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26th meeting of the Committee of the Whole

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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.

the Soviet Union.[2] Although he would have welcomed the implementation of the ideas underlying them, he was prepared to accept the present draft article 16, in view of the fact that practice tended to confirm the continuity of the treaties in question and that to a large extent the same rules would apply in any case under international law independently of those treaties.

7. Mrs. DAHLERUP (Denmark) supported the views expressed by the Swedish representative.

8. Mr. DADZIE (Ghana) said that for the reasons already been given by previous speakers, his delegation supported draft article 16, which adequately fulfilled its purpose.

9. Mr SNEGIREV (Union of Soviet Socialist Republics), thanking those delegations which had supported his proposed new article 16 *bis*, said he still believed that the proposal did not limit the "clean slate" rule, which speakers rightly regarded as giving freedom to accede or not to accede to a particular treaty.

10. The representative of the United Republic of Tanzania had thought the proposal by the Soviet Union left some uncertainty about reservations made by the predecessor State in respect of a treaty applicable to the territory,[3] but the proposed consequential amendment to article 19 fully settled that point.

11. The Brazilian representative had urged that every State must have unfettered freedom of choice.[4] It was not clear, however, in what way the proposal by the Soviet Union sought to override the will of a newly independent State. The inclusion of article 16 *bis* in the future convention would not make it binding on such a State unless it chose to ratify the convention. Even then, the new State could make a reservation with respect to article 16 *bis*. What had been described as the "automatic operation" of a treaty meant that a universal treaty would continue to be in force without any specific notification on the part of the newly independent State; it did not mean that the treaty would be applied contrary to the will of that State.

12. Mr. ARIFF (Malaysia) said that the "clean slate" principle had been staunchly upheld by practically all the newly independent States, which had resisted any attempt to introduce exceptions. The basic principle underlying the present draft article 16 was undoubtedly that the "clean slate" rule should apply to multilateral treaties no less than to bilateral treaties. The non-obligatory nature of the newly independent State's participation in multilateral treaties was clearly shown by the words "may establish" in paragraphs 1 and 3, and by the provisions of paragraph 2, which made it impossible to apply a treaty to the territory of a newly independent State if that "would be incompatible with its objects and purpose or would radically change the conditions for the operation of the treaty", since in such cases the discretion of the newly independent State to opt into the treaty became wholly irrelevant.

13. In submitting its amendment, the Netherlands delegation had undoubtedly been motivated by the desire to uphold the "clean slate" principle, but the proposed text did not do so: it introduced a presumption that all newly independent States would accept as a *fait accompli* all multilateral treaties open to universal participation which had been in force at the time of the succession of States. It was true that the Netherlands amendment gave such States the option to terminate a treaty at a later stage, but that was not the same as the right to exercise the option immediately upon independence, as the prerogative of a sovereign State. The Netherlands amendment suggested that the newly independent State was saddled with obligations, and to that extent it eroded the idea of freedom of expression and self-determination to which all newly independent States subscribed and which lay behind the "clean slate" rule. The fact that, in subparagraph (*b*) of the proposed paragraph 4, conditions were attached to the newly independent State's right to terminate a treaty was a further departure from the "clean slate" principle and a constraint on the newly independent State.

14. The proposal by the Soviet Union for a new article 16 *bis* appeared to be a half-way house between draft article 16 and the Netherlands amendment. It purported to recognize the sovereign status of a newly independent successor State and, hence, the "clean slate" principle. It gave the newly independent State the right to contract out of treaties, subject to three months' notice of termination; it made treaties provisionally valid for the newly independent State under the same conditions as for the predecessor State and it gave the former State the right to become a party to treaties by notification of succession.

15. The proposal by the Soviet Union would, however, have the effect of undermining the "clean slate" principle, in that some treaties would be regarded as continuing provisionally in force irrespective of the views of the newly independent State. Furthermore, although it might be concluded from a cursory examination that there was not much to choose between the proposal by the Soviet Union and draft article 16, the proposal had the disadvantage of not covering the cases provided for in paragraphs 2 and 3 of the draft article. The draft articles, from article 16 onwards, and particularly article 26, adequately met the needs of newly independent States.

