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47th Meeting of the Committee of the Whole

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 VREEDZAAM (Suriname) replied that, since the United States delegation had withdrawn draft article 37 *bis*, they withdrew their proposal.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

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[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.

paragraph 1 of article 31, namely, that a treaty should be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose. That criterion made it possible, notwithstanding the ancillary applicability of the Vienna Convention, for the solution of situations not provided for in the present draft convention to be sought first in accordance with its own rules before being referred to the Vienna Convention.

6. The draft convention did not consist of a series of exceptions to the rules laid down in the Vienna Convention on the Law of Treaties: on the contrary it was a coherent set of rules to be applied in conformity with its own terms and in the light of its own object and purpose. The fact that the Vienna Convention specifically excluded succession of States from its purview indicated that it was a special subject where principles such as self-determination and equality of States should be taken into account as well as the principle of continuity. Any automatic reference to the Vienna Convention would detract from the independence of the present draft and might prevent a solution in harmony with the latter's own rules–a result which would be contrary to the correct interpretation of article 31 of the Vienna Convention itself. Therefore, while supporting the Netherlands amendment, he would suggest for the consideration of the Drafting Committee that the word "specific", which appeared in that amendment, be deleted and that language be inserted to the effect that the solution of any problem in connexion with a treaty arising out of a succession of States should, in the absence of a relevant provision in the present convention, be referred to the Vienna Convention only after it had proved incapable of solution when the treaty concerned was interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the convention in the light of its object and purpose.

7. Mr. YASSEEN (United Arab Emirates) said that in his view the Netherlands amendment was unnecessary in respect of the rules of customary international law embodied in the Vienna Convention on the Law of Treaties. What was more important, however, was that it misrepresented the position with regard to the new rules established by that Convention.

8. It was true that rules of customary international law continued to govern those matters for which there were no specific provisions. Several codification conventions made reference to that practice in a paragraph of their preambles. That example should perhaps be followed, and a paragraph set aside for that purpose at the end of the preamble.

9. However, what was more important was that the amendment misrepresented the position as regards the new rules established by the Vienna Convention on the Law of Treaties. Those rules had the force of conventional rules only. Moreover, the Vienna Convention on the Law of Treaties was not yet in force and, even if it were, the principle *res inter alios acta* implied that such rules would apply only to States parties to the Convention, and it was possible that the States which might become parties to the Convention being prepared by the Conference might not be the same as those that were parties to the Vienna Convention on the Law of Treaties.

10. Mr. ECONOMIDES (Greece) said that the comprehensive reference to the Vienna Convention on the Law of Treaties proposed by the Netherlands was tantamount to incorporating it in the draft convention to the extent that it supplemented the latter. Such a step caused no difficulties to his delegation since Greece was already a party to the Vienna Convention, but it might well do so for States which were not bound by that Convention and which therefore might not wish to see the incorporation of those of its provisions that were binding only on States parties to it; articles embodying customary international law were of course binding on all. He therefore appreciated the arguments which had been put forward by the representatives of Hungary and the United Arab Emirates. However, it might be possible in the present draft convention to supplement the general reference to customary international law which was usual in codification conventions by the statement that those rules of customary law relating to treaties codified in the Vienna Convention would govern any matters not covered in the present convention. He hoped that such a provision would meet the point raised by the Netherlands representative.

11. Mr. PÉREZ CHIRIBOGA (Venezuela) said that, in his delegation's view, the proposed new article would be either unnecessary or unduly restrictive, paradoxical though that might seem. If it was unnecessary, then, as pointed out in particular by the representative of the United Arab Emirates, there was obviously no point in including it in the draft convention.

12. He was, however, more concerned that the proposal perhaps went too far and could thus give rise to difficulties for those countries, such as Venezuela, which had not signed and ratified the Vienna Convention on the Law of Treaties. As his delegation had repeatedly stressed, it was essential when seeking to legislate to have constantly in mind that the aim was a viable international instrument, capable of commanding a wide measure of support among Governments with a view to its ultimate signature and ratification. Consequently, while not denying the importance of the Vienna Convention or of its relationship with the draft convention, his delegation considered it extremely important to ensure, so far as possible, that the fact that a country had difficulty in becoming, or did not wish to become, a party to the Vienna Convention should not debar it from becoming a party to the convention being prepared by the Conference. In that connexion, the Hungarian representative's suggestion that a reference be included in the preamble rather than in the body of the articles seemed to offer an acceptable middle-of-the-road solution.

