United Nations Conference on Succession of States in Respect of Treaties

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3rd meeting of the Committee of the Whole

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the parties by common consent agree to submit the dispute to arbitration",[6] and that disputes concerning the application and interpretation of other articles should be settled in accordance with a procedure for conciliation. His delegation would prefer problems concerning the interpretation of the future Convention to be settled by the International Court of Justice, but was prepared to support the opinion of the majority of States and try to find, with other delegations, a solution acceptable to all.

53. Mr. GILCHRIST (Australia) said that the draft articles as a whole were acceptable and that the Conference should be very prudent in any amendments it might make. He considered, however, that some articles could be modified and others eliminated.

54. Article 2 was not a source of any major problem for his delegation. The improvements which might be made to subparagraph (*b*) of paragraph 1 were, in its opinion, a matter for the Drafting Committee. With respect to subparagraph (*c*), it appreciated the difficulties to which the representative of the United States had referred, but did not consider that a better definition of the "date of the succession of States" would facilitate determination of that date in practice and would have no objection to deletion of that definition.

The meeting rose at 12.50 p.m.

[6] *Ibid.*, p. 298.

3rd MEETING

Wednesday, 6 April 1977, at 3.40 p.m.

Chairman: Mr. RIAD (Egypt)

In the absence of the Chairman, Mr. Ritter (Switzerland), Vice-Chairman, took the Chair.

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

ARTICLE 2 (Use of terms) (*continued*)[1]

1. The CHAIRMAN invited delegations to make general comments on the draft articles[2] and to discuss article 2 paragraph 1, subparagraphs (*a*) to (*g*).

2. Mr. SNEGIREV (Union of Soviet Socialist Republics) said that the draft articles constituted a good basis on which to work out a final instrument, though it could be improved in a number of respects. The preparation of such an instrument was one step among others in the progressive development of international law and its codification, a substantial measure to strengthen the foundation upon which modern co-operation between States must be based. The convention to be drawn up at the present Conference was a multilateral treaty of a universal character, and it would be wholly logical for the question of succession of States in respect of such treaties to find appropriate reflection in it.

3. Draft article 2 was acceptable to the USSR delegation in the form proposed by the International Law Commission in the draft text before the Conference.

4. Mrs. THAKORE (India) said that article 2 was of overriding importance for interpreting the provisions of the draft articles and determining their scope. Her delegation approved of the definitions excepting that of the term "newly independent State" in paragraph 1, subparagraph (*f*). That definition, which determined the circumstances in which the "clean slate" principle would apply to successor States, had a rather restrictive meaning in that it excluded cases of a "new State" emerging as the result of separation of part of an existing State or the union of two or more existing States, to which the rule of *ipso jure* continuity of treaty obligations would apply. Her delegation held the view that the term "newly independent State" should be defined to include all new successor States. She recalled that in his statement to the 1495th meeting of the Sixth Committee, the Indian representative had observed that the adoption of the principle of *ipso jure* continuity in some cases and of the "clean slate" principle in others would require further careful consideration and that it would be preferable to apply the same principle for the transmission of treaties to all States (A/CONF.80/5, p. 122).

5. She drew attention to the definition of the term "newly independent State" suggested by the Government of the United Kingdom, namely, that it should mean "a successor State the territory of which immediately before the date of the succession of States was part of the territory of the predecessor State".[3] That definition would solve the problem arising from the use of the phrase "dependent territory for the international relations of which the predecessor State was responsible" to which several speakers had already drawn attention.

6. She noted that the Government of the Federal Republic of Germany had also expressed the view that the distinction whereby the assumption of a new State's obligation to continue existing treaties would

[1] For the amendments submitted to article 2, see 2nd meeting, foot-note 4.

[2] See above, 1st meeting, paras. 9-11.

[3] *Official Records of the General Assembly, Twenty-ninth Session, Supplement No. 10 (A/9610/Rev.1), p. 163, annex I.*

not apply to newly independent States would have far-reaching consequences and should be reconsidered from the point of view of equal treatment (*ibid.*, p. 54). And in its study on the subject, the Asian-African Legal Consultative Committee had suggested that the definition of the term "newly independent State" should be extended to cover cases of States becoming independent in circumstances other than decolonization.