16. His delegation therefore supported draft article 16 as it stood.

17. Sir Francis VALLAT (Expert Consultant) said he would reply to the questions asked by the repre-

[2] See above, 24th meeting, para. 38.

[3] See above, 24th meeting, paras. 39-40.

[4] See above, 24th meeting, paras. 31 *et seq.*

sentative of the United Republic of Tanzania at the 25th meeting.[5]

18. First, the representative of the United Republic of Tanzania had sought an interpretation of article 16, when read together with article 22 and the International Law Commission's commentaries, concerning the continuance in force of a predecessor State's treaties by notification under articles 21 and 22, and had asked whether such notification had the effect of avoiding any lapse between the date of the succession of States and that of the notification.

19. The International Law Commission, in its deliberations on the present articles 16 and 22, had considered the various issues arising from the "clean slate" principle and the effects of notification of succession, and had grouped the issues under six headings: law-making treaties, time-limits, the international régime, grounds for excluding the application of paragraph 1 of the present article 16, objections to a notification of succession and questions of termination of suspension. The Committee was at present concerned with the first three of those headings. The interim régime was considered together with the effect of a treaty—especially a multilateral treaty—between the date of a succession of States and the date of notification of succession with respect to a particular treaty, including the question of the retroactive effect of such notification. In the 1972 draft articles, the effect of such notification would have been to consider the treaty in force from the date of the succession of States; but the International Law Commission had subsequently deemed it unrealistic to make notification retroactive, in its effect, to the date of the succession. The International Law Commission had been motivated entirely by the "clean slate" principle and had left it to a newly independent State to make its own choice in its own time.

20. As a corollary, the operation of a treaty could not, after a period of delay, be made retroactive to the date of a succession of States. The question of time-limits and that of the effects of notification were linked, therefore, and although notification of succession might be made at any time, the actual effect of such notification was as stated in the present article 22, paragraph 1. There would be an element of retroactivity, but the operation of the treaty would be considered as suspended in accordance with paragraph 2 of that article.

21. The lacuna, therefore, was only partly filled by article 22, which had been so drafted because it had been thought unrealistic to make the operation retroactive.

22. Secondly, the representative of the United Republic of Tanzania had asked whether, in any case, the proposed time-limits within which a successor State had to indicate its non-acceptance of the continuance of a treaty in force, did not have the same adverse effects as the International Law Commission had considered in regard to article 22. On that question, it would not be appropriate for him to comment on the substance of an amendment under consideration by the Committee, and he could only reiterate his remarks concerning the motivation of the International Law Commission.

23. Thirdly, the representative of the United Republic of Tanzania had asked what was meant by "treaties of a universal character" and whether such a concept would not introduce confusion in distinguishing between multilateral treaties. The International Law Commission had indeed had difficulty in trying to identify treaties which might be regarded as continuing in force for a newly independent State notwithstanding the "clean slate" principle; it had deemed it impossible to identify law-making treaties as such. The International Law Commission had considered the question of a suitable system to enable a newly independent State to opt in or out by a notification of succession—a matter which might be the crux of the whole issue at present under consideration—and had concluded that, bearing in mind the "clean-slate" principle as reflected in the present draft articles, it would be wrong to adopt a rule to provide for opting out.

24. He would not comment on the clarity of the definition in the proposal by the Soviet Union. In the Declaration on Universal Participation in the Vienna Convention on the Law of Treaties,[6] however, the text had been used to express the wish that treaties of that nature should be made open to universal participation; it had not been intended as a legal definition.

25. Mr. BOGAYEVSKY (Ukrainian Soviet Socialist Republic) said that the Conference should give serious attention to the question of preserving the stability of treaty relationships and the continuity of treaty rights and obligations in relation to the sovereign rights of newly independent States. A solution to that problem was called for in view of the need for adopting a differentiated approach to the different categories of treaty, and for taking into account the special role, importance and significance of treaties of a universal character in contemporary international law.

26. Treaties of a universal character dealt, for the most part, with matters of exceptional international importance, such as disarmament and narcotics control, matters covered by the conventions of the International Labour Organisation, etc., and many of them were a direct consequence of international co-operation between States with different economic and

[5] See above, 25th meeting, paras. 61-64.