13. Mr. TREVIRANUS (Federal Republic of Germany) said that the general considerations involved in the complex topic of the relationship between the Vienna Convention

on the Law of Treaties and the draft convention were set forth in paragraphs 53-56 of the International Law Commission's introduction to the draft articles (A/CONF.80/4, pp. 9-10). Under article 73 of the Vienna Convention, which had purposely been drafted in very general terms, the provisions of that Convention did not apply to questions relating to succession of States as such. In other words, the rules laid down in the draft convention would be *lex specialis*. That distinction, however, though sound in itself, would not suffice to resolve all the doubts that would arise from the simultaneous application of both conventions.

14. A list compiled by his delegation of articles in the draft convention bearing some relationship to the provisions of the Vienna Convention—which list included articles 1-5, 7, 8, 10 (paragraph 2), 11, 13 and 14, and the escape clauses scattered throughout the draft—showed that, despite a number of cross-references, the nature of the relationship was not always clear, and he doubted whether it would be possible, in a simple formula, to define the relationship between the two conventions. Indeed, it would seem inadvisable to seek to do so in a draft convention which, in his view, should be seen as an instrument embodying rules that were *lex specialis* vis-à-vis the Vienna Convention rather than an all-embracing work of codification. The International Law Commission had wisely refrained from such a concept and had been supported in that approach by delegations. On that basis, he would suggest that a provision along the following lines might be included in the preamble to the draft convention:

> Noting that under article 73 of the Vienna Convention on the Law of Treaties the provisions of that Convention shall not prejudge any question that may arise in regard to a treaty from succession of States, and that accordingly questions that may arise in regard to a treaty from a succession of States and covered by specific provisions of the present Convention are not governed by the Vienna Convention on the Law of Treaties.

15. Mr. RANJEVA (Madagascar) said that, so far as the substance of the Netherlands proposal was concerned, he feared that a general reference to the Vienna Convention on the Law of Treaties might discourage those States which did not wish to participate in the Vienna Convention from acceding to the present draft convention. He noted that the last paragraph of the preamble to the Vienna Convention provided that the rules of customary law would continue to govern questions not regulated by its provisions. In other words, the rules on succession of States prevailing at the date on which the Vienna Convention was adopted would continue to be governed by customary law. Once those rules had been codified, however, the question could arise whether they derogated from the Vienna Convention.

16. Fot that reason, while he was grateful to the Netherlands delegation for seeking to fill a possible legal lacuna, he considered that it would be preferable to couch any such provision in more general terms, and to provide that any question that might arise in regard to a treaty from a succession of States for which the draft convention did not lay down any specific provisions should be referred not to the Vienna Convention on the Law of Treaties but to the relevant provisions of the law of treaties. That would encompass both customary law and the provisions of the Vienna Convention.

17. He would also suggest that the Netherlands and Hungarian representatives be requested to study the best way of resolving the problem, from the technical point of view, and that the question then be referred either to the Committee, for a brief discussion, or to the Drafting Committee.

18. Mr. PAPADOPOULOS (Cyprus) said that hitherto States, in their arguments for or against State succession, had referred to rules of customary international law and in some cases, including that of his own country, even to general principles of international law. Consequently, since the Vienna Convention on the Law of Treaties codified the rules of customary international law, his delegation believed that a general reference to its terms was desirable. It could therefore support the idea contained in the proposed new article, provided that some suitable wording was worked out in the Drafting Committee. As to the placing of such a reference in the present convention, his delegation was prepared to abide by any consensus that might emerge from a discussion on that point.

19. Mr. MARESCA (Italy) said that the Netherlands proposal was to be welcomed on two grounds. First, it had the noble aim of filling a lacuna—noble because, in terms of international law, any lacuna was a mortal sin. Secondly, it constituted an act of faith in the Vienna Convention on the Law of Treaties. It had been said that the Vienna Convention had still not come into force and that many States would never become parties to it in any event. But the Vienna Convention was not the isolated treatise of some jurist, divorced from reality. It existed; and, even had his country not ratified that Convention long since, it could never have ignored it. The Vienna Convention, like all other conventions agreed by the United Nations, was a legal reality; it formed an integral part of existing international law and constituted an authority of the highest moral order. The draft convention could therefore not be considered apart from the Vienna Convention.

20. The proposed new article was, however, defective on a technical point. Although it provided for a purely formal *renvoi*, as opposed to a material *renvoi*, the complexities of that doctrine as it applied in the field of conflict of laws were only too well known. One of the dangers was *renvoi* into the void. That, unfortunately, was the case with the proposed new article, for article 73 of the Vienna Convention on the Law of Treaties meant in effect that that Convention abdicated all responsibility in the matter. It was doubtful whether *renvoi* was possible in those circumstances. It had been suggested that a suitable reference to customary law should instead be included in the preamble. That was a tried and trusted method but there was more to the modern law of treaties than customary law, and to confine a reference in the preamble to customary law alone would be to meet the problem only half way. Consequently, he would agree that the Netherlands proposal should be recast, omitting any mention of the Vienna Convention, to refer in general terms to the law of treaties,

or alternatively, that a wider reference to the law of treaties, taking account of modern realities, should be included in the preamble.

