United Nations Conference on Succession of States in Respect of Treaties

Vienna, Austria
First session
4 April – 6 May 1977

Document:-
A/CONF.80/C.1/SR.23

23rd 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)*

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23rd MEETING

Thursday, 21 April 1977, at 3.50 p.m.

Chairman: Mr. RIAD (Egypt)

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

ARTICLE 14 (Succession in respect of part of territory) (*continued*)

1. Mr. ESTRADA-OYUELA (Argentina) said that his delegation fully agreed with the representative of Egypt that article 14 could not refer to an illegal situation.[1] He was also concerned about the point raised by the representative of Algeria concerning the situation of territories which were not really an integral part of the State responsible for their international relations[2] but he thought the present wording of the article made adequate provision for such cases.

2. Referring to the possible inclusion in the convention of a procedure for the settlement of disputes, he drew attention to the statement made by his delegation during the debate on article 2.[3]

3. Mr. EUSTATHIADES (Greece) said he foresaw no very serious objections to article 14, which repeated, albeit in innovative terms, the classical notion that the sovereignty of a State increased or diminished with the changes in its territory and that a treaty to which it was a party could therefore no longer apply in an area which it had ceded to another State. However, article 14 also dealt with the very special case of territory which became part of a State other than that which had formerly been responsible for its international relations. The principles to be applied in regard to the validity, for that territory, of the treaties of the State which had formerly represented it, would naturally be the same as in the first case mentioned in the article; but he agreed with the representative of Algeria that it would be preferable if, in keeping with the decision adopted by the International Law Commission in connexion with its study of succession of States in respect of matters other than treaties, the two questions were dealt with in separate parts of the draft convention.[4]

4. With regard to the wording of the article, a matter of secondary concern was the absence of any criteria for determining what was the "date of the succession of States", a phrase which appeared for the first time in article 14. The definition of that expression given in article 2, paragraph 1, subparagraph (*e*) did not explain how the precise moment at which responsibility passed from the predecessor to the successor State was to be identified.

5. Of primary importance was the question of the derogation from article 14 permitted by the second part of subparagraph (*b*) of the article. As the representative of the United Kingdom had said,[5] it would be better to word that provision differently, for it was not only incompatibility with the object and purpose of the treaty or a radical change in the conditions for its operation which could constitute grounds for an exception, but also a fundamental obstacle to its implementation extraneous to the circumstances obtaining at the time of its conclusion. He himself, however, could find no better wording than that proposed by the International Law Commission. Moreover, the problem was perhaps partly solved by virtue of the fact that the same clause appeared in other articles of the draft convention.

6. The real difficulty was that the criteria which States, and particularly third States, would apply in invoking an exception to article 14 would inevitably be subjective, whereas they should be objective. In view of that fact, and of the importance of article 14 for the entire convention, he fully supported the appeal made by the representative of the United States for the inclusion of provisions relating to the settlement of disputes.[6]

7. Mr. MIRCEA (Romania) said that his delegation had no great objections to the substance of article 14, but it had at first been surprised to see that part II of the draft convention consisted solely of that article, the provisions of which were closely linked with those of other articles. He was still not quite clear why article 14 departed from the question of succession of States in respect of treaties to deal with that of the succession of territories, which, as other delegations had objected, were not subjects of international law.

8. He thought it would be both politically and legally more appropriate to deal with the two very different situations covered by the article in separate parts of the draft convention. In his view, article 14 should be read in conjunction with articles 32 and 33 to give a full picture of the rights and obligations of all the States involved in a succession: as it stood, the article simply gave a "clean slate" to the predecessor State and, in subparagraph (*b*), offered an escape clause to the other parties to the treaties concerned.

9. He thought that better wording could be found for the phrase "for the international relations of which that State is responsible".

[1] See above, 22nd meeting, para. 42.

[2] See above, 22nd meeting, paras. 27-29.

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

[4] See above, 22nd meeting, para. 29.

[5] See above, 22nd meeting, para. 25.

[6] See above, 22nd meeting, paras. 33-34.

