it by the Committee of the Whole. In the title and in paragraph 1, the expression *"con sujeción a ratificación"*, in the Spanish version, had been replaced by *"a reserva de ratificación"*, in order to bring the language into conformity with that used in the Vienna Convention on the Law of Treaties, in particular article 18 of that Convention. In paragraph 3, the changes already made to article 14, subparagraph (*b*), article 16, paragraph 2, and article 17, paragraph 3, had been introduced in the English and Spanish versions. The Spanish and French versions of paragraph 4 had been changed in the same manner as article 16, paragraph 3, and article 17, paragraph 4, in order to bring the final words into conformity with the English words "such consent".

15. The CHAIRMAN said that, if there was no objection, he would take it that the Committee adopted on second reading the title and text of article 18 proposed by the Drafting Committee.

It was so decided.[7]

Article 19 (Reservations)[8]

16. Mr. YASSEEN (Chairman of the Drafting Committee) said that the Drafting Committee had made one minor drafting change in the International Law Commission's text of article 19, which had been referred to it by the Committee of the Whole. In paragraph 2 of the Spanish version, the words *"queda excluida"* had been replaced by the words *"quedaría excluida"*, in order to achieve consistency in the use of tenses as between the various language versions.

17. The Drafting Committee had paid particular attention to the question of objections to reservations and objections to such objections, which had been raised by the Netherlands representative.[9] It had noted that, as was clear from the International Law Commission's commentary to article 19, particularly paragraph (15) (A/CONF.80/4, p. 66), the article did not deal with that matter, which was left to be regulated by general international law.

18. Mr. MBACKÉ (Senegal), referring to paragraph 1 of the French version, said that it would be better to replace the words *"l'intention"* by *"une intention"*, since the intention in question was not clearly defined. In paragraph 2 of the French version, he would prefer the words *"est exclue"* to *"serait proscrite"*; the use of the conditional introduced an element of doubt, while the word *"proscrire"* was a criminal-law term normally applied to persons. It should also be noted that the word "excluded" was used in the English version of paragraph 2.

19. Mr. STUTTERHEIM (Netherlands) said he regretted that the Drafting Committee had decided not to make express provision in article 19 for the question of objections to reservations. It was not very satisfactory for a newly independent State not to know its exact position in that regard. He was not opposed to the adoption of article 19 as proposed by the Drafting Committee, but reserved to right to revert to the question of objections in connexion with subsequent articles of the draft convention.

20. Mr. ROSENSTOCK (United States of America) said that the Drafting Committee had taken the view that the whole question of objections to reservations was one governed by general international law. Paragraph (15) of the International Law Commission's commentary to article 19 stated that, unless it was necessary to make some particular provision in the context of the succession of States, the newly independent State was assumed to "step into the shoes of the predecessor State" (*ibid.*). Given that assumption, it did not seem necessary to make express provision for objections to reservations—a matter which lay outside the law of succession and came under the law of treaties in general.

21. Mr. YASSEEN (Chairman of the Drafting Committee) said he believed it was clear from the wording of article 19 and the International Law Commission's commentary thereto that the question of objections to reservations should be resolved by reference to general international law. What precise solution

[5] For the adoption of article 12 by the Conference, see 5th plenary meeting.

[6] For earlier discussion of article 18, see 27th meeting, paras. 27-58.

[7] For the adoption of article 18 by the Conference, see 5th plenary meeting.

[8] For earlier discussion of article 19, see 27th meeting, paras. 59-95 and 28th meeting, paras. 1-43.

[9] See above, 28th meeting, para. 32.

general international law would provide, it was not within the Committee's competence to determine.

22. Mr. MARESCA (Italy) said that, without going so far as to propose a formal amendment, he wished to support the remarks made by the representative of Senegal. The Vienna Convention on the Law of Treaties was a legal reality to which constant reference was made, so the use of the conditional tense in the French version of paragraph 2 was inappropriate. Moreover, the word *"proscrite"* had somewhat sinister overtones.

23. The CHAIRMAN noted that no formal amendments had been proposed. Consequently, if there was no objection, he would take it that the Committee adopted on second reading the title and text of article 19 proposed by the Drafting Committee.