7. Mr. SEPULVEDA (Mexico) said that his country was in favour of codifying the existing arbitrary and scattered rules on the succession of States, as that would provide a guarantee for newly emerging States. He congratulated the International Law Commission on having achieved a broad consensus in its draft articles, which his delegation found generally acceptable. It was reasonable that they should ultimately be cast in the form of a convention, since they constituted a complement to the 1969 Vienna Convention on the Law of Treaties.[4]

8. His delegation had a clear preference for the adoption of the "clean slate" principle, as being more specific and practical; he could not share the view of the Federal Republic of Germany that States could denounce treaties they found unacceptable: denunciation of treaties was a difficult process which often involved additional obligations. He agreed, however, with the exceptions to the "clean slate" principle in respect of boundary and other territorial régimes, set out in articles 11 and 12 of the draft, though the limitations proposed in paragraph 1 of article 12 were not acceptable.

9. Article 7 should be deleted, since non-retroactivity of treaties was dealt with in article 28 of the Vienna Convention on the Law of Treaties; it was, however, open to discussion whether the matter was fully covered in that article. He thought that the draft articles should contain a reference to the Vienna Convention and that they should be interpreted in the light of the provisions of that Convention.

10. With regard to article 2, he urged that too much time should not be spent on the futile quest for perfect definitions. His delegation was disposed to accept those proposed in article 2 with the exception of the use of the word "responsibility" in paragraph 1, subparagraph (*b*), which was inappropriate in Spanish.

11. Sir Ian SINCLAIR (United Kingdom) paid a tribute to the meticulous preparatory work of the International Law Commission and said that his delegation's attitude to the draft articles was generally positive. It could also support the principle that they should be embodied in a multilateral convention. There might be some doubt about the utility of such a step, since the era of decolonization was rapidly drawing to a close and there was force in the argument that codification in such a form would not necessarily provide solutions to all the treaty problems arising from a succession of States; nevertheless, his delegation believed that the conclusion of a multilateral convention on the topic would be a step forward.

12. One specific point for the Conference to consider was how to ensure, without damage to the principle of partial non-retroactivity embodied in draft article 7, that a successor State could apply the provisions of the future convention to its own succession. By definition, a successor State could not express its consent to be bound by the convention until after the date of the succession of States. His delegation hoped to table a proposal for a procedural mechanism to overcome that difficulty.

13. The United Kingdom had previously expressed misgivings about the "clean slate" principle which, in its view, ignored the many examples of uncontroversial succession to treaties by newly independent States. It recognized, however, that such examples did not invalidate the "clean slate" principle which, founded upon the notion of free choice on the part of newly independent States, met the need to find some appropriate underlying principle for the draft articles. His delegation was therefore prepared to accept the "clean slate" principle as a basis, but he would emphasize that it continued to attach the utmost importance to the retention of the exceptions provided for in draft articles 11 and 12 and would be prepared to consider other proposals for exceptions provided they could be applied objectively.

14. The "clean slate" principle was also relevant to the precise wording of article 2, since a distinction was drawn in the draft articles between the régime applicable to a newly independent State and that applicable to other cases of succession of States, including a separation of States. The definition of a "newly independent State" in paragraph 1, subparagraph (*f*) presented difficulties because it dealt with an inherently elusive concept; there were various stages and mechanisms by which dependent territories achieved independence. In that connexion, he had noted with interest the statement made by the Commission in paragraph (7) of its commentary to article 2 (A/CONF.80/4, p. 17), that in the case of "associated States" the rule to be applied would depend on the particular circumstances of each association. He agreed with the observation of the representative of Iraq that in the application of the articles, it would not be easy to differentiate between the emergence of a newly independent State and the separation of part of an existing State;[5] in that context, article 33, paragraph 3 presented particular problems. For that reason, his delegation attached particular importance to the incorporation into the proposed convention of

[4] *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. 287.