[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.

social systems aimed at promoting international security and peaceful coexistence. Thus their provisions were formulated for the benefit of all States, and it was undoubtedly in the interests of newly independent States that such treaties should continue, for some time at least, to apply to their territories. Such was the intention underlying the proposal by the delegation of the Soviet Union. That proposal was in no way detrimental to the "clean slate" principle, since an independent State would retain the right to give notice of termination of the said treaty in respect of its territory. The underlying idea was by no means new but had been discussed in a preliminary manner in the Sixth Committee of the General Assembly during the consideration of the present draft articles.

27. In his delegation's view, fears about the difficulty of defining treaties of a universal character were somewhat exaggerated; the definition already contained in the Declaration on Universal Participation in the Vienna Convention on the Law of Treaties, which formed an integral part of the Final Act of the United Nations Conference on the Law of Treaties, could serve as the basis for such a definition.

28. The principle of defining a treaty of a universal character by reference to its substance and purpose was logical and fundamental, since such treaties were invaluable in solving problems affecting the interests of all countries, including newly independent States. It would not be fruitful, however, to attempt to define such treaties on the basis of the number of parties to them, as proposed in the Netherlands amendment.

29. The idea that treaties of a universal character should remain provisionally in force did not detract from the "clean slate" principle since, under the proposed article 16 *bis*, a newly independent State could either give notice of termination of such a treaty in respect of that State or establish its status as a permanent party to the treaty.

30. The proposed article 16 *bis* was aimed at removing the legal "vacuum" arising as a result of the categorical application of the "clean slate" principle in respect of newly independent States. Since there was indeed a likelihood, noted by some delegations, that a newly independent State might not always know which multilateral treaties had applied to its territory previously, the Czech, Polish and Ukrainian delegations had submitted a proposal (A/CONF.80/C.1/L.28) for the inclusion in the draft of a new article 22 *bis*, which would provide that the depositary of a treaty referred to in article 16, 16 *bis*, 17 and 18 should inform the newly independent States that the said treaty had been previously extended to the territory to which the succession related.

31. Mr. TODOROV (Bulgaria) said that the International Law Commission had had before it two proposals, as noted in paragraph 75 of the commentary (A/CONF.80/4, pp. 13-14), one of them relating to article 12 *bis*, which was the present article 16 *bis* (A/CONF.80/C.1/L.22) and which concerned participation in multilateral treaties of a universal character; the other proposal concerned the settlement of disputes. Unfortunately, the International Law Commission had not had time to consider those two proposals.

32. At the thirtieth session of the General Assembly Bulgaria had been one of the sponsors of a draft resolution (A/C.6/L.1019),[7] together with Cuba, Czechoslovakia, France, Ghana, Guyana, Liberia, Netherlands, Ukrainian Soviet Socialist Republic, United Kingdom of Great Britain and Northern Ireland and Sri Lanka, which had requested the International Law Commission to consider further those two proposals. The idea failed to obtain a majority in the General Assembly, although the Bulgarian delegation had expressed its view that the convening of the Conference would be untimely and that consideration of the draft articles by an international conference should have been preceded by two separate readings of those proposals by the International Law Commission at two different sessions. The Conference was consequently at a serious disadvantage in considering draft article 16, since it did not have the benefit of the International Law Commission's deliberations on a topic whose extreme importance had been made abundantly clear.

33. Treaties of a universal character reflected all the valid norms and principles of international law and friendly relations between States, and were drawn up in such a way that their objects and purposes were in the interests of the international community as a whole, including newly independent States. Such treaties must therefore be open to all States of the international community. The strict application of the "clean slate" rule to such treaties in the event of a succession of States could create a legal vacuum, which might last for years and would obviously be detrimental to any successor State's interests. As the representative of the Soviet Union had pointed out, however, the automatic application of a treaty of a universal character to a newly independent State would be on a provisional basis, and the State concerned would have the opportunity of accepting or rejecting participation later.

34. His delegation was one of the many which supported the proposal by the Soviet Union. But in view of the numerous suggestions for alterations to the text or the adoption of some of the ideas contained in the Netherlands amendment, he thought it might be useful, at a later stage, to set up a working group, even if only on an unofficial basis, to try to draft a generally acceptable text.

