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25th meeting of the Committee of the Whole

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25th MEETING

Friday, 22 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 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. MIRCEA (Romania) said that if it was not intended to call the "clean slate" principle in question, draft article 16 was a procedural article designed to make it possible for newly independent States to become parties to a certain category of treaties by the simplified procedure of notification of succession. On that interpretation, he found it difficult to understand the relevance of paragraph 2, which, as the representative of Senegal had observed,[2] appeared to be an additional limitation on the right of such States to choose whether or not to become party to a treaty. If the treaty had been applicable to the territory before succession, how could its application thereto subsequently be incompatible with its object and purpose, unless either the predecessor State or the other parties to the treaty had been acting in bad faith in the first place?

2. In paragraph 3 of article 16, it should be made clear that all the elements involved, namely, the number of States, the terms of the treaty and its object and purpose, must be considered jointly.

3. He congratulated the sponsors of the proposals before the Committee on producing texts which were compatible with the present draft article 16 and filled the lacuna left by the International Law Commission, which had failed to deal with the period between the date of the succession and the time when the successor State indicated its intention to accept or terminate a multilateral treaty.

4. The presumption provided for in the Netherlands amendment (A/CONF.80/C.1/L.35) entailed serious legal consequences for the newly independent State: under the last clause of subparagrah (*b*) of the proposed paragraph 4, it could forfeit the right to withdraw from a treaty. The proposed definition of the term "multilateral treaty open to universal participation" was acceptable, but it would not cover all cases; for example, treaties of a universal character not concluded within the framework of the United Nations would not contain a clause on participation by States Members of the United Nations.

5. The Soviet proposal for a new article 16 *bis* (A/CONF.80/C.1/L.22) adopted a different legal approach and was based on concepts such as provisional application and suspension, already employed in the International Law Commission's text. The proposed definition of the term "treaty of a universal character" was more complete than that of the Netherlands, since it included treaties the object or purpose of which were "of interest to the international community as a whole". That clause suggested a wider participation by newly independent States in treaties to which all States could become parties by reason of their purpose and provisions.

6. He would support amendment of the present text of article 16 along the lines proposed.

7. Mr. SHAHABUDDEEN (Guyana) said that the Soviet representative, in introducing his proposal for a new article 16 *bis*, had held it to be consistent with the "clean slate" principle[3] because a treaty would apply only provisionally in the first instance, and the newly independent State would be free to withdraw by giving notice. But those provisions were no substitute for the theoretical need for prior consent, since they referred to a stage after the treaty had begun to apply; the provisional aspect merely concerned the basis and duration of its operation. Hence, in principle, the consent of the newly independent State would seem to be required, as was shown by the provisions of draft article 26. For that reason, his delegation preferred the Netherlands amendment.

8. The suggestion by the Indian representative that a requirement of expression of consent by the newly independent State should be included,[4] seemed contrary to the object of both the Netherlands and the Soviet proposals, which took account of the fact that it was usually impossible to obtain such consent in time to avoid a break in the application of the treaty. Otherwise, the provisions already included in the draft articles would be adequate.

9. The representative of the United Republic of Tanzania had questioned the need for the proposals submitted by the Netherlands and the Soviet Union[5] in view of the provisions of draft article 22. However,

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

[2] See above, 24th meeting, para. 11.

[3] See above, 24th meeting, para. 6.

[4] See above, 24th meeting, paras. 27 and 29.

[5] See above, 24th meeting, paras. 37-42.

paragraph 2 of that article provided that the operation of the treaty should be considered as suspended until the date of making the notification of succession, except so far as the treaty might be applied provisionally in accordance with article 26, which also called for the prior consent of the newly independent State. The inevitable delay in expressing that consent would cause a period of uncertain relations with other States parties and with international organizations, which the Netherlands and Soviet proposals were designed to eliminate.

10. Mr. NATHAN (Israel) said that draft article 16 was unobjectionable since it proceeded on the proposition stated in paragraph (2) of the commentary that "a newly independent State has a general *right of option* to be a party to certain categories of multilateral treaties in virtue of its character as a successor State" (A/CONF.80/4, p. 55). That proposition was amply supported by modern State practice.

