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28th meeting of the Committee of the Whole

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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 Bearing in mind that reservations to a treaty could be withdrawn at any time without the consent of any other State party, a debate on the question whether a treaty and the reservations made thereto formed one whole or were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.

predecessor State, shall remain effective for the newly independent State". Instruments of the type referred to were, of course, made in treaty practice; in his delegation's view, however, they could not always be considered binding, especially in relation to the terms of a succession of States.

3. With regard to the Austrian amendment (A/CONF.80/C.1/L.25), his delegation saw no real need to delete paragraphs 2 and 3 of article 19, though it had no strong views on the matter. It would have difficulty, however, in agreeing to the proposed deletion from paragrpah 1. Reservations of the type made by Zambia, and referred to in paragraph (10) of the International Law Commission's commentary (A/CONF.80/4, p. 65), were a striking example of the practice in making reservations, which the International Law Commission had borne in mind when drafting article 19.

4. His delegation endorsed the International Law Commission's approach in regarding specific forms of accession as being of greater help to newly independent States than succession as such. It did not think that the International Law Commission had failed to conform to the norms of international law; but it believed that newly independent States should, wherever possible, create new norms themselves.

5. Mr. NATHAN (Israel) thought that adoption of the Austrian amendment could lead to difficulties in implementing the future convention, since the amendment itself was based on legal premises which might well be incompatible with some of the basic concepts on which the draft convention was based.

6. The procedure outlined in draft article 19 was clear and convenient; it allowed a newly independent State to formulate new reservations when making a notification of succession, and provided for participation when that would not be possible by any other means than succession.

7. The legal basis of the Austrian amendment was apparently that a successor State would "step into the shoes" of the predecessor State. In his delegation's view, article 19 should be construed in the light of the provisions of article 16 and of the definition of succession of States in article 2, paragraph 1, subparagraph (*b*). It could be seen, from paragraph (3) of the International Law Commission's commentary to article 2 (*ibid.*, p. 17), that a succession of States was not a legal inheritance or a transmission of rights and obligations; a newly independent State, on exercising its right of option under article 16, would simply have the right of option to establish itself as a separate party to the treaty in virtue of the legal nexus established by its predecessor. Its right was to notify its own consent to be considered as a separate party to the treaty; that was not a right to step into the predecessor's shoes. The significance of article 19 was that a newly independent State should be "considered" as maintaining its succession to the treaty. In other words, notification of succession was an independent act of the successor State's own volition.

8. If the idea underlying the Austrian amendment was taken to its logical conclusion, the provision in article 20, which gave a new State the option to bring only part of a treaty into operation or to choose between differing provisions, would have to be deleted, since the draft articles allowed a new State the same right of choice, in the context of article 20 as in that of article 19.

9. His delegation could agree with the principles embodied in the amendment submitted by the Federal Republic of Germany, but the words "any statement or instrument", in the proposed new paragraph 1, should be clarified, so as to avoid conflicting interpretations.

10. The method of drafting by reference, used by the International Law Commission in article 19 and referred to in paragraph (21) of its commentary to article 19 (*ibid.*, p. 67), was normal in municipal law, but unusual in international law. The draft convention was not meant to be subsidiary to the Vienna Convention on the Law of Treaties; indeed, the International Law Commission had derogated in some way from the Vienna Convention on various occassions. It had not adopted the method of reference elsewhere; in article 2, for example, it had reproduced verbatim the definitions of terms contained in the Vienna Convention.

11. His delegation hoped that the Drafting Committee would give careful attention to those matters when considering article 19.

12. Mr. MIRCEA (Romania) said that his delegation's position of principle in regard to article 19 was that the article was an essentially practical one, intended to assist the participation of newly independent States in multilateral treaties altready in existence which related to their territories. The presumption seemed to be that the successor State would maintain its predecessor's reservations; but his delegation did not interpret that as an automatic succession according to the principle of succession of States. In addition to the reason given by the International Law Commission, his delegation thought there were two further considerations; first, that a newly independent State, simply by remaining silent, could have an obligation imposed on it; secondly, that if the maintenance of reservations was not presumed, there was a risk of going against a State's real intention.

