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56th Meeting of the Committee of the Whole

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

PROPOSAL TO INSERT A NEW ARTICLE 39 *ter* (Miscellaneous provisions)

46. Mr. MONCAYO (Argentina) withdrew his delegation's amendment for the addition of a new article 39 *ter* (A/CONF.80/C.1/L.58).

Organization of work

[Agenda item 10]

47. Mr. RANJEVA (Madagascar) said he would like to know when the Drafting Committee expected to complete its work.

48. Mr. YASSEEN (Chairman of the Drafting Committee) said that the Drafting Committee would in any event have to hold one more meeting, at which it hoped to be able to complete its work.

The meeting rose at 6.15 p.m.

56th MEETING

Monday, 21 August 1978, at 11.55 a.m.

Chairman : Mr. RIAD (Egypt)

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

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

[Agenda item 11] (*continued*)

REPORT OF THE DRAFTING COMMITTEE ON THE TITLES AND TEXTS OF ARTICLES 6 AND 7 ADOPTED BY THE DRAFTING COMMITTEE (A/CONF.80/C.1/5) (*concluded*)*

*Article 7 (Temporal application of the present Convention) (concluded)**

1. The CHAIRMAN invited the Committee, before taking up articles 2, 12 and 12 *bis* and the resolution concerning article 30, to resume its consideration of the title and text of article 7 as adopted by the Drafting Committee (A/CONF.80/C.1/5). At the 53rd meeting of the Committee, further discussion of article 7¹ had been deferred pending informal consultations among States with a particular interest in the article regarding the oral amendment

to paragraph 3 proposed in the course of that meeting² by the United Kingdom.

2. Sir Ian SINCLAIR (United Kingdom) said that the period during which the Convention would be open for signature would expire in August 1979. The purpose of his delegation's amendment to paragraph 3 had been to cover the case of a newly independent State coming into being subsequent to that date, which might wish to make a declaration regarding provisional application of the Convention. It was a purely technical amendment and he believed that, as a result of the consultations mentioned by the Chairman, those delegations which had previously expressed doubts no longer objected to it.

3. Mrs. BOKOR-SZEGŐ (Hungary) said her original hesitation had been caused by inaccurate interpretation of the English wording of the amendment. She was now satisfied that the amendment would not prevent the entry into force of the Convention between States which acceded to it and those which had signed but not ratified it. She therefore supported the amendment.

4. Mr. VREEDZAAM (Suriname) said he wished to be associated with the amendment proposed by the United Kingdom and by the Netherlands, and particularly with the reference made by the Netherlands delegation to the case of the Netherlands Antilles.³

5. Mr. YANGO (Philippines) said that in his delegation's view the title adopted by the Drafting Committee for article 7 was a little infelicitous and might cause confusion. The article preserved the recognized and accepted concept of the non-retroactivity of treaties. It was true that the article set out certain exceptions to that principle, but that should not be allowed to detract from the fact that the principle itself was clearly stated in paragraph 1 and in the original wording of the International Law Commission's text. In his view, there was nothing against the retention of the original title as well, although the words "and exceptions" might be added to cover the whole present substance of the article. In introducing his report on article 7, the Chairman of the Drafting Committee had made no reference to the considerations which had prompted the change in title and he would be happy to know what they had been.

6. Mr. RYBAKOV (Union of Soviet Socialist Republics) said that his delegation was prepared to accept the title adopted by the Drafting Committee. However, there was force in the arguments advanced by the representative of the Philippines and if delegations objected to the present title, it might be better, in order to save time, to revert to the International Law Commission's title.

7. Mr. ROVINE (United States of America) said that the International Law Commission's text of article 7 contained

* Resumed from the 53rd meeting.

¹ See 53rd meeting, paras. 50-51.

² *Ibid.*, para. 41.

³ *Ibid.*, para. 45.

a slight element of retroactivity in that it referred generally to the “entry into force of these articles” and did not stipulate that the entry into force should be with respect to the particular States concerned. The original title had therefore been inaccurate; in any event it clearly needed changing in view of the fact that the proposed United Kingdom amendment offered a further possibility of retroactivity. The term “temporal application” was apt and he recommended that it be retained.

8. Mr. DUCULESCU (Romania) said that his delegation preferred the Drafting Committee’s text of paragraph 3. It also considered that the present title was a good description of the contents of the article.