11. The proposals by the Netherlands and the Soviet Union shared a certain identity of purpose. Both sought to avoid a vacuum in the treaty relations of newly independent States where multilateral treaties of a universal character were concerned. Such treaties were obviously of general importance to the international community as a whole, and it was useful that stability and continuity should prevail in their application. Nevertheless, certain difficulties might arise in applying the provisions of the proposals by the Netherlands and the Soviet Union to State practice.

12. Newly independent States were not always aware of all the multilateral treaties which had been made applicable to their territories by a variety of modes of application, and even less of the financial and other consequences of their participation, which it might take them some time to assess. Constructive notice of the contents of such treaties could not therefore be imputed to newly independent States. The Netherlands amendment took some account of those difficulties, in that it did not seek to impose on the new State a duty of participation in any multilateral treaty and that it gave the State the right to opt out by giving notice of termination, provided it had not invoked the benefit of the treaty.

13. In the proposal by the Soviet Union, treaties of the category in question were made applicable to newly independent States by a mandatory provision in paragraph 1; it was not clear, however, why the right of the State to opt out, rather than accept provisional application of the treaty, was not stated in equally definite terms. Indeed, in paragraph (2) of the commentary to draft article 26, the International Law Commission had expressed the view that "The provisional application of a multilateral treaty as such hardly seems possible, except in the case of a 'restricted' multilateral treaty and then only with the agreement of all the parties. The reason is that participation in a multilateral treaty is governed by its final clauses which do not, unless perhaps in rare cases, contemplate the possibility of participation on a provisional basis, i.e. on a basis different from that of the parties to the treaty *inter se*" (*ibid.*, pp. 84-85).

14. There was another point which, in principle, would commend the Netherlands amendment for adoption. The proposal by the Soviet Union would cover what was called a "treaty of a universal character", as defined in the first paragraph of the preamble to the Declaration on Universal Participation in the Vienna Convention on the Law of Treaties.[6] That definition might be open to a variety of interpretations. Treaties "the object and purpose of which are of interest to the international community as a whole", might include the Universal Copyright Convention, treaties on dangerous drugs, commodity agreements and other arrangements of an economic nature, to which, however, a large number of States had not become parties. The Vienna Convention on the Law of Treaties itself had wisely refrained from any specific categorization of treaties.

15. He wished to propose a number of drafting changes in the Netherlands amendment which might have some bearing on the underlying legal concepts. With reference to subparagraph (*a*) of the proposed paragraph 4, he did not think that a newly independent State could be presumed to "be desirous" of being a party; the presumption was rather that at the date of the succession it was already a party to the treaty in question. A similar presumption should be made with regard to the termination of the treaty provided for in subparagraph (*c*). The two phrases should therefore read respectively: "A newly independent State shall be presumed to be a party to any multilateral treaty..." and "A treaty referred to in subparagraph (*a*) of this paragraph shall be deemed not to have entered into force...". The wording of subparagraph (*a*) should also be tightened up by the addition of the words "at the date of succession" after the words "which was in force" in the third line, and of the words "as from the date of succession" after the words "other States parties to the treaty" in the sixth line. Subject to those changes, he was prepared to support the Netherlands amendment.

16. Mr. RANJEVA (Madagascar) said that his delegation had no objection to draft article 16, but there would be practical difficulties in applying it. That justified the submission of the two amendments which did not differ greatly in substance. The matter should not be considered on the theoretical plane, but in terms of practical problems.

17. There were two types of multilateral treaty: ordinary treaties with more than two parties and universal treaties. Paragraph 3 of article 16 made the distinction in its reference to "the limited number of negotiating States", but did not specify what that

[6] *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.

number might be. The definition by the Soviet Union of a "treaty of a universal character" was interesting in that it related to the essence and functions of international law, but it should be supplemented by the Netherlands definition of a "multilateral treaty open to universal participation", preferably, however, in the form which that definition assumed in article 81 of the Vienna Convention on the Law of Treaties.

