United Nations Conference on Succession of States in Respect of Treaties

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39th Meeting of the Committee of the Whole

Extract from volume II 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)*

had stated that Walvis Bay should be returned to Namibia. There was thus no doubt than when Namibia attained independence, Walvis Bay should also be decolonized.

66. For that reason his delegation had requested, at the first session of the Conference, that the relevant draft articles should be amended so as to take account of historical reality and, in particular, the fact that South Africa was not the predecessor State in the case of Namibia. It had also endeavoured to amend draft article 2 in order to take account of the fact that the United Nations was responsible for Namibia's international relations.[9]

67. The Council considered that, in the case of Namibia, failure to apply the "clean slate" principle would impose an intolerable burden on the Territory once it had become independent.

68. The Council could not refrain from referring to the question of exceptions to that principle, because it might be inferred from its silence on that point that it approved of the attempts made by South Africa to dismember Namibia, in defiance to the inalienable right of the Namibian people to self-determination and to the preservation of the territorial integrity of their country, and of General Assembly resolution 1514 (XV) on the granting of independence to colonial countries and peoples.

69. The Conference should not legalize arbitrary acquisitions of territory by a racist, colonialist State whose claims were based on leonine treaties. The dismemberment of Namibia and the detachment of Walvis Bay were attributable solely to economic and strategic considerations and to a deliberate desire to keep Namibia in a situation of economic subordination in relation to South Africa and other colonialist countries whose objective was to derive benefit from the natural resources of Namibia. Namibia's claims to Walvis Bay could not be challenged, given the historical, geographical, cultural and ethnic context. Before the arrival of the first European settlers in South Africa, Walvis Bay had formed an integral part of Namibia and had been inhabited by the indigenous race, the Namas. In 1870, the captain of a British warship had taken possession of the Bay in the name of the Queen of England. In 1884, the rest of Namibia, then known as South-West Africa, had been occupied by the Germans. But unlike the other adjoining regions, Walvis Bay had not been incorporated into the Cape Colony. In 1915, the South African forces had occupied Namibia, and at the time of the establishment of the Union of South Africa, Walvis Bay too had been occupied by the South Africans. Subsequently South Africa had extended to Walvis Bay the legislation applicable to the whole of the territory of South-West Africa. In 1922, it had incorporated Walvis Bay into Namibia by adopting a series of laws under which Walvis Bay had finally been placed under the territorial jurisdiction of Namibia.

70. Despite the measures adopted by the General Assembly of the United Nations in 1966 and 1967, and despite the advisory opinion of the International Court of Justice confirming that South Africa's Mandate over Namibia[10] had come to an end, South Africa had continued to defy the United Nations by refusing to withdraw from Namibia. Recently, South Africa had taken legislative and administrative measures with a view to detaching Walvis Bay from Namibia. It was those acts of defiance of the United Nations which obliged the Council to insist that the future convention should take account of the status of international territory under the responsibility of the United Nations with which Namibia was endowed. For that reason, at the first session of the Conference, the Council had proposed that an amendment should be added to the proposed preamble for the convention (A/CONF.80/DC.13), with a view to ensuring that South Africa would not be the predecessor State in the case of Namibia.

The meeting rose at 12.55 p.m.

[9] *Official Records of the United Nations Conference on Succession of States in Respect of Treaties... op. cit.*, 5th meeting, para. 55.

[10] Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970), Advisory Opinion, *I.C.J. Reports 1971*, p. 16.

39th MEETING

Tuesday, 1 August 1978, at 3.25 p.m.

Chairman: Mr. RIAD (Egypt)

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

[Agenda item 11] (*continued*)

ARTICLE 30 (Effects of a uniting of States in respect of treaties in force at the date of the succession of States)[1] (*concluded*) *and*

PROPOSED NEW ARTICLE 30 *bis* (Conflicting treaty régimes)[2]

1. Mr. KOROMA (Sierra Leone) said that the existing draft of article 30 laid undue stress on the principle of *pacta sunt servanda* at the expense of the principle of consent. That was a matter of the utmost importance to African States, many of which realized that harsh present-day realities compelled them to unite.

2. He shared the view of the representative of the Federal Republic of Germany that the existing draft of the

[1] For the amendments submitted, see 37th meeting, foot-note 2.

