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40th Meeting of the Committee of the Whole

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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.

which concerned incompatible treaty obligations. It was quite certain, however, that the proposal could not apply to article 29, which had not been conceived from the same viewpoint as article 30.

4. Mr. HAMZA (United Arab Emirates) said that his delegation, believing that the problem of incompatible obligations did not belong to the topic of succession of States, considered that the United States proposal appertained rather to the Convention on the Law of Treaties and the question of the peaceful settlement of disputes. Hence the Committee should therefore either reject the proposal or study it thoroughly in connexion with the question of settlement of disputes.

5. Mr. DIENG (Senegal) welcomed the effort made by the United States delegation to find a solution to all the questions raised by article 30. He wondered, however, whether the problem had not already been solved by the Vienna Convention on the Law of Treaties and the United Nations Charter; he saw no advantage in providing expressly that possible conflicts should be solved by consultation and negotiation. In his opinion, the proposal had nothing to do with succession of States in respect of treaties, and was superfluous.

6. Mr. NAKAGAWA (Japan) supported the United States proposal, but pointed out that conflicting treaty obligations could also arise under articles 31 and 32. Hence those two articles should perhaps be mentioned in the text of the proposal.

7. Mr. TREVIRANUS (Federal Republic of Germany) said he did not think that the question of incompatible treaty obligations raised by articles 29 and 30 had no connexion with succession of States. Indeed, he wondered how the question could be settled by the general rules of the law of treaties or the Vienna Convention, since in the present case there was not only one predecessor State, but two or more. Moreover, everything possible should be done to make the text adopted by the Conference acceptable to the greatest possible number of States, since the codification of international law did not depend solely on the work accomplished by the Conference, but also on the subsequent conduct of States.

8. Mr. MARESCA (Italy) said he was grateful to the United States delegation for having tried to allay the doubts raised by article 30, all the more so because common sense called for an effort to prevent conflicts. The United States proposal rightly referred to article 30, but to mention one article might mean excluding another from the application of the provision. Disputes might arise in connexion with any rule. The United States proposal was therefore useful, but should apply to the draft as a whole. It was in the best interests of States to insert provisions on the peaceful settlement of disputes in the body of the draft Convention.

9. Mr. PERÉZ CHIRIBOGA (Venezuela) said he supported the idea expressed in the United States proposal but shared the view of the representative of Guyana that, as it stood, the proposal was more like a draft article that a draft resolution. A preamble should therefore be added and an operative part drafted. As he had pointed out during the discussion on draft article 30,[3] in the present state of world affairs that article might prove to be the most important article in the Convention in the not too distant future. As it could give rise to controversy, the Conference should emphasize the need for direct negotiations between the parties to the treaties in question, which was the sovereign formula for the settlement of disputes. Moreover, the fact that the United States proposal emphasized article 30, could not be interpreted as preventing the parties to disputes arising under other articles from also resorting to consultations. The comments and doubts of some delegations regarding the United States proposal might perhaps be justified if it was in the form of a draft article, but as a Conference resolution, which was not an integral part of the Convention, it could not harm anyone and would rather reflect the feeling of the Conference that disputes should be settled, first and foremost, by direct negotiations between the parties.

10. Mr. KOROMA (Sierra Leone) said he subscribed to the view of the representative of Italy on the United States proposal, but feared that the suggestion that it be placed in a section dealing with the settlement of disputes might open Pandora's box. At present, the United States proposal referred to draft article 30, but as the Japanese delegation had said, it could also refer to draft articles 31 and 32. In principle, he approved of the proposal.

11. Mr. LANG (Austria) said he welcomed the United States proposal, which embodied some useful ideas. He was also glad to note that the United States delegation was prepared to seek wide support for its text by informal contacts. The proposal reflected the idea that a balance should be established between the principle of continuity and that of the consent of States to be bound by treaty obligations. It also took into account the need to avoid uncertainty of the Law, which would not serve the interests of any member of the international community. The right of peoples to self-determination and the need for States to maintain friendly relations with one another supported the idea behind the proposal, namely, that the parties to treaties should, as far as possible, settle their disputes by consultation and negotiation. He hoped that the informal contacts would make it possible to place that idea in its proper setting.

