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43rd Meeting of the Committee of the Whole

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ARTICLE 34 (Position if a State continues after separation of part of its territory)[5] (*concluded*)

63. Mr. RYBAKOV (Union of Soviet Socialist Republics) observed that France and Switzerland had proposed, in paragraph 3 of their amendment to articles 2, 33 and 34 (A/CONF.80/C.1/L.41/Rev.1) that the article should be renumbered, which meant placing it in part III of the draft. That proposal was based on the idea that a colony was part of the metropolitan territory—an idea which was not accepted by all countries and was contested by the socialist countries, in particular.

64. That idea also appeared in paragraph 3 of article 33, which was one of the reasons why his delegation doubted the utility of that paragraph.

65. Consequently, the delegation of the Soviet Union could not support the amendment proposed by France and Switzerland.

66. Sir Ian SINCLAIR (United Kingdom) suggested that the Committee should refer article 34 to the Drafting Committee with the amendment submitted by France and Switzerland. The Drafting Committee should examine, in particular, the words "unless: (*a*) it is otherwise agreed" (subparagraph (*a*) of article 34), the meaning of which was clear in the case of bilateral treaties, but not so clear in the case of multilateral treaties.

67. Mr. RYBAKOV (Union of Soviet Socialist Republics) said he had no objection to the Committee of the Whole approving article 34 and referring it to the Drafting Committee, provided it was understood that the amendment submitted by France and Switzerland was attached only for reference.

68. The CHAIRMAN proposed that article 34 should be referred to the Drafting Committee and that consideration of the proposed amendment to that article should be deferred until a decision had been taken on article 33.

It was so agreed.[6]

The meeting rose at 12.55 p.m.

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

[6] For resumption of the discussion of article 34, see 53rd meeting, paras. 20-21.

43rd MEETING

Thursday, 3 August 1978, at 3.30 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 35 (Participation in treaties not in force at the date of the succession of States in cases of separation of parts of a State)[1]

1. The CHAIRMAN invited the Committee to examine article 35 and the amendment to that article which had been submitted by the delegation of Finland in document A/CONF.80/C.1/L.39.

2. Mr. HALTTUNEN (Finland) said that the amendment proposed by his delegation was to be seen as a drafting suggestion. It was aimed essentially at simplifying the text of article 35 as proposed by the International Law Commission, by replacing the first three paragraphs of that text by a reference to the corresponding paragraphs of article 17, which contained similar provisions.

3. The CHAIRMAN said that, if there was no objection, he would take it that the Committee agreed that the Finnish proposal should be referred to the Drafting Committee as a drafting amendment.

It was so agreed.

4. The CHAIRMAN said that, if there was no objection, he would take it that the Committee provisionally adopted the text of article 35 as proposed by the International Law Commission and referred it to the Drafting Committee for consideration.

It was so agreed.[2]

ARTICLE 36 (Participation in cases of separation of parts of a State in treaties signed by the predecessor State subject to ratification, acceptance or approval)[3]

5. The CHAIRMAN reminded the Committee that the amendment which had been proposed to the article by the delegations of Swaziland and Sweden in document A/CONF.80/C.1/L.23 had been withdrawn.

6. Mr. KRISHNADASAN (Swaziland), speaking on behalf of his own delegation and that of Sweden, requested that the text of article 36 as proposed by the International Law Commission be put to the vote.

Article 36, as proposed by the International Law Commission, was provisionally adopted by 60 votes to 3, with 12 abstentions, and referred to the Drafting Committee.[4]

7. Mr. JOMARD (Iraq) asked whether the Drafting Committee would be able to take into consideration the

[1] The following amendment was submitted: Finland, A/CONF.80/C.1/L.39.

[2] For resumption of the discussion of article 35, see 53rd meeting, paras. 22-23.

[3] The following amendment was submitted: Swaziland and Sweden, A/CONF.80/C.1/L.23. Withdrawn; see 40th meeting, para. 21.

