United Nations Conference on Succession of States in Respect of Treaties

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13th Plenary Meeting

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)*

70. Mr. DE VIDTS (Belgium), noting that his country had voted in favour of General Assembly resolution 2145 (XXI) of 27 October 1966, said that the Belgian delegation had abstained in the vote on the resolution concerning Namibia because it was not convinced that the Conference should act as surrogate for the future independent State of Namibia and because it considered that that future State alone should decide whether to apply, in its own case, the existing practice in the matter of succession of States or the provisions of the Convention if it had entered into force. There had therefore been no call for the Conference to take a decision on the question. The resolution that had just been adopted in no way altered the prerogatives of the future State of Namibia, which Belgium wished every success in asserting itself in the area of international relations on the basis of respect for its new sovereignty.

71. Mr. MARESCA (Italy) said that Italy had always adopted a favourable attitude towards Namibia, whose independence would serve to enrich the international community.

72. The Italian delegation had abstained in the vote that had just been taken because it considered that the Conference, which had been convened to draw up a convention on succession of States in respect of treaties, was not competent to take a decision on the question of Namibia and that its adoption of a position constituted interference in the affairs of a future State which should be the sole master of its own fate.

73. Mr. SIDDIQUI (United Nations Council for Namibia) expressed his gratitude to the Conference for having adopted the resolution on Namibia.

Organization of work

74. The PRESIDENT, observing that the Conference would obviously be unable to complete its work on 18 August, as scheduled, suggested that the session be extended until Wednesday, 23 August 1978, inclusive, subject to any further decision that might be taken if necessary.

That suggestion was adopted.

The meeting rose at 5.50 p.m.

13th PLENARY MEETING

Monday, 21 August 1978, at 3.20 p.m.

President: Mr. ZEMANEK (Austria)

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*)

TITLES AND TEXTS OF ARTICLES 30 TO 39 ADOPTED BY THE COMMITTEE OF THE WHOLE[1] (A/CONF.80/20)

Article 30 (Effects of a uniting of States in respect of treaties in force at the date of the succession of States)

Article 30 was adopted without a vote.

1. Mr. FLEISCHHAUER (Federal Republic of Germany), referring to article 30, said that he wanted to make a statement on behalf of his own delegation and of the other delegations representing States members of the European Communities at the Conference. He wanted to state that the provisions of the draft articles on succession of States in respect of treaties did not apply to the participation of States in the European Communities. That view had also been taken by the International Law Commission, as was clear from its 1974 report (see A/CONF.80/4, pp. 12-13, chap. II, Introduction, paras. 65-69, and p. 93, para. 4 of the commentary to articles 30-32). The States members of the European Communities wished that statement to be reproduced in the records of the Conference.

Article 31 (Effects of a uniting of States in respect of treaties not in force at the date of the succession of States)

Article 31 was adopted without a vote.

Article 32 (Effects of a uniting of States in respect of treaties signed by a predecessor State subject to ratification, acceptance or approval)

Article 32 was adopted without a vote.

Article 33 (Succession of States in cases of separation of parts of a State)

2. Mr. RITTER (Switzerland) requested that in view of the lengthy debate on article 33 and its importance in the convention as a whole, the article should be put to the vote.

3. After a procedural discussion in which Sir Ian SINCLAIR (United Kingdom), Mr. MAIGA (Mali), Mr. MUDHO (Kenya), and Mr. PÉRÉ (France) took part, the PRESIDENT put article 33 to the vote.

Article 33 was adopted by 68 votes to 5.

4. Mr. MUDHO (Kenya) said that his delegation would have voted for article 33 if it had been able to participate in the vote.

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[1] For the consideration of these articles by the Committee of the Whole, see the summary records of the following meetings: article 30: 27th, 38th, 39th and 53rd meetings; article 31: 40th and 53rd meetings; article 32: 40th and 53rd meetings; article 33: 40th, 41st, 47th, 48th, 49th and 53rd meetings; article 34: 41st, 42nd and 53rd meetings; article 35: 43rd and 53rd meetings; article 36: 43rd and 53rd meetings; article 37: 43rd and 53rd meetings; article 38: 43rd and 53rd meetings; article 39: 43rd and 53rd meetings.

Article 34 (Position if a State continues after separation of part of its territory)

5. Mr. PÉRÉ (France) pointed out, in connexion with article 34, that the position of the predecessor State was regulated only in Part IV of the draft convention. He regretted that it had not been defined in greater detail in the cases referred to in Part III of the draft. Consequently, the French delegation could not join the consensus on article 34, but would not oppose it.

Article 34 was adopted without a vote.

Article 35 (Participation in treaties not in force at the date of the succession of States in cases of separation of parts of a State)

Article 35 was adopted without a vote.

Article 36 (Participation in cases of separation of parts of a State in treaties signed by the predecessor State subject to ratification, acceptance or approval)

Article 36 was adopted without a vote.

Article 37 (Notifications)

Article 37 was adopted without a vote.

