United Nations Conference on Succession of States in Respect of Treaties

Vienna, Austria
Resumed session
31 July-23 August 1978

Document:-
A/CONF.80/C.1/SR.46

46th Meeting of the Committee of the Whole

Extract from volume II of the *Official Records of the United Nations Conference on Succession of States in Respect of Treaties (Summary records of the plenary meetings and of the meetings of the Committee of the Whole)*

solution on the basis of the proposals submitted by the Netherlands and the United States.

62. Mr. AL-NASHERI (Yemen) said he endorsed the remarks of the representative of the United Arab Emirates, and would have great difficulty in accepting either of the proposals submitted by the Netherlands and the United States. He agreed, however, that an *ad hoc* working group should be appointed with a view to finding an acceptable solution.

63. Mr. SMALLWOOD (Liberia) said his country, which had always favoured the settlement of disputes through negotiation, would welcome the inclusion in the draft convention of some mechanism for settlement along those lines. The Netherlands proposal, however, was wholly unacceptable to his delegation for the reasons already stated by other delegations, particularly in regard to paragraph (*a*), which provided for the automatic referral of disputes to the International Court of Justice when settlement through the normal diplomatic channels failed. His delegation, while more sympathetic to the United States proposal, would also have difficulty in accepting paragraphs 2 and 4 of the Annex to that proposal, which set forth a proposed conciliation procedure. It supported the proposal that the question be referred to an *ad hoc* working group and would suggest that the African group be represented by its Chairman, the representative of Niger, or by a person to be appointed by him.

64. Miss GRAINGER (New Zealand), supporting the proposal for the appointment of an *ad hoc* working group, said her delegation considered it vital to include in the draft convention some provision for a dispute settlement procedure. It had no difficulty with the Netherlands proposal but appreciated that that proposal went somewhat further than many delegations could accept. In the circumstances, it considered that the United States proposal offered a reasonable compromise.

65. Mr. NATHAN (Israel) said the inclusion of a dispute settlement clause in the draft convention was an obvious necessity and it sufficed to refer to article 6, article 33 (3) and to the many exception clauses to appreciate only some of the difficulties that were likely to arise.

66. The procedure adopted for the settlement of disputes should be realistic, to take account of the realities of the present-day international community and of its sensitivities, yet at the same time should be as effective as possible. In general, the United States proposal met those requirements.

67. So far as the proposed conciliation procedure was concerned, however, he would have preferred to follow, in whole or in part, the corresponding provisions of the annex to the Vienna Convention on the Law of Treaties, for the following reasons. In the first place, paragraph 1 of the annex to the United States proposal did not provide for the case where a State party to a dispute failed to designate a person to serve as a member of the conciliation commission. That omission could cause the entire conciliation procedure to be abortive; paragraph 4 had been included to fill the lacuna but it too might lead to very unsatisfactory results. Secondly, the last sentence of paragraph 5 which provided for an advisory opinion to be requested of the International Court of Justice, would make the conciliation procedure unduly cumbersome, subject it to consideration by political organs such as the United Nations General Assembly, and introduce certain elements of compulsory third party procedure into the conciliation process by the back door as it were. He did not think that was the intention of the draftsmen. Thirdly, he failed to understand the meaning of the last sentence of paragraph 6. If the conciliation commission decided in favour of one party, that party would undoubtedly abide by its recommendations–but without legal effect, if the losing party did not do likewise. In his view, the corresponding provisions of the Vienna Convention on the Law of Treaties were of a far more forceful character. Furthermore, the annex to that Convention provided for interim measures to be indicated by the conciliation commission and also for third parties to a treaty to be invited to express their opinion before such a commission. Both those provisions were extremely useful and should certainly be included in the draft convention.

68. Lastly, while the Netherlands proposal was deserving of every praise for its idealistic approach, it had to be recognized that the international community was not as yet ready for such far-reaching provisions.

69. Mr. MARESCA (Italy) said he agreed entirely that machinery for the settlement of disputes was, in a sense, a guarantee of the rule of law.

70. The conciliation procedure envisaged differed somewhat from the traditional understanding of that concept, in that it was at once compulsory, in the sense that the parties would be required to bring their dispute before a conciliation commission, and also optional, in the sense that the findings of the commission would not be binding on the parties although they would have considerable moral force.

71. The CHAIRMAN said that, if there was no objection, he would take it that the Committee agreed in principle to the appointment of an *ad hoc* working group to consider the inclusion in the draft convention of a provision on the settlement of disputes. The exact composition of the *ad hoc* working group could be decided at the beginning of the following week.

It was so agreed.