12. Mr. KRISHNADASAN (Swaziland) unreservedly supported the view of the representative of Sierra Leone. It would be logical to relate the United States proposal to draft articles 31 and 32. On the other hand, he was glad the United States delegation had deleted the reference to draft article 29.

13. Mr. KASASA-MUTATI (Zaire) observed that the United States proposal was based on the idea that draft article 30, as it stood, might give rise to conflicting

[3] See 38th meeting, para. 29.

interpretations by States parties to certain treaties. But the same applied to articles 31, 32 and 33. His delegation even believed that some of the provisions already adopted by the Committee could also give rise to conflicts. He thought the proposal should be placed in a section dealing with the settlement of disputes; as there were no provisions on that question, the proposal offered a means of remedying situations involving conflict. It should, however, be presented as a draft resolution comprising a preamble and an operative part.

14. Mr. GHADAMSI (Libyan Arab Jamahiriya) said he endorsed the statement made by the representative of the United Arab Emirates, for the question dealt with in the United States proposal had nothing to do with succession of States in respect of treaties. It would therefore be difficult for his delegation to support the proposal.

15. Mr. GILCHRIST (Australia) supported the United States proposal and said that whatever the outcome of the discussions on the procedure to be followed in regard to the settlement of disputes, that proposal would be of great practical value. He also approved of the suggestion by the representative of Guyana that a preamble could be drafted during informal consultations, before the Committee voted on the proposal.

16. Mr. ROVINE (United States of America) said that his delegation had no objection to the drafting of a preamble to make its proposal into a Conference resolution, rather than an article in the proper sense of the term. It did not object, either, to extending the scope of the proposal to draft articles 31 and 32, but doubted whether it was advisable to place it in a section of the draft dealing with the settlement of disputes, since that would amount to assuming that draft article 30 would necessarily give rise to disputes. In most cases, conflicts between treaty obligations resulting from a succession of States were settled by consultation. Finally, as he had already intimated, his delegation saw no reason why its proposal should not be referred to an informal consultations group.

17. Mr. BOUBACAR (Mali) said he wondered whether the Conference was concerned with succession of States in respect of treaties or with succession of States in respect of matters other than treaties, since it followed from the United States proposal that the draft Convention would impose incompatible obligations on successor States—a matter which would pertain more to the draft Convention on succession of States in respect of matters other than treaties, which was under study by the International Law Commission. Furthermore, a convention was prepared on the basis of the principle that it would be applied in good faith: could a resolution, which was ultimately no more than a recommendation, solve the problem of conflicting treaty obligations? The informal consultations group which was to consider the United States proposal should bear in mind the recommendations made by his delegation when the General Assembly had examined the question of the definition of aggression and, in particular, the role of the International Court of Justice.

18. The CHAIRMAN said that, if there was no objection, he would take it that the United States proposal (A/CONF.80/C.1/L.51/Rev.1) was to be referred to the Informal Consultations Group.

It was so agreed.[4]

ARTICLE 31 (Effects of a uniting of States in respect of treaties not in force at the date of the succession of States)

19. The CHAIRMAN said that, if there was no objection, he would take it that the Committee decided to refer article 31 to the Drafting Committee.

It was so agreed.[5]

ARTICLE 32 (Effects of a uniting of States in respect of treaties signed by a predecessor State subject to ratification, acceptance or approval)[6]

20. Mr. KRISHNADASAN (Swaziland) said that with regard to articles 32 and 36, the objections of his delegation and the Swedish delegation were the same as their objections to article 18 and to article 29, paragraph 3. He would merely draw the Committee's attention to the International Law Commission's commentary to article 18 (A/CONF.80/4, pp. 60-62), which confirmed the validity of those objections, and to the statement on that article made by the representative of Swaziland on behalf of his delegation and that of Sweden[7] at the 27th Meeting of the Committee.