Article 38 (Cases of State responsibility and outbreak of hostilities)

Article 38 was adopted without a vote.

Article 39 (Cases of military occupation)

Article 39 was adopted without a vote.

REPORT OF THE DRAFTING COMMITTEE ON THE FINAL CLAUSES (A/CONF.80/19)

Article [I] (Signature)

6. Mr. YASSEEN (Chairman of the Drafting Committee), introducing the report of the Drafting Committee on the final clauses of the convention, reminded the Conference that at its 21st meeting, on 20 April 1977, the Committee of the Whole had instructed the Drafting Committee to prepare texts of the final clauses and to submit them direct to the Conference.[2] The Drafting Committee had had before it a number of proposals by delegations, and two working documents by the Secretariat, one of which contained a comparative table of the final clauses appearing in the most recent codification conventions. After considering those documents, the Drafting Committee had adopted the draft final clauses circulated under the symbol A/CONF.80/19. The numbering of the articles was provisional.

7. With regard to article [I], the Drafting Committee had used the formulation which appeared in the two most recent codification conventions, and particularly in article 81 of the 1975 Vienna Convention on the Representation of States in their Relations with International Organizations of a Universal Character,[3] where the expression "all States" was used. The two dates contained in the article had been selected by the method used in the case of the 1975 Convention, i.e. they were the last days of the sixth and twelfth months from the month following the adoption of the Convention.

Article [I] was adopted without a vote.

Article [II] (Ratification)

8. Mr. YASSEEN (Chairman of the Drafting Committee) pointed out that article [II] contained the formulation that had been used in all codification conventions, particularly in article 49 of the Vienna Convention on Diplomatic Relations,[4] article 51 of the Convention on Special Missions,[5] and article 82 of the Vienna Convention on the Law of Treaties.[6] It had been proposed that the words "acceptance or approval" should be added to the title and in the text of the article; but the Drafting Committee had felt that there was no reason to depart from the established model, since the term "ratification" in the context of the convention implied acceptance and approval.

9. Mr. LUKABU-K'HABOUJI (Zaire) said that his delegation would submit written comments on article [I] which the Conference had just adopted. With regard to article [II], he observed that no provision in the convention indicated who its depositary was to be. Article [II] mentioned the Secretary-General, but the words "who shall be its depositary" should be added to the end of the article.

10. Mr. MAIGA (Mali) said that the representative of Zaire had been right to raise the question of the depositary; but he felt that the article was already sufficiently clear and invited the representative of Zaire to withdraw his amendment in order to save time.

11. Mr. YASSEEN (Chairman of the Drafting Committee) said that he understood the point made by the representative of Zaire, but thought that article [II] was quite clear, since the instruments of ratification could not be deposited with any authority other than the depositary. Also, the article contained a formulation already used in other codification conventions.

[2] *Official Records of the United Nations Conference on Succession of States in respect of Treaties*, vol. I, *Summary records of the plenary meetings and of the meetings of the Committee of the Whole* (United Nations publication, Sales No. E.78.V.8) p. 151, 21st meeting, paras. 94-95.

[3] *Official Records of the United Nations Conference on the Representation of States in their Relations with International Organizations*, vol. II, *Documents of the Conference* (United Nations publication, Sales No. E.75.V.12), p. 222.

[4] United Nations, *Treaty Series*, vol. 500, p. 124.

[5] General Assembly resolution 2530 (XXIV).

[6] *Official Records of the United Nations Conference on the Law of Treaties, Documents of the Conference* (United Nations publication, Sales No. E.70.V.5), p. 300.

12. Sir Ian SINCLAIR (United Kingdom) said that his delegation would have some difficulty in departing from the established precedents, and that the addition of the words proposed by the representative of Zaire might raise doubts regarding the interpretation of conventions which already contained that formulation.

13. Mr. LUKABU-K'HABOUJI (Zaire) said that his proposal was intended to make the text of article [II] more clear, and he recalled that the United Nations Convention on the Carriage of Goods by Sea[7] adopted at Hamburg in March 1978 contained that very phrase. He nevertheless withdrew this amendment to article [II].

Article [II] was adopted without a vote.

Article [III] (Accession)

14. Mr. YASSEEN (Chairman of the Drafting Committee) said that article [III] was based on article 83 of the Vienna Convention on the Representation of States in their Relations with International Organizations of a Universal Character.[8]

Article [III] was adopted without a vote.

Article [IV] (Entry into force)

15. Mr. YASSEEN (Chairman of the Drafting Committee) said that in article [IV] the Drafting Committee had adopted the formulation used in all codification conventions. With regard to the number of instruments of ratification required for the entry into force of the convention, the majority of the members of the Drafting Committee had favoured 10, in view of the characteristics of the Convention, which was not of interest to all States in the same degree. A minority of the members of the Drafting Committee would have preferred a minimum of 20 instruments.