[4] For resumption of the discussion of article 36, see 53rd meeting, paras. 24-25.

reference in article 36, paragraph 1, to article 33, paragraph 1, a provision concerning which the Committee had so far taken no formal decision.

8. The CHAIRMAN said that when any article has referred to the Drafting Committee, it was subject to the understanding that that body could not take up any references in the article to other provisions of the draft until those provisions had themselves been approved by the Committee of the Whole.

PROPOSED NEW ARTICLE 36 *bis*[5]

9. Mr. TREVIRANUS (Federal Republic of Germany), introducing his delegation's proposal for a new article 36 *bis* (A/CONF.80/C.1/L.53) said that the purpose of the amendment was to incorporate in Part IV of the draft the ideas contained in articles 19 and 20 thereof. Article 19 contained a presumption that a newly independent State maintained the reservations of its predecessor State. His delegation proposed that, in order clearly to illustrate what was the existing law, the same presumption should be included in Part IV of the draft. It also proposed that a new State formed through either of the processes contemplated in Part IV should enjoy the right extended to newly independent States by article 19, paragraph 2, to shape its own treaty profile through the modification of existing reservations or declarations or through the expression of consent to be bound by, or the choice of, particular provisions of a treaty.

10. During the debate on article 19[6] in the light of the amendments submitted to that article by his own delegation and that of Austria in documents A/CONF.80/C.1/L.36 and A/CONF.80/C.1/L.25 respectively, there had been general acceptance of the idea that a newly independent State, stepped into the shoes so to speak, of its predecessor State. That idea had been confirmed by the vote on article 19. The legal nexus constituting succession meant the taking over by the successor State of treaty obligations as they existed at the date of the succession, together with the reservations which attached thereto, and the possibility for that State subsequently to adjust its inherited treaty régime by withdrawing reservations—something that was always possible under general international law—or by modifying them in accordance with its domestic needs.

11. While his delegation fully understood why some participants in the Conference had wished emphasis to be placed on the special nature of the conditions of the formation of a newly independent State, it believed that the situation with respect to succession, as distinct from accession, was identical for the States to which Parts III and IV of the draft referred. There could be no doubt, for the situation was one which flowed logically from the legal character of succession as such, that the contractual position of new States of the kind with which Part IV was concerned was the same as that of their predecessor States. That assumption could be found in article 19, paragraph 1, article 20, paragraphs 1 and 2, articles 23, 29, 30 and 33, and even in the borderline cases of articles 18 and 32. The successor State was bound *ipso jure* by the individual treaty relationship created by the predecessor State, including the reservations and other declarations made by that State and the objections thereto entered by its treaty partners. Paragraph 1 of his delegation's amendment was merely a formal expression of that situation. The contents of the paragraph would still hold true, as part and parcel of the philosophy of the draft as a whole, even if the paragraph itself was rejected.

12. While paragraph 2 of the amendment could not be considered as clarifying an existing legal situation, since there had been very little State practice in the area to which it referred, the introduction of the faculty mentioned in that paragraph was both necessary and appropriate. If new States were able to alter the reservations and declarations they inherited from their predecessors, they would be able to harmonize the various treaties to which they succeeded and so continue them with a minimum of difficulty. If they did not have that faculty, they might be compelled to invoke the escape clauses in the treaties or to terminate them sooner than was appropriate for the preservation of a sound international legal order. Paragraph 2 of the amendment was, therefore, a necessary corollary to the rule proposed in paragraph 1 and, however paradoxical that might seem at first sight, enhanced rather than weakened the principle of continuity. The amendment as a whole was, indeed, designed to preserve the stability of existing treaty relations as far as possible.

13. Mrs. SZAFARZ (Poland) said her delegation felt that paragraph 1 of the proposal by the Federal Republic of Germany merely stated explicitly provisions that were already implicit in articles 30, 31, 33 and 35. It was clear, under the principle of *ipso jure* continuity, that a successor State inherited the treaties of a predecessor State, together with any reservations or expressions of consent or preference relating thereto. Consequently, her delegation concurred with the view of the Expert Consultant that a provision such as the proposed paragraph was not entirely indispensable.