[5] See above, 2nd meeting, para. 12.

satisfactory provisions relating to the settlement of disputes.

15. It was necessary for the Conference to proceed on certain general assumptions; in particular, it was necessary to have a clear understanding of the concept of the succession of States. His delegation endorsed the Commission's view that the essential ingredient was the factual replacement of one State by another in the responsibility for the international relations of territory. He had noted that some delegations had difficulty with the word "responsibility". No doubt the Drafting Committee would wish to consider possible alternative wording; but his delegation would oppose any extension of the scope of the definition to cover internal economic or social changes in a State.

16. Mr. NAKAGAWA (Japan) said that both State practice and theoretical writings on succession of States in respect of treaties had hitherto been characterized by diversity, so that the formulation of clear-cut rules on the subject would contribute to the orderly development of the international community and hence to the maintenance of peace and security.

17. In view of the diversity of State practice in the matter, the task of the Conference could not be confined to a mere codification of existing law, but would involve its progressive development, with due regard for the fundamental principles of equality of States, self-determination, consent and good faith. For example, the principle of equality of States required that no State, whether a predecessor, a successor or a State party to the future convention, should be placed in either a privileged or unfavourable position by the formulation of the rules. In general, the basic structure of the draft articles prepared by the Commission, including the balance between the principle of continuity and the "clean slate" principle, was reasonable and he commended the International Law Commission and the Special Rapporteurs for their work.

18. His delegation wished to comment on three issues.

19. The first was the problem of form. Some delegations seemed to favour a declaration of legal principles rather than a convention. But while he appreciated the difficulties involved in applying a convention to a new State not a party to it, he believed that those difficulties could be overcome; moreover, a just and reasonable convention, which would be complied with because of its own merits, and not only because it was binding, could serve as a basis for the development of customary law.

20. Secondly, the rules to be formulated should not prejudice existing treaty relations between States. His delegation proposed to speak in further detail during the consideration of article 7, and at present simply stressed the need for a clear-cut rule of non-retroactivity.

21. Thirdly, it was important to establish an adequate system for the settlement of disputes, because some rules might lead to complications in application—for example, those relating to compatibility with the object and the purpose of the treaty and to a radical change of conditions for its operation, and the rules contained in article 33, paragraph 3.

22. In general his delegation had no difficulty with the various subparagraphs of article 2, paragraph 1, and it welcomed the close relationship maintained between the draft articles and the Vienna Convention on the Law of Treaties. For the moment it would only express the view that paragraph 1, subparagraph (*f*) might well be reformulated to take into account the various types of dependencies and their stages of progress towards independence.

23. Mr. SATTAR (Pakistan) congratulated the International Law Commission on its excellent work in preparing the draft articles.

24. With regard to article 2, on the use of terms, his delegation noted with satisfaction the choices made by the International Law Commission between various alternatives. For example, it endorsed the choice in paragraph 1, subparagraph (*b*) of the term "responsibility", which was commonly used in State practice and hence should not be lightly discarded.

25. As noted by some previous speakers, a number of the terms and expressions used in the draft articles had been previously defined in the Vienna Convention on the Law of Treaties, following extensive discussion; in order to save time, the Conference should not repeat that work, and to do so might in any case result in differing definitions in two closely related instruments—an outcome which would be contrary to the basic purpose of codification.

26. His delegation hoped that common understanding on the definitions of key terms could be reached at the outset, so that subsequent discussion on the articles could proceed without vagueness.

27. Mr. TORNARITIS (Cyprus) reiterated his delegation's support, subject to certain modifications, of the draft articles, which should take the form of a convention.

28. His delegation had no objections to the definitions proposed in article 2, beyond observing that the definition of a "newly independent State" did not seem consistent with the intended distinction between dependent territories, as described in paragraph (7) of the commentary (*ibid.*, p. 17) and new States arising from separation of territories. He suggested that that point should be clarified by the Drafting Committee.