9. Mr. NATHAN (Israel) said that the original title of the article had been inaccurate, for even the International Law Commission’s text had provided for limited retroactivity of the Convention in that it referred to its general entry into force and had not adopted the specific formulation of article 28 of the Vienna Convention, namely, “the date of the entry into force of the treaty with respect to that party”.

10. Mr. AL-KHASAWNEH (Jordan) said that his delegation had no strong views about the title of the article but since delegations appeared to be divided in their opinions, it might be useful to ask the Chairman of the Drafting Committee why it had been changed.

11. Mr. YANGO (Philippines) said that, in view of the statements which had been made by other delegations and in order to save time, his delegation was prepared to accept the Drafting Committee’s title for article 7.

12. Mr. YASSEEN (Chairman of the Drafting Committee) said it had no longer been possible to retain the original title of article 7 once the paragraphs added to the International Law Commission’s text had provided for the retroactive application of the Convention.

13. The Drafting Committee had given a great deal of thought to the choice of a title which would cover all the possible applications of the Convention in time. The hallowed expression in French legal language—“*application dans le temps*” covered both retroactivity and non-retroactivity of laws and conventions. It was thus an appropriate title in French for article 7 but there was some difficulty about translating it. However, the English language members of the Drafting Committee, supported by the Expert Consultant, had stated that the phrase “temporal application” was similarly employed by English writers on the subject.

14. The CHAIRMAN said, if there were no objection, he would take it that the Committee agreed to adopt the proposal by the United Kingdom that the opening part of paragraph 3 be amended to read:

A successor State may at the time of signing or of expressing its consent to be bound by the present Convention make a declaration that it will apply the provisions of the Convention provisionally in respect of its own succession of States which has occurred before

the entry into force of the Convention in relation to any other signatory or contracting State ...”

It was so agreed.

15. The CHAIRMAN said that, if there were no objection, he would take it that the Committee agreed to adopt on second reading the title and text of article 7, as proposed by the Drafting Committee, as amended by the United Kingdom.

*It was so agreed.*⁴

REPORT OF THE DRAFTING COMMITTEE ON THE TITLE AND TEXT OF ARTICLE 2 ADOPTED BY THE DRAFTING COMMITTEE (A/CONF.80/C.1/6)

*Article 2 (Use of terms)*⁵

16. Mr. YASSEEN (Chairman of the Drafting Committee) said that the Drafting Committee had adopted the title and text of article 2 proposed by the International Law Commission, subject to the following changes. In paragraph 1 (b) of the French version, the word “*du*”, preceding the word “*territoire*”, had been replaced by “*d’un*”, in line with the other language versions. In paragraph 1 (h), the phrase “or a notification referred to in article 37” had been replaced, in all languages, by “or any other notification under the present Convention”. That change had been made in view of the Committee’s decision to add to the basic text proposed by the International Law Commission provision for notifications other than a notification of succession (article 7 (4) and article C of the provisions relating to peaceful settlement of disputes). In paragraph 2 of the French version, the word “*préjudicent*” had been replaced by “*préjudicant*”, and the word “*à*”, preceding the expression “*l’emploi de ces expressions*”, had been deleted. Lastly, as elsewhere throughout the draft, the term “the present articles” had been replaced by “the present Convention”.

17. Mr. EUSTATHIADES (Greece) said it seemed to him that the expression “relations of territory”, in paragraph 1 (b), must perhaps be a typing error and that the correct expression should be “relations of a territory”. In the French version of the same sub-paragraph, it would be better to replace the expression “*d’un territoire*” by “*concernant un territoire*”.

18. Mr. KASASA-MUTATI (Zaire) said his delegation considered that, notwithstanding the terms of paragraph 2

⁴ For the adoption of article 7 by the Conference, see 14th plenary meeting.

⁵ For earlier discussion of article 2 at the resumed session, see 52nd meeting, paras. 24-73. For the discussion of article 2 by the Committee of the Whole at the 1977 session, see *Official Records of the United Nations Conference on Succession of States in Respect of Treaties*, vol. I, *Summary records of the plenary meetings and of the meetings of the Committee of the Whole* (United Nations publication, Sales No. E.78.V.8), pp. 22 *et seq.*, 28 *et seq.* and 40 *et seq.*, 2nd meeting, paras. 6-54, 3rd meeting, paras. 1-70 and 5th meeting, paras. 1-58.

of article 2, it would be advisable to include a definition of the term “people” since it had been introduced in article 12 *bis*. As his delegation had already had occasion to point out,⁶ it was States—not people—that would sign the Convention.