[2] Proposed by the United States of America in document A/CONF.80/C.1/L.50. Statements were also made on the proposed article 30 *bis*, submitted at the 38th meeting, during the discussion of article 30.

article would not be conducive to the observance of treaties by successor States[3] and indeed, it appeared from the International Law Commission's commentary to the article that it did not conform with the current practice of newly independent States when they united. He therefore supported the United States proposed article 30 *bis*, (A/CONF.80/C.1/L.50), advocating negotiation in the event of conflicting treaty régimes, although he agreed with the United Kingdom representative that paragraph (*b*) of that proposal required further consideration.[4]

3. The Japanese amendment (A/CONF.80/C.1/L.49) might be acceptable if extradition were the only problem to be considered, but many aspects of trade relations were also involved and the Japanese formulation would merely serve to increase the rigidity of the existing text.

4. He appreciated the force of the argument behind the Swiss amendment (A/CONF.80/C.1/L.44) but once again he felt that recourse should be had to negotiation so that the circumstances of a particular merger of States might be taken into account.

5. Mr. BRECKENRIDGE (Sri Lanka) requested that the statement made by the representative of the Council of Namibia at the Committee's thirty-eighth meeting should be reproduced *in extenso* in the summary record.

6. It was common ground that in article 30 of its draft articles the International Law Commission had given precedence to continuity over the "clean slate" principle. He had been impressed by the remarks by the Indian representative on the subject:[5] the historical reasons given in the commentary for dismissing the claims of self-determination were inadequate. He also agreed with the representative of Sierra Leone as to the need to have due regard to what the normal practice of successor States was likely to be. He could accept the general thrust of the original draft if it took that aspect, as well as the need for negotiation, into account.

7. With regard to the various amendments, the Japanese proposal effectively reversed the intention of the International Law Commission and the practical problem of extradition did not justify such a substantive amendment. The proposal of the Federal Republic of Germany addressed itself to a pertinent issue, but the problem of conflicting treaty provisions was not to be solved as simply as the amendment suggested. Moreover, the text was not improved by the omission of the last part of the sentence after the word "obligation", as had been suggested by the United Kingdom representative:[6] it was rendered still more contentious.

8. In its proposed article 30 *bis*, the United States had endeavoured to come to grips with the issue raised by the Federal Republic of Germany, while taking into account considerations like those voiced by the representative of Sierra Leone. However, the text of the proposed new article opened the door to discussions on matters which were irrelevant for the purposes of the present convention. The other United States proposal, the adoption of a mere Conference resolution, (A/CONF.80/C.1/L.51) was begging the question since, however much the original text of article 30 stressed continuity, the need for negotiation was obvious from State practice. Furthermore, it was not clear why the draft Conference resolution referred to article 29 as well as to article 30. It should be confined to the latter. If there was indeed a link between articles 20 and 30, that added additional force to the argument put forward by the representative of Sierra Leone.

9. With regard to the Swiss amendment, the interpretation which that delegation wished to place on article 30 should be examined by the Drafting Committee in order to clarify the situation: it should not take the form of a substantive amendment to the article.

10. Mr. ROVINE (United States of America) said that his delegation had submitted its proposals because it supported the principle of continuity of treaties while recognizing the validity of the problem raised by the representative of the Federal Republic of Germany about conflicting treaty régimes.[7] On reflection, however, it seemed difficult to find a better solution than acceptance of the original text of article 30, in conjunction with a resolution outside the framework of the Convention. His delegation therefore withdrew its proposal for a new article 30 *bis* but maintained its proposal for a Conference resolution on incompatible treaty obligations.

11. The method of leaving the successor State to make a choice of existing treaties failed to protect the rights of third parties and could lead to invidious distinctions. It might work under special circumstances, as, for example, when predecessor States A and B were both parties to a multilateral treaty on human rights but one of them had entered a reservation on the settlement of disputes. In such a case, the successor State could exercise a choice in the matter without affecting the position of other States parties. But such cases were too limited to support a general rule. On the other hand, the solution of terminating treaties with conflicting provisions was too harsh and also failed to protect third parties. The approach adopted by his delegation in their proposed article 30 *bis*, of termination or selection after negotiation, had the disadvantage that it might constitute an incentive for negotiations to fail. The amendment submitted by the Federal Republic of Germany was modelled on the lines of paragraph 1 (*b*) of the original text. In both cases, the problem of conflict would be resolved by the treaty not continuing in force but that would again be a solution at the expense of third parties. The Japanese amendment, by carrying the continuity principle too far, was likely to be the source of additional conflict. It also reversed the thrust of articles 31 and 32. Although his delegation's draft resolution had primarily been intended to solve the problem raised by the Federal Republic of Germany, it could also be used to cover the

[3] See 37th meeting, para. 5.

[4] See 38th meeting, para. 6.

[5] See 37th meeting, paras. 9-11.