The meeting rose at 6.10 p.m.

46th MEETING

Monday, 7 August 1978, at 10.40 a.m.

Chairman: Mr. RIAD (Egypt)

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

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

[Agenda item 11] (*continued*)

PROPOSED NEW ARTILCLE 39 *bis* (Settlement of disputes)[1] (*continued*)

1. Mr. POEGGEL (German Democratic Republic) said that, in principle, his delegation supported the idea that States should be under an obligation to settle any disputes regarding the application or interpretation of the Convention by peaceful means. In the light of the fundamental principles of international law, in particular the sovereign equality of States and their obligation to co-operate with one another in peace and settle their disputes by peaceful means, it would be helpful to include in the Convention provisions imposing on the parties to a dispute an obligation to hold consultations and resort to a conciliation procedure. Provisions of that kind were to be found in other conventions, either as an integral part of the instrument itself or as an optional protocol, and the relevant articles of the Vienna Convention on the Representation of States in their Relations with International Organizations of a Universal Character[2] could provide a useful basis for discussion.

2. His delegation was not in a position to support the Netherlands proposal (A/CONF.80/C.1/L.56), because it doubted whether it was proper to authorize only one party to a dispute concerning the interpretation or application of the Convention to seek a binding decision from the International Court of Justice. Moreover, the number of States which accepted the compulsory jurisdiction of the International Court of Justice had fallen to 45, or less than a third of all States. The United States proposal (A/CONF.80/C.1/L.38/Rev.1), on the other hand, was more flexible and deserved further discussion, though his delegation would prefer a procedure that was already more or less accepted internationally. That was one reason why it was in favour of following the model of the Vienna Convention on the Representation of States in their Relations with International Organizations of a Universal Character.

3. Lastly, his delegation supported the idea of setting up a small working group to examine the various proposals and draft a new article.

4. Mr. SCOTLAND (Guyana) said he thought delegations were bound to have different views on the subject under consideration; for while some States were reluctant to be confined within a system that would govern the settlement of future disputes without knowing what the future held in store for them, others argued for a régime to which they could have recourse and which offered some certainty as to the course for settling any dispute arising under the Convention. It was also clear that no delegation wished to exclude the possibility of recourse to the diplomatic channel. His own delegation considered that any system for the settlement of disputes adopted within the framework of the Convention should take account of the following elements. The principle of the consent of States should be applied at all stages of the procedure and it should be stressed that the best way of settling disputes was through the diplomatic channel. Account should also be taken of the situation in which one party to a dispute was in a weaker position than the other, so one of the parties should not be allowed to accept the recommendations of a conciliation commission and apply them unilaterally. If the party in the weaker position continued to reject the recommendations of the conciliation commission, a return to direct negotiations might be the best method of settling the dispute once and for all. But it was obvious that, in any situation, the absence of any dispute-settlement faculty would be prejudicial to the weaker party. The same was also true where the dispute-settlement faculty provided neither for automatic and compulsory recourse to judicial proceeedings nor for compulsory implementation of the decisions given by the body to which the disputes was referred. However, it was obvious that the international community had not reached a degreee of maturity which would lead it to adopt provisions to that effect as a matter of course in treaties such as the draft under consideration.

5. The delegation of Guyana was in favour of a system for the settlement of disputes by third parties, but considered that not all disputes lent themselves to that treatment; since international legal procedure was such that it precluded consideration of non-legal factors having a bearing on the case, it should be made clear in article 39 *bis* that the dispute in question was a legal one before referring it to a judicial body, even though the body might always give a preliminary ruling on the legal or non-legal character of the dispute. The machinery for settlement of disputes provided for in the convention should therefore take account of the fact that the diplomatic channel was the principle means of settlement and must remain open to the parties if other means of settlement failed. It must also reflect the need for the consent of the parties to the procedure envisaged and take account of the possibility that three categories of disputes might arise: legal, political and mixed i.e., legal and political, nothwithstanding the fact that a legal dispute might be influenced by political considerations. Lastly, a party should not be entitled to apply unilaterally a recommendation which was not binding on the parties and had not been accepted by the other party.

6. Examining the United States proposal paragraph by paragraph, he said that paragraph 1 was not entirely satisfactory, because it made no distinction between disputes which might be settled by arbitration and those which might not. He also doubted whether notification of one party by the other was really sufficient for the submission of a dispute to arbitration; if it was, he was not sure that the arbitration procedure would yield successful results. He felt that the same weakness was inherent in

[1] For the amendments submitted, see 44th meeting, foot-note 3.

