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50th Meeting of the Committee of the Whole

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In favour: Angola; Argentina; Austria; Bulgaria; Burundi; Byelorussian SSR; Canada; Cuba; Cyprus; Egypt; Ethiopia; France; German Democratic Republic; Germany, Federal Republic of; Ghana; Greece; Hungary; Indonesia; Iraq; Italy; Ivory Coast; Kenya; Liberia; Libyan Arab Jamahiriya; Madagascar; Malaysia; Mali, Mexico, Netherlands, Niger, Nigeria, Norway, Pakistan; Panama; Peru; Philippines; Poland; Portugal; Romania; Senegal; Sierra Leone; Spain; Switzerland; Tunisia; Uganda; Ukrainian SSR; Union of Soviet Socialist Republics; United Arab Emirates; United Republic of Tanzania; United States of America; Yemen; Zaire.

Against: Australia; Finland; Japan; Papua New Guinea; Singapore; Suriname; Trinidad and Tobago; Venezuela; Yugoslavia.

Abstaining: Belgium; Brazil; Czechoslovakia; Democratic Yemen; Denmark; Guyana; Holy See; India; Ireland; Israel; Jordan; Kuwait; Lebanon; New Zealand; Republic of Korea; Somalia; Sri Lanka; Swaziland; Sweden; Thailand; Turkey; United Kingdom of Great Britain and Northern Ireland.

The amendment was adopted by 52 votes to 9, with 22 abstentions.

11. The CHAIRMAN said that, paragraph 3 having now been deleted, Pakistan's amendment automatically fell. He invited the Committee to vote on article 33, as a whole, as amended.

Article 33 as a whole, as amended, was adopted by 73 votes to 4, with 6 abstentions.

12. Mr. KOH (Singapore), speaking in explanation of vote, said that Singapore had voted against the deletion of paragraph 3 because Singapore had become an independent State in circumstances closely analogous to those existing in the case of the formation of a newly independent State. Its treaty practice accorded with that of a newly independent State and the practice had been recognized by the international community.

13. Mr. ECONOMIDES (Greece), speaking in explanation of vote, said he had abstained in the vote on the joint amendment proposed by France and Switzerland because, although he could accept it in respect of new States legally formed by the separation of parts of a territory of a State, he could not do so in the case of the dissolution of a union of States or other composite States. He had also abstained in the vote on paragraph 1 of the International Law Commission's text for article 33 since that likewise failed to make the necessary distinction. He had voted in favour of the deletion of paragraph 3 of the Commission's text for article 33 because, although it sought to rectify the omission in paragraph 1, it was likely to prove ambiguous in interpretation.

14. Mr. NAKAGAWA (Japan), speaking in explanation of vote, said that he had voted against the deletion of paragraph 3 of article 33 because he considered that it would be better to have a safeguard clause in one form or another in the event of cases analogous to those of newly independent States occurring in the future, despite the fact that the present formulation of paragraph 3 might not be satisfactory. However, he understood the position of the majority and would be ready to accept its decision; he had therefore voted in favour of the article as a whole.

15. Mr. PÉREZ CHIRIBOGA (Venezuela) said he had voted against the deletion of paragraph 3 for reasons which he had already explained at an earlier meeting[2]. He regretted that paragraph 3 had been deleted from article 33 of the draft as it would have constituted a positive rule. He had, however, voted in favour of the article as a whole since it would be a useful provision.

PROPOSED NEW ARTICLE 30 *bis* (Settlement of disputes)[3] (*concluded*)*

16. The CHAIRMAN announced that the composition of the *Ad Hoc* Group on Peaceful Settlement of Disputes,[4] as communicated to him by the President of the Conference, was as follows: Brazil, Bulgaria, Czechoslovakia, Guyana, Iraq, Mali, Malaysia, Netherlands, Niger, Sri Lanka, Swaziland, Union of Soviet Socialist Republics, United Kingdom of Great Britain and Northern Ireland, United States of America and Venezuela, as well as States having a particular interest in the subject.

