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## **35th meeting of the Committee of the Whole**

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## 35th MEETING

Wednesday, 4 May 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] (concluded)

#### REPORT OF THE DRAFTING COMMITTEE ON THE TITLES AND TEXTS OF ARTICLES 16 TO 29 ADOPTED BY THE DRAFTING COMMITTEE (A/CONF.80/C.1/3)

##### *Article 16 (Participation in treaties in force at the date of succession of States)<sup>1</sup>*

1. Mr. YASSEEN (Chairman of the Drafting Committee) said that the Drafting Committee had made only a few minor drafting changes in the International Law Commission's text of article 16, which had been referred to it by the Committee of the Whole.
2. At the end of paragraph 1 of the Spanish version, the word "*esté*" had been replaced by "*estuviera*" in order to bring the tense into line with that used in the other language versions, as had already been done in the case of other articles already adopted by the Committee of the Whole.
3. In paragraph 2 of the English and Spanish versions, the same change had been made as in article 14, subparagraph (b), for the reasons which he had given in introducing that article. Consequently, paragraph 2 of the English text now concluded with the words: "[...] would be incompatible with the object and purpose of the treaty or would radically change the conditions for its operation", while the corresponding phrase of the Spanish version read: "*[...] sería incompatible con el objeto y el fin del tratado o cambiaría radicalmente las condiciones de su ejecución*". The French version, which remained unchanged, corresponded to the new English and Spanish versions.
4. In order to bring the final words of paragraph 3 of the French and Spanish versions into line with the English version, they had been amended to read: "*un tel consentement*" and "*tal consentimiento*", respectively.
5. The CHAIRMAN said that, if there was no objection, he would take it that the Committee adopted

on second reading the title and text of article 16 proposed by the Drafting Committee.

*It was so decided.<sup>2</sup>*

##### *Article 17 (Participation in treaties not in force at the date of the succession of States)<sup>3</sup>*

6. Mr. YASSEEN (Chairman of the Drafting Committee) said that in the International Law Commission's text of article 17 referred to it by the Committee of the Whole, the Drafting Committee had made a few changes designed to ensure consistency between the different language versions.
7. The change already decided upon in the case of article 14, subparagraph (b),<sup>4</sup> and article 16, paragraph 2, had also been made in the last part of paragraph 3 of the English and Spanish versions of article 17. Similarly, the final words of paragraph 4 of the French and Spanish versions had been changed in the same way as those of paragraph 3 of article 16, to read, respectively, "*un tel consentement*" and "*tal consentimiento*".
8. In paragraph 4 of the French text, the words "*ne peut établir, à l'égard du traité, sa qualité de partie ou d'Etat contractant*" had been replaced by the words "*ne peut établir sa qualité de partie ou d'Etat contractant au traité*" in order to bring the French version as close as possible to the other language versions. In consequence of that decision, the corresponding change had been made in paragraphs 1 and 5 of article 17 and in subsequent articles where the expression "*Etat contractant à l'égard du traité*" or "*d'un traité*" had been used.
9. In paragraph 5 of the English version, the word "reckoned" had been replaced by "counted", which was closer to the French and Spanish versions and in keeping with the terminology commonly used in the practice of depositaries. In paragraph 5 of the French text, the words "*tout Etat*" had been replaced by "*un Etat*", for the sake of consistency between the various language versions; that amendment involved no change in the meaning of the provision.
10. Speaking as representative of the United Arab Emirates, he said that he had some reservations regarding the phrase "*sa qualité de partie ou d'Etat contractant au traité*", which the Drafting Committee had decided to use in paragraph 4 of the French version. While it was permissible to speak of a "party to a treaty", to refer to a "Contracting State to a treaty" was incorrect usage; the expression "*à l'égard de*" was preferable to "*à*".
11. Mr. SAKO (Ivory Coast) said he thought that the formula chosen by the Drafting Committee had

<sup>2</sup> For the adoption of article 16 by the Conference, see 5th plenary meeting.

<sup>3</sup> For earlier discussion of article 17, see 27th meeting, paras. 18-26.

<sup>4</sup> See above, 34th meeting, paras. 3-4.

<sup>1</sup> For earlier discussion of article 16, see 23rd meeting, paras. 55-67, 24th meeting, paras. 1-47, 25th meeting, paras. 1-64, 26th meeting, paras. 1-61 and 27th meeting, paras. 1-17.

been “*sa qualité de partie au traité ou d’Etat contractant*”.

