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52nd Meeting of the Committee of the Whole

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38. As the United States delegation had emphasized during the discussion on article 39 *bis*,[11] it was important to include adequate provisions on the settlement of disputes in the future Convention, in order to give effect to the rights deriving from the "clean slate" principle and leave no room for doubt. In that respect, the work of the Committee of the Whole was not what it should, or could, have been. It was to be hoped that, in the future, the international community would make greater efforts in situations of that kind.

The meeting rose at 6.25 p.m.

[11] See 44th meeting, paras. 4-7.

52nd MEETING

Tuesday, 15 August 1978, at 9.30 p.m.

Chairman: Mr. RIAD (Egypt)

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

[Agenda item 11] (*continued*)

AGREED TEXT OF THE *AD HOC* GROUP ON PEACEFUL SETTLEMENT OF DISPUTES (A/CONF.80/C.1/L.60 and Corr.1) (*concluded*)

1. Mr. MUDHO (Kenya) said that the agreed text of the *Ad Hoc* Group on Peaceful Settlement of Disputes (A/CONF.80/C.1/L.60 and Corr.1) was a realistic compromise which his delegation had little difficulty in accepting, although it had some reservations about article B.

2. He wondered, however, what purpose would be served by the retention of paragraph 4 of the annex on conciliation procedure, if read in conjunction with the second sentence of paragraph 6, which expressly stated that the report of the Commission would not be binding upon the parties.

3. At an earlier stage, he had been disposed to support the proposal of the Ugandan representative[1] that due notice should be given to other parties before a party to a dispute had recourse to the conciliation procedure laid down in article B. On reflection, however, he had become convinced that such an arrangement would merely add to the delay, which might already amount to some three years, before the Conciliation Commission made its recommendations. He would therefore urge the Ugandan representative not to press his proposal.

[1] See 51st meeting, para. 23.

4. Mr. STUTTERHEIM (Netherlands) said that, in view of the Netherlands proposal of a new article 39 *bis* on the settlement of disputes (A/CONF.80/C.1/L.56), it would be readily understood that his delegation was not entirely satisfied with the agreed text of the *Ad Hoc* Group. It would appear that the international community was a long way from accepting true international justice and indeed had even taken a step back from the position it had adopted in the Vienna Convention on the Law of Treaties. Nevertheless, in order to advance the work of the Conference, his delegation was prepared to accept the view of the majority and therefore withdrew its proposal.

5. He endorsed the comments of the Italian representative[2] on article B of the agreed text.

6. Mr. MAIGA (Mali) said that a number of speakers had considered that, in article A of the *Ad Hoc* Group's report, the words "consultation" and "negotiation" had been incongruously yoked together, and had suggested the deletion of the former. However, in codification conventions, reference had to be made both to legal norms and to State practice. It was a matter of experience that many States had settled disputes by way of consultation; African States had provided an edifying example of that practice. Some texts of agreements between States mentioned consultation, whereas others referred only to negotiation. The two words had virtually the same meaning, except that "negotiation" had diplomatic implications. A reference to negotiation was desirable for the progressive development of international law.

7. He endorsed the comment of the Italian representative on article B.

8. In his view, article C struck a false note. It was superfluous since the parties to a dispute could always submit it to the International Court of Justice or to arbitration by common consent. Article C had been accepted by delegations on the understanding that it would provide for opting in to the procedure it laid down, but he had considerable reservations about the present text which appeared to differ from the original version which had been read out to the Committee.

9. Some delegations had asked why third world countries were reluctant to accept the jurisdiction of the International Court of Justice. In troubled times like the present, when dominant ideologies were endeavouring to stamp out all elements of civilization that did not square with their own dogmas, countries were right to have serious misgivings about the submission of disputes to the compulsory jurisdiction of the Court. They had seen how the decisions of its judges were coloured by the national policies of their respective countries—the most flagrant example being the Court's 1966 judgment in the South West Africa case.[3] On other occasions, the Court had even reached the conclusion that both sides in a dispute were right. The fact was that international law was changing, but

[2] *Ibid.*, para. 14.

[3] South West Africa, Second Phase, Judgment, *I.C.J. Reports 1966*, p. 6.

the Court still based itself on superannuated concepts that did not accord with the ideas of the newly independent States which accordingly had an absolute right to reject its jurisdiction. In any legal judgment at regional or international level, religious and political considerations always played a part. Third world countries could not accept judgments which took no account of their own opinions and which seemed to imply that such countries did not belong to the category of civilized nations referred to in article 38 of the Statute of the International Court of Justice.