18. It was just conceivable that the continuity of universal multilateral treaties could be accepted as an exception to the "clean slate" principle by the transposition, *mutatis mutandis,* with respect to such instruments of the principles of customary law, so that they would be considered as a formal expression of an aspiration to a rule of law. However, there were limits in law, and particularly international law, to how far such transposition could be taken. Moreover, such treaties did not necessarily reflect either universal aspirations or the aspirations of the third world countries, and some provision should therefore be made for obtaining the consent of States to be bound by the treaties in question. Subject to the incorporation of a clear definition of what was meant by "treaty of a universal character", his delegation would, as a last resort, be prepared to consider the proposal by the Soviet Union. The principle by which the International Law Commission had been guided in drafting article 16 was valid and acceptable with regard to multilateral treaties of a regional character.

19. As it stood, article 16 made no mention of the important question of the time-limit for the notification by a successor State of its participation or otherwise in treaties. The proposal by the Soviet Union sought to fill that gap by providing that treaties should provisionally remain in force and by giving the successor State total discretion as to the time when it announced its decision concerning a treaty. But if all the treaties of the predecessor State continued to be valid, even provisionally, it would be impossible for the successor State to know just what its rights and obligations were. A newly independent State should not merely be told that it remained entirely free to participate in a multilateral agreement; it should be part of the duties of the depositary of such an agreement, whether it was of a universal or of a regional character, to inform the newly independent State of the advantages or and disadvantages of such participation. It would seem reasonable to require a newly independent State to notify its intentions in regard to a treaty six months after it had received that information.

20. His delegation considered that paragraph 3 of draft article 16 had no relevance to the question of succession of States, but was linked directly to that of accession to international treaties—a problem which could be automatically solved by recognition that successor States had the right to accede to such instruments in an exceptional manner.

21. He would like the Netherlands delegation to explain what it meant by the phrase "provided it has not invoked the benefits of that treaty after the date of succession of States", which appeared in subparagraph (*b*) of the proposed paragraph 4. The logic of the proposal by the Netherlands was that a successor State was bound by, and therefore necessarily benefited from, a treaty until such time as it gave notice of termination of it; and such notice could, at the earliest, be given on the date of succession.

22. Mr. MIKULKA (Czechoslovakia) said that his delegation had upheld the "clean slate" principle stated in article 15 at all stages of the discussion of the draft articles. Far from being contrary to that principle, the proposals of the Soviet Union and the Netherlands concerning article 16 were designed to help a newly independent State in dealing with multilateral treaties of a universal character, without the requirement of a notification of succession with respect to those treaties. During the often lengthy and complex process of succession of States, it might be difficult to determine the precise moment when such a notification of succession would be possible, whereas the successor State had a vital interest in preserving the treaties of a universal character without a temporary interruption.

23. Of the two proposals, his delegation preferred that of the Soviet Union: it fitted better into the existing text of article 16 and, unlike the Netherlands amendment, did not use the words "A newly independent State shall be presumed to be desirous", which was a somewhat unusual expression to employ in an international convention. In addition, it was only logical to deal in a separate provision with a category of multilateral treaties which were of such exceptional importance as those designed to promote international peace and security or the codification and progressive development of international law. The proposal by the Soviet Union could in no sense be construed as referring to all the treaties covered by draft article 16, which his delegation wished to see incorporated in the convention together with the proposed new article 16 *bis*.

24. Mr. MEISSNER (German Democratic Republic) observed that the International Law Commission had stressed (in paragraph (6) of its commentary to article 15), with regard to the relationship between the principle of self-determination and the law relating to succession in respect of treaties, that the "clean slate" metaphor was misleading if account was not also taken of other principles which affected the position of a newly independent State in relation to the treaties of its predecessor (*ibid.*, p. 52). It was the view of his delegation that the duty of States to cooperate with one another in accordance with the Charter of the United Nations was of paramount importance, and that the proposed article 16 *bis* was fully in keeping with the "clean slate" principle in that respect. His delegation saw the proposal by the Soviet Union as providing, not an exception to the "clean

slate" principle, but another means of applying it, through the mechanism of opting out. A provision of that nature was justified in view of the importance of multilateral treaties of a universal character for international co-operation and security, and his delegation therefore supported its inclusion in the future convention.