12. Mr. MUSEUX (France) suggested that the phrase referred to by the representative of the United Arab Emirates might be amended to read “*sa qualité d’Etat contractant ou de partie au traité*”.

13. The CHAIRMAN said that, if there was no objection, he would take it that the suggestion made by the representative of France was acceptable to the Committee and should also be applied to other provisions of the draft where the same expression was used in the French text. He assumed that the Committee adopted on second reading, with that amendment, the title and text of article 17 proposed by the Drafting Committee.

*It was so decided.*<sup>5</sup>

*Article 18 (Participation in treaties signed by the predecessor State subject to ratification, acceptance or approval)*<sup>6</sup>

14. Mr. YASSEEN (Chairman of the Drafting Committee) said that the Drafting Committee had made a few minor changes in the International Law Commission’s title and text of article 18, which had been referred to it by the Committee of the Whole. In the title and in paragraph 1, the expression “*con sujeción a ratificación*”, in the Spanish version, had been replaced by “*a reserva de ratificación*”, in order to bring the language into conformity with that used in the Vienna Convention on the Law of Treaties, in particular article 18 of that Convention. In paragraph 3, the changes already made to article 14, subparagraph (b), article 16, paragraph 2, and article 17, paragraph 3, had been introduced in the English and Spanish versions. The Spanish and French versions of paragraph 4 had been changed in the same manner as article 16, paragraph 3, and article 17, paragraph 4, in order to bring the final words into conformity with the English words “such consent”.

15. The CHAIRMAN said that, if there was no objection, he would take it that the Committee adopted on second reading the title and text of article 18 proposed by the Drafting Committee.

*It was so decided.*<sup>7</sup>

#### *Article 19 (Reservations)*<sup>8</sup>

16. Mr. YASSEEN (Chairman of the Drafting Committee) said that the Drafting Committee had made one minor drafting change in the International Law

Commission’s text of article 19, which had been referred to it by the Committee of the Whole. In paragraph 2 of the Spanish version, the words “*queda excluida*” had been replaced by the words “*quedaría excluida*”, in order to achieve consistency in the use of tenses as between the various language versions.

17. The Drafting Committee had paid particular attention to the question of objections to reservations and objections to such objections, which had been raised by the Netherlands representative.<sup>9</sup> It had noted that, as was clear from the International Law Commission’s commentary to article 19, particularly paragraph (15) (A/CONF.80/4, p. 66), the article did not deal with that matter, which was left to be regulated by general international law.

18. Mr. MBACKÉ (Senegal), referring to paragraph 1 of the French version, said that it would be better to replace the words “*l’intention*” by “*une intention*”, since the intention in question was not clearly defined. In paragraph 2 of the French version, he would prefer the words “*est exclue*” to “*serait proscrite*”; the use of the conditional introduced an element of doubt, while the word “*proscrire*” was a criminal-law term normally applied to persons. It should also be noted that the word “excluded” was used in the English version of paragraph 2.

19. Mr. STUTTERHEIM (Netherlands) said he regretted that the Drafting Committee had decided not to make express provision in article 19 for the question of objections to reservations. It was not very satisfactory for a newly independent State not to know its exact position in that regard. He was not opposed to the adoption of article 19 as proposed by the Drafting Committee, but reserved to right to revert to the question of objections in connexion with subsequent articles of the draft convention.

20. Mr. ROSENSTOCK (United States of America) said that the Drafting Committee had taken the view that the whole question of objections to reservations was one governed by general international law. Paragraph (15) of the International Law Commission’s commentary to article 19 stated that, unless it was necessary to make some particular provision in the context of the succession of States, the newly independent State was assumed to “step into the shoes of the predecessor State” (*ibid.*). Given that assumption, it did not seem necessary to make express provision for objections to reservations—a matter which lay outside the law of succession and came under the law of treaties in general.

21. Mr. YASSEEN (Chairman of the Drafting Committee) said he believed it was clear from the wording of article 19 and the International Law Commission’s commentary thereto that the question of objections to reservations should be resolved by reference to general international law. What precise solution

<sup>5</sup> For the adoption of article 12 by the Conference, see 5th plenary meeting.

<sup>6</sup> For earlier discussion of article 18, see 27th meeting, paras. 27-58.

<sup>7</sup> For the adoption of article 18 by the Conference, see 5th plenary meeting.