[2] See 45th meeting, foot-note 14.

authorizing one party to refer a dispute unilaterally to the International Court of Justice. Paragraphs 2 and 3, on the other hand, raised no difficulties. The conciliation procedure provided for in paragraph 4 could lead to a settlement only if all parties to the dispute agreed to have recourse to it. Paragraph 1 of the annex to the Convention, proposed by the United States delegation raised no problem for the delegation of Guyana, and paragraphs 2 and 3 called for no comment. With regard to paragraph 4, however, he could remember several cases in which the decisions taken by a conciliation commission under those conditions had not had the expected effect, and he must once again stress the principle of the consent of the parties. Paragraph 5 posed several questions for his delegation: What would be the relationship between the conciliation commission and the United Nations? To which organ of the United Nations would the conciliation commission apply for transmission of its request for an advisory opinion to the International Court of Justice? In what form would it submit its request? Would the request be submitted on behalf of the parties? And what would be the role of the conciliation commission after the International Court of Justice had delivered its advisory opinion? Would the Commission accept that opinion, disregard it or deviate from it? His delegation could not agree to disputes being referred to the International Court of Justice in that way. Paragraph 6 contained some positive elements: the six-month time-limit, in particular, would make for quick settlement. While it was wise to provide that the recommendations of the conciliation commission would not be binding on the parties, it was totally unacceptable to his delegation to provide that one of the parties could unilaterally accept and implement the commission's decisions.

7. Those comments also applied to the Netherlands proposal. He was not sure that subparagraph (*a*) dealt correctly with the problems which might be raised by article 33, paragraph 3, regarding the reference of disputes to the International Court of Justice. Could the Court rule on the circumstances in which a new State had entered international life? The lack of any objective criterion for determining whether a State had attained independence under the same conditions as a newly independent State would give rise to serious difficulties.

8. Lastly, he thought it would be useful to set up a small working group to consider the elements which should be included in the system for the settlement of disputes and reach a compromise.

9. Mr. MUDHO (Kenya) said that the problem of the settlement of disputes was not peculiar to the draft Convention: both the Charter of the United Nations and that of the Organization of African Unity contained explicit provisions on the matter, as also did the Vienna Convention on the Law of Treaties. But the authors of the proposals under consideration had pointed out that those provisions could not be reproduced in the draft convention, because it contained certain concepts, such as incompatibility with the object and purpose of the treaty, which were so formulated that differences in interpretation would be inevitable. For that reason, the attitude of certain delegations to the draft convention eventually adopted, including that of the Kenyan delegation, would depend largely on the system adopted for the settlement of disputes.

10. His delegation recognized that there was a problem which it was the duty of all delegations to solve in a satisfactory manner. Consequently, in a spirit of compromise, it lent its full support to the United Kingdom representative's suggestion, that an *ad hoc* working group be set up to study the problem and submit recommendations to the Committee. His delegation was willing to contribute to the efforts made to find a satisfactory solution; but if they were to commend themselves to as many delegations as possible, any recommendations made to the Committee must take account of the legitimate concerns of all States and the facts of the modern world. The solution would probably be similar to the proposal made by the United States delegation, which, although unacceptable to his delegation its present form, nevertheless provided a better basis for discussion than the Netherlands proposal, which was too idealistic to merit serious study. Lastly, he fully endorsed the views expressed by the representative of Guyana on the various aspects of the two proposals submitted.

11. Mr. LUBIS (Indonesia) said that, like the United States and Netherlands delegations, he considered it necessary to include a system for the peaceful settlement of disputes in the future convention, as in any other convention, and he commended the efforts made by those two delegations in that direction.

12. Having carefully studied the United States proposal and the Netherlands proposal, he had come to the conclusion that, if it were necessary to choose between them, he would favour the former, because the Netherlands proposal was more rigid and tended to neglect political realities, whereas the United States proposal allowed the States parties to a dispute concerning the interpretation or application of the convention more room to manœuvre. Paragraph 1 of the United States proposal dealt with the various stages of the procedure to be followed in the peaceful settlement of disputes before having recourse to the International Court of Justice. Paragraph 2 contained a reservation clause which, in his delegation's opinion, was very important and should be included in the future convention and in every other convention.

13. His delegation's basic objection to the United States proposal was that it led eventually to the compulsory jurisdiction of the International Court of Justice, which his Government was not yet able to accept, save in very special circumstances. His Government's position was that, for any dispute to be submitted to international arbitration, the consent of both parties thereto must be secured first, as provided for in the peaceful settlement clauses of the Treaty of Amity and Co-operation in South East Asia, signed in Bali in February 1976.

