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41st Meeting of the Committee of the Whole

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41st MEETING

Wednesday, 2 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 33 (Succession of States in cases of separation of parts of a State)[1] (*continued*)

1. The CHAIRMAN drew attention to a further amendment to article 33, submitted by Pakistan (A/CONF.80/C.1/L.54), and to the revised version of the Franco-Swiss amendment (A/CONF.80/C.1/L.41/Rev.1).

2. Mr. POEGGEL (German Democratic Republic) said that, while in general his delegation supported article 33 as drafted, it would like the Drafting Committee also to take into account the problems of the dissolution of a State.

3. Paragraph 23 of the International Law Commission's commentary to articles 33 and 34 read "From a purely theoretical point of view, there may be a distinction between dissolution and separation of part of a State" (A/CONF.80/4, p. 104). Such distinctions were not only theoretical however. In the case of separation, the predecessor State continued to exist and usually retained its identity, although there might be a significant reduction in terms of its population and its territory. The question of succession in respect of treaties therefore arose only to a very limited extent since, in principle, a State would remain a party to the treaty in question. In the case of dissolution, on the other hand, the predecessor State disappeared completely and, consequently, so did the party to the treaty too. As a result, different legal consequences ensued. Furthermore, dissolution was not to be regarded simply as the sum of several separations.

4. To meet that point, his delegation wished to suggest that a reference to dissolution be included in the titles of Part IV and of article 33, and also in the body of paragraph 1 of the article. That would make it clear that article 33 dealt with two different but generally recognized types of succession, namely, separation of part of a State and dissolution of a State. A further reason for including such a reference was that articles 16 and 25 of the draft on succession of States in respect of matters other than treaties dealt explicitly with the dissolution of a State. He trusted that his delegation's suggestion would be favourably considered particularly bearing in mind the general agreement within the International Law Commission and at the Conference that the questions of separation and dissolution were closely interrelated and that it was necessary to be as consistent as possible in the use of terms.

5. His delegation was unable to accept the amendment submitted by the Federal Republic of Germany (A/CONF.80/C.1/L.52) for the reasons it had already stated in reference to the amendment submitted by that delegation to article 30 (A/CONF.80/C.1/L.45).

6. Mr. SHEIKH (Pakistan), introducing his delegation's amendment (A/CONF.80/C.1/L.54), said that it dealt with a situation which his own country had known and which concerned the problems that might arise in regard to the rights and liabilities accruing under agreements entered into by the unitary State. The International Law Commission had rightly applied the "clean slate" principle in Part III of the draft convention, and the rule of "continuity" in Part IV. Yet paragraph 3 of article 33 gave rise to an anomaly for, under its terms, a successor State formed in circumstances similar to those existing in the case of the formation of a newly independent State would be treated on the same basis as the latter. Such a successor State was not a newly independent State, however, since it had not been a dependent territory so far as the conduct of its international relations was concerned. Furthermore, the legal philosophy behind the "clean slate" principle, as it applied to a newly independent State, was that the people of such a State had never exercised their inalienable right to self-determination, and their will had not been ascertained when treaty obligations had been entered into. That did not apply to the people of a State who had exercised such a right; nor could it be said of separation of part of the territory of a State, even in circumstances similar to those existing in the case of the formation of a newly independent State, that the will of the people had never been involved when entering into treaty obligations.

7. Consequently, his delegation considered that, in cases of separation covered by paragraph 3, the principle of continuity should apply only to the extent that, if the successor State had derived any benefits under a treaty, it would have the corresponding obligations, consistent with the maxims *aequum et bonum* and *res cum onere transit.*

8. Mr. RITTER (Switzerland), referring to the question raised by the Soviet representative at the 40th meeting, said he would like to explain that the main purpose of the Franco-Swiss amendment was to ensure that a single régime, namely that laid down in articles 15-19 for newly independent States, would apply not only to those States but also to new States other than newly independent States arising as a result of succession in the case of separation.