21. Mr. KOROMA (Sierra Leone) said that, while his delegation sympathized with the spirit of the Netherlands proposal, it had certain doubts as to its necessity and validity. Assuming that States A and B were parties both to the Vienna Convention on the Law of Treaties and to the convention being prepared by the Conference, and that the dispute in question could not be resolved under the terms of the latter, the parties would naturally turn to the Vienna Convention. If that did not provide the answer, then presumably they would have recourse to the rules of customary international law, as provided for in the preamble to the Vienna Convention. If that thinking were correct, would it not be simpler to provide that disputes which could not be resolved under the treaty would continue to be governed by the rules of customary international law? That point was further strengthened in the case where States A and B were parties to the convention being prepared by the Conference but not to the Vienna Convention, or where only one was a party. Obviously, in such cases, the rule embodied in article 34 of the Vienna Convention would apply.

22. His delegation considered that, instead of including a separate article in the draft convention to cover the point, it would be preferable to follow the approach adopted in the Vienna Convention and refer to the matter in the preamble.

23. Sir Francis VALLAT (Expert Consultant) said that, while he hesitated to intervene in such an important discussion, the occasion was perhaps one which required the veil of the formal report of the International Law Commission to be drawn aside so that delegations could have some insight into the thinking behind it.

24. The question raised in the Netherlands proposal had not been considered formally by the Commission but, as would be seen from Section 4 of the introduction to the draft articles (A/CONF.80/4, pp. 9-10), members had given very serious thought to the matter, and much discussion of the topic had taken place privately and also informally in the Drafting Committee. He himself had been very much in favour of an article along the lines of that proposed by the Netherlands but the more he had discussed the concept with his colleagues the more he had become convinced that it would be virtually impossible to draft such an article without tearing the delicate fabric of the relationship between the draft convention and the general law of treaties. It was not without relevance that Section 4 of the Commission's introduction to the draft articles was entitled "Relationship between succession in respect of treaties and the general law of treaties", for the question involved the draft convention's relationship not only to the Vienna Convention but also to customary law and possibly to other treaties to which parties to the draft convention would likewise be parties. Consequently, it was the majority view in the Commission that some extremely complicated drafting would be required to deal with that relationship satisfactorily by way of a normative rule that could be included in the draft convention. Many members did consider, however, that the idea might be expressed in the preamble, but it was not the Commission's practice to undertake the task of drafting preambles for future conventions.

25. Lastly, as an indication of the lines along which members of the Commission had been thinking, he would refer the Committee to paragraphs 52-56 of section 4 of the introduction to the draft articles and, in particular, to the first sentence of paragraph 54, the second, third and last sentences of paragraph 55 and to the last sentence of paragraph 56 (*ibid.*).

26. Mr. MAKAREVICH (Ukrainian Soviet Socialist Republic) said his delegation agreed that the proposed new article was not altogether necessary. It also considered that it would bind States that were not parties to the Vienna Convention on the Law of Treaties. Moreover, its terms were already covered by article 5 of the draft convention, which referred parties to the convention to general rules of international law. That article was entirely acceptable to his delegation which was therefore unable to support the Netherland's proposal.

27. Mr. ARIFF (Malaysia) said that the Netherlands proposal apparently sought to link the draft convention to the Vienna Convention on the Law of Treaties, and had the laudable aim of filling a lacuna. None the less, he had to agree with the representative of the United Arab Emirates that it would serve no useful purpose, particularly in view of the terms of article 3 of the Vienna Convention.

28. Sir Ian SINCLAIR (United Kingdom) said that the Netherlands proposal had given rise to a very interesting debate, from which two main points had emerged. First, it would clearly be difficult, as a matter of treaty law, to state in the body of the draft convention that any situation arising in relation to a treaty from a succession of States for which the draft convention did not specifically provide would be governed by the Vienna Convention on the Law of Treaties. That was so because the States which agreed to be bound by the draft convention might not be the same as those which had accepted the Vienna Convention on the Law of treaties. Secondly, considerable thought must be given, in connexion with the formulation of the preamble to the draft convention, to the rather delicate question of the relationship between customary and treaty law. The Committee would have to bear in mind in that respect the principle laid down by the International Court of Justice, in the *North Sea Continental Shelf Cases*,[4] that, in certain circumstances, and in certain very closely defined conditions, particular types of multilateral treaties could generate rules of customary international law. It must also bear in mind that the Court, in its advisory opinion in the

[4] North Sea Continental Shelf, Judgment. *I.C.J. Reports 1969*, p. 3.