14. It was because the United States proposal would allow a dispute to be submitted to arbitration without the prior consent of both parties that his delegation was unable

to support it. Nevertheless, it supported the United Kingdom representative's suggestion that a working group be set up to examine the question. Whatever new draft was proposed by that group, his delegation hoped that it would include the reservation clause contained in paragraph 2 of the United States proposal.

15. Mr. MAIGA (Mali) said he believed that a procedure for the settlement of disputes should be provided for in the future convention, as some members of the International Law Commission had already suggested. But he did not think disputes should be submitted to compulsory arbitration by the International Court of Justice, since the Court's arbitration rules were based on the legislation of the advanced countries and were not suitable for newly independent countries. In his opinion, priority should be given to conciliation, as the Italian representative had very rightly said, and a solution should be sought which took account of the various legal systems in force in the international community, for it was only thus that international law would be able to serve the interests of the different members of that community.

16. Mr. YANGO (Philippines) said he considered it necessary to provide for a procedure for the settlement of any disputes that might arise out of the interpretation or application of the convention. The Philippines, which had been one of the first States to sign the Charter of the United Nations and had accepted the compulsory jurisdiction of the International Court of Justice, had always adopted, in the various organs of the United Nations, a position resolutely in favour of the peaceful settlement of disputes. The question of the peaceful settlement of disputes was one of the most important items now under consideration by the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization, and his delegation trusted that the General Assembly would hold a special session on that question. It was accordingly grateful to the delegations of the United States and the Netherlands for having submitted proposals concerning a procedure for the peaceful settlement of disputes. It hoped that the working group set up to examine those proposals would arrive at a positive solution in keeping with the Vienna Convention on the Law of Treaties and acceptable to all States.

17. Mr. KOROMA (Sierra Leone) said that, as the International Law Commission had observed in paragraph 52 of its introduction to the draft articles, "The task of codifying the law relating to succession of States in respect of treaties appears, in the light of State practice, to be rather one of determining within the law of treaties the impact of the occurrence of a 'succession of States' than *vice versa*", and consequently, "in approaching questions of succession of States in respect of treaties, the implications of the general law of treaties have constantly to be borne in mind." The International Law Commission had further stated that "As today the most authoritative statement of the general law of treaties is that contained in the Vienna Convention on the Law of Treaties (1969), the Commission felt bound to take the provisions of that Convention as an essential framework of the law relating to succession of States in respect of treaties" (A/CONF.80/4, p. 9).

18. He believed that articles 65 and 66 of the Vienna Convention on the Law of Treaties provided a sufficient *modus operandi* for the settlement of disputes that might arise out of the application of the future convention. Although the Vienna Convention had not yet been ratified by all States, no delegation had been opposed, in principle, to article 65 of that Convention. He would suggest that the emphasis should be on conciliation—even on compulsory conciliation—which was the emerging trend in regard to settlement of disputes in the various United Nations fora.

19. The different methods of settling disputes all had their advantages and disadvantages, and in choosing between them it was necessary to consider what States were prepared to accept at the present stage of international relations. The method of compulsory conciliation was in itself an important development in settlement procedure, and that would seem to be what the majority of States were prepared to accept at the present time. It therefore seemed preferable to keep to the provisions of the Vienna Convention on the Law of Treaties.

20. The delegation of Sierra Leone supported the proposal that a working group should be set up to study the question of settlement of disputes and find a generally acceptable solution.

21. Mr. ROVINE (United States of America) thanked members of the Committee for their comments and suggestions, and assured them that his delegation would take account of all the views expressed. He was sure that the working group would reach a solution acceptable to the great majority of delegations.

22. With regard to direct negotiation, his delegation fully endorsed all that had been said on the value of that method, which was the one most frequently used and preferred by the great majority of States. It was to that method that recourse should be had in the first instance, and his delegation would have no objection to stressing that point in paragraph 1 of article 39 *bis*. It did seem necessary, however, to provide for another procedure, in case the negotiations failed.

23. Some delegations thought it necessary to establish a hierarchy in the methods of settlement of disputes by providing, first, for negotiation; secondly, for conciliation; thirdly, for arbitration; and, lastly, for reference to the International Court of Justice. In his view, however, such a classification would give rise to difficulties, since it would imply, in the last resort, compulsory reference to the International Court of Justice, which most delegations were unable to accept. He pointed out that the United States proposal did not provide for compulsory arbitration or for compulsory reference to the International Court of Justice and that, under paragraph 2 of article 39 *bis*, a dispute could only be submitted to arbitration or referred to the International Court of Justice for a decision with the consent of the parties. He recognized that the international community was not yet ready to accept compulsory

arbitration, but thought it was necessary to move in that direction.

