

United Nations Conference on Succession of States in Respect of Treaties

Vienna, Austria
4 April – 6 May 1977
31 July – 23 August 1978

Document:-
A/CONF.80/14

Report of the Committee of the Whole on its work at the 1977 session of the Conference

Extract from Volume III of the *Official Records of the United Nations Conference on Succession of States in Respect of Treaties (Documents of the Conference)*

C. REPORT OF THE COMMITTEE OF THE WHOLE (1977 SESSION)

Document A/CONF.80/14

REPORT OF THE COMMITTEE OF THE WHOLE ON ITS WORK AT THE 1977 SESSION OF THE CONFERENCE

[Original: English]
[21 June 1977]

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Chapter I

INTRODUCTION

1. At its 1st plenary meeting, held on 4 April 1977, the Conference, *inter alia*, established a single Committee of the Whole to which it referred item 11 of the agenda (A/CONF.80/7), namely "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". The present document contains the report of the Committee of the Whole to the Conference on its consideration of that item.

2. At its 2nd plenary meeting, held on 5 April 1977, the Conference elected by acclamation Mr. Fuad Riad (Egypt) Chairman of the Committee of the Whole.

3. At its 1st meeting, held on 5 April 1977, the Committee of the Whole elected by acclamation Mr. Jean-Pierre Ritter (Switzerland) as Vice-Chairman and Mr. Abdul Hakin Tabibi (Afghanistan) as Rapporteur.

4. In the absence of Mr. Erik Suy, Under-Secretary-General, the Legal Counsel of the United Nations, Mr. Yuri M. Rybakov, Executive Secretary of the Conference, Director of the Codification Division, Office of Legal Affairs of the United Nations Secretariat acted as representative of the Secretary-General; Mr. Santiago Torres Bernárdez acted as Secretary of the Committee of the Whole; Miss Jacqueline Dauchy and Mr. Alexander Borg Olivier acted as Assistant Secretaries of the Committee of the Whole.

5. In accordance with rule 27 of the rules of procedure (A/CONF.80/8), adopted by the Conference at its 1st plenary meeting on 4 April 1977, the Committee of the Whole had before it as the basic proposal for discussion by the Conference the draft articles on succession of States in

respect of treaties adopted by the International Law Commission at its twenty-sixth session¹ (A/CONF.80/4).

6. The Committee of the Whole, in addition to the relevant records of the International Law Commission and of the General Assembly, had available to it the following background documentation:

(a) An analytical compilation of comments of Governments on the final draft articles on succession of States in respect of treaties (A/CONF.80/5 and Corr.1), prepared by the Codification Division, Office of Legal Affairs of the United Nations Secretariat;

(b) A guide for the draft articles on succession of States in respect of treaties (ST/LEG/12), prepared by the Codification Division, Office of Legal Affairs of the United Nations Secretariat;

(c) A selected bibliography on succession of States in respect of treaties (ST/LIB/SER.B/24) prepared by the Dag Hammarskjöld Library of the United Nations.

7. The Committee of the Whole held 36 meetings between 5 April and 5 May 1977.

8. While the Committee of the Whole—in accordance with the "Methods of work and procedures" (A/CONF.80/9) which, on the basis of a memorandum drawn up by the Secretary-General, were approved by the Conference at its 2nd plenary meeting, held on 5 April 1977—proceeded mainly by way of article-by-article discussion of the draft articles before it and related amend-

¹ *Official Records of the General Assembly, Twenty-ninth session, Supplement No. 10* (A/9610/Rev.1), chap. II, sect. D (see pp. 5 *et seq.*, sect. B).

ments, it was agreed that delegations wishing to make statements of principle on the draft articles as a whole could do so in the context of the discussion on article 2. The statements thus made are to be found in the summary records of the 2nd, 3rd and 5th meetings of the Committee of the Whole.²

9. The Committee of the Whole completed discussion of 25 of the 39 articles contained in the basic proposal, namely, articles 1, 3 to 5, 8 to 11 and 13 to 29 as well as of proposed new articles 9 *bis* and 16 *bis*. It started consideration of articles 2, 6, 7 and 12 and of a proposed new article 22 *bis*, but could not complete it due to the complexity of the subject-matter and lack of time. For the same reasons, it was unable to begin consideration of articles 30 to 39 of the basic proposal and of new articles and amendments relating thereto. At its 21st meeting, held on 20 April 1977, it decided to entrust to the Drafting Committee the preparation of drafts, for submission directly to the Plenary, concerning the preamble and the final clauses of the future convention.³