10. Mr. SETTE CÂMARA (Brazil) said that article 14 represented an expression, in its simplest form, of the principle of "moving treaty frontiers", which, together with the "clean slate" principle, precluded the inheritance of treaties of a predecessor by a successor State. The rule provided that a territory undergoing a change of sovereignty, or in other words, a territory responsibility for the international relations of which was transferred from one State to another, passed automatically from the treaty régime of the predecessor State to that of the successor State. In fact, the article could be seen as a corollary of article 29 of the Vienna Convention on the Law of Treaties, in the sense that treaties were intended to apply to the whole of the territory of a State, and that treaties in force in the territory of one State were not binding in that of another.

11. There were two sides to the rule set out in article 14: a positive statement to the effect that treaties of the successor State automatically began to apply to the territory, as changed, from the date of the succession; and a negative statement to the effect that treaties of the predecessor State automatically ceased to apply to that territory at the same time. It had been contended that the problem lay outside the field of succession of States because there was succession only to part of a territory. But paragraph (3) of the commentary to the article (A/CONF.80/4, p. 49) made it clear that what was involved was a "succession of States" in the sense in which that concept was used in the draft articles, namely, a replacement of one State by another in the responsibility for the international relations of territory.

12. Article 14 was, of course, closely linked to article 6, which limited the application of the draft convention to lawful situations. Similarly, it should be read together with the saving clauses in articles 38 and 39, which dealt with cases of hostilities and military occupation.

13. O'Connell had contended, in his classic work *State Succession in Municipal Law and International Law,* that "The formulae of the 'clean slate' and 'moving treaty boundaries' tend to transform an interpretative guide into an inflexible criterion, and hence to prejudge the question both of emancipation of territory from the predecessor's treaties and of subjection of it to those of the successor. A rigidly negative rule with respect to treaty succession will tend to exaggerate the negative element in State practice."[7] The International Law Commission had drafted article 14 so as to avoid that rigidity, by including in the last part of subparagraph (*b*) a very elaborate saving clause based on the principles of articles 29, 61 and 62 of the Vienna Convention on the Law of Treaties. That saving clause naturally applied only to the situation described in the subparagraph in which it appeared, since there was no question, in the circumstances dealt with in subparagraph (*a*) of the article, of the application of treaties to the separated territory.

14. His delegation considered article 14 to be one of the major elements of the draft and had no difficulty in supporting it in the version proposed by the International Law Commission.

15. Sir Francis VALLAT (Expert Consultant), explaining the formulation of draft article 14, which dealt with the first case of State succession coming within the meaning of the draft articles, said that it had been placed separately in part II because it dealt with a case which was different from the other cases of succession of States dealt with in parts III and IV. That explanation was necessary in view of the suggestion by certain delegations that article 14 should have been included in the general provisions of part I of the draft.

16. Referring to the very difficult subject of the safeguard clause in subparagraph (*b*), he said that, as delegations were aware, the International Law Commission had tried to draft articles which were sound in principle and workable in practice. If it had adopted only the criterion of the "moving treaty frontiers" principle, the result in some cases would have been quite unworkable because, on the transfer of part of a territory from one State to another, the treaty might have been wholly inapplicable. The International Law Commission had been faced with the problem of trying to draft a safeguard clause which would make the "moving treaty frontiers" principle workable in all cases. In its 1972 draft, the safeguard clause had referred only to the case where the application of the treaty in the new circumstances would be incompatible with its object and purpose. In 1974, the International Law Commission had examined government comments on that clause with great care. The matter had been of very great importance to certain of its members, who had considered various ways of making the wording of the safeguard clause clearer. They had found, however, that whenever they tried to elaborate the detail of the clause, the draft became, if anything, even more difficult and more obscure. The International Law Commission had therefore fallen back on the present wording of draft article 14, which reflected the language of the Vienna Convention on the Law of Treaties.

17. The last part of the safeguard clause in subparagraph (*b*) had been inspired by article 62, paragraph 1, of the Vienna Convention, though the words "would radically change the conditions for the operation of the treaty" reflected only part of the provisions of that paragraph, some of which were clearly not applicable to the case of a succession of States dealt with in draft article 14, because they dealt with a fundamental change of circumstances following the conclusion of a treaty. Thus, there was a real difference between the circumstances dealt with in article 62, para-

[7] D. P. O'Connell, *State Succession in Municipal Law and International Law*, Cambridge, Cambridge University Press, 1967, vol. II, p. 25.

graph 1, of the Vienna Convention and the circumstances dealt with in draft article 14. That difference justified the wording used in draft article 14, which looked to the future in the light of the succession of States that was taking place, while article 62, paragraph 1, of the Vienna Convention related to circumstances which were fundamentally different from those existing at the date of the conclusion of the treaty.