14. It disagreed profoundly with paragraph 2 of the proposed amendment, since the general aim of that provision was to introduce the "clean slate" principle, albeit on a limited scale, in Part IV of the draft. The modification of a reservation or the formulation of a new reservation, which would be acceptable in the case of a newly independent State, were inadmissible in instances of the uniting or separation of States, which were covered by the

[5] The following amendment was submitted: Federal Republic of Germany, A/CONF.80/C.1/L.53. [At the 1977 session, the Federal Republic of Germany had submitted A/CONF.80/C.1/L.47 for insertion as a new article 36 *bis*. It was withdrawn at the resumed session and the amendment A/CONF.80/C.1/L.53 was submitted in its place].

[6] 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. 191 *et seq.*

rule of *ipso jure* continuity of treaty régimes. The same was true of expressions of consent to be bound by parts of a treaty, or of preference for certain provisions of such an instrument. In view of those considerations, her delegation was unable to support the proposal by the Federal Republic of Germany.

15. Mr. ROVINE (United States of America) said he associated himself with the comments made by the representative of Poland.

16. Mr. MUSEUX (France) said that his views on the proposal were less absolute than those of previous speakers. Paragraph 1 restated a rule which seemed logical in the light of the principle of continuity that the Committee had already approved. Such a restatement might, indeed, not be indispensable, but it could be considered useful for purposes of clarification. Paragraph 2 of the proposed amendment raised a special problem, inasmuch as it sought to reintroduce, to a certain degree, the "clean slate" rule. There was thus a link between that paragraph and the amendment which his own delegation and that of Switzerland had proposed to article 33 in document A/CONF.80/C.1/L.41/Rev.1. If that later amendment was adopted, paragraph 2 of the proposal by the Federal Republic of Germany would be applicable in theory, but pointless in practice, since the question at issue would be covered, at least with regard to newly independent States by articles 19 and 20. In that respect, therefore, the paragraph would seem to have no place in the draft.

17. His delegation was, however, prepared to accept the amendment in so far as it could be considered to relate to the cases covered in articles 31 and 32, in which the treaty of a predecessor State was not necessarily in force for the successor State.

18. Mr. SANYAOLU (Nigeria) said he agreed with previous speakers that the proposed amendment was unacceptable. The rules which had been set out in article 19 had been drafted solely for the benefit of newly independent States and were inconsistent with the *ipso jure* rule that was proclaimed in Part IV of the draft.

19. Mr. BOUBACAR (Mali) said he endorsed the criticisms of the proposed amendment that had been expressed by other speakers.

20. Mr. TORNARITIS (Cyprus) said it was a fundamental rule of construction that what was clear needed no interpretation; the first paragraph of the proposed amendment merely stated the obvious. He agreed with other speakers that the second paragraph of the amendment was entirely inconsistent with Part IV of the draft.

21. Mr. TAPAVAC (Yugoslavia) said he associated himself with the views expressed by the representatives of Poland, the United States of America and Cyprus.

22. Mr. GILCHRIST (Australia) said that, while he appreciated the intention behind the proposed amendment, he agreed with those speakers who had taken the view that paragraph 1 of the proposal was already covered by the principle of *ipso jure* continuity laid down in Part IV of the draft as prepared by the International Law Commission. With regard to the attempt made in paragraph 2 of the amendment to replace the continuity principle by the "clean slate" principle, of which the International Law Commission had limited the application to newly independent States, his delegation supported the continuity principle as it had been advocated by the International Law Commission.

23. Mr. TREVIRANUS (Federal Republic of Germany) said that he was gratified to see that so many members of the Committee felt that what was said in paragraph 1 of his delegation's amendment was obvious and need not be stated in the draft Convention. In view of the comments which had been made, there was no point in requesting that paragraph 2 of the amendment be put to the vote, but his delegation did wish to state that it believed there had been at least one case of State practice which was relevant to that paragraph. That had occurred when the Socialist Republic of Viet Nam had informed the depositaries of the multilateral treaties of the entities it considered to be its predecessors that it wished to maintain those treaties and its predecessors' reservations to them. Since the Socialist Republic of Viet Nam had restated those reservations in language differing from that which had been employed when they had first been made, his delegation considered that new reservations had been entered to the treaty. It formally withdrew its amendment.