21. He was more than ever convinced that article 32 was undesirable and was not a good example of the progressive development of international law, for there was no legal nexus by virtue of which the mere signature of a treaty by a predecessor State enabled the successor State to ratify the treaty. When that question had been considered in connexion with article 18, the amendment to that article submitted by Swaziland and Sweden (A/CONF.80/C.1/L.23) had been rejected by 36 votes to 25, with 17 abstentions, and paragraph 2 of article 18 had then been adopted by 43 votes to 3, with 29 abstentions. It was because that article now appeared in the draft, as also did article 29, paragraph 3, and for that reason only, that the delegations of Swaziland and Sweden had decided to withdraw their amendments to articles 32 and 36 (A/CONF.80/C.1/L.23). They requested, however, that article 32 should be put to the vote.

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[4] For the resumption of the discussion of the proposal, see 54th meeting.

[5] For the resumption of the discussion of article 31, see 53rd meeting paras. 9-10.

[6] The following amendment was submitted at the 1977 session: Swaziland and Sweden, A/CONF.80/C.1/L.23.

[7] *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) p. 187 27th meeting, para. 27.

22. Mrs. THAKORE (India) said she was opposed to deleting article 32, as proposed by Swaziland and Sweden, since that article contained a rule that was similar, *mutatis mutandis*, to the rule in article 18 relating to newly independent States. Under that rule, a successor State formed by a uniting of States could become a party or a contracting State to a treaty signed by one of its predecessor States. It could thereby complete the process initiated by the predecessor State.

23. In the opinion of the Indian delegation, that solution was the best for the effectiveness of multilateral treaties, the progressive development of international law and international co-operation. It did not interfere with the option of the successor State to become a party to the treaty in question or not to do so, since ratification, acceptance or approval were also sovereign acts, equivalent to accession by the successor State. Hence, the Indian delegation did not share the misgivings expressed by the sponsors of the amendment to article 32, that a signature subject to ratification, acceptance or approval did not create a legal nexus between the treaty and the territory concerned, on the basis of which a successor State could participate in a treaty under the law of succession. In that connexion, she drew attention to the statement she had made on article 18 at the 27th meeting of the Committee of the Whole.[8]

24. The Indian delegation fully supported the view expressed by the International Law Commission in paragraph 32 of its commentary to articles 30, 31 and 32, (A/CONF.80/4, p. 99) that there was no valid reason for a difference in treatment between two categories of successor States, namely, newly independent States and those formed by a uniting of States. The amendment submitted by Swaziland and Sweden, calling for the deletion of article 18, had been rejected by the Committee of the Whole by 36 votes to 25, with 17 abstentions, and article 18 had been adopted without a vote. She urged the Committee to follow a similar course in regard to article 32 and adopt it by consensus.

Article 32, as proposed by the International Law Commission, was provisionally adopted by 52 votes to 4, with 22 abstentions, and referred to the Drafting Committee.[9]

ARTICLE 33 (Succession of States in cases of separation of parts of a State)[10]

25. The CHAIRMAN invited the representatives of Switzerland and France to introduce their amendment to article 33.

26. Mr. RITTER (Switzerland) said that the amendments to articles 33 and 34 submitted by his delegation and that of France (A/CONF.80/C.1/L.41/Rev.1) touched on what was probably the central problem of the draft, namely the difference between the régime prescribed in article 15 for newly independent States and the régime prescribed in articles 33 and 34 for the case of separation of parts of a State. That duality of régimes was, in his opinion, the most characteristic feature of the draft. On that point, the International Law Commission, making a bold and deliberate choice, had departed from existing international law to propose an innovative solution involving progressive development. The Commission having thus performed its task, it was now incumbent on States to say whether they wished to confirm the new solution proposed to them and make it a part of positive international law, or whether they preferred to confirm the existing law.

27. In his view, the innovative element of the draft articles did not lie in the solution proposed in article 15 for newly independent States. The appearance of those States was, of course, one of the most notable phenomena of contemporary international life, but the rules of classical international law on succession of States had proved perfectly well adapted to the new situation and the draft articles had confirmed that point by retaining the traditional régime for newly independent States. For the "clean slate" rule, which was the basic principle of classical international law concerning succession of States in respect of treaties, had been generally applied in international relations long before decolonization. The International Law Commission had pointed that out in paragraph 3 of its commentary to article 15 of the draft (A/CONF.80/4, p. 52), citing the cases of accession to independence of the United States of America, the Spanish American Republics, Belgium, Panama, Ireland, Poland, Czechoslovakia and Finland.