25. Mrs. OLOWO (Uganda) said that her delegation was unable to accept either the proposal of the Soviet Union or that of the Netherlands, although it appreciated the motives behind them. The proposal by the Soviet Union was clearly contrary both to the "clean slate" principle, on which the Committee as a whole had agreed, and to the principle of the self-determination of peoples. Furthermore, by offering newly independent States the possibility of opting out of treaties, the proposal placed pressure on them to define, within an inevitably limited time, their attitude to provisions in whose formulation they had taken no part.

26. With regard to the Netherlands amendment, her delegation would find subparagraph (*a*) of the proposed new paragraph 4 acceptable, if account was taken of the comments made by the representative of Kenya.[7] It could not, however, accept the subsequent subparagraphs, since they again put pressure on the newly independent State by presuming it to be bound by the treaty. Consequently, her delegation supported draft article 16 as it stood.

27. Mr. AMLIE (Norway) remarked that article 16 formed a corollary to article 15, in that it afforded newly independent States the possibility of accepting treaties, whereas the previous article provided that they were not bound by such instruments merely by reason of the fact of succession. Taken together, those two articles represented a very harmonious system, of which his Government fully approved.

28. The articles also gave the impression, however, that they did not altogether satisfy the requirement of continuity in international relations, and he had therefore been instructed to take a positive attitude to all proposals which sought to fill that apparent gap in the future convention. That was, in fact, the aim of the proposals submitted by the Netherlands and the Soviet Union, which were designed to establish a collateral system, whereby continuity would be assured by exempting certain treaties from the rules which normally applied in the event of a succession. He had studied those proposals with great care and had found that the sponsors were treading on dangerous ground. Moreover, having listened to the statements made by other delegations, he now saw a picture taking shape in which the "clean slate" principle, supplemented by the possibility for a newly independent State to accept a treaty, was being so tightly squeezed between two walls that its expression and application might become only an exercise in empty words.

29. The first wall was constituted by draft article 16, paragraph 3. His delegation accepted that paragraph because it provided that the newly independent State could establish its status as a party to the treaty only with the consent of all the parties. The second wall was constituted by the Netherlands amendment and the proposal by the Soviet Union, which provided that the newly independent State was bound by a treaty and could opt out only in certain circumstances. His delegation considered that the second wall should not be made so large and heavy that there would be no room for application of the "clean slate" principle. In deciding how that second wall was to be built, account should be taken of the scope of the treaties in question and of the machinery for their application.

30. With regard to the scope of the treaties to be included in the collateral system, the proposal by the Soviet Union was based on substantive criteria. It defined the treaties to be included as "treaties of a universal character in force at the date of the succession of States". That definition had been supplemented by the representative of Hungary,[8] who had provided a valuable survey of three categories of treaties. The representative of Brazil had also mentioned other categories of treaties which might be of a universal character.[9] His delegation could not, however, accept the proposal by the Soviet Union, because the definition it contained would never be sufficient; its scope was so wide that it would have no room for application of the "clean slate" principle embodied in draft articles 15 and 16.

31. The Netherlands amendment did not try to define the scope of the treaties to be included in the collateral system. It merely applied the formal criterion that the treaties were "open to participation by a least all States Members of the United Nations". But there were many international agreements open to universal participation, which, strictly speaking, were not of a universal character. Thus the Netherlands approach to the treaties to be included in the collateral system was even broader than the Soviet approach and would constitute an even greater danger to the application of the "clean slate" principle.

32. With regard to the machinery for the application of multilateral treaties proposed by the Netherlands and the Soviet Union, the Soviet system was that the treaty should be provisionally in force for the newly independent State until it gave notice of termination. That was a very strict provision to apply to newly independent States, which might be forced, without their knowledge, to become parties to treaties which were not in their interests. In addition, they would only be able to opt out by the machinery provided in

[7] See above, 24th meeting, para. 16.

[8] See above, 24th meeting, para. 24.

