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27th meeting of the Committee of the Whole

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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

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

1. The CHAIRMAN recalled that there were two procedural motions before the Committee: a motion by Bulgaria[2] which had asked for an informal working group to be set up to examine article 16 *bis* proposed by the Soviet Union (A/CONF.80/C.1/L.22) and a motion by Ethiopia that article 16 *bis* be put to the vote.[3] As there was no consensus on either he would have to put articles 16 *bis* to the vote.

2. Mr. TODOROV (Bulgaria) explained that his proposal consisted in setting up a working group to elaborate a consolidated text based on the Soviet Union's proposal and the Netherlands amendment (A/CONF.80/C.1/L.35), both of which had been supported by many delegations.

3. Mr. YANGO (Philippines) said that, as the Committee had already decided in similar situations to refer certain matters to an informal consultations group, it could set up an informal consultations group to examine article 16 *bis*, as proposed by Bulgaria, provided that it did not make a practice of doing so as that might delay progress.

4. Mr. MUDHO (Kenya) said he saw no reason why the Soviet Union's proposal should be treated differently from others and not put to the vote according to the usual procedure. The establishment of a working group would only further delay the Committee's work.

5. Mr. ARIFF (Malaysia) pointed out that his delegation's amendment to article 8 (A/CONF.80/C.1/L.15) had been put to the vote[4] because the Committee had regarded it as a substantive amendment which could not simply be referred to the Drafting Committee. Thus, he saw no reason why a vote should not be taken on the Soviet Union's proposal.

6. Mr. YIMER (Ethiopia) emphasized that article 16 *bis* was of no special interest to his delegation, which was simply anxious to expedite the Committee's work. His delegation had only proposed that a vote be taken on the Soviet Union's proposal in the belief that the Committee would lose time by referring it to a working group. However, as his delegation was now convinced that the Committee would never be able to adopt the draft convention at the present session, it would not insist on article 16 *bis* being put to the vote or object to its being referred to a working group.

7. Mr. DADZIE (Ghana) considered that the Committee should not waste any more time in procedural discussion and that it should first vote on article 16 *bis* proposed by the Soviet Union and then on article 16 proposed by the International Law Commission.

8. Mr. KRISHNADASAN (Swaziland) supported the proposal by Ghana.

9. Mr. USHAKOV (Union of the Soviet Socialist Republics) supported the Bulgarian proposal to postpone the vote on article 16 *bis* and refer that article for examination to a working group.

10. Mr. KATEKA (United Republic of Tanzania) observed that the Committee was faced with two conflicting motions: the first, for a vote to be taken on article 16 *bis*, had been withdrawn by Ethiopia, reintroduced by Ghana and supported by Swaziland; the second, to postpone voting on the article, had been proposed by Bulgaria and supported by the Soviet Union. He proposed that the Committee vote first on the first motion and asked for a roll-call vote.

11. Mr. MUDHO (Kenya) asked for details about the working group which the Bulgarian delegation was proposing should examine article 16 *bis*. Had it in mind the informal consultations group which already existed or the establishment of a new working group? If the latter, he would oppose such a procedure.

12. Mr. TODOROV (Bulgaria) believed it was preferable to entrust the examination of article 16 *bis* to the existing informal consultations group instead of creating a new working group as he had proposed at the outset.

13. Mr. KATEKA (United Republic of Tanzania) proposed that, if the Committee decided to refer the Soviet Union's proposal to the informal consultations group, the latter should report back to the Committee before 29 April.

14. The CHAIRMAN pointed out that, if the Bulgarian motion were adopted, that did not mean that the informal consultations group would reach a consensus on the Soviet proposal—divergences of opinion ruled that out—but that it would review the proposal in the light of other proposals made during the discussion. The proposal by the Soviet Union should in any case be put to the vote.

15. He invited the Committee to vote on the Bulgarian proposal to postpone voting on draft article 16 *bis* proposed by the Soviet Union and at the same time to refer it to the informal consultations group for priority study, requesting it to report to the Committee before 29 April.

The Bulgarian proposal was rejected by 29 votes to 19, with 31 abstentions.

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

[2] See above, 26th meeting, para. 34.

[3] See above, 26th meeting, para 51.

[4] See above, 14th meeting, para. 26.

16. Mr. SNEGIREV (Union of Soviet Socialist Republics) withdrew draft article 16 *bis* submitted by his delegation.

17. The CHAIRMAN said that as the Netherlands and Soviet delegations had withdrawn their proposals, and if there was no objection, he would take it that the Committee wished to adopt article 16 provisionally and refer it to the Drafting Committee.

It was so decided.[5]

ARTICLE 17 (Participation in treaties not in force at the date of the succession of States)[6]

18. Mr. ARIFF (Malaysia) reminded the meeting that when his delegation had submitted its amendment to article 12, it had stressed the need to draft provisions which were as concise as possible. It therefore proposed in its amendment A/CONF.80/C.1/L.42 that paragraphs 1 and 2 of the Commission's text be combined and that the subsequent paragraphs be modified accordingly. However, it was entirely satisfied with the substance of the draft article and wished to make no changes to it in that respect.

19. Mr. KATEKA (United Republic of Tanzania) said he understood what had prompted the Malaysian delegation to propose that paragraphs 1 and 2 of the article under consideration be combined in a single provision, but felt that the wording of the proposal submitted would vitiate paragraph 1 of the Commission's text. The Malaysian proposal did not seem to make a distinction between the idea of party and that of contracting States, whereas the latter text did. Consequently, it would be difficult for the delegation of the United Republic of Tanzania to accept the amendment.

20. Mrs. OLOWO (Uganda) proposed the addition of the words "contracting State to a treaty" after the words "which is in force or" in the new paragraph 1 proposed by the Malaysian delegation, in order not to deprive paragraph 1 of the basic text of its meaning. She drew the Committee's attention to an error in the English text of article 17 in the penultimate line of paragraph 4, where the word *"contrasting"* appeared.