13. In his delegation's view, the Committee should reason differently. In adopting the procedure for simplifying notification of succession, all were agreed that a succession was an independent act on the part of a successor State. That being so, his delegation thought the reverse presumption would be better,

since there was a stronger case for it. In the first place, the very nature of a reservation made the application of a treaty somewhat restricted, so that a restricted interpretation was called for. Secondly, automatic application of the general rule concerning all objections would give rise to practical difficulties, although the intention was to enable newly independent States to become parties to treaties without undue delay. It was left open to all the other parties to make objections with regard to the newly independent State. It was in that light that his delegation viewed the purpose of the Austrian amendment. Perhaps if the presumption were reversed, the last part of the first paragraph would be deprived of meaning.

14. In paragraph 3 of article 19, the International Law Commission had for the first time departed from the drafting practice it had used elsewhere. In his delegation's view, the cross-reference to the Vienna Convention on the Law of Treaties was not simply a drafting convenience, but entailed the application of all the rules in that Convention concerning reservations and objections to reservations.

15. Mr. NAKAGAWA (Japan) said his delegation had some doubts about the drafting of article 19, believing that it would have been better if based on the "contract-in" rather than the "contract-out" system, since automatic transmission of a reservation from a predecessor to a successor State was not in accordance with the "clean slate" principle. However, his delegation could go along with the International Law Commission's text.

16. It did so on the understanding that when a successor State succeeded to a reservation made by a predecessor State it did "step into the shoes" of that State; hence a State party which had objected to the original reservation which had been made by the predecessor State did not need to repeat the objection with regard to the successor State.

17. Mrs. THAKORE (India) said that the problem of reservations related to all types of succession, not merely to newly independent States. In her delegation's view, there was a gap which should be filled by adding an article on reservations to part IV of the draft, which dealt with the uniting and separation of States.

18. Her delegation could support draft article 19, although it saw merit in the suggestion that the presumption in paragraph 1 should be reversed.

19. There seemed to be nothing compelling in the legal reasoning behind the Austrian amendment, which sought to deny the right not only to formulate a new reservation, but also a reservation relating to the same subject matter as the one made by the predecessor State, and thus ran counter to the principle of self-determinaition. For the reasons stated in paragraph (20) of the commentary, her delegaion thought that paragraph 2 of draft article 19 was necessary. Paragraph 3, which would ensure that any reservation made by a newly independent State in exercise of the right conferred by paragraph 2 would be subject to the relevant rules of the Vienna Convention, was closely connected with paragraph 2 and hence should also be retained in order to avoid any ambiguity.

20. The amendment submitted by the Federal Republic of Germany sought to cover all possible cases and bring within the scope of article 19, paragraph 1 "any statement or instrument made in respect to the treaty in connexion with its conclusion or signature by the predecessor State". Her delegation thought that that provision was too wide in scope, and preferred the International Law Commission's text of paragraph 1.

21. Mr. TREVIRANUS (Federal Republic of Germany) formally withdrew the amendment to article 19 contained in document A/CONF.80/C.1/L.36.

22. Replying to a question asked by the Polish representative at the 27th meeting,[2] he said that his delegation had not intended the text of the proposed new paragraph 1 of article 19 to encompass, by the words "any statement or instrument", everything said in negotiations leading to a treaty, but only relevant legal documents and statements of the type referred to in article 31, paragraph 2 of the Vienna Convention on the Law of Treaties. Indeed, the language of the amendment had been modelled on the Vienna Convention.

23. The question raised by the representative of Ghana had been subsequently answered by the Expert Consultant.[3] The point was that the problem arising in connexion with article 19, would also arise in part IV of the draft articles, the legal nature of the succession being the same. Perhaps discussion on the subject would be resumed when the Committee came to consider part IV.

24. Neither his delegation's amendment nor the International Law Commission's draft offered any answer to the Guyanese representative's question concerning the possibility of a reservation being continued by a successor State and being subsequently found incompatible with the object and purpose of the treaty within the new context.[4] However, the lacuna could surely be filled by analogy or by reference to the general law of treaties.

25. Only some of the objections against the motivation of the amendment submitted by the Federal Republic of Germany seemed to be based on the denial that the notion of "stepping into the shoes" of the predecessor was sound if the successor State

[2] See above, 27th meeting, para. 78.