24. Mr. KRISHNADASAN (Swaziland) said that the proposal of the Federal Republic of Germany endeavoured to deal with a very real problem. As he saw it, if a successor State succeeded to a treaty with existing reservations, its only course would perhaps be to terminate its participation in that treaty. However, a State wishing to remain a party to a treaty might, after having given notice of termination, re-apply to become a party to the same treaty and enter its own reservations thereto. That in turn gave rise to the question what the position would be in the case of treaties that did not contain a termination clause. Consequently, he sympathized with the proposal of the Federal Republic of Germany although he would have had difficulty in supporting it, since it was contrary to the principle of continuity embodied in Part IV of the draft convention.

ARTICLE 37 (Notification)[7]

25. The CHAIRMAN drew attention to an amendment to article 37 submitted by Finland in document A/CONF.80/C.1/L.40.

26. Mr. HALTTUNEN (Finland), introducing his delegation's amendment, said that it was for the replacement of article 37 by a single provision to the effect that the terms of article 21 should apply to any notification under articles 30, 31 or 35.

[7] The following amendment was submitted at the 1977 session: Finland, A/CONF.80/C.1/L.40.

27. Mrs. THAKORE (India) said that article 37 laid down the procedure whereby a successor State might exercise its rights under articles 30, 31 and 35 of Part IV of the draft convention to establish its status as a party or contracting State to a multilateral treaty, and the term "notification" had been used in those three articles to draw a clear distinction between newly independent States, dealt with in Part III, and other successor States, dealt with in Part IV. In article 37 the International Law Commission had adapted the provisions of article 21, which laid down the procedure whereby a newly independent State might make a notification of succession. The purpose of the Finnish amendment, which was similar to a suggestion made during the discussion on article 37 in the Sixth Committee of the United Nations General Assembly, was apparently to avoid repetition of the terms of article 21 in article 37. Her delegation, however, considered that article 37 should be retained as drafted by the International Law Commission since it was more in keeping with its approach, which was to apply the "clean slate" principle to newly independent States and the principle of *ipso jure* continuity to the uniting and separation of States. The Commission's text of article 37 was therefore more logical.

28. Mr. DUCULESCU (Romania) said that, while he supported the provisions of article 37, he proposed that the words "notification of succession" be used instead of "notification" in both the title and body of the text in keeping with the practice followed in drafting article 21.

29. In his delegation's opinion, thought could be given to the possibility of dealing with all the issues relating to the notification of succession in the same part of the convention, while retaining, of course, the features specific to each case.

30. Mr. MARESCA (Italy) suggested that the Drafting Committee be asked to check the final phase in paragraph 2 of article 37 against the corresponding formulation in the Vienna Convention on the Law of Treaties. The wording "may be called upon" seemed somewhat indefinite: the representative of the State would either be called upon to produce full powers or he would not.

31. The CHAIRMAN said that, if there was no objection, he would take it that the Committee agreed to refer article 37, together with the amendment thereto proposed by Finland, to the Drafting Committee.

It was so agreed[8]

PROPOSED NEW ARTICLE 37 *bis* (Objections to succession) [9]

32. The CHAIRMAN then drew attention to a new article 37 *bis*, dealing with objections to succession, proposed by the United States (A/CONF.80/C.1/L.37/Rev.1).