16. Sir Ian SINCLAIR (United Kingdom) said that the number of instruments of ratification required for the entry into force of the convention was, in his delegation's view, an important question. In the progressive development and codification of the general rules of international law, there was the precedent of several conventions that required 35 instruments of ratification, in particular the Vienna Convention on the Law of Treaties and the Vienna Convention on the Representation of States in their Relations with International Organizations with a Univeral Character. It was essential to take into account not only those precedents but also the need to stipulate that a considerable proportion of the international community should express its consent to be bound by the convention. In recent years, the number of States had increased so fast that it might be possible to envisage a figure even higher than 35 instruments of ratification. However, the United Kingdom delegation recognized that in the present case, in view of the characteristics of the convention, it was not necessary to have so large a figure. It therefore formally proposed that the number of instruments of ratification required for the entry into force of the convention should be 25;

17. Mrs. BOKOR-SZEGÖ (Hungary) observed that during the discussions, particularly on article 7, the majority of delegations had expressed the wish that the convention should enter into force in the near future, particularly as the decolonization process had now practically come to an end. Accordingly, she did not understand the logic of the efforts being made to delay the entry into force of the convention. In her opinion it was quite right to say that the convention should enter into force after the deposit of the tenth instrument of ratification.

18. Mr. RASSOLKO (Byelorussian Soviet Socialist Republic) said that the convention should enter into force as soon as possible. The number of instruments of ratification required should therefore be fixed at 10, as proposed by the Drafting Committee. It was necessary to take into account that objective factor, and not subjective factors such as those mentioned by the representative of the United Kingdom. His delegation unreservedly supported the text of the final clauses proposed by the Drafting Committee.

19. Mr. de OLIVEIRA (Angola) said that Angola attached great importance to the progressive development of international law. For instance, a few months after it had acceded to independence in extremely difficult conditions, his Government had tried to persuade the international community to approve a convention on the prevention and punishment of the crime of engaging in mercenary activities, and thus fill a void in international law. If Angola had not always participated as actively as it would have wished in the work of international organizations for the development of international law, that was merely because it had been independent for only three years and lacked qualified personnel. His delegation hoped that, in the case under discussion, the Conference would adopt machinery that would make it possible for the convention to enter into force as soon as possible. It welcomed the convention elaborated by the Conference, which embodied solutions that would contribute to the progressive development of international law. The convention was belated, but he doubted whether it could have been adopted 20 years previously. It could not be regarded merely as an academic exercise. It was understandable that, because of misgivings or mental reservations, some States might not sign the Convention: but such misgivings or mental reservations could not alter the fact that there was a consensus in the international community on the question involved. His delegation considered therefore that 10 instruments of ratification would be enough for the entry into force of the convention.

[7] A/CONF.89/13, annex I.

[8] *United Nations Conference on the Representation of States in Their Relations with International Organizations*, vol. II, *Documents of the Conference* (United Nations publication, Sales No. E.75.V.12), p. 222.

20. Mr. NATHAN (Israel) said that the convention could be placed in the category of normative treaties, i.e. treaties establishing a multilateral legal régime or codifying legal rules. That characteristic of the convention must be borne in mind, since it might perhaps be contrary to the purposes of the convention to provide that it should enter into force after the deposit of the tenth instrument of ratification. The number of instruments suggested seemed to be unprecedented for a treaty of that kind, because there were already two codification conventions which provided that the number of ratifications should be 35. Since the adoption of those instruments, the number of States Members of the United Nations had grown to 149, which meant that the figure of 10 represented only 7 per cent of the Organization's membership. Naturally, the entry into force of the convention must not be unduly delayed; but a balance must be found between the need to accelerate entry into force so that newly independent States could take advantage of the provisions of the convention, and the need to provide for the deposit of a reasonable number of instruments of ratification before the entry into force of the convention. In the circumstances, his delegation regarded as reasonable the figure of 25 proposed by the United Kingdom delegation, which was equivalent to one third of the States participating in the Conference.

21. Mr. PÉRÉ (France) drew attention to the fact that although nine delegations in the Drafting Committee had favoured the figure 10, five other delegations had favoured a higher figure. Since the Drafting Committee had based itself on the final clauses of codification conventions that had already been adopted, he wondered why the Conference should make innovations in the present case. His delegation believed that the number of instruments of ratification required for entry into force of the convention should be fairly large for several reasons, particularly because the prestige of the United Nations would be damaged if the Conference were to fix too low a figure for a major codification convention elaborated under the auspices of an organization of a universal character with nearly 150 Member States. It was wrong to say that nothing had been done to facilitate the earliest possible entry into force and application of the convention. On the contrary, no convention had gone so far as the present one in that respect. For instance, article 7 permitted immediate, and even retroactive, application of the convention by any State that so wished. He was therefore surprised by the allegations that certain delegations were showing ill-will in the matter, when States were in fact permitted to apply the provisions of the convention even before its entry into force.