10. Mr. FARAHAT (Qatar) said that the *Ad Hoc* group had produced a practical text consonant with the rules of international law and its codification. His delegation attached particular importance to the peaceful settlement of disputes by consent and to strengthening the role of the International Court fof Justice which was in accordance with political realities and the basic tenets of international law.

11. Mr. DOGAN (Turkey) said that, although his delegation should have preferred an agreed text which provided for the compulsory jurisdiction of the International Court of Justice, it shared the majority view that recourse to the Court might prove superfluous if negotiations and consultations were conducted with good will. The text constituted an advance in the settlement of disputes in that it set up an obligatory conciliation procedure, while leaving it open to the parties to agree to submit their dispute to the International Court of Justice. His delegation would vote for the agreed text.

12. Mr. KRISHNADASAN (Swaziland) said that, although the agreed text probably did not satisfy any delegations completely, it represented the best that could be achieved by consensus and his delegation would support it. In particular, he believed it constituted a clear advance on the Vienna Convention on the Law of Treaties and other multilateral conventions. Although no article in the present convention enjoyed the status of *jus cogens* to which article 66 of the Vienna Convention applied, nevertheless, a procedure for the compulsory settlement of disputes had been devised and the possibility of opting in was provided for in article C instead of in an optional protocol. That represented progressive development of international law. His delegation was particularly in favour of its being made a matter of opting in rather than opting out, to which some stigma might be attached. It therefore supported the present text of article C, although there was room for improvement by the Drafting Committee.

13. He fully endorsed the comments of the Malian representative on the attitude of third world countries to the International Court of Justice. The reason for that attitude was not merely the crisis of confidence which had occurred in 1966; the brutal truth was that third world countries had played no part in the formulation of customary international law and for that reason preferred to emphasize treaty law. Even if such countries were adequately represented in the Court, the judges had perforce to apply existing international law. Nevertheless, by the form of the declaration it had made under article 36 of the Statute of the International Court, Swaziland had demonstrated its faith that in due course the Court would rise above its limitations and contribute to the progressive development of international law. Many countries whose delegations advocated the compulsory jurisdiction of the Court had made declarations so hedged about with reservations as to be virtually meaningless.

14. In his view, the heterogeneous international community in which right and wrong were not clearly defined thought more easily in terms of a negotiated settlement in which there was neither winner nor loser, and many States showed a marked preference for the way of mediation, conciliation and good offices.

15. Mr. JOMARD (Iraq), on a point of order, proposed that, since there were no written amendments before the Committee, it should proceed to a vote on the agreed text submitted by the *Ad hoc* Group.

16. The CHAIRMAN said that, although he had not yet reached the end of his list of speakers, he would suggest that the list be closed forthwith.

It was so agreed.

17. Mr. OSMAN (Somalia) said there was little point in prolonging discussion of a text which was not controversial and which the majority of speakers had declared was acceptable to their delegations. The use of the term "consultation and negotiation" in article A was not a substantive issue.

18. The other problem had been the question of the compulsory jurisdiction of the International Court of Justice. That problem had been resolved now that those delegations which supported compulsory jurisdiction had agreed not to press for it, and the text had been reformulated accordingly.

19. The reasons why some delegations had strong views about the compulsory jurisdiction of the Court had been adequately explained by the representatives of Mali and Swaziland. To put it bluntly, the International Court of Justice was an anachronism set up to apply the nineteenth century laws of nations which had been evolved by the European and colonialist powers. In a dispute between a former colonial power and a developing country, the Court would apply the classical principles of international law, which did not reflect the needs of third world countries and which the latter regarded as neither equitable nor just. International law was developing progressively—a fact which all the speakers had realized.

20. The CHAIRMAN said that all the views expressed by delegations would be reflected in the summary records and the Drafting Committee would take due note of all suggested amendments. If there were no objection, he would take it that the Committee approved the agreed text of the *Ad Hoc* Group and agreed to refer it to the Drafting Committee.

21. Mr. MUSEUX (France) said that, while he would have no objection to the procedure suggested by the Chairman, he considered it essential first of all to be quite clear as to the exact intent of article B. As the Italian representative had rightly pointed out, that article, which provided for a request to be submitted to the United Nations Secretary-General and to the other State party or State parties to the dispute, was open to two possible interpretations: either, once a request had been submitted, the other State party was bound to agree to have recourse to the conciliation procedure, or it could decline so to agree. In his view, the members of the *Ad Hoc* Group had intended to provide for a compulsory conciliation procedure, once such a request had been submitted, and by "compulsory" he understood that it was the conciliation procedure–as opposed to the decision reached as a result of that procedure–that would be compulsory.