The meeting rose at 5.50 p.m.

[2] See 42nd meeting, paras. 18-20.

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

* Resumed from the 46th meeting.

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

50th MEETING

Monday, 14 August 1978, at 5 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*)

FIRST REPORT OF THE INFORMAL CONSULTATIONS GROUP (A/CONF.80/C.1/L.59)[1]

[1] *Official Records of the United Nations Conference on Succession of States in Respect of Treaties*, vol. I, *Summary records of the plenary meetings and of the meetings of the Committee of the Whole* (United Nations publication, Sales No. E.78.V.8), p. 233, 34th meeting, paras. 7-8.

Article 6 (Cases of succession of States covered by the present articles)[2] *and*

Article 7[3]

1. The CHAIRMAN noted that at the 1977 session, the Committee of the Whole had decided to refer articles 6, 7 and 12 of the basic draft prepared by the International Law Commission and the amendments relating thereto to an Informal Consultations Group, established under the chairmanship of the Vice-Chairman of the Committee of the Whole.[4] He invited the Committee to consider the Group's first report, which related to articles 6 and 7 (A/CONF.80/C.1/L.59). That over-all examination should not prevent the Committee, in due course, from pronouncing separately on each of these articles, in accordance with its method of work.

2. Mr. RITTER (Chairman of the Informal Consultations Group) said that the first report of the Informal Consultations Group related to the first two of the four points which the Group had been instructed to examine. As far as article 6 was concerned, the Group recommended the Committee of the Whole to adopt the text proposed by the International Law Commission without change. As to article 7, the Group recommended the Committee of the Whole to adopt the text proposed in variant A. No consensus had been reached on the addition to paragraph 1 proposed in variant B.

3. Mr. YASSEEN (United Arab Emirates) endorsed the recommendation of the Informal Consultations Group that the text of article 6 proposed by the International Law Commission should be adopted without change, since the task of the Conference was to formulate rules which applied only to lawful cases of succession of States.

4. With regard to article 7, he commended the Group and its Chairman on their outstanding work. At the 1977 session, the Conference had been hesitant to adopt a rule involving a general declaration of the non-retroactivity of the future convention, since it had considered that, in view of the many cases of succession of States which had already occurred, such a rule might narrow the scope of the convention by limiting its application to cases of succession which occurred after its entry into force. The United Arab Emirates had advocated a solution which would allow the convention to be applied to certain cases of succession which had not been settled, and the United States had made a proposal along those lines (A/CONF.80/C.1/L.16). He noted with satisfaction that the Group had succeeded in offering an acceptable solution, which was consistent with the fundamental rules of international law governing the principle of non-retroactivity. That, in his view, was an undisputed principle in domestic law which indisputably applied in international law. It was not, however, a principle of *jus cogens* since it bound the judge, but not the legislator. Accordingly, it could be waived by agreement.

5. He could therefore accept the provision appearing in paragraph 2 of the text proposed by the Group in variant A, to the effect that States could agree to apply the provisions of the convention to successions which had occurred before its entry into force. In that connexion, he stressed that it was the provisions of the convention, and not the convention itself, which would be applied retroactively.

6. Paragraph 3 of the text proposed by the Group, under which two or more States could agree to apply the provisions of the convention provisionally, was based on article 25 of the Vienna Convention on the Law of Treaties. The provision breached no peremptory rule of international law and might enable certain problems to be solved.

7. He considered that the addition proposed in variant B was superfluous, since it was already implicit in paragraph 1 of variant A. In his opinion, the solution proposed by the Group was technically acceptable, since it was based on collateral agreements, by which States could decide to apply any provision of a convention in their mutual relations. His delegation was therefore in favour of the text submitted by the Group in variant A.