It was so decided.[10]

Article 20 (Consent to be bound by part of a treaty and choice between differing provisions)[11]

24. Mr. YASSEEN (Chairman of the Drafting Committee) said that the Drafting Committee had made a number of drafting changes in the International Law Commission's text of article 20, which had been referred to it by the Committee of the Whole. In paragraph 1, the words "when the treaty so permits" (in French: *"lorsque le traité le permet"*; in Spanish: *"cuando el tratado lo permita"*) have been added for the sake of greater clarity. At the end of the French version of paragraph 1, the word *"ce"* before *"consentement"* and before *"choix"* had been replaced by the words *"un tel"*, to correspond more closely with the other language versions.

25. In paragraph 3 of the English version, the words "it is considered" had been replaced by the words "it shall be considered", since the future had seemed the more appropriate tense to express the rule laid down. The Drafting Committee would later undertake a systematic review of the use of tenses in the English version.

26. Mr. YAÑEZ-BARNUEVO (Spain) said that the text of paragraph 1 could be improved by the substitution of the word "if" for the word "when" in the expression "when the treaty so permits". "If" was the word used in article 17 of the Vienna Convention on the Law of Treaties, which was the corresponding provision. Moreover, the English and French texts of paragraph 1 began with the words "When" and *"lorsque"*, respectively, so that the same word was used twice in the course of a few lines. In the Spanish version, his suggestion would also make it necessary to change the word *"permita"* to *"permite"*.

27. Mr. YASSEEN (Chairman of the Drafting Committee) said that the meaning of the text submitted by the Drafting Committee was clear; it was for the Committee of the Whole to decide whether it was necessary in all cases to align the text of the draft convention with that of the Vienna Convention on the Law of Treaties.

28. Mr. KOH (Singapore) supported the suggestion made by the representative of Spain.

29. The CHAIRMAN asked the representative of Spain whether he wished his suggestion to be regarded as a formal amendment.

30. Mr. YAÑEZ-BARNUEVO (Spain) said it had not been his delegation's intention to submit a formal amendment. If the Committee did not consider that it would improve the text, he would not press his suggestion.

31. Mr. YIMER (Ethiopia) moved the closure of the debate on article 20, in accordance with rule 24 of the rules of procedure (A/CONF.80/8).

32. Mr. EUSTATHIADES (Greece) said that he would vote for the suggestion made by the representative of Spain if it were presented as a formal amendment.

33. Mr. SATTAR (Pakistan) said that the representative of Spain had made a very useful suggestion. He therefore opposed the motion for closure of the debate.

The motion to close the debate on article 20 was rejected by 24 votes to 13, with 38 abstentions.

34. Mr. SATTAR (Pakistan) asked whether the Spanish representative's suggestion had been considered by the Drafting Committee.

35. Mr. YAÑEZ-BARNUEVO (Spain) said that the point had not been discussed by the Drafting Committee; it had only occurred to him after comparing the wording adopted by the Committee with that of article 17 of the Vienna Convention on the Law of Treaties. Perhaps the best course would be to vote on his suggestion as a formal amendment and thus avoid further delay.

The amendment proposed by the representative of Spain was adopted by 37 votes to 7, with 26 abstentions.

36. The CHAIRMAN said that, if there were no objections, he would take it that the Committee adopted on second reading the title and text of article 20 proposed by the Drafting Committtee, with the amendment submitted by the representative of Spain.

It was so decided.[12]

[10] For the adoption of article 19 by the Conference, see 5th plenary meeting.

[11] For earlier discussion of article 20, see 28th meeting, paras. 44-52.

[12] For the adoption of article 20 by the Conference, see 5th plenary meeting.

Article 21 (Notification of succession)[13]

37. Mr. YASSEEN (Chairman of the Drafting Committee) said that the Drafting Committee had decided to replace the word "must" in the English version of paragraph 1 by the word "shall" which was more usual in that kind of context. In the French version of paragraph 2, the phrase *"qui fait la communication"* had been amended to read *"qui en fait la communication"*, so as to bring the wording closer to the English and Spanish versions.

38. In the Spanish version of paragraph 4, the words *"por otro motivo"* had been replaced by the more accurate wording: *"por otra causa"*. In addition, the words *"a ella referente"*, which corresponded more closely to the words "in connexion therewith" in English and *"y relative"* in French, had been substituted for the words *"en relación con ella"* and inserted after the words *"de toda comunicación"*.