<sup>8</sup> For earlier discussion of article 19, see 27th meeting, paras. 59-95 and 28th meeting, paras. 1-43.

<sup>9</sup> See above, 28th meeting, para. 32.

general international law would provide, it was not within the Committee's competence to determine.

22. Mr. MARESCA (Italy) said that, without going so far as to propose a formal amendment, he wished to support the remarks made by the representative of Senegal. The Vienna Convention on the Law of Treaties was a legal reality to which constant reference was made, so the use of the conditional tense in the French version of paragraph 2 was inappropriate. Moreover, the word "*proscrite*" had somewhat sinister overtones.

23. The CHAIRMAN noted that no formal amendments had been proposed. Consequently, if there was no objection, he would take it that the Committee adopted on second reading the title and text of article 19 proposed by the Drafting Committee.

*It was so decided.*<sup>10</sup>

*Article 20 (Consent to be bound by part of a treaty and choice between differing provisions)*<sup>11</sup>

24. Mr. YASSEEN (Chairman of the Drafting Committee) said that the Drafting Committee had made a number of drafting changes in the International Law Commission's text of article 20, which had been referred to it by the Committee of the Whole. In paragraph 1, the words "when the treaty so permits" (in French: "*lorsque le traité le permet*"; in Spanish: "*cuando el tratado lo permita*") have been added for the sake of greater clarity. At the end of the French version of paragraph 1, the word "*ce*" before "*consentement*" and before "*choix*" had been replaced by the words "*un tel*", to correspond more closely with the other language versions.

25. In paragraph 3 of the English version, the words "it is considered" had been replaced by the words "it shall be considered", since the future had seemed the more appropriate tense to express the rule laid down. The Drafting Committee would later undertake a systematic review of the use of tenses in the English version.

26. Mr. YAÑEZ-BARNUEVO (Spain) said that the text of paragraph 1 could be improved by the substitution of the word "if" for the word "when" in the expression "when the treaty so permits". "If" was the word used in article 17 of the Vienna Convention on the Law of Treaties, which was the corresponding provision. Moreover, the English and French texts of paragraph 1 began with the words "When" and "*lorsque*", respectively, so that the same word was used twice in the course of a few lines. In the Spanish version, his suggestion would also make it necessary to change the word "*permite*" to "*permite*".

<sup>10</sup> For the adoption of article 19 by the Conference, see 5th plenary meeting.

<sup>11</sup> For earlier discussion of article 20, see 28th meeting, paras. 44-52.

27. Mr. YASSEEN (Chairman of the Drafting Committee) said that the meaning of the text submitted by the Drafting Committee was clear; it was for the Committee of the Whole to decide whether it was necessary in all cases to align the text of the draft convention with that of the Vienna Convention on the Law of Treaties.

28. Mr. KOH (Singapore) supported the suggestion made by the representative of Spain.

29. The CHAIRMAN asked the representative of Spain whether he wished his suggestion to be regarded as a formal amendment.

30. Mr. YAÑEZ-BARNUEVO (Spain) said it had not been his delegation's intention to submit a formal amendment. If the Committee did not consider that it would improve the text, he would not press his suggestion.

31. Mr. YIMER (Ethiopia) moved the closure of the debate on article 20, in accordance with rule 24 of the rules of procedure (A/CONF.80/8).

32. Mr. EUSTATHIADES (Greece) said that he would vote for the suggestion made by the representative of Spain if it were presented as a formal amendment.

33. Mr. SATTAR (Pakistan) said that the representative of Spain had made a very useful suggestion. He therefore opposed the motion for closure of the debate.

*The motion to close the debate on article 20 was rejected by 24 votes to 13, with 38 abstentions.*

34. Mr. SATTAR (Pakistan) asked whether the Spanish representative's suggestion had been considered by the Drafting Committee.

35. Mr. YAÑEZ-BARNUEVO (Spain) said that the point had not been discussed by the Drafting Committee; it had only occurred to him after comparing the wording adopted by the Committee with that of article 17 of the Vienna Convention on the Law of Treaties. Perhaps the best course would be to vote on his suggestion as a formal amendment and thus avoid further delay.

*The amendment proposed by the representative of Spain was adopted by 37 votes to 7, with 26 abstentions.*

36. 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 20 proposed by the Drafting Committee, with the amendment submitted by the representative of Spain.

*It was so decided.*<sup>12</sup>

<sup>12</sup> For the adoption of article 20 by the Conference, see 5th plenary meeting.

