

United Nations Conference on Succession of States in Respect of Treaties

Vienna, Austria
First session
4 April – 6 May 1977

Document:-
A/CONF.80/C.1/SR.34

34th meeting of the Committee of the Whole

Extract from Volume I of the *Official Records of the United Nations Conference on Succession of States in Respect of Treaties (Summary records of the plenary meetings and of the meetings of the Committee of the Whole)*

text proposed by the International Law Commission, though in the French version the words "*n'affecte pas*" had been replaced by the words "*ne porte pas atteinte*", which seemed more in keeping with French usage. The words "*ne porte pas atteinte*" had, for example, been used in articles 70 and 71 of the Vienna Convention on the Law of Treaties, when the words "does not affect" appeared in English and the words "*no afecterá*" in Spanish.

20. Mr. TABIBI (Afghanistan) observed that it had been agreed that the Committee would wait until it had completed consideration of article 12 before taking a decision on the amendment submitted by his delegation,⁵ which would change the titles and combine the texts of articles 11 and 12. He thought it would be preferable for the Committee to wait until it had completed consideration of article 12 before it adopted article 11, since both those articles dealt with territorial régimes and it would be logical to adopt them at the same time.

21. Mr. YIMER (Ethiopia) pointed out that the amendment submitted by Afghanistan, which would combine articles 11 and 12, was purely a drafting proposal and did not affect the substance of article 11. In his opinion, that article was in no way related to article 12; it was a separate article which the Committee had provisionally adopted by an overwhelming majority. He therefore proposed that article 11 should be put to the vote immediately.

22. Mr. SEPÚLVEDA (Mexico) said he too saw no reason to postpone the vote on article 11, which was a separate article that could stand on its own merits. Articles 11 and 12 did not deal with the same subject-matter: the former dealt with boundary régimes while the latter concerned the use of a territory. Moreover, it was unlikely that article 12 would be adopted at the current session. Here therefore supported the proposal made by the representative of Ethiopia.

23. Mr. TABIBI (Afghanistan) formally moved the adjournment of the debate on article 11.

24. Mr. MUDHO (Kenya) said that the adoption of article 11 would in no way prejudice the decision the Committee would take on the amendment submitted by Afghanistan. He therefore supported the proposal made by the representative of Ethiopia.

25. Mr. SATTAR (Pakistan) said that all the Committee had to do was to approve the draft submitted by the Drafting Committee. In clarification of his delegation's position, he referred to a statement made the previous day by the Prime Minister of Pakistan in the Parliament concerning his Government's intention to settle all border disputes with Afghanistan on an equitable basis.

26. Mr. TABIBI (Afghanistan) said he would not press his motion for the adjournment of the debate, or his proposal that articles 11 and 12 should be combined.

27. The CHAIRMAN said that, if there was no objection, he would take it that the Committee of the Whole approved, on second reading, the text of article 11 proposed by the Drafting Committee.

*It was so decided.*⁶

The meeting rose at 5.40 p.m.

⁶ For resumption of the discussion of article 11 and its adoption (without a title) by the Conference, see 5th plenary meeting.

34th MEETING

Monday, 2 May 1977, at 5. 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)

REPORT OF THE DRAFTING COMMITTEE ON THE TEXT OF ARTICLE 11 AND ON THE TITLES AND TEXTS OF ARTICLES 13 TO 15 ADOPTED BY THE DRAFTING COMMITTEE (A/CONF.80/C.1/2) (continued)

Article 13 (Questions relating to the validity of a treaty)¹

1. Mr. YASSEEN (Chairman of the Drafting Committee) said that the Drafting Committee had made only one change in article 13: it had replaced the word "prejudicing" by the word "prejudging" in the English text, the words "*préjudicant* [...] à" by the words "*préjugeant* [...] d'" in the French, and the words "*en modo alguno en perjuicio de*" by the words "*de manera que prejuzgue de modo alguno*" in the Spanish, so as to bring out the meaning which the Committee of the Whole wished to give that article.

2. The CHAIRMAN said that, if there were no objections, he would take it that the Committee adopted on second reading the title and text of article 13 proposed by the drafting Committee.

*It was so decided.*²

¹ For earlier discussion of article 13, see 22nd meeting, paras. 1-13.

² For the adoption of article 13 by the Conference, see 5th plenary meeting.

⁵ See above, 19th meeting, para. 7.