18. Mr. HELLNERS (Sweden) said that, at the 22nd meeting, the representative of the Federal Republic of Germany had suggested that some phrase, such as "unless the parties otherwise agree", should be added to the text of draft article 14.[8] His delegation could not agree that such wording should be included, because it would change the meaning of the rule laid down in draft article 14. Thus the suggestion made by the representative of the Federal Republic of Germany was not merely a matter of a drafting nature and should not be referred to the Drafting Committee.

19. The safeguard clause now contained in draft article 14, subparagraph (*b*), had two parts which seemed to be intended to cover two types of exception. He agreed with the view expressed by the representative of Swaziland[9] that there was not a great deal of difference between those two types of exception and that the commentary did not provide an adequate explanation of why they were both needed.

20. He therefore proposed that the words "would be incompatible with its object and purpose or" should be deleted in order to make the text of the future convention clearer. That amendment was not intended to change the substance of, or to give a new meaning to, draft article 14, subparagraph (*b*).

21. Mr. MARESCA (Italy) said that the explanations provided by the Expert Consultant had helped to dispel some of his delegation's doubts about draft article 14. Those explanations would, however, be reflected only in the records of the Conference and would not directly benefit those who would subsequently have to apply the provisions of the future convention.

22. He therefore considered that the wording of draft article 14 should be improved and made clearer. It was, as the representative of Greece had pointed out, one of the most traditional articles in the draft. Nevertheless, it contained some new elements and it reflected confusion about the legal meaning of terms. The introductory part of the article combined two very different ideas, namely, the idea that part of the territory of a State became part of the territory of another State and the idea that one State ceased to be responsible for the international relations of the territory in question. He did not think that those two ideas should be combined in the same phrase because, historically and legally, they were two quite different things. Moreover, too much concision could lead to obscurity, which was the worst enemy of the law. His delegation was therefore of the opinion that the Drafting Committee should consider the possibility of separating those two ideas.

23. He drew attention to the fact that, in the French version of the introductory part of draft article 14, a comma should be added after the word "*responsable*", so as to correspond to the English, Spanish and Russian texts.

24. Referring to subparagraph (*b*), he said he was grateful for the Expert Consultant's explanations, but he still found the present wording unclear and thought it likely to give rise to confusion and possible misunderstandings.

25. The CHAIRMAN said that the drafting suggestions made by the representative of Italy would be taken into acount by the Drafting Committee.

26. Mr. ARIFF (Malaysia) said his delegation believed that every treaty had an object and purpose, without which it might never have been concluded in the first place. Thus, if a situation arose in which it was impossible to apply a particular treaty to a territory, or in which its application would defeat the purpose for which it had been concluded, it was only right that the treaty should be written off for good.

27. Consequently, his delegation could not support the Swedish proposal that the words "would be incompatible with its object and purpose" should be deleted from subparagraph (*b*) of article 14. It believed that those words were necessary and vital to the meaning of the article and that the words "would radically change the conditions for the operation of the treaty" had an entirely different meaning and purpose. The two phrases should both be retained.

28. Mr. AMLIE (Norway) said he agreed with the representative of Malaysia that the words "would be incompatible with its object and purpose" should be retained. Since those words appeared in many other places in the draft, if the Committee decided to delete them from article 14, it would also have to delete them from other articles.

29. His delegation considered that draft article 14 should be adopted as it stood, subject to consideration, during the discussion of subsequent draft articles, of the amendment proposed orally by the representative of Sweden.

30. Mr. MIRCEA (Romania) supported the amendment proposed by the representative of Sweden, because it provided a good means of shortening the text of several articles. His delegation would have no difficulty in accepting the safeguard clause in

[8] See above, 22nd meeting, para. 37.

