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.24

24th 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)*

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

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

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

The meeting rose at 6.05 p.m.

24th MEETING

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

Chairman: Mr. RIAD (Egypt)

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

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

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

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

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

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

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

4. Under paragraph 1 of the proposal, "any treaty of universal character which at the date of a succession of States is in force in respect of the territory to which the succession of States relates shall be provisionally in force between the newly independent State and the other States parties until such time as the newly independent State gives notice of termination of the said treaty for that State"; the principle there set forth might perhaps engender a mental reservation, because in such a case it could not be said that the treaty remained in force by reason of the will manifested by the newly independent State. However, that was a minor drawback when measured against the enormous advantages that accrued to newly independent States from their automatic and provisional participation in treaties of a universal character. For if the effects of the treaty were interrupted from the date of the succession of States until the date of notification of succession, during that period the newly independent State would have no obligations to the other parties to the treaty and the latter would similarly be released from any obligation towards the newly independent State. Such an interruption would not be in the interests of either newly independent States or the international community in general.

5. The rule laid down in article 16 *bis* derived from the practice followed by the Secretary-General of the United Nations as depositary of numerous treaties of a universal character, as well as from the practice of other depositaries of treaties of that kind, which had not ceased to regard a newly independent State as being party to a multilateral treaty from the date of independence. Similarly, in a letter dated 16 April 1974 to the Chairman of the International Law Commission, the International Committee of the Red Cross had stated that, to the best of its knowledge, no State had ever claimed to be released from any obligation under the Geneva Conventions by virtue of attaining independence. Such a practice had not created difficulties for newly independent States.

6. It might be asked whether the provisions of article 16 *bis* were in conformity with the "clean slate" principle. In his opinion, they were, inasmuch as newly independent States had an option and their freedom of action was not fettered.

7. Since article 16 *bis* dealt with treaties of a universal character, his delegation considered that the expression "treaty of a universal character" should be defined in article 2. The definition it proposed reproduced the text of the first preambular paragraph of the Declaration on Universal Participation in the Vienna Convention on the Law of Treaties,[3] which formed an integral part of the Final Act of the United Nations Conference on the Law of Treaties; that Declaration had already been adopted by many States.

[3] *Official Records of the United Nations Conference on the Law of Treaties, Documents of the Conference* (United Nations publication, Sales No. E.70.V.5), p. 285.

8. In conclusion, his delegation hoped that its proposal would be favourably received by the Conference. It was willing to collaborate with other delegations in devising a formula acceptable to all.

9. Mrs. SAPIEJA-ZYDZIK (Poland) said that her Government had always considered that general multilateral treaties should apply to as many States as possible and that access to such treaties should be as easy as possible. During the General Assembly debate on the draft articles prepared by the International Law Commission, a number of delegations had pointed out that the uninterrupted application of treaties in that category, such as the 1949 Geneva Conventions for the protection of victims of war, would be advantageous to newly independent States. Her delegation viewed the two amendments to article 16 in that context.

10. The purpose of the Soviet Union proposal was to ensure that universal rules of customary international law, as reflected in general multilateral treaties, survived all changes of sovereignty and continued to be binding on all States, newly independent as well as others. Her delegation therefore supported the proposed new article 16 *bis* and favoured all the consequential amendments it would entail. In the view of Poland, the practical problems that might arise with the continued application of general multilateral treaties as proposed in the Soviet Union amendment could be easily resolved if the depositary of any such treaty notified the newly independent State that the operation of the treaty had been extended to the territory to which the succession of States related. Her delegation would revert to that question when the Committee considered the proposed new article 22 *bis* (A/CONF.80/C.1/L.28).

11. Mr. MBACKÉ (Senegal) said that article 16, which was based on the principle of continuity, would make it easy for a newly independent State to accede to a multilateral treaty in force with respect to its territory at the date of a succession of States. Paragraphs 2 and 3 imposed certain quite understandable restrictions on the principle expressed in paragraph 1, as it would be rash to require that the successor State and the other States parties should act in a manner incompatible with the object and purpose of the treaty, or to radically change the conditions for the operation of the treaty because of the successor State's participation in it. A further restriction emerged from the provisions of article 4 on treaties constituting international organizations and treaties adopted within an international organization; under that article, the provisions of such treaties with regard to the admission of a new Member State took precedence over the procedures laid down in the convention under consideration.