[3] See above, 27th meeting, paras. 72 and 84.

[4] See above, 27th meeting, para. 91.

chose to do so. On the other hand, there was clearly no widely held view in the Committee that a serious lacuna existed; his delegation felt sure, however, that the Drafting Committee could deal with the matter in the light of the discussion that had taken place. Although his delegation was withdrawing its amendment, it believed that the discussions it had prompted might be of value in clarifying that particular and rather complex sector of international law.

26. Mr. HERNDL (Austria) said it was precisely in order to include an element of legal logic in article 19 that his delegation had introduced its amendment. Contrary to some of the views expressed, that amendment was in fact consistent with the principle of self-determination. For that principle was confirmed by the "clean slate" rule, which was fully safeguarded by paragraph 1 of article 16, which had already been adopted; and if a newly independent State chose the procedure outlined in that paragraph, it could in no way be deemed contrary to the principle of self-determination to say that a treaty was to be inherited by a successor State as it was—in other words, with the existing reservations attached to it.

27. The solution offered by the Austrian amendment not only lay within the legal premises of the whole conception underlying article 19, but also offered a practical solution to the dilemma noted by the International Law Commission in paragraph (20) of its commentary (*ibid.*, p. 67). Of the two alternative ways of dealing with the inconsistency mentioned in that paragraph, the International Law Commission had opted for alternative (*b*), whereas the Austrian amendment had been submitted in the spirit of alternative (*a*). Both alternatives were possible, and both conformed to legal principles; the choice was a matter of legal logic. The International Law Commission, in making its choice, had felt the need to add the provisions of article 19, paragraphs 2 and 3, which referred to the Vienna Convention on the Law of Treaties. But the International Law Commission itself had recognized, in paragraph (21) of its commentary (*ibid.*), that there had been some opposition to drafting by reference, particularly because the parties to the different instruments concerned might not be the same States.

28. But perhaps the crucial point was that the International Law Commission, as could be seen by reference to paragraph (22) of its commentary (*ibid.*), had also avoided specific reference to the moment when a new reservation would become effective. Thus the fate of the reservations was basically governed by the provisions of the specific treaty to which the newly independent State wished to succeed. Under article 16, if a newly independent State chose to make notification of succession, it would become effective at the date of the succession and would thus be retroactive. But any new reservation made by the new State would become effective not at the date of the succession, but at a later date in accordance with the treaty provisions.

29. His delegation also had some difficulty with the fact that, while the filing of a notification of succession could conceivably be said to mean acceptance of a treaty, it was not among the actions mentioned in article 19 of the Vienna Convention on the Law of Treaties, which stipulated that a State might formulate a reservation "when signing, ratifying, accepting, approving or acceding to a treaty".[5]

30. He hoped that his remarks had illustrated the problems which his delegation saw in the present text of draft article 19. It believed that a newly independent State had a choice: it could either accede to a multilateral treaty, in which case it had an inherent right to make reservations at the time of accession; or it could succeed to the treaty, in which case it was bound to the instrument by virtue of the succession and must inherit it as it stood. A newly independent State would not necessarily have a right to formulate a reservation by virtue of the provisions of the future convention. The legal complications to which he had referred would be removed if the paragraphs 2 and 3 of article 19 were deleted, and he hoped that the Committee would agree to his delegation's proposal to that effect. He withdrew the part of his delegation's amendment relating to paragraph 1 of article 19.

31. He had been asked at the 27th meeting what would be the position with regard to a reservation of a predecessor State which was incompatible with the objects and purposes of a newly independent State, if all of article 19 except paragraph 1 was deleted. The answer to that question was to be found in article 22, paragraph 1, of the Vienna Convention on the Law of Treaties, according to which a reservation could be withdrawn at any time without the consent of a State which had accepted it.

32. Mr. STUTTERHEIM (Netherlands) said that the text of article 19, paragraph 1, did not make it clear that, as explained by the Expert Consultant, the intention behind the use of the term "reservation" in that paragraph was to indicate that the successor State "stepped into the shoes" of the predecessor State. He therefore proposed that the Drafting Committee should be asked to revise the paragraph so as to show that the term in question referred not only to reservations as such, but also to objections and objections to objections made by the predecessor State.