[6] See 38th meeting, para. 5.

[7] See 37th meeting, paras. 2-6.

Japanese amendment by extending the application to the whole territory of a successor State of an existing treaty applicable to only part of it. He hoped there would be sufficient support for the draft Conference resolution to send it to the Drafting Committee.

12. The Swiss amendment did not deal with a real issue of succession of States within the purview of article 30 and should be dealt with outside the convention.

13. Mr. DOGAN (Turkey) said that the International Law Commission had endeavoured to accommodate in its text of article 30 two principles which were not easy to reconcile: the dynamism of international relations, as expressed in the will of States to unite, and the stability of international legal relations which required continuity of treaty obligations. The formulation adopted by the Commission did not meet completely the increasing desire of new States to unite; indeed, in one sense, it might be said to discourage such unions by maintaining the validity of treaties entered into by the predecessor States. Turkey completely supported the Commission in opting for stability in international legal relations but the inescapable fact remained that the union of two States would raise problems of incompatible treaty régimes which the provisions of article 30 would not solve and which would render the article unworkable. The stability of legal obligations and the interests of third States would be adversely affected if such States entertained doubts about the successor State's willingness fully to discharge its obligations because the latter took the view that its responsibilities under different treaties were incompatible. Insistence on the principle of continuity would under those circumstances give rise to dissatisfaction on the part both of third States and of successor States. The solutions proposed of paragraphs 2 and 3 of article 30 did not adequately solve the difficulties.

14. The same was true of the various amendments proposed to article 30 and consequently, his delegation, while reserving its position on the suggested article 30 *bis*, hoped that the Drafting Committee would maintain the principle, in the event of failure to solve a case of conflicting treaty régimes, on continuity for a limited period of up to two years from the date of the succession of States.

15. Mr. FERREIRA (Chile) said that, in the opinion of his delegation, the article 30 proposed by the International Law Commission was comprehensive and well balanced, since it was adapted to meet the principle of continuity *de jure* of treaties while countenancing rules of exception to provide remedies for the difficulties which might arise in its implementation.

16. With reference to the amendments submitted, he said that the case of incompatibility dealt with in the amendment of the Federal Republic of Germany was not a common one, and inasmuch as paragraph 2 of that article stated that any treaty continuing in force in conformity with paragraph 1 should apply only in respect of the part of the territory of the successor State in respect of which the treaty was in force at the date of succession, it was therefore rather unlikely that such a situation would arise, and the incorporation of a provision which ran counter to the principles upheld by the article, particularly the principle *pacta sunt servanda* could not be justified. His delegation therefore could not support the amendment of the Federal Republic of Germany.

17. As regards the Japanese amendment, his delegation considered it unnecessary since article 30, paragraph 2, subparagraph (*c*) proposed by the International Law Commission provided the solution for the cases raised, for the successor State and the other State party could agree that the treaty should apply to the entire territory, failing which resort could be had to the procedure for settlement or to the rules of the Vienna Convention on the Law of Treaties on the termination of international treaties. His delegation could not therefore support the Japanese amendment.

18. His delegation considered the Swiss amendment adequate only as a means of clarifying the text of the article under consideration, and endorsed the comments made by other delegations to the effect that the text should be referred to the Drafting Committee for use in improving the wording of the article.

19. Mr. ABOU-ALI (Egypt) said that the International Law Commission's text kept the necessary balance between the continuity of legal obligations, and dynamism resulting in the uniting of two or more States. As the representative of the United Arab Emirates[8] had remarked, *pacta sunt servanda* was the more important principle. Paragraph 1 (*b*) in fact met the concern which had been voiced by the representative of the Federal Republic of Germany about conflicting treaty provisions and, as other speakers had already said, the Japanese amendment would lead to confusion. He therefore supported the original text of article 30.

20. Although he appreciated the reasons for the Swiss amendment, a general international convention should not include details applicable to a single State and the matter should be referred to the Drafting Committee.

21. Mr. TREVIRANUS (Federal Republic of Germany) said that it had become clear from the discussion of the amendments that the original text of article 30 would not suffice in itself. No satisfactory solution could be achieved without introducing the element of consent, thus making allowance for the complexity and variety of problems which might arise when a new successor State, essentially heterogeneous in nature, sought, as it must, to achieve consistency in its international relations as soon as possible. Indeed, in the case of a unitary State, such an approach was a precondition of the merger. The question had also arisen in the case of article 29, as could be seen from the summary record of the discussion at the 33rd meeting of the Committee.[9] In that case, the difficulty could be overcome

[8] See 37th meeting, para. 16.

