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7th meeting of the Committee of the Whole

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tify its deletion. An imperfect draft was preferable to one shorn of so vital a provision.

43. Mr. MUPENDA (Zaire) expressed a preference for article 6 as proposed by the International Law Commission. While that provision sought to condemn the effects of any events contrary to the principles of international law embodied in the Charter of the United Nations, the Australian amendment appeared to sanction the acts of aggressor States. There was a danger that the amendment might prove to be a source of misunderstanding.

44. Mr. HELLNERS (Sweden) said that at the beginning of the discussion he had thought that the principle set out in article 6 would be accepted by all delegations as one which should be fundamental to the Committee's work. It had then seemed to him that the provision could be dropped since it was self-evident and the mere fact of repeating such an axiomatic principle might give the impression that it was in doubt. However, after listening to the discussion and studying the Australian amendment he had concluded that the principle was not as self-evident as he had thought and might be included in the draft convention.

45. The Australian amendment was not altogether clear. It would not suffice, in order to remove difficulties of interpreting the phrase "in conformity with international law" which appeared in the draft article, to replace it as proposed in the Australian amendment. The latter seemed to open the door to accepting a great many types of situation. Certainly States were not bound to accept them but the amendment produced the surprising impression that the future convention could apply to unlawful acts provided the State concerned raised no objection. For that reason his delegation could not accept the amendment.

46. He had the same doubts about the suggestion made by the representative of Indonesia to substitute the word "normally" for the word "only" in draft article 6 as he had about the Australian amendment. Moreover, any other change in the wording proposed by the International Law Commission was liable to produce more confusion rather than clarity.

47. Undoubtedly, article 6 was closely linked with article 7 and the latter would attenuate the purport of the former. On the other hand, the principle set forth in article 6 might also be incorporated in the preamble to the draft convention.

48. Mr. FARAHAT (Qatar) considered that the wording of article 6 as framed by the International Law Commission was free of ambiguity. While he understood the reasons which had prompted the Australian amendment, he thought that there might be a danger that such a formulation might legitimize unlawful situations. As that amendment raised doubts and uncertainties he would support article 6 as it stood, in principle, but would welcome any drafting improvements that might be made.

The meeting rose at 1 p.m.

7th MEETING

Tuesday, 12 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 6 (Cases of succession of States covered by the present articles) (*continued*)[1]

1. Mr. MIRCEA (Romania), introducing his delegation's amendment to article 6 (A/CONF.80/C.1/L.5), said he thought that it would be premature to regulate, in a specialized convention, the highly complex question of the conformity of a succession of States with the principles of international law. If the article in question was to be retained, it would be essential to indicate the basic criteria needed to define the concept of succession of States. Since a number of delegations wished to keep article 6, his delegation had submitted an amendment which departed only slightly from the text proposed by the International Law Commission. The reference to "international law and, in particular, the principles of international law embodied in the Charter of the United Nations" had been replaced by the words "fundamental principles embodied in the Charter of the United Nations, in the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States (General Assembly resolution 2625 (XXV)) and in other international instruments". It could not be denied that the Declaration contained some provisions of direct concern to the succession of States in respect of treaties and that the application of those provisions, particularly the principle of self-determination, ought to help with the solution of certain problems. Among the "other international instruments" which his delegation had in mind were the Charter of Economic Rights and Duties of States (General Assembly resolution 3281 (XXIX), of which his country had been one of the first advocates, the

[1] For the amendments submitted to article 6, see 6th meeting, foot-note 4.

Charter of the Organization of African Unity,[2] the Final Act of the Conference on Security and Co-operation in Europe,[3] and any other instruments relating to the succession of States.

2. He welcomed the fact that other delegations had also submitted amendments to improve article 6, and pointed out that his delegation's proposal was not a rigid one.

3. Mr. YIMER (Ethiopia), introducing his delegation's amendment (A/CONF.80/C.1/L.6), said that it was simply a drafting variant of article 6, which changed none of the substance of that provision. In view of article 52 of the Vienna Convention on the Law of Treaties which stated: "A treaty is void if its conclusion has been procured by the threat or use of force in violation of the principles of international law embodied in the Charter of the United Nations",[4] his delegation thought it would be more striking if article 6 was drafted in a negative form. If the Committee wished to retain article 6 but was not particularly attached to the International Law Commission's wording, his delegation's proposal might be referred to the Drafting Committee.