24. Referring to the question raised by the representative of Zaire, concerning the application of paragraph 2 of article 39 *bis* in the case of a uniting of States covered by article 30,[3] he said that if State A united with State B, there would be no problem if both States had made a declaration under paragraph 2 or if neither of them had done so. A problem would arise only if State A had made a declaration, but State B had not. But in that case the successor State A-B was free to choose, and could negotiate a settlement with the other parties to the Convention.

25. In conclusion, the United States delegation was willing to seek a compromise solution within the working group the Committee had decided to set up.

26. The CHAIRMAN proposed that consideration of article 39 *bis* should be suspended until the *Ad Hoc* Group on Peaceful Settlement of Disputes set up to study that article had completed its task, and that the Committee of the Whole should resume consideration of aricle 37 *bis*.

It was so agreed.

PROPOSED NEW ARTICLE 37 *bis* (Objections to succession)[4] (*concluded*)*

27. Mr. NATHAN (Israel) said that the new version of article 37 *bis* would make a valuable contribution to the provision of machinery for the application of the convention in regard to one of its most complex subjects, namely, objections to succession to a treaty. Unlike those delegations which considered that such a provision would be unnecessary if there was an article on the settlement of disputes, his delegation believed that article 37 *bis* was useful, since it was intended to settle specific questions. In the absence of a procedure under which States would be obliged to give notification of their objection, it would be difficult to know whether a particular treaty was in force or not. It should be noted that all objections did not necessarily give rise to disputes. One example was the objection raised in regard to the participation of Malawi in the European Convention for the Protection of Human Rights and Fundamental Freedoms, which was referred to in paragraph 11 of the International Law Commission's commentary to article 16 (A/CONF.80/4, p. 57).

28. It seemed to him that in so far as the article referred to an objection made by the successor State, it concerned the case of succession to a treaty within the context of part IV of the draft; under part III, a newly independent State became party to a treaty only by notification of succession. If that were indeed so, it should be made clear in the text of article 37 *bis*.

29. Articles 31 and 37 provided for a procedure whereby notification had to be made to the depository, if there was one, and he saw no reason for departing from that principle in article 37 *bis*.

30. Since not all objections would necessarily impose an obligation to engage in negotiations or consultations, or even to have recourse to traditional methods of the settlement of disputes, the other States parties should first of all set a time-limit for rejection of the objection. If it was not rejected, the treaty should cease to apply as between the objecting State and the State or States which had not rejected that objection. It was only in the event of rejection of the objection that the procedure of negotiation or consultation should be initiated.

31. Mrs. SLAMOVA (Czechoslovakia) said she thought article 37 *bis* raised difficulties, even in its new version (A/CONF.80/C.1/L.37/Rev.2). The article was linked with the provisions of part IV and constituted an exception to the application of the principle of continuity, but, its wording suggested that it also applied to part III. If that were so, it would impair the "clean slate" principle and the freedom of every newly independent State to decide for itself whether or not it wished to participate in the treaties of the predecessor State.

32. Article 37 *bis* also raised difficulties in regard to procedure. In short, it created more problems than it solved, so her delegation could not support it.

33. Mr. CHUCHOM (Thailand) pointed out that a State could be required to co-operate in the performance of a treaty to which it was not a party, and that that treaty could be the subject of a succession between two other States. It followed that it should be possible for an objection to succession to a treaty to be made not only by a State party, but also by a third State. Consequently, the words "party or parties", in paragraph 2 of draft article 37 *bis*, should be deleted.

34. Mr. NAKAGAWA (Japan) said his delegation would support the proposed new article 37 *bis*, which would improve the draft Convention.

35. Mr. BRECKENRIDGE (Sri Lanka) said that, in his view, article 37 *bis* upset the balance between the "clean slate" rule and the principle of continuity. That article, like the article on the settlement of disputes, concerned the right to challenge a succession. Both were important, especially from the political point of view, but they had already been discussed at length and should perhaps be put to the vote. It would be helpful if the Expert Consultant could explain why the International Law Commission had not proposed an article on objections to succession.

36. Mrs. SAHOOLY (Democratic Yemen) said she was convinced that article 37 *bis* would raise more problems than it would solve, because it introduced subjective criteria. It would allow any State which was a party to treaties to decide individually whether succession of a State to those treaties was incompatible with their object and purpose and whether such succession would radically change the conditions of their operation. Article 37 *bis* was therefore unacceptable.

[3] See 44th meeting, para. 46.

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

* Resumed from the 44th meeting.