29. Mr. MIRCEA (Romania) said that the efforts made by the Romanian Head of State and by the Romanian Government for the purpose of elaborating principles to govern the rights and duties of States and to guide international relations were well known.

30. His delegation believed that the Conference should strive to formulate generally acceptable rules and principles, in line with contemporary world conditions; with regard to the codification of rules to govern the succession of States, Romania was among those countries which considered that such rules should be so drawn up as to be easily and swiftly applicable, taking into account the various categories of States and in particular the problems which newly independent States had to face.

31. The adoption of a convention on succession of States in respect of treaties would provide a valuable guideline, but considerable prior consultation would clearly be necessary. His delegation agreed with those which had stressed the need for more specific definitions—for example, of the word "succession" itself and of the principle of non-retroactivity of the articles. It was to be hoped that such matters could be finalized before a convention came into force.

32. With regard to article 2 of the draft, his delegation shared the view that the text might be cross-referenced to the Vienna Convention on the Law of Treaties. Although the comments made by the International Law Commission on article 2, paragraph 1, subparagraph (*b*) were pertinent (*ibid.*), the text as it stood was not fully satisfactory, since the question at issue was not simply one of replacement.

33. His delegation would prefer to see a specific definition of succession of States, which would define the continuity or non-continuity of a treaty. For example, the final text might be worded to say that a predecessor State was one which had secured the application of a particular treaty and that a successor State had the right to assume or renounce that application.

34. With regard to paragraph 1, subparagraph (*f*) of the same article, he would prefer a more neutral text, with the word "successor" and the words following "dependent territory" deleted. His delegation, too, thought that further definitions should be agreed upon to cover such matters as multilateral and general treaties.

35. Mr. DE VIDTS (Belgium), referring to article 2, said that in his Government's view the International Law Commission's draft met the undeniable need for clarity in instruments governing present-day international relations. The Belgian delegation believed that a parallel should be established, as far as possible, between the draft articles and the Vienna Convention on the Law of Treaties.

36. His Government had noted with satisfaction the genuine attempts to arrive at a suitable compromise between the principles of the "clean slate" and *pacta sunt servanda*. In its view, the former principle meant that a newly independent State had the right to decide whether or not to become a party to a treaty entered into by its predecessor, not that it would automatically be deprived of the right to become a party.

37. It was important, of course, to ensure as far as possible that rules governing the succession of States to treaties should avoid any disruption or compromise of current international law and relations between States. The Belgian Government realized that the "clean slate" principle could well entail some problems—for example, some imbalance with regard to continuity—but it was nevertheless prepared to accept the draft articles as a basis for consideration.

38. Mr. NATHAN (Israel) said that one of the cornerstones of the proposed convention would be the "clean slate" principle, which implied that a newly independent State would not automatically be bound by former treaties relating to its territory. His Government acted on that principle in its multilateral and bilateral treaty dealings with other States.

39. The complex nature of the Conference's task made it necessary to give careful consideration not only to the substance, but also to the form of the draft articles. For example, any attempt to give a measure of non-retroactivity greater than that in the present draft could subsequently lead to confusion whenever, following the entry into force of the convention, newly independent States became parties to it. Article 16 provided another example; it might be considered whether a newly independent State should be required to give notification of succession within a reasonable time in order to avoid uncertainty; on the other hand, once such notification had been filed, any party which raised objections on the grounds of incompatibility, in accordance with paragraph 2 of that article, should likewise be required so to notify the other parties or the depositary in good time.

40. The International Law Commission, in drafting paragraphs 2 and 3 of article 19, had simply referred to certain provisions of the Vienna Convention on the Law of Treaties. Some doubts might arise, because that method had not been adopted in other parts of the draft articles, where certain formulations relating to the Vienna Convention had been reproduced almost verbatim.

41. With regard to articles 29 and 30, difficulties might arise from differing or even conflicting treaty provisions, because of the proposal that the treaties of each predecessor State should remain in force only in respect of that part of the territory of the union for which it was in force prior to the union, and not to the united territory as a whole.