4. Mr. YANGO (Philippines) said that the task of the Committee of the Whole was clear: it was to promote the codification and progressive development of international law and, in particular, of the principles embodied in the Charter of the United Nations. To that end, the International Law Commission had emphasized, in its draft article 6 and its commentary thereon, that the future convention should be based on lawfulness. Article 6 was thus essential in that it embodied a principle of lawfulness which the United Nations had taken pains to establish in other codification conferences and in various declarations. The concepts of normality and lawfulness introduced in that way were very important for the draft as a whole. Any dispute concerning the normality or lawfulness of a succession in terms of the future convention would have to be settled in conformity with international law and, more particularly, with the principles of international law incorporated in the Charter of the United Nations. In the circumstances, his delegation was doubtful whether the Australian amendment (A/CONF.80/C.1/L.3) was a pertinent one, although it could understand the desire of its sponsors to take certain realities into account. It was important, however, to specify that the future convention would apply to normal cases of succession of States, and the Committee should not be afraid to state that such cases had to be in conformity with international law and, more particularly, with the principles of international law embodied in the Charter of the United Nations. The Australian amendment introduced a subjective element which could well cause some confusion. It was necessary, however, to spell out how the convention would be applied. Consequently, his delegation could not support the Australian amendment and preferred the draft article 6 prepared by the International Law Commission.

5. As for the Ethiopian and Romanian amendments, they were similar to draft article 6 in that they were based on the concepts of normality and lawfulness. The Ethiopian amendment would only make a change in the form of article 6, while the Romanian amendment added some further details concerning the substance of the provision. Since other amendments could still be submitted, his delegation reserved its position concerning both those amendments.

6. Mr. JELIĆ (Yugoslavia) said that the principle contained in article 6 was such an obvious one that his delegation had, at first, thought it unnecessary to incorporate such a provision in the future convention. Subsequently, however, the numerous calls for political realism made in the course of the discussion had convinced it that it was absolutely essential to spell the principle out, as had been done by the International Law Commission.

7. The Australian amendment was not an acceptable one since it opened the door to *de facto* recognition of unlawful situations by presenting such recognition virtually as the rule, with non-recognition as the exception, and thus tended to legitimize unlawful situations and to encourage other situations of the same kind. It was true that, in the name of political realism, a State might be led to recognize unlawful situations, but in doing so it assumed a moral, political and legal responsibility which should not find its justification in any United Nations convention.

8. As for the Ethiopian and Romanian amendments, the former was an interesting one but concerned the Drafting Committee, while the latter deserved more thorough consideration than his delegation had as yet been able to give it. For the moment, therefore, it was unable to take a position on the subject.

9. Mr. ZAKI (Sudan) said that it was important to retain article 6, because it stated an obvious fact, namely, that the convention could not be applied to situations not in conformity with international law. The presence of that provision would dispel doubts. In fact, a State could always find excuses to act contrary to international law in respect of succession of States. In his delegation's view, it was not necessary to specifiy which rules were and which rules were not in conformity with international law. Although not all the rules on the subject had as yet been codified, it was clear that a succession of States was not

[2] United Nations, *Treaty Series*, vol. 479, p. 70.

[3] See *Conference on Security and Co-operation in Europe, Final Act* (Helsinki, 1975), Imprimeries Réunies, Lausanne, p. 76.

[4] *Official Records of the United Nations Conference on the Law of Treaties, Documents of the Conference* (United Nations publications, Sales No. E.70.V.5), p. 296.

in conformity with international law when it resulted, for instance, from force or from an act of aggression.

10. The Ethiopian amendment had the same meaning as draft article 6, but it was drafted in a negative form. It was not acceptable, however, in that it would be out of step with other articles which were drafted in a positive form. The Romanian amendment referred to the Charter of the United Nations and to the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States. There were a number of contradictions between those two texts as well as some ambiguities and, consequently, they should not be referred to together.