[9] See above, 22nd meeting, para. 43.

subparagraph (*b*) if it contained only the phrase "would radically change the conditions for the operation of the treaty", which would adequately cover a large number of cases, in particular, those involving newly independent States.

31. Mr. SIEV (Ireland) said that in his delegation's view the deletion of the words "would be incompatible with its object and purpose" would create a lacuna. His delegation endorsed the Malaysian and Norwegian representatives' remarks.

32. Perhaps, however, article 14 might be easier to understand if the words "it appears from the treaty or is otherwise established that" were deleted from subparagraph (*b*); the Drafting Committee might consider that possibility.

33. The CHAIRMAN said that, in the absence of any objection, the Drafting Committee would be invited to consider the amendment to subparagraph (*b*) proposed by the representative of Ireland.

34. He invited the Committee to vote on the oral amendment proposed by the representative of Sweden to delete the words "would be incompatible with its object and purpose or" from subparagraph (*b*) of article 14.

The oral amendment proposed by the representative of Sweden was rejected by 43 votes to 4, with 27 abstentions.

35. The CHAIRMAN said that, if there was no objection, he would take it that the Committee of the Whole decided to adopt provisionally the text of article 14 as it stood and to refer it to the Drafting Committee.

It was so decided.[10]

ARTICLE 15 (Position in respect of the treaties of the predecessor State)

36. Mr. RANJEVA (Madagascar) said that his delegation agreed with the substance of article 15, which was a fundamental provision of the draft convention by reason of its statement of the "clean slate" principle.

37. The Drafting Committee's attention should perhaps be drawn to the article's wording. The International Law Commission had used a negative form, which might suggest that it was recommending the formulation of a new rule to facilitate the progressive development of international law. His delegation would applaud such an approach, but it was not wholly satisfied with the negative form of words, which suggested hesitancy and meant that the article stated no self-contained principle, but must be examined in the light of principles to be found elsewhere.

38. That the "clean slate" principle was universally and unconditionally accepted was shown not only by paragraph (3) of the commentary to article 15 (A/CONF.80/4, p. 52), which referred to that principle's traditional character, but also by the numerous and concordant instances of the practice in most States, which seemed also to indicate that the so-called continuity rule had hardly withstood the tests of time and practice.

39. Consequently, his delegation, while congratulating the International Law Commission on its work, would be pleased if the Drafting Committee could consider whether a less tentative form of words could be used to affirm the principle which, as practice had constantly revealed, was accepted as the fundamental guideline.

40. Mr. MBACKÉ (Senegal) said that his delegation did not question the substance of article 15, which proclaimed the "clean slate" principle. It was uneasy, however, about the allusion in the text to the principle of continuity, which entailed a lack of precision and gave the article an ambivalent character which ought to be avoided. His delegation would like the Drafting Committee to seek a form of words to make it clearer that a newly independent State was not obliged to maintain a treaty in force.

Mr. Ritter (Switzerland), Vice Chairman, took the Chair.

41. Mr. SETTE CAMÂRA (Brazil) said that article 15 was a cornerstone of the whole draft convention, on account of the "clean slate" principle it enunciated. During the Committee's deliberations on article 2, his delegation had stated its views on the meaning and substance of article 15, as well as on newly independent States, which in its view were "born free".[11]

42. The "clean slate" doctrine derived from two sources: the principle of self-determination and the underlying tenor of the Vienna Convention on the Law of Treaties, within the framework of which the set of draft articles under consideration had been prepared by the International Law Commission.

43. As noted in paragraph (3) of the commentary (*ibid.*), the "clean slate" rule had been long established in practice; and among the comments of governments, the United States representative, noting with satisfaction that the Commission had adopted the "clean slate" principle, had pointed out that "the United States was probably the first country to have enunciated that doctrine when it attained independence almost 200 years ago" (A/CONF.80/5, p. 213).

44. The principle became paramount, however, only on the emergence of a new State; such a State could not automatically take up the rights and obligations of the predecessor State. The text of article 15, how-

[10] For resumption of the discussion of article 14, see 34th meeting, paras. 3-4.