[9] See *Official Records of the United Nations Conference on Succession of States in Respect of Treaties*, vol. I, *Summary records of the plenary meetings and of the meetings of the Committee of the Whole* (United Nations publication, Sales No. E.78.V.8), pp. 229 *et seq.*

by a wise exercise of the right of option with regard to the extension of the applicability of the treaty to the entire territory of the successor State. Under those circumstances, the successor State would clearly seek to harmonize its treaty relationships by judicious selection. But the application of article 30 entailed further difficulties, as appeared from paragraph 26 of the International Law Commission's commentary (A/CONF.80/4, pp. 104-105) and from the note quoted at the beginning of paragraph 19 (*ibid.*, pp. 102-103) addressed to the Secretary-General by the new United Republic of Tanganyika and Zanzibar, to the effect that it would be bound by the provisions of international treaties and agreements in force between the predecessor States and other States to the extent only that their implementation was consistent with the constitutional régime established by the Articles of the Union. That statement propounded an inescapable truth: a new State recognized by the international community could legitimately assume that other States would respect the resultant situation. That did not imply any intention to evade the treaty obligations entered into by the predecessor States, but it was clear that the people of the new State had the same right to self-determination, regardless of whether or not the predecessor States had been newly independent.

22. Many delegations had thought that the escape clauses in the original text of article 30 would suffice to meet the difficulties. He wondered whether, in order to do so, they would not need to be given a wider interpretation than was customary. However, in view of the fact that the last phrase of his delegation's amendment had not commanded support, he preferred not to press the first part and would withdraw the entire text. He expected that the idea it expressed would be followed up along the lines suggested by the United States.

23. Mr. NAKAGAWA (Japan) said he withdrew his delegation's amendment and would support the United States' proposed Conference resolution on incompatible treaty obligations.

24. Mr. RITTER (Switzerland) said that it appeared from the discussion on his delegation's amendment that no speaker opposed the idea of the mutability of frontiers in a composite State and there had been no suggestion that such an idea was not consonant with the intention underlying the International Law Commission's text of article 30. Some delegations had considered the Swiss amendment redundant on the grounds that the issue was already covered in the original text but others had considered that the current wording of paragraph 2 froze the situation at the time of the creation of the successor State against subsequent changes. It appeared that it was largely a matter of legal technique and that a slight modification in the wording of paragraph 2 was all that was required. If that view was generally acceptable, he had no objection to the matter being entrusted to the Drafting Committee to find an appropriate solution.

25. Mr. KRISHNADASAN (Swaziland) said that his delegation was in favour of article 30 as it stood. It was also in favour of referring the Swiss amendment to the Drafting Committee for the idea it contained to be incorporated somewhere in the Convention.

26. Mr. MAIGA (Mali) said it was clear from the Commission's commentary (A/CONF.80/4) that articles 30, 31 and 32 were closely linked. It was also clear that the merging of one State with another was covered by article 30, whereas the transfer of a territory to an existing State was covered by the moving treaty-frontiers rule set out in article 14. Since the Swiss amendment was clearly in conflict with the International Law Commission's approach, he wondered whether it could be retained. The Drafting Committee could do little in the circumstances. Perhaps the representative of Switzerland could clarify his approach in the light of that comment and the position in international law.

27. Mr. RITTER (Switzerland) said that if he had understood the representative of Mali correctly, he had referred to the fact that, if a number of States became one, only the newly emerging State had an international personality. While he agreed that that might be illogical, federalism was an empirical phenomenon and not always logical. Member countries of federal States often retained a certain international competence, as was the case of his country, and it was in fact that legal reality which had inspired its proposal.

28. Mr. MAIGA (Mali) said that that explanation had been included in the comments by Governments and States accompanying the 1972 Draft as a result of which the International Commission's draft had been amended, resulting in the drafting of article 30. If the Swiss delegation insisted that article 14 covered the case under consideration, then its view conflicted with the position in international law.

29. The CHAIRMAN suggested that in view of the opposition expressed by the delegation of Mali, a vote should be taken on the position of the reference of the Swiss amendment to the Drafting Committee.

30. Mr. RYBAKOV (Union of Soviet Socialist Republics) said that in his opinion a vote was not necessary. The amendment could be submitted to the Drafting Committee without a vote and the latter would then be free to take the amendment into account or not, as it wished: it was not, however, empowered to consider the substance of the amendment.

31. The CHAIRMAN said that the representative of Switzerland had agreed that his amendment should go to the Drafting Committee as a drafting amendment. If there was no objection, he would take it that the Committee of the Whole approved that arrangement.