28. The application of the "clean-slate" rule was not a choice of legal policy, but a logical consequence of the principle *res inter alios acta*, according to which a treaty was not binding on a State which was not a party to it, and no legal rule adopted without the participation of a State, for instance at a universal codification conference, could bind that State by a treaty without its consent.

29. The principle of *pacta sunt servanda* was sometimes set against that of *tabula rasa* as though they were two complementary rules, between which codification had to choose according to whether the legitimate interests of the international community were on one side or the other. It was obvious, however, that the rule *pacta sunt servanda*, which meant respect for treaties, applied only to a State which was bound by a treaty. A State which was no longer bound by a treaty was naturally not required to respect it. Thus the *pacta sunt servanda* rule was applicable only in so far as the situation was not one of *res inter alios acta*.

30. That was why, in the debates during the first part of the session, the Swiss delegation had reminded the Conference, whenever the occasion arose, that it associated the "clean slate" rule with the principle of *res inter alios acta* and not with the principle of self-determination. The

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[8] *Ibid.*, p. 187, 27th meeting, paras. 28-30.

[9] For resumption of the discussion of article 32, see 53rd meeting, paras. 11-12.

[10] At the resumed session the following amendments were submitted: France and Switzerland, A/CONF.80/C.1/L.41/Rev.1 (this amendment to article 33 was the same as that submitted by both countries at the 1977 session in document A/CONF.80/C.1/L.41); Federal Republic of Germany, A/CONF.80/C.1/L.52; Pakistan, A/CONF.80/C.1/L.54.

principle of self-determination was, indeed, a political maxim, and one that was now universally recognized, but to attach the "clean slate" rule to such a maxim, however much respected it might be, was to give that rule a political tinge which it did not have. There would thus be some danger of losing sight of the fact that a State could not be bound by a treaty it had not accepted, that that rule was absolute and that it applied to all States, and hence to all new States. Moreover even if the principle of self-determination was taken as the basis, the solution arrived at would be the same. For as the Government of Mexico had pointed out in its written comments of 1975 "the right to self-determination if applicable to all peoples and, therefore, all new States deserve equal treatment, regardless of whether they have been colonial dependencies or not" (A/CONF.80/5, p. 258).

31. When it passed from the case of newly independent States to that of other new States, that was to say, according to draft article 33, to the case in which "a part or parts of the territory of a State separate to form one or more States", the International Law Commission abandoned the "clean slate" principle and introduced, on the contrary, a rule of continuity. It was quite clear that in doing so it had been aware of the fact that it was not simply reflecting the present state of the law, but was proposing progressive development. The Commission had also pointed out in paragraph 26 of its commentary to article 33 and 34 that "In cases of secession the practice prior to the United Nations era, while there may be one or two inconsistencies, provides support for the clean slate rule in the form in which it is expressed in article 15 of the present draft: i.e., that a seceding State, as a newly independent State, is not bound to maintain in force, or become a party to, its predecessor's treaties" (A/CONF.80/4, p. 105). Since there was no doubt that the International Law Commission had wished to make a change, it was first necessary to make sure that the rule proposed would have the desired effect. He had most serious doubts on that point. For "clean slate" rule was part of general international law and would continue to be so, whatever solution was adopted in the Convention. It would therefore apply to new States which, at the time of their accession to independence, would obviously not be parties to the Convention. The "clean slate" rule would therefore take full effect and the treaties concluded by the predecessor State would not remain in force for the successor State at the time when it acceded to independence. Could those treaties by brought back into force by virtue of the ratification of the codification Convention by the new State? That was no doubt the intention of the parties, but even so, the formula "any treaty in force at the date of the succession of States ... continues in force ...", which appeared in paragraph 1 (*a*) of article 33, did not correspond to reality and hence was not applicable, since the treaty would not have continued in force, but would have entered into force for the successor State at the moment when it acceded to the codification Convention.