9. Mr. RASSOLKO (Byelorussian Soviet Socialist Republic) said that his delegation supported the general rule laid down in article 33, which would also cover localized treaties.

10. It did not favour the Franco-Swiss proposal to delete paragraph 1 (*a*), for attention would then be concentrated on the narrower situation dealt with in paragraph 1 (*b*). Nor was it able to support the amendment submitted by the Federal Republic of Germany, the effect of which would be

[1] For the amendments submitted, see 40th meeting, foot-note 9.

to accord a special status to bilateral treaties. The substance of that amendment was in any event very similar to that submitted by the Federal Republic of Germany to article 30. The latter had, however, been withdrawn, many delegations being of the view that its terms were in conflict with the general principles of international law and, in particular, with the *pacta sunt servanda* rule. His delegation regarded it as absolutely essential to reflect clearly in the draft convention the principle of the continuity of treaties and therefore to retain article 33 as drafted. Paragraph 2 of the article provided for exceptions to that principle, and would thus cover the point raised in the amendment submitted by the Federal Republic of Germany.

11. Lastly, his delegation saw no reason to oppose the Franco-Swiss amendment to delete paragraph 3 of the article.

12. Mr. DOGAN (Turkey) said that, in his view, the drafting of article 33 was obscure, and it was necessary to refer to the commentary to learn that it dealt with cases of succession arising in the event of the separation or dissolution of a State. That point could perhaps be referred to the Drafting Committee.

13. As to the substance of the article, in his delegation's view, a distinction had to be drawn between cases of succession arising, on the one hand, in the event of the dissolution or separation of a State and, on the other, in the event of the separation of part of the territory of a State. With regard to the former, the draft convention made it clear that, so far as cases of voluntary succession were concerned, stability of legal relationships was of paramount importance and the principle of continuity should prevail. States which united voluntarily should not evade their obligations under treaties entered into by the predecessor State. That applied equally to cases of separation and dissolution, as was borne out by international practice, for example, by the case of the union and separation of Syria and Egypt.

14. The same argument could not, however, be adduced when considering the separation of a part of the territory of a State, and the reasoning which had led to the adoption of the "clean slate" principle was self-evident. International practice in the matter and particularly that of the Ottoman Empire, was abundant, but it sufficed to call to mind the separation of Montenegro, Greece, Bulgaria, and Moldavia and Wallachia. The territories which had separated from the Ottoman Empire, having energetically resisted the notion of continuity, had ultimately managed to put an end to their commitments–commitments which had, in any event, been imposed for reasons of a political rather than a legal nature. In those circumstances, his delegation failed to see why cases of succession which differed in character, and even in origin, should be made subject to the rule of continuity. It saw no valid reason for not applying the "clean slate" principle to the separated part of a State. Indeed, as international practice showed, the reasons which applied under article 15 were equally applicable in that case.

15. His delegation fully supported the Franco-Swiss amendment.

16. Mr. ROVINE (United States of America) said that, in his delegation's view, article 33 accorded with the bulk of international practice. Attention had been focused on the obligations arising out of treaty relationships, and rightly so, but it was important not to overlook the rights which arose out of those same relationships. States which had entered into such relationships were entitled to rely on those rights and the continuation of the treaty. That did not apply, of course, where the other party or parties to the treaty had had its terms imposed upon them, irrespective of their will. Consequently, the "clean slate" principle, which would apply to newly independent States under articles 15-29, was entirely just and necessary. By the same token, however, rights freely accorded under a treaty should not be cut off because one State united with another, under article 30, or separated into two or more parts, under article 33. The central question for the Conference's consideration, therefore, was why the right of reliance should disappear.

17. There was the further question of the equities involved. If State A entered into treaty relationships with, say, 95 other nations, a rule that would cut off the rights of all those nations when State A divided into two parts would certainly not promote stability. Reference had been made to the undeniable right to self-determination of States in the case of separation and secession, but the large majority of the nations of the world, which had entered into treaty relationships, likewise had a right in the matter of those relationships to self-determination. It had also been suggested that the "clean slate" principle should apply at least to bilateral treaties because those treaties were more sensitive and were in a special category. But it was for those very reasons that the rights arising under such treaties should be maintained.