39. Lastly, the words "made connexion therewith", already employed in paragraph 4, had been inserted in the English version of paragraph 5 and the words "such notification" had been replaced by the words "the notification", so that the phrase now read: "the notification of succession or the communication made in connexion therewith". The corresponding changes had also been made in the Spanish version.

40. The CHAIRMAN said that, if there were no objections, he would take it that the Committee adopted on second reading the title and text of article 21 proposed by the Drafting Committee.

It was so decided.[14]

Article 22 (Effects of a notification of succession)[15]

41. Mr. YASSEEN (Chairman of the Drafting Committee) said that the only change decided on by the Drafting Committee was in paragraph 3, where the words *"Etat contractant à l'égard du traité"* in the French version had been replaced by *"Etat contractant au traité"*, as in article 17.

42. Mr. LANG (Austria), asked whether his delegation's proposed amendment to paragraph 2 (A/CONF.80/C.1/L.26), and more specifically the part of the amendment relating to the presumption of consent by the parties to suspension of the operation of the treaty, had been considered by the Drafting Committee.

43. Mr. YASSEEN (Chairman of the Drafting Committee) said that the Drafting Committee had thoroughly discussed all amendments and suggestions concerning the article. In the case of the Austrian proposal, the Committee had not thought it necessary, in the context, to emphasize the presumption of consent by the parties. In reporting on the decisions of the Drafting Committee, he was following the usual practice of indicating only those suggestions which had been adopted. He would, of course, be available to inform delegations of the Drafting Committee's views on suggestions or amendments which had not been adopted.

44. The CHAIRMAN said that, if there were no objections, he would take it that the Committee adopted on second reading the title and text of article 22 proposed by the Drafting Committee.

It was so decided.[16]

Article 23 (Conditions under which a treaty is considered as being in force in the case of a succession of States)[17]

45. Mr. YASSEEN (Chairman of the Drafting Committee) said that, following a suggestion by the delegation of the United Kingdom, the Drafting Committee had decided to delete the words "in conformity with the provisions of the treaty", from paragraph 1, since they were not absolutely necessary and their deletion would not affect the substance of the article.

46. In order to achieve greater consistency with the terminology employed in the Vienna Convention on the Law of Treaties, the Drafting Committee had accepted the suggestion of the representative of Greece that the French word *"comportement"*, used to render the English term "conduct" in paragraph 1, subparagraph (*b*), should be replaced by the word *"conduite"*; the Spanish version of the subparagraph had been amended to read: *"se hayan comportado de tal manera que deba entenderse que han convenido en ello"*. The Drafting Committee had not considered it necessary to go into details about the interpretation of "conduct" and had consequently not accepted the Finnish Proposal (A/CONF.80/C.1L.30) to refer to application of the treaty.

47. In reply to an inquity by Mr. SIEV (Ireland), the said that the question of the parts and sections of the draft, together with their headings, would be considered only after all of the articles had been adopted.

48. Mr. MBACKÉ (Senegal), supported by Mr. SAKO (Ivory Coast), suggested that in the French version of paragraph 1, subparagraph (*b*), the words *"à raison"* should be replaced by *"en raison"*.

[13] For earlier discussion of article 21, see 28th meeting, paras. 53-64.

[14] For the adoption of article 21 by the Conference, see 5th plenary meeting.

[15] For earlier discussion of article 22, see 29th meeting, paras. 1-9.

[16] For adoption of article 22 by the Conference, see 5th plenary meeting.

[17] For earlier discussion of article 23, see 29th meeting, paras. 83-116.

49. The CHAIRMAN said that, if there were no objections, he would take it that the Committee adopted on second reading the title and text of article 23 proposed by the Drafting Committee, with the amendment suggested by the delegation of Senegal.

It was so decided.[18]

Article 24 (The position as between the predecessor State and the newly independent State)[19] and

Article 25 (Termination, suspension of operation or amendment of the treaty as between the predecessor State and the other State party)[20]

50. Mr. YASSEEN (Chairman of the Drafting Committee) said that the Drafting Committee had decided to make no changes in either the titles or the texts of articles 24 and 25.