22. The CHAIRMAN said that that point would be considered by the Drafting Committee, together with all the other drafting points raised during the discussion.

23. If there were no objection, he would invite the Committee to approve the agreed text proposed by the *Ad Hoc* Group on Peaceful Settlement of Disputes (A/CONF.80/C.1/L.60/Corr.1) and to refer it to the Drafting Committee.

It was so agreed.[4]

ARTICLE 2 (Use of terms)[5]

24. The CHAIRMAN said that the 1977 session of the Conference had referred article 2[6] to the resumed session for further consideration. Two amendments to paragraph 1, submitted by France and Switzerland (A/CONF.80/C.1/L.41/Rev.1) and Cuba (A/CONF.80/C.1/L.46), respectively were before the Committee.

25. Mr. MUSEUX (France), introducing the amendment proposed by France and Switzerland (A/CONF.80/C.1/L.41/Rev.1), said that it consisted of two parts, relative to paragraphs 1 (*b*) and 1 (*f*) respectively. The amendment to paragraph 1 (*f*) was closely linked to that submitted by France and Switzerland to article 33, which had not been accepted by the Committee. In the circumstances, he withdrew the amendment to paragraph 1 (*f*).

26. The amendment to paragraph 1 (*b*), unlike that to paragraph 1 (*f*), was concerned purely with a point of drafting and was in no way intended to call into question the statements made in paragraph 3 of the International Law Commission's commentary to article 2 (A/CONF.80/4, p. 17). The essence of the amendment was the replacement of the phrase "in the responsibility for the international relations of territories" by the phrase "in the exercise of competence for international relations in respect of a particular territory". In his delegation's view, that change would make the drafting more precise, at any rate in the French version, and would correspond more closely to a possible situation in a unitary state, where each part might not have international relations, in the strict sense of the term.

27. Mrs. VALDÉS PÉREZ (Cuba), introducing the first of her delegation's two amendments to article 2 (A/CONF.80/C.1/L.46), said she appreciated that the definition of "treaty" given in paragraph 1 (*a*) was identical with that given in the Vienna Convention on the Law of Treaties, on which the draft convention was modelled, but she nonetheless considered that it could give rise to difficulty. Certain treaties imposed by the colonial powers for their own benefit or for that of third States were lacking in one essential element, namely, the consent of the parties. They were thereby rendered invalid and could not be applied to a successor State. For that reason, her delegation proposed that, in paragraph 1 (*a*), the word "validly" be inserted between the words "agreement" and "concluded".

28. The purpose of the second amendment, which related to paragraph 1 (*b*), was to make it clear that a successor State replaced a predecessor State so far as all rights and obligations arising under treaties were concerned.

29. Mr. OSMAN (Somalia) said that his main difficulty with the Franco-Swiss amendment arose from the replacement of the term "responsibility" by the word "competence", for there was a fundamental difference between those two concepts. The former colonial powers, for example, had been responsible for the affairs of their colonies, but had certainly not been competent in that respect, from the legal point of view. For that reason, he considered that paragraph 1 (*b*) should stand as drafted.

30. He fully endorsed the Cuban delegation's amendment to paragraph 1 (*a*), but was unable to support its amendment to paragraph 1 (*b*) which, in his view, was superfluous.

31. Miss WILMHURST (United Kingdom), referring first to the Franco-Swiss amendment, said that her delegation had no difficulty with the term "responsibility" which, in English at any rate, had a certain hallowed respectability. The International Law Commission's commentary made it clear that there was no intention to convey any notion of State responsibility, in the sense of State liability (A/CONF.80/4, p. 17). Since it was generally recognized that the matter concerned a drafting point, it could perhaps be remitted to the Drafting Committee for consideration in more detail.

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[4] For resumption of the discussion, see 57th meeting, paras. 1-18.

[5] At the 1977 session the following amendments were submitted: France and Switzerland, A/CONF.80/C.1/L.41; Cuba A/CONF.80/C.1/L.46. Afghanistan also submitted an oral amendment (5th meeting, para. 8). At the resumed session France and Switzerland submitted a revised version of their amendment, A/CONF.80/C.1/L.41/Rev.1.