42. A clause was needed to govern settlement of disputes. Such a clause might be modelled on the annex to the Vienna Convention, providing for settlement by conciliation on an optional basis.

43. His delegation could, in general, agree to the draft of article 2, but would like paragraph 1, subparagraph (*b*) to be amended in order to make it clear that the territory for which responsibility in international relations was assumed was the territory to which the succession related. There were also grounds for misgivings with regard to paragraph 1, subparagraph (*f*); the draft distinguished clearly, with regard to succession of States, between newly independent States, on the one hand, and a union or merger on the other, and the distinction should not be blurred.

44. The CHAIRMAN said that the Israeli representative's remarks concerning article 2 would be noted by the Drafting Committee.

45. Mr. SETTE CÂMARA (Brazil) observed that the draft articles represented the distillation of long study by the International Law Commission, masterly reports by its two Special Rapporteurs, and debates in the Sixth Committee of the General Assembly, which had given them additional substance; there could be no doubt, therefore, that the Conference was starting its work on very sound and well prepared ground. His delegation was in full agreement with the general philosophy of the basic proposals and considered them to represent a very realistic approach to the question of succession of States in respect of treaties.

46. In the current age of decolonization, it was right that the draft articles had not retained the municipal law principle of the automatic inheritance of rights and obligations. No country would accept engagements entered into by another without first expressing its own will and that of its people as properly ascertained, for to do otherwise would be to accede to independent life bound by foreign commitments. The basic principle of the draft was, therefore, that a newly independent State was born free and began its life with a clean slate. With one or two exceptions, that principle had been accepted by all the governments which had submitted written or oral comments on the draft articles. It was fully consistent with the general law of treaties, according to which the will of the State was the decisive element in treaty-making procedures.

47. The draft articles before the Conference also preserved another essential feature of the 1972 version,[6] namely, the principle of the continuity *ipso jure* of treaties in the case of a succession relating to territory which had previously enjoyed sovereignty. Such cases were dealt with in part IV of the draft. The balance between the principle of the "clean slate" and of continuity *ipso jure* was the key to the economy of the whole draft. Conflicts between predecessor and successor States had been common in the past, but his delegation believed that the draft articles proposed by the International Law Commission succeeded in harmonizing the successor State's complete lack of obligations and almost absolute possession of rights in respect of succession to treaties, with the requirements of international life.

48. While it was undoubtedly the process of decolonization which was the most frequent source of successions in modern times, the broad and flexible wording employed in article 2 offered the advantage of also covering successions arising in other circumstances. It was also an advantage that the draft defined succession as the "replacement" of one State by another. As other delegations had said, that definition was not perfect, but it should be borne in mind that behind it, as behind the concept of the "newly independent State", lay the problem of sovereignty. The International Law Commission had deliberately chosen the present wording in order to avoid discussing that complex subject.

49. Article 2 went far beyond a mere explanation of the meaning of terms. The phraseology of the article and the commentary to it prepared by the International Law Commission (*ibid.*, pp. 16-18) showed that the task before the Conference was to be understood as being contained within the borders of the general law of treaties. Once it was admitted that succession of States relating to treaties was part of the law of treaties, rights and obligations could derive from no other source than the expressly stated will of the contracting parties.

50. It would certainly be necessary to return to the question of the definition of terms at a later stage in the Conference. He shared the opinion that the draft convention should include a section on the settlement of disputes.

51. Mr. BENBOUCHTA (Morocco) observed that in 1975 his delegation had said that it would prefer the subject matter of the draft to be presented in the form of a declaration of principle or a General Assembly resolution, rather than a convention (A/CONF.80/5, p. 26). It had held that view for a purely practical reason: as many other delegations had pointed out, a convention would raise the problem of its applicability to newly independent States.

52. Morocco believed firmly that the articles should not be retroactive. But since non-retroactivity was a general principle of international law, there was no need for an article restating it. If the article in question (article 7) was retained, it should be redrafted to remove all ambiguity.

