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2nd meeting of the Committee of the Whole

Extract from Volume I of the *Official Records of the United Nations Conference on Succession of States in Respect of Treaties (Summary records of the plenary meetings and of the meetings of the Committee of the Whole)*

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.*