21. Mr. MBACKÉ (Senegal) pointed out that paragraphs 1 and 2 of article 17 dealt with the situation of a successor State in connexion with the entry into force of a treaty, and that, depending on whether a treaty was or was not in force, a new State notifying its succession became a party or a contracting State to such a treaty. According to the definitions in subparagraphs (*k*) and (*l*) of paragraph 1 of article 2 of the draft, "'contracting State' means a State which has consented to be bound by the treaty, whether or not the treaty had entered into force" and "'party' means a State which has consented to be bound by the treaty and for which the treaty is in force". The Malaysian amendment raised quite a serious problem inasmuch as, if it were adopted, a new State would need only to notify its succession in order to become party to a treaty which was not in force but which would become applicable to it.

22. Sir Francis VALLAT (Expert Consultant), drawing the Committee's attention to article 2, paragraph 1, subparagraphs (*k*) and (*l*), which defined "contracting State" and "party", said that the Commission had used those terms in article 17 in accordance with the meaning conferred on them in article 2. Paragraphs 1 and 2 of the draft article envisaged quite different situations. Paragraph 1 provided for the case of a successor State establishing "its status as a contracting State to a multilateral treaty which is not in force", and paragraph 2 provided for that of a successor State establishing "its status as a party to a multilateral treaty which enters into force ...". Although the Commission would have preferred to draft a single provision, it had felt that in the interests of clarity and simplicity the two situations should be dealt with separately.

23. Mr. MIRCEA (Romania) said that the Government of Romania had already taken a more or less unfavourable position on article 17 because it seemed unnecessary. The legal nexus which the International Law Commission considered necessary in the other articles did not exist between the territory of a successor State and a treaty in the case of article 17. Furthermore, what proof would there be that a predecessor State had signed a treaty with the intention that it should apply to territory under its administration? Should the Committee decide it was necessary to adopt provisions similar to those of article 17, a simpler formula would be preferable. If time were not running short for the Committee, the Romanian delegation would have formally proposed the following wording: "The provisions of article 16 shall apply *mutatis mutandis* to participation in treaties which are not yet in force but to which the predecessor State was a contracting State". If the Committee accepted the existing text of the draft article, it might consider how to deal with the drafting problem posed by the phrase "contracting State in respect of the territory" used in paragraphs 1 and 2, since the provision could only mean a contracting State in respect of a treaty.

24. Mr. MARESCA (Italy) said that article 17 did not directly deal with the question of the succession of States; in the cases envisaged, there was no legal nexus between the territory of the successor State and the treaty signed by the predecessor State. However, the justification for article 17 lay in considerations of a pratical nature. It raised no major difficulties for the Italian delegation, but he shared the Romanian representative's doubts about the phrase "contracting State in respect of the territory". The

[5] For resumption of the discussion of article 16, see 35th meeting, paras. 1-5.

[6] The following amendment was submitted: Malaysia, A/CONF.80/C.1/L.42 and Corr.1.

Malaysian amendment did not distinguish between the concepts "contracting State" and "party to a treaty". The Italian delegation therefore preferred the article drafted by the International Law Commission.

25. Mr. ARIFF (Malaysia) repeated that for him the shortest route was the best one and that it appeared preferable to have one rather than two paragraphs dealing with the situation of a new State establishing its status as a contracting State or as a party to a treaty. It had unfortunately been necessary to draft the Malaysian amendment hastily, and one or two words had inadvertently been omitted. There had been no intention of affecting the substance of the draft article in any way. In the second line of the amendment the words "as a contracting State" should be substituted for the words "as a party", and in the third line the words "which is not in force" for the words "which is in force".[7] With that correction the Malaysian amendment might be referred to the Drafting Committee.

26. The CHAIRMAN said that, if there was no objection, he would take it that the Committee wished to refer the Malaysian amendment (A/CONF.80/C.1/L.42), as modified, to the Drafting Committee, and provisionally to adopt article 17.

It was so decided.[8]

ARTICLE 18 (Participation in treaties signed by the predecessor State subject to ratification, acceptance or approval)[9]

27. Mr. KRISHNADASAN (Swaziland), presenting on behalf of his own delegation and the Swedish delegation amendment A/CONF.80/C.1/L.23 deleting article 18, pointed out that all the arguments which could be invoked in support of the proposal applied equally to the deletion of article 29, paragraph 3, article 32, and article 36. His delegation had already spoken in favour of deleting article 18 in the Sixth Committee of the General Assembly (See A/CONF.80/5, p. 224). In its commentary, the International Law Commission had itself recognized that the provision was not essential. Paragraph (2) of the commentary stated that "the question [...] arises whether a predecessor State's signature, still subject to ratification, acceptance or approval, creates a sufficient legal nexus between the treaty and the territory concerned on the basis of which a successor State may be entitled to participate in a multilateral treaty under the law of succession" (A/CONF.80/4, p. 61). With regard to practice, the Secretariat had commented in a memorandum of 1962 that "it is not yet clear whether the new State can inherit the legal consequences of a simple signature of a treaty which is subject to ratification" (*ibid.*), without, however, expressing a definite opinion. Moreover, as the International Court of Justice had stated on several occassions, a signature subject to ratification, acceptance or approval did not bind the State. That was also the law codified by article 14 of the Vienna Convention, although, as stated in paragraph (5) of the commentary, the International Court of Justice, in an opinion, and article 18 of the Vienna Convention, "recognize that a signature subject to ratification creates for the signatory State certain limited obligations of good faith and a certain legal nexus in relation to the treaty" (*ibid.*). He emphasized, however, that it was not possible to subscribe to such a point of view in the case of a successor State, since it was not itself a signatory State, and did not think that the proposed solution, which consisted in recognizing the option of a newly independent State to establish its consent to be bound by a treaty in virtue of its predecessor's simple signature of the treaty subject to ratification, was the most favourable both to successor States and to the effectiveness of multilateral treaties. Nor did he share the view of the International Law Commission, which, referring to the opinion of a State which had objected that the article would create inequality between the newly independent State and signatories to the treaty, because the newly independent State would not be bound by the good faith obligation incumbent on the predecessor State and other signatories, had not considered that that was, in itself, sufficient reason for omitting the article from the draft. Lastly, if, as stated in paragraph (9) of the commentary, the signature had particular significance (*ibid.*, p. 62), it was with regard to the predecessor State and not the new State. In view of the fact that the predecessor State had no obligations or rights under a treaty signed but not ratified at the time of succession, it could not transmit to the successor State any of the rights and obligations which it would have contracted by virtue of the treaty if it had ratified it. It was for those reasons that the Swazi and Swedish delegations proposed that the draft article under discussion should be deleted.