18. The presumptions provided for in paragraph 2 of article 33, whereby in certain circumstances the rule laid down in paragraph 1 would not apply, were entirely fair, if the rights of the vast majority of nations were compared with those of a single State which separated–a far more unusual occurrence. The representative of the Federal Republic of Germany had asked why the successor State should be compelled, under article 33, to continue bilateral treaty arrangements. He in turn, would ask why, under the terms of that same article, the vast bulk of nations should forgo their rights under such treaties.

19. It was true that paragraph 3 of the article gave rise to some difficulties but it nonetheless afforded the most reasonable approach in the circumstances and highlighted the need for a dispute settlement procedure. The question had been raised as to who would decide whether the separation was essentially of the same character as that existing in the case of the formation of a newly independent State. The answer was the parties themselves, in the first instance, although, if they failed to agree, they would perhaps have to resort to assistance from a third party.

20. Lastly, there was little difference in principle, in his view, between article 30, which had already been adopted, and article 33. Both were concerned with the application of the rule of continuity as a means of preserving the stab-

of treaty relationships and the international legal order. For all those reasons, his delegation supported article 33 as drafted by the International Law Commission, and was opposed to the amendments submitted by France and Switzerland and by the Federal Republic of Germany.

21. Mr. RYBAKOV (Union of Soviet Socialist Republics) said that his delegation supported in principle the International Law Commission's text of paragraphs 1 and 2 of article 33, although it agreed with the representatives of the German Democratic Republic and Turkey that the language required polishing by the Drafting Committee.

22. With regard to the amendment proposed by the Federal Republic of Germany, he endorsed the views of those other speakers who had found it unacceptable. It was an attempt to apply the "clean slate" principle to States other than newly independent States emerging from the process of decolonization, that is, to violate the idea underlying the International Law Commission text. His delegation was also opposed to the Franco/Swiss amendment since the deletion of paragraph 1, subparagraph (*a*) of article 33, which it proposed, would destroy the whole point of the article. A situation could then arise in which, if States A and B united, the continuity rule would apply in respect of existing treaties in conformity with article 30, but if they separated, they would enjoy complete freedom.

23. With regard to paragraph 3 of article 33, the problem, as the Mexican representative[2] had pointed out, was uncertainty about the meaning of the phrase "in circumstances which are essentially of the same character as those existing in the case for the formation of a newly independent State". It appeared to constitute a deviation from the general idea underlying the International Law Commission's text which was otherwise well balanced. It was superfluous and might indeed prove dangerous if retained. It was in effect establishing a second category of States, other than newly independent States as defined in article 2, paragraph 1 (*f*), to which the "clean slate" principle was to be applied. It was clear from the International Law Commission's commentary to the article that paragraph 3 might come to be applied to a predecessor State continuing to exist after a separation of some of its parts to which there would be no wish to extend the "clean slate" principle. The entire draft convention had been based on the premise that there were only two alternatives: either a State was a newly independent State or it was not. Any other approach weakened the basic concept of the draft and opened the door to misinterpretations which no international court could rectify.

24. He would suggest that further consideration be given to paragraph 3, perhaps by regional groups.

25. Mr. FONT BLÁZQUEZ (Spain) said that, while it was more logical to apply the rule of continuity to the case of dissolution of a union of States, that should not be extended to the very different case of separation of parts of a State. Where the emergence of a new State following separation was concerned, clearly only the "clean slate" principle should apply.