8. Mr. NAKAGAWA (Japan) said that his delegation had already emphasized, particularly in connexion with article 7, that in view of the diversity of State practice in regard to succession of States, the Conference was engaged more in the progressive development of international law than in the mere codification of existing practice.[5] The Committee should therefore take care that the outcome of its work did not prejudice the treaty relations existing between States. However, it should also take account of the fact, that, as the International Law Commission had observed in paragraph 3 of its commentary to article 7, the adoption of a rule similar to that set forth in article 28 of the Vienna Convention on the Law of Treaties would prevent the application of the present articles to a newly independent State, since the entry into force of the convention for such a State would inevitably occur after the date of its independence (A/CONF.80/4, p. 23). The International Law Commission had proposed a solution to that problem by making provision, in article 7, for "partial retroactivity", in other words, by restricting the application of the convention to cases of succession of States which occurred after the general entry into force of that convention. It had thus taken into consideration the need not to bring into question the effects of a succession of States

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[2] The following amendments were submitted at the 1977 session: Australia, A/CONF.80/C.1/L.3 (withdrawn at the 7th meeting); Romania, A/CONF.80/C.1/L.5; Ethiopia, A/CONF.80/C.1/L.6; Union of Soviet Socialist Republics, A/CONF.80/C.1/L.8 (withdrawn at the 9th meeting); Singapore, A/CONF.80/C.1/L.17.

[3] The following amendments were submitted at the 1977 session; Byelorussian SSR, A/CONF.80/C.1/L.1; Malaysia, A/CONF.80/C.1/L.7; Cuba, A/CONF.80/C.1/L.10 and Rev.1 and 2 (the latter also co-sponsored by Somalia); United States of America, A/CONF.80/C.1/L.16. The United Kingdom of Great Britain and Northern Ireland submitted a working paper in connexion with article 7, A/CONF.80/C.1/L.19.

[4] Official Records of the United Nations Conference on Succession of States in Respect of Treaties ... (*op. cit.*) p. 76, 10th meeting, para. 56.

[5] *Ibid.*, p. 75, 10th meeting, para. 48.

which occurred in the past, while taking account of the newly independent States which would attain independence before the general entry into force of the convention. In that connexion, his delegation was ready to support the text proposed by the International Law Commission.

9. As far as the two variants set out in the report of the Informal Consultations Group were concerned, his delegation was unable to support the Argentine proposal, which appeared in variant B, since such extensive retroactivity might create difficulties for many States.

10. Although it preferred the International Law Commission's text, his delegation was prepared, in a spirit of conciliation, to agree to the United Kingdom proposal which appeared in variant A. It considered, however, that the text still contained a number of obscure points which should be clarified. For instance, at the beginnning of paragraph 3, the words "at the time of signing the present Convention" should, in its view, be replaced by the words "at the time of expressing its consent to be bound by the present Convention", which had appeared in the original proposal by the United Kingdom. As the text now stood, a successor State might ultimately not become a party to the convention, although it had applied the convention provisionally up to the time when it had terminated its provisional application by a unilateral notification; that would create unstable treaty relations between the States concerned. His delegation was, however, ready to accept the text now proposed by the Group in variant A, while reserving the right to make further drafting suggestions for the consideration of the Drafting Committee.

11. Mr. STUTTERHEIM (Netherlands) noted that, in its statement on 8 April 1977 at the 6th meeting, his delegation had said that it was concerned by the provisions of draft article 6,[6] since it was not impossible for a new State created under conditions contrary to international law to invoke that article in claiming that the provisions of articles 11 and 12 on boundary régimes and other territorial régimes did not apply to it. The discussions held in the Informal Consultations Group on that article had shown that other delegations had not subscribed to that view, and his delegation hoped that its misgivings would be unfounded.

12. As far as article 7 was concerned, his delegation endorsed the text proposed by the Group in variant A. On the other hand, it had doubts about the application of the provision proposed in variant B, since a new State coming under that provision might have to wait a long time for the convention to enter into force, while being already bound by it. It therefore preferred paragraph 1 of variant A.