*Article 21 (Notification of succession)*<sup>13</sup>

37. Mr. YASSEEN (Chairman of the Drafting Committee) said that the Drafting Committee had decided to replace the word "must" in the English version of paragraph 1 by the word "shall" which was more usual in that kind of context. In the French version of paragraph 2, the phrase "*qui fait la communication*" had been amended to read "*qui en fait la communication*", so as to bring the wording closer to the English and Spanish versions.

38. In the Spanish version of paragraph 4, the words "*por otro motivo*" had been replaced by the more accurate wording: "*por otra causa*". In addition, the words "*a ella referente*", which corresponded more closely to the words "in connexion therewith" in English and "*y relative*" in French, had been substituted for the words "*en relación con ella*" and inserted after the words "*de toda comunicación*".

39. Lastly, the words "made connexion therewith", already employed in paragraph 4, had been inserted in the English version of paragraph 5 and the words "such notification" had been replaced by the words "the notification", so that the phrase now read: "the notification of succession or the communication made in connexion therewith". The corresponding changes had also been made in the Spanish version.

40. 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 21 proposed by the Drafting Committee.

*It was so decided.*<sup>14</sup>

*Article 22 (Effects of a notification of succession)*<sup>15</sup>

41. Mr. YASSEEN (Chairman of the Drafting Committee) said that the only change decided on by the Drafting Committee was in paragraph 3, where the words "*Etat contractant à l'égard du traité*" in the French version had been replaced by "*Etat contractant au traité*", as in article 17.

42. Mr. LANG (Austria), asked whether his delegation's proposed amendment to paragraph 2 (A/CONF.80/C.1/L.26), and more specifically the part of the amendment relating to the presumption of consent by the parties to suspension of the operation of the treaty, had been considered by the Drafting Committee.

<sup>13</sup> For earlier discussion of article 21, see 28th meeting, paras. 53-64.

<sup>14</sup> For the adoption of article 21 by the Conference, see 5th plenary meeting.

<sup>15</sup> For earlier discussion of article 22, see 29th meeting, paras. 1-9.

43. Mr. YASSEEN (Chairman of the Drafting Committee) said that the Drafting Committee had thoroughly discussed all amendments and suggestions concerning the article. In the case of the Austrian proposal, the Committee had not thought it necessary, in the context, to emphasize the presumption of consent by the parties. In reporting on the decisions of the Drafting Committee, he was following the usual practice of indicating only those suggestions which had been adopted. He would, of course, be available to inform delegations of the Drafting Committee's views on suggestions or amendments which had not been adopted.

44. 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 22 proposed by the Drafting Committee.

*It was so decided.*<sup>16</sup>

*Article 23 (Conditions under which a treaty is considered as being in force in the case of a succession of States)*<sup>17</sup>

45. Mr. YASSEEN (Chairman of the Drafting Committee) said that, following a suggestion by the delegation of the United Kingdom, the Drafting Committee had decided to delete the words "in conformity with the provisions of the treaty", from paragraph 1, since they were not absolutely necessary and their deletion would not affect the substance of the article.

46. In order to achieve greater consistency with the terminology employed in the Vienna Convention on the Law of Treaties, the Drafting Committee had accepted the suggestion of the representative of Greece that the French word "*comportement*", used to render the English term "conduct" in paragraph 1, subparagraph (b), should be replaced by the word "*conduite*"; the Spanish version of the subparagraph had been amended to read: "*se hayan comportado de tal manera que deba entenderse que han convenido en ello*". The Drafting Committee had not considered it necessary to go into details about the interpretation of "conduct" and had consequently not accepted the Finnish Proposal (A/CONF.80/C.1L.30) to refer to application of the treaty.

47. In reply to an inquiry by Mr. SIEV (Ireland), the said that the question of the parts and sections of the draft, together with their headings, would be considered only after all of the articles had been adopted.

48. Mr. MBACKÉ (Senegal), supported by Mr. SAKO (Ivory Coast), suggested that in the French version of paragraph 1, subparagraph (b), the words "*à raison*" should be replaced by "*en raison*".

<sup>16</sup> For adoption of article 22 by the Conference, see 5th plenary meeting.

<sup>17</sup> For earlier discussion of article 23, see 29th meeting, paras. 83-116.

49. 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 23 proposed by the Drafting Committee, with the amendment suggested by the delegation of Senegal.