51. Mr. MBACKÉ (Senegal) said that, in article 25, paragraph 2, the French words *"selon le cas"* were not an adequate translation of "as the case may be" in the English version and might be replaced by an expression such as *"le cas écheant"*.

52. The CHAIRMAN suggested that the Committee should note the comment made by the representative of Senegal. If there were no objections, he would take it that the Committee adopted on second reading the titles and texts of articles 24 and 25 proposed by the Drafting Committee.

It was so decided.[21]

Article 26 (Multilateral treaties)[22]

53. Mr. YASSEEN (Chairman of the Drafting Committee) said that the changes made in the rendering of the English term "conduct" in article 23, paragraph 1, subparagraph (*b*) had also been made in the French and Spanish versions of paragraphs 1 and 3 of article 26. In the same paragraphs, the Spanish word *"cuando"* had been replaced by *"si"* and the tenses of the verbs had been changed accordingly. In paragraphs 2 and 4, as in article 16, paragraph 3, the words *"une telle application"* had been used in French, and *"tal aplicación"* in Spanish, to correspond to the English wording: "such [...] application". In the English version of paragraph 5, the last two lines had been amended in the same way as article 14, subparagraph (*b*).

54. Mr. MUSEUX (France) noted that the French words *"à raison"*, used in paragraph 1, were also employed in article 45 of the Vienna Convention on the Law of Treaties. However, he would not object to replacing them by the words *"en raison"*, as suggested by the representative of Senegal in the case of article 23.

55. The CHAIRMAN said that, if there were no objections, he would take it that the Committee adopted on second reading the title and text of article 26 proposed by the Drafting Committee, with the amendment suggested by the representative of France.

It was so decided.[23]

Article 27 (Bilateral treaties)[24]

56. Mr. YASSEEN (Chairman of the Drafting Committee) said that subparagraph (*b*) had been aligned with the amended wording of article 23, paragraph 1, subparagraph (*b*). In the introductory part of the Spanish version, the tenses of the verbs had been changed.

57. Mr. YACOUBA (Niger) observed that it would also be necessary to alter the words *"à raison"* to *"en raison"*, as had been done in articles 23 and 26.

58. The CHAIRMAN said that, if there were no objections, he would take it that the Committee adopted the title and the text of article 27 proposed by the Drafting Committee, with the amendment suggested by the delegation of Niger.

It was so decided.[25]

Article 28 (Termination of provisional application)[26]

59. Mr. YASSEEN (Chairman of the Drafting Committee) said that the Drafting Committee had decided not to make any changes in article 28. Nevertheless, he had to report the absence of a consensus in the Drafting Committee on the interpretation of paragraph 1, subparagraph (*b*). The question arose whether, under the terms of that subparagraph in its present form, it was sufficient for notice of termination of provisional application to be given by one party or whether all the parties had to give such notice. Some members of the Drafting Committee interpreted the provision as requiring notice to be given by one of the parties, with the explicit or implicit agreement of the others, while other members believed that notice of termination had to be given by all the parties.

60. It was the duty of the Drafting Committee to point out that the present wording could lead to con-

[18] For the adoption of article 23 by the Conference, see 5th plenary meeting.

[19] For earlier discussion of article 24, see 29th meeting, paras. 83-119.

[20] For earlier discussion of article 25, see 30th meeting, para. 1.

[21] For the adoption of articles 24 and 25 by the Conference, see 5th plenary meeting.

[22] For earlier discussion of article 26, see 30th meeting, paras. 2-40 and 32nd meeting, paras. 14-32.

[23] For the adoption of article 26 by the Conference, see 5th plenary meeting.

[24] For earlier discussion of article 27, see 30th meeting, paras. 2-40 and 32nd meeting, paras. 33-36.

[25] For the adoption of article 27 by the Conference, see 5th plenary meeting.

[26] For earlier discussion of article 28, see 30th meeting, paras. 41-43 and 32nd meeting, paras. 37-46.

fusion. The only solution, in the circumstances, was for the Committee of the Whole to decide on the precise meaning of the provision.