26. Paragraph 3 of article 33, provided for the application of that principle as an exception to the rule laid down in paragraph 1, but, in his view, it was deficient in three respects. In the first place, it did not accord with State practice, whereby the principle of continuity was applied to the dissolution of unions of States and the "clean slate" principle to that of typical cases of separation. Secondly, it was not realistic, since a State which came into being as a result of separation would not accept the rule of continuity but would insist on the "clean slate" principle. Thirdly, it could lead to serious problems of interpretation, for an international court would have difficulty in determining, on the basis of strictly legal criteria, whether the circumstances in which a part of a State separated were the same as those existing in the case of the formation of a newly independent State. He would only remind the Conference of the *Customs Union between Austria and Germany*[3] case which, in effect, had put an end to the advisory activities of the Permanent Court of International Justice. In that case, the Court had had to consider whether the customs unions between those two countries would "endanger the independence" of Austria—an expression which had been the subject of much political, economic and legal debate. He would not like the International Court of Justice, or indeed any other court, to have to solve the problems that would result from the language used in paragraph 3 of article 33.

27. The United States representative, if he had understood him correctly, had argued that the rights acquired by third States under treaties with the predecessor State should be protected. In effect, that would mean dispensing entirely with the "clean slate" principle in the draft convention and imposing on newly independent States the rule of continuity. He was unable to agree on that point. In general, however, he shared the views expressed by the Turkish representative.

28. Sir Ian SINCLAIR (United Kingdom) said that State practice in cases of separation of parts of a State was largely inconclusive, owing to the variety of circumstances under which such a separation might take place. The International Law Commission's commentary to articles 33 and 34 drew attention to the classical instances of dissolution of unions where the guiding principle had been that of continuity. On the other hand, in the case of the separation of parts of a State, with the predecessor State continuing to exist, there was a tendency to adopt the "clean slate" rule. It had been said that a clearer distinction should be drawn between the two categories, but it was difficult to see how that might be done and his delegation agreed with the observation in paragraph 25 of the International Law Commission's commentary on articles 33 and 34 that the infinite variety of constituted relationships and kinds of "union" rendered it inappropriate to make that element the basic test for determining whether treaties continued in force upon the

[2] See 40th meeting, para. 58.

[3] Customs Régime between Germany and Austria (Protocol of March 19, 1931), P.C.I.J., Series A/B No. 41, p. 34.

dissolution of a State (A/CONF.80/4, p. 104). Indeed, it appeared that State practice was not a wholly reliable guide and the international community must have regard to progressive development rather than codification in determining the basic rule.

29. Neither the International Law Commission's draft of article 33 nor the Franco/Swiss proposal constituted a departure from existing law, but if accepted, the latter would, as had been generally acknowledged, produce a radical change in the economy of the draft Convention as a whole. The obvious objection to the Franco/Swiss proposal was that it equated two situations which were dissimilar both with regard to terminology and to substance. In the draft Convention, the newly independent State was defined in terms of the historical process of decolonization and a legal régime based on the "clean slate" rule had been applied to it. To extend that régime to cases of separation of parts of a State would result in further destabilizing international treaty relations. He would remind the proponents of the amendment of the observation of a former Supreme Court Justice of the United States that the life of law was not logic but experience. In that light, a further breach of the continuity rule was not required. If a federation broke up in the future, it would not be inappropriate for any resultant successor State, which had had a voice in the formulation of the foreign policy of the federation, to continue to be bound by treaty relations.

30. Indeed, the Franco/Swiss amendment might be deemed to encourage secessionist movements. The application of the "clean slate" rule should be reserved for special circumstances essentially the same as those existing in the case of the formation of a newly independent State. Like the Soviet representative, he had considerable doubts about the way in which the provisions of paragraph 3 might be applied. The concept was not in itself too difficult and experience showed that circumstances similar to those attending the emergence of newly independent States might occur. However, the precise scope of the paragraph was not clear and if it was retained, a procedure for the settlement of disputes would be required.

31. Although there might be an objection to the amendment proposed by the Federal Republic of Germany on the grounds that it qualified the principle of continuity, his delegation could support it, in recognition of the fact that circumstances might occur under which application of the continuity rule to bilateral treaties could create difficulties and also as a compromise between the original text of article 33 and the Franco/Swiss amendment.