53. Morocco supported the adoption of the "clean slate" principle in the convention, since it had al-

[6] *Official Records of the General Assembly, Twenty-seventh Session, Supplement No. 10* (A/8710/Rev.1), chap. II, sect. c.

ways upheld the concept of contractual freedom. It considered, however, that that principle should have been more flexibly stated in the present case, and that the interests of the international community would be better served if the draft referred to automatic succession to multilateral law-making instruments.

54. The International Law Commission had given too much weight to the question of the emergence of newly independent States as the result of decolonization—a process which was drawing to its close. More importance should have been attached to the new forms of succession arising out of unions of States and the like.

55. With regard to article 2, his delegation agreed with that of Romania that the concepts of the "predecessor State" and the "successor State" should be more clearly defined. With respect to paragraph 1, subparagraph (*f*) of the article, it agreed with the delegation of Iraq[7] that the mention of other cases or forms of succession would make the draft more balanced.

56. The CHAIRMAN said that, if there were no objections he would take it that the Committee agreed to the request from the Observer from the United Nations Council for Namibia that he be permitted to make a statement on article 2 at the following afternoon's meeting.

It was so agreed.

57. After a procedural discussion in which Mr. DAMDINDORJ (Mongolia), Mrs. BOKOR-SZEGÖ (Hungary), and Mr. MANGAL (Afghanistan) participated, the CHAIRMAN suggested that the Committee should resume consideration of article 2, paragraph 1, subparagraphs (*a*) to (*f*) at the following afternoon's meeting and that the deadline for submission of amendments to that part of article 2 and to articles 3 to 6 should be Friday, 8 April, at 1 p.m. He further suggested that delegations should be free to submit, at any time, amendments to any part of article 2 which derived from amendments to later articles.

58. Mr. MARESCA (Italy), supported by Mr. MUSEUX (France), suggested that no deadline should be set for the submission of amendments to any part of article 2 until the Committee was in a position to take a firm decision on the content of that article.

59. Mr. SATTAR (Pakistan) said that he found the Chairman's suggestions concerning the submission of amendments to article 2 reasonable, since the subsequent work of the Committee would be made very difficult if no understanding was reached at an early stage on at least the key terms in the article.

60. Sir Ian SINCLAIR (United Kingdom) said he agreed with the representative of Pakistan that the Chairman's suggestion concerning amendments to article 2 was fair and reasonable. Moreover, he thought that the Committee must reach agreement promptly on the meaning of the terms to be used in the draft convention, so that the Drafting Committee could begin its work as soon as possible.

61. Mr. YANGO (Philippines) said that his delegation shared the views of the delegations of Pakistan and the United Kingdom concerning possible amendments to article 2. It also agreed with the representative of Brazil that it would be necessary for the Committee to come back to article 2 later in its work.

62. Mr. MUSEUX (France) said that his delegation also supported the Chairman's suggestion, which was reasonable and allowed some latitude in the submission of amendments.

63. The CHAIRMAN said that, if there were no objections he would take it that the Committee decided to follow the suggestion he had made concerning amendments to article 2.

It was so decided.

64. The CHAIRMAN invited the Committee to consider article 2, paragraph 1, subparagraphs (*h*) to (*n*), and paragraph 2.

65. Mr. EUSTATHIADES (Greece) said that paragraph 2 added nothing to article 2. It was unnecessary to include that paragraph in the article because it would, in any case, not be possible to prevent States from using terms other than those embodied in the draft convention. Moreover, the inclusion of such a paragraph would be an invitation to anarchy among contracting States, which should simply be required to use the terms adopted in the draft convention.

66. Mr. YASSEEN (United Arab Emirates) said he shared the view of the representative of Greece concerning article 2, paragraph 2. He wished, however, to remind the representative of Greece that that paragraph was taken from article 2, paragraph 2, of the Vienna Convention on the Law of Treaties, and he feared that its deletion might give rise to confusion in the interpretation of the future convention.