[9] See above, 24th meeting, para. 32.

those treaties, which could, *inter alia,* have unexpected financial implications.

33. The system proposed in the Netherlands amendment did not really represent a softer line. It provided that if a newly independent State gave notice of termination of a treaty within 12 months after the succession of States had taken place, the termination had retroactive effect to the date of the succession. His reaction to that provision was that no newly independent State could possibly ascertain within 12 months whether or not it wished to continue to be a party to a treaty, and that no newly independent State would be able to rid itself of its obligations under any treaty with retroactive effect to the succession of States. Consequently, the only thing the newly independent State could do would be to give notice of termination after the 12-month period had elapsed. It would then be in the same situation as it would be under the system proposed by the Soviet Union, as the representative of Uganda had pointed out.

34. The proposed new paragraph 4, subparagraph (*b*) of the Netherlands amendment contained the idea that, if a newly independent State had not invoked the benefits of a treaty after the date of the succession of States, it could terminate the treaty under the provisions of the future convention alone. The idea of invoking the benefits of a treaty was extremely vague and would only increase the probability of disputes between States.

35. His delegation accordingly considered that the proposals by the Netherlands and the Soviet Union were not likely to lead to the results desired by the majority of the Committee, and it could not support them.

36. Mr. HASSAN (Egypt) said that draft article 16 gave the newly independent State a general right of option to be a party to certain categories of multilateral treaties by virtue of its status as a successor State. That general right was based on State practice and was a clear-cut example of the application of the "clean slate" principle. The International Law Commission's text of the article was well-balanced and in keeping with article 15, and his delegation therefore supported it as it stood.

37. The amendment submitted by the Netherlands and the proposal by the Soviet Union were designed primarily to ensure continuity, but they provided for exceptions to the "clean slate" principle. Those exceptions could be justified only if it was considered that draft articles 16 and 22 did not fulfil their intended purpose. His delegation was, however, satisfied that they did fulfil that purpose. Hence it could not support the Netherlands amendment, which provided for an exception to the "clean slate" principle by the presumption that a newly independent State was desirous of being a party to any multilateral treaty open to universal participation in force at the date of succession, or the new article 16 *bis* proposed by the Soviet Union, which also provided for such an exception by providing that any treaty of universal character in force at the date of succession would be provisionally in force for the newly independent State.

38. It was clear to his delegation that both those proposals amounted to a negation of the will of the newly independent State, even if only for a limited period of time. They contradicted the general rule of option embodied in draft article 16 and did not take account of the difficulties which the new State might encounter in the early stages of independence. Moreover, the proposals could be taken to mean that the newly independent State was unable to take the appropriate decisions, and his delegation found it difficult to accept such an implication.

Mr. Riad (Egypt) took the Chair.

39. Mr. AL-SERKAL (United Arab Emirates) said that his delegation supported draft article 16, which reaffirmed the "clean slate" principle and allowed newly independent States to decide whether they wished to be parties to multilateral treaties in force at the date of succession.

40. By contrast, the amendment submitted by the Netherlands and the proposal by the Soviet Union provided for the continuity of the treaty relations of the newly independent State. They thus constituted exceptions to the "clean slate" principle by implying that a newly independent State's silence could be interpreted to mean that it consented to be bound by the treaties in force at the time of the succession. Those proposals were likely to create enormous difficulties and his delegation could not support them.

41. Mr. LA (Sudan) said his delegation was of the opinion that draft article 16 should be adopted as it stood because, in preparing the draft articles, the most significant step the International Law Commission had taken had been to give effect to the "clean slate" principle. Thus article 16, paragraph 1, provided that a newly independent State might, by a notification of succession, establish its status as a party to any multilateral treaty in force at the time of succession and gave it an option to decide whether it accepted or wished to terminate multilateral treaties. That option was perfectly in keeping with the "clean slate" principle embodied in article 15.

42. The amendment submitted by the Netherlands and the proposal submitted by the Soviet Union both presumed that multilateral treaties continued in force for the newly independent State unless it expressly signified its intention to terminate them. His delegation understood the motives of the Netherlands and the Soviet Union in submitting their proposals, which aimed at maintaining continuity in treaty relations, but it could not support them because they did not take account of the generally accepted practice of opting in.