32. His delegation had not had sufficient time to study the Pakistan amendment to paragraph 3 and it therefore reserved the right to speak again.

33. Mr. TORNARITIS (Cyprus) said that his delegation supported both the principle and the substance of article 33 as it stood, but the wording was not always clear and should be referred to the Drafting Committee. Part III of the draft dealt with newly independent States, as defined in article 2, to which the "clean slate" principle applied: Part IV dealt with the union or separation of other States to which the continuity principle applied. When there was a separation of territory to form a new State, other than a newly independent State, article 33 applied; all other cases were covered by Part III of the draft. The difference was obvious, although the language might need improvement. The Conference should be careful not to disturb the wise structure of the draft by inserting amendments which, purporting to clarify it, might render it more obscure.

34. Mr. STUTTERHEIM (Netherlands) said that his delegation supported the International Law Commission's text of paragraphs 1 and 2. As he had already stated in the discussions on articles 16 and 30, his delegation was in favour of the continuity principle unless there were compelling reasons to the contrary, such as in the case of decolonization.

35. Paragraph 3 was superfluous since, as the Soviet representative had said, it established an undesirable third category of States which fell outside the definitions established in article 2 and its application would give rise to difficulties. He therefore thought it should be deleted but, if it were retained, he shared the view of the United Kingdom representative that a procedure for the settlement of disputes was required.

36. His first reaction to the Pakistan amendment to paragraph 3 was that it would be difficult to define the word "benefits", and that he was therefore not disposed to support it.

37. Mr. ECONOMIDES (Greece) said that the draft convention was treating as dissimilar two situations which were essentially the same: a State formed by the separation of parts of a State was to all extents and purposes newly independent and the discrimination whereby a newly independent State under article 15 was given more rights than a separated State under article 33 ran counter to the principle of the equality of States guaranteed by the Charter of the United Nations. The provisions of article 33 could rightly be applied to the dissolution of a union of composite States but were ill adapted to the case of separation. He supported the Franco-Swiss amendment.

38. Mr. NAKAGAWA (Japan) said he agreed with previous speakers that the framework of the draft convention had been well structured and that its delicate balance should not be destroyed. The continuity rule, for which many precedents were cited in the International Law Commission's commentary to articles 33 and 34 should therefore be retained in paragraph 1. Accordingly, his delegation was unable to support either the Franco-Swiss amendment or the amendment of the Federal Republic of Germany which would change the structure and harmony of the convention, and might create new problems. However, paragraph 3 in its present form was not satisfactory and therefore some drafting improvement might be necessary.

39. Mr. ROVINE (United States of America), replying to the Spanish representative's comment that the United States approach to article 33 was calculated to eliminate the "clean

slate" principle altogether, said that the right of nations to rely on treaty relationships assumed that they had been freely entered into by the other parties. In the case of non-self-governing territories and colonies on which treaty relationships had been imposed, that was clearly not the case and the "clean slate" rule was only equitable and just. So far from detracting from the "clean slate" principle, the United States attitude emphasized the reasons for accepting it.

40. The United Kingdom representative was probably right in saying in support of the amendment proposed by the Federal Republic of Germany that the maintenance of the continuity rule in respect of bilateral treaties might cause difficulties. However, the non-maintenance of such treaties was even more likely to cause difficulty. It was impossible to have a uniformly satisfactory rule, but since all States entered into bilateral treaties under which they acquired rights as well as obligations, he thought that the continuity rule should stand.

41. Mr. MARESCA (Italy) said that the arguments put forward by the proponents of the Franco-Swiss amendment had been impeccable in their logic: it was undeniable that a State emerging from an internal struggle was just as much a new State as a State born from decolonization. But international law was based not only on logic but on history, political realities and the requirements of international life. It was impossible to claim that when two States separated which, like many of the examples quoted in the International Law Commission's commentary to the article, had been joined for centuries and had formed links with other States, they were beginning a completely new existence just like those emerging from decolonization.