10. The Committee of the Whole followed various procedures in connexion with the draft articles which it considered: in most cases, after initial consideration by the Committee of the Whole of the article and amendments thereto, the text adopted for the article was referred to the Drafting Committee, sometimes with drafting suggestions relating thereto; the Committee of the Whole subsequently considered, on the basis of the corresponding report of the Drafting Committee, the drafting recommended by the Drafting Committee for the article and pronounced itself on that drafting. In one case, article 22 *bis*, the Committee of the Whole entrusted the Drafting Committee with the task of elaborating a formulation taking into account amendments and oral suggestions before pronouncing itself on the substance of the provision. In some instances, the Committee of the Whole referred the article and the amendments thereto to an informal consultations group chaired by the Vice-Chairman. Lastly, in one case, that of article 2 on use of terms, the Committee of the Whole, after an initial debate, postponed consideration of the article until a later stage of the work.

11. The reports of the Drafting Committee took the form of the texts adopted. The reports did not elaborate upon particular points considered or the reasons why certain amendments which had been referred to the Drafting Committee as drafting points had, or had not, been accepted. In most cases, however, the Chairman of the Drafting Committee explained the main considerations which had resulted in the recommendations concerned. These statements by the Chairman of the Drafting Com-

mittee are to be found in the summary records of the Committee of the Whole.⁴

12. The present report is organized as follows: in addition to *Chapter I*, the "Introduction", there are two other chapters and an annex containing a check list of documents submitted by States participating in the Conference. *Chapter II* is entitled "Consideration by the Committee of the Whole of the draft articles on succession of States in respect of treaties prepared by the International Law Commission". It consists of four sections:

Section A describes the proceedings of the Committee regarding those draft articles whose consideration by the Committee of the Whole has been completed, namely articles 1, 3 to 5, 8 to 11 and 13 to 29.

Section B deals with draft articles whose consideration by the Committee of the Whole has not been completed: it is itself subdivided into three subsections as follows: subsection 1 deals with one proposed new article which was referred to the Drafting Committee but on which the Drafting Committee has not yet presented its report, namely article 22 *bis*; subsection 2 concerns draft articles which were referred to the Informal Consultations Group chaired by the Vice-Chairman, namely articles 6, 7 and 12; subsection 3 deals with one draft article consideration of which was suspended after an initial debate, namely article 2.

Section C of Chapter II contains the texts of the articles and proposed new articles not yet considered by the Committee of the Whole, as well as of the relevant amendments submitted at this session. Each article in sections A, B and C of Chapter II is treated separately except in a few cases where proposed new articles or amendments sought to combine or supplement articles of the basic proposal.

Section D concerned the division of the draft into parts and sections.

13. *Chapter III* of the report deals with the proposals submitted for the preamble and the final clauses.

14. In most cases, the articles in Chapter II are dealt with in accordance with the following plan: the text of the International Law Commission's draft articles, or the text of a proposed new article, is set out; next comes the text of amendments, if any, with a brief indication of the manner in which they were disposed of; the proceedings of the Committee of the Whole are then described.

15. Chapter II of this report is designed to be read in conjunction with the summary records of the Committee of the Whole.⁵ In particular, for the reasons indicated in paragraph 11 above, attention is drawn to the statements made by the Chairman of the Drafting Committee when introducing texts proposed by that Committee.

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), pp. 22-28, 28-34 and 39-46, 2nd, 3rd and 5th meetings.

³ *Ibid.*, p. 151, 21st meeting, paras. 94-95.

⁴ *Ibid.*, pp. 219-224, 229-232, 232-234 and 235-242, 31st meeting, paras. 1-42; 33rd meeting, paras. 18-27; 34th meeting, paras. 1-8 and 35th meeting, paras. 1-89.

⁵ *Ibid.*, pp. 21 *et seq.*, 1st to 36th meetings.

Chapter II

CONSIDERATION BY THE COMMITTEE OF THE WHOLE OF THE DRAFT ARTICLES ON SUCCESSION OF STATES IN RESPECT OF TREATIES PREPARED BY THE INTERNATIONAL LAW COMMISSION

A. DRAFT ARTICLES WHOSE CONSIDERATION BY THE COMMITTEE OF THE WHOLE HAS BEEN COMPLETED

ARTICLE 1

1. International Law Commission text

16. The International Law Commission text provided as follows:

Article 1. Scope of the present articles

The present articles apply to the effects of a succession of States in respect of treaties between States.