[11] See above, 3rd meeting, paras. 45-50.

ever, dealt only with the point that the newly independent State was not bound by any treaty by reason only of the fact that at the date of the succession the treaty was in force in respect of the territory to which the succession related. His delegation had carefully noted the International Law Commission's commentary on the interpretation of the "clean slate" rule, particularly paragraph (6) and paragraphs (8) to (14) of the commentary (A/CONF.80/4, pp. 52-54), including the question whether there were categories of treaties to be regarded as exceptions from the "clean slate" rule. The International Law Commission apparently believed that some difference existed between bilateral treaties and certain multilateral treaties, but as the question would be raised in connexion with article 16, his delegation would reserve its remarks until the Committee came to consider that article.

45. He noted, too, that the International Law Commission's text did not include the usual type of saving clause; the drafting technique was the same as in article 8, and again the use of the word "only" opened the way to specific exceptions to the rules governing the application of general international law to different express agreements between parties.

46. His delegation thought that article 15 was one of the most important in the whole draft; it was in favour of the text as it stood and would regret any attempt to amend it.

47. Mr. MUSEUX (France) praised the work of the International Law Commission in drafting article 15. The article was of fundamental importance, and although he appreciated the wish of the delegation of Madagascar to see a more affirmative form of wording, he thought that such a change would be only a matter of drafting and in any case his delegation was not prepared to support a change in the text.

48. The International Law Commission had clearly based article 15 on the "clean slate" principle. As his delegation had said during the Committee's discussion on article 2,[12] it could accept that principle provided that the International Law Commission's formulation, in its scope as well as its wording, was retained—in other words, that the "clean slate", which by itself was broad and categoric, should be seen in the light of existing State practice in domestic and constitutional law as well as in international law. Indeed, the categorical application of the "clean slate" principle would mean—certainly in France, for example—that international treaties, even if all the former provisions remained unaltered, would have to be returned to the State legislature for renewal.

49. Mr. FARAHAT (Qatar) associated himself with the previous speakers in supporting the retention of draft article 15 as it stood. It was simple and straightforward and assured the newly independent State of freedom of choice in regard to treaties, while implicitly ensuring continuity.

50. Miss OLOWO (Uganda) reaffirmed her country's support for the present text of article 15. She would reject any amendment, since that might lead to changes of substance.

51. Mr. MANGAL (Afghanistan) said that his delegation supported draft article 15, which clearly affirmed the "clean slate" principle. The newly independent State could not regard itself as entitled to the treaty rights of the predecessor State, particularly in the case of bilateral treaties. The article left without legal foundation any argument or dispute based on views conflicting with the "clean slate" principle.

52. Mr. MARESCA (Italy) said that his delegation fully supported draft article 15, which constituted the codification, in a masterly text, of a very old principle of international law. However, he wondered whether it would not be better to follow the practice employed in other articles, such as article 16, and introduce in an opening phrase a reference to articles based on a different principle, such as articles 11 and 12. That would serve to define the precise scope of article 15.

53. Sir Francis VALLAT (Expert Consultant) said that the International Law Commission had dealt carefully and deliberately with the point raised by the Italian representative. The 1972 text of draft article 15 had opened with the phrase "Subject to the provisions of the present articles". But the International Law Commission had considered that cross referencing might create confusion about the relationship between that article and other articles. It had therefore deliberately deleted the phrase and endeavoured, by the drafting and positioning of other articles, to make such cross references unnecessary. That was why certain articles appeared under the general provisions so that they should apply to all the draft articles. It would be noticed that draft articles 16 and 17 referred, not to other articles, but to other paragraphs of the articles themselves so that the references were self-contained.

54. The CHAIRMAN said that, if there were no objections, he would take it that the Committee decided to adopt draft article 15 provisionally and refer it to the Drafting Committee for consideration.

It was so decided.[13]

ARTICLE 16 (Participation in treaties in force at the date of the succession of States)[14] and PROPOSED NEW ARTICLE 16 *bis* (Participation in treaties of a

[12] See above, 2nd meeting, paras. 28-30.

[13] For resumption of the discussion of article 15, see 34th meeting, paras. 5-6.