22. In the opinion of his delegation the problem was one of form, not of substance. After referring to the codification conventions that required 35 instruments of ratification, he also cited the example of the recent Hamburg Convention on the Carriage of Goods by Sea which, although it dealt with much more delicate problems and had immediate financial and economic implications, established the figure of 20 in accordance with the wishes of delegations of developing countries, which his delegation had supported. In conclusion, he suggested that if the Conference were to fix too low a figure, it would raise doubts concerning the quality of its work and concerning the welcome which the international community was likely to give to an uncontroversial convention.

23. Mr. RITTER (Switzerland) pointed out that the future convention was intended to be universal, which meant that it must be ratified by a number of States that was representative of the international community. In his opinion, by permitting the entry into force of a universal convention ratified by only 10 States, the Conference might distort the nature of the convention, lessen its prestige and detract from its authority. It was true that to require a high number of ratifications might delay the entry into force of the convention, as had occurred with the 1969 Vienna Convention on the Law of Treaties. In the case of the current convention, however, the problem was solved in advance as a result of the provisions of article 7, which permitted a State that had emerged prior to the entry into force of the convention to apply the provisions of the convention with respect to its own succession of States. It did seem possible, therefore, to adopt a figure more in line with the universal character of the convention. In his opinion, the figure of 35 would already represent an easing of requirements by comparison with the Vienna Convention on the Law of Treaties, because the number of Members of the United Nations had increased since that date; but his delegation supported the figure of 25 proposed by the United Kingdom which, in view of the provisions of article 7, should meet all objections.

24. Mr. WALLACE (United States of America) said he thought that the figure proposed by the Drafting Committee was too small. A significant minority of the members of the Drafting Committee had voted for a higher figure, as the representative of France had emphasized. If, as the representative of Angola had said, the convention enjoyed the consensus of the international community, which at present numbered 158 States, the figure 10 in no way reflected that consensus. It was true that there were relatively few newly independent States that were liable to invoke the provisions of the convention; but all States could be affected by a succession of States.

25. He pointed out that two of the more recent codification conventions had set the number of ratifications required at 35, and none had provided for a figure lower than 22. In his opinion, the figure should be set at 25 in the current convention and should not, in any case, be less than 20.

26. Mr. KASASA-MUTATI (Zaire) said that in the proposal for final clauses (A/CONF.80/DC.27) which it had submitted to the Drafting Committee on 7 August 1978, his delegation had proposed that the number of ratifications required for entry into force of the convention should be 25. It considered that a happy medium must be found between the figure of 35 established in the Vienna Convention on the Law of Treaties, which was excessive, and the figure of 10 proposed by the Drafting Committee,

which detracted from the value of the work of the Conference and did not take account of the importance of the future convention which was of interest to the whole international community. He failed to understand the fears of delegations which considered that, by establishing the necessary number of ratifications at 25, the Conference would delay the entry into force of the convention. In his opinion the convention was one of which the Conference could be proud and which States would not hesitate to ratify.

27. Mrs. THAKORE (India) said that, for the reasons given by the representatives of the United Kingdom and Switzerland, she favoured a figure not lower than 20. She considered that the convention under discussion was closely linked to the Vienna Convention on the Law of Treaties and must be supported by a significant number of States.

28. Mr. YACOUBA (Niger) said that the Conference must ensure not only the progressive, but also the rapid, development of international law. It should not, therefore, follow the example of the Vienna Convention on the Law of Treaties, which had become a reference source even before its entry into force. If it were to achieve its purpose, the convention to be adopted by the Conference must take effect as soon as possible. In a spirit of conciliation, he could agree that the number of ratifications necessary for the entry into force of the convention should be 15.

29. Mr. YASSEEN (Chairman of the Drafting Committee) said that he wished to make it clear that, when the Drafting Committee had voted on the number of instruments of ratification or accession required for the entry into force of the convention, the figure 10 had been adopted by 9 votes to 5, with 1 abstention. He also wished to explain that he had not said that the convention was not of interest to all States but that it was not of interest to all States in the same degree.

30. Mr. FLEISCHHAUER (Federal Republic of Germany) supported the United Kingdom proposal to set the number of ratifications necessary for entry into force of the convention at 25. In his opinion, the question of accelerating or delaying the progressive development of international law was not the main issue; what was essential was to make sure that the convention enjoyed sufficient support in the international community. The practice of States at the end of the 1950s and in the 1960s showed that the number of ratifications required for the entry into force of conventions of a universal character had been approximately one third of the States Members of the United Nations. In view of the increase in the number of Member States, it was now impossible to maintain that proportion by setting the number of ratifications required at 50. Twenty-five was, however, a minimum figure.

31. Mr. MUDHO (Kenya) pointed out that, whereas in the case of certain conventions–such as the 1978 United Nations Convention on the Carriage of Goods by Sea–States had to be given sufficient time to make preparations for applying the provisions of the convention, the same was not true in the case of the current convention which reflected the existing state of customary law. Accordingly, he failed to see why, before applying the convention, States should wait until it had been ratified by 25 States. He was surprised to note that delegations that had referred to the provisions of article 7, which permitted retroactive application of the convention, were the very same ones which advocated a high number of ratifications. He pointed out that the Vienna Convention on the Law of Treaties had, 10 years after its adoption, still not entered into force and, as the Chairman of the Drafting Committee had pointed out, the current convention was essentially of interest to a relatively small number of States. He would, therefore, have preferred the figure of 10 proposed by the Drafting Committee but, in a spirit of conciliation, he was prepared to accept the figure of 15.