32. Mr. PÉREZ CHIRIBOGA (Venezuela) said his delegation would like to know whether the Drafting Committee was to be requested to seek a formula to incorporate the Swiss amendment somewhere in the convention, or whether it was to seek several formulae that would be

referred back to the Committee of the Whole, which would then decide on the placing of the amendment in the convention. While he did not object to the Drafting Committee studying the amendment, he did not know what its terms of reference were. He did feel, however, that the reference of the amendment to the Drafting Committee implied that the Committee of the Whole had agreed in principle that it should be incorporated somewhere in the text, or that it had been approved *a priori* by the Committee, which, as his delegation understood it, was not the case.

33. Mr. SILVA (Peru) said he shared the doubts of the representative of Venezuela. He wondered whether, by leaving its amendment to the Drafting Committee, the Swiss delegation was not in fact supporting another amendment to article 30.

34. Mr. ROVINE (United States of America) said that, while there appeared to be no objection in the Committee to the substance of the Swiss amendment, there was a division of opinion as to its place in the Convention. He was in favour of referring it to the Drafting Committee not as an amendment to article 30 but on the understanding that the Drafting Committee would advise the Committee of the Whole on its appropriate placing, whether somewhere in the Convention or whether perhaps in the form of a resolution.

35. Mr. RITTER (Switzerland) said that, in suggesting that the amendment be submitted to the Drafting Committee, his delegation had simply been trying to interpret the trend of the discussion and to see whether the wording could be improved or whether the idea occurred elsewhere in the convention. If it did not, the Drafting Committee might advise the Committee of the Whole whether it should go into article 30 or elsewhere. His delegation in no way assumed its acceptance by the Committee or that it would be in any way binding.

36. Mrs. BOKOR-SZEGÖ (Hungary) said that from the procedural point of view, she felt that the mandate intended for the Drafting Committee went beyond its actual competence. If the amendment were to be referred anywhere, it would be more appropriately referred to the informal consultation group.

37. Sir Ian SINCLAIR (United Kingdom) said that in his opinion the Drafting Committee had a mandate in relation to the text of the Convention as a whole. If, without expressing a view on the substance of the Swiss amendment, the Committee of the Whole referred it to the Drafting Committee, it would be open to the latter to look at it as an amendment either to article 30 or article 14, and make its recommendations to the Committee on the appropriateness or otherwise of its incorporation into the Convention as a whole as a purely drafting matter. If, on the other hand, the Drafting Committee said that in its view nothing needed to be added, since the idea was already covered by the Convention as a whole and particularly by article 14, that in itself would be a contribution to a solution to the problem facing the Committee of the Whole as a result of the Swiss amendment. It would be in the interests of the Committee of the Whole to accept the procedure suggested by the representative of Switzerland and await the recommendations of the Drafting Committee before taking a final decision.

38. Mr. MAKAREVICH (Ukrainian Soviet Socialist Republic) said that, at the previous session, amendments which were not matters of substance had not been referred to the Drafting Committee unless that had been the wish of the Committee of the Whole. The Swiss amendment was not simply a drafting amendment. The precedent set at the 1977 session was that amendments by delegations could, at the request of those delegations, be submitted to the Drafting Committee if they contained amendments of interest to the latter. The Committee of the Whole would have to express its support for the amendment first, however.

39. Mr. MAIGA (Mali) said that the question of legal techniques referred to by the representative of Switzerland did not arise. It was perfectly clear from paragraph 28 of the commentary to articles 30, 31 and 32 (*ibid.*, p. 98) that the Swiss amendment was one of substance and could not be sent to the Drafting Committee as a drafting amendment.

40. The CHAIRMAN suggested that the Committee might vote on the amendment accordingly.

41. Mr. MUSEUX (France) said that he fully agreed with the Chairman's original proposal to send the Swiss amendment to the Drafting Committee with the interpretation given by the representative of Switzerland, namely, in order that the Drafting Committee might consider whether the idea it contained should be taken into account in article 30 or elsewhere. A vote on the substance of the amendment would only confuse the issue, judging from the discussion and the impression that it was intended simply to clarify a point in paragraph 2. The Swiss delegation did not want a vote. He urged the Committee to support the Chairman's original suggestion and allow the Drafting Committee to provide the answer which the Swiss delegation sought. The Committee of the Whole could vote later on. At the present stage the amendment was not ready or clear enough to vote on.