[14] The following amendment was submitted: Netherlands, A/CONF.80/C.1/L.35; in addition, the Union of Soviet Socialist Republics proposed the insertion of an article 16 *bis*, A/CONF.80/C.1/L.22.

universal character in force at the date of the succession of States)

55. The CHAIRMAN said that the Netherlands amendment to draft article 16 (A/CONF.80/C.1/L.35) dealt with the same subject as the Soviet proposal for a new article 16 *bis* (A/CONF.80/C.1/L.22). If there was no objection, he would suggest that the Committee should consider the two amendments together in conjunction with draft article 16.

It was so agreed.

56. Mr. STUTTERHEIM (Netherlands), introducing his delegation's amendment, said that in contradistinction to the Soviet proposal for a new article, it was based on the "clean slate" principle. His delegation thought it useful to presume that newly independent States would want to be parties to multilateral treaties open to universal participation. The recent practice of such States had shown that they wished to play a full part in international life and often notified the Secretary-General of the United Nations of their intention to maintain the treaties and conventions applicable to their territory at the date of succession, subject to future consideration in order to decide which treaties they wished to adopt, to adopt with reservations or to terminate. His delegation knew no case in which a newly independent State had subsequently ceased to be a party to a multilateral treaty open to universal participation. Such treaties were well known to all newly independent States through publications, particularly those of the United Nations.

57. By obliging newly independent States to give written notification, signed by a minister, the well-established States would be imposing a burden on new States at a time when they were concerned with more urgent matters. Additional tasks would also be imposed on the Secretary-General of the United Nations and other depositaries of multilateral treaties.

58. His delegation was aware that, if its amendment was adopted, consequential changes would be required in other draft articles, which it would indicate to the Drafting Committee.

59. Mr. SNEGIREV (Union of Soviet Socialist Republics) said that he would prefer to introduce the Soviet proposal at the following meeting.

60. Mr. WERNERS (Surinam) said that his delegation supported the Netherlands amendment to draft article 16. It was a practical proposal which, in the new paragraph 4, paid a well-deserved tribute to the "clean slate" principle. It had to be admitted that after a succession of States, the political will of the newly independent State was the decisive factor in determining how clean the slate was to be. At the time of his country's accession to independence, it had been told by a representative of the Secretary-General of the United Nations that, subject to legal examination, the great majority of newly independent States acknowledged the rights and duties created by multilateral treaties open to universal participation to which their predecessor States had been parties. Mr. Jenks, a former Director-General of the International Labour Organisation, had even voiced the opinion that some multilateral law-making treaties should be regarded as customary international law and hence binding upon all new members of the international community, although such a view was without any strong legal foundation, given the stage of contemporary international law.

61. Mr. SHAHABUDDEEN (Guyana) said that the Netherlands amendment to draft article 16 and the Soviet proposal for a new article differed, but they had the common object, with which his delegation was in sympathy, of seeking to prevent the occurrence of an international vacuum, by providing that multilateral treaties should apply to a newly independent State from the date of its independence even though that State had not notified its intention to accede to them.

62. International life was conducted through a complex of treaty arrangements and a literal application of the "clean slate" rule would mean that those arrangements did not devolve upon a successor State without its consent and that of other States parties—a procedure which would take time and cause a lacuna inconvenient both to the newly independent State and to the international community.

63. Draft article 16 sought to remedy the situation in regard to multilateral treaties, but it did not entirely succeed in providing adequate machinery, since according to draft article 22, paragraph 2, the operation of the treaty was to be considered as suspended until the date of making of the notification of succession. It was true that provision was made for the treaty to be applied provisionally either in accordance with draft article 26 or "as may be otherwise agreed". However, according to article 26, provisional application of a multilateral treaty depended on notice being given by the new State, and the other exception under draft article 22, paragraph 2, would involve the agreement of interested parties, so that in both cases there would almost certainly be a lacuna.

64. It might be held that such lacunae, though undesirable, were the inevitable price of seeking to protect newly independent States by adopting the "clean slate" principle. His delegation considered, however, that it was unnecessary to act in a doctrinaire fashion, though care should be taken to avoid any approach which might appear to involve a negation of the requirement of consent by the newly independent State to be bound. For that reason, his delegation had reservations on the Soviet proposal in which the international community would seem to assume unilaterally the application of certain treaties to newly independent States before they had had an opportunity to express their wishes.