*It was so decided.*<sup>18</sup>

*Article 24 (The position as between the predecessor State and the newly independent State)*<sup>19</sup> and

*Article 25 (Termination, suspension of operation or amendment of the treaty as between the predecessor State and the other State party)*<sup>20</sup>

50. Mr. YASSEEN (Chairman of the Drafting Committee) said that the Drafting Committee had decided to make no changes in either the titles or the texts of articles 24 and 25.

51. Mr. MBACKÉ (Senegal) said that, in article 25, paragraph 2, the French words "*selon le cas*" were not an adequate translation of "as the case may be" in the English version and might be replaced by an expression such as "*le cas échéant*".

52. The CHAIRMAN suggested that the Committee should note the comment made by the representative of Senegal. If there were no objections, he would take it that the Committee adopted on second reading the titles and texts of articles 24 and 25 proposed by the Drafting Committee.

*It was so decided.*<sup>21</sup>

*Article 26 (Multilateral treaties)*<sup>22</sup>

53. Mr. YASSEEN (Chairman of the Drafting Committee) said that the changes made in the rendering of the English term "conduct" in article 23, paragraph 1, subparagraph (b) had also been made in the French and Spanish versions of paragraphs 1 and 3 of article 26. In the same paragraphs, the Spanish word "*cuando*" had been replaced by "*si*" and the tenses of the verbs had been changed accordingly. In paragraphs 2 and 4, as in article 16, paragraph 3, the words "*une telle application*" had been used in French, and "*tal aplicación*" in Spanish, to correspond to the English wording: "such [...] application". In the English version of paragraph 5, the last two lines had been amended in the same way as article 14, subparagraph (b).

54. Mr. MUSEUX (France) noted that the French words "*à raison*", used in paragraph 1, were also employed in article 45 of the Vienna Convention on the

Law of Treaties. However, he would not object to replacing them by the words "*en raison*", as suggested by the representative of Senegal in the case of article 23.

55. 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 26 proposed by the Drafting Committee, with the amendment suggested by the representative of France.

*It was so decided.*<sup>23</sup>

*Article 27 (Bilateral treaties)*<sup>24</sup>

56. Mr. YASSEEN (Chairman of the Drafting Committee) said that subparagraph (b) had been aligned with the amended wording of article 23, paragraph 1, subparagraph (b). In the introductory part of the Spanish version, the tenses of the verbs had been changed.

57. Mr. YACOUBA (Niger) observed that it would also be necessary to alter the words "*à raison*" to "*en raison*", as had been done in articles 23 and 26.

58. The CHAIRMAN said that, if there were no objections, he would take it that the Committee adopted the title and the text of article 27 proposed by the Drafting Committee, with the amendment suggested by the delegation of Niger.

*It was so decided.*<sup>25</sup>

*Article 28 (Termination of provisional application)*<sup>26</sup>

59. Mr. YASSEEN (Chairman of the Drafting Committee) said that the Drafting Committee had decided not to make any changes in article 28. Nevertheless, he had to report the absence of a consensus in the Drafting Committee on the interpretation of paragraph 1, subparagraph (b). The question arose whether, under the terms of that subparagraph in its present form, it was sufficient for notice of termination of provisional application to be given by one party or whether all the parties had to give such notice. Some members of the Drafting Committee interpreted the provision as requiring notice to be given by one of the parties, with the explicit or implicit agreement of the others, while other members believed that notice of termination had to be given by all the parties.

60. It was the duty of the Drafting Committee to point out that the present wording could lead to con-

<sup>18</sup> 2-40 and 32nd meeting, paras. 14-32.

<sup>18</sup> For the adoption of article 23 by the Conference, see 5th plenary meeting.

<sup>19</sup> For earlier discussion of article 24, see 29th meeting, paras. 83-119.

<sup>20</sup> For earlier discussion of article 25, see 30th meeting, para. 1.

<sup>21</sup> For the adoption of articles 24 and 25 by the Conference, see 5th plenary meeting.

<sup>22</sup> For earlier discussion of article 26, see 30th meeting, paras.

<sup>23</sup> For the adoption of article 26 by the Conference, see 5th plenary meeting.

<sup>24</sup> For earlier discussion of article 27, see 30th meeting, paras. 2-40 and 32nd meeting, paras. 33-36.

<sup>25</sup> For the adoption of article 27 by the Conference, see 5th plenary meeting.