33. Mr. MUDHO (Kenya) said that his delegation considered article 19 to be inconsistent with both the "clean slate" principle and the principle of self-determination, inasmuch as paragraph 1 established a presumption of the continuance in force, irrespective of the wishes of the successor State, of reservations made by the predecessor State with regard to the territory to which succession related. Since at least some

[5] *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.

of those reservations might be inimical to the interests of a newly independent State, paragraph 1 should be redrafted so as to reverse that presumption.

34. In view of that position, his delegation was unable to support the amendment submitted by the delegation of Austria.

35. Mr. HELLNERS (Sweden) said that, in essence, the position of his delegation in regard to article 19 was still as described by the representative of Austria at the 27th meeting, when introducing his amendment.[6] He was grateful to the representative of Austria for having withdrawn the first paragraph of that amendment; the second paragraph had some merit, since it simplified the present text of article 19, and the making of reservations should not be unduly encouraged.

36. The remaining part of the Austrian amendment did not seem to him to infringe the principle of self-determination. He did not wish to take a definite stand on the question whether the reversal of the presumption in article 19, paragraph 1, suggested by the representative of Kenya, would be more or less in keeping with that principle; but he did think that if that suggestion was accepted, it would be more logical to retain paragraphs 2 and 3 of the article. Referring to the comments contained in paragraph (21) of the commentary to article 19 (*ibid.*), he said that, if paragraph 3 was to be retained, the Drafting Committee should take up the question of how it fitted into the text.

37. Mr. KATEKA (United Republic of Tanzania) proposed that in paragraph 1 of draft article 19 the word "maintaining" should be replaced by the word "discontinuing" and the phrase "or formulates a reservation which relates to the same subject matter as that reservation" should be deleted.

38. Mrs. OLOWO (Uganda) supported the amendments to the first paragraph of the article proposed by the representatives of the Netherlands and the United Republic of Tanzania.

39. Mr. MUDHO (Kenya) supported the amendment proposed by the representative of the United Republic of Tanzania.

40. The CHAIRMAN invited the Committee to vote on paragraph 2 of the amendment submitted by Austria in document A/CONF.80/C.1/L.25, paragraph 1 having been withdrawn.

The amendment was rejected by 39 votes to 4, with 36 abstentions.

41. The CHAIRMAN invited the Committee to vote on the oral amendment to paragraph 1 of article 19 proposed by the representative of the United Republic of Tanzania.

The amendment was rejected by 26 votes to 14, with 41 abstentions.

42. The CHAIRMAN invited the Committee to vote on draft article 19.

Draft article 19 was provisionally adopted by 76 votes to none, with 6 abstentions, and referred to the Drafting Committee.[7]

43. Mr. HERNDL (Austria), explaining his vote, said that his delegation had had no choice but to abstain from voting on article 19 as a whole. None the less, it considered that the result of the voting should be taken as an expression of confidence in the action of the International Law Commission and its Special Rapporteur in choosing the second of the alternatives to which the International Law Commission had referred in paragraph (20) of its commentary. His delegation naturally accepted the Committee's decision, although, for reasons of legal logic, it would have preferred paragraphs 2 and 3 of the article to be deleted.

ARTICLE 20 (Consent to be bound by part of a treaty and choice between differing provisions)

44. Mr. SETTE CÂMARA (Brazil) said that draft article 20 dealt with partial application of multilateral treaties in the cases covered by article 17 of the Vienna Convention on the Law of Treaties. It was normal practice for parties to choose the provisions by which they were to be bound. Article 20 established the presumption that, on making a notification of succession, the newly independent State was on the same footing as the predecessor State—a presumption which was of benefit both to the new State and to the other States parties.

45. Nevertheless, "stepping into the shoes" of the predecessor State could not be regarded as an automatic action in which the will of the newly independent State played no part. Paragraph 2 of article 20 covered that point for cases in which the treaty permitted partial application. Paragraph 3 put the newly independent State on the same footing as the other States parties, in that reservations entered by the predecessor State could be inherited, but the essential element of treaty-making, the will of the new State, was fully preserved. That paragraph covered a situation which often occurred in practice as was evident from the examples given in the commentary to article 20 (*ibid.* pp. 68 *et seq*).