65. The essence of the problem was to strike a balance between continuity and the freedom of choice which was the basis of the "clean slate" principle. In the case of multilateral treaties, the need for continuity was pressing and the risk to the interests of the new State minimal. It could be argued that the consent of the new State depended on evidence to that effect, and that the experience of all States represented at the Conference probably indicated that any newly independent State would wish to have such treaties applied to it. It could therefore be laid down as a safe rule that the new State should be presumed to be desirous of having those treaties applied to it, unless it indicated otherwise and that the treaties should accordingly be considered as applying to it from the date of independence. Such a rule would not involve any negation of the need for consent and would therefore not be inconsistent with the "clean slate" principle.

66. The Netherlands amendment was in conformity with that approach and his delegation supported it in principle. However, subparagraphs (*b*) and (*c*) of the proposed new paragraph 4 might admit of some improvement. They might include provisions to the effect that a State which had never availed itself of the benefits of a treaty was free at any time to give notice of its desire not to have the treaty applied to it, and that in such a case the treaty would be treated as if it had never applied to that State; and that a State which by virtue of the new provisions had availed itself of the benefits of a treaty was free to discontinue the application of the treaty to itself only in accordance with the termination provision of that particular treaty.

67. It would also be necessary to bring the provisions of the Netherlands amendment into line with the provisions of draft article 26.

The meeting rose at 6.05 p.m.

24th MEETING

Friday, 22 April 1977, at 11.10 a.m.

Chairman: Mr. RIAD (Egypt)

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

ARTICLE 16 (Participation in treaties in force at the date of the succession of States) and PROPOSED NEW ARTICLE 16 *bis* (Participation in treaties of a universal character in force at the date of the succession of States)[1] (*continued*)

1. Mr. SNEGIREV (Union of Soviet Socialist Republics), introducing draft article 16 *bis* (A/CONF.80/C.1/L.22), observed that the proposal to include in the draft convention a provision dealing with treaties of a universal character was not new. A proposal of that kind had been submitted to the International Law Commission in 1974 but there had not been sufficient time to discuss it, as stated in paragraph 75 of the Commission's report on the work of its twenty-sixth session (A/CONF.80/4, pp. 13-14). On 14 December 1974, the General Assembly had referred the draft convention to Governments together with a draft article 12 *bis*, entitled "Multilateral treaties of universal character", in order to ascertain their views on the subject. The International Law Commission and the General Assembly had thus attached great importance to the question of succession of States to treaties of a universal character, and the article 16 *bis* proposed by his delegation was designed to fill a gap in the draft convention in that regard.

2. Treaties of a universal character were the outcome of international co-operation and embodied generally accepted principles and rules concerning contemporary international relations. The purpose of such treaties was to strengthen the legal order in international relations in important spheres; for example, the maintenance of international peace and security; the development of economic co-operation; the struggle against genocide, *apartheid* and racial discrimination; humanitarian law, particularly as set out in the 1949 Geneva Conventions;[2] public health; diplomatic and consular relations; and the law of treaties. Thus treaties of a universal character were of paramount importance for the whole international community, and particularly for newly independent States. It was therefore in the interests not only of newly independent States but also of the international community as a whole that a treaty of universal character should not cease to be in force when a new State attained independence. Yet, under article 22 (Effects of a notification of succession), the operation of a multilateral treaty was suspended from the date of independence of the new State until the date of the notification of succession. Such a suspension, which could last a very long time, was neither in the interests of the newly independent State nor in those of the international community as a whole. The Soviet Union therefore proposed removing that defect by the inclusion of a new article 16 *bis* entitled "Participation in treaties of a universal character in force at the date of the succession of States".

3. The essence of the Soviet Union proposal lay in paragraphs 1 and 4 of article 16 *bis*. Paragraph 1 provided that a treaty of universal character should remain in force provisionally for all States parties, including the newly independent State. Paragraph 4 further made it possible for the newly independent State to become a party to such a treaty definitively.

[1] For the amendment submitted to article 16, see 23rd meeting, foot-note 14.

[2] See United Nations, *Treaty Series*, vol. 75, pp. 31-419.