33. Mr. ROVINE (United States of America), introducing his delegation's amendment (A/CONF.80/C.1/L.37/Rev.1); said that it had been presented by the United States Government, in a slightly different form, in 1977–A/CONF.80/C.1/L.37–on the basis that some procedure was required for dealing with objections to succession by successor States and parties to treaties. Under paragraph 1 of the proposed new article, any such objection would be limited to those submitted "on the ground of incompatibility with the object and purpose of the treaty or on the ground that the succession of the State to the treaty would radically change the conditions of its operation". It was for the Conference to decide whether the proposed article would unduly weaken the continuity rule embodied in Part IV of the draft convention, or whether it would make for a workable approach. His delegation would welcome the guidance and comments of the Conference in that connexion.

34. Mrs. THAKORE (India) said that the proposed new article had been submitted to meet the United States Government's concern, as expressed in its written comments in 1972 and 1975 (A/CONF.80/5, p. 323), at the lack of any provision in the draft articles on the effect of an objection to a notification of succession made on either of the two grounds referred to in paragraph 1 of the proposed article. In her delegation's view, the proposed article, by institutionalizing the procedures for making such objections would only complicate matters. It was also her delegation's view that the law of succession should deal with substantive matters only. She would remind the Conference that the International Law Commission had rejected the proposal since it felt that it would be difficult to evolve rules to deal with objections to notifications of succession, given the multitude of treaty relationships that might be affected. That the United States Government was itself aware of the practical difficulties involved was clear from the fact that it had suggested, as an alternative course, that a system for the settlement of disputes should be instituted under which any objection to a notification of succession could be handled.

35. Mr. MEISSNER (German Democratic Republic) said that his delegation was opposed to the proposed new article, which would impair the character of the draft convention and create new obstacles to the exercise of the right of succession. A general right of objection of the type envisaged would introduce further subjective elements into the régime of succession and could result in arbitrary discrimination against a successor State. Moreover, since the proposed new article was not confined to any particular type of multilateral treaty, objection by one State only could hinder the successor State's succession to the more important multilateral treaties. Objections, to the extent that they were justifiable, were already covered by paragraph 3 of article 16 and other provisions of the draft convention, which appeared to be entirely satisfactory. The only other permissible course was to apply by analogy the provisions of Part III relating to notification. In the event

[8] For resumption of the discussion, see 53rd meeting, paras. 26-29.

[9] At the 1977 session, the United States of America had submitted A/CONF.80/C.1/L.37 for insertion as a new article 37 *bis*. At the resumed session, the United States of America submitted a revised version of the amendment A/CONF.80/C.1/L.37/Rev.1. Subsequently, it submitted a second revised version of its amendment A/CONF.80/C.1/L.37/Rev.2.

of any problem or dispute, the existing draft articles and the procedure envisaged for conciliation would be adequate for the purpose of settlement.

36. Mr. TORNARITIS (Cyprus) said that before the procedure governing objections to succession to a treaty could be regulated, which was the purpose of the proposed new article, there had to be a substantive provision on objections. Part IV, contained no such provision, the only substantive provisions of that nature being to the effect that the draft articles would not become operative if certain eventualities, as provided for, occurred. For that reason, his delegation was unable to accept the proposed new article, which was contrary to the principle underlying Part IV of the draft convention.

37. Mr. MARESCA (Italy) said that all those attending the Conference were undoubtedly only too well acquainted with the complexities of reality and with the frequency with which problems arose. In the course of his own long experience in the service of the Italian Foreign Ministry, he had known several cases where notification of succession to a treaty had been challenged by other States which had questioned the right of a country to proclaim itself a successor State. Such difficulties were a fact of life and the Conference should face up to them squarely. The proposed new article provided a very necessary procedure for that purpose and one which could be regarded as an element of diplomatic law—the law of international procedure—as it applied to the phenomenon of succession of States. He therefore differed entirely from those who considered that the proposal was without point.

38. Mr. TREVIRANUS (Federal Republic of Germany) said that, in his view, a procedural link between escape clauses and machinery for the settlement of disputes was a prerequisite for the successful outcome of the Conference.