[7] *Official Records of the General Assembly, Thirtieth Session, Annexes*, agenda item 109, document A/10462, para. 4.

35. Mr. SIEV (Ireland) said that his delegation, in adherence to the "clean slate" principle, could not accept that any newly independent State was bound, unless it so declared within a reasonable time, by any international treaty previously in force in regard to its territory. Such a State had the right, under certain conditions, to establish itself as a party to any multilateral treaty, except one of a restrictive character, to which the predecessor State was a party at the date of succession.

36. Paragraphs 1 and 5 of the proposal by the Soviet Union could give rise to a situation that was unjustifiable under the "clean slate" rule if, for example, a newly independent State decided, on the very date of its independance, to notify its wish to terminate a treaty of a universal character, since according to paragraph 5, the treaty would remain in force in respect of the newly independent State for three months.

37. With regard to the Netherlands amendment, his delegation found a significant difference between the proposal in the new paragraph 4, subparagraph (*a*) and that in the new paragraph 4, subparagraph (*c*).

38. The proposal by the Soviet Union maintained the sovereign right of a newly independent State to pronounce its willingness to be bound by a multilateral treaty, and allowed reasonable time for consideration before the automatic declaration that a treaty applied to the newly independent State.

39. His delegation was satisfied neither with the definition of a "treaty of a universal character" in the proposal by the Soviet Union, nor with that of a "multilateral treaty open to universal participation" in the Netherlands amendment. Some satisfactory definition was needed, however, to provide a formula, along the lines of both amendments, which would apply to certain treaties of world-wide scale and operation. Something of the kind was urgently required at the present time, when newly independent States were often engaged in hostilities from the time of their independence, and were likely to need recourse to international instruments which regulated hostilities and made provisions for humanitarian operations under the auspices of the International Committee of the Red Cross.

40. Mr. BRACEGIRDLE (New Zealand), referring to the amendment submitted by the Netherlands, said that its present formulation posed several problems. The aim behind the proposed paragraph 4, subparagraph (*a*), namely, to balance concern for the sensitivities of newly independent States with concern for the preservation of those multilateral treaties which played a particularly important part in international relations, was commendable. The subparagraph was not entirely consistent with itself, however, in that it proceeded directly from a presumption to a categorical statement, without any reference to the manifestation by a newly independent State of its presumed desire. As the subparagraph stood, the presumption in the first sentence did not seem strong enough, in legal terms, to support the statement in the second sentence. Yet if the link between the two sentences was not a strong one, the first sentence had rather less meaning, and a very wide exception to the "clean slate" principle remained. One way of improving the formulation of the subparagraph would be to delete the word "accordingly", in order to make it clear that the second sentence was not dependent on the first, and to replace it by the word "furthermore". The second sentence should also state, to be consistent with the first, that the treaties with which the subparagraph was concerned should "be presumed to apply...".

41. The second problem in the proposed paragraph 4, subparagraph (*a*) was the stipulation that the treaty would apply to the newly independent State "under the same conditions as were valid for the predecessor State". That phrase effectively covered the same ground as paragraphs 2 and 3 of the new article 16 *bis* proposed by the Soviet Union, so that the proposals by both the Netherlands and the Soviet Union had consequences for the principles set out in draft articles 19 and 20. It might be, for example, that the reservations to a treaty which had been applicable to a territory prior to its independence became inappropriate thereafter, for the interests of the predecessor State and the successor State would often be very different. One obvious reason for that difference would be that the predecessor State, which would have entered those reservations, was usually a developed country, whereas the successor State was usually a developing country. It might, therefore, be preferable, as well as more consistent with draft articles 19 and 20, if the conditions under which a treaty would continue to apply to the successor State after succession were not those which had been valid for the predecessor State, but rather those which had applied to the territory to which the succession of States related.