19. Mr. YASSEEN (Chairman of the Drafting Committee), said that that point concerned a question of substance which had not been before the Drafting Committee and on which he was therefore unable to comment.

20. As to the point raised by the Greek representative, in his view, the term “*relations internationales du territoire*” could be used in the French version of paragraph 1 (b).

21. Mr. EUSTATHIADES (Greece) said that he was still not entirely satisfied with the French version of paragraph 1 (b). The difficulty was that a partial succession of States, which would be covered by paragraph 1 (b), involved the transfer of a territory that never had had, or would have, international relations, either before or after succession.

22. The CHAIRMAN said he should point out that some delegations, including the Swiss delegation, took the view that a territory could not have international relations unless it had a federal structure or was some other form of composite State. An amendment to that effect, submitted by the delegations of France and Switzerland (A/CONF.80/C.1/L.41/Rev.1), had not, however, been accepted. It therefore seemed to him that the matter was settled, apart from the drafting point concerning the English version of paragraph 1 (b).

23. Mr. MUDHO (Kenya) said that the Informal Consultations Group had inserted the word “people” (see A/CONF.80/C.1/L.62) in article 12 *bis* in order to cater for the few cases of non-self-governing territories whose peoples nonetheless had, and should continue to have, permanent sovereignty over their natural wealth and resources. Whether or not it had been beyond the competence of the Informal Consultations Group to make such an insertion was, however, for the Committee to decide.

24. The CHAIRMAN said that, since the word “people” had been introduced in article 12 *bis*, which had already been adopted by the Committee, there could be no question of deleting it, at least at that stage. The only question was whether or not it should be defined in article 2. He would point out, however, that not all the terms used in the Convention, whether of legal purport or not, had been defined, and “State” was a case in point. His personal view was that the phrase “every people and every State”, in article 12 *bis*, should be given its ordinary natural meaning.

25. Mr. PÉREZ CHIRIBOGA (Venezuela) said that, while his delegation understood the desire of the representative of Zaire for precision in the language of the Convention, it considered it would be inappropriate to

include a definition of the word “people” in article 2. That article, in its view, should be confined to definitions that were essential for a full understanding of all the provisions in the Convention, in other words, to definitions of terms that were particularly relevant to succession of States.

26. Furthermore, he understood that the phrase “every people and every State”, which appeared in article 12 *bis*, was commonly used throughout the United Nations family of organizations in articles relating to sovereignty over natural resources. The word “people” also occurred in numerous international instruments and its full force was to be appreciated from the fact that it appeared in the opening clause of the preamble to the United Nations Charter.

27. Lastly, any attempt to define the word “people” would take days rather than hours. In the circumstances, he would appeal to the representative of Zaire not to insist on his suggestion.

28. Miss WILMHURST (United Kingdom), referring to the point raised by the Greek representative regarding the English version of paragraph 1 (b), said that the Drafting Committee had adopted the text proposed by the International Law Commission, and the reason why the Commission had proposed that an article, whether definite or indefinite, should be omitted from the phrase “international relations of territory” was clearly stated in its commentary to article 2, and in particular in paragraph 4 thereof (A/CONF.80/4, pp. 17-18). That somewhat vague term covered both a particular territory and parts of a territory and, even though it had presented some problems of translation, she believed it to be correct.

29. Mr. MAIGA (Mali) said that, in the French version of paragraph 1 (b), his delegation would prefer the expression proposed by the International Law Commission, namely, “*relations internationales du territoire*” which, in its view, would be more appropriate in the context.

30. Mr. MARESCA (Italy) said that the definitions which the Committee was now considering should be viewed not as legal definitions in the dogmatic sense but as practical tools for the better use and understanding of the Convention. There was no point in seeking in each and every case for a perfection that it was quite impossible to attain. Nonetheless, he continued to think that “*relations internationales d'un territoire*”, in the French version, was not the happiest of phrases and that “*concernant un territoire*” would be better.

31. Mr. LUKABU-K'HABOUJI (Zaire) said that, although he had not been entirely convinced by the arguments that had been advanced in support of the non-inclusion of a definition of the word “people” in article 2, he would not press his point. He did, however, wish to make it absolutely clear that his delegation's reason for raising the matter was that the future convention concerned relations between States, not between peoples.