39. The International Law Commission had been wise to refrain from laying down general rules governing the continuance in force of treaties on the emergence of a new State, bearing in mind that the position would vary according to the type of treaty concerned. It had instead paved the way for an acceptable solution to the matter by means of the device which he had dubbed "escape clauses". In fact, they were far more than that, being in the nature of a general formula which could, and must, be interpreted according to the requirements of special situations. That, in turn, presupposed the existence of a means for settling any disputes as to the interpretation of those clauses, with the aim of ensuring that the process of succession was harmonious and smooth. In the circumstances, the United States proposal was to be regarded as a very important addition to the International Law Commission's draft.

40. Mr. STUTTERHEIM (Netherlands) said that his delegation supported the proposed new article, which provided for a very necessary procedure and, if a vote were taken, it would vote in favour of it. Provision should however perhaps be included for notification to be made to the depositary, where there was one, so that the State concerned would not have to notify the parties directly.

41. Sir Ian SINCLAIR (United Kingdom), also supporting the proposed new article, said that he had noted seventeen separate instances of escape, or exception, clauses throughout the draft articles, all in identical wording. His delegation had no undue difficulty with that wording but considered that such clauses should be complemented by a procedural mechanism in order to introduce a degree of legal security both for the successor State and for other States parties to the treaties in question. In the absence of such a procedure, it would be possible, in theory, for a successor State or any other State party to the treaty to lodge an objection to the application of the treaty at any time—even years after succession had occurred—on the ground that it would be incompatible with its object and purpose or with the conditions for its operation.

42. Mr. USHAKOV (Union of Soviet Socialist Republics) said that, in his delegation's view, the proposed new article would cause more problems than it would solve. For instance, the opening words of the article "An objection to the succession" immediately prompted the question who would lodge such an objection. In principle, under the terms of article 30 and its related articles, which the Conference had already adopted, only the parties to the treaty could decide, on the basis of objective as opposed to subjective criteria, whether it would continue in force. Those objective criteria were that a treaty would not remain in force if it appeared from the treaty or was otherwise established that its application would be incompatible with the objects and purpose of the treaty or would radically change the conditions for its operation. It would be contrary to the provisions of article 30 and its related articles for a State to decide unilaterally to notify its objection to succession to a treaty, as provided under the proposed new article. That was particularly true in the case of multilateral treaties. In the circumstances, his delegation would have great difficulty in accepting the United States proposal.

43. Mr. DOGAN (Turkey) said that, while it was true that the proposed new article would meet certain needs that might arise in international practice, the question of the application of the treaty being incompatible with its object and purpose fell more properly within the law of treaties. For that reason, his delegation would not be in a position to vote in favour of the proposal.

44. Mr. FERREIRA (Chile) said that the proposed new article would provide a sound basis for dealing with a problem that had already been raised by a number of delegations, including his own, namely, who would decide whether the application of a treaty was incompatible with its object and purpose.

45. Mr. RANJEVA (Madagascar) said that the proposed article 37 *bis* was dangerous. He had nothing to add on the general problem regarding competence to determine the compatibility or otherwise of succession to a treaty with its object and purpose, but the wording of the article lent itself to subjective and arbitrary interpretations which might themselves be incompatible with the fundamental prin-

ciples of international law and the law of treaties. In effect, the succession of States constitutes an accession *sui generis* to a treaty and it was therefore somewhat contradictory to introduce the possibility of objection to succession. Since *tabula rasa* had now been established as a fundamental principle, it was to be hoped that the succession of States would not involve a violent disruption in the legal relationships between parties to treaties; the *tabula rasa* principle must take account of the needs of international life. To accord to States parties to treaties the possibility of opposing succession by an objection procedure was likely to destroy the delicate balance of the draft convention for which all delegations had striven at the 1977 session. His delegation would therefore have difficulty in accepting article 37 *bis* as drafted.

46. Mr. BUBEN (Byelorussian Soviet Socialist Republic) said that article 37 *bis* was an attempt to introduce unnecessarily detailed provisions for the application of the draft convention: the original text sufficed for that purpose, provided all States showed goodwill. Article 37 *bis* increased the possibility of creating a legal vacuum for successor States, since if one such State lodged an objection, it would be possible to question the whole succession. That would not promote stability in contractual relations, for it would create problems soluble only by the extremely complex procedure envisaged in the proposed new article 39 *bis* (A/CONF.80/C.1/L.38/Rev.1). In fact it might be imagined that article 37 *bis* had been proposed in order to ensure the inclusion in the draft convention of article 39 *bis*. It was unrealistic and his delegation would not support it.