11. Mr. SETTE CÂMARA (Brazil) said that he was in favour of retaining the article 6 proposed by the International Law Commission. The presumption that it stated was very important, although not entirely accurate. As appeared from the International Law Commission's commentary on article 6 (A/CONF.80/4, pp. 22-23), certain situations called for specific treatment, particularly in the case of treaties entered into under constraint or treaties conflicting with the norms of *jus cogens*. There were certain areas of law which lent themselves to codification and which related solely to lawful situations, as in the case of the responsibility of States, hijacking of aircraft and the protection of diplomats. In the case of the draft convention under consideration, the difficulty stemmed from the fact that the expression "succession of States" was not qualified in the definition given of it in article 2, paragraph 1, subparagraph (*b*). From that subparagraph it might be deduced that the convention was also intended to apply to unlawful successions. When the International Law Commission had reconsidered its draft articles in the light of the comments submitted by governments, it had studied a suggestion by the Government of the United States of America[5] that a distinction should be made between rights and obligations under the future convention: in the case of unlawful succession, the obligations would still apply. The Special Rapporteur had even submitted a text taking account of that suggestion,[6] but the International Law Commission had preferred to retain the original wording of article 6.[7] It would, in fact, be dangerous to accept the principle that unlawful successions could have certain effects in the matter of the succession of States, even if those effects were limited to obligations. Moreover, a distinction between rights and obligations would be a source of confusion and could give rise to divergent interpretations of the various articles of the future convention.

12. He was doubtful as to the suitability of the Australian amendment, which contained a subjective element, since it would be for the interested State to decide as to the lawful or unlawful nature of a succession of States. As for the Ethiopian amendment, it could be referred to the Drafting Committee since it would merely give article 6 a negative form similar to that of article 13. Although the Romanian amendment contained some important elements, it would make the test of article 6 cumbersome. Furthermore, it should not be forgotten that the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations did not have the mandatory force of a convention, although it contained some very important provisions.

13. In short, therefore, he hoped that the Committee would retain the article 6 proposed by the International Law Commission and that it would refer the various amendments to the Drafting Committee for its consideration.

14. Mr. SATTAR (Pakistan) said that he found article 6 basically acceptable. At first sight, it might seem unnecessary, since nothing in the future convention could be interpreted as obliging a party to apply it to the effects of occurrences contrary to international law and, in particular, the Charter of the United Nations, but the reaffirmation it contained would help to ensure respect for the principles of international law and, in particular, those embodied in the United Nations Charter. It was unnecessary and even undesirable to refer to the violation of those principles. On the other hand, the Australian amendment contained a saving clause which enabled, rather than obliged, a State to apply the convention to the effects of situations contrary to international law and to the United Nations Charter. It would be manifestly absurd for a codifying convention to enable States parties to it to apply the law thus codified for the benefit of those who infringed the convention. That result would be contrary to the spirit and letter of the United Nations Charter, article 2 of which provided that Members of the United Nations should act in accordance with the principles set out in that article. The Charter also contained provisions designed to discourage States from acting in violation of those principles. There could be no doubt that the Australian delegation did not wish its amendment to have such effects.

15. The Romanian amendment seemed at first sight to contain some useful elements, especially the reference to the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations. Nevertheless, the amendment required a certain amount of clarification, especially with regard to the concept of "fundamental" principles and what was meant by "other international instruments".

16. To sum up, he supported article 6 as drafted by the International Law Commission, but would like

[5] *Yearbook of the International Law Commission, 1974*, vol. II, part one, p. 328, document A/9610/Rev.1, annex I.

[6] *Ibid.*, p. 35, document A/CN.4/278 and Add. 1-6, para. 177.

[7] *Ibid.*, vol. I, p. 192, 1285th meeting, paras. 15-16.

the text to contain a reference to the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States.

17. Mr. SANYAOALU (Nigeria) said that draft article 6 contained a subjective element which made a provision on the settlement of disputes all the more necessary. He could not accept the suggestion to replace the word "only" by "normally",[8] since the change would in no way remedy that subjectivity. The Australian amendment was also unacceptable, since it introduced no objective element. Likewise, he could not support the other two amendments and was in favour of the text proposed by the International Law Commission, on the understanding that the future Convention would contain a provision on the settlement of disputes.