42. The amendment submitted by the Federal Republic of Germany had the merit of distinguishing, in accordance with international law, between bilateral and multilateral treaties. Paragraph 2 of the International Law Commission's text was both clear and logical but the same could not be said of paragraph 3 which suddenly abandoned the continuity principle and freed certain new States of any legal ties. It should be deleted.

43. Mr. DIENG (Senegal) said he could not accept the view expressed by one speaker at the 40th meeting, that the right to self-determination was a mere political maxim. If any principle fell into the category defined by article 53 of the Vienna Convention on the Law of Treaties, it was that of self-determination. The Commission had faithfully observed the principle of the progressive development of international law by including two separate criteria in the matter.

44. What put newly independent States into a category of their own was that they had emerged as a result of the decolonization process; States having separated themselves from larger territories were entirely different, and it would be totally illogical to deny that difference. However, because the Convention provided for two different legal régimes for basically different matters, it was difficult for the Senegalese delegation to support the amendment proposed by France and Switzerland. The part of a State which separated itself had to some extent participated in the formulation of international relations, which a newly independent State had not. The difference between a new and a newly independent State could not be denied, although the terminology was perhaps not ideal. The Franco-Swiss amendment in fact challenged the spirit of the draft Convention and, if accepted, would mean that many accepted elements would have to be revised.

45. The amendment proposed by the Federal Republic of Germany would undoubtedly upset the balance of the Convention and was therefore inappropriate. He reserved the right to comment later on, on the amendment proposed by Pakistan.

46. Paragraph 3 of article 33 raised serious problems and the International Law Commission's wording would certainly have to be improved. The Commission had undoubtedly been attempting to cover the marginal case of a part of a territory which had never accepted its position as a part of another, but had always demanded to be made separate, as a result of which it had always been treated as a colony. Unfortunately, as a result of its attempt, the Commission had lapsed into obscurity and it would now be better either to delete paragraph 3 entirely, or to replace it by something less confused.

47. Mrs. BOKOR-SZEGÖ (Hungary) said that from the start of its work of codifying the succession of States, the Commission had maintained the theory of different treatment for newly independent States, and it was clear from the commentary that it had had in mind only those which had resulted from the disintegration of colonial systems, hence the reference to the principle of self-determination. She fully agreed that that principle was no longer a political one but an imperative of international law, which was why a clear distinction was made between the provisions of Parts 3 and 4 of the draft as a result.

48. The reasons for making a distinction between categories of newly independent States was that those born of the colonial system had not been able to participate in the formulation of traditional international law, but had had it imposed on them. The Conference now had a duty to think of the future, and in considering the possible dissolution of States, the continuity of inter-State relations had to be safe-guarded and the stability of treaty relations maintained in the interests of the community of States. If the Committee pursued its present line of discussion, it might end by questioning the work of the International Law Commission. It should therefore maintain that clear distinction between the provisions of Parts 3 and 4 of the draft, and instruct the Drafting Committee to make the wording of paragraph 3 of article 33 clearer.

49. Mrs. PÉREZ VENERO (Panama) said she agreed with the representative of Mexico that paragraph 3 of article 33 as it stood raised difficulties of interpretation. Her delegation's position on it would naturally have to be compatible with its foreign policy position of total support for the principle of self-determination of peoples, whether of newly-formed or old-established States. That did not mean that Panama did not appreciate the serious conse-

quences of the problems which might arise from the separation of part of the territory of a State; nor did it mean that Panama would encourage the separation of part of a State in order to enable it to avoid negotiations to clarify what treaty obligations had existed for it prior to the separation; nor, finally, did it mean that Panama did not respect the principle of continuity or not believe that States should respect their treaty obligations when there was no dispute as to what they were.