67. Sir Francis VALLAT (Expert Consultant) said that there were two technical reasons why paragraph 2 had been included. First, certain terms, such as "ratification" and the term "treaty" itself, had in some States different meanings in internal law and in international law. Secondly, article 2, paragraph 2, of the Vienna Convention on the Law of Treaties contained a provision with the same wording, and doubt and confusion might arise if it were omitted from the draft convention.

[7] See above, 2nd meeting, para. 12.

68. Mr. EUSTATHIADES (Greece) said he realized that the Expert Consultant and the representative of the United Arab Emirates attached considerable importance to article 2, paragraph 2, but he did not see why the draft articles under consideration had to embody the same mistake as had been made in the Vienna Convention on the Law of Treaties. He did not think that the deletion of paragraph 2 would give rise to confusion, because the terms used in the draft articles were very specific and had a particular meaning.

69. Mr. MIRCEA (Romania) said he fully supported the view expressed by the representative of Greece concerning article 2, paragraph 2. He did not think the Committee was obliged to use the exact wording of the 1969 Convention on the Law of Treaties; it was free to decide what provisions should be included in the draft articles, provided that it could agree on the meaning of the terms used.

70. Mr. ARIFF (Malaysia) said that, since the terms used in the draft articles might have different meanings in internal law and in international law, it was necessary to include article 2, paragraph 2, in the draft articles. Moreover, he believed that that provision ensured respect for the sovereignty of all States.

The meeting rose at 5.50 p.m.

4th MEETING

Thursday, 7 April 1977, at 10.30 a.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 3 (Cases not within the scope of the present articles)[1]

1. Mr. KOECK (Holy See) said that his delegation was ready to do everything in its power to ensure the successful outcome of the Conference and to lend its support to other delegations, in keeping with the Holy See's particular mission in the world and its intention to keep aloof from political quarrels. His delegation attached the highest importance not only to draft article 3 as such but also to the principle embodied therein, particularly since the international community would be inclined to consider the provisions of the convention as applicable in practice, regardless of whether or not the convention was in force. Evidence of that could be seen in the fact that the International Court of Justice had already adopted a similar position concerning the Vienna Convention on the Law of Treaties, for the very reason that, although it was not in force, the Convention reflected to a large extent the traditional law in that field. One might even be tempted to take the view that the adoption of codification conventions was more important than their ratification.

2. The Holy See not only concluded agreements that were in the nature of treaties between States when it acted on behalf of the Vatican City State—it also entered into such agreements as the supreme organ of the Catholic world. Consequently, his delegation attached particular importance to draft article 3, for it considered that subparagraph (*a*) took into account cases in which the Holy See, not as a State but in its capacity as representative of the Catholic world, concluded concordats with States, i.e. treaties concerned mainly with religious matters. However, the reference in that provision to general international law might raise difficulties in practice, because the draft did not specify whether particular provisions constituted new rules of law or merely reflected existing customary international law. For that reason, the Holy See would have to examine separately each case of State succession in respect of concordats, having regard to the particular circumstances of every case. It was his understanding that that position was in keeping with the international practice that had developed over the centuries, i.e. that concordats were international treaties of a special character.

3. Mr. MIRCEA (Romania), explaining why his delegation had submitted amendments to articles 1, 3 and 4 (A/CONF.80/C.1/L.2), said that it had sought to include in the scope of the convention the case of treaties concluded between States and other subjects of international law. While it was true that some bodies studied the law of treaties concluded with international organizations, they did not, however, cover the problem of succession to such treaties. As to draft article 3, his delegation had preferred to delete subparagraphs (*a*) and (*b*); firstly, because it would be difficult to draw a distinction between the provisions which were obligatory and the provisions which reflected the progressive development of international law; secondly, because the provision contained in subparagraph (*b*) appeared to be restrictive and it would be advantageous to the international community if subjects of international law other than States could avail themselves of the provisions of the convention.

4. It was his understanding that adoption of draft article 3 by the Committee would in no way prejudge the fate of his delegation's amendment.

[1] The following amendment was submitted: Romania, A/CONF.80/C.1/L.2.