42. The statement in the proposed paragraph 4, subparagraph (*b*) of the Netherlands amendment, to the effect that the newly independent State might terminate a treaty, provided it had not invoked the benefits of that treaty after the date of the succession of States, was a further potential source of difficulty. For example, where a treaty contained provisions which unquestionably embodied rules of customary international law, it might be unclear whether the newly independent State had relied on those rules as such or on the treaty; if it was held that the newly independent State had in fact invoked the benefits of the treaty, it would be bound by that instrument even if it did not agree with all of its provisions. Furthermore, it might be precluded by the Vienna Convention on the Law of Treaties from formulating reservations to or denouncing the treaty. Moreover, the fact that article 38 of the Vienna Convention provided that basic principles of international law, codified in major multilateral treaties, bound both

newly independent and other States independently of those treaties, perhaps made it less important to declare expressly that newly independent States would be bound by such instruments.

43. Finally, the imposition in the proposed paragraph 4, subparagraph (*c*) of time-limits for the notice of termination by a newly independent State of a treaty of its predecessor, could also raise problems, for accession to independence was above all a political phenomenon and there might be political reasons, particularly when independence occurred in a less orderly manner, why a territory might gain independence several years before it could evolve definite opinions concerning treaty relations. It might be unrealistic, even unjust, to expect independence to be delayed until the newly independent State had taken decisions on the treaties of its predecessor State. Provisions of the type proposed could also place small territories with limited recources at a particular disadvantage. Furthermore, the amendment itself precluded the cessation of the effect of a treaty from the date of succession if notice of termination was given more than 12 months after the date of the succession. Under article 70 of the Vienna Convention on the Law of Treaties, the obligations which a newly independent State had incurred under a treaty prior to terminating it could continue to be binding, even if that State had had no knowledge of those obligations at the time they had been incurred.

44. His delegation preferred the Netherlands amendment to the proposal for a new article 16 *bis* submitted by the Soviet Union, because it was possible to know with certainty to which treaties the Netherlands amendment applied. However, the Netherlands amendment seemed to provide for a wider exception to the "clean slate" principle than did the proposal by the Soviet Union, and one of a breadth his delegation was not yet fully convinced was necessary. While it agreed that the International Law Commission's text should be improved where necessary, it was also anxious that any alterations of substance to that text should not themselves give rise to problems either in the present or, as far as it was possible to know, in the future.

45. Mr. SATTAR (Pakistan) said that his delegation, like most others, supported draft article 16, which represented a clear and concise distillation of the practice of States. While the delegations of the Netherlands and the Soviet Union deserved praise for the submission of proposals designed to extend to new States, before they had acted to accede thereto, the benefits of treaties of a universal character, those proposals in each case entailed an implicit decision by the Conference to accept on behalf of future members of the community of States not only the rights, but also the obligations, which would be theirs as parties to such instruments. However, it was an underlying principle of the draft articles as a whole that a newly independent State had a right, but not an obligation, to establish itself as a party to an open-ended treaty, and it could be a contradiction of that principle not to allow the State itself to exercise that right. Both the proposals placed the new State in a situation in which it would have to act to contract out of a treaty into which it had never contracted in the first place.

46. His delegation believed that it would be neither morally nor legally justifiable to impugn the conduct of a newly independent State which, on the grounds that it had not established itself as a party thereto, refused to discharge an obligation deriving from a treaty which it had automatically been presumed to uphold. It would be better to avoid the embarrassment to which such a situation could give rise and leave it to the newly independent State itself to decide whether or not it wished to assume the contractual obligations of its predecessor.

47. That choice would not impose any hardship on new States, for they could become parties to their predecessors' treaties from the outset of their own existence through a mere notification of succession. Nor would the solution his delegation was proposing deprive new States of the benefits of the codification and progressive development of law: codification conventions largely comprised contemporary rules of international law, which would, in any case, apply to a new State by virtue of the provisions of article 5 of the future convention and article 3 of the Vienna Convention on the Law of Treaties. Provisions of codification conventions which did not qualify as rules of customary law did not apply to existing States which were not parties to those instruments, and it was only right and just that they should not be deemed to apply to new States without their agreement.