18. Mr. SIMMONDS (Ghana) said his delegation was convinced that the future convention must apply only to the effects of successions of States occurring in conformity with international law. Draft article 6 sought to avoid any confusion; the amendments submitted seemed unlikely to accomplish that, since none of them elaborated on or clarified the draft article. Since article 6 as drafted by the International Law Commission was designed to ensure and promote the stability and coherence of law, it must be retained.

19. Mr. SIEV (Ireland) said he had some doubts concerning the need to specify that "the present articles apply only to the effects of a succession of States occurring in conformity with international law". He therefore supported the Australian amendment, which respected the principle of the sovereignty of States and recognized the international practice, established by new States, of leaving each State free to accept or reject a treaty.

20. Mr. TABIBI (Afghanistan) said that article 6 was the most important saving clause of the draft articles, since it safeguarded the legality of all the provisions of the future convention by limiting their application to the effects of lawful succession to valid treaties. It was specified in part V of the Vienna Convention on the Law of Treaties that that instrument applied only to facts occurring and situations established in conformity with international law. Article 6 covered in a single principle the whole question of validity which was dealt with in many articles of the Vienna Convention. As the International Law Commission had stressed in paragraph (2) of its commentary on article 6, that saving clause was particularly important in connexion with transfers of territory, since "only transfers occurring in conformity with international law would fall within the concept of 'succession of States' for the purposes of the present articles" (A/CONF.80/4, p. 23). Accordingly, the provisions of the future convention would not apply to unlawful transfers which were contrary to the will of the people and to the principle of self-determination.

21. He reminded the Committee that, at his request, the Expert Consultant to the Vienna Conference on the Law of Treaties had confirmed that under article 62 of the Vienna Convention, the provisions of part V of that instrument also applied to unlawful treaties.[9] He therefore asked the Expert Consultant now to confirm expressly that the future convention would not serve to support unlawful colonial treaties and that that was the real meaning of article 6. He also asked the sponsors of the various amendments not to insist on changing the text of the article, which had been carefully drafted and the balance of which should not be disturbed.

22. Sir Francis VALLAT (Expert Consultant) said he could unreservedly assure the representative of Afghanistan that the International Law Commission had in no way sought to sanction any unlawful treaties whatsoever. Moreover, it should be concluded from the principle set out in article 13 that the convention conferred no validity on a treaty deemed to be legally invalid.

23. Mr. USHAKOV (Union of Soviet Socialist Republics) said that the difficulties arising from article 6 related to the wording rather than the substance of the article, since the Australian, Romanian and Ethiopian amendments had been submitted with a view to improving the wording.

24. Like the whole of the draft convention, article 6 did not relate to the succession of States as such, but only to the effects of that succession or its legal consequences. In the context of the general definition of the succession of States given in article 2, paragraph 1, subparagraph (*b*), several hypotheses could be envisaged—succession which might result from the transfer of part of the territory of one State to another State (part II of the draft), from the creation of a new State—for example, as a result of the decolonization process (part III) or from the uniting or separation of States (part IV). The question of succession properly so-called was not dealt with in the draft articles, since the legality of the succession of States was determined by rules of international law. The draft articles were therefore concerned only with lawful succession of States and, in particular, the lawful transfer of the territory of one State to another State. Thus, if article 6 was omitted from the draft, it would be impossible to conclude that the convention could apply to unlawful succession. Even if the article did not appear in the convention, that instrument would apply only to lawful succession from the point

[8] See above, 6th meeting, para. 31.

[9] See *Official Records of the United Nations Conference on the Law of Treaties, Second Session, Summary records of the plenary meetings and of the meetings of the Committee of the Whole* (United Nations publication, Sales No. E.70.V.6), pp. 121-122, 22nd plenary meeting, paras. 50-52. (Article 62 of the Vienna Convention corresponded to article 59 of the draft considered by the United Nations Conference on the Law of Treaties.)

of view of the principles of international law, especially those embodied in the United Nations Charter, which was the keystone of all international conventions.