32. Mr. MAIGA (Mali) said he still believed that the International Law Commission had used the expression “*du*

⁶ See 54th meeting, para. 39.

territoire” in the French version of article 2, paragraph 1 (b), for a definite and valid reason and that that expression and its equivalents in the other languages of the Conference should be employed in the final text of the article.

33. Mr. PÉRE (France) said that, as he understood it, the Drafting Committee had decided to use the indefinite article in the French version of article 2, paragraph 1 (b), because it believed that the intention of the International Law Commission, as evidenced by the wording the Commission had proposed for the English and Spanish versions of the provision, had been to refer to territory in an indeterminate sense.

34. Mr. MONCAYO (Argentina) said that it was appropriate to use the indefinite article in the Spanish version of the definition, since the future convention was concerned with cases of succession relating to different proportions of the territory of the predecessor State and even to areas which had not, strictly speaking, been part of the State.

35. Mr. MAIGA (Mali) said that he would not press for the amendment of the text proposed by the Drafting Committee.

36. The CHAIRMAN said that, if there were no objection, he would take it that the Committee agreed to adopt on second reading the title and text of article 2 proposed by the Drafting Committee.

*It was so agreed*⁷.

REPORT OF THE DRAFTING COMMITTEE ON THE TITLE OF ARTICLE 11 AND THE TITLES AND TEXTS OF ARTICLES 12 AND 12 *bis* ADOPTED BY THE DRAFTING COMMITTEE (A/CONF.80/C.1/7)

*Article 11 (Boundary régimes)*⁸

37. Mr. YASSEEN (Chairman of the Drafting Committee) said that, at the first part of the session, the question of the title of article 11 had been left in abeyance pending a decision by the Committee on the amendment to articles 11 and 12 proposed by Afghanistan (A/CONF.80/C.1/L.24). That amendment having been rejected, the Drafting Committee had seen no need to change the title that had been proposed for article 11 by the International Law Commission.

38. The CHAIRMAN said that, if there were no objection, he would take it that the Committee agreed to adopt

⁷ For the adoption of article 2 by the Conference, see 14th plenary meeting.

⁸ For the discussion of article 11 by the Committee of the Whole at the 1977 session, see *Official Records of the United Nations Conference on Succession of States in Respect of Treaties...* (op. cit.) pp. 113 *et seq.*, 119 *et seq.*, 129 and 231-232, 17th meeting, paras. 10-49, 18th meeting, paras. 5-88, 19th meeting, paras. 1-9 and 33rd meeting, paras. 18-27.

on second reading the title of article 11 as proposed by the Drafting Committee.

*It was so agreed.*⁹

Article 12 (Other territorial régimes) (continued)

39. Mr. YASSEEN (Chairman of the Drafting Committee) said that the Drafting Committee had made no change either in the title of the article or in the text of paragraphs 1 and 2 thereof. Paragraph 3 had been simplified by the replacement of the words “accepted by” by the word “of”. Consequent upon that change, the word “and” had been deleted from the second line of the English and French versions of the paragraph. In the Spanish version, the words “*derivadas de tratados*” had been placed between commas, for the sake of clarity, while the words “*aplicarán*” and “*relativas al*” had been replaced by the words “*aplican*” and “*que prevean el*” respectively, for the sake of conformity with the other language versions. The Committee had decided not to replace the word “do” in the English version, at the beginning of the paragraph, by the word “shall”, because it had felt that the paragraph affirmed explicitly what had been stated implicitly in paragraphs 1 and 2 of the article, and that the change might jeopardize the consensus that had been reached in the Informal Consultations Group.

Mr. MONCAYO (Argentina) said that, in the light of the title proposed for article 12, the third paragraph of the article must be interpreted as implying that treaties concerning the establishment of foreign military bases did not constitute territorial régimes. His delegation believed that it was because such treaties and others—which might include treaties relating to natural wealth and resources—did not establish territorial régimes, that the provisions of article 12 would not apply to them.

41. The CHAIRMAN said that, if there were no objection, he would take it that the Committee agreed to adopt on second reading the title and text of article 12 as proposed by the Drafting Committee.

*It was so agreed.*¹⁰

Article 12 bis (The present Convention and permanent sovereignty over natural wealth and resources) (continued)

42. Mr. YASSEEN (Chairman of the Drafting Committee) said that, in the Spanish version, to ensure conformity with the other language versions, the Drafting Committee had replaced the words “*en los que se afirma*” by the word “*afirman*”. No other changes had been made to the text of the article. The Drafting Committee believed that the title it proposed for the article gave an objective and neutral indication of its contents.