50. On the contrary, Panama had shown by its co-operation with such international organizations as the United Nations and the Organization of American States, its respect for treaty obligations, patience, integrity and desire for the peaceful settlement of disputes. But where cases of incompatibility of treaty obligations caused by the separation of part of the territory of a State, as in the case referred to in subparagraph 2 (*b*) could not be settled by negotiation, Panama supported the "clean slate" principle and self-determination, which was endangered by paragraph 3 of article 33 as it stood.

51. Mr. BOUBACAR (Mali) said that as far as he was concerned there was no duality in article 33. The legal arguments put forward had carefully omitted to refer to the principles of self-determination as set forth in the United Nations Charter. Professor Virally, member of the Institute of International Law, had shown that those principles were rules of *jus cogens*. If the sponsors of the amendments believed that the former colonial power was still part of a colonized territory, then there was duality, but if that power was no longer part of the decolonized territory there could be no question of duality. He could not support the authors of the amendments, in their efforts to weaken the "clean slate" principle. As the law was being changed at a time of new ideas and newly independent States, States in other words which were no longer dependent, paragraphs 1 and 3 had to be retained. The fears of some delegations regarding paragraph 3 were not justified. It could not be denied that there were different forms of decolonization. The text as drafted by the International Law Commission should therefore be supported.

52. Mr. LANG (Austria) said that his delegation understood the priority given by the International Law Commission to the "clean slate" principle with respect to newly independent States; it was justified by the particular historical situation in which those countries had been created. Once a universal international community had been established, however, in conformity with the principles of the United Nations Charter, particularly that of the sovereign equality of States, some measure of stability was necessary for the maintenance of an international order beneficial to all its members, whence the need to give a proper place to the principle of continuity.

53. His delegation was in favour of deleting paragraph 3 of article 33 since as it stood, it could only give rise to difficulties which would not easily be resolved by any of the recognized methods for the settlement of disputes. The Conference should try to lay down rules that would not complicate matters but facilitate the process of State succession and clarify the position of treaties affected by successions. The Austrian delegation could not support any of the other amendments, although it fully appreciated their merits.

54. Mr. DUCULESCU (Romania) said that in principle his delegation favoured the legal solutions contained in article 33 as it stood. The text could doubtless be improved, particularly to bring out the distinction between the separation of unions of States and the secession of unitary States where objective criteria were necessary to an appreciation of the legality of the situation.

55. The amendments proposed by France and Switzerland and by the Federal Republic of Germany conflicted with the principles of continuity and the stability of international relations. Self-determination and secession were quite different situations in international law and should not be put into the same category.

56. As far as paragraph 3 was concerned, he was of the opinion that its scope needed to be defined more clearly. The Conference had a duty to seek legal solutions guaranteeing both the principle of self-determination and the territorial integrity of States.

57. Mr. FERREIRA (Chile) said that paragraph 3 was somewhat obscure as it stood and his delegation was still analysing it.

58. The amendment proposed by the Federal Republic of Germany was positive only in that it made the necessary distinction between bilateral and multilateral treaties in the case of part of a State separating from a larger territory, when the predecessor State continued to exist, because the application of the principle of continuity to those cases meant non-recognition of the principle of self-determination since, with the text as it stood, neither of the two States—the successor State nor the other State party—could object unilaterally to the continuity of the bilateral treaty in question.

59. The CHAIRMAN suggested that the Committee postpone its decision on article 33 until the following day, and begin its consideration of article 34.

60. Mr. KASASA-MUTATI (Zaire), on a point of order, said that further clarification of paragraph 3 of article 33 was obviously needed. He suggested that some recognized authority in the matter be asked to give further explanation so as to avoid the necessity for more statements the following day.

61. The CHAIRMAN invited the Chairman of the International Law Commission to make a statement at a time of his choosing.

62. Mr. SETTE CÂMARA (Brazil), Chairman of the International Law Commission said that he would make a statement the following day on article 33 as a whole. The Expert Consultant was better qualified to speak specifically on paragraph 3.