[6] *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. 21, 1st meeting, paras. 9-11.

32. With regard to the Cuban amendment to paragraph 1 (*a*), it seemed to her delegation that the point was already met by article 13, which provided that nothing in the Convention should prejudice the validity of a treaty.

33. The Cuban amendment to paragraph 1 (*b*) could perhaps be remitted to the Drafting Committee for consideration, together with the Franco-Swiss amendment.

34. Mr. YIMER (Ethiopia), referring, to the Franco-Swiss amendment to paragraph 1 (*b*), said that his delegation preferred the text as drafted, since it found the term "competence" somewhat difficult to understand in that context.

35. It was quite unable to accept the Cuban amendment to paragraph 1 (*a*) and agreed that the point was already covered by article 13. In any event, it would only lead to confusion if two major legal instruments–the Vienna Convention on the Law of Treaties and the present convention–defined such a basic legal concept of international law as a treaty in two different ways.

36. Mr. MUSEUX (France) said he would again stress that the Franco-Swiss amendment was concerned primarily with a question of drafting, more particularly as it affected the French version of the article. At the same time, he appreciated that, in the English version, the word "competence" was perhaps not an absolutely accurate rendering of the French word *"compétences"*. He would therefore have no objection if the word "responsibility" were retained in the English version.

37. With regard to the remarks made on the phrase "exercise of competence", in reference to colonial powers, he would point out that the authors of the amendment were quite clear that the exercise of competence by a State in a given area did not imply that it was actually competent in that area.

38. Mr. MASUD (Pakistan) said that, while there appeared to be some difficulty with the French version of paragraph 1 (*b*), the English version, as proposed by the International Law Commission, seemed to have general support and should therefore, in his view, be retained.

39. He was unable to accept either of the two Cuban amendments, since the amendment to paragraph 1 (*a*) was already covered by article 13 and the amendment to paragraph 1 (*b*) was covered, by paragraph 3 of the International Law Commission's commentary which stated that the term "succession of States" was used "as referring exclusively to *the fact of the replacement* of one State by another in the responsibility for the international relations of territory, leaving aside any connotation of inheritance of rights or obligations on the occurrence of that event" (A/CONF.80/4, p. 17).

40. Mr. MAIGA (Mali) said that one point must be clearly understood by all, namely, that in considering the term "succession of States". the International Law Commission had drawn a very sharp distinction between, on the one hand, succession of one State to another in the responsibility for international relations of territory, and on the other hand, transfer of the rights and obligations arising under treaties from the predecessor State to the successor State. On that basis, it had excluded such rights and obligations from its definition of "succession of States", to the extent that they were provided for under other provisions.

41. The Franco-Swiss amendment, however, sought to draw a certain analogy with internal law, by assimilating States to individuals and vesting them with legal personality; in his view, that could lead to quite unacceptable results. Bearing in mind the definition of State responsibility, as laid down by the International Law Commission within the context of an internationally wrongful act, he considered that the term "exercise of competence" could mean the exercise of certain acts which might ultimately lead to those rights and obligations which the International Law Commission had decided to exclude from the definition being introduced into the notion of succession. Moreover, the last part of the definition, reading "for the international relations of territory", had been adopted by the International Law Commission with a view to avoiding the possibility of disputes arising out of a possible conflict with the terms of paragraph 1 (*f*), which laid down a definition of the term "newly independent State".

42. As to the Cuban amendments, the amendment to paragraph 1 (*a*) was unnecessary since, in order to be valid, it sufficed if a treaty fulfilled the following three conditions: first, it was in written form, secondly, it was governed by international law, and thirdly, it was embodied in a single instrument or in two or more related instruments. With regard to the Cuban amendment to paragraph 1 (*b*), he would prefer to retain the text as drafted since, for the reasons he had already explained, a reference to rights and obligations in the definition could give rise to difficulty.

43. Mr. PAPADOPOULOS (Cyprus) said that the proposed amendments to paragraph 1 (*b*) of article 2 were not acceptable to his delegation; the introduction of the concept of "competence" lent itself to various interpretations, and would create more problems then it would solve. It therefore supported the text proposed by the International Law Commission. Furthermore his delegation supported the view of the representative of the United Kingdom concerning the Cuban amendment to paragraph 1 (*a*), that to insert the word "validly" would be superfluous.