48. Mr. STUTTERHEIM (Netherlands) thanked the delegations which had commented on the Netherlands amendment, particularly those which had suggested drafting changes, nearly all of which his delegation found acceptable. The amendment aimed at balancing the interests of newly independent States with those of the existing members of the international community, who needed to know whether a treaty was applicable as between a newly independent State and themselves. The amendment referred to multilateral treaties open to universal participation in the sense in which it suggested that phrase should be defined, because a list of such instruments was already kept and could be readily updated by the Secretary-General of the United Nations, whereas it would be impossible to determine which treaties were or were not "of a universal character". The amendment was in no way intended to impose financial or other obligations on newly independent States.

49. Since there had been no general agreement on the amendment in the Committee, his delegation would be willing to join in further discussion of it in an informal working group, as suggested by the representative of Bulgaria. If, however, the Committee

rejected the Bulgarian suggestion, his delegation would withdraw the amendment, in order to facilitate the work of the Conference.

50. The CHAIRMAN suggested that interested delegations should be given time to consult, in the informal consultations group headed by the Vice-Chairman of the Committee, on article 16, the Netherlands amendment thereto, and the proposal by the Soviet Union for a new article 16 *bis*.

51. Mr. YIMER (Ethiopia) objected that draft articles had previously been referred to the informal consultations group mentioned by the Chairman only when there had been general agreement in the Committee that their underlying principle should be incorporated in the convention. No such agreement had been reached concerning the proposals by the Netherlands and the Soviet Union, and he therefore proposed that they should be put to the vote.

52. Mr. KATEKA (United Republic of Tanzania) said that in his view there was no chance of a consensus being reached on the inclusion in the convention of the principles embodied in the proposals of the Netherlands and the Soviet Union. He suggested that, as a gesture of courtesy towards their authors, the proposals should nonetheless be referred to the informal consultations group, which should be instructed to report back to the Committee within a maximum of two days. His delegation would ask for a roll-call vote on the proposals if they had not been withdrawn by the time the report was made.

53. Mr. STUTTERHEIM (Netherlands) pointed out that he had said he would withdraw his amendment if there was no real consensus in the Committee to discuss it further.

54. Mr. KRISHNADASAN (Swaziland) seconded the proposal made by the representative of Ethiopia.

55. Mr. SNEGIREV (Union of Soviet Socialist Republics) said that to vote as proposed by the representative of Ethiopia would be inappropriate, since some speakers had supported the proposal of his delegation and some the proposal of the Netherlands, while others had rejected the inclusion in the convention of anything resembling either proposal. He therefore proposed that a vote should be taken on the question whether or not to request the informal consultations group to prepare a compromise text based on the proposals of his own delegation and that of the Netherlands.

56. Mr. ARIFF (Malaysia) said that a vote should be taken on the proposal by the Soviet Union, since it concerned a matter of substance.

57. Mr. KATEKA (United Republic of Tanzania) said it was his understanding that the representative of the Netherlands had withdrawn his amendment. That being so, the only formal proposal which remained was that of the Soviet Union, and the Committee was therefore obliged by its rules of procedure to vote on that proposal.

58. Mr. SNEGIREV (Union of Soviet Socialist Republics) said he understood the representative of the Netherlands to have expressed his willingness, but not a decision, to withdraw his amendment; consequently, that amendment still stood. That being so, he reiterated his proposal for a vote on the referral to the informal consultations group of the proposals by his own delegation and that of the Netherlands.

59. Mr. YIMER (Ethiopia) said he understood the representative of the Netherlands to have withdrawn his amendment. Consequently, the only vote which the Committee could take was on the question whether or not to adopt the proposal by the Soviet Union.

60. Mr. STUTTERHEIM (Netherlands) said that he would maintain his amendment only if a majority of the members of the Committee wished to discuss it further. Otherwise, the amendment was to be considered as having been withdrawn as of that moment.

61. Mrs. BOKOR-SZEGÖ (Hungary) moved the adjournment of the meeting under rule 25 of the rules of procedure (A/CONF.80/8).

62. The CHAIRMAN said that, as there was no objection, he would take it that the motion was carried.

It was so decided.

Organization of work

63. The CHAIRMAN said, that before he adjourned the meeting, he wished to draw the attention of delegations to the situation now reached in their work. The Committee was at the start of the fourth week of its deliberations, that was to say its last and most crucial week, and it was no secret to anyone that it had fallen considerably behind the programme of work originally adopted. Nevertheless, it could legitimately hope to complete its task, namely, to consider all the articles of the basic draft and the amendments thereto and to report to the Conference the following week.