43. Mr. KRISHNADASAN (Swaziland) said that his delegation was satisfied with draft article 16 and did not think that the amendment submitted by the Netherlands and the proposal by the Soviet Union would necessarily improve it. As it stood, the article did not go too far in the direction of continuity and safeguarded the "clean slate" principle established in favour of newly independent States by allowing them to opt out of any multilateral treaty in force at the date of the succession.

44. As to the kind of treaties to which the newly independent State's right to opt out applied, no matter whether a treaty was said to be "of a universal character" or "open to universal participation", treaties of a universal character seemed to be what was intended because, ultimately, treaties open to universal participation were of a universal character. The basic difficulty was one of definition: for example, the Treaty on the Non-Proliferation of Nuclear Weapons (General Assembly resolution 2373 (XXII)) seemed to some members of the international community to be of a universal character, while other members considered it as being loaded in favour of the nuclear Powers. Difficulties and confusion would arise if such a treaty were provisionally in force for a newly independent State after the date of the succession, as provided in the proposal by the Soviet Union, or if it were presumed that the newly independent State was desirous of being a party to it, as provided in the Netherlands amendment.

45. Many delegations seemed to have placed the strongest emphasis on the rights of States deriving from multilateral treaties. But account should also be taken of the obligations deriving from such treaties, particularly financial obligations, of which many newly independent States might not be aware and which they would need time to determine. Consequently, his delegation was of the opinion that it was important to maintain the freedom of choice provided by the "clean slate" rule, as had been done in the International Law Commission's text of draft article 16.

46. Paragraph 2 of the proposal by the Soviet Union provided that reservations to a treaty would be provisionally valid for the newly independent State under the same conditions as for the predecessor State. Experience had shown, however, that the way such reservations operated after a State had achieved independence was entirely different from the way in which they had operated before. For example, the predecessor State often applied treaties to a colony without necessarily realizing what the full implications of the treaties would be for the colony when it became independent. In the case of a humanitarian treaty such as the Convention relating to the Status of Refugees (General Assembly resolution 429 (V)), it might be found that, when the colony had achieved independence, many of the predecessor State's reservations would not be acceptable to it, or that it wished to make further reservations to that Convention in the interests of its security. Paragraph 3 of the proposal by the Soviet Union appeared to contain a contradiction: if the predecessor State had been bound by only part of a treaty, how could that treaty qualify as being of a universal character?

47. In the Netherlands amendment, the words "any multilateral treaty open to universal participation", in the new paragraph 4, subparagraph (*a*), had even wider implications than the equivalent wording of the proposal by the Soviet Union. Moreover, he shared the view expressed by the representative of India that the words "A newly independent State shall be presumed to be desirous of being a party" clearly constituted an inadequate criterion in a convention such as the one the Conference was trying to adopt.[10] The proposed new paragraph 4, subparagraph (*b*), stipulating that a newly independent State could terminate a treaty "provided it has not invoked the benefits of that treaty after the date of succession of States", did not make it clear how the international community was to know whether or not a newly independent State had in fact invoked the benefits of the treaty.

48. With regard to the proposed new paragraph 4, subparagraph (*c*), he agreed with the representatives of Uganda and Norway that that provision was similar to the corresponding provision of the proposal by the Soviet Union. His delegation also had some difficulty in understanding the effect of the proposed new paragraph 4, subparagraph (*c*) (i). Experience had shown that a period of several years would be much more realistic than the 12-month period provided for in that subparagraph. What would happen if the notice was given within 11 months? The Netherlands amendment did not make it clear whether the treaty would be applicable during those 11 months or not. Thus, one of the gaps which the Netherlands had sought to fill in submitting its amendment was still open.

49. Mr. BROVKA (Byelorussian Soviet Socialist Republic) said that his delegation was in favour of the inclusion of an article 16 *bis* in the draft and supported the adoption of the proposal by the Soviet Union. The provisions of that proposal would help to fill a legal vacuum and to solve the problems faced by newly independent States in the period immediately following their attainment of independence—a period when such countries had many difficult decisions to take and few people qualified to take them.