25. That did not mean, however, that article 6 should be deleted, although he thought that its wording should be clarified to avoid any confusion. Article 6 was a saving clause which related to other rules of international law and, in particular, to the principles of international law embodied in the Charter. On the other hand, the article did not state which rules of international law should in practice govern the succession of States and determine the lawfulness of a territorial transfer.

26. Article 1 provided that "the present articles apply to the effects of a succession of States in respect of treaties between States". It should of course be taken for granted that the reference was to lawful treaties, since it would be absurd to suppose that the convention could relate to unlawful treaties; but that *a priori* assumption did not exclude the introduction of a saving clause.

27. Like article 6, article 13 related to other norms of international law, since the validity of a treaty was determined by the Vienna Convention on the Law of Treaties. Both those articles concerned the question of validity, article 6 dealing with validity of a succession of States and article 13 with the validity of treaties. Although the two articles concerned analogous situations, their wording was very different, and it would be more logical to draft them in the same manner. He was in favour of aligning the text of article 6 on that of article 13, which he preferred, and he therefore proposed that article 6 be replaced by the following text:

Article 6. Questions relating to the validity of a succession of States

Nothing in the present articles shall be considered as prejudicing in any respect any question relating to the validity of a succession of States as such.[10]

28. That amendment would in no way change the meaning of article 6, but would have two advantages: on the one hand, aligning the text of article 6 on that of article 13 would stress the parallelism between those two articles and, on the other hand, that wording of article 6 would give rise to no difficulty of interpretation. He was aware, however, that his amendment was not merely a drafting proposal and was prepared to submit it in writing if the members of the Committee so wished. The idea of the amendment had come to him during the debate, when he had realized from the statements of other delegations that the wording rather than the substance of the article was creating problems.

29. The CHAIRMAN suggested that the amendment submitted by the Soviet Union should be discussed as an oral amendment.

30. Sir Ian SINCLAIR (United Kingdom) said he would prefer the amendment to be submitted in writing and the debate on article 6 to be deferred to a later meeting.

31. Mr. MARESCA (Italy) said that the proposal of the Soviet representative was of major importance and would alter the whole tenor of the discussion. He therefore joined the United Kingdom representative in requesting that the amendment should be submitted in writing, as it would be unfortunate to have to forgo a formal debate on such an important proposal.

32. Mr. MUDHO (Kenya) said that earlier he had seen no purpose in retaining article 6 in the draft convention, as the draft contained no provision whereby the lawfulness of a State succession could be determined. He was now, however, convinced of the usefulness of the article and favoured its retention unchanged. The Australian amendment was unacceptable owing to the dangerously subjective element it introduced, which could impair the coherence of the convention and create a degree of instability. Article 7 should also be retained, as it was necessary to stipulate that the provisions of article 6 applied without prejudice to those of articles 11 and 12.

33. Mr. KOECK (Holy See) said the fact that a number of delegations had submitted amendments to draft article 6 showed that the article did not really meet with the wishes of the Committee members who, without thereby taking a decision as to the validity of a succession of States, nevertheless wished to make clear that the articles were not intended to apply to an unlawful succession. However, those amendments did not solve the problem which article 6 posed for the delegation of the Holy See. On the other hand, it supported the Soviet proposal, which should enable the Commission to find a solution and would help to bring the wording of article 6 into line with the other provisions of the draft, particularly articles 1, 2 and 13.

34. Mr. SAMADIKUN (Indonesia) said he was in favour of maintaining article 6 as it stood, taking into account the suggestion made by his delegation at the 6th meeting.[11] He was unable to endorse the Australian amendment, as it altered the idea which the International Law Commission had sought to embody in article 6. As to the Romanian amendment, the Indonesian delegation understood it, but left it to the Commisson to take the relevant decision. It would be appropriate to bring the Ethiopian amendment to the attention of the Drafting Committee. The Indonesian delegatin reserved the right to develop its ideas regarding the Soviet amendment at a later stage.

[10] This amendment was subsequently issued as document A/CONF.80/C.1/68.