13. Mr. LUKABU-K'HABOUJI (Zaire) said that he was in complete agreement with the comments made by the representative of the United Arab Emirates. As far as article 6 was concerned, he had no difficulty in accepting the text of the International Law Commission, as the Informal Consultations Group proposed. With regard to article 7, he could agree to the text proposed by the Group in variant A, on the understanding that paragraph 2 of that text took account of the concerns which had been the basis for variant B.

14. Mr. SAHOVIĆ (Yugoslavia) said he was pleased to note that the Informal Consultations Group recommended the Committee of the Whole to adopt the text of article 6 proposed by the International Law Commission without change, since he considered that that text would help to reinforce international lawfulness.

15. With regard to article 7, he unreservedly supported the text proposed by the Group in variant A, which would help to bring about the speedy application of the convention. He agreed with the representative of the United Arab Emirates that the addition proposed in variant B was not essential, since the solution, in his opinion, lay in the consent of the parties to the convention.

16. Mr. DUCULESCU (Romania) said that his delegation would not press its amendment to article 6 (A/CONF.80/C.1/L.5), the main purpose of which had been to emphasize the need to interpret and to apply the principles of international law enunciated in the Charter of the United Nations in the light of subsequent texts adopted by the General Assembly, more particularly the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations[7] and the Charter of Economic Rights and Duties of States.[8] In view of the stage now reached in the development of international law, such an interpretation was the only one conceivable, even if the present text of article 6 was retained.

17. As to article 7, he unreservedly supported the text proposed by the Informal Consultations Group in variant A, for it met the requirements of progressive development of international law and of unification of practice in matters of State succession. At the first session of the Conference, his delegation had stressed the need to find solutions that applied both to present and to future cases of succession of States, in order to take due account of the interests of newly independent States.[9]

18. Like the representative of Zaire, he considered that the situation dealt with in variant B was already fully covered by paragraph 2 of variant A.

19. Mr. FLEISCHHAUER (Federal Republic of Germany) observed that, at the 1977 session, his delegation had said that draft article 7 as proposed by the International Law Commission was acceptable but did not go quite far enough.[10] A convention of the kind under consideration should have some measure of retroactivity,

[6] *Ibid.*, p. 48, 6th meeting, para. 18.

[7] General Assembly resolution 2625 (XXV).

[8] General Assembly resolution 3281 (XXIX).

[9] *Official Records of the United Nations Conference on Succession of States in Respect of Treaties ...* (*op cit.*), p. 83, 12th meeting, para. 19.

[10] *Ibid.*, pp. 68-69, 9th meeting, paras. 42-49.

and the draft article made allowance for that by referring to the original entry into force. However, it did not specify how the convention could be made operable with effect beyond that date, either after or before the original entry into force. The saving clause "except as may be otherwise agreed" did not give sufficient indication of the decisions and complex procedures required for that purpose.

20. The Informal Consultations Group had been successful in its work. On the basis of a proposal originally submitted by the United Kingdom, it had made additions to draft article 7 which related in particular to the *ex tunc* application of the convention beyond its entry into force, both after the entry into force of the convention for the party concerned and on the basis of provisional application. The method chosen for that purpose was the mutual consent of the parties, which implied some measure of split treaty relations that could give rise to difficulties. However, such situations were not new and experience showed that they were not insurmontable.

21. Variant B of paragraph 1 related not to the entry into force of the convention but to the opening of the convention for signature. His delegation preferred the paragraph as proposed by the International Law Commission. It was in fact already uncommon to refer to the date of the original entry into force in an article concerning the applicability in time of a treaty, and a possibly dangerous precedent would be created if reference was made to the much earlier date of the opening of the convention for signature. Some situations might remain uncertain for a long time, and that would run counter to stability in treaty relations. It should be noted, however, that that question was closely related to a problem that had not yet been considered, namely, the number of ratifications required for the future convention to enter into force. His delegation considered that the number should be fairly high and, for that reason, it favoured variant A.