42. Mr. RYBAKOV (Union of Soviet Socialist Republics) said that his delegation had no objection at all to referring the Swiss amendment to the Drafting Committee as an auxiliary paper, but in the meantime the Committee of the Whole had to take a decision on article 30. In the absence of other amendments, he took it that the Committee was ready to adopt article 30 as drafted by the International Law Commission and to submit it to the Drafting Committee, which could consider it together with the Swiss amendment; that procedure would be in line with the wishes of almost all the delegations.

43. Mr. TODOROV (Bulgaria) said that he agreed with that view. Since the representative of Switzerland had not

insisted on a vote, a vote was not necessary. The Drafting Committee could consider only the drafting elements in the amendment if any. The Committee of the Whole could not expect to see the Swiss amendment before it again, should the Drafting Committee decide that it was not one of a drafting nature.

44. Mr. RITTER (Switzerland) said that there appeared to be a certain amount of misunderstanding about his proposed amendment. He had not withdrawn it, but had said that to simplify matters it would be better to know whether or not the idea called for a textual amendment or whether the point was already covered. He had thought that the Drafting Committee should decide whether or not it was needed and, if so, where it should be placed.

45. Mr. RYBAKOV (Union of Soviet Socialist Republics) said that if the Swiss amendment was transferred to the Drafting Committee before the Committee of the Whole had taken a decision on it, that would be an unprecedented move.

46. Mr. TORNARITIS (Cyprus) said that the question of procedure and that of principle were being confused. The question of principle fell within the competence of the Committee of the Whole and not that of the Drafting Committee. The Drafting Committee had to give an appropriate form to any resolution taken by the Committee of the Whole, so the latter could not refer anything to it which had not been decided. By referring the Swiss amendment to the Drafting Committee without a decision, the Committee of the Whole would be asking the Drafting Committee to function as its legal adviser. If that was what the Committee of the Whole intended, then it must give the Drafting Committee clear directions.

47. Mr. MUDHO (Kenya) suggested that, in accordance with paragraph 3 of rule 34 of the rules of procedure (A/CONF.80/8), the Chairman be asked to give a ruling on the matter.

48. Sir Ian SINCLAIR (United Kingdom) said that, whereas the representatives of the USSR and Cyprus seemed to feel that the Drafting Committee had a remit that was basically confined to the preparation of draft articles, it seemed clear from rule 47, paragraph 2, of the rules of procedure that it would be perfectly proper for the Committee of the Whole to request the Drafting Committee to advise it on those elements of the Swiss amendment which were essentially drafting matters. . Since what the delegation of Switzerland was seeking was simply an opinion as to whether or not the current text of the draft Convention covered the concern it had sought to express in its draft amendment, he believed that the Committee of the Whole could ask the Drafting Committee to look into the matter.

49. Mr. MASUD (Pakistan) said that it appeared to him that other delegations, and the Swiss delegation itself, were uncertain whether the Swiss amendment was purely a drafting suggestion, or whether it also touched on matters of substance. Perhaps it would be best to allow time for delegations to seek advice on that point before any decision was taken concerning the amendment. If the amendment was referred to the Drafting Committee, that body would naturally be able to consider only the drafting aspects of the proposal.

50. Mr. MARESCA (Italy) said that the Committee should not allow itself to be bemused by titles. Drafting committees had historically had differing functions, and one of the roles which it was now customary for them to play was that of adviser to the larger bodies of which they were organs in matters such as that which was now before the Committee of the Whole. It should be noted that the Drafting Committee would be asked to do no more than to say whether, in the light of the present text of the draft articles and the concern expressed by the representative of Switzerland, an amendment such as the one proposed was necessary. The decision whether to accept the substance of such an amendment would, of course, lie with the Committee of the Whole.

51. Mr. PÉREZ CHIRIBOGA (Venezuela) said that, when his delegation had first spoken, it had been under the impression that the Drafting Committee would be asked to consider the Swiss amendment only after the Committee of the Whole had approved the substance thereof. It now understood, however, that no decision was to be taken on the substance of the provision, and that the Drafting Committee was to be asked to make suggestions concerning the wording of the proposal. Although his delegation considered that such a procedure would constitute a liberal interpretation of rule 47, paragraph 2, of the rules of procedure, it would have no objection to its adoption, providing the Drafting Committee refrained from commenting on the substance of the proposal. Alternatively, the Swiss amendment might, as suggested by the representative of Hungary, be submitted to the informal consultation group, if that would not unduly delay the work of the Conference.