32. The debates of the International Law Commission showed that the solution it proposed had first been conceived for the case of dissolution of a union of States. But the Commission had noted that it was difficult to cover the different cases of unions of States in a single legal formula, and it had finally proposed continuity as the sole solution for all cases of dissolution. The assimilation of one case to another was not without difficulties, however, since a union of States, as its name implied, was a plurality of entities, each of which possessed separate international personality. It was therefore logical that in the case of dissolution of a union, each of these entities should remain bound by the treaties which applied to it. In the case of a unitary State, on the contrary, the parties did not have international personality and consequently were not the subjects of obligations which they could retain after they seceded. If the State from which a territory had separated remained in existence, it naturally retained its obligations; if it disappeared because all its parts had separated, the subject of the obligations no longer existed and the obligations were extinguished.

33. Several States had pointed out in their written comments that it was difficult to distinguish between a newly independent State and a State resulting from a separation. Of course everyone was familiar with what the draft designated by the expression "newly independent State", for that was a matter of political and historical fact. But no one had ever proposed an objective legal criterion for distinguishing the newly independent State, in that particular sense, from other new States. The International Law Commission had been aware of that point, since in paragraph 3 of article 33 it had introduced a provision designed to make the system more flexible by taking account of the case in which "a part of the territory of a State separates from it and becomes a State in circumstances which are essentially of the same character as those existing in the case of the formation of a newly independent State". But if the International Law Commission itself had noted the absence of objective legal criteria for distinguishing between those two situations, it might be asked how those called upon to apply the Convention would be able to establish that distinction. Consequently, paragraph 3 of article 33 might raise insurmountable interpretation difficulties. It was for all those reasons that France and Switzerland proposed that the "clean slate" rule be made generally valid.

34. It might be asked, however, whether there would not be practical disadvantages in adopting that course and whether the proposed amendment would not have the effect of creating a vacuum in international relations by causing the extinction of treaties whose maintenance would be in the interests of the new State and of third States. He believed that in reality there was no such danger and that where there was a common interest, the two States would not fail to reach agreement in order to ensure the continuity of the treaty.

35. Indeed, the practice of decolonization showed that in spite of the "clean slate" principle, most of the treaties concluded by the colonial Powers with third States had been maintained in force by agreement between those third States and the newly independent State. That, at least, had been the experience of Switzerland in its relations with

newly independent States. It was therefore reasonable to rely on agreement between the States concerned, whereas it would be dangerous to impose on them treaties which, having been concluded by another State, might not be in the interests of either of the parties.

36. The main concern of the co-sponsors of the amendments to articles 2, 33 and 34, issued as document A/CONF.80/C.1/L.41/Rev.1, had been to adopt an economical solution which would make it possible to isolate the problem and limit the reflex effects, in other words to ensure that the proposed amendment did not have repercussions on the other parts of the draft, particularly provisions already adopted.

37. The essential part of the proposal by the French and Swiss delegations was the deletion of subparagraph (*a*) of article 33, paragraph 1, which imposed on the successor State the continuity of treaties concluded by the predecessor State, and of article 33, paragraph 3, which made it possible to assimilate certain cases of separation to the case of formation of a newly independent State—a provision which would be pointless once a single régime had been established.

38. The co-sponsors proposed, on the other hand, that subparagraph (*b*) of paragraph 1, relating to treaties in force "in respect only of that part of the territory of the predecessor State which has become a successor State", should be retained, since the local character of those treaties showed that they were of a territorial nature, or that the territory which had separated had already enjoyed some form of international personality under the previous régime.

39. They also proposed the retention of article 34, relating to the position if a State continued after separation of part of its territory, but that provision would become a compliment to the "clean slate" rule formulated in article 15, since the latter rule would have general validity and be applicable to all cases of new States. Article 34 would therefore be renumbered 15 *bis*.