32. Mr. MARESCA (Italy) said he had always regretted that so much time elapsed between the signing of an international convention and its entry into force, as had occurred in the case of the Vienna Convention on the Law of Treaties which was still not in force. The figure of 35, which was established in that Convention, seemed too high; and, in his view, the Conference would be making a serious error if it adopted that figure in the convention now under discussion. The international community had admittedly grown but that was the result of the emergence of new States; and it was precisely they which were impatiently waiting for the convention to enter into force.

33. Also, ratification of a convention by a State involved a lengthy ministerial and parliamentary procedure, which delayed the entry into force of the convention. He therefore believed that, the number of instruments of ratification required should be set at a figure lower than 35 and, in a spirit of compromise, he would accept the figure of 25 proposed by the United Kingdom, which he regarded as a maximum.

34. Mr. TODOROV (Bulgaria) endorsed all the arguments put forward in favour of the figure 10. The figure of 35 established in the 1969 Vienna Convention on the Law of Treaties and in the 1975 Vienna Convention on the Representation of States in their Relations with International Organizations of a Universal Character, seemed to be too high; and, indeed, neither convention had yet come into force. A convention recently adopted under the auspices of World Intellectual Property Organization had fixed at 12 the number of ratifications needed for its entry into force. He therefore supported the number proposed by the Drafting Committee.

35. Mr. JOMARD (Iraq) proposed the figure of 15, which he regarded as a reasonable compromise.

36. Mr. EUSTATHIADES (Greece) pointed out that the value of a codification convention lay not only in its application by the contracting parties but also in its impact on general international law. The date of its entry into force was therefore not of decisive importance: the manner in which it was applied was more important. Any State

wishing to accelerate its entry into force had only to ratify it without delay.

37. However, the present convention was not an ordinary codification convention, since it would not be applied from day to day like the Vienna Convention on the Law of Treaties, the Vienna Convention on Diplomatic Relations or the Vienna Convention on Consular Relations.[9] It was one which would apply only in cases of succession of States–in other words, in very rare instances. It should therefore enter into force more quickly than the other codification conventions, and he proposed that the number of instruments of ratification should be fixed at between 10 and 20.

38. Mr. SCOTLAND (Guyana) considered 10 to be a reasonable number in view of the objective of the convention, which was to enable newly-independent States to avail themselves as quickly as possible of the advantages provided for in treaties concluded by the predecessor State. The argument that the convention, in view of its universal character, could not enter into force until it had been ratified by a sizeable proportion of the international community failed to convince him, because the figure of 35 was not representative of the international community either. Also, the two Vienna Conventions in which that number had been established could not be taken as a reference since they were different in nature from the present convention. He could therefore not accept a number higher than 20.

39. Mrs. BEMA-KUMI (Ghana) considered that the progressive development of international law required that the present convention should come into force as soon as possible, so that newly independent States could avail themselves of its provisions without delay. She was therefore in favour of the figure of 10, but could accept 15 in a spirit of compromise.

40. Mr. STUTTERHEIM (Netherlands) remarked that the number of instruments of ratification required was always arbitrary. For a codification convention, ratification by one quarter of the number of States Members of the United Nations should normally be required. In the present case, however, and particularly in view of the special importance of the entry into force of the convention in accordance with article 7, his delegation considered that a lower number was permissible. It therefore favoured the figure of 15, which it had proposed in the Drafting Committee.

41. Mr. MAIGA (Mali) took the view that the value of a universal convention did not depend on the number of ratifications, as had once been thought. A number of codification conventions concluded during the last decade had not yet entered into force because the number of ratifications needed was too high. The international community's codification efforts were designed to guarantee the stability of international relations in the legal field. Since one of the principal phenomena of the present age–the decolonization process–occupied an important place in the future convention, the latter should come into force as soon as possible. His delegation would like the convention to enter into force immediately following its signature; but out of respect for the views of other delegations, it would accept the lowest number of ratifications proposed–i.e. the number proposed by the Drafting Committee.

42. Mrs. VALDÉS PÉREZ (Cuba) said that, in the Drafting Committee, her delegation had advocated the lowest possible figure. The entry into force of the Vienna Convention on the Law of Treaties, on which the future convention was modelled, had been subject to the requirement of a much higher number of ratifications. It must be borne in mind that the question of succession of States with regard to treaties was such that the future convention would be a dead letter if its entry into force were to depend on an excessively high number of ratifications. The number should not be higher than 10.

43. Mr. TORNARITIS (Cyprus) proposed that, in a spirit of conciliation and bearing in mind the special nature of the future convention, the number of ratifications needed should be established at 20.