<sup>26</sup> For earlier discussion of article 28, see 30th meeting, paras. 41-43 and 32nd meeting, paras. 37-46.

fusion. The only solution, in the circumstances, was for the Committee of the Whole to decide on the precise meaning of the provision.

61. Mr. SEPÚLVEDA (Mexico) said that, while the Drafting Committee deserved to be congratulated on its work as a whole, it had, in its zeal to solve all semantic problems, overstepped the bounds of its mandate in regard to article 28. The Committee of the Whole had taken a decision on the amendment to paragraph 1, subparagraph (b) of the article proposed by the United Kingdom delegation<sup>27</sup> and there was no need to reopen the discussion on the point to which that proposal had related. Consequently, he proposed that the present text of the article should be put to the vote.

62. Mr. YIMER (Ethiopia) agreed with the representative of Mexico that the Drafting Committee should not have gone into the question of the interpretation of article 28. Those who would have to apply the future convention would find guidance in the discussions which had led up to the decision by the Committee of the Whole on the United Kingdom amendment, and in that decision itself. Discussion of the article should not be reopened at the present stage.

63. Mr. YASSEEN (Chairman of the Drafting Committee) emphasized that the Drafting Committee did not wish to go beyond or against any decision by the Committee of the Whole. Nevertheless, it did have a mandate to draft a clear text, and it was incumbent on it to point out to the Committee of the Whole cases in which the rule adopted by that body was not sufficiently clear from the proposed wording and could perhaps be better expressed. The Committee of the Whole naturally remained sovereign to amend the text or to state that it should be interpreted in a certain way.

64. The CHAIRMAN said that the comments which had been made could be seen as serving to confirm the limits of the Drafting Committee's mandate. The decision taken by the Committee of the Whole with regard to the United Kingdom amendment could be taken as meaning that the notice of termination referred to in article 28, paragraph 1, subparagraph (b), must be given by all the parties to a treaty, not by one of them.

65. Mr. ROSENSTOCK (United States of America) explained that the Drafting Committee's problem had been that it had been unable to determine from the text of the article whether the Committee of the Whole in fact intended that notice of termination should be given by all of the parties or by one of them. In view of that fact, and of the need for an article capable of ready application by States, he proposed that a vote be taken on the insertion in article 28, paragraph 1, subparagraph (b) of the words "all of" between the words "or" and "the parties".

That proposal was a natural consequence of the rejection of the United Kingdom proposal to insert the words "one of" in the same place.

66. Mr. YIMER (Ethiopia), speaking on a point of order, objected that the United States proposal was tantamount to a request for reconsideration of the United Kingdom amendment. He moved that a vote should be taken on that request in accordance with rule 31 of the rules of procedure (A/CONF.80/8).

67. Mr. ROSENSTOCK (United States of America) emphasized that his delegation's proposal related to the insertion in the article, not of the words "one of", but of the words "all of". That was a proposal which had not been considered by the Committee of the Whole and which was the opposite of the United Kingdom amendment. The United States proposal was designed merely to clarify the interpretation to be given to article 28.

68. Mr. BRECKENRIDGE (Sri Lanka) said that the report given by the Chairman of the Drafting Committee on article 28 amounted to a suggestion that the Committee of the Whole should reconsider one of its own decisions; in making such a suggestion, the Drafting Committee had clearly exceeded its mandate. Nor was it proper for the Drafting Committee to seek the help of the Committee of the Whole in resolving its own difficulty in understanding an article.

69. With regard to the amendment proposed by the United States delegation, the question of including the words "all of" had already been raised at the Committee's 32nd meeting.<sup>28</sup> And if the United Kingdom proposal to insert the words "one of" had been rejected, that decision also clearly implied rejection of the words "all of"; it was mere sophistry for the United States delegation to claim that its amendment did not relate to the same matter as the United Kingdom proposal.

70. His delegation therefore supported the motion of the representative of Ethiopia.

71. Sir Ian SINCLAIR (United Kingdom) said that his delegation wished to defend the approach of the Drafting Committee. The United Kingdom amendment had been put forward as a probe, in order to determine the attitude of the Committee of the Whole on a matter which his delegation believed to be of some difficulty. There had been much discussion in the Drafting Committee as to what the rejection of that amendment meant; his delegation had taken the view that the logical conclusion to be drawn from the decision was that notice of termination must be given by all the parties to a treaty. He considered it entirely proper for the Committee of the Whole to assist the Drafting Committee in arriving

<sup>27</sup> See above, 32nd meeting, paras. 37-46.