40. With regard to the consequences of the proposed amendment to the definitions in article 2, the essential purpose was to remodel the definition of a "newly independent State" so as to cover all cases of new States. The co-sponsors therefore proposed that in subparagraph (*f*) of article 2, paragraph 1, the notion of a "dependent territory", which clearly referred to a colonial situation, should be dropped, so that the definition would cover any territory, whether it was an integral part of the national territory, a dependent or associated territory, or a member State of a union or federation, etc. In the new definition, they had adopted the notion of a territory "in respect of which competence for international relations was exercised either by a single predecessor State or by two or more predecessor States which have not been entirely absorbed by the successor State".

41. In the case of a single predecessor State, that form of words covered either the separation of a territory which became an independent State, whereas the former State subsisted with a smaller territory, or the dissolution of the predecessor State, which disappeared.

42. In the case of two or more predecessor States, the wording covered the situation of which the classic example was the re-establishment of the sovereignty of Poland in 1918, with territories detached from Germany, Austria and Russia. In contrast, the proposed amendment had to exclude the case of uniting of States covered by article 30: the co-sponsors had avoided that difficulty by inserting the words "which have not been entirely absorbed by the successor State".

43. Lastly, it was necessary to harmonize the definition of "succession of States" itself, which appeared in subparagraph (*b*) of article 2, paragraph 1, with the new definition of a "newly independent State". The co-sponsors had done so by reverting to the notion of "competence for international relations in respect of a particular territory", instead of that of "responsibility for the international relations of territory". That proposal was of some value in itself and might possibly be adopted independently of the rest of the amendment. The co-sponsors had in fact considered that the notion of "responsibility for the international relations of the territory" was not fecilitous, since it could only apply to a composite State, not to a unitary State. It could be said, for instance, that Switzerland exercised responsibility for the international relations of Geneva, because Geneva, as a member State of a Federal State, had international competence in certain matters, which was exercised for it by the Swiss Confederation. But it could not be said that France assumed responsibility for international relations of Bordeaux, since Bordeaux, as a mere part of French territory, had no international relations. The expression "competence for international relations in respect of a particular territory" properly covered both situations.

44. Mr. MUSEUX (France) explained that his delegation had reached the same conclusions as the delegation of Switzerland, and that any slight differences in their positions related only to the place of the "clean slate" principle in classical international law. The French delegation considered that in customary international law, the "clean slate" principle co-existed with the principle of continuity and that both were found in practice. France had opted for a mixed system, applying the "clean slate" principle to treaties concluded *intuitu personae* and the principle of continuity to other treaties.

45. The system proposed by the International Law Commission was clearly innovative, since it applied the "clean slate" principle to newly independent States and the principle of continuity to other cases of succession of States. Generally speaking, the French delegation approved of that system, since the rules proposed had a unifying and simplifying effect, which met a need in the satisfactory conduct of international relations. Any separation of part of the territory of a State implied some incompatibility between that part and the territory from which it separated; it was therefore logical that the part thus separated should not be bound by the obligations applicable to the territory from which it had separated. In the case of a uniting of States, which, on the contrary, implied a desire

to come together, it was logical to presume the application of the principle of continuity. Although innovative, the system proposed by the International Law Commission was therefore logical. What the authors of the amendment in document A/CONF.80/C.1/L.41/Rev.1 had against it, was that it treated differently two identical legal situations, which were referred to, respectively, in article 15 and article 33, paragraph 1. Why should a State which seceded not be considered as a newly independent State? Perhaps the International Law Commission and some delegations participating in the Conference were influenced by the existence of two opposing principles embodied in the Charter of the United Nations: the principle of self-determination and the principle of the territorial integrity of States. Perhaps it was desired to give preference to the principle of self-determination by providing for application of the "clean slate" rule to cases of decolonization, and it was considered that cases of secession impaired the principle of territorial integrity. In his opinion, that position was untenable. The two principles were of equal value and must both be fully respected. According to article 6, which had already been adopted, the future Convention would only apply to the effects of a succession of States occurring in conformity with international law. Consequently, all the cases of succession covered by the Convention, whether or not they occurred in the context of decolonization, would be in conformity with the Charter and would constitute an application of the right to self-determination. Moreover, the difference between cases of accession to independence and cases of secesssion was tenuous, as could be seen from article 33, paragraph 3, under which secession occurring in circumstances essentially of the same character as those existing in the case of the formation of a newly independent State was assimilated to the latter case. To overcome the difficulties of application which that paragraph was bound to raise, some delegations proposed that it should be mentioned in the provision on the settlement of disputes. The French delegation believed that that would be a very bad method. It would be better to treat identical legal situations in the same way and thus eliminate such unnecessary difficulties.