[11] See above, 6th meeting, para. 31.

35. Mr. MUSEUX (France) reminded the meeting that his delegation was one of those which had misgivings about the usefulness of article 6, as it either said too much or too little. Article 6 was vague in that it limited the scope of the convention to successions occurring in conformity with international law and the principles set forth in the Charter of the United Nations, without further explanation; hence the difficulties which its implementation might entail. The article reflected a praiseworthy concern; nevertheless, if the International Law Commission had refrained from providing for an article on the matter, it would not thereby have endorsed the violation of international law which the article was intended to sanction. The written amendments to the draft article did not solve the problems which the French delegation had encountered. On the other hand, it welcomed the Soviet oral amendment, which dealt with its concerns; the parallel established between the question of the validity of treaties and that of the validity of a succession of States was a very interesting idea. As the Soviet amendment made clear, the Committee could of course only be concerned with the effects of the succession of States.

36. Mr. MARSH (Liberia) was in favour of maintaining the original version of article 6, and could not support the Australian amendment, which set forth criteria of a subjective nature. His delegation could also endorse the Ethiopian amendment, which did not affect the ideas expressed in article 6, but it reserved the right to state its position on the Soviet amendment at a later stage.

37. Mr. KRISHNADASAN (Swaziland) agreed with the representative of Afghanistan that article 6 was the keystone of the draft articles. In the absence of provisions concerning treaties whose conclusion had been procured by the threat or use of force and treaties which conflicted with a peremptory norm of general international law, article 6 would perform an important function. As the Romanian amendment added an element of uncertainty to article 6 he could not support it. Although the Ethiopian amendment did not affect the substance of the draft article, the Swaziland delegation preferred the positive version of the International Law Commission to the negative version proposed by the Ethiopian delegation. As it could be assumed from the Australian amendment that the convention might be applied to a succession which occurred in violation of international law, the Swaziland delegation could not endorse it. The Soviet proposal was extremely interesting in that it clarified the draft article; the question arose, however, as to whether the proposed text, instead of replacing article 6, might not form an additional paragraph.

38. Mr. HASSAN (Egypt) said that most delegations seemed willing to accept the clear and explicit text of the International Law Commission. Perhaps the Soviet amendment, instead of replacing the text of article 6, could be used to complete article 13 for, as could be seen from the revised title proposed by the Soviet delegation, it dit not deal with quite the same point as article 6.

39. Mr. GILCHRIST (Australia) shared the misgivings expressed by the representative of Malaysia at the 6th meeting[12] concerning the clause "occurring in conformity with international law" used by the Commission. As he had noted that several delegations were afraid that the Australian amendment would conflict with the principle embodied in article 6, he again wished to assure the Committee that there was no reason to suppose that the amendment would weaken international law or condone acts of aggression. His delegation remained convinced that article 6 lacked precision; it would, for instance, provide no solution in regard to a succession which occurred in conformity with the spirit of international law, but in violation of certain formal or technical rules. However, in view of the misgivings expressed by some delegations, his delegation withdrew its amendment A/CONF.80/C.1/L.3 in order to facilitate examination of draft article 6.

40. Referring to the idea put forward at an earlier meeting by the representative of Sweden[13] and taken up by the representative of the Soviet Union, i.e. that it might be well to set out in the preamble to the draft the principle stated in article 6, he said that he still had doubts about the wording of the article, which had to be precise. His delegation was prepared to examine any proposal which would improve the wording of article 6, any proposal concerning the preamble, and the Soviet proposal, which seemed likely to gain the approval of a great many Committee members.

41. Mrs. BOKOR-SZEGÖ (Hungary) supported the Soviet proposal and said she also felt that the preamble to the convention should mention the fact that the succession of States was governed by the peremptory norms of international law.

42. Mr. HERNDL (Austria) said that the successions covered by the future convention could obviously only be those occurring in conformity with international law. As no delegation had disputed that basic assumption, he doubted whether there was any point in expressly stating it in the convention. Although the Ethiopian amendment had been sent to the Drafting Committee it deserved to be examined by the Committee. His delegation would like to have clarification concerning the clause "other international instruments" in the Romanian amendment. At first sight, he found the Soviet oral amendment satisfactory, as it broached the question objectively and made a distinction between succession as such and the consequences resulting from it. The Soviet amendment was more in keeping with the body of the draft than the original article.