22. Mr. NATHAN (Israel) said that variant B of paragraph 1 would oblige States to apply the convention retroactively from the date of the opening for signature and it would thus lead to uncertainty. Even if the convention was to enter into force shortly after it had been opened for signature, successor States which had not become parties to the convention at the time of its entry into force would be able to accede to it later on. States which were already parties would then be obliged to apply the convention retroactively, which might require some readjustment of rights and obligations. The situation would be even more serious if a lengthy period elapsed between the opening of the convention for signature and its entry into force. In that connexion, he noted that under article 22, entitled "Effects of a notification of succession", a newly independent State was considered a party to the treaty from the date of the succession of States or from the date of entry into force of the treaty, whichever was the later date, but the operation of the treaty was none the less considered as suspended until the date of making of the notification of succession, unless the treaty might be applied provisionally. In paragraph 8 of the commentary to that article (A/CONF.80/4, p. 75), the International Law Commission had put forward considerations that also applied in respect of article 7. It had emphasized that article 22, in its earlier version would have given retroactive effect to a notification of succession by a newly independent State so that, even if the notification of succession occurred long after the date of the succession of States, a multilateral treaty would as a general rule be regarded as in force between that State and other parties with effect from the date of the succession of States. In that respect, the International Law Commission had added, other parties to the treaty would have had no choice, but the newly independent State would have been able to choose a later date if the retroactive application of the treaty was inconvenient from its point of view. That rule would create an impossible legal position for the States parties to the treaty, which would not know during the interim period whether or not they were obliged to apply the treaty in respect of the newly independent State. The latter might make a notification of succession years after the date of the succession of States and, in those circumstances, a party to the treaty might be held to be responsible retroactively for breach of the treaty. He wished to add that such retroactive application of the convention would hardly be of any practical advantage to the successor State, in view of the terms of article 2, paragraph 2.

23. His delegation approved variant A, which was based on the principle of provisional application of the convention, the parties being allowed the freedom to apply it *inter se* before the date of entry into force. The provision was based on mutual consent and it was not mandatory.

24. Lastly, his delegation favoured article 6 as proposed by the International Law Commission.

25. Mr. MONCAYO (Argentina) said that his delegation unreservedly supported article 6. In its opinion, only territorial changes occurring in conformity with international law were covered by the concept of succession of States, within the meaning of the future convention. The criterion of lawfulness was that territorial change should conform to the general norms of international law and, more particularly, to the principles of international law embodied in the Charter of the United Nations. Territorial changes which occurred as a result of force or of violation of the territorial integrity of a State were therefore excluded from the scope of the future convention.

26. Article 7 posed delicate problems, for it concerned the application of legal rules in time. On several occasions attention had been drawn to the need to supplement that provision by a transitional régime which would permit the application of the future convention to newly independent States or to territorial chances which occurred between the conclusion of the treaty and its entry into force.

27. The general principle of non-retroactivity of juridical norms was not a peremptory norm of international law; it did not bar agreement to the contrary. In its initial form, article 7 had already provided for a certain degree of retroactivity by permitting the application of the convention to any succession of States occurring after its entry into force. It therefore represented an advance in relation

to article 28 of the Vienna Convention on the Law of Treaties. Moreover, article 7 facilitated the agreement of the parties, and the purpose of paragraphs 2 and 3 as proposed by the Informal Consultations Group was precisely to indicate the procedure to be followed to permit the application of the convention to a State whose succession occurred before the convention entered into force. However, in order to ensure such a result, the consent of the other States, whether States parties or signatory States, was still needed.

28. In view of the need for consent, the amendment proposed by the Informal Consultations Group in variant B sought to ensure that the convention could be applied, after its entry into force, to a State which acceded to independence after the signing of the convention, and which declared its willingness that it should so apply, without the need for further consent or agreement. The purpose of the proposal was to fill the gap left in paragraphs 2 and 3 as proposed by the Informal Consultations Group.

29. On the assumption that the convention introduced sound legal rules, there was no reason for excluding those States which acceded to independence after the signing of the treaty, but before its entry into force, from the application of the convention. The automatic application proposed, subject to only the willingness of the successor State, was limited in scope and would permit the effective application of the convention after its entry into force; it would thus invalidate some of the criticisms concerning its belated nature. There was also ample scope for establishing, through agreement by the parties, other forms of retroactive application of the provisions of the convention.