⁹ For the adoption of the title of article 11 by the Conference, see 14th plenary meeting.

¹⁰ For the adoption of article 12 by the Conference, see 14th plenary meeting.

43. The CHAIRMAN said that, if there were no objection, he would take it that the Committee agreed to adopt on second reading the title and text of article 12 *bis* as proposed by the Drafting Committee.

*It was so agreed.*¹¹

REPORT OF THE DRAFTING COMMITTEE ON THE TITLE AND TEXT OF THE RESOLUTION CONCERNING ARTICLE 30 ADOPTED BY THE DRAFTING COMMITTEE (A/CONF.80/C.1/8)

44. Mr. YASSEEN (Chairman of the Drafting Committee) said that no change had been made in the text that had been referred to the Drafting Committee by the Committee of the Whole.

45. The CHAIRMAN said that, if there was no objection, he would take it that the Committee agreed to adopt on second reading the title and text of the resolution concerning article 30 as proposed by the Drafting Committee.

*It was so agreed.*¹²

The meeting rose at 1.15 p.m.

¹¹ For the adoption of article 12 *bis* by the Conference, see 14th plenary meeting.

¹² For the adoption of the resolution concerning article 30 by the Conference, see 14th plenary meeting.

57th MEETING

Tuesday, 22 August 1978, at 9.50 a.m.

Chairman: Mr RIAD (Egypt)

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

[Agenda item 11] (*concluded*)

REPORT OF THE DRAFTING COMMITTEE ON THE TITLES AND TEXTS OF ARTICLES A TO E RELATING TO PEACEFUL SETTLEMENT OF DISPUTES ADOPTED BY THE DRAFTING COMMITTEE (A/CONF.80/C.1/9)¹

1. The CHAIRMAN invited the Chairman of the Drafting Committee to introduce his Committee's draft for the articles relating to peaceful settlement of disputes (A/CONF.80/C.1/9).

¹ For the discussion by the Committee of the Whole of the agreed text of the *Ad Hoc* Working Group on Peaceful Settlement of Disputes (A/CONF.80/C.1/L.60 and Corr.1), see 51st meeting, paras. 10-38 and 52nd meeting, paras. 1-23.

2. Mr. YASSEEN (Chairman of the Drafting Committee) said that the Drafting Committee, being fully aware of the importance attached to the five articles by members of the *Ad Hoc* Group on Peaceful Settlement of Disputes which had prepared the agreed text (A/CONF.80/C.1/L.60 and Corr.1), had decided to retain articles A to E as separate articles rather than combine them into a single article. It had therefore formulated an appropriate title for each article designed to give as succinct an idea of its contents as possible. The designation of all five articles was provisional and had been retained to facilitate the work of the Committee of the Whole. The final numbering would be decided according to their position after the present article 39.

3. The Drafting Committee had retained the texts of the articles as submitted by the Committee of the Whole, and had only made small changes to ensure uniformity of terminology throughout.

4. In all five articles the word "State", in relation to "parties", had been deleted, the present text referring only to "parties". Furthermore the expressions "to the present Convention" or "to the Convention" had been used as appropriate, particularly with reference to "parties". The word "parties" had been given a capital letter when referring to the "Parties to the Convention", in order to make a clear distinction between those Parties and "parties to the dispute".

Article A (*Consultation and negotiation*)

5. The Drafting Committee had decided to follow the grammatical structure of the French version of Article A, and to insert the phrase "upon the request of any of them" between the words "shall" and "seek", for greater clarity and precision; the same had been done in the Spanish version.

6. Mr. PÉREZ CHIRIBOGA (Venezuela) said that a number of Spanish-speaking delegations had found the Spanish version of articles A and B somewhat cumbersome and possibly open to erroneous interpretation. In order not to delay the work of the Committee of the Whole, he suggested that an informal meeting with the Chairman of the Drafting Committee be held later in order to bring the Spanish version into line with the French.

7. Mr. MONCAYO (Argentina) said he supported that suggestion.

It was so agreed.

8. Mr. FISHER (Holy See) said that he wished to state briefly the Holy See's position as regards the machinery for the settlement of disputes. Generally speaking, the Holy See shared the view expressed by a famous lawyer that "Legal obligations that exist but cannot be enforced are ghosts that are seen in the law but are elusive to the grasp". His delegation had always strongly supported any attempt to introduce some sort of compulsory judicial or arbitral procedure for the settlement of disputes arising out of the