12. Consequently, in spite of its practical value, article 16 was relatively limited in scope. Nevertheless, his delegation approved the present formulation of the article; the limitations it stipulated appeared un-

avoidable. He wished, however, to draw the Committee's attention to some drafting points. The words "in force in respect of the territory" in paragraph 1 of the article and in other draft articles seemed to personalize the notion of territory, as a treaty, to his mind, was in force "in respect of" an international legal person or any other entity having legal personality but "in" the territory of the State. His delegation therefore proposed the replacement of the words "in force in respect of the territory" by the words "applicable to the territory". It also proposed that in paragraph 3 the words "and the object" should be replaced by the words "or by reason of the object".

13. The Netherlands amendment and the proposal of the Soviet Union would add further exceptions to the important ones already appearing in article 16. Their purpose was doubtless praiseworthy, as they would increase participation by newly independent States in multilateral treaties of a universal character, but there was the possibility that they might further water down article 16 and impair its practical application by introducing too many exceptions to the principle which it set forth.

14. In his view, the Netherlands amendment and the proposal by the Soviet Union constituted two complementary exceptions. The first dealt with multilateral treaties open to universal participation, which it defined as international agreements "open to participation by at least all States Members of the United Nations", thereby applying a procedural criterion. The second concerned treaties of a universal character which it defined as multilateral treaties which deal "with the codification and progressive development of international law, or the object and purpose of which are of interest to the international community as a whole", thereby applying a substantive criterion. In his view, article 4 considerably limited the scope of the two amendments. Also by introducing the notion of presumed consent, the Netherlands amendment created a risk, since a newly independent State was not always aware of the treaties binding it when it attained independence. Those treaties might be purely political or contain reservations which would be opposable to the successor State. The presumption of consent, which could extend over a relatively long period, could thus have unexpected consequences for a newly independent State until it reached its final decision.

15. The proposal by the Soviet Union had the advantages of being more specific, since it defined the notion of a treaty of universal character in new terms, and of stipulating a provisional period of treaty operation before the definitive accession of a newly independent State. Consequently, if he had to choose between the proposal by the Soviet Union and the Netherlands amendment, he would favour the former.

16. Mr. MUDHO (Kenya) said that he found article 16 satisfactory as it stood. He wished to point out to the Committee the close link between that article and article 15, which it had already adopted, and warn it against any amendment which would conflict with the "clean slate" principle set forth in the latter article. He supported the Netherlands amendment, which established a presumption, not that multilateral treaties of universal character should continue in force—that would be contrary to the "clean slate" principle—but that a newly independent State desired them to remain in force in respect of its territory until it was in a position to make a pronouncement on the matter. However, in order to safeguard the "clean slate" principle, he proposed that the words "shall accordingly be presumed to apply" should replace the words "shall accordingly apply" in subparagraph (*a*) of the new paragraph 4 proposed by the Netherlands.

17. The proposal by the Soviet Union was not so readily acceptable, since it completely disregarded the "clean slate" principle, set forth in article 15, in respect of treaties of a universal character and gave the impression that such treaties conferred nothing but benefits on newly independent States, whereas any treaty involved both rights and obligations. The Soviet Union representative had said that his proposal was intended to fill a gap in the draft, in that article 22, concerning the effects of a notification of succession, provided that the operation of a treaty would be "considered as suspended as between the newly independent State and the other parties to the treaty until the date of making of the notification of succession". It was inconceivable, however, that a successor State should wait years before making known its desire to become party to a treaty which would bring it considerable advantages. Furthermore, as the International Law Commission had mentioned in paragraph (3) of its commentary to article 16, the practice followed by the Secretary-General of the United Nations was to send every newly independent State "a letter inviting it to confirm whether it considers itself to be bound" by the treaties concluded by the predecessor State in respect of its territory; that letter "is sent in all cases; that is, when the newly independent State has entered into a devolution agreement, when it has made a unilateral declaration of provisional application, and when it has given no indication as to its attitude in regard to its predecessor's treaties" (A/CONF.80/4, p. 56).

18. The Soviet Union representative had also said that article 16 *bis* gave a newly independent State freedom of choice. Whereas article 16 recognized a newly independent State's right to become party to the treaty by a notification of succession, article 16 *bis* conferred on it the right to give notice of termination of the treaty for that State. It might be asked, however, what would happen in the case of article 16 *bis* if a newly independent State notified neither its desire to accede to the treaty nor its wish to terminate it. If there was no notification to either effect, was the treaty presumed to remain in force provisionally for the newly independent State, as

paragraph 1 of article 16 *bis* would seem to indicate? For those various reasons he was unable to support the Soviet Union proposal in its present form.