30. Mr. SETTE CÂMARA (Brazil) said that he favoured the retention of article 6 as proposed by the International Law Commission. Since, in article 2, the concept of succession of States was not restricted to that of lawful succession, the International Law Commission had considered that it would be useful to include in the draft a provision of the kind set forth in article 6. In its written comments on article 6, the United Kingdom Government had suggested that a distinction should be made between rights and obligations, and that States should be deemed to be bound by their obligations, even in the event of unlawful succession. The International Law Commission had taken the view that such a distinction would be dangerous and difficult to make (A/CONF.80/4, pp. 22-23). Consequently, he favoured the retention of article 6 as drafted by the International Law Commission.

31. Article 7 as proposed by the Informal Consultations Group took account both of the principle of non-retroactivity and of the need to apply the future Convention to successions of States occurring as a result of the decolonization process. The text proposed covered every conceivable situation and would reassure newly independent States. The exceptions envisaged to the principle of non-retroactivity were so designed as to require an express declaration of willingness on the part of States concerned. For that reason, he fully supported the text recommended by the Informal Group.

32. Variant B of paragraph 1 might mean that the convention would be applicable before it entered into force. It appeared to make provision for automatic retroactive application, independently of the will of the parties, which would be contrary to article 28 of the Vienna Convention on the Law of Treaties.

33. Mr. MARESCA (Italy) said that he could not but support the text proposed by the International Law Commission for article 6, which was a tribute paid to general international law and, in particular, to the important principles elaborated by the Commission. He was, however, uncertain as to the law that would be applicable to the effects of a succession of States which did not occur in conformity with international law. Would the successor State apply customary international law, or would it act according to principles of its own choosing? He had no solution to offer, but thought that the possible consequences of the lack of rules in such an eventuality should be borne in mind.

34. Turning to article 7, he said that the text proposed by the Informal Consultations Group was a great improvement on article 7 as drafted by the International Law Commission. The convention was inherently dangerous, since it settled problems that history had already overcome, and because of that it was necessary to make provision for retroactivity by agreement. Accordingly, he supported paragraph 2 of the text under consideration. Paragraph 3 incorporated the provisions of the Vienna Convention on the Law of Treaties. Paragraph 1 proposed in variant B had been subjected to the harshest criticism, as constituting a regrettable source of uncertainty. While it was inadvisable to adopt rules which might create difficulties, the period of time which might elapse between the opening of the convention for signature and its entry into force should nevertheless be a matter of concern. That long period of uncertainty might well nullify the value of the convention. The legal validity of the convention during that period should be taken into account. His delegation considered that the new idea incorporated into variant B deserved further study.

35. Mr. RYBAKOV (Union of Soviet Socialist Republics) said he supported articles 6 and 7, as drafted by the International Law Commission. Nevertheless, his delegation had no objection to the provisions in variant A, which were clear and which covered all the cases which might arise. However, it shared the doubts expressed by several delegations as to the advisability of adopting the provisions in variant B. Those provisions would have no practical value, since the entry into force of the convention would depend on the clarity of its articles and the number of States that ratified it. Thus, if the Conference decided that ratification of the convention by a small number of States would suffice for it to enter into force, no problem would arise in practice. However, it should not adopt ambiguous formulations such as those in paragraph 1, variant B.