61. Mr. SEPÚLVEDA (Mexico) said that, while the Drafting Committee deserved to be congratulated on its work as a whole, it had, in its zeal to solve all semantic problems, overstepped the bounds of its mandate in regard to article 28. The Committee of the Whole had taken a decision on the amendment to paragraph 1, subparagraph (*b*) of the article proposed by the United Kingdom delegation[27] and there was no need to reopen the discussion on the point to which that proposal had related. Consequently, he proposed that the present text of the article should be put to the vote.

62. Mr. YIMER (Ethiopia) agreed with the representative of Mexico that the Drafting Committee should not have gone into the question of the interpretation of article 28. Those who would have to apply the future convention would find guidance in the discussions which had led up to the decision by the Committee of the Whole on the United Kingdom amendment, and in that decision itself. Discussion of the article should not be reopened at the present stage.

63. Mr. YASSEEN (Chairman of the Drafting Committee) emphasized that the Drafting Committee did not wish to go beyond or against any decision by the Committee of the Whole. Nevertheless, it did have a mandate to draft a clear text, and it was incumbent on it to point out to the Committee of the Whole cases in which the rule adopted by that body was not sufficiently clear from the proposed wording and could perhaps be better expressed. The Committee of the Whole naturally remained sovereign to amend the text or to state that it should be interpreted in a certain way.

64. The CHAIRMAN said that the comments which had been made could be seen as serving to confirm the limits of the Drafting Committee's mandate. The decision taken by the Committee of the Whole with regard to the United Kingdom amendment could be taken as meaning that the notice of termination referred to in article 28, paragraph 1, subparagraph (*b*), must be given by all the parties to a treaty, not by one of them.

65. Mr. ROSENSTOCK (United States of America) explained that the Drafting Committee's problem had been that it had been unable to determine from the text of the article whether the Committee of the Whole in fact intended that notice of termination should be given by all of the parties or by one of them. In view of that fact, and of the need for an article capable of ready application by States, he proposed that a vote be taken on the insertion in article 28, paragraph 1, subparagraph (*b*) of the words "all of" between the words "or" and "the parties". That proposal was a natural consequence of the rejection of the United Kingdom proposal to insert the words "one of" in the same place.

66. Mr. YIMER (Ethiopia), speaking on a point of order, objected that the United States proposal was tantamount to a request for reconsideration of the United Kingdom amendment. He moved that a vote should be taken on that request in accordance with rule 31 of the rules of procedure (A/CONF.80/8).

67. Mr. ROSENSTOCK (United States of America) emphasized that his delegation's proposal related to the insertion in the article, not of the words "one of", but of the words "all of". That was a proposal which had not been considered by the Committee of the Whole and which was the opposite of the United Kingdom amendment. The United States proposal was designed merely to clarify the interpretation to be given to article 28.

68. Mr. BRECKENRIDGE (Sri Lanka) said that the report given by the Chairman of the Drafting Committee on article 28 amounted to a suggestion that the Committee of the Whole should reconsider one of its own decisions; in making such a suggestion, the Drafting Committee had clearly exceeded its mandate. Nor was it proper for the Drafting Committee to seek the help of the Committee of the Whole in resolving its own difficulty in understanding an article.

69. With regard to the amendment proposed by the United States delegation, the question of including the words "all of" had already been raised at the Committee's 32nd meeting.[28] And if the United Kingdom proposal to insert the words "one of" had been rejected, that decision also clearly implied rejection of the words "all of"; it was mere sophistry for the United States delegation to claim that its amendment did not relate to the same matter as the United Kingdom proposal.

70. His delegation therefore supported the motion of the representative of Ethiopia.

71. Sir Ian SINCLAIR (United Kingdom) said that his delegation wished to defend the approach of the Drafting Committee. The United Kingdom amendment had been put forward as a probe, in order to determine the attitude of the Committee of the Whole on a matter which his delegation believed to be of some difficulty. There had been much discussion in the Drafting Committee as to what the rejection of that amendment meant; his delegation had taken the view that the logical conclusion to be drawn from the decision was that notice of termination must be given by all the parties to a treaty. He considered it entirely proper for the Committee of the Whole to assist the Drafting Committee in arriving

[27] See above, 32nd meeting, paras. 37-46.

[28] *Ibid.*, para. 41.

at a text which would not give rise to conflicting interpretations.