50. Article 16 *bis* would relate specifically to treaties of a universal character, which included treaties for the promotion of international co-operation, peace and security, which codified the generally accepted norms of present-day international law. Succession to such treaties of a universal character by newly independent States would therefore help them to promote their own national interests by enabling them to take

[10] See above, 24th meeting, para. 27.

their place as equal partners in the international community.

51. It was desirable to avoid even a short-term suspension of the application of such treaties to newly independent States, which should be given a chance to opt for the rights and advantages of those treaties. In the event of a suspension, as referred to in draft article 22, paragraph 2, not only the newly independent State, but all the other parties to a treaty of a universal character would be released from their obligations under the treaty—a circumstance which would benefit neither the newly independent State nor the international community in general.

52. Consequently, there was justification for a provision in the draft convention to the effect that any treaty of a universal character in force at the date of a succession of States should remain in force provisionally until such time as the newly independent State signified that it would not terminate the treaty provisions in respect of itself. The inclusion of such a provision did not contradict the "clean slate" principle, since the newly independent State would retain the right to notify termination or, as provided in paragraph 4 of the proposal by the Soviet Union, to establish its status as a party to the treaty.

53. The inclusion of a provision such as the proposed article 16 *bis* was desirable despite the fact that many provisions in international treaties of a universal character could be applied to newly independent States on the basis of customary international law. Experience had shown that it was better to have recourse to the unambiguous provisions of such treaties than to attempt the application of general rules, the interpretation of which in particular situations could give rise to difficulties.

54. In supporting the adoption of the proposed article 16 *bis*, his delegation likewise supported the corresponding amendments to articles 16, 19, 20 and 21 and the addition of a subparagraph (*a*) *bis* to paragraph 1 of article 2. The definition given in subparagraph (*a*) *bis* of paragraph 1 of article 2 reproduced the text of the first paragraph of the Declaration on Universal Participation in the Vienna Convention on the Law of Treaties, but the proposed definition of a treaty of universal character could possible be further improved.

55. Mr. SUTARASUWAN (Thailand) said that his delegation would prefer draft article 16 to be retained as it stood. The article upheld the principles of the "clean slate" and of self-determination, for the benefit of newly independent States. The amendment submitted by the Netherlands and the proposal by the Soviet Union would merely add to the procedures incumbent on a newly independent State; his delegation could not accept either of them.

56. Mr. SAKO (Ivory Coast) said that his delegation endorsed draft article 16 with the exception of the words "was in force in respect of the territory", which, as he had said, should be replaced by the words "was applicable to the territory". His delegation, too detected a note of presumption, to which the Kenyan representative had drawn attention,[11] in paragraph 2 of that article.

57. With regard to the amendment submitted by the Netherlands and the proposal by the Soviet Union, the problem was how to reconcile observance of the principles invoked by the International Law Commission and the need to give developing countries the best practical help. Not all multilateral treaties were useful to developing countries; on the other hand, there were some treaties of a special character which were most advantageous.

58. While recognizing all the efforts made to improve and clarify the article and to avoid jeopardizing its basic principle, of the two proposals submitted, his delegation would choose that of the Netherlands. The "walls" which it set up were not as formidable as the Norwegian representative had made out; the Ivory Coast delegation found them easy to surmount.

59. Mr. DAMDINDORJ (Mongolia) said that the "clean slate" principle was of the utmost importance, especially to newly independent States, and was a guarantee of international peace and security. His delegation had stressed the importance of that principle in accepting article 15, which stated it in the clearest possible form. Article 16, as previous speakers had noted, was an indispensable part of the draft convention, and in basing it, too, on the "clean slate" principle, the International Law Commission had produced a well-balanced text.