36. Mr. PÉREZ CHIRIBOGA (Venezuela) supported the text for article 6 proposed by the International Law Commission. He would have preferred the Informal Con-

sultations Group to recommend the Committee to retain the original text of article 7, since he believed that it would have been more practical to treat the principle of non-retroactivity as a general rule, with the possibility of making exceptions to it. It seemed to him to be dangerous to attempt to regulate those exceptions, at the risk of leaving gaps that were impossible to fill in a convention. However, the Informal Consultations Group had decided otherwise, and his delegation had joined in the consensus on the question and therefore supported the proposed paragraphs 2, 3 and 4 for article 7. He was surprised that paragraph 1 in variant B was causing such misgivings and concern among delegations, since to his mind it in fact served to fill one of those inevitable gaps by making provision for the case of a State which emerged into international life at a time when the convention had been opened for signature but had not yet entered into force, in other words, when the international community had expressed its views on the succession of States in a convention which had not yet entered into force but which contained rules applicable to that situation. It would not be fair if, during that legal vacuum, a successor State did not have the possibility of availing itself of all the progressive rules contained in the convention. Justice required that those rules should be automatically applicable to the cases of succession to which he had referred. The only difference between paragraph 1 of variant A and paragraph 1 of variant B was the date set for the application of the principle of retroactivity. In both cases, objective criteria were involved. He further stressed that paragraph 1 of variant B would apply to a small number of successions only and that it constituted a transitional provision enabling States which entered the international arena for the first time during the period in question to benefit from the development of international law.

37. Mr. DOGAN (Turkey) said he supported the text of article 6 recommended by the Informal Consultations Group and the text of article 7 proposed in the Group's report, with a preference for variant B of paragraph 1. It was true that no treaty applied until after its entry into force. However, there was no rule of international law to prevent sovereign States from agreeing that a convention should apply with effect from its signature, but after its entry into force. There was no valid reason to deprive a newly independent State of an additional option, if it wished the convention to be applied to it after its entry into force but with effect from its signature. The issue involved legal policy rather than a mandatory requirement under international law in respect of the entry into force of a convention. His delegation favoured a legal policy which would afford the newly independent State an additional option of which it could avail itself.

38. Mrs. BEMA KUMI (Ghana) said that for the reasons adduced by the Italian representative, her delegation was concerned by the use of the word "only" in article 6. What would happen if a State emerged into international life by methods other than those recognized by the international community? In regard to article 7, she supported the text proposed in variant A but could not agree to variant B.

39. Mr. ARIFF (Malaysia) said it appeared that all members of the Committee could accept the proposed article 6. However, the text proposed by the International Law Commission for article 7 was far removed from the new version proposed by the Informal Consultations Group, which addressed itself to the problem of the retroactive effect of the convention and the situation in which the provisions of the convention would apply on a provisional basis. He considered that the provisions of variant A were perfectly clear and that those under variant B were superfluous and would contribute nothing to the text of the convention.

40. Mr. RYBAKOV (Union of Soviet Socialist Republics), supported by Mr. KASASA-MUTATI (Zaire), observed that the Committee had concluded its consideration of articles 6 and 7 and proposed that it should take a decision on them.

41. Mr. YACOUBA (Niger) said that the members of the Committee had not perhaps all had the time to take a final decision on the two articles under consideration and that it might be better to defer a decision on them until the next meeting.

42. After a procedural discussion in which Mr. RYBAKOV (Union of Soviet Socialist Republics), Sir Ian SINCLAIR (United Kingdom), Mr. YACOUBA (Niger), Mr. TORNARITIS (Cyprus) and Mr. RANJEVA (Madagascar) took part, the CHAIRMAN suggested that the discussion on articles 6 and 7 should be closed, that a decision on them should be deferred until the next meeting and that separate decisions should be taken on the two articles in question at that time.

It was so decided.

Organization of work

[Agenda item 10]

43. Mr. SAHOVIĆ (Yugoslavia), speaking on a point of order, noted that the Committee was now in its third week of work and said that it should complete that work during the current week, if necessary, by holding night meetings. He would like to know how the President of the Conference envisaged the final stages of the work.

44. The CHAIRMAN informed the Committee that he would hold consultations with the President of the Conference that evening on the matter raised by the representative of Yugoslavia.

45. Mr. RANJEVA (Madagascar) requested the Chairman to inform those taking part in the consultations of the desire of several delegations that the timetable should be observed and that the Conference should end on Friday, 18 August.