44. Mr. RANJEVA (Madagascar) said that his delegation had some difficulty with the notion of responsibility as implied in subparagraph 1 (*b*) of article 2, since in public law responsibility was the sanction of the exercise of competence; that view of responsibility did not appear to be reflected in the International Law Commission's commentary and he could envisage a number of legal difficulties if the text were adopted as it stood. Politically speaking it was hard to see how any colonial power could be legally entitled to any such right in international relations, and so long as there was any implication that responsibility might

lie with the colonial power, his delegation could not support the text as it stood. The notion of the exercise of competence might be acceptable in spite of all its inherent legal and political difficulties, provided it did not relate to the legal person to which responsibility was attributed and provided it excluded the question of enjoyment of rights and title to competence.

45. Mr. *DUCULESCU* (Romania) said that his delegation would have preferred to see a specific definition of succession of States based on the idea of the continuity or non-continuity of a treaty, as it had stated at the previous session. As far as the definition of succession in article 2 of the draft was concerned, in the majority of cases, particularly with newly independent States, it was not simply a question of the replacement of one State by another in the responsibility for the international relations of territory; there were in fact profound political and legal changes involved which affected every area of the life of a State including its international treaties.

46. The Franco-Swiss amendment (A/CONF.80/C.1/L.41/Rev.1) contained nothing that might help to clarify the notion of succession of States. Furthermore, the notion of "competence" was closely linked in international law to the idea of the supremacy of international law over the national law of sovereign States, which was unacceptable to his delegation. It did, however, support the Cuban amendment to subparagraph 1 (*a*), since it was clear that only lawful, validly concluded agreements, and not unlawful or unequal treaties could give rise to a succession of States.

47. Cuba's proposal concerning subparagraph (*b*) might usefully be referred to the Drafting Committee.

48. Mr. OSMAN (Somalia) said, with regard to the Franco-Swiss amendment, that he agreed with the representatives of Mali and Madagascar that the connotation of the word "responsibility" in international law was different from that of "competence", and that the notion of responsibility should be retained in subparagraph 1 (*b*) of the International Law Commission's draft. Indeed, since the sponsors of the amendment had conceded that the word "responsibility" might be retained in the English version, there seemed to be no need for further discussion on the point.

49. As far as the Cuban amendment was concerned, he maintained his view that insertion of the word "validly" would emphasize that agreements covered by the Convention were validly and legally concluded and would help any interpretation which might subsequently be required. He fully supported the Cuban amendment.

50. Mr. SILVA (Peru) said that although the Franco-Swiss amendment was constructive, his delegation felt that the International Law Commission's text was closer to the more acceptable concept of responsibility, and should therefore be retained. As far as the Cuban amendment for the insertion of the word "validly" was concerned his delegation was of the opinion that article 13 adequately covered the difficulties envisaged and so it could not support that amendment.

51. Mr. PÉREZ CHIRIBOGA (Venezuela), referring to the Franco-Swiss amendment, said that his delegation had doubts about the use of the word "responsibility" in the English version and the word "compétences" in the French version of texts concerning international relations. Although he would not object to the amendment being referred to the Drafting Committee, he felt that there was a basic difference between the two expressions and would be happier if the same expression could be used in all texts. His delegation preferred the use of the word "responsibility" rather than "compétences" since it was always employed in relation to treaties, and compétence had a connotation of legitimacy which responsibility did not.

52. With regard to the Cuban amendment, his delegation agreed that the insertion of the word "validly" might be superfluous in view of the terms of article 13. However, it could certainly do no harm and his delegation would not therefore object to it.

53. Mr. RYBAKOV (Union of Soviet Socialist Republics) said he shared the views of the representatives of Ethiopia, Pakistan and Mali, and supported the text of article 2 as drafted by the International Law Commission.

54. Mr. MUDHO (Kenya) said that his delegation appreciated the desire of France, Switzerland and Cuba to improve the International Law Commission's text, but was not convinced that their proposed amendments filled any gap or materially improved the text. It could not therefore support any of them.

55. Mrs. BEMA KUMI (Ghana) said that her delegation was of the opinion that the International Law Commission's text for article 2 should be acepted as it stood. Cuba's concern over the validity of treaties within the scope of the Convention was fully taken care of by article 13. The Franco-Swiss amendment was unacceptable because of the differing interpretations to which the notions of "responsibility" and "competence" were open.

56. Mr. SILVA (Peru) requested that a vote be taken on article 2 without further debate.

57. Mr. MARESCA (Italy), on a point of order, requested that the discussion be suspended and resumed in the morning.

58. Sir Ian *SINCLAIR* (United Kingdom) on a point of order, in view of the lateness of the hour, moved that the debate on article 2 be closed and a vote be taken on the article forthwith.