37. Mr. MAIGA (Mali) said that the future Convention should confirm the process of decolonization. Article 37 *bis* not only upset the balance of the draft, but dealt with a question which the International Law Commission had left aside. Since the article could be invoked at any time, it constituted a further element of instability in relations between States. Consequently, it was unacceptable.

38. Mr. SCOTLAND (Guyana) drew the attention of representatives to the three examples of application of the principle of incompatibility which the International Law Commission had cited in its commentary to article 16 (A/CONF.80/4, pp. 57-58). No doubt that enumeration was not exhaustive, but any other examples that might be given must at least be of a similar nature. None of the cases which the International Law Commission had had in mind seemed susceptible of judicial settlement, but his delegation believed they could be settled peacefully by other means. If succession to a treaty gave rise to objections, it would be the States parties to that treaty which would exclusively assert the right to arrive at a settlement. He did not believe that States parties to a treaty-régime as sensitive as one which contemplated an exclusive membership would permit the question of membership in that régime to be the subject of judicial scrutiny and binding judicial decision.

39. An analysis of paragraph 1 of the proposed new article revealed the following: notification of an objection must be given in writing; that such notification could be given by the successor State or any other State party to the treaty; and that an objection or the rejection of an objection must be made within twelve months from the date of the succession.

40. It was normal practice for a State wishing to give such notification to ensure that all the other parties to the treaty were informed of its intention, either directly or through the depository, and to give its notification in writing. The procedure to be followed was laid down in article 77, paragraph 1 (*c*), and article 78, subparagraph (*a*), of the Vienna Convention on the Law of Treaties. Articles 21 and 37 of the draft gave further particulars concerning the notification of succession. He felt confident that the same procedure would be followed by States in notifying an objection.

41. According to paragraph 1 of article 37 *bis*, an objection to succession to a treaty could be notified by the successor State or by the other States parties. That provision was dangerously ambiguous. Why would a successor State object to a notification of succession? It could do so, of course, only if it had been informed that it had succeeded to a treaty and did not agree. That situation might arise for a State which came into being by separation from another State, but his delegation did not see how it could arise for a newly independent State. Among the articles of parts III and IV of the draft that contained saving clauses on incompatibility or radical changes, in all but two, the initiative lay with the successor State, either to become a party to a treaty or ratify it, or to give notification of succession. In all the articles of part III, the successor State was seen as expressing its consent to become a party to treaties without any assistance from the States that were already parties. An exception was to be found in part IV, in articles 30 and 34, which concerned the uniting and the separation of States respectively. There was a presumption that treaties continued to be applied. It was only in the cases covered by those two articles that the other States parties could notify the new State, or a State which continued to exist after separation of part of its territory, that the application of a particular treaty would be incompatible with its object and purpose or would radically change the conditions of its operation. Paragraph 1 of the article 37 *bis* was unacceptable since it treated the cases coming under parts III and IV of the draft in the same way, and his delegation remained opposed to any attempt to merge the ideas contained in those two parts.

42. Finally, paragraph 1 of article 37 *bis* set a time-limit of twelve months from the date of the succession of States for notification of an objection by the successor State and, it would appear too, a time-limit for the rejection of an objection. Except in article 28, concerning the termination of provisional application, paragraph 3 of which provided that reasonable notice for such termination was twelve months, the International Law Commission had carefully avoided specifying time-limits. During the Conference only the two amendments relating to article 16 had given rise to a discussion on time-limits, but those amendments had been withdrawn, for it had been acknowledged that fixed time-limits would cause hardship. It could take a State, particularly a newly independent State, a very long time to review all of the predecessor's treaties that applied to its own territory, in order to determine which of them it wished to maintain in force. For those reasons, his delegation considered that the time-limit specified in paragraph 1 of article 37 *bis* was unacceptable.

43. Paragraph 2, which concerned recourse to consultation and negotiation, presented no difficulty, but his delegation reserved its position on paragraph 3 pending the outcome of the discussion on article 39 *bis*.

44. Mr. RANJEVA (Madagascar) said that the new version of article 37 *bis* was an improvement, in so far as an objection to succession to a treaty did not put an end to relations between the successor State and the other States parties, but obliged them to negotiate. But that improvement was not enough, for the notion of an obligation to negotiate implied that the decision of a successor State to become a party to a particular treaty was open to discussion. If article 37 *bis* was finally adopted, its application should be made subject to rigorous conditions.

45. Mrs. BOKOR-SZEGÖ (Hungary) endorsed the opinion of the delegation of Czechoslovakia. It was not clear whether the United States proposal was intended to apply only to part IV of the draft, or to part III as well, in which case it was unacceptable. In view of the links between the proposed articles37 *bis* and 39 *bis*, it might be advisable to suspend consideration of article 37 *bis* until the *ad hoc* group set up to study article 39 *bis* had completed its work.