72. Mr. KATEKA (United Republic of Tanzania) agreed with the comments of the representative of Sri Lanka concerning the United States proposal. If the Chairman ruled that that proposal would not have the effect of re-opening the discussion of article 28, that ruling would itself have to be put to the vote.

73. Mr. USHAKOV (Union of Soviet Socialist Republics) said that his delegation found the text which had been referred to the Drafting Committee, which was that proposed by the International Law Commission, entirely satisfactory. By their decision on the United Kingdom amendment, the majority of the members of the Committee of the Whole had shown that they shared that view. His delegation was therefore opposed to any further referral of the text to the Drafting Committee.

74. Mr. ROSENSTOCK (United States of America) stressed that all the Committee of the Whole had done in rejecting the United Kingdom amendment to article 28 was to decide not to include the words "one of" in that article. Following that decision, an overwhelming majority of the members of the Drafting Committee, whose task was to prepare a text which would be intelligible to States, had considered that the situation was unclear. His delegation had no particularly strong views on whether the text should read "one of the parties" or "all of the parties", but it did consider that, for practical reasons, the question must be settled one way or another. Since one of those phrases had been rejected, his delegation was proposing the incorporation of the other simply in order to make the instrument easily applicable. He did not think that rejection of his delegation's proposal was consequential on the rejection of the United Kingdom amendment or that the two proposals were the same.

75. Mr. TODOROV (Bulgaria) agreed that the United States amendment entailed the re-opening of the discussion on article 28 and that the Committee would therefore have to proceed according to rule 31 of its rules of procedure (A/CONF.80/8).

76. Mr. AMLIE (Norway) agreed entirely with the United States representative that his proposal did not entail re-opening of the discussion, but was aimed merely at clarifying the existing text. By rejecting the United Kingdom proposal, the Committee of the Whole had in fact decided by implication that the relevant part of paragraph 1, subparagraph (*b*) should read "or all the parties"; it was that logical deduction which had given rise to the comments by the Chairman of the Drafting Committee. He considered that, rather than accept the motion by the representative of Ethiopia, it would be proper to decide by a simple majority whether or not the United States proposal entailed the reconsideration of an issue already settled. His delegation viewed the United States proposal simply as a drafting amendment.

77. Mr. YIMER (Ethiopia) urged that a vote be taken on his motion that the United States proposal entailed reconsideration of the United Kingdom amendment.

78. Mr. MUDHO (Kenya) said that his delegation would be content to retain the text of article 28 proposed by the International Law Commission. However, in view of the confusion which had arisen concerning the interpretation of that text following the rejection of the United Kingdom amendment, it supported the United States delegation in its efforts to clarify the provision.

79. Mr. ROSENSTOCK (United States of America) said that the Committee should not vote on the motion by the representative of Ethiopia, which assumed that his own delegation's amendment entailed reconsideration of the United Kingdom proposal, but on the question whether or not that assumption was correct.

80. Mr. NATHAN (Israel), referring to the motion by the representative of Ethiopia, said that rule 31 of the rules of procedure could clearly not apply in the present case, since what was at issue was the consideration of an amendment arising from the referral to the Committee of the Whole by the Drafting Committee of a text which the latter body considered unclear. Consequently, he thought that the Committee should vote as suggested by the representatives of Norway and the United States of America.

81. The CHAIRMAN invited the Committee to vote on the question whether the United States oral amendment to article 28, paragraph 1, subparagraph (*b*) entailed reconsideration of the United Kingdom oral amendment to the same provision, which had been rejected at the Committee's 32nd meeting.

It was decided by 46 votes to 19, with 10 abstentions, that such reconsideration was not entailed.

82. The CHAIRMAN invited the Committee to vote on the United States proposal to insert the words "all of" between the words "or" and "the parties" in article 28, paragraph 1, subparagraph (*b*).

The proposal was adopted by 46 votes to 19, with 11 abstentions.

83. Mr. KRISHNADASAN (Swaziland), explaining his vote, said that his delegation had abstained from voting mainly because it had considered that acceptance of the United States amendment would make article 28 less, rather than more, clear. He would have been happy to see the article adopted in its original form.