28. Mrs. THAKORE (India) said that article 18 created an unusual situation since it was not based on the practice of States or depositaries and since some members of the International Law Commission, including the Special Rapporteur, and some Governments had expressed doubts concerning its usefulness. Although fully aware of the difficulties created by the article, her delegation was not convinced of the necessity of deleting it. It did not see why the successor State should not be able to continue the process initiated by the predecessor State and enjoy the right of ratifying, accepting or approving the treaty in question on its own behalf. In the opinion of the International Court of Justice and according to article 18 of the Vienna Convention on the Law of Treaties, the signature of a treaty had a legal effect, and that justified recognition of the option of a newly independent State to establish its

[7] The correction was subsequently issued as document A/CONF.80/C.1/L.42/Corr.1.

[8] For resumption of the discussion of article 17, see 35th meeting, paras. 6-13.

[9] The following amendment was submitted: Swaziland and Sweden, A/CONF.80/C.1/L.23.

consent to be bound by a treaty in virtue of its predecessor's bare signature to the treaty subject to ratification, acceptance or approval. Consequently, the solution embodied in article 18 was the most favourable to successor States and to the effectiveness of multilateral treaties, and hence to international co-operation, while at the same time contributing to the progressive development of international law. The convention would be incomplete without such a provision. It should seek to cover all aspects of the question of succession so as to leave no room for uncertainty.

29. Furthermore, she considered the criticism that article 18 would create inequality between States unfounded and shared the opinion of the International Law Commission that it would not be appropriate to regard the successor State as bound by the obligation of good faith, contained in article 18 of the Vienna Convention on the Law of Treaties, until it had at least established its consent to be bound and become a contracting State. Clearly the provisions of article 18 of the Vienna Convention on the Law of Treaties could not be applied to a State which had not itself signed the treaty.

30. In the interests of the progressive development of international law, the effectiveness of multilateral treaties and international co-operation, and above all the newly independent States whose cause the Committee was trying to promote, the Committee should perhaps improve the text of article 18 rather than delete it.

31. Mr. YASSEEN (United Arab Emirates) said that the International Law Commission had wished to make it easy for newly independent States to participate in multilateral treaties in their own interests and in that of the international community. Draft article 18 concerned treaties signed by the predecessor State subject to ratification, acceptance or approval. Some delegations had claimed that signature subject to ratification, acceptance or approval did not express the intention of the predecessor State to be bound by the treaty and hence did not create any right which could be transferred to the successor State. But that argument was most certainly not conclusive, since it was a matter here of permitting the successor State merely to succeed to the option which the predecessor State had already possessed of ratifying, accepting or approving the treaty.

32. The technical difficulties invoked in favour of deleting the article were not convincing. If a newly independent State could succeed to treaties already in force with regard to the predecessor State, why could it not ratify treaties already signed by it? Why prevent it from continuing the process begun by the predecessor State? It was important to ensure the continuity of an international process, in the interests of the successor State itself, since no one obliged it to ratify the treaties signed by its predecessor.

33. The solution proposed in draft article 18 did not reflect positive international law; nevertheless, it was unquestionably desirable to accept it as progressive development of international law.

34. Mr. TREVIRANUS (Federal Republic of Germany) was in favour of deleting article 18 which, for lack of precedent, constituted an undesirable innovation. The bare fact of signature was not sufficient to justify the consequences which would arise from such a provision, which had no place in the draft convention.

35. Mr. MARESCA (Italy) said that, although all amendments submitted to the Conference merited respect and interest, proposals like those of Swaziland and Sweden were, to say the least disquieting. The proposal before the Committee to delete four articles of the draft convention was a radical measure which should only be resorted to in the case of necessity. Otherwise it was preferable to turn to less drastic remedies, in other words drafting changes where necessary.

36. Article 18 called for the same remarks as article 17. It did not refer to the succession of States in the strict sense, since treaties which were not ratified or not in force did not create the legal nexus which was the basis of succession as such. At the same time multilateral treaties were of general benefit both to the predecessor State and to the successor State, and it would be inappropriate to prevent the successor State from continuing a process already begun, both in its own interest and in that of other States parties to the treaties. His delegation was therefore not in favour of deleting article 18.

37. Mr. RANJEVA (Madagascar) said he could see no need for the article 18 proposed by the International Law Commission. A comparison between it and article 18 of the Vienna Convention on the Law of Treaties showed that, quite apart from the difficulties mentioned by other delegations, recognition of the successor State's right to become party to treaties necessarily implied the creation of an obligation for that State, that of being bound *ab initio* by those treaties. In practice such a provision was liable to give rise to problems if, in immediately ratifying a treaty on the grounds of succession, a successor State acted—perhaps quite innocently and unintentionally—in a manner incompatible with the object and purpose of the treaty in question. Could article 18 of the Vienna Convention on the Law of Treaties then be invoked to oppose such action? Article 18 proposed by the International Law Commission introduced confusion, infringed the "clean slate" principle and was likely to saddle the successor State with additional problems. It was therefore not desirable to include the article in the draft convention.