ARTICLE 34 (Position if a State continues after separation of part of its territory)[4]

63. Mrs. THAKORE (India) said that article 34 embodied the *ipso jure* continuity rule, subject to the usual exceptions in respect of a State which continued to exist after separation of a part of its territory. Since it dealt with treaties applicable to the predecessor State and not to the successor State or States, article 34 was acceptable to the Indian delegation as it stood.

64. The amendment proposed by France and Switzerland (A/CONF.80/C.1/L.41/Rev.1) appeared to be consequential to their amendment to article 33, and could only be considered by the Drafting Committee, if the amendment proposed by France and Switzerland to article 33 were adopted.

The meeting rose at 5.50 p.m.

[4] The following amendment was submitted: France and Switzerland, A/CONF.80/C.1/L.41/Rev.1.

42nd MEETING

Thursday, 3 August 1978, at 10.25 a.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 33 (Succession of States in cases of separation of parts of a State)[1] (*continued*)

1. Mrs. DAHLERUP (Denmark) said that her delegation supported paragraphs 1 and 2 of article 33, which guaranteed continuity and stability in treaty relations between States which had negotiated and accepted rights and obligations of their own free will. The amendment proposed by France and Switzerland (A/CONF.80/C.1/L.41/Rev.1) would have the advantage of establishing a single rule, but in cases of separation, that rule might lead to an unnecessary legal vacuum, when a whole system of freely negotiated treaties already existed. After the adoption of article 30, the amendment proposed by France and Switzerland would lead to strange results. In the case of a union of two States, their treaty régimes would be maintained, but if the new State thus formed subsequently broke up, the same treaties which had been maintained in force would no longer be applicable, which would create a legal vaccum.

2. The Danish delegation approved of the idea underlying paragraph 3, since the situation to which it applied might arise in the future. Nevertheless, the Drafting Committee should try to improve the wording, in order to prevent the abuses to which it might give rise. In any case, provision should be made for some means of settling the disputes which might result from the not very precise description of the situations covered by paragraph 3.

3. Mr. MASUD (Pakistan), introducing his delegation's amendment (A/CONF.80/C.1/L.54), said that article 33, paragraph 3, had raised doubts as to the true nature of the situations it dealt with. As a matter of fact, such situations fell within the twilight zone between part III of the draft, which dealt with newly independent States and called for application of the "clean slate" principle and part IV, which dealt with the uniting and separation of States and called for application of the continuity principle. Some delegations considered that there was no difference between the situations dealt with in article 33, paragraph 3, and those covered by article 15. It was nevertheless clear that article 33, paragraph 3, did not deal with cases of formation of a newly independent State, but with cases in which part of the territory of a State separated from it and became a State in circumstances which were essentially of the same character. In the former situation, the right to self-determination was exercised, and the will of the people of the territory which had become independent had not been consulted in the treaty-making process. Other delegations considered that it was not necessary to make provision for the situation referred to in article 33, paragraph 3, since all such situations were covered by paragraphs 1 and 2 of the article. But the reason why the International Law Commission had drafted paragraph 3 was, precisely, to cover the category of situations which were similar to cases of formation of newly independent States, but nevertheless distinct from those cases. That was why it had provided for application of the "clean slate" principle to those situations.

4. Nevertheless, the wording of paragraph 3 was not entirely satisfactory. First, the idea of "circumstances which are essentially of the same character" was not precise; secondly, according to that paragraph, situations which were not absolutely identical would have to be treated in the same way. What the Commission had intended was, precisely, to give situations in the special category referred to an intermediate position between cases falling under part III of the draft and those falling under part IV. And it was in order to give a separate status to the cases dealt with in paragraph 3 that Pakistan had submitted its amendment, which proposed restricting the application of the continuity principle to cases in which the successor State had "derived any benefits, directly or indirectly, under a treaty". That was the case when a State had received loans from another State and the part of its territory which had benefited from the loans separated from it; it was then natural that the successor State should assume the corresponding obligations.

[1] For the amendments submitted, see the 40th meeting, footnote 9.