46. Mr. MUDHO (Kenya) said that, without in any way wishing to hold up the work of the Conference, he could not approve of methods of work which would be inef-

ficient. Delegations with few members would have some difficulty in taking part in all the meetings, particularly night meetings, which might be scheduled in order to complete the work during the current week.

47. The CHAIRMAN said he believed that the Committee, which had the bulk of the work to perform, would be able to complete its task by Friday, 18 August.

The meeting rose at 6.50 p.m.

51st MEETING

Tuesday, 15 August 1978, at 5.05 p.m.

Chairman: Mr. RIAD (Egypt)

Election of the Rapporteur

1. The CHAIRMAN announced that Mr. Tabibi (Afghanistan), who had been elected Rapporteur of the Committee of the Whole at the 1977 session of the Conference, had informed the President of the Conference that he was unable to attend the resumed session. He invited members of the Committee to submit nominations for the post of Rapporteur.

2. Mr. JOMARD (Iraq), on behalf of the Asian Group, nominated Mrs. Thakore (India) for the post of Rapporteur.

Mrs. THAKORE (India) was elected Rapporteur of the Committee of the Whole by acclamation.

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*)

FIRST REPORT OF THE INFORMAL CONSULTATIONS GROUP (A/CONF.80/C.1/L.59)[1] (*concluded*)

3. The CHAIRMAN said that at its 50th meeting the Committee had closed the discussion on the first report of the Informal Consultations Group (A/CONF.80/C.1/L.59), on articles 6 and 7; it therefore remained only to take a decision on the recommendations of the Group concerning articles 6 and 7.

Article 6 (Cases of succession of States covered by the present articles)[2] *and*

Article 7[3] (*concluded*)

4. Mr. PAPADOPOULOS (Cyprus) observed that article 6 naturally stated the presumption that the Convention would apply only to the effects of a succession of States occurring in conformity with international law and, in particular, with the principles of international law embodied in the Charter of the United Nations. The delegation of Cyprus, however, would vote for article 6, as drafted by the International Law Commission, in the belief that it would serve as a reminder to those who might believe that they would enjoy the benefits of the future Convention in unlawful situations. Article 6 would thus serve a useful purpose, in so far as it reflected the unequivocal stand of the international community in such cases.

5. Although the delegation of Cyprus had supported the initial text of article 7, it would vote for the text proposed by the Informal Consultations Group and, in particular, for variant A of paragraph 1, as it believed that the new text was largely in the interests of many States which had doubts, among other things, as to whether a notification of succession made under the régime of continuity, after a long silence, could produce its effects.

6. The CHAIRMAN said that if there were no objections he would take it that the Committee provisionally adopted the text of article 6 proposed by the International Law Commission and referred it to the Drafting Committee for consideration.

It was so agreed.[4]

7. The CHAIRMAN observed that no delegation had asked that variant B of paragraph 1 be put to the vote. If there were no objections, he would take it that the Committee provisionally adopted the text of article 7 proposed by the Informal Consultations Group and referred it for consideration to the Drafting Committee, which would also be required to propose a title for that article.

It was so agreed.[5]

8. Mr. MUSEUX (France) said that the attention of the Drafting Committee should be drawn to the phrase "contained in a written notification to the Secretary-General of the United Nations", which appeared in paragraph 4; for as he had already pointed out, the Secretary-General of the United Nations was not there referred to in his capacity as such, but in his capacity as depositary of the Convention. In his opinion the words "Secretary-General of the United Nations" should be replaced by the word "depositary".

9. Mr. OSMAN (Somalia) said he had joined in the consensus on article 7 on the understanding that its

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[1] See 50th meeting, foot-note 1.

[2] For the list of amendments submitted, see 50th meeting, foot-note 2.

[3] For the list of amendments submitted, see 50th meeting, foot-note 3.

[4] For resumption of the discussion, see 53rd meeting, paras. 34-35.

[5] For resumption of the discussion, see 53rd meeting, paras. 36-51.