52. Mr. MUDHO (Kenya) said that he did not feel that the statement by the United Kingdom delegation on the competence of the Drafting Committee had settled the question whether the Swiss proposal was a substantive or a drafting amendment. His delegation would, in principle, have no objection to the submission of the amendment to the Drafting Committee or the informal consultation group, but, before taking its final decision on that matter, it would welcome a ruling from the Chairman concerning the precise nature of the amendment.

53. Mr. TORNARITIS (Cyprus) said that he would not object to the Drafting Committee's being asked whether the present text of the draft Convention covered the concern of the Swiss delegation, since the problem of the Swiss amendment would be finally settled in the Drafting Committee if it replied in the affirmative, but would be returned to the Committee of the Whole if the Drafting Committee replied in the negative.

54. Mr. ECONOMIDES (Greece) said he supported the view that the Committee of the Whole could ask the Drafting Committee for advice concerning the Swiss amendment. If the Drafting Committee answered "Yes" to the question whether the amendment was already covered by the present text of the draft articles, the matter need go no further. If, on the other hand, the Drafting Committee replied "No", it should be asked whether the Swiss amendment merely served to make the draft articles clearer, and if so, where it could best be incorporated in them. But if the Drafting Committee felt, like the representative of Mali, that the amendment added a new element to the draft articles, it would naturally have to refer the matter back to the Committee of the Whole for further consideration.

55. Mr. RASSOLKO (Byelorussian Soviet Socialist Republic) said that, to his mind, there was no need for the procedural discussion in which the Committee was currently engaged, since many delegations besides that of Switzerland were clearly of the opinion that the Swiss proposal was a substantive amendment. It was, indeed, difficult to see how a proposal to add an entire paragraph to a text could be considered as anything else. In those circumstances, the Committee of the Whole must decide whether it wished to retain or to reject the amendment. Perhaps, however, the Chairman of the Drafting Committee could throw some light on the matter.

56. Mr. YASSEEN (Chairman of the Drafting Committee) said that, when he had spoken on the matter at the 37th meeting, he had expressed some doubt concerning the nature of the Swiss proposal. He had said that the proposal might be sent to the Drafting Committee for the latter to determine whether it was already covered in the draft articles or whether, if the Drafting Committee felt it to be purely a drafting suggestion, it required any modification. He had also said, however, that if the Drafting Committee felt the proposal was substantive, the decision on how to treat it would be for the Committee of the Whole. As an organ of the Conference, the Drafting Committee could study only such matters as were referred to it by the Conference itself or by the Committee of the Whole. It was, in particular, bound to follow the instructions of the Conference or the Committee of the Whole in relation to matters of substance. In view of the interest that had been aroused by the Swiss proposal, it seemed advisable that the Committee of the Whole should take a decision on the disposition of the Swiss amendment.

57. The CHAIRMAN said that opinions were divided on the nature of the Swiss amendment and he accordingly invited the Committee of the Whole to vote on that proposal as contained in document A/CONF.80/C.1/L.44.

The Swiss amendment was rejected by 31 votes to 15, with 32 abstentions.

58. The CHAIRMAN said that, if there was no objection, he would take it that the Committee provisionally adopted the text of article 30 as proposed by the International Law Commission and referred it to the Drafting Committee for consideration.

It was so agreed.[10]

59. Mr. SILVA (Peru) suggested that a repetition of the difficulties that the Committee had just encountered, and the attendant loss of time, could be avoided in future if recourse were had to the good offices of the informal contact group.

60. The CHAIRMAN said he agreed that the Conference should utilize the services of any of its organs that might facilitate its task or save its time.

PROPOSED RESOLUTION OF THE CONFERENCE ON INCOMPATIBLE TREATY OBLIGATIONS[11]

61. The CHAIRMAN invited the Committee to consider the proposal for the resolution of the Conference on Incompatible Treaty Obligations submitted by the United States of America in document A/CONF.80/C.1/L.51.

62. Mr. PÉREZ CHIRIBOGA (Venezuela) said that his delegation supported the proposed resolution, but hoped that the Drafting Committee would bring the Spanish version of that proposal into line with the English text by changing the expression *"obligaciones convencionales"*.

63. Mr. RYBAKOV (Union of Soviet Socialist Republics), on a point of order, said it was his understanding that draft resolutions such as that now proposed were normally considered only after work on the entire text of the draft convention to which they related had been completed. He would therefore be grateful for a ruling by the Chairman whether the Committee should abandon that practice in order to examine the United States draft resolution forthwith.

64. The CHAIRMAN said that he would be willing to postpone discussion of the draft resolution if such was the will of the Committee.