[12] *Ibid.*, paras. 39-40.

[13] *Ibid.*, para. 47.

43. Mr. PANCARCI (Turkey) said that the Turkish delegation, like many other delegations, was uncertain about the need to maintain article 6; after having heard the Soviet representative, however, it was convinced of the general importance of such a clause. The Soviet amendment clarified the idea expressed by the Commission in article 6 and should be studied closely.

44. The CHAIRMAN pointed out that the representatives of Swaziland and Egypt had suggested that the Soviet oral proposal, instead of replacing article 6, could be used to supplement either article 6 or article 13. In view of the procedural consequences such proposals could have, the Chairman invited the Soviet delegation to express its views on the matter.

45. Mr. USHAKOV (Union of Soviet Socialist Republics) said that the purpose of his proposal was not to supplement article 6 but to replace it, inasmuch as it did not differ from it in substance. Nor could his proposal be used to supplement article 13 as the latter, although dealing with a principle related to that contained in his proposal, referred to a different matter. There could be no question of merging into one article proposals dealing with two distinct situations, particularly as drafting the title of the new article would cause problems. It would also be difficult to know where to insert such an article, whereas articles 6 and 13 fitted smoothly into the draft. The Soviet proposal was intended to improve the wording of article 6 by aligning in with the text of article 13, but without affecting the substantive provisions.

The meeting rose at 12.55 p.m.

8th MEETING

Tuesday, 12 April 1977, at 3.25 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 [Item 11 of the agenda] (*continued*)

ARTICLE 5 (Obligations imposed by international law independently of a treaty)[1] (*resumed from the 6th meeting*)

1. Mr. MIRCEA (Romania), introducing the Romanian amendment to article 5 (A/CONF.80/C.1/L.4), said that although the International Law Commission had based the draft article on article 43 of the Vienna Convention on the Law of Treaties, his delegation believed that the case of States, especially the successor State, involved in a succession was not the same as that of States which sought to terminate a treaty. In the case of succession, a newly independent State could invoke the "clean slate" principle, and, as the comments of other delegations showed, it was a fairly general practice not to refer to the imposition of obligations on States which were entering the international arena for the first time. With that in mind, his delegation had attempted to lighten the text of article 5 of the draft by modifying the second part of the sentence. The amendment did not entail any great change in the substance of the article and its wording could, no doubt, be improved by the Drafting Committee.

2. Mr. SHAHABUDDEEN (Guyana) said that article 5, as drafted by the international Law Commission, was useful and should be retained in substance. He had some comments to make on it, however, which also applied to the amendment submitted by Romania.

3. The International Law Commission had modelled article 5 on article 43 of the Vienna Convention on the Law of Treaties, but that provision was addressed to States which were parties to both the Vienna Convention and a treaty which had been terminated, whereas comments made in the Committee showed that draft article 5 was seen as being directed, perhaps chiefly, to newly independent States, which, by definition, could not yet be parties either to the proposed convention or to any treaty concluded by the predecessor State. In view of that difference there was a need to reconsider the formulation of article 5, and especially its legislative aspect in regard to newly independent States.

4. A distinction should be made between the provisions of the convention, considered as a convention, and the principles of international law which those provisions embodied as currently existing, or of which they might ultimately succeed in promoting general acceptance. The provisions of the convention could not apply to States which were not parties to that instrument and it might, therefore, be more appropriate to provide, in article 5, that the question whether or not a treaty was in force for a State would turn not on "the application of the present articles", but on the "application of the principles embodied in the present articles" or words to that effect, as in article 7.

5. The basic principle stated in article 5 would apply to States which were not parties to the convention by virtue of the fact that it was a generally accepted principle of international law. That being so, it might be best to replace the word "shall" by the word

[1] For the amendment submitted to article 5, see 4th meeting, foot-note 6; for earlier discussion of article 5, see 4th to 6th meetings.