2. Amendments

17. An amendment relating to articles 1, 3 and 4 was submitted by *Romania* (A/CONF.80/C.1/L.2).

18. This amendment was to the following effect:

Combine these articles to read as follows:

Article 1. Scope of the Convention

1. The present Convention applies to treaties concluded between States in written form, including treaties constituting international organizations.

2. In cases of succession to treaties constituting international organizations, the Convention applies jointly with the relevant rules of each international organization.

3. The fact that the present Convention does not apply to international agreements concluded between States and other subjects of international law or international agreements not concluded in written form shall not affect the application to such agreements of the rules set forth in the Convention.

[Referred to the Drafting Committee as a drafting suggestion by a decision taken in connexion with articles 3 and 4; see paras. 20 and 27 below.]

3. Proceedings of the Committee of the Whole

(1) Meetings

19. The Committee of the Whole initially considered article 1 and the amendments thereto at its 2nd meeting, on 6 April 1977. At its 31st meeting, on 28 April 1977, it considered the report of the Drafting Committee on the article.

(ii) Initial consideration

20. At its 2nd meeting, the Committee of the Whole adopted without a vote the text of the International Law Commission for the article and referred it to the Drafting Committee, it being understood that consideration of the amendment by *Romania* to articles 1, 3 and 4 (A/

CONF.80/C.1/L.2) would be left until the discussion on article 4.

(iii) *Consideration of the report of the Drafting Committee*

21. At the 31st meeting of the Committee of the Whole, the Chairman of the Drafting Committee introduced a report of the Drafting Committee (A/CONF.80/C.1/1) containing the text of article 1 adopted by the Committee (for the text, see para. 22 below). The Committee of the Whole approved without a vote the text of article 1 as recommended by the Drafting Committee.

(iv) *Text approved by the Committee of the Whole*

22. The Committee of the Whole recommends that the Conference should adopt the following text for article 1:

Article 1. Scope of the present Convention

The present Convention applies to the effects of a succession of States in respect of treaties between States.

ARTICLES 3 AND 4

1. International Law Commission text

23. The International Law Commission text provided as follows:

Article 3. Cases not within the scope of the present articles

The fact that the present articles do not apply to the effects of a succession of States in respect of international agreements concluded between States and other subjects of international law or in respect of international agreements not in written form shall not affect:

(a) the application to such cases of any of the rules set forth in the present articles to which they would be subject under international law independently of these articles;

(b) the application as between States of the present articles to the effects of a succession of States in respect of international agreements to which other subjects of international law are also parties.

Article 4. Treaties constituting international organizations and treaties adopted within an international organization

The present articles apply to the effects of a succession of States in respect of:

(a) any treaty which is the constituent instrument of an international organization without prejudice to the rules concerning acquisition of membership and without prejudice to any other relevant rules of the organization;

(b) any treaty adopted within an international organization without prejudice to any relevant rules of the organization.

2. Amendments

24. *Romania* submitted an amendment (A/CONF.80/C.1/L.2) relating to articles 1, 3 and 4 which was considered in connexion with articles 3 and 4.

25. This amendment was to the following effect:

Combine articles 1, 3 and 4 to read as follows:

Article 1. Scope of the Convention

1. The present Convention applies to treaties concluded between States in written form, including treaties constituting international organizations.

2. In cases of succession to treaties constituting international organizations, the Convention applies jointly with the relevant rules of each international organization.

3. The fact that the present Convention does not apply to international agreements concluded between States and other subjects of international law or international agreements not concluded in written form shall not affect the application to such agreements of the rules set forth in the Convention.

[Referred to the Drafting Committee as a drafting suggestion; see para. 27 below.]

3. Proceedings of the Committee of the Whole

(i) *Meetings*

26. The Committee of the Whole initially discussed articles 3 and 4 and the amendment thereto at its 4th meeting, on 7 April 1977. At its 31st meeting, on 28 April 1977, it considered the report of the Drafting Committee on the articles.

(ii) *Initial consideration*

27. At its 4th meeting, the Committee of the Whole adopted without a vote the texts of the International Law Commission for articles 3 and 4 and referred those texts to the Drafting Committee. It also referred to the Drafting Committee the amendment to articles 1, 3 and 4 submitted by *Romania* (A/CONF.80/C.1/L.2) as a drafting suggestion.