Namibia case[5] and in its judgments in the *Fisheries Jurisdiction* cases[6] had said that certain provisions of the Vienna Convention on the Law of Treaties were generally to be regarded as declaratory of general international law. The preamble must indicate the precise relationship between customary international law, those rules of general international law that were embodied in the Vienna Convention on the Law of Treaties, and the rules in the draft convention itself. In other words, it would be desirable and, indeed, necessary to state in the preamble that any question arising from a succession of States in respect of treaties that was not specifically governed by the draft convention should be considered as subject to the rules of customary international law, including any relevant provisions of the Vienna Convention.

29. Mr. MIKULKA (Czechoslovakia) said that his delegation saw no need for an article such as that which was now proposed. In view of the provisions of article 73 of the Vienna Convention on the Law of Treaties, the proposed article 40 could only be a source of uncertainty. Furthermore, if the Vienna Convention became in general a subsidiary text to the draft convention, which would be the case if the Netherlands proposal were adopted, the necessary division between the field of succession in respect of treaties and the field of treaty law would be lost. The Vienna Convention on the Law of Treaties could be applied only to questions concerning that law, and not to matters connected with the law of succession, the rules of which were often different from those in the Vienna Convention.

30. Mr. STUTTERHEIM (Netherlands) said that his delegation would not have made its proposal had it been aware of the difficulties which the International Law Commission had encountered in trying to draft a similar article. The basic reason why the proposal had been made was his delegation's fear that it might one day be claimed that a rule in the Vienna Convention could not be applied to State succession. In view of the apparent general agreement that the Drafting Committee should discuss that point in connexion with the preamble to the draft convention, his delegation formally withdrew its proposal.

31. The CHAIRMAN said that, if there was no objection, he would take it that the Committee agreed that the Drafting Committee should attempt to cover the point raised by the Netherlands proposal in the preamble to the draft convention.

It was so agreed.

ARTICLE 33 (Succession of States in cases of separation of parts of a State)[7] *(continued)**

32. The CHAIRMAN invited the Committee to resume its consideration of article 33, with the assistance of the Expert Consultant.

33. Sir Francis VALLAT (Expert Consultant), referring to the clarifications concerning paragraph 3, which the representative of Zaire had requested[8] of the Committee, said that the problem posed by the paragraph was not one of deciphering its wording as such, but rather of prophesying in what cases the provision would apply. As with any treaty provision, the paragraph must be interpreted in the context of the treaty as a whole and, in particular, of the article in which it appeared. Article 33 concerned the treaty relations of the successor State or States formed when part or parts of a State separated from it. Paragraphs 1 and 2 of the article had to do with the continuity principle and exceptions to it, while paragraph 3 set aside that principle in favour of the "clean slate" principle. The essential balance in the draft convention was between those two principles, and the International Law Commission had considered it desirable to adhere to one or other of them in particular cases, and not to try to innovate.

34. While that was clear, problems arose with paragraph 3 when it came to the test for cases in which the "clean slate" principle would apply, for that test was not clearly defined: since the draft convention in general held that the "clean slate" principle would apply to newly independent States, paragraph 3 not unnaturally stated that it would also apply "in circumstances which are essentially of the same character as those existing in the case of the formation of a newly independent State".

35. The key to how the International Law Commission had come to adopt that position lay in what, in 1972, had been articles 27 and 28,[9] and in the reservations which some members of the Commission had expressed to the then article 28, paragraph 2. The former article 27 had concerned the dissolution of a State and had applied the continuity principle in the event of such dissolution. The former article 28 had concerned the separation of part of a State and had, in its second paragraph, applied the "clean slate" principle to a new State emerging from such a separation, which had been considered as being in the same position as a newly independent State. However, some members of the Commission had questioned whether paragraph 2 should apply automatically and in all cases to the separated State and had reserved their position on that point until the Commission had received the views of Governments.[10] Some Governments had indeed raised

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

[6] Fisheries Jurisdiction (United Kingdom v. Iceland), Jurisdiction of the Court, Judgement. *I.C.J. Reports 1973*, p. 3, and Fisheries Jurisdiction (Federal Republic of Germany v. Iceland), Jurisdiction of the Court, Judgment. *I.C.J. Reports 1973*, p. 49.

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

* Resumed from the 42nd meeting.