47. Mr. PÉREZ CHIRIBOGA (Venezuela) said that, as a result of the convention on the succession of States, standards would be established for the determination of the existence or otherwise of incompatibility of succession to a treaty with its object and purpose or the emergence of a radical change in the conditions of its operation. Some procedure was required for the notification of objections and his delegation therefore supported article 37 *bis*. However, many speakers had expressed dissatisfaction with the proposed text and it might be possible to find a more acceptable working.

48. Paragraph 4 was certainly misplaced, since the resolution of disputes ought to apply to the whole draft convention and not merely to a particular article. If article 37 *bis* was put to the vote, he would ask for a separate vote on paragraph 4.

49. Mr. KOROMA (Sierra Leone) said that at first sight article 37 *bis* appeared commendable but closer inspection revealed its dangers. No delegation would be opposed to institutionalizing the procedure for objections. However it had rightly been said that the text of article 37 *bis* raised more problems than it solved. It confused the issue by referring to incompatibility with the object and purpose of the treaty and radical change in the conditions of its operation: his delegation had yet to be convinced that the use of those two formulations was appropriate. The article did not indicate any method of determining incompatibility and, if it were accepted as it stood, it would tend to undermine all treaty régimes.

50. Finally, paragraph 3 deprived newly independent States of their right under the "clean slate" principle to accept an existing treaty if they so desired. His delegation could not therefore support article 37 *bis*.

51. Mr. CHUCHOM (Thailand) said that article 37 *bis* provided a useful method of determining whether succession to a treaty was compatible with its object and purpose. His delegation would vote in favour of it.

52. Mr. SILVA (Peru) said that if article 37 *bis* was put to the vote, he would ask for each paragraph to be voted upon separately, since his delegation thought that the proposed procedure of notification was useful but could not accept other elements of the article.

53. Mr. FONT BLÁZQUEZ (Spain) said that the proposed new article 37 *bis* contained two doubtful points. The first was the fact that paragraph 4 appeared to be misplaced, since it did not relate to the title of the article. The second and more important point was that he assumed from paragraph 1 that the treaty would apply if the successor State did not lodge an objection within 12 months. That imposed a considerable limitation on the freedom of a successor State to accept or reject a treaty under the provisions of previous articles and a consequent extension of the principle of continuity.

54. Mr. SCOTLAND (Guyana) asked that a vote on article 37 *bis* should be deferred until the following meeting in order to allow delegations more time for reflexion.

55. Mr. YANGO (Philippines) and Mr. ABOU-ALI (Egypt) supported the Guyanese representative's request.

56. Mr. MUDHO (Kenya) asked that not only the vote but further discussion on article 37 *bis* be deferred until the following meeting.

It was so agreed.

ARTICLE 38 (Cases of State responsibility and outbreak of minorities)

ARTICLE 39 (Cases of military occupation)[10]

57. Mr. GUTIÉRREZ EVIA (Mexico), introducing his amendment for the deletion of articles 38 and 39 (A/CONF.80/C.1/L.55), said that the inclusion of those articles in the draft convention had already been the subject of written comments by a number of Governments (A/CONF.80/5, p. 263 *et seq.*). His delegation proposed that the articles should be omitted because they referred to matters outside the scope of the succession of States, as the International Law Commission itself recognized. Moreover, both military occupation and the outbreak of hostilities

[10] The following amendment was submitted to articles 38 and 39: Mexico, A/CONF.80/C.1/L.55.

were entirely abnormal conditions and the rules governing their legal consequences should not be regarded as forming part of the general rules of international law applicable in the normal relations between States, as the Commission affirmed in paragraph 4 of its commentary to draft articles 38 and 39 (A/CONF.80/4, p. 108). Finally, cases of State responsibility had already been covered by article 73 of the Vienna Convention on the Law of Treaties, to which the necessary reference should be made.