44. The PRESIDENT, summing up the discussion, said that, in addition to the proposal by the Drafting Committee that 10 ratifications should be required, the Conference had before it an amendment by the United Kingdom calling for 25 ratifications, one by Cyprus calling for 20 ratifications and another by Iraq, supported by the Netherlands, providing for 15 ratifications.

45. Sir Ian SINCLAIR (United Kingdom) announced that, in order to simplify the procedure, his delegation would be prepared to withdraw its amendment if delegations which favoured 20 ratifications would also withdraw their support for that figure.

46. Mr. RYBAKOV (Union of Soviet Socialist Republics), speaking on a point of order, said that the Conference did not have before it a basic proposal by the Drafting Committee and three amendments to that proposal, but rather four independent proposals concerning the number of ratifications. It was therefore essential to determine the order in which those proposals were to be put to the vote. Rule 41 of the rules of procedure, concerning votes on proposals relating to the same question, should be applied.

47. The PRESIDENT took the view that the Drafting Committee's text should be regarded as the basic proposal. According to rule 40 of the rules of procedure "a motion is considered an amendment to a proposal if it merely adds to, deletes from or revises part of that proposal". The proposals made during the discussion were amendments in that they sought to amend a figure established by the Drafting Committee. The Conference should therefore vote first on the amendment which was substantively farthest removed from the original proposal, in other words, on the United Kingdom amendment. If that amendment was

[9] United Nations, *Treaty Series*, vol. 596, p. 261.

rejected, it should then vote on the amendment by Cyprus and, if necessary, on the amendment proposed by Iraq and the Netherlands.

48. Mr. RYBAKOV (Union of Soviet Socialist Republics) said he still thought that the Conference had before it four separate proposals, each of which related to the requirements for entry into force of the future convention. Those proposals should be put to the vote in the order in which they were submitted, i.e. starting with that of the Drafting Committee.

49. The PRESIDENT said he could not agree with the Soviet representative. For motions submitted during the discussion to be considered as independent proposals, they would have to be unrelated to other proposals; but the motions under discussion were concerned simply with figures which were meaningful only in relation to the Drafting Committee's proposal. According to the methods of work and procedures (A/CONF.80/3, para. 9) adopted by the Conference at its 1977 session, "Proposals will be any text, in addition to the 'basic proposal' provided for in Rule 27, i.e., the draft articles adopted by the International Law Commission, on a matter which has not been considered by the Commission, such as a preamble, the final clauses, any additional protocols, ...". What the Drafting Committee had submitted to the Conference was a proposal, and what had been submitted during the discussion were amendments to that proposal.

50. Mr. YANGO (Philippines), speaking on a point of order, reminded the Conference that prior to the present procedural debate the United Kingdom representative had said that his delegation was prepared to withdraw its oral amendment on a certain condition.

51. The PRESIDENT suggested that a decision on the text submitted by the Drafting Committee for article [IV] and on the amendments thereto should be deferred until the following meeting.

It was so decided.

Article [V] (Authentic texts)

52. Mr. YASSEEN (Chairman of the Drafting Committee) explained that the Drafting Committee had modelled article [V] on article 85 of the Vienna Convention on the Law of Treaties. In view of the relevant General Assembly resolution, Arabic had been added to the languages in which the authentic texts were established.

53. The PRESIDENT said that, if there were no objections, he would take it that the Conference wished to adopt article [V].

It was so decided.

Testimonium

54. Mr. YASSEEN (Chairman of the Drafting Committee) pointed out that the testimonium had been based on that of the Vienna Convention on the Law of Treaties.

55. The PRESIDENT said that, if there were no objections, he would take it that the Conference wished to adopt the testimonium.

It was so decided.

REPORT OF THE DRAFTING COMMITTEE ON THE PREAMBLE TO THE CONVENTION (A/CONF.80/21)

56. Mr. YASSEEN (Chairman of the Drafting Committee) said that at the 1977 session the Conference had requested the Drafting Committee to prepare a draft preamble to the convention.[10] The draft which the Committee was now submitting direct to the Conference was based on various working papers and proposals. At the 1977 session, the Drafting Committee had had before it a draft preamble submitted by Spain (A/CONF.80/DC.9) and a draft paragraph submitted by the United Nations Council for Namibia (A/CONF.80/DC.13). In 1978, it had received a draft preamble from Ivory Coast (A/CONF.80/DC.21), another draft from Uganda (A/CONF.80/DC.26), a draft paragraph from the Ukrainian Soviet Socialist Republic (A/CONF.80/DC.29) and a draft preamble submitted jointly by Ivory Coast and Spain (A/CONF.80/DC.30). In preparing its draft preamble, the Drafting Committee had also taken into account a proposal submitted by Afghanistan to the 21st meeting of the Committee of the Whole[11] and a proposal by the Netherlands (A/CONF.80/C.1/L.57) which had been referred to it by the Committee of the Whole.[12] Lastly, the Drafting Committee had had before it two working papers prepared by the Secretariat (A/CONF.80/DC/R.10 and R.11).