Article 14 (*Succession in respect of part of territory*)³

3. Mr. YASSEEN (Chairman of the Drafting Committee) said that, in order to make article 14 easier to understand and to bring out the distinction between the two kinds of territory involved, the Drafting Committee had decided to change the order of the clauses in the introductory phrase of the article. In addition, in the French version the indefinite article "un" in the phrase "*Lorsqu'une partie d'un territoire*" had been replaced by the definite article, so as to bring the text into line with the versions in the other languages. In the English and the Spanish versions of subparagraph (b), in order to achieve greater clarity the Drafting Committee had replaced the phrase "its object and purpose[...] for the operation of the treaty" by "the object and purpose of the treaty [...] for its operation" and the phrase "*con su objeto y su fin ... las condiciones de ejecución del tratado*" by "*con el objeto y el fin del tratado [...] las condiciones de su ejecución*". That change would also be made in the text of other articles if necessary.

4. The CHAIRMAN said that, if there were no objections, he would take it that the Committee adopted on second reading the title and text of article 14 proposed by the Drafting Committee.

*It was so decided.*⁴

Article 15 (*Position in respect of the treaties of the successor State*)⁵

5. Mr. YASSEEN (Chairman of the Drafting Committee) said that, in order to bring the Spanish version of article 15 into line with the English and French versions, and with the Spanish text of other articles, the Drafting Committee had decided to replace the word "*esté*" at the end of the article by the word "*estuviera*".

6. The CHAIRMAN said that, if there were no objections, he would take it that the Committee adopted on second reading the title and text of article 15 proposed by the Drafting Committee.

*It was so decided.*⁶

REPORT OF THE INFORMAL CONSULTATIONS GROUP ON ARTICLES 6, 7 AND 12

7. Mr. RITTER (Vice-Chairman of the Committee of the Whole and Chairman of the informal consultations group) said that the informal consultations group, which had held seven meetings, had been in-

³ For earlier discussion of article 14, see 22nd meeting, paras. 14-38 and 23rd meeting, paras. 1-35.

⁴ For the adoption of article 14 by the Conference, see 5th plenary meeting.

⁵ For earlier discussion of article 15, see 23rd meeting, paras. 36-54.

⁶ For the adoption of article 15 by the Conference, see 5th plenary meeting.

structed by the Committee to try to reconcile the different views on articles 6, 7 and 12. The group had thoroughly discussed the text of those articles, the amendments before the Committee and the suggestions made at the meetings. The group had reached the conclusion that it should recommend the Committee of the Whole to defer consideration of articles 6, 7 and 12 until a subsequent session of the Conference.

8. The CHAIRMAN suggested that the Committee should take note of the Vice-Chairman's statement concerning the informal consultations on articles 6, 7 and 12.

It was so decided.

ARTICLE 29 (Newly independent States formed from two or more territories)⁷ (*continued*)

9. Mr. STEEL (United Kingdom) said that a number of delegations, including his own, had drawn the Committee's attention to the fact that article 29 was linked with article 30 and with some other articles. Since those delegations had pointed out that the Committee's decision on those later articles might influence its decision on article 29, he thought it might be advisable for the Committee to reserve its position on article 29 to some extent and to reconsider that provision at a latter stage, in the light of its decisions on the subsequent articles.

10. Mr. SEPÚLVEDA (Mexico) said he could see no link between articles 29 and 30, which dealt with entirely different questions. In his view, it would be placing an unfair restriction on the Committee to ask it to reserve its final position on article 29; his delegation would prefer the Committee to vote on the article without conditions.

11. Mr. STEEL (United Kingdom) observed that he had not formally proposed postponement of the decision on article 29 and that he had not meant to imply that articles 29 and 30 dealt with the same question. But it was a fact that those two articles had certain elements in common and raised similar problems, in particular, the problem of the incompatibility of certain treaty régimes and obligations, which should be very carefully considered. Consequently, the Committee might perhaps have to revert to article 29, depending on the decision it took on article 30; for the time being, therefore, it need do no more than adopt article 29 provisionally.

12. Mr. EUSTATHIADES (Greece) reminded the Committee of one element which articles 18, 29, 32, 36 and others had in common, namely, the intention manifested by the predecessor State through its signature. According to those articles, by signing a treaty the predecessor State showed that it wished to

⁷ For the amendments submitted to article 29, see 32nd meeting, foot-note 18.

be bound; under the terms of article 29, paragraph 3, the intention thus manifested by the predecessor State would have so much effect that the newly independent State would be bound by the treaty.