46. The amendment submitted by Switzerland and France had the merits of simplifying the draft, of establishing objective criteria and of applying a simple legal régime. It should be noted that the "clean slate" rule adopted in the draft was not an absolute rule: it conferred a right to succeed and did not have the disadvantages of an absolute rule, which would create a legal vacuum. In submitting their proposal the delegations of Switzerland and France associated themselves with those States which had made comments on article 33 from both the theoretical and the practical points of view, in particular, Bangladesh and Swaziland (A/CONF.80/5, pp. 255 and 259).

47. Since the amendment in document A/CONF.80/C.1/L.41/Rev.1 departed from the system proposed by the International Law Commission, it might be feasible before taking up drafting problems, to discuss and take a decision on the preliminary question whether all cases of separation should be placed on the same footing.

48. Mr. TREVIRANUS (Federal Republic of Germany) introducing his delegation's amendment (A/CONF.80/C.1/L.52), said that it had a more limited scope than the amendment in document A/CONF.80/C.1./L.47, in which his country had proposed a new article 36 *bis*, and which had been withdrawn on 31 July 1978. In its new amendment, the Federal Republic of Germany had endeavoured to tackle the question by a different approach from that adopted by France and Switzerland. Moreover, it was only if the amendment proposed by the delegations of those two countries was not adopted that the amendment of the Federal Republic of Germany should be considered.

49. That amendment was intended to establish a distinction between multilateral and bilateral treaties and to introduce into article 33 the notion of consent which appeared in article 23. As proposed in the amendment by France and Switzerland, the exception referred to in article 33, paragraph 1 (*b*) would be retained; it could, indeed, be assumed that treaties applicable only to that part of the territory of the predecessor State which had become a successor State had been concluded in the interests of the population of that part of the territory, and that they should be kept in force.

50. If special treatment was not prescribed for bilateral treaties, there would have to be general recourse to saving clauses. In drafting, article 30, paragraph 2 (*c*), the International Law Commission had recognized that a bilateral treaty could be extended to the whole of the territory of a successor State only with the consent of the other State party to the treaty. The reason why his delegation now proposed to differentiate, by analogy to article 23, between bilateral and multilateral treaties was that in the case of bilateral treaties it was necessary to take account of the legitimate interest of the contracting parties in deciding whether such treaties should continue in force. The identity of the parties to a bilateral treaty was a very important factor. Generally, a bilateral treaty was intended to regulate the rights and obligations of the parties in their mutual relations. Hence it could not be assumed that States which had agreed that a bilateral treaty should apply to a certain territory would subsequently be willing to keep it in force with respect to that territory when it had become an integral part of the territory of a new sovereign. That was where the idea of protecting the co-contractors came in. For them, it mattered little whether they had to deal with a newly independent State, or with a new State which had emerged under the conditions set out in Part IV of the draft. In any case, they would wish their consent to be required. If a State broke up in the circumstances set out in article 33, any party to a treaty concluded with the predecessor State would be dealing with several States, and if it could not invoke a saving clause, it could not take a decision concerning the maintenance in force of the treaty. Since saving clauses did not provide a solution in every case, that procedure could not be relied on exclusively. In his delegation's view, the system would only be workable if it was supplemented by some mechanism of the kind proposed by the United States of America.

51. The amendment submitted by his delegation was intended to make article 33 more widely acceptable by providing a more balanced solution and ensuring, as far as possible, the stability of treaty relations.

52. Mr. NATHAN (Israel), speaking on a point of order, said that the amendment of the Federal Republic of Germany should be considered only after the amendment of France and Switzerland, as Mr. Treviranus himself had suggested.