65. Mr. KRISHNADASAN (Swaziland) said that his delegation would have no objection to the postponement of discussion of the United States or any other draft resolutions until the text of the draft convention had been completed. His delegation's attitude to the substance of the United States proposal would be contingent upon the restriction of the scope of the proposal to article 30.

66. Sir Ian SINCLAIR (United Kingdom) said he agreed with the representative of the Union of Soviet Socialist Republics that formal resolutions were normally considered after the discussion of substantive draft articles had been

[10] For resumption of the discussion of article 30, see 53rd meeting, paras. 7 and 8.

[11] Submitted by the United States of America (A/CONF.80/C.1/L.51).

completed. However the Vienna Conference on the Law of Treaties had established a precedent by deciding, in the context of the debate on what subsequently became article 52 of the Vienna Convention on the Law of Treaties,[12] that a particular amendment could be disposed of by transforming certain substantive elements of the proposal into a resolution of the Conference. It would, therefore, seem justified to examine the United States draft resolution at the present time, particularly as it clearly related to problems which had been raised during the Committee's discussion of article 30. It might be inappropriate to take a final decision on the draft resolution immediately, but the Committee should be able to decide whether it felt a resolution of the type proposed was required and then entrust the preparation of a draft text to the informal contact group or some other body.

67. Mr. ROVINE (United States of America) said he supported the reasoning of the United Kingdom representative. Since his delegation's proposal was very directly related to problems which it and other delegations saw in article 30 and perhaps also article 29, its final thinking on those articles would depend on the Committee's decision concerning the draft resolution.

68. Mr. SILVA (Peru) said that, in general his delegation had no objection to the substance of the draft resolution. It did, however, share the objection that had been raised by the delegation of Venezuela to the Spanish version of the proposal.

69. The CHAIRMAN invited the delegations of Venezuela and Peru to submit any suggestions they might have for the improvement of the Spanish version of the draft resolution to the Secretariat.

70. Mr. RYBAKOV (Union of Soviet Socialist Republics) said that, while he continued to believe that the general practice was to consider draft resolutions when the work on all draft articles had been completed, he appreciated that there was a special link between the United States draft resolution and the articles that the Committee was in the process of examining. His delegation would therefore be willing for discussion of the United States draft resolution to begin forthwith, on the understanding that the final decision concerning the disposition of that provision would be taken in the light of the opinions which came to light during that discussion.

71. Mr. BRECKENRIDGE (Sri Lanka) said he wished to repeat the strong objection which his delegation had expressed during the discussion of article 30 to the reference in the United States draft resolution to article 29. It felt that reference raised anew the entire question of the counter-position of the "clean slate" principle and that of continuity, a matter which the Committee had already settled. It also felt that the resolution, which at present had almost the form of a draft article, should be preceded by a preamble setting out the reason why it had been proposed.

[12] Article 49 of the draft articles.

72. Mr. KRISHNADASAN (Swaziland) asked whether the sponsor of the draft resolution felt that it could be limited to article 30 alone.

73. Mr. ROVINE (United States of America) said that the draft resolution could be confined to article 30, but that his delegation would prefer to retain the reference to article 29 as well, since it felt that the application of that article might also result in conflict between treaty régimes.

The meeting rose at 5.55 p.m.

40th MEETING

Wednesday, 2 August 1978, at 10.25 a.m.

Chairman: Mr. RAID (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*)

PROPOSED RESOLUTION OF THE CONFERENCE ON INCOMPATIBLE TREATY OBLIGATIONS[1] (*concluded*)

1. Mr. ROVINE (United States of America) said that his delegation had deleted from its proposal (A/CONF.80/C.1/L.51/Rev.1) the reference to article 29 which appeared in document A/CONF.80/C.1/L.51 in order to make it more easily acceptable to other members of the Committee, and had also made some other drafting changes. He would not press for a vote on the proposal at that meeting, as delegations might wish to obtain instructions from their Governments on the matter; in the meantime the proposal might perhaps be referred to an informal consultations group.

2. Mr. SCOTLAND (Guyana) suggested that it might be appropriate to add to the text a preamble stating the reasons for the proposal and in the operative part, a phrase starting with the words "The Conference recommends."

3. Mr. SANYAOLU (Nigeria) said that while he approved the principle stated in the United States proposal, his delegation shared the view expressed by the representative of Brazil[2], that it might be preferable to deal with that question in the final clauses relating to the settlement of disputes or in the preamble to the Final Act of the Conference. Moreover, as the proposal referred only to article 30 he wondered whether that was the only article

[1] United States of America, A/CONF.80/C.1/L.51/Rev.1. For the initial proposal, see 39th meeting, foot-note 11.

[2] See 38th meeting.