46. Sir Francis VALLAT (Expert Consultant), replying to the delegation of Mali, said that the International Law Commission had not considered the question of objections to succession. As could be seen from paragraphs 80 and 81 of its introduction to the draft articles (A/CONF.80/4, p. 15), the International Law Commission had been willing to consider the question of the settlement of disputes at its 27th session and would no doubt have examined the question of objections at the same time, but the General Assembly had decided not to wait any longer before convening the Conference.

47. Mr. PÉREZ CHIRIBOGA (Venezuela) said that, when the United States delegation had submitted its draft article 37 *bis*, the Venezuelan delegation had supported it, because it had considered that the proposal did not introduce any new principle or call accepted principles in question. It still believed that the idea contained in the proposed article was good and should be embodied in the convention. In view of the difficulties raised by paragraph 1, however, the Committee would certainly not be able to approve the article as it stood, and it should perhaps be redrafted by its sponsor. His delegation reserved its position on paragraphs 2 and 3 until a decision had been taken on paragraph 1.

48. It might perhaps be easier to find a solution if the title of the draft article were amended so that it no longer referred to objections, but, for example, to participation in a treaty signed by the predecessor State, when a State considered that there would be incompatibility with the object and purpose of the treaty.

49. Mr. VREEDZAAM (Suriname) said he believed that an objection to succession to a treaty could be made only if the treaty itself so provided. Adoption of the United States proposal would only add to the existing difficulties in matters of succession. His delegation could not support the proposal and suggested that it should be referred to the *ad hoc* group set up to study draft article 39 *bis*.[5]

50. Mr. MARESCA (Italy) said he did not share the doubts expressed by many delegations concerning the proposed article 37 *bis*. It was a procedural article that was quite appropriate in the draft.

51. As to the question whether the proposed article applied to all cases of succession, its position in the draft clearly showed that it would not apply to cases in which the successor State was a newly independent State and that it in no way affected the application of the fundamental "clean slate" principle to such States.

52. Paragraph 2 of the draft article was not superfluous, for as the representative of Madagascar had pointed out, it stated a new obligation: when an objection had been made, a State party could not simply reject it, but must enter into consultations and negotiations.

53. Some speakers had held that the successor State had no reason to make an objection to succession. On the contrary, in the cases covered by articles 30, 31 and 35, where the principle of *ipso jure* continuity applied, the successor State must be able to raise an objection when it considered that succession was incompatible with the object and purpose of the treaty or would change the conditions of its operation.

54. Paragraph 3 was not superfluous either, for an objection was not a dispute, even though it might give rise to a dispute. Paragraph 3, which provided that the general procedure for the settlement of disputes should be applied if no solution was reached within a period of twelve months, was entirely logical.

55. Mr. KOROMA (Sierra Leone) said that his delegation was still opposed in principle to article 37 *bis*, which would have the effect of depriving newly independent States of the benefit of application of the "clean slate" rule. Even admitting, for the sake of argument, that the article was useful, it still raised difficulties. Part IV of the draft convention, particularly the provisions relating to the uniting of States, was predicated on the principle of the continuity of treaty relations. What would happen if, after two States had agreed to unite, one of them, which had not been a party to a particular treaty, found a reason for objection to succession to that treaty which was not one of th two reasons specified in article 37 *bis*, but fell under part II, section 2, of the Vienna Convention on the Law of Treaties? Might not the proposed new article have a restrictive effect in that case? Would not the other parties to the treaty be able to invoke the principle that the mention of one or two texts implied the exclusion of the other? If so, why should only two grounds for objection to a succession be specified in article 37 *bis*? And if the grounds stated in part II, section 2, of the Vienna Convention on the Law of Treaties were considered valid in that context, what was the use of adopting article 37 *bis*?

56. Mr. AL-KHASAWNEH (Jordan) said he had been glad to hear the Expert Consultant confirm his delegation's impression that there was a link between draft articles 37 *bis* and 39 *bis*. He therefore supported the proposal by the representative of Hungary that consideration of article 37 *bis* should be suspended until the *ad hoc* group had completed its examination of article 39 *bis*.

57. Mr. DOGAN (Turkey) said that while he appreciated the efforts made by the United States delegation, he thought it would be preferable to adopt a settlement procedure that was applicable to all disputes, rather than try to find a specific solution for each individual case. The objections which his delegation had raised concerning 39 *bis* also applied to article 37 *bis*.