[8] See 41st meeting, para. 60.

[9] *Yearbook of the International Law Commission, 1972*, vol. II, pp. 230 *et seq.*, Document A/8710/Rev.1, chap. II, sect. C.

[10] *Ibid.*, p. 298, article 28, para. 12 of the Commentary.

doubts concerning the soundness of the concept contained in the former article 27 and of the distinction between cases made in the former articles 27 and 28. Of those articles, article 27 had been largely based on old precedents in relation to the union of States, while the Commission had found little State practice in the United Nations period to serve as a basis for article 28.

36. In those circumstances, the International Law Commission had concluded, at its 26th session (A/CONF.80/4, pp. 104-106), that there was no distinction of principle between dissolution and separation of part or parts of a State and that the distinction which had been considered to exist in that respect had been based on out-moded terminology and was not in accordance with either the modern constitutional structure of States or current doctrine. The Commission had, therefore, rearranged the subject-matter of the former articles 27 and 28 in the present articles 33 and 34, which laid down uniform rules for all cases of separation. It had decided that, in instances of separation, there was, in principle, always a continuation of the legal nexus between the new State and the territory which had existed prior to the succession, and that it would therefore be contrary to the doctrine of the sanctity of treaties to apply the "clean slate" principle except in special circumstances. Such circumstances would arise if a territory which was not technically dependent secured its independence from the rule of the imposing Government in circumstances comparable to those of the formation of a newly independent State.

37. The commentary to article 33 and 34 (*ibid.*, pp. 99-106) showed that most of the examples of separation prior to the United Nations era concerned States which had emerged from a colonial or quasi-colonial situation, and that most cases of separation in the United Nations period concerned States which had emerged from a colonial, trusteeship or protected status through the gateways of Chapters XI and XII of the Charter of the United Nations. He submitted that, in the body of practice and law which had developed in the field, at least some guidance could be found for rules to be applied to States formed in the circumstances to which article 33, paragraph 3, referred. It would be invidious to give specific examples, but it should be clear that there might be cases, such as that in which a State emerged after a long struggle for independence, in which it would be contrary to nature to apply the principle of continuity.

38. He was conscious of the imperfections in the drafting of article 33, paragraph 3, as proposed by the International Law Commission and would welcome suggestions for its improvement. He would, however, regret any reversion to the doctrine which the International Law Commission had adopted in 1972, and in particular any return to the universal application of the "clean slate" principle that had been advocated in the former article 28, paragraph 2.

39. Mr. PÉREZ CHIRIBOGA (Venezuela) asked the Expert Consultant whether there was any particular reason why the first of the similar exceptions mentioned in article 30, paragraph 1 (*a*), and article 33, paragraph 2 (*a*), would apply if "the other State party or States parties" so agreed, whereas the second of those exceptions would apply if "the States concerned" so wished. Did the term "the States concerned" include States which, for some reason or other, had an interest in the treaty in question, but which were not parties to it?

40. Mr. KASASA-MUTATI (Zaire) said that, following the Expert Consultant's explanation of the reasons behind the proposal made in article 33, paragraph 3, his delegation felt that its fears that the inclusion of that provision in the draft convention would be tantamount to incitement to secession within even a unitary State were at least partly justified. He therefore wished to know what would be the effect on the draft convention if that provision were deleted.

41. Sir Francis VALLAT (Expert Consultant) said that he could not recall any particular reason for the difference in working mentioned by the representative of Venezuela, although a similar difference had existed between the former articles 27 and 28. He suggested that the matter be investigated by the Drafting Committee and that that body refer the question to the Committee of the Whole if it considered the discrepancy to be based in any way on grounds of substance.

42. As to the question put by the representative of Zaire, his personal view was that, if the principle of continuity was to apply in all cases of separation, there would be some cases in which article 33 would be unworkable. The exception provided in paragraph 3 of that article was necessary to cater for cases similar to that in which a territory broke away from a parent State or cases in which it would, as he had already said, be contrary to nature to apply the continuity doctrine.

43. Mr. KOH (Singapore) said he would remind the Committee that, as he had pointed out,[11] Singapore was a practical example of the application of the exception provided for in article 33, paragraph 3.

44. Mr. USHAKOV (Union of Soviet Socialist Republics), observing that paragraph 1 of article 33 stated that the article would apply "whether or not the predecessor State continues to exist", asked the Expert Consultant for his personal opinion concerning the need for paragraph 3 of the article in the event of the complete dissolution of a State. Would not the retention of that provision have the effect of extending the "clean slate" principle to all parts of the predecessor State?

The meeting rose at 6.05 p.m.

[11] See 42nd meeting, para. 21.