<sup>28</sup> *Ibid.*, para. 41.

at a text which would not give rise to conflicting interpretations.

72. Mr. KATEKA (United Republic of Tanzania) agreed with the comments of the representative of Sri Lanka concerning the United States proposal. If the Chairman ruled that that proposal would not have the effect of re-opening the discussion of article 28, that ruling would itself have to be put to the vote.

73. Mr. USHAKOV (Union of Soviet Socialist Republics) said that his delegation found the text which had been referred to the Drafting Committee, which was that proposed by the International Law Commission, entirely satisfactory. By their decision on the United Kingdom amendment, the majority of the members of the Committee of the Whole had shown that they shared that view. His delegation was therefore opposed to any further referral of the text to the Drafting Committee.

74. Mr. ROSENSTOCK (United States of America) stressed that all the Committee of the Whole had done in rejecting the United Kingdom amendment to article 28 was to decide not to include the words "one of" in that article. Following that decision, an overwhelming majority of the members of the Drafting Committee, whose task was to prepare a text which would be intelligible to States, had considered that the situation was unclear. His delegation had no particularly strong views on whether the text should read "one of the parties" or "all of the parties", but it did consider that, for practical reasons, the question must be settled one way or another. Since one of those phrases had been rejected, his delegation was proposing the incorporation of the other simply in order to make the instrument easily applicable. He did not think that rejection of his delegation's proposal was consequential on the rejection of the United Kingdom amendment or that the two proposals were the same.

75. Mr. TODOROV (Bulgaria) agreed that the United States amendment entailed the re-opening of the discussion on article 28 and that the Committee would therefore have to proceed according to rule 31 of its rules of procedure (A/CONF.80/8).

76. Mr. AMLIE (Norway) agreed entirely with the United States representative that his proposal did not entail re-opening of the discussion, but was aimed merely at clarifying the existing text. By rejecting the United Kingdom proposal, the Committee of the Whole had in fact decided by implication that the relevant part of paragraph 1, subparagraph (b) should read "or all the parties"; it was that logical deduction which had given rise to the comments by the Chairman of the Drafting Committee. He considered that, rather than accept the motion by the representative of Ethiopia, it would be proper to decide by a simple majority whether or not the United States proposal entailed the reconsideration of an issue al-

ready settled. His delegation viewed the United States proposal simply as a drafting amendment.

77. Mr. YIMER (Ethiopia) urged that a vote be taken on his motion that the United States proposal entailed reconsideration of the United Kingdom amendment.

78. Mr. MUDHO (Kenya) said that his delegation would be content to retain the text of article 28 proposed by the International Law Commission. However, in view of the confusion which had arisen concerning the interpretation of that text following the rejection of the United Kingdom amendment, it supported the United States delegation in its efforts to clarify the provision.

79. Mr. ROSENSTOCK (United States of America) said that the Committee should not vote on the motion by the representative of Ethiopia, which assumed that his own delegation's amendment entailed reconsideration of the United Kingdom proposal, but on the question whether or not that assumption was correct.

80. Mr. NATHAN (Israel), referring to the motion by the representative of Ethiopia, said that rule 31 of the rules of procedure could clearly not apply in the present case, since what was at issue was the consideration of an amendment arising from the referral to the Committee of the Whole by the Drafting Committee of a text which the latter body considered unclear. Consequently, he thought that the Committee should vote as suggested by the representatives of Norway and the United States of America.

81. The CHAIRMAN invited the Committee to vote on the question whether the United States oral amendment to article 28, paragraph 1, subparagraph (b) entailed reconsideration of the United Kingdom oral amendment to the same provision, which had been rejected at the Committee's 32nd meeting.

*It was decided by 46 votes to 19, with 10 abstentions, that such reconsideration was not entailed.*

82. The CHAIRMAN invited the Committee to vote on the United States proposal to insert the words "all of" between the words "or" and "the parties" in article 28, paragraph 1, subparagraph (b).

*The proposal was adopted by 46 votes to 19, with 11 abstentions.*

83. Mr. KRISHNADASAN (Swaziland), explaining his vote, said that his delegation had abstained from voting mainly because it had considered that acceptance of the United States amendment would make article 28 less, rather than more, clear. He would have been happy to see the article adopted in its original form.