84. Mr. KATEKA (United Republic of Tanzania) explained that his delegation had not participated in

the voting on the United States amendment, because it considered that the effect would be to limit the freedom of the other parties to opt out of the treaty, as compared with the freedom accorded to the newly independent State.

85. The CHAIRMAN said that, if there was no objection, he would take it that the Committee of the Whole approved, on second reading, the title and text of article 28 proposed by the Drafting Committee, as amended.

It was so decided.[29]

Article 29 (Newly independent States formed from two or more territories)[30]

86. Mr. YASSEEN (Chairman of the Drafting Committee) said that the Drafting Committee had made only minor changes to the text of the article proposed by the International Law Commission. In paragraph 2 of the Spanish version, the word "*esté*" had been replaced by the word "*estuviera*", as in previous articles. In the English and Spanish versions, the same change had been made in paragraph 2, subparagraph (*a*) and paragraph 3, subparagraph (*a*) as had been made in article 14, subparagraph (*b*).

87. The CHAIRMAN said that, if there was no objection, he would take it that the Committee of the Whole adopted, on second reading, the text and title of article 29 proposed by the Drafting Committee.

It was so decided.[31]

88. Mr. MARESCA (Italy) said he hoped that, in order to avoid repetition, the provisions of article 29 which appeared in subsequent articles could be set out only once in the convention, with a reference to the other articles to which they applied.

PROPOSED NEW ARTICLE 22 *bis* (A/CONF.80/C.1/L.28), DRAFT PREAMBLE AND DRAFT FINAL CLAUSES

89. Mr. YASSEEN (Chairman of the Drafting Committee) said that the Drafting Committee had already held consultations with groups of delegations concerning the text of the proposed new article 22 *bis*. Owing to lack of time, it had decided to defer further consideration of that article, and the formulation of a draft preamble and draft final clauses, until the next session of the Conference.

The meeting rose at 6.35 p.m.

[29] For adoption of article 28 by the Conference, see 5th plenary meeting.

[30] For earlier discussion of article 29, see 32nd meeting, paras. 47-53, 33rd meeting, paras. 1-17 and 34th meeting, paras. 9-21.

[31] For adoption of article 29 by the Conference, see 6th plenary meeting.

36th MEETING

Thursday, 5 May 1977, at 3.50 p.m.

Chairman: Mr. RIAD (Egypt)

ADOPTION OF THE REPORT OF THE COMMITTEE OF THE WHOLE (A/CONF.80/C.1/L.48, A/CONF.80/C.1/L.48/Add.1-3 and A/CONF.80/C.1/L.48/Add.4 and Corr.1)

1. The CHAIRMAN invited the Rapporteur to introduce the draft report of the Committee of the Whole (A/CONF.80/C.1/L.48, A/CONF.80/C.1/L.48/Add.1-3 and A/CONF.80/C.1/L.48/Add.4 and Corr.1).

2. Mr. TABIBI (Rapporteur) said that the draft report recorded the decisions taken during the session, and did not cover all the articles contained in the draft prepared by the International Law Commission. Nevertheless, in view of the lack of time and of the political, legal and practical complexities of the branch of law concerned, the result of the session was better than had been expected. The progress made was due not only to the scholarly work of the International Law Commission, but also to the efforts of the Expert Consultant and the Drafting Committee, and of the Vice-Chairman of the Committee of the Whole who had presided over the informal consultations group.

3. The report showed that the Committee of the Whole had proceeded mainly article by article in considering the International Law Commission's draft and the proposed amendments thereto, and had fully discussed and adopted 25 of the 39 draft articles as well as two proposed new articles. The report also noted that the Committee had entrusted the Drafting Committee with the preparation of a draft preamble and draft final clauses for submission direct to a plenary meeting of the Conference.

4. The report consisted of an introductory chapter, a chapter consisting of four sections which recorded the various forms of action taken by the Committee on the articles, and a chapter dealing with the proposals submitted so far in regard to the preamble and the final clauses. The report in its final form would be accompanied by two annexes, one reproducing the text of the articles adopted by the Committee of the Whole, and the other containing a check-list of the documentation submitted during the Conference.

5. The report, when adopted, would accompany the resolution of the Conference submitted to the General Assembly. It would clearly show governments and their delegations to the Assembly what had been accomplished during the present session and what remained to be done next year.