19. Mr. TABIBI (Afghanistan) said that article 16 was important not only for newly independent States but also for the international community, in the interests of the maintenance of law and order. Article 15, provisionally adopted by the Committee, expressed the "clean slate" principle, namely the idea that a newly independent State was born free of any commitment entered into by the predecessor State under bilateral or multilateral agreements, whether restricted or universal in character. Nevertheless, a newly independent State must reckon with the needs of the international community, to which it belonged and in which it had a part to play; that was why article 16 called on newly independent States to participate in multilateral agreements. There were three types of treaties: bilateral treaties, whose continuation in force was subject to the consent of the other party; restricted multilateral treaties, participation in which by newly independent States depended in each case on the object and purpose of the treaty and the consent of the other interested parties; and finally multilateral treaties of universal character, or law-making treaties. The latter included conventions on human rights and conventions on diplomatic and consular relations; they established rules of *jus cogens* which had to be respected by the members of the international community. The exception to the "clean slate" rule was therefore based on the interest of the international community in certain treaties remaining in force. Unlike the first two types of treaties, treaties of universal character were not a matter of simply offering newly independent States an option; those States had no choice but to participate in them, in the interests of the international community. On that basis, his delegation endorsed article 16.

20. Mr. MUPENDA (Zaire), after explaining his delegation's interpretation of the "clean slate" rule, said that he welcomed the efforts made by the International Law Commission to reconcile that rule with the principle of continuity. The "clean slate" rule followed naturally from the principle of self-determination, which gave a successor State the sovereign right to refuse to be bound by a treaty concluded by the predecessor State. However, as a successor State should not be automatically derived of any benefits deriving from a treaty concluded before its accession to independence, nor be regarded as automatically bound by such a treaty by the supposed operation of the *pacta sunt servanda* rule, it should be free to decide which treaties it would apply and which it would denounce.

21. In the light of what he had said, his delegation felt that the Netherlands amendment and the Soviet Union proposal shared a common purpose, that of filling a legal vacuum. Unfortunately, Zaire could not support the Soviet Union amendment, as it conflicted with the "clean slate" principle and the principle of self-determination, which all members of the Committee had so far defended. If a newly independent State was committed to participation in treaties of a universal character, it would be confronted with a *fait accompli,* whereas the tendency in the Committee had been to protect the newly independent State, which should be free to take sovereign decisions concerning its future.

22. The Netherlands amendment was more constructive as it put a newly independent State under less constraint; his delegation could support it subject to certain drafting improvements.

23. Mr. RITTER (Switzerland) said that his delegation associated itself with all those which welcomed the efforts made to ensure that instruments concluded in the interests of humanity at large were applied. Switzerland had always co-operated in tasks contributing to the common good such as the progressive development of international law and humanitarian law. Once it was agreed that those instruments should remain in force, the question arose of what means were to be selected. Two things, one a principle and the other a practical matter, had to be considered. Firstly, the "clean slate" rule must be observed, since it was an expression of the principle of self-determination and also—a more compelling reason—because it was the logical outcome of the *res inter alios acta* rule. Secondly, as States several hundred years old needed at least two years to complete the formalities that preceded the ratification of an instrument concluded in the general interest, it was not feasible to require a newly independent State, confronted with manifold problems, to review all the treaties concluded by the predecessor State in respect of its territory. While it would be wrong to establish boldly that a treaty simply remained in force, it would be possible to introduce a presumption to that effect, as the Netherlands delegation had done in its amendment, thereby respecting the will and freedom of choice of the successor State. The Kenyan representative had accurately summed up the rationale of the Netherlands amendment and was right in suggesting that subparagraph (*a*) of the new paragraph proposed by the Netherlands should specify that "such treaty shall accordingly be presumed to apply". The Netherlands delegation had proposed the simplest arrangement and reduced the newly independent State's obligations to a minimum. His delegation therefore preferred the Netherlands amendment to the Soviet Union proposal.