46. His delegation had no difficulty in accepting draft article 20.

[6] See above, 27th meeting, paras. 59-64.

[7] For resumption of the discussion of article 19, see 35th meeting, paras. 16-23.

47. Mr. MANGAL (Afghanistan) said that his delegation had no objection to article 20 and supported the basic rule embodied in it. The article made appropriate provision for the newly independent State to establish its status as a party to the type of treaty in question. The new State had the usual discretion to express consent to be bound by part of the treaty or make a choice between differing provisions.

48. However, article 20 did not make it clear whether the newly independent State was entitled to those two advantages if no specific provisions to that effect were included in the treaty concerned. Another point was that the newly independent State might find its will to be bound by part of a multilateral treaty constrained by the need to obtain the consent of the other States parties to the treaty.

49. Mr. MUSEUX (France) said that his delegation had no difficulty with the substance of draft article 20, but considered that paragraph 1 should make it clear that a newly independent State could express its consent to be bound by part of a treaty only if the treaty so permitted. He would therefore suggest that in the penultimate line of paragraph 1 after the word "provisions", the words "if the treaty so permits and" should be inserted. He thought that was only a drafting change.

50. Mr. MARESCA (Italy) and Mr. EUSTATHIADES (Greece) supported the French representative's suggestion as being a useful clarification of the text.

51. Mr. YANGO (Philippines) said that a similar change should be made in the title of article 20.

52. The CHAIRMAN said that, if there was no objection, he would take it that the Committee of the Whole provisionally adopted the text of draft article 20 and referred it to the Drafting Committee for consideration, together with the French representative's suggestion concerning paragraph 1. The Drafting Committee would make a proposal about the title of the article, in the light of the final text.

It was so decided.[8]

ARTICLE 21 (Notification of succession)[9]

53. Mr. GILCHRIST (Australia), introducing his amendment (A/CONF.80/C.1/L.29), said that his delegation supported the substance of draft article 21, which contained necessary procedural provisions concerning the making of notifications under articles 16 and 17, and a saving clause on the duties of depositaries to transmit information about a succession of States. His amendment was essentially a drafting point.

54. The close relationship between draft article 21 and similar procedural provisions of the Vienna Convention on the Law of Treaties, especially articles 16, 67 and 78, was clearly set out in paragraphs (8) to (14) of the commentary to article 21 (A/CONF.80/4, pp. 72-73). Articles 2, 7 and 77 of the Vienna Convention were also directly relevant.

55. The Australian amendment dealt with paragraph 3 of draft article 21 which had already been the subject of second thoughts by the International Law Commission. It was stated in paragraph (13) of the commentary that "The Commission replaced the somewhat vague expression 'transmitted [...] to the States for which it is intended' of the 1972 text by the expression 'transmitted [...] to the parties or the contracting States'" (*ibid.*, p. 73). His delegation wondered, however, whether the International Law Commission had chosen the right way to make the wording of paragraph 3, subparagraph (*a*) more precise. The terms "party" and "contracting State" were defined in article 2, paragraph 1, subparagraphs (*g*) and (*f*) respectively of the Vienna Convention, and from those definitions it appeared that all parties were contracting States, but not all contracting States need be parties; they might, for example, be States which had consented to be bound by a treaty not yet generally in force under the provisions of article 17, or they might be States which had consented to be bound by a treaty which was generally in force during the qualifying period following their formal adherence to it.

56. If it was correct that the term "contracting States" included "parties", it would be sufficient in paragraph 3, subparagraphs (*a*) and (*b*) to refer to contracting States only—a usage which would be consistent with articles 20 and 57 of the Vienna Convention, in which the context made it clear that the term "contracting States" included parties. The apparent disjunction between "contracting States" and "parties" in the International Law Commission's text did not appear in the Vienna Convention, which maintained a well-defined distinction not only between those two terms but also between "parties", "States entitled to become parties to the treaty", "signatory States" and "contracting States", as shown in article 79.

57. In formulating its amendment, his delegation had assumed that the International Law Commission's intention was that notification should be transmitted to all States which had consented to be bound by the treaty, whether it was in force for all of those States—in which case all the contracting States would be parties—or only for some of those States—in which case some of the contracting States would be parties and some would not.