84. Mr. KATEKA (United Republic of Tanzania) explained that his delegation had not participated in

the voting on the United States amendment, because it considered that the effect would be to limit the freedom of the other parties to opt out of the treaty, as compared with the freedom accorded to the newly independent State.

85. The CHAIRMAN said that, if there was no objection, he would take it that the Committee of the Whole approved, on second reading, the title and text of article 28 proposed by the Drafting Committee, as amended.

*It was so decided.*<sup>29</sup>

*Article 29 (Newly independent States formed from two or more territories)*<sup>30</sup>

86. Mr. YASSEEN (Chairman of the Drafting Committee) said that the Drafting Committee had made only minor changes to the text of the article proposed by the International Law Commission. In paragraph 2 of the Spanish version, the word "esté" had been replaced by the word "estuviera", as in previous articles. In the English and Spanish versions, the same change had been made in paragraph 2, subparagraph (a) and paragraph 3, subparagraph (a) as had been made in article 14, subparagraph (b).

87. The CHAIRMAN said that, if there was no objection, he would take it that the Committee of the Whole adopted, on second reading, the text and title of article 29 proposed by the Drafting Committee.

*It was so decided.*<sup>31</sup>

88. Mr. MARESCA (Italy) said he hoped that, in order to avoid repetition, the provisions of article 29 which appeared in subsequent articles could be set out only once in the convention, with a reference to the other articles to which they applied.

PROPOSED NEW ARTICLE 22 *bis* (A/CONF.80/C.1/L.28),  
DRAFT PREAMBLE AND DRAFT FINAL CLAUSES

89. Mr. YASSEEN (Chairman of the Drafting Committee) said that the Drafting Committee had already held consultations with groups of delegations concerning the text of the proposed new article 22 *bis*. Owing to lack of time, it had decided to defer further consideration of that article, and the formulation of a draft preamble and draft final clauses, until the next session of the Conference.

*The meeting rose at 6.35 p.m.*

<sup>29</sup> For adoption of article 28 by the Conference, see 5th plenary meeting.

<sup>30</sup> For earlier discussion of article 29, see 32nd meeting, paras. 47-53, 33rd meeting, paras. 1-17 and 34th meeting, paras. 9-21.

<sup>31</sup> For adoption of article 29 by the Conference, see 6th plenary meeting.

## 36th MEETING

Thursday, 5 May 1977, at 3.50 p.m.

Chairman: Mr. RIAD (Egypt)

ADOPTION OF THE REPORT OF THE COMMITTEE OF THE WHOLE (A/CONF.80/C.1/L.48, A/CONF.80/C.1/L.48/Add.1-3 and A/CONF.80/C.1/L.48/Add.4 and Corr.1)

1. The CHAIRMAN invited the Rapporteur to introduce the draft report of the Committee of the Whole (A/CONF.80/C.1/L.48, A/CONF.80/C.1/L.48/Add.1-3 and A/CONF.80/C.1/L.48/Add.4 and Corr.1).

2. Mr. TABIBI (Rapporteur) said that the draft report recorded the decisions taken during the session, and did not cover all the articles contained in the draft prepared by the International Law Commission. Nevertheless, in view of the lack of time and of the political, legal and practical complexities of the branch of law concerned, the result of the session was better than had been expected. The progress made was due not only to the scholarly work of the International Law Commission, but also to the efforts of the Expert Consultant and the Drafting Committee, and of the Vice-Chairman of the Committee of the Whole who had presided over the informal consultations group.

3. The report showed that the Committee of the Whole had proceeded mainly article by article in considering the International Law Commission's draft and the proposed amendments thereto, and had fully discussed and adopted 25 of the 39 draft articles as well as two proposed new articles. The report also noted that the Committee had entrusted the Drafting Committee with the preparation of a draft preamble and draft final clauses for submission direct to a plenary meeting of the Conference.

4. The report consisted of an introductory chapter, a chapter consisting of four sections which recorded the various forms of action taken by the Committee on the articles, and a chapter dealing with the proposals submitted so far in regard to the preamble and the final clauses. The report in its final form would be accompanied by two annexes, one reproducing the text of the articles adopted by the Committee of the Whole, and the other containing a check-list of the documentation submitted during the Conference.

5. The report, when adopted, would accompany the resolution of the Conference submitted to the General Assembly. It would clearly show governments and their delegations to the Assembly what had been accomplished during the present session and what remained to be done next year.