38. Mr. GOULART DE AVILA (Portugal) said that his delegation supported the proposal by Swaziland and Sweden to delete article 18. Articles 16 and 17

of the draft convention dealt with the accession of newly independent States to treaties to which the predecessor State was a party or a contracting State, in other words, with cases in which there existed a genuine legal nexus constituted by the rights and obligations of the predecessor State in respect of a given territory. It was quite reasonable that succession of States should apply in the case of treaties which were complete, in other words, treaties to which a State had already expressed its consent. Article 18, however, related to succession of States in respect of incomplete treaties, in other words, of treaties which had been signed subject to ratification, acceptance or approval, so that the most important act in their creation was still lacking. The successor State would thus be succeeding merely to an intention whose contents were not clearly known, since it was not certain that the predecessor State would in fact have accepted or ratified the treaty. Experience showed that States signed many treaties which were never ratified, accepted or approved.

39. As for the obligations of good faith created by the signature of a treaty for the signatory State, mentioned in paragraph (5) of the International Law Commission's commentary, in his delegation's view that was merely a general duty which should always be observed between members of the international community, both in their treaty relations and in simple matters of international courtesy to which article 18 could in no circumstances apply.

40. The deletion of draft article 18 would not, in practice, diminish the efficacy of multilateral treaties, since newly independent States would almost always have the possibility of acceding to those treaties, and the cases where that possibility was not available would, in the main, be covered by paragraphs 3 and 4 of draft article 18, which would prevent a newly independent State from ratifying, approving or accepting a given treaty. Furthermore, from a practical point of view, there was no great difference between the deposit of an instrument of ratification and that of an instrument of acceptance.

41. The Portuguese delegation therefore considered that no possibility should be given to a successor State to take advantage of acts of a predecessor State that had not established any juridical links with the territory for whose international relations the new State was assuming responsibility.

42. Mr. BRECKENRIDGE (Sri Lanka) thought that draft article 18 contributed to the progressive development of international law. Inasmuch as the proposal by Swaziland and Sweden called for the deletion of other articles of the draft convention as well, it would be preferable if the Commission waited until it had examined the other three articles concerned before taking a decision.

43. The CHAIRMAN said that it would be for the co-sponsors of the draft to explain at a later stage what connexion, if any, there was between the four proposals contained in that amendment.

44. Mr. STEEL (United Kingdom) believed that the proposal by Swaziland and Sweden was based primarily on considerations of convenience. Article 18 did indeed give rise to a certain number of difficulties. In the first place, as the International Law Commission had recognized, the article did not reflect current State practice. It therefore represented an exercise in progressive development of international law rather than in codification, and there was no sufficiently convincing reason to justify a departure from existing State practice.

45. Other difficulties arose in connexion with the impact of article 18 of the Vienna Convention on the Law of Treaties upon the proposed provision. Some delegations thought, like the International Law Commission, that the obligations of good faith which formed the subject of article 18 of the Vienna Convention on the Law of Treaties would not apply to a successor State which invoked article 18 of the draft convention. If they were right, inequality would thus be created between the signatories of the treaty and the successor State. Other delegations thought, on the contrary, that the International Law Commission's view was mistaken and that the successor State would, in fact, be bound under article 18 of the Vienna Convention. That too, would produce inconveniences and might not be welcome to some delegations.

46. Lastly, the draft article contained certain elements which would be difficult to translate into practice. He had in mind, in particular, the words "and by the signature intended that the treaty should extend to the territory to which the succession of States relates" in paragraph 1 of the draft. In United Kingdom practice, no firm intention was formed at the time of signature concerning the territory to which a treaty would eventually extend. It was usual to consult the government of each territory with a view to ascertaining its wishes in that respect before ratifying the treaty. That criterion was therefore devoid of practical meaning and based on a supposition which was not in accordance with reality.

47. There were thus three types of difficulty which stood in the way of applying the provisions of draft article 18. Since, moreover, those provisions were not more favourable to the successor State than the normal accession procedure, the United Kingdom delegation favoured the proposal by Swaziland and Sweden to delete the article.

48. Mr. FERNANDINI (Peru) thought that article 10 of the draft convention had practical advantages and that the text proposed by the International Law Commission, which gave the successor State the possibility of benefiting from the signature of the predecessor State in becoming party to multilateral treaties, should be retained. It was unusual for a

draft convention such as the one before the Committee to give advantages to the successor State. The Peruvian delegation was therefore in favour of keeping article 18 in its present form, paragraphs 2, 3 and 4 of the article being both clear and necessary. The argument that the article infringed the "clean slate" principle was unacceptable, since it gave the successor State only the possibility, not the obligation, to participate in treaties signed by the predecessor State.

49. The proposal to delete the article by Swaziland and Sweden was too radical. It should be possible to resolve the difficulties to which the article gave rise simply by making some drafting changes.

50. Mr. MIRCEA (Romania) favoured the deletion of article 18 proposed by the International Law Commission, which had a deeper political and legal meaning than might appear at first sight. In fact, no national constitution provided for the possibility of ratifying the signature of another State. On the external relations level, subparagraphs (*c*) and (*d*) of paragraph 1 of article 14 of the Vienna Convention on the Law of Treaties provided that the consent of a State to be bound by a treaty could be expressed by ratification, but only "when the representative of the State has signed the treaty subject to ratification" or "when the intention of the State to sign the treaty subject to ratification appears from the full powers of its representative or was expressed during the negotiation".[10] It was impossible to imagine a situation in which those conditions would be fulfilled, and newly independent States had nothing to gain, in practical terms, from the provisions of draft article 18 because they could always benefit from the procedure of accession to multilateral treaties. Lastly, as the representative of the United Kingdom had just pointed out, it was very difficult for the depositary State to guess the intention of the predecessor State at the time of signing the treaty. For all those reasons, the article should be deleted without hesitation.