58. Mrs. THAKORE (India) said that articles 38 and 39 made a general reservation concerning any question that might arise in regard to a treaty from the international responsibility of a State, or from the outbreak of hostilities between States or the military occupation of a territory. Questions arising from the international responsibility of a State or from the outbreak of hostilities between States were excluded from the Vienna Convention on the Law of Treaties by article 73. Both those matters might have an impact on the law of succession of States in respect of treaties and had therefore been excluded from the scope of the draft articles so as to prevent any misunderstanding as to the inter-relationship between the rules governing those matters and the law of treaties. Military occupation of a territory did not constitute a succession of States.

59. Her delegation was in favour of maintaining articles 38 and 39 in order to remove any misunderstanding on the subject and was not therefore in a position to support the Mexican amendment.

60. Mr. ABOU-ALI (Egypt) said that to delete the articles would be tantamount to ignoring the problem of hostilities in the succession of States. Their maintenance would remove any doubt that armed aggression, which was contrary to the Charter of the United Nations and international law, did not provide a legal basis for any decision relating to the succession of States. His delegation therefore supported the Indian representative.

61. Mr. TORNARITIS (Cyprus) said his delegation also supported the retention of the articles.

62. Mr. LUKABU-K'HABOUJI (Zaire) said that deletion of the articles might give rise to disputes. If the Mexican amendment was put to the vote, he would vote against it.

63. Mr. GUTIÉRREZ EVIA (Mexico) said that all representatives who had spoken so far appeared to be aware that the articles were unnecessary and that their contents were not in keeping with the nature of the draft convention. However, in a spirit of conciliation, he was prepared to withdraw his amendment.

64. The CHAIRMAN said if there were no objections, he would take it that the Committee wished to refer the original text of draft articles 38 and 39 to the Drafting Committee.

It was so decided.[11]

[11] For resumption of the discussion of articles 38 and 39, see 53rd meeting, paras. 30-33.

65. Mr. PÉREZ CHIRIBOGA (Venezuela), seconded by Sir Ian SINCLAIR (United Kingdom) and Mr. TORNARITIS (Cyprus), moved that the meeting adjourn.

It was so decided.

The meeting rose at 5.50 p.m.

44th MEETING

Friday, 4 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*)

PROPOSED NEW ARTICLE 37 *bis* (Objections to succession)[1] (*continued*)

In the absence of the Chairman, Mr. Ritter (Switzerland), Vice-Chairman, took the Chair.

1. Mr. ROVINE (United States of America) said that, following the discussion at the 43rd meeting concerning the new article 37 *bis* proposed by his country (A/CONF.80/C.1/L.37/Rev.1) and after consulting other delegations, his delegation had prepared a revised version of the text of that provision. No change had been made to article 37 *bis*, paragraph 1, but paragraphs 2, 3, and 4 had been replaced by new paragraphs 2 and 3. The new version of article 37 *bis* would appear in document A/CONF.80/C.1/L.37/Rev.2, which had not yet been circulated. It would be noted that paragraphs 2 and 3 were similar to articles 65 and 66 of the Vienna Convention on the Law of Treaties.

2. Replying to questions raised at the 43rd meeting, he said that article 37 *bis* related to objections to succession to a treaty, not to objections to a succession of States. Paragraph 1 of that article should perhaps be clearer on that point. It should also be noted that the question of objections was entirely different from that of the settlement of disputes. An objection did not necessarily lead to a dispute. Article 37 *bis* was intended to provide a regular procedure for the objections which certain States would undoubtedly make in connexion with succession to treaties on the grounds that such succession would be incompatible with the object and purpose of those treaties or that it would radically change the conditions of their operation. Such objections could be made by the successor State or by a party of the treaty.

[1] For the list of amendments submitted, see 43rd meeting, foot-note 9.