58. If the amendment was adopted, there should be a consequential change to paragraph 4, but that could be left to the Drafting Committee. His delegation would be willing to accept the term "contracting

[8] For resumption of the discussion of article 20, see 35th meeting, paras. 24-36.

[9] The following amendment was submitted: Austria, A/CONF.80/C.1/L.29.

States" instead of the expression proposed in its amendment. He hoped that the Committee would agree to the amendment being treated as a drafting change.

59. In paragraph 5, it was not clear whether the phrase "such notification of succession" related back to the notification referred to in paragraphs 1, 2 and 3 or only to paragraph 4, where notification of succession was coupled with the phrase "or any communication". In the context, the latter reading seemed more likely, since notifications to parties or contracting States, as provided for in paragraph 3, subparagraph (*a*) were not relevant to paragraph 5. He suggested that the Drafting Committee should be asked to clarify that point.

60. Sir Francis VALLAT (Expert Consultant) said that in his view the point raised by the Australian amendment was one for the Drafting Committee. He agreed that the phrase "such notifcation of succession" in paragraph 5 of article 21 might be ambiguous.

61. The use of the terms "the parties or the contracting States" in paragraph 3, subparagraphs (*a*) and (*b*) had been a deliberate choice by the International Law Commission. Article 78 of the Vienna Convention on the Law of Treaties was a general provision, which dealt in its subparagraph (*a*) with cases in which there was no depository. The context was different from that of draft article 21.

62. It had been found useful in drafting provisions on the transmission of notification to specify "parties" and "contracting States" as separate classes, and those terms were used in draft article 21 to pick up the definitions given in draft article 2, paragraph 1, subparagraphs (*k*) and (*l*). Both definitions contained the common element of consent to be bound, but a "contracting State" was one that consented to be bound whether or not the treaty had entered into force, whereas a "party" was one that had consented to be bound and for which the treaty had entered into force. The question was whether the two classes of States should be kept distinct.

63. Mr. MARESCA (Italy) said that, although he did not intend to make a formal proposal on the matter, he would advise the deletion from article 21, paragraph 2 of the provision that the representative of the State communicating the notification of succession might, in specific cases, be called upon to produce full powers. The wording of that paragraph was modelled on article 67, paragraph 2 of the Vienna Convention on the Law of Treaties, which referred to instruments for declaring invalid, terminating, withdrawing from or suspending the operation of a treaty. Article 7, paragraph 2, subparagraphs (*b*) and (*c*) of the Vienna Convention, which explicitly did not require representatives to produce full powers, was more relevant to draft article 21, in that it dealt with the expression of consent to be bound. Experience had shown that insistence on a representative producing full powers was an unnecessary complication, which was open to misinterpretation.

64. The CHAIRMAN said that, if there was no objection, he would take it that the Committee of the Whole provisionally adopted draft article 21 and referred it to the Drafting Committee for consideration, together with the Australian amendment thereto (A/CONF.80/C.1/L.29).

It was so decided.[10]

The meeting rose at 1 p.m.

[10] For resumption of the discussion of article 21, see 35th meeting, paras. 37-40.

29th MEETING

Tuesday, 26 April 1977, at 4 p.m.

Chairman: Mr. RIAD (Egypt)

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

ARTICLE 22 (Effects of a notification of succession)[1]

1. Mr. LANG (Austria) said that the amendment to article 22 (A/CONF.80/C.1/L.26) proposed by his delegation was intended to clarify paragraph 2 of the International Law Commission's draft and to make it more consistent with the Vienna Convention on the Law of Treaties, although his delegation was entirely in agreement with the substance of the article drafted by the Commission.

2. The amendment sought first of all to indicate clearly the moment from which suspension of the operation of the treaty took effect. In paragraphs (6) and (11) of its commentary on the article (A/CONF.80/4, pp. 74-75), the International Law Commission had established that the decisive date was that of accession to independence, whereby it coincided with the date of succession. Nevertheless, his delegation felt that paragraph 2 of the article could specify more clearly when the suspension began.

3. In paragraph (13) of its commentary (*ibid.*, p. 76), the International Law Commission had itself admit-

[1] The following amendment was submitted: Austria, A/CONF.80/C.1/L.26.