24. Mrs. BOKOR-SZEGO (Hungary) observed that the notion of a treaty of universal character appeared both in the Soviet Union proposal, where the expression was part of the text, and in the Netherlands amendment, which referred to multilateral treaties open to universal participation. With regard to State practice, mention had often been made of treaties of a universal character at recent conferences held under the auspices of the United Nations and at the International Court of Justice itself, and there were a

considerable number of studies on the role and functions of such instruments. In her opinion, treaties of that kind could be classed under three main headings: treaties closely concerned with the maintenance of international peace and security; treaties for the codification and progressive development of international law; and treaties aimed at ensuring the protection of human rights.

25. With regard to draft article 16 itself, her delegation fully subscribed to the "clean slate" rule, which followed from the principle of self-determination, but it noted that an analysis of State practice revealed a customary rule to the effect that treaties of a universal character continued in force. It was necessary to bear in mind that newly independent States and the international community as a whole had a common concern in ensuring the continuity of treaties which were the very embodiment of their interests. In conclusion, she said that, in comparison with the Netherlands amendment, the Soviet Union proposal had two advantages: it did not limit the number of States entitled to become parties to a treaty of universal character and it used terminology which was already well known.

26. Mrs. THAKORE (India) said that her delegation found no difficulty with article 16 as it stood, since it codified an existing practice by conferring upon a newly independent State the option to become a party to a multilateral treaty by virtue of the legal nexus established by the predecessor State between the territory to which the succession of States related and the treaty. The Netherlands amendment and the Soviet Union proposal stemmed from practical considerations and sought to ensure that certain categories of treaties remained in force provisionally for a newly independent State until such time as the newly independent State gave notice of termination. While the Netherlands amendment defined such a treaty as "any multilateral treaty open to universal participation", the Soviet Union proposal defined it as "a multilateral treaty which deals with the codification and progressive development of international law, or the object and purpose of which are of interest to the international community as a whole".

27. While appreciating the idea underlying paragraph 4, subparagraph (*a*) which the Netherlands amendment proposed to add to article 16, her delegation felt that it was not sufficient to presume that the newly independent State was desirous of becoming a party to a multilateral treaty. Some manifestation of will on the part of the newly independent State was necessary. Also, the wording "shall be presumed to be desirous of being a party" was unsatisfactory for a legal text, a point which the Drafting Committee might perhaps consider. Furthermore, it should be made clear that the treaties covered by the provision were treaties of general interest.

28. Turning to the Soviet Union proposal, she said that it was an improvement on the original proposal made on the subject in the International Law Commission, but unfortunately, like the Netherlands amendment, it did not allow for any manifestation of will on the part of the newly independent State. While it was perhaps true that a newly independent State would find most of the treaties in question acceptable, account should be taken of those cases, however few, where it did not wish the treaty to continue in force even provisionally. Why in fact should a newly independent State have to wait several months in order to be free of the provisions of a treaty of the kind concerned? Some safeguard in that respect was essential. With regard to the definition of the expression "treaty of a universal character", her delegation felt that the Soviet Union proposal introduced a useful element by referring to instruments dealing with "the codification and progressive development of international law, or the object and purpose of which are of interest to the international community as a whole"; she preferred that formulation to the words "multilateral treaty open to universal participation", which would exclude conventions of general interest adopted under the auspices of the United Nations, such as the Vienna Conventions on Diplomatic Relations and Consular Relations.

29. In conclusion, if the Committee decided to adopt a provision along the lines of the Netherlands and Soviet Union proposals, it should allow the newly independent State the option of expressing its will, instead of stipulating that newly independent States would be automatically bound by treaties of a universal character. In that connexion, she drew the attention of the Committee to paragraph (8) of the commentary to article 15 (A/CONF.80/4, p. 53), where the International Law Commission had expressed a similar point of view. In addition, the Committee should ask the Drafting Committee to provide a more comprehensive definition of the term "treaty of a universal character", on the basis of the Soviet Union proposal.

30. Mr. SETTE CÂMARA (Brazil) said that he favoured the text of article 16 as drafted by the International Law Commission.