64. The Committee of the Whole had so far held 26 meetings, 25 of them devoted to consideration of the draft articles prepared by the International Law Commission and of the amendments submitted by delegations. Those 26 meetings represented a total of about 70 hours work. During those 70 hours the Committee had considered articles 1 to 16 of the draft, with the corresponding amendments, and also articles 9 *bis* and 16 *bis*—a total of about 18 articles. In addition, statements of principle had been made by a number of delegations during the consideration

of article 2 of the draft, in accordance with the decision adopted by the Conference.

65. The situation regarding the articles that had been discussed was the following:

(*a*) 11 articles had been adopted and referred to the Drafting Committee, namely, articles 1, 3, 4, 5, 8, 9, 10, 11, 13, 14 and 15;

(*b*) 3 articles, namely, articles 6, 7 and 12, had been discussed and referred to the informal consultations group, which was to report back to the Committee;

(*c*) the consideration of one article, namely article 2 (Use of terms), had been held over until a later stage in the work, as was customary at codification conferences;

(*d*) an article, proposed by one delegation, namely article 9 *bis*, had been rejected; and

(*e*) the Committee of the Whole had decided to entrust the preparation of the preamble and the final clauses to the Drafting Committee, which was to report direct to the Conference.

66. In view of that picture and of the number of hours that had been available, it could be concluded that the Committee had needed an average of approximately four hours for each article considered. That was rather a gloomy picture. However, it was necessary to look to the future—the number of articles that still had to be considered and the time available. As to the number of articles, the Committee still had to consider articles 17 to 39 of the basic draft, with the amendments thereto, and some additional articles proposed by delegations: in all, about 25 articles. Consideration of article 2 would also have to be completed and decisions taken concerning the articles held over for consultations. In addition, it would be necessary to adopt the text for all the articles to be submitted by the Drafting Committee.

67. As to the time factor, 36 hours, including the extended afternoon meetings, would be available during the week. If the Committee was able to hold a few meetings at the beginning of the following week, some extra time might be added. That question would be discussed when the Committee came to assess its progress at the end of the current week. In round figures, it could be said that the Committee had about 45 hours for approximately 25 articles, which meant that an effort would have to be made to halve the average time hitherto devoted to the consideration of each article. Henceforth, the Committee would have to make sure that the time taken for each article did not, on the average, exceed two hours.

68. That objective might, at first sight, seem difficult to attain. But although difficult, it was not entirely impossible. It must be recognized that most of the articles which posed major problems were, precisely, the early articles of the draft, which explained the seemingly slow progress of the Committee's deliberations during the first weeks of its work.

69. Moreover, an examination of the amendments submitted to the articles in part III of the draft showed that, except for those relating to articles 16 and 16 *bis*, they did not raise any problems likely to require much time. With some discipline, it would be possible to reach article 30 relatively quickly. For he had noted that the number and the length of statements had been substantial in the case of articles such as articles 2, 5, 6, 7, 11, 12, 16 and 16 *bis*, but not in the case of articles to which no important amendments had been submitted, such as articles 1, 3, 4, 9, 13, 14 and 15.

70. Lastly, the approach adopted by the Committee, namely, to go ahead with the articles that did not raise major problems, while isolating those that raised more difficult and delicate problems and holding them over for consultations, was perhaps essential in order to gain the necessary time.

71. In the light of those considerations, the first conclusion was that the Committee must start its meetings punctually, so as not to lose a single minute of its time. He therefore appealed to delegations and to the groups which met between the Committee's meetings to be punctual. Secondly, he appealed once again to delegations to speak as briefly as possible, particularly on articles to which no amendment had been submitted or which raised no special problems for them. At first sight that appeared to be feasible in regard to many of the articles in part III which followed articles 16 and 16 *bis*. However, he left it to the discretion of delegations to exercise the self-discipline which alone would enable the Committee to assume its full responsibility towards the international community.

The meeting rose at 1.05 p.m.

27th MEETING

Monday, 25 April 1977, at 4.05 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