57. Apart from the proposal by the United Nations Council for Namibia for a new paragraph to be inserted in the preamble (A/CONF.80/DC.13)—the substance of which proposal had been incorporated in the resolution adopted by the Conference[13]—all the documents to which he referred had been taken into consideration by the Drafting Committee, which had devoted six consecutive meetings to the preparation of the preamble.

58. In preparing its draft preamble, the Drafting Committee had borne in mind the characteristics of the future convention, and had endeavoured to make clear the close relations between it and the Vienna Convention on the Law of Treaties. The Vienna Convention was expressly mentioned in three paragraphs of the preamble. Two paragraphs were virtually identical with paragraphs in the preamble to the Vienna Convention. Lastly, the importance of the codification and progressive development of international law for the international community had been duly emphasized.

59. Apart from the penultimate paragraph, on which one member of the Drafting Committee had reserved his

[10] See foot-note 2 above.

[11] *Official Records of the United Nations Conference on Succession of States in Respect of Treaties ...* (*op. cit.*), p. 147, 21st meeting, para. 62.

[12] See 47th meeting, para. 31.

[13] See 12th plenary meeting, paras. 16-65.

position, each of the 11 paragraphs of the preamble had been adopted by consensus.

60. Since recent practice in regard to succession of States was for the most part directly related to decolonization, and since most of the problems raised by succession of States were connected with that phenomenon, the first preambular paragraph referred to the profound transformation of the international community brought about by the decolonization process. That provision was based on proposals submitted respectively by Spain and by Spain and Ivory Coast. The second paragraph looked to the future, with a reference to other factors which might lead to cases of succession of States. The third paragraph set out the implications of the ideas expressed in the preceding paragraphs, i.e., the need for the codification and progressive development of the rules relating to succession of States in respect of treaties, as a means for ensuring greater juridical security in international relations. The fourth paragraph, virtually identical with the corresponding provision in the Vienna Convention on the Law of Treaties, contained a reference to principles that were universally recognized and directly related to the aims of the convention and the rules it contained. In the fifth paragraph, which was based on the proposal by the Ukrainian Soviet Socialist Republic, the Drafting Committee had emphasized the importance of the codification and progressive development of international law for the strengthening of international peace and co-operation. The sixth paragraph, which also corresponded to a provision in the Vienna Convention, referred to the fundamental principles of international law which were embodied in the Charter of the United Nations, and on which the convention was based. The seventh paragraph referred to a principle which was derived from the Charter and was obviously closely related to the rules concerning succession of States–the principle of respect for the political independence and territorial integrity of all States. The eighth and ninth paragraphs indicated the links between the future convention and the Vienna Convention, article 73 of which was crucial in that respect, since it provided in particular that the provisions of the Vienna Convention did not prejudge any question which might arise in regard to a treaty from a succession of States. The tenth paragraph referred to the relation between the convention and the law of treaties, of which the Vienna Convention was the most authoritative expression. Lastly, the eleventh paragraph stated a principle which seemed to be obligatory in conventions prepared under United Nations auspices for the codification of international law–i.e. the principle that the rules of customary international law should continue to govern questions not regulated by such conventions.

61. Mr. DUCULESCU (Romania) stressed the importance of the draft preamble under consideration, which was a genuine code of moral, political and legal principles in the light of which the convention would be interpreted. He welcomed the reference in the preamble to several essential principles, but regretted that some of the formulations adopted by the Drafting Committee were less satisfactory than those used in the draft submitted by Spain and Ivory Coast (A/CONF.80/DC.30), in particular the formulation concerning any attempt to disrupt, partly or completely, the national unity of a State.

62. In his delegation's view, the eleventh paragraph of the draft preamble, to the effect that the rules of customary international law would continue to govern questions not regulated by the provisions of the convention, must be interpreted in the light of the sixth paragraph. The rules of customary law in question were those which were in conformity with international law, and not earlier customary rules which were contrary to the interests of new States. That was the sense of the paragraph in the proposal by Uganda (A/CONF.80/DC.26) which emphasized the desire to amplify and codify in a convention the rules and practices of customary international law in regard to succession of States in respect of treaties.

63. The PRESIDENT said that if there were no objections, he would take it that the Conference wished to adopt the draft preamble submitted by the Drafting Committee (A/CONF.80/21).

It was so decided.

64. Mr. PÉRÉ (France) said that his delegation had joined the consensus on the understanding that the fifth and tenth preambular paragraphs would be interpreted in the manner it had said that it understood them.

65. The fifth paragraph seemed to some extent to duplicate the fourth paragraph, which affirmed the principle *pacta sunt servanda.* In his delegation's view, the fifth paragraph was no more than a tribute to a particular class of treaties. It was obvious, however, that the duty to comply with multilateral treaties, and those the object and purpose of which were of interest to the international community as a whole, should be interpreted in accordance with the fourth paragraph, which affirmed the principle of free consent, and with the sixth paragraph, which proclaimed the principles of the sovereign equality of States, the independence of States, and non-interference in the internal affairs of States.