58. Mr. ECONOMIDES (Greece) supported the proposal that article 37 *bis* should be referred to the *ad hoc* group set up to study article 39 *bis*.

59. Mr. ROVINE (United States of America) thanked those delegations which had taken part in the discussion on the proposed new article 37 *bis*. As the proposal (A/CONF.80/C.1/L.37/Rev.2) had not received sufficient

[5] See 45th meeting, para. 71.

support, his delegation withdrew it, while expressing hope that when objections to succession to a treaty were actually made, the States concerned would settle the matter by negotiation and that, if the negotiations failed, they would apply the procedure for settlement of disputes which his delegation hoped the Conference would adopt.

60. The CHAIRMAN asked the delegations concerned whether they wished to maintain their proposal that article 37 *bis* should be referred to the *ad hoc* group set up to study article 39 *bis*.

61. Mr. GÖRÖG (Hungary) and Mr. VREEDZAAM (Suriname) replied that, since the United States delegation had withdrawn draft article 37 *bis*, they withdrew their proposal.

The meeting rose at 1 p.m.

47th MEETING

Monday, 7 August 1978, at 4.05 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*)

PROPOSED NEW ARTICLE 40[1]

1. Mr. STUTTERHEIM (Netherlands), introducing his delegation's proposed new article 40 (A/CONF.80/C.1/L.57), said that several articles of the draft convention laid down the same rules as the Vienna Convention on the Law of Treaties, 1969. But in the course of its discussions, there had been cases where the Committee had not deemed it necessary to restate the rules but had, as in article 19, cited the specific rules of the Vienna Convention which were applicable. He would remind the Committee, that, during the discussion on that article, he had proposed that the Drafting Committee be asked to add a rule about objections to objections.[2] The Drafting Committee had discussed the matter but had not deemed it necessary to change the wording of article 19. It had stated in its report that general international law, and particularly the rules set out in the Vienna Convention,[3] were applicable.

2. Article 73 of the Vienna Convention on the Law of Treaties (1969) could be interpreted as excluding the application of that Convention to a succession of States. That was why his delegation had submitted its amendment. The text merely set out the idea and if the Committee approved it, the Drafting Committee could improve the wording. It might, for example, be preferable to say that the rules of the 1969 Vienna Convention would be applicable, since it was not impossible that a State which was not a party to the 1969 Vienna Convention might become party to the convention under consideration.

3. Mrs. BOKOR-SZEGÖ (Hungary) said that the essential point of the Netherlands amendment was that it filled the gaps in the draft convention in cases where a problem arose which was linked with the law of treaties and was not covered by the provisions of the present draft. Nevertheless, for purely legal reasons, her delegation could not support the proposal.

4. It might be anticipated that in the future there would be many cases of application of the present draft convention affecting States which were parties to it but were not bound by the Vienna Convention on the Law of Treaties. In the interests of legal clarity, it would therefore be a mistake to refer in general terms in a special article of the present draft convention to another convention when the parties to the two conventions were not identical. Certain provisions of the present draft convention already mentioned specific articles of the Vienna Convention. However, the idea underlying the Netherlands amendment could be inserted into the preamble of the draft convention. Thus, the preamble might refer on the one hand to customary international law relating to the law of treaties, and on the other hand, it might mention the existence of the Vienna Convention. Both concepts must appear in view of the fact that the Vienna Convention did more than merely codify the existing customary rules on the subject. She therefore hoped that the Netherlands and other delegations would consider her suggestion, particularly bearing in mind paragraphs 52 and 54 of the International Law Commission's introduction to the draft articles (A/CONF.80/4, pp. 9-10).

5. Mr. MONCAYO (Argentina) said that in preparing the present draft convention, the International Law Commission had filled a gap in the codification of international law which had been explicitly left by article 73 of the Vienna Convention of the Law of Treaties. In his delegation's view, there was no reason why the Conference, having settled individual rules, should not decide that the Vienna Convention would govern any matters which were not otherwise provided for. The Netherlands amendment merely generalized the criterion embodied in article 19, paragraph 3, in its reference to articles 20 to 23 of the Vienna Convention. In general terms, therefore he could support the Netherlands amendment. There was, however, one point which required clarification. The reference to the Vienna Convention on the Law of Treaties implied that the general rule of interpretation for the present draft convention would be that embodied in articles 31 to 33 of the Vienna Convention. The basic rule was that contained in

---

[1] The Netherlands submitted an amendment proposing the insertion of a new article 40, A/CONF.80/C.1/L.57.

[2] *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*, p. 198, 28th meeting, para. 32.

[3] *Ibid.*, pp. 236-237, 35th meeting, paras. 16-23.