31. The article 16 *bis* proposed by the Soviet Union took account of the problems raised by law-making treaties, which several Governments considered as possible exceptions to the applicaton of the "clean slate" rule. If they were, newly independent States should be automatically bound by them. The right to "opt out" should then replace the right to "opt in" which was the basis of article 16. The International Law Commission's solution had the advantage of being consistent with the fundamental "clean slate" principle, while at the same time giving the newly independent State the possibility of notifying its succession to a treaty. The right to free choice was thus preserved. The contrary solution proposed by the Soviet Union would raise various difficulties. In the first place, the notion of a treaty of universal charac-

ter, like that of a law-making treaty, was rather vague. Even the Governments which had made the suggestion could not agree on a definition. For some, treaties of a universal character were treaties codifying international law, for others they were treaties relating to problems of interest to the international community as a whole, while for a number of other Governments they were treaties approved by the overwhelming majority of States members of the United Nations. The definition proposed by the Soviet Union in article 16 *bis* was taken from the preamble to the Declaration on Universal Participation in the Vienna Convention on the Law of Treaties. Although it was an improvement on other definitions, it was nevertheless couched in abstract terms. Its wording was no doubt appropriate to a provision of a final act of an international conference, but not for an article of a convention.

32. The strongest argument which could be invoked against article 16 *bis* was that no State could be considered as automatically bound by treaties of a universal character, no matter how laudable their aims. Every member of the international community had the right to choose whether or not to be bound by a treaty of that kind. Although the system established in article 16 *bis* allowed the newly independent State to opt out, it would unjustifiably place it in the difficult situation of having to take a rapid decision on participation in treaties without sufficient time for reflection. As was evident from an explanatory note reproduced in the International Law Commission's report on the work of its twenty-sixth session (A/CONF.80/4, p. 14, note 57), the treaties falling under the very vague definition in question could be counted by tens or even hundreds. Accordingly, if article 16 *bis* were adopted, the newly independent States would not start their international life with the freedom of action implied by the "clean slate" rule, but with a heavy burden of treaty commitments undertaken without any consultation of their wishes. In that connexion, many founding members of the United Nations were not parties to some of the treaties of universal character enumerated in the explanatory note to which he had referred. How then could a successor State be obliged to participate in them automatically?

33. The International Law Commission's position in article 16 was a prudent one. It would be wrong to depart from the fundamental rule laid down in article 15 and draw distinctions between treaties, a course which the Vienna Convention on the Law of Treaties had avoided.

34. The reasons which inclined his delegation against article 16 *bis* also compelled it to oppose the Netherlands amendment (A/CONF.80/C.1/L.35). Although that proposal was couched in more cautious terms, the statement that "a newly independent State shall be presumed to be desirous of being a party to any multilateral treaty open to universal participation" implied that the State had the right to opt out, which was inconsistent with the "clean slate" rule. His delegation was therefore in favour of article 16 as drafted by the International Law Commission.

35. Mr. SAMADIKUN (Indonesia) said his delegation was more convinced than ever that the "clean slate" rule, which was in conformity with the principle of self-determination recognized in the Charter of the United Nations, must underlie article 16. It was only logical and just that a newly independent State, as a sovereign State, should not be under any automatic obligation to continue in force treaties concluded by the predecessor State and applicable to its territory, since the successor State had not been in a position to give its consent when those treaties had been concluded.

36. His delegation therefore believed that article 16 was acceptable in principle and it could see no reason why the article should be reworded or deleted. The Netherlands amendment was an attempt to clarify the article while preserving its main substance, and could therefore be referred to the Drafting Committee. With regard to the new article proposed by the Soviet Union, his delegation reserved the right to revert to it later.

37. Mr. KATEKA (United Republic of Tanzania) said he was in favour of article 16 as it stood, for the reasons given by the Brazilian representative. Any addition to the article would be prejudicial to the "clean slate" principle as set out in article 15. The only exceptions to that principle which his delegation could accept were the ones represented by article 11 and, albeit unwillingly, the exception constituted by article 12. Where multilateral treaties were concerned, it should not be presumed that they continued in force with respect to newly independent States. On the contrary, the presumption should be that those States were released from such instruments.

38. The sponsors of the proposals under consideration seemed to be concerned with a non-existent problem. Draft article 22 showed that a notification under article 16 took effect as from the date of the succession of States, irrespective of the date on which the notification was made. Yet the passage in paragraph (2) of the commentary to article 22 which related to the practice followed by the Secretary-General of the United Nations as a depositary of treaties and by other depositaries showed that periods of delay were not regarded as applicable to notifications of succession (A/CONF.80/4, pp. 73-74). In practice, therefore, no problem arose which might justify the Netherlands amendment and the new article proposed by the Soviet Union. The Secretary-General habitually sent every newly independent State a letter asking it to make its position known with regard to the multilateral treaties of which he was the depositary. The effects of the reply were retroactive to the date of the succession, without the situation giving

rise to any of the difficulties that the Soviet Union and Netherlands delegations seemed to fear.