51. Mr. HELLNERS (Sweden), replying to the question put by the representative of Sri Lanka, explained that the sponsors of the amendment relating to article 18 had not intended that the Committee should defer its decision on that proposal but, rather, that by expressing an opinion on article 18, it should adopt a position of principle. The Commission should therefore take a decision on article 18 forthwith.

52. The arguments advanced by certain delegations in support of retaining article 18 in the draft convention were no more convincing than the commentary by the International Law Commission. As the representative of Swaziland had remarked, the International Law Commission had, in a sense, actually opened the way to the proposal by Swaziland and Sweden by underlining the shortcomings of article 18 and articles 29, 32 and 36 which, apparently, had been inserted in the draft convention only for reasons of "logic". It could well be argued, however, that there existed several different kinds of logic. Furthermore, practical considerations sometimes had to outweigh those of logic, and it hardly seemed desirable to include in the draft convention a provision that would be so difficult to apply. Some delegations had already pointed out that the article related only to the question of succession to an intention whose content was quite uncertain. The draft amendment proposed by Swaziland and Sweden was therefore justified and did not in any way represent an infringement of the principles underlying the draft convention.

53. The CHAIRMAN suggested that the proposal by Swaziland and Sweden should be put to the vote. In reply to a question by the representative of France, he explained that the Committee could then take a decision on article 18 of the draft convention. In reply to a question by the representative of Algeria, he said that the vote would concern only the first of the four proposals in the amendment by Swaziland and Sweden, the one relating to article 18.

54. Mr. AMLIE (Norway), speaking on a point of order, said that the Committee should indeed vote first on the amendment and then on the article itself. Such a procedure would not give rise to difficulties unless the votes were equally divided in both cases.

55. Mr. ROSENSTOCK (United States of America), speaking on a point of order, said that his delegation had been prepared to vote on the whole of the amendment by Swaziland and Sweden, thus solving four problems at one stroke. If, however, the vote concerned only article 18, it would be preferable to vote on the article itself first and then on the amendment relative to it.

56. The CHAIRMAN confirmed that the proposed procedure would not give rise to difficulties unless the votes were equally divided in both cases. Unless the sponsors of the draft withdrew their proposal, the Commission had to vote on the draft amendment first. He therefore put to the vote the amendment by Swaziland and Sweden (A/CONF.80/C.1/L.23).

The amendment by Swaziland and Sweden was rejected by 36 votes to 25, with 17 abstentions.

57. The CHAIRMAN invited the members of the Committee of the Whole to vote on article 18 of the draft convention.

At the request of the representative of Greece, a separate vote was taken on paragraph 2 of article 18 as drafted by the International Law Commission.

Paragraph 2 of article 18 was adopted by 43 votes to 3, with 29 abstentions.

58. The CHAIRMAN said that if there were no objections he would take it that the Committee of the

[10] 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. 291.

Whole wished provisionally to adopt article 18 in its existing form and to refer it to the Drafting Committee.

It was so decided.[11]

ARTICLE 19 (Reservations)[12]

59. Mr. HERNDL (Austria), submitting his delegation's amendment to article 19 (A/CONF.80/C.1/L.25), stressed the need to seek practical solutions to legal problems, but without completely ignoring the concepts of logic. That was the spirit in which his delegation had submitted its amendment. In its commentary on the article, the International Law Commission had expatiated on the basic contradiction between the creation of treaty obligations as a result of a succession of States and the principle under which the State which inherited a treaty should be able to formulate new reservations. The Austrian amendment was intended to avoid the difficulties which might arise from the application of article 19, paragraph 2. It also had the advantage of simplifying the problem and facilitating the task of depositaries of multilateral treaties.

60. In its oral and written observations, the Austrian Government had always spoken against the capacity of formulating reservations as provided for in paragraph 2 of the article under discussion. The idea set out in that provision seemed to be based on an erroneous concept of succession. When a new State succeeded to treaties, they were all applicable to it under exactly the same conditions as to its predecessor, and it therefore succeeded to the reservations made by the predecessor State. It could withdraw those reservations, since that had also been the right of its predecessor, but it could not formulate new reservations, because its predecessor had not had that capacity. If a newly independent State wished to make reservations, it should use the ratification or accession procedure provided for becoming a party to a multilateral treaty. That view was shared by other governments, especially those of Argentina and Sweden.

61. There was, of course, a body of practice which might justify article 19, paragraph 2, but the few examples provided rather brought out the uncertainty of that practice. In most of those cases, the successor States had expressly declared that they maintained the reservations formulated by their predecessors. In the rare cases where new reservations had been made by the successor State, the depositary of the treaty had at once been faced with difficulties, since he had been obliged to apply the general law of treaties, in the absence of specific legal rules.

62. In paragraph (10) of its commentary to article 19 (A/CONF.80/4, p. 65), the International Law Commission referred to Zambia's notification of its succession to the Convention relating to the Status of Refugees.[13] In depositing its notification, Zambia had made no allusion to the reservations made by its predecessor, but had formulated its own reservations, in accordance with a provision of the Convention in question. The Secretary-General had considered that the Government of Zambia, on declaring formally its succession to the Convention, had decided to withdraw the old reservations and in future to remain bound by the Convention in the light of the new reservations, "the latter reservations to become effective on the day when they would have done so, pursuant to the pertinent provisions of the Convention, had they been formulated on accession" (*ibid.*). Those reservations were therefore to take effect on the 90th day after the deposit of the instrument of succession by the Government of Zambia. In that connexion, he pointed out that article 19, paragraph 2, if adopted, would create a legal void, since, under article 22 of the draft, a newly independent State which made a notification of succession was considered a party to the treaty from the date of succession. Under article 19, however, the successor State and the other parties to the treaty would not be bound until 90 days after the deposit of the instrument of succession. It was to fill that gap that his delegation had submitted its amendment.