66. The tenth paragraph contained a reference to the Vienna Convention on the Law of Treaties, with regard to questions of the law of treaties other than those which might arise from a succession of States. In that connexion, he reminded the Conference that in the course of the discussions, it had been accepted that the Vienna Convention on the Law of Treaties included both pre-existing customary rules and rules elaborated by the United Nations Conference on the Law of Treaties. For its part, the Drafting Committee had agreed that the tenth paragraph of the preamble referred solely to rules already in existence, which meant that no others could be invoked against States that were not parties to the Vienna Convention on the Law of Treaties. In that connexion, his delegation noted with satisfaction that the use of the formula "including those" showed unequivocally that only some of the rules of customary law had been consolidated in the Vienna Convention on the Law of Treaties.

67. Mr. MARESCA (Italy) pointed out that the first paragraph of the preamble proclaimed a historical fact which was not, however, brought into relation with the paragraphs which followed. It would have been better to add to it the words "modifying the legal régimes for the succession of States in respect of treaties".

68. Mr. FLEISCHHAUER (Federal Republic of Germany) said that his delegation had joined in the consensus although it had some difficulty with the fifth paragraph of the preamble. He failed to see what precisely was meant by "consistent observance" and the concept of general multilateral treaties was by no means precise. Neither the general law of treaties nor the Vienna Convention on the Law of Treaties recognized any such class of treaties. In his delegation's view, no class of treaty was any more binding than another.

TITLE OF THE FUTURE CONVENTION

69. The PRESIDENT suggested that the Drafting Committee might be requested to submit to the Conference a title for the future convention.

It was so decided.

The meeting rose at 6.55 p.m.

14th PLENARY MEETING

Tuesday, 22 August 1978, at 11.25 a.m.

President: Mr. ZEMANEK (Austria)

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*)

REPORT OF THE DRAFTING COMMITTEE ON THE FINAL CLAUSES (A/CONF.80/19) (*concluded*)

Article [IV] – Entry into force

1. The PRESIDENT said that the 13th plenary meeting had deferred a decision on the Drafting Committee's text for article [IV] and the oral amendments thereto. Three amendments had been proposed to the figure for the number of ratifications required–10–as it appeared in the text recommended by the Drafting Committee.

2. Mr. TORNARITIS (Cyprus) said he withdrew his delegation's amendment proposing 20 instruments of ratification.

3. Mr. NAKAGAWA (Japan) said his delegation wished to propose this figure of 20 instruments.

4. Sir Ian SINCLAIR (United Kingdom) said that in view of the fact that the amendment calling for 20 instruments had been reinstated, he would not insist on a vote on the United Kingdom amendment calling for 25 instruments.

5. The PRESIDENT put to the vote the Japanese amendment to article [IV].

The amendment was rejected by 42 votes to 28, with 8 abstentions.

6. The PRESIDENT put to the vote the amendment proposed by Iraq and the Netherlands, which called for 15 instruments.

The amendment was adopted by 55 votes to 5, with 15 abstentions.

7. The PRESIDENT put to the vote article [IV] of the final clauses, as amended.

Article [IV] as amended, was adopted by 69 votes to 1, with 8 abstentions.

ARTICLES 6, 7 AND 2, TITLE OF ARTICLE 11, AND ARTICLES 12 AND 12 *bis* ADOPTED BY THE COMMITTEE OF THE WHOLE (A/CONF.80/22 AND CORR.1, A/CONF.80/23, A/CONF.80/24)[1]

8. The PRESIDENT invited the Conference to adopt articles 6, 7, 2, the title of article 11, and articles 12 and 12 *bis* as adopted by the Committee of the Whole at its 53rd meeting (article 6) and its 56th meeting (articles 7, 2, title of article 11, and articles 12 and 12 *bis*) on 17 and 21 August 1978, which appeared in documents A/CONF.80/22 and Corr.1 (articles 6 and 7), A/CONF.80/23 (article 2) and A/CONF.80/24 (title of article 11, and articles 12 and 12 *bis*).

Articles 6 and 7

Articles 6 and 7 were adopted without a vote.

Article 2

9. Mr. KOH (Singapore) said that he wished to place on record his delegation's view that the concept of a newly

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[1] For the consideration of these articles by the Committee of the Whole, see the summary records of the following meetings: article 6: 6th, 8th, 9th, 34th, 50th, 51st and 53rd meetings; article 7; 9th; 10th; 11th; 12th; 34th; 50th; 51st, 53rd and 56th meetings; article 2: 2nd, 3rd, 5th, 52nd and 56th; article 11: 17th, 18th, 19th, 33rd and 56th; article 12: 19th, 20th, 21st, 34th, 54th, 55th and 56th meetings; article 12 *bis*: 54th, 55th and 56th. [The summary records of the 1st to 36th meetings of the Committee of the Whole, for the 1977 session, appear in *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. 21 *et seq.*]