13. His delegation believed that the signing of a treaty should truly reflect the intention of a State to be bound by that treaty; it should announce ratification or accession. But that was not the case in reality, and signing entailed no obligation, either moral or legal; although that practice might be attacked, it was the reflection of custom. That being so, simply to delete paragraph 3, as proposed by the delegations of Swaziland and Sweden (A/CONF.80/C.1/L.23), was perhaps not the best solution. However, the Committee might perhaps take a separate vote on that paragraph.

14. Mr. KRISHNADASAN (Swaziland) said he did not quite understand the distinction made by the representative of Greece between his suggestion that a separate vote be taken on paragraph 3 of article 29 and the proposal by the delegations of Swaziland and Sweden that the paragraph be deleted.

15. Mr. MARESCA (Italy) said that, as he saw it, whereas the amendment submitted by Swaziland and Sweden would delete paragraph 3 of the article entirely, the representative of Greece had merely expressed his doubts, from the legal and diplomatic viewpoints, concerning the inclusion of such a provision in the draft. He himself had also been convinced, by long years of diplomatic experience, that the signing of a treaty was intended only to authenticate the instrument and did not entail any undertaking on the part of the signatory State. That being so, it seemed difficult to deduce, from the mere signing of a treaty by the predecessor State, the intention of that State to extend the effects of the treaty to the whole territory of the newly independent State; nevertheless, he found the solution proposed by the delegation of Swaziland and Sweden too Draconian.

16. Mr. HELLNERS (Sweden) said that the arguments advanced by his delegation in favour of deleting article 18⁸ carried even more weight in the case of article 29, paragraph 3. The representatives of Greece and Italy seemed to agree that it was difficult to attach any importance to signature. He therefore considered that paragraph 3 of article 29 should not be included in the future convention.

17. Mr. SEPÚLVEDA (Mexico) opposed the United Kingdom suggestion that a decision on article 29 should be deferred. He thought the Conference could hardly submit to the General Assembly articles whose consideration had not been completed.

18. Mr. FLEISCHHAUER (Federal Republic of Germany) said that article 29 raised many problems which had not been taken into account in the amendment submitted. The discussion had been very

brief and had related mainly to the amendments, not to the main problems inherent in the article, which also arose in regard to article 30. Consequently, if the Committee voted on article 29 before it voted on article 30, it would be failing to take into account the complexity of article 29 and the work done on it by the International Law Commission. That would only make the work of the Conference more difficult at its next session.

19. Mr. KEARNEY (United States of America) said that, while sharing the concern of the representatives of the United Kingdom and the Federal Republic of Germany regarding the problems raised by article 29, he agreed with the representative of Mexico that the Committee should not defer the adoption of that article. The major problem raised by article 29 and 30 was that of incompatibility between the treaties applied in the different territories of which the new State was composed; but the solution to that problem did not lie in the proposed amendments to articles 29 and 30. The solution, if there was one—and that was doubtful, in view of the difficulty of the problem—would be to establish a procedure for resolving conflicts between treaties, which would form the subject of a new, separate article. The problem should be settled outside article 29 and 30. Consequently, the Committee could complete its consideration of article 29.

20. Mr. AMLIE (Norway) said that, in his view, article 29 raised many problems, some of which should be examined in connexion with article 30. Since the Conference no longer had any hope of producing the final text of a convention at its present session, there was no reason why it should not postpone the adoption of article 29, which required fuller consideration. He therefore formally proposed that further discussion and the vote on article 29 should be deferred until the next session of the Conference.

The Norwegian proposal to defer the vote on article 29 until the next session was rejected by 34 votes to 18, with 26 abstentions.

The proposal of Swaziland and Sweden to delete paragraph 3 of article 29 (A/CONF.80/C.1/L.23) was rejected by 35 votes to 18, with 24 abstentions.

The amendment to article 29 submitted by Finland (A/CONF.80/C.1/L.32) was rejected by 23 votes to 16, with 37 abstentions.

21. The CHAIRMAN observed that the Malaysian amendment to article 29 (A/CONF.80/C.1/L.43) related only to drafting; he therefore suggested that it be referred to the Drafting Committee.

It was so decided.

Article 29 was adopted provisionally by 69 votes to none, with 9 abstentions, and referred to the Drafting Committee.⁹

The meeting rose at 6 p.m.

⁸ See above, 27th meeting, paras. 51-52.

⁹ For resumption of the discussion of article 29, see 35th meeting, paras. 86-88.