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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.

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[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.