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15th meeting of the Committee of the Whole

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(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.