59. Mr. MONCAYO (Argentina) said that he must categorically oppose the unusual proposal by the United Kingdom representative. To move the closure in the middle of a debate on a fundamental issue was totally unacceptable. He formally requested that the motion be withdrawn.

60. Mr. AHIPEAUD (Ivory Coast) said he supported the request made by the representative of Argentina.

61. The CHAIRMAN invited the Committee to vote on the motion to close the debate.

The motion for the closure was carried by 59 votes to 6, with 6 abstentions.

62. The CHAIRMAN declared the debate on article 2 closed. He invited the sponsors of the amendments to state whether or not they wished to maintain them.

63. Mrs. VALDÉS PÉREZ (Cuba) said that, quite apart from the implications of article 13, her delegation's amendment related specifically to the definition of "treaty". However, in the interests of reaching a solution, the Cuban delegation withdrew its amendment.

64. Mr. RITTER (Switzerland) said that it had never been the aim of his delegation or of the French delegation to change the substance of article 2, only to improve its wording. The discussion had shown that only drafting changes were required, and he therefore did not request a vote. He did suggest, however, that the Drafting Committee should carefully consider the equivalents of the words used in the various working languages. The France/Swiss amendment itself was withdrawn.

65. The CHAIRMAN proposed that the Committee approve the International Law Commission's text and refer it to the Drafting Committee, which would consider the suggestions of the representative of Switzerland.

66. Mr. MONCAYO (Argentina) said he claimed the right to explain his vote before the vote was taken.

67. His delegation considered that the amendment proposed by France and Switzerland was timely. The concept of "replacement of one State by another in the responsibility for the international relations of territory", as it appeared in the International Law Commission's draft, could be more closely refined. Responsibility implied an autonomous institution in international law and the use of the term in article 2, although referring directly to the international relations of a territory, was not satisfactory. The amendment proposed by France and Switzerland, which spoke of the exercise of competence for international relations in respect of a particular territory, was more accurate. The fears expressed by some delegations that the use of the word "competence" would somehow imply a presumption of validity were unjustified, since the proposed text referred to a *de facto* situation, the exercise of competence, without expressing any judgment on the legality of such competence.

68. That being so, and referring to subparagraph 1 (*c*) of article 2, which defined "predecessor State" as "a State which has been replaced by another State on the occurrence of a succession of States" his delegation wished to emphasize that that concept of "predecessor State" was of an instrumental character and had a purely technical significance, limited to the purpose of the application of the present Convention. In no way did it prejudge the legality of the competence exercised by the so-called predecessor State, nor did it affect the continuity or intangibility of the legal and historical titles of a State which had been deprived *de facto* of its lawful competence.

69. Mr. KOH (Singapore) said that his delegation considered that the definition of "newly independent State" given in subparagraph 1 (*f*) of article 2 applied to the situation of his country after its separation from Malaysia in 1965. It had been a colonial territory until 1963 when it became part of the Federation of Malaysia, a merger which could be regarded as an experiment that failed. Disregarding, therefore, the short "experimental period", his delegation considered that the concept of "newly independent State" covered the sort of situation which gave rise to Singapore's attainment of independence as a sovereign State.

70. Mr. OSMAN (Somalia), speaking in explanation of vote, said that in supporting the International Law Commission's text of paragraph 1 (*a*), his delegation wished to place on record its understanding that "international agreements" as referred to in the Convention were agreements validly and legally concluded and could not be construed to mean the illegal, unequal treaties signed with colonial powers and relating to the nineteenth century territorial arrangements affecting Somalia.

71. The CHAIRMAN proposed that the International Law Commission's text be referred to the Drafting Committee.

72. Mr. PÉRÉ (France) said that as there had been a number of explanations of vote, he would request that a vote be taken on article 2. His delegation intended to vote against it as it stood. The Franco-Swiss amendment had been a substantial one but had been withdrawn, but its withdrawal had been the consequence of the vote on article 33 of the Convention. The definition of "newly independent State" as it stood corresponded to the concept in the Convention itself which was not acceptable to his delegation.

73. The CHAIRMAN invited the Committee to vote on draft article 2 as it stood.

Draft article 2 was provisionally adopted by 71 votes to 5, with 1 abstention, and referred to the Drafting Committee.

The meeting rose at 12.30 a.m. on 16 August 1978.