63. The International Law Commission had, of course, not ignored the problem. That was why it had referred in paragraph 3 of the article to the relevant provisions of the Vienna Convention on the Law of Treaties. That was the only example in the draft of a reference to another legal instrument, and indicated that the question concerned the general law of treaties rather than the law of succession. That was why his delegation proposed to delete paragraphs 2 and 3 of the article.

64. He stressed that his delegation's amendment in no way prejudiced the sovereign right of newly independent States to formulate reservations when they acceded to multilateral treaties in accordance with the final clauses of those instruments.

Mr. Riad (Egypt) took the chair.

65. Mr. TREVIRANUS (Federal Republic of Germany), introducing his delegation's amendment to article 19 (A/CONF.80/C.1/L.36), pointed out that the proposal in no way altered the substance of the article and was in no way prejudicial to newly independent States. Its only purpose was to shed light on the legal nature of succession of States as it appeared from the article itself and from paragraph (2) of the International Law Commission's commentary to it. The option given to a newly independent State was based on the presumption that it continued to be

[11] For resumption of the discussion of article 18, see 35th meeting, paras. 14-15.

[12] The following amendments were submitted: Austria, A/CONF.80/C.1/L.25; Federal Republic of Germany, A/CONF.80/L.36.

[13] See the text of the Convention in United Nations, *Treaty Series*, vol. 189, p. 150.

bound by the treaty under the same conditions as the predecessor State, that it was bound in accordance with article 16, or that it continued to be bound *de jure* in accordance with part IV of the draft. In his view, the legal position was the same in all the cases: the newly independent State continued to take the place of the predecessor State, but could withdraw reservations and make new ones, in accordance with article 19, paragraph 2.

66. In the "additional points" made by the Rapporteur of the International Law Association it was stated *inter alia* that "A successor State can continue only the legal situation brought about as a result of its predecessor's signature or ratification. Since a reservation delimits that legal situation it follows that the treaty is succeeded to (if at all) with the reservation".[14] That point was in conformity with article 19. According to another "additional point", "A new State which does not wish to continue the reservations of its predecessor is free to withdraw these, or delimit them so as to enter more fully into the undertakings of the convention"[15] Article 19, paragraph 2, went further in providing that the newly independent State could formulate new reservations. Yet another "additional point" provided that "Since a new State takes over the legal situation of its predecessor, it takes over the consequences of its predecessor's objections to an incompatible reservation made to a multilateral convention by another party".[16] That provision had not been accepted by the International Law Commission. The last "additional point" provided that "A new State also takes over the effects of any interpretative declaration of its predecessor until it makes an alternative declaration, which it can do in its declaration of continuity".[17] In his view, those assertions, to which the International Law Commission seemed to have subscribed, were correct: a different concept would nullify the distinction between succession and accession.

67. The position taken by the International Law Commission could clearly be deduced from article 19, paragraph 1, article 20, paragraphs 1 and 2, and articles 23, 29, 30 and 33, and even articles 18 and 32. The only exception appeared in the wording of article 16, repeated in articles 17 and 31, under which the newly independent State had the faculty to "establish its status as a party to any multilateral treaty" by declaring itself bound by the treaty, and which might be regarded as a novation. On the other hand, it should be considered that succession implied continuation of the consent to be bound given by the predecessor State, or its reaffirmation in the case of articles 17 and 18. The successor State inherited the legal status of the predecessor State. Under article 16, it had a wide choice, since it was not obliged to declare itself bound by the treaty, but could accede to the instrument and create its own treaty relations. Once it chose to be bound by the treaty, it was presumed to continue the instrument with the declarations made by the predecessor State. That was the tenor of his delegation's amendment, which was in conformity with articles 19 and 20.

68. He asked delegations commenting on the amendment to make it clear whether they questioned the principle whereby the newly independent State took the place of the predecessor State.

69. He wished to reply in advance to objections which might be raised to his delegation's amendment. The clarifications it contained were useful, if not necessary, in view of the wording of article 16 and of the fact that the draft did not mention objections which were sometimes made to reservations. The amendment could have been submitted at some other stage and could well appear elsewhere in the draft, possibly even among the general provisions in part I. The wording of the amendment could no doubt be improved, and that could be done by the Drafting Committee.

70. Mr. STUTTERHEIM (Netherlands) asked the Expert Consultant whether paragraph 1 of article 19 also applied to the acceptance of and objections to reservations. The amendment of the Federal Republic of Germany seemed to cover those concepts and, in his opinion, that should be so.

71. Although he understood the reasoning behind the Austrian amendment, his delegation was in favour of retaining paragraphs 2 and 3 of article 19 for practical reasons, so that the newly independent State should not be obliged to conform with more complicated ratification procedures than those provided for by the International Law Commission.

72. Mr. DADZIE (Ghana) said he wished to know whether the article under discussion and the amendment of the Federal Republic of Germany applied only to newly independent States or whether they concerned all cases of succession of States.

73. Mr. SAHRAOUI (Algeria) said that his delegation was opposed to the amendment of the Federal Republic of Germany because it clearly affected the principle of self-determination, which should be placed in its real context, that of relationships involving domination. Once it became independent, a new State was not free to decide on its future, since social, political and economic disadvantages debarred it from free self-determination with regard to treaties, and especially with regard to reservations thereto. In his delegation's opinion, the "participation" of a newly independent State in a treaty was, by definition, a "tied" participation. The additional phrase proposed in the amendment of the Federal Republic of Germany seemed to bring the very principle of

[14] See *Yearbook of the International Law Commission, 1969*, vol. II, p. 49, document A/CN.4/214 and Add.1 and 2, section I, D, para. 17, point 10.

[15] *Ibid.*, point 11.

[16] *Ibid.*, point 13.

[17] *Ibid.*, point 14.

self-determination into question. His delegation could not accept the Austrian amendment for that reason.