53. Sir Ian SINCLAIR (United Kingdom), supported by Mr. RIBAKOV (Union of Soviet Socialist Republics), said that it would be an advantage for the Committee of the Whole to consider the two amendments together. It was only when it came to voting that the amendment of France and Switzerland should be taken first, because it was the furthest removed from the original proposal.

54. Mr. GÖRÖG (Hungary) said that in drafting article 33, the International Law Commission had adopted the principle of *ipso jure* continuity of all treaties, both bilateral and multilateral, in the event of the dissolution or separation of States. He referred the Committee to paragraph 25 of the Commission's commentary to articles 33 and 34 A/CONF.80/4, p. 105). The amendment proposed by the Federal Republic of Germany, on the other hand, provided that the principle of *ipso jure* continuity should apply only to multialteral treaties, bilateral treaties remaining in force only if the successor State and the other State party expressly so agreed, or by reason of their conduct were to be considered as having so agreed. He thought that distinction was unnecessary, because article 33, paragraph 2, already provided for exceptions to the principle of *ipso jure* continuity. That principle was in conformity with the interests of the States concerned, as well as those of the international community. He reminded the Committee of the case of his own country which, on the termination of the Austro-Hungarian Empire in 1918, had continued to consider itself bound by the treaties of the Dual Monarchy. He was therefore in favour of article 33 as proposed by the International Law Commission and he could accept neither the amendment of the Federal Republic of Germany nor the part of the amendment of France and Switzerland which called for the deletion of paragraph 1 (*a*).

55. Mrs. THAKORE (India) noted that article 33, paragraph 1, stated the principle of *ipso jure* continuity of treaty obligations in the event of separation of parts of a State, whether or not the predecessor State continued to exist. In her view, a distinction should be made between cases in which the predecessor State continued to exist, that was to say cases of separation, and cases in which it ceased to exist, namely, cases of dissolution. That was the course which had been followed in the draft on the succession of States in respect of matters other than treaties. In cases of dissolution, the "clean-slate" rule should be applied more widely than in other cases.

56. Subject to those remarks, she approved of the present text of article 33 and of that part of the amendment proposed by France and Switzerland which would permit wider application of the "clean-slate" principle in cases of dissolution. She would speak later on the amendment proposed by the Federal Republic of Germany.

57. Mr. RYBAKOV (Union of Soviet Socialist Republics) said he was not sure how to interpret the amendment proposed by France and Switzerland. The draft was based on the "clean-slate" principle which was set out in detail in articles 15 to 29 already adopted by the conference, and by virtue of which newly independent States were not bound, at the time of succession of States, to maintain in force or become parties to treaties, but had the right to do so if they wished. The amendment submitted by France and Switzerland seemed calculated to deprive the successor State, in the event of separation or dissolution, of the possibility of establishing, by a notification of succession, its status as a party to treaties in force, with the exception of the treaties mentioned in paragraph 1 (*b*), which was of limited scope. He could not believe that France and Switzerland really intended to re-open discussion on the "clean-slate" principle and he would like some clarification on that point.

58. Mr. GUTIÉRREZ EVIA (Mexico) referred to the position taken by Mexico in 1975 in its written comments, namely, that the right to self-determination was applicable to all peoples and that all new States deserved equal treatment, regardless of whether they had been colonial dependencies or not (A/CONF.80/5, p. 258). Paragraph 3 of article 33, as drafted by the International Law Commission, raised very great difficulties, because it was open to question who would decide that the circumstances in which a part of the territory of a State separated from it and became a State were "essentially of the same character as those existing in the case of the formation of a newly independent State", and that it was therefore appropriate to apply the "clean-slate" principle. He thought it would be better to apply the principle of self-determination in all cases. He supported the amendment submitted by France and Switzerland.

COMMUNICATION BY THE CHAIRMAN ON ARTICLES 22 *bis* AND 7.

59. The CHAIRMAN announced that the amendment to article 22 *bis* appearing in document A/CONF.80/C.1/L.28/Rev.1 had been withdrawn. Document A/CONF.80/C.1/L.10/Rev.2, which contained an amendment to article 7, withdrawn at the 38th meeting, had been withdrawn from circulation.

The meeting rose at 12.55 p.m.