60. The amendment submitted by the Netherlands and the proposal by the Soviet Union represented different approaches to certain situations but had some features in common. Some delegations objected to the proposal by the Soviet Union because they seemed to think that it did not confine itself to the "clean slate" principle. His delegation, however, was one of those which supported that proposal; in its view, the text of the proposed article 16 *bis* in no way detracted from that principle; indeed, paragraph 4 provided that a newly independent State might establish its status as a party to a treaty of the type referred to in paragraph 1 at any time while such a treaty remained provisionally in force. The proposal by the Soviet Union related to multilateral treaties, which merited special attention, particularly on account of the growing role of such treaties in the promotion of international peace and security. In his delegation's view it was not possible to isolate a specific category of treaties of a universal character.

61. Mr. KATEKA (United Republic of Tanzania) said his delegation thought that article 16, taken in conjunction with article 22, made the amendment submitted by the Netherlands and the proposal by

[11] See above, 24th meeting, paras. 16 and 18.

the Soviet Union unnecessary. The notification provided for in article 22 related back to the date of succession or of entry into force of a treaty, so that even a suspension of the type referred to in article 22, paragraph 2, would not create a legal vacuum. In fact, the International Law Commission had said in paragraphs (13) *et seq.*, of its commentary to article 22 that it would be wrong to interpret suspension as having the effect of nullifying a treaty obligation (A/CONF.80/4, p. 76); and there were, of course, some exceptions whereby parties to the future convention would accept the application of a treaty retroactively from the date on which the successor State succeeded to the predecessor State's obligations.

62. His delegation would be grateful for the Expert Consultant's views on whether draft article 16 as it stood could deal with such situations or should be amended.

63. The International Law Commission had decided that the inclusion of time-limits was not desirable, since it was impossible to reach agreement on suitable periods.

64. His delegation thought that the expression "universal character" was misleading. There were certain types of treaty which some countries regarded as universal in character and others did not; for example, his delegation was among those which regarded arms limitation treaties as in no way universal in character, although some delegations had implied that they were. Even the Charter of the United Nations was not universal in the true sense of the word. Consequently, if a provision on the lines of the proposed article 16 *bis* was to be included in the draft convention, the meaning of the expression "treaty of a universal character" would need to be very carefully defined; otherwise, such a provision might only confuse the situation and prejudice the effects of a succession of States.

The meeting rose at 6 p.m.

26th MEETING

Monday, 25 April 1977, at 10.50 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. HELLNERS (Sweden) said that he considered both the Netherlands amendment (A/CONF.80/C.1/L.35) and the Soviet Union proposal (A/CONF.80/C.1/L.22) constructive.

2. There was general agreement on the "clean slate" rule, as had been clearly shown by the positions taken on article 15. There was also, however, a desire to prevent a hiatus occurring after a succession of States in respect of universal conventions, and it had been observed that in practice most newly independent States continued to apply such conventions. The opponents of the Netherlands amendment and the proposal by the Soviet Union had argued that the "clean slate" rule would be virtually emptied of content if so many conventions were excepted from it. Some speakers had also referred to the possibility of newly independent States being faced with unexpected financial commitments.

3. The number of exceptions to the "clean slate" rule introduced by the Netherlands amendment and the proposal by the Soviet Union had been somewhat exaggerated. The rule would still apply to bilateral treaties and to many regional treaties. As to financial commitments, membership in international organizations, which entailed financial contributions, was outside the scope of the draft articles, and the financial implications of becoming party to diplomatic or humanitarian conventions should not be overstated.

4. Another point, which was mentioned in paragraph (8) of the commentary to article 15 (A/CONF.80/4, p. 53), was that much of the contents of the so-called universal conventions was regarded as existing international law, independently of those conventions. In many instances, it could be maintained that after their adoption, such conventions determined international law. That point was illustrated by the way in which countries which had not ratified the Vienna Convention on the Law of Treaties referred to it when the need arose.

5. The Netherlands amendment and the proposal by the Soviet Union could be improved, particularly in regard to the concept of presumption in the former and of temporary application in the latter. The definition of universal conventions also required further consideration, though it was a great improvement on earlier drafts.

6. His conclusion was that the differences and difficulties had been exaggerated. He was inclined to agree with the representative of the United Republic of Tanzania that draft articles 16 and 22 together might lead to a situation very similar to that sought by the Netherlands amendment and the proposal by

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