74. Mrs. SZAFARZ (Poland) said that, in the view of her delegation, it was quite natural that newly independent States should have made such widespread use of reservations, which had enabled them to accept existing multilateral treaties, while at the same time preserving their specific interests. The practice of newly independent States in that regard was extremely diverse. There were cases in which such States had repeated or expressly confirmed all reservations of the predecessor State; had confirmed certain reservations, while expressly withdrawing others; had formulated additional reservations while at the same time corfirming the reservations of the predecessor State; had formulated new reservations only, while making no allusion to the reservations of the predecessor State; had formulated reservations notwithstanding the fact that the treaties in question had been extended to their respective territories without any reservation; or had made no allusion to the reservations, despite the fact that the treaties had been extended to their respective territories with those reservations. In addition, on one particular occasion, a newly independent State had expressly withdrawn the reservations of its predecessor.

75. Her delegation knew of no case in which that practice had met with opposition from the other States parties to a multilateral treaty; it might still, however, give rise to two important questions: Was the formulation of new reservations compatible with the notion of "succession"? And what was the proper presumption in the event that the notification of succession made no reference to reservations of the predecessor State?

76. On the basis of the "clean slate" principle, there were two solutions that could be adopted in that regard. First, it might be considered that the very concept of succession required the newly independent State to step into the shoes of its predecessor upon notifying succession in respect of a treaty; consequently, the formulation of new reservations would be inadmissible and, in the event that the notification of succession was silent with regard to the reservations of a predecessor State, they must be considered as devolving upon the newly independent State. Secondly, it might be considered that a notification of succession was equivalent to an instrument of accession; in that event, new reservations could be formulated by newly independent States and any reservations of the predecessor State not confirmed in the notification of succession would be considered as not being maintained by them.

77. Her delegation viewed the rules laid down in draft article 19 as an attempt to combine those two general solutions. When providing for the presumed continuance of the reservations of the predecessor State, the International Law Commission had relied on the requirements of the concept of succession itself; when providing for the formulation of new resvations, her delegation felt obliged to reserve its position on the Austrian amendment to article 19. It quirements. Thus, the Commission had provided for the possibility that a notification of succession could be treated, at least to some extent, as the independent act of will of a State expressing its consent to be bound by a treaty. Believing, as it did, that it was better to be realistic than puristic, her delegation was inclined to accept the text of article 19 as drafted by the International Law Commission.

78. In view of State practice in the matter of reservations, her delegation felt obliged to reserve its position on the Austrian amendment to article 19. It considered that the amendment submitted by the Federal Republic of Germany, which attempted to treat in a comprehensive way all possible statements and instruments of the predecessor State relating to a multilateral treaty, went too far and was not sufficiently clear. That amendment raised the questions whether the expression "any statement or instrument made in respect to the treaty in connexion with its conclusion" also comprised preparatory work, and whether all the statements or instruments of the predecessor State could properly be said to be relevant in respect of dependent territories and, thereafter, in respect of newly independent States. Moreover, the statements or instruments referred to in the amendment were hardly relevant in cases in which a multilateral treaty had simply been extended to the dependent territory concerned many years after the metropolitan Power itself had consented to be bound by that treaty. In view of those doubts, her delegation found if difficult to accept the amendment of the Federal Republic of Germany.

79. Mr. KATEKA (United Republic of Tanzania) said that his delegation would have preferred the presumption made in article 19, paragraph 1 to be reserved, so that a successor State, when accepting obligations under a treaty, would be considered to start with a "clean slate" in regard to reservations unless it expressed a contrary intention. While the acceptance of a treaty concluded by a predecessor State might be beneficial to a successor State, it did not necessarily follow that the acceptance of the reservations of the predecessor State was also in the interests of the successor State, since those reservations might have been greatly to the advantage of the predecessor State; many newly independent States lacked the necessary staff to review treaty reservations carefully and identify those which were not to their advantage. Since, however, article 22 of the Vienna Convention on the Law of Treaties provided that a reservation could be withdrawn at any time, he could reluctantly consider subscribing to the International Law Commission's text.

80. He reserved the right to comment at a later stage on the amendments submitted by Austria and the Federal Republic of Germany.

81. Sir Francis Vallat (Expert Consultant) observed that the Netherlands representative had asked whether the term "reservation" as used in draft article 19 also comprised objections to reservations and objections to objections, as provided for in articles 20 and 21 of the Vienna Convention on the Law of Treaties. What the International Law Commission had done in draft article 19 was to provide for the case of a reservation and to leave the situation regarding other aspects to be governed by the rules of international law, whether of a conventional or a customary character.

82. Attention should be drawn to the need for the provision embodied in draft article 19, which arose from the terms of the Vienna Convention. Article 19 of that Convention provided that, other than in certain specified circumstances, a State could formulate a reservation "when signing, ratifying, accepting, approving or acceding to a treaty".[18] That formulation did not include a notification of succession. The draft article under consideration made provision for newly independent States to establish their status as parties to a multilateral treaty by a notification of succession. Consequently, if the notification was, for that purpose, to be treated as similar to a ratification, acceptance or approval, the provisions of draft article 19 regarding reservations were necessary.

83. On the other hand, it could be seen from paragraphs (13) to (16) of the commentary to article 19 (A/CONF.80/4, pp. 65-66) that the Commission had considered the question of the effect of objections to reservations with a certain amount of care and that, partly for practical and partly for theoretical reasons, it had come to the conclusion that it was not necessary to deal expressly with the question of objections in draft article 19. That was partly because an objection, unless it was coupled with a notification that a treaty was not regarded as being in force between the objecting State and the reserving State, would take effect subject to the reservations formulated, but if there were such a notification, there would be no treaty relationship between the predecessor State and the reserving State to which the successor State could in that event succeed. The International Law Commission had concluded, in paragraph (15) of its commentary, that it would be better, in accordance with its fundamental method of approach to the draft articles, to leave the questions of acceptances of, or objections to, reservations to be regulated by the ordinary rules applicable to such matters, on the assumption that unless it was necessary to make some particular provision in the context of the succession of States, the newly independent State would "step into the shoes of the predecessor State" (*ibid.*, p. 66).