6. The CHAIRMAN said that, if there was no objection, he would take it that the Committee of the Whole adopted the draft report on its work contained in documents A/CONF.80/C.1/L.48, A/CONF.80/C.1/L.48/Add.1-3 and A/CONF.80/C.1/L.48/Add.4 and Corr.1.

It was so decided.

Conclusion of the work of the Committee of the Whole

7. The CHAIRMAN, on behalf of the Committee, thanked the Rapporteur for the excellent work he had done; he also commended the efforts of the Vice-Chairman, the Executive Secretary, the Expert Consultant and all the secretariat personnel who had staffed the Committee. He expressed his gratitude to all delegations for the understanding and goodwill that had enabled the Committee's deliberations to proceed so far, despite the many differences of opinion.

8. Sir Ian SINCLAIR (United Kingdom), speaking on behalf of the Western European and Others Group, thanked the Chairman, the Vice-Chairman, the Rapporteur, the Expert Consultant, the General Committee, and the secretariat staff; by their zeal and devotion they had greatly assisted the Committee in dealing with the complex tasks before it.

9. Mr. YANGO (Philippines), speaking on behalf of the Asian Group, Mrs. BOKOR-SZEGÖ (Hungary), speaking on behalf of the socialist countries of Eastern Europe, Mr. YACOUBA (Niger), speaking on behalf of the African Group and Mr. FERNANDINI (Peru), speaking on behalf of the Latin American Group, endorsed the thanks expressed by the United Kingdom representative.

10. Mr. HERNDL (Austria) associated his delegation with the thanks expressed by the previous speakers.

11. Despite all the devotion and effort shown by the Committee, the task of considering the whole draft of articles had clearly been too big and too complicated to accomplish at a single session; the Conference would therefore have to hold a second session, at which, it was to be hoped, a convention on succession of States in respect of treaties could be adopted. Austria would be proud and happy to invite the Conference to Vienna again for that session.

12. After the expression of further thanks and courtesies by Mr. SNEGIREV (Union of Soviet Socialist Republics), Mr. MARESCA (Italy) and Mr. AMLIE (Norway), the CHAIRMAN declared that the Committee of the Whole had concluded its work.

The meeting rose at 4.55 p.m.

كيفية الحصول على منشورات الامم المتحدة

يمكن الحصول على منشورات الامم المتحدة من المكتبات ودور التوزيع في جميع انحاء العالم . استعلم عنها من المكتبة التي تتعامل معها أو اكتب الى : الامم المتحدة ،قسم البيع في نيويورك او في جنيف .

如何购取联合国出版物

联合国出版物在全世界各地的书店和经售处均有发售。请向书店询问或写信到纽约或日内瓦的联合国销售组。

HOW TO OBTAIN UNITED NATIONS PUBLICATIONS

United Nations publications may be obtained from bookstores and distributors throughout the world. Consult your bookstore or write to: United Nations, Sales Section, New York or Geneva.

COMMENT SE PROCURER LES PUBLICATIONS DES NATIONS UNIES

Les publications des Nations Unies sont en vente dans les librairies et les agences dépositaires du monde entier. Informez-vous auprès de votre libraire ou adressez-vous à : Nations Unies, Section des ventes, New York ou Genève.

КАК ПОЛУЧИТЬ ИЗДАНИЯ ОРГАНИЗАЦИИ ОБЪЕДИНЕННЫХ НАЦИЙ

Издания Организации Объединенных Наций можно купить в книжных магазинах и агентствах во всех районах мира. Наводите справки об изданиях в вашем книжном магазине или пишите по адресу: Организация Объединенных Наций, Секция по продаже изданий, Нью-Йорк или Женева.

COMO CONSEGUIR PUBLICACIONES DE LAS NACIONES UNIDAS

Las publicaciones de las Naciones Unidas están en venta en librerías y casas distribuidoras en todas partes del mundo. Consulte a su librero o diríjase a: Naciones Unidas, Sección de Ventas, Nueva York o Ginebra.

Printed in Belgium
GE.77-92005 (7854)
June 1978 — 2,785

Price: $U.S. 14.00
(or equivalent in other currencies)

United Nations publication
Sales No. E.78.V.8