39. The notion of "treaties of a universal character", which appeared in article 16 *bis* proposed by the Soviet Union, was a vague one and might cause problems. His delegation recognized the concept of "general multilateral treaties", but did not consider that treaties of a universal character existed.

40. The article proposed by the Soviet Union delegation also provided that where the predecessor State had formulated reservations to a treaty, they should be provisionally valid for the newly independent State. Such a provision would be seriously prejudicial to the sovereignty of the successor State. In that connexion, an analogy might be drawn between the case under consideration and that covered by article 23, paragraph 2, of the Vienna Convention on the Law of Treaties, supporting the conclusion that the newly independent State should consider itself released from any reservation made by the predecessor State.

41. The Soviet Union proposal gave a newly independent State the faculty to opt out of multilateral treaties, but difficulties might arise if such a State denounced a multilateral treaty after a long period of provisional application. Certain States parties to the treaty might contend that the newly independent State had allowed a reasonably long period of provisional application to elapse and that it was consequently bound by the treaty. There might then be a conflict between the provisions of the proposed convention and the final clauses of the treaty in question.

42. In conclusion, he did not think it necessary or desirable to accept the proposals made by the Soviet Union and the Netherlands.

43. Mr. MARESCA (Italy) said that the problem under consideration could be examined from both the legal and the practical points of view.

44. From the purely legal point of view, it was rather disturbing to note the tendency to raise the "clean slate" principle to the level of the sole and basic dogma applicable to succession of States. It must be borne in mind that the topic under discussion concerned the legal effects of a succession of States and that those effects might be negative, where the "clean slate" rule was applied, or positive, in that the successor State enjoyed certain rights. With regard to multilateral treaties, article 16 provided that the successor State was entitled to become a party to any treaty of that kind. That was an effect of succession independent both of the final clauses of the treaty to which the newly independent State intended to become a party and of the will of the other parties to the treaty. It was by an act of unilateral will that a new State became a party to the treaty. Article 16 provided an exception for restricted multilateral treaties, including those concluded within international organizations.

45. The notification procedure provided for in article 16 made it necessary to consider that provision from the practical point of view as well. In that connexion, it was extremely difficult for the treaty section of a Ministry of Foreign Affairs such as that of his own country to comply with the necessary formalities on time in every case. The difficulty must be even greater for a State that had just become independent. That being so, should the Conference impose on newly independent States a notification procedure which would call for a great deal of work on their part? It was in order to remedy that shortcoming that the delegations of the Soviet Union and the Netherlands had made their interesting suggestions.

46. There were two possible expedients in legal practice: presumption and maintenance in force. The Netherlands amendment employed a neat presumption, although not an absolute one. The article proposed by the Soviet Union was based not only on a presumption but also on the fact that treaties remained in force provisionally. In that connexion, he pointed out that the Vienna Convention on the Law of Treaties contained a rule on the provisional application of a treaty and that the provisional maintenance in force of a treaty was therefore perfectly conceivable.

47. The difficulty which those two expedients raised for his delegation lay in the definition of the treaties to which they applied. The Netherlands proposal referred to "any multilateral treaty open to universal participation" and the Soviet Union proposal to "any treaty of universal character", and the two formulations were very alike. The second kind was defined by the Soviet Union in the light of the subtle "Vienna formula" devised by the Conference on the Law of Treaties, but it was difficult to define a treaty in such a way without reference to its final clauses. The examples of treaties of a universal charactor given by the Hungarian representative had only served to accentuate his misgivings. If the Vienna Convention on Diplomatic Relations[4] was obviously of a universal character, the Vienna Convention on Consular Relations[5] must be so as well. Certain international treaties, such as the humanitarian conventions, undoubtedly concerned the international community as a whole, but some chancelleries had questioned the universal character of other conventions, particularly those relating to the non-proliferation of nuclear weapons. From the point of view of diplomatic requirements, the proposed definitions therefore left certain problems unsolved.

The meeting rose at 1.10 p.m.

[4] United Nations, *Treaty Series*, vol. 500, p. 96.

[5] *Ibid.*, vol. 596, p. 261.