84. The representative of Ghana had asked whether article 19 was designed to apply only to newly independent States or whether its provisions were also available to any successor State and, if so, whether it would not be preferable to draft the article in more general terms. The answer was that article 19 related solely to newly independent States, as he believed was clear from the fact that that article appeared, not in part I under the general provisions of the draft convention, but in part III. In order not to complicate the Committee's deliberations, he thought it would be better to defer consideration of the question whether the provisions of article 19 should be made available to any successor State until the Committee took up part IV of the draft.

85. Mr. RANJEVA (Madagascar) said that, despite the explanations just given by the Expert Consultant, his delegation still had some doubts about the problem of objections to reservations. It believed that serious practical difficulties might arise in connexion with that problem, because it was not at all certain that the States parties to a multilateral treaty would adopt the same attitude towards the successor State as they had adopted towards the predecessor State. It was therefore regrettable that the International Law Commission had not included an explicit provision relating to objections to reservations in the text of draft article 19.

86. The Austrian amendment ran counter to the "clean slate" principle accepted by the Committee and failed to take account of the distinction made in draft article 19 between the successor State's right to maintain reservations formulated by the predecessor State and its right to formulate new reservations to a treaty. Hence he could not support the Austrian amendment.

87. He also had some difficulties with the amendment submitted by the Federal Republic of Germany, the wording of which was much too broad in scope, as the representative of Poland had said. In addition, he did not see why the Federal Republic of Germany had thought it necessary to create a special régime for reservations formulated by a successor State. Although he accepted the idea that there should be some continuity in reservations to treaties he could not agree that statements or instruments made with respect to a treaty by a predecessor State should be considered as remaining effective for a newly independent State.

88. His delegation therefore supported the Commission's text of draft article 19, which took account of the fact that a successor State could withdraw a reservation at any time and gave expression to the principle of the right of every newly independent State to self-determination.

89. Mr. SCOTLAND (Guyana), referring to the amendment submitted by Austria, said that his delegation did not agree with the Austrian delegation's view that, when a succession of States occurred, the newly independent State took on all the reservations

[18] *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. 291.

to a treaty formulated by the predecessor State. Bearing in mind that reservations to a treaty could be withdrawn at any time without the consent of any other State party, a debate on the question whether a treaty and the reservations made thereto formed one whole or were to be considered as separate but related documents could go on interminably and yet no firm conclusion would be reached. The Austrian amendment denied the newly independent State the right to formulate a reservation which related to the same subject matter as the reservation formulated by the predecessor State; that was a negation of the principle of self-determination, which found expression in the act of succession by the newly independent State.

90. It had been an understatement for the representative of the Federal Republic of Germany to say that the wording of his delegation's amendment was very strong. That amendment was designed to make a statement by the predecessor State with respect to the treaty in question binding on the successor State, even though the successor State would have to confirm that statement when it expressed its consent to be bound by the treaty. His delegation could not support the amendment submitted by the Federal Republic of Germany.

91. He would like the delegations of Austria and the Federal Republic of Germany to explain what the position would be if the maintenance of a particular reservation in the form in which it had been cast by the predecessor State was incompatible with the successor State's intentions, even though that State might wish to become a party to the treaty in question through an act of succession, rather than through an act of accession or ratification.

92. Although his delegation agreed with the representative of the United Republic of Tanzania that the International Law Commission's text of article 19, paragraph 1, might have been drafted in a different way, it was of the opinion that, as it stood, that provision represented the minimum possible derogation from the "clean slate" principle, which was the cornerstone of the draft articles.

93. Mr. MARESCA (Italy) said that, although reservations weakened international conventions and treaties, they were a necessary evil. Of course, no newly independent State was under any obligation to become a party to any of the predecessor State's multilateral treaties or to assume any of the reservations to those treaties formulated by the predecessor State. If the newly independent State remained silent, the legal presumption was that it maintained those reservations, whereas, if it expressed a contrary intention or formulated a reservation which related to the same subject-matter as the predecessor State's reservation, as stated in a very balanced way in draft article 19, paragrpah 1, it would not be considered as maintaining those reservations. His delegation fully supported the International Law Commission's text of draft article 19, which took account of all the possibilities regarding the problem of reservations to treaties.

94. In the amendment submitted by Austria, the proposal to delete the words "or formulates a reservation which relates to the same subject matter as that reservation", at the end of paragraph 1, was logical. Indeed, those words were unnecessary since paragraph 1 also stated that the newly independent State would be considered as maintaining any reservation to a treaty unless it expressed a contrary intention. His delegation could not, however, support the Austrian proposal to delete paragraphs 2 and 3 of draft article 19, because it was of the opinion that, from the practical point of view, repetition served a definite purpose in legal texts.

95. His delegation had some difficulty in supporting the amendment submitted by the Federal Republic of Germany, because of the very strong and inflexible wording of the last part of the proposed new paragraph 1, which probably did not reflect the real intentions of the sponsor.

The meeting rose at 8.05 p.m.

28th MEETING

Tuesday, 26 April 1977, at 11 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 19 (Reservations)[1] (*continued*)

1. Mr. KRISHNADASAN (Swaziland) said that draft article 19 reflected a pragmatic approach to the whole question of reservations and showed due regard for the normal practice of newly independent States.

2. His delegation would have difficulty in accepting the amendment submitted by the Federal Republic of Germany (A/CONF.80/C.1/L.36), in particular, the provision in the proposed new paragraph 1 that "any statement or instrument made in respect to the treaty in connexion with its conclusion or signature by the

[1] For the amendments submitted to article 19, see 27th meeting, foot-note 12.