(iii) *Consideration of the report of the Drafting Committee*

28. At the 31st meeting of the Committee of the Whole, the Chairman of the Drafting Committee introduced a report of the Drafting Committee (A/CONF.80/C.1/1) containing the texts of articles 3 and 4 adopted by the Committee (for the texts see para. 29 below). The Committee of the Whole approved without a vote the texts of articles 3 and 4 as recommended by the Drafting Committee.

(iv) *Texts approved by the Committee of the Whole*

29. The Committee of the Whole recommends that the Conference should adopt the following texts for articles 3 and 4:

Article 3. Cases not within the scope of the present Convention

The fact that the present Convention does not apply to the effects of a succession of States in respect of international agreements concluded between States and other subjects of international law or in respect of international agreements not in written form shall not affect:

(a) the application to such cases of any of the rules set forth in the present Convention to which they are subject under international law independently of the Convention;

(b) the application as between States of the present Convention to the effects of a succession of States in respect of international agreements to which other subjects of international law are also parties.

Article 4. Treaties constituting international organizations and treaties adopted within an international organization

The present Convention applies to the effects of a succession of States in respect of:

(a) any treaty which is the constituent instrument of an international organization without prejudice to the rules concerning acquisition of membership and without prejudice to any other relevant rules of the organization;

(b) any treaty adopted within an international organization without prejudice to any relevant rules of the organization.

ARTICLE 5

1. International Law Commission text

30. The International Law Commission text provided as follows:

Article 5. Obligations imposed by international law independently of a treaty

The fact that a treaty is not considered to be in force in respect of a State by virtue of the application of the present articles shall not in any way impair the duty of that State to fulfil any obligation embodied in the treaty to which it would be subject under international law independently of the treaty.

2. Amendments

31. An amendment was submitted to article 5 by *Romania* (A/CONF.80/C.1/L.4).

32. This amendment was to the following effect:

Amend article 5 to read as follows:

Article 5. Obligations deriving from the generally accepted principles and rules of international law independently of a treaty

The fact that a treaty is not considered to be in force by virtue of the application of the present Convention shall not in any way impair the duty of the successor State and the other States concerned to fulfil the obligations embodied in the treaty which arise for them from the generally accepted principles and rules of international law independently of the said treaty.

[Referred to the Drafting Committee as a drafting suggestion; see para. 34 below.]

3. Proceedings of the Committee of the Whole

(i) *Meetings*

33. The Committee of the Whole initially considered article 5 and the amendment thereto at its 4th to 6th and 8th meetings, on 7, 8 and 12 April 1977. At its 31st meeting, on 28 April 1977, it considered the report of the Drafting Committee on the article.

(ii) *Initial consideration*

34. At its 8th meeting, the Committee adopted without a vote the text of the International Law Commission for

article 5 and referred it to the Drafting Committee. It also referred to the Drafting Committee the amendment by Romania (A/CONF.80/C.1/L.4) as a drafting suggestion.

(iii) *Consideration of the report of the Drafting Committee*

35. At the 31st meeting of the Committee of the Whole, the Chairman of the Drafting Committee introduced a report of the Drafting Committee (A/CONF.80/C.1/1) containing the text of article 5 adopted by the Committee (for the text see para. 36 below). The Committee of the Whole approved without a vote the text of article 5 as recommended by the Drafting Committee.

(iv) *Text approved by the Committee of the Whole*

36. The Committee of the Whole recommends that the Conference should adopt the following text for article 5:

Article 5. Obligations imposed by international law independently of a treaty

The fact that a treaty is not considered to be in force in respect of a State by virtue of the application of the present Convention shall not in any way impair the duty of that State to fulfil any obligation embodied in the treaty to which it is subject under international law independently of the treaty.

ARTICLE 8

1. International Law Commission text

37. The text of the International Law Commission provided as follows:

Article 8. Agreements for the devolution of treaty obligations or rights from a predecessor State to a successor State

1. The obligations or rights of a predecessor State under treaties in force in respect of a territory at the date of a succession of States do not become the obligations or rights of the successor State towards other States parties to those treaties in consequence only of the fact that the predecessor State and the successor State have concluded an agreement providing that such obligations or rights shall devolve upon the successor State.

2. Notwithstanding the conclusion of such an agreement, the effects of a succession of States on treaties which, at the date of that succession of States, were in force in respect of the territory in question are governed by the present articles.

2. Amendments

38. Amendments were submitted to article 8 by the *United Kingdom* (A/CONF.80/C.1/L.11) and by *Malaysia* (A/CONF.80/C.1/L.15).

39. These amendments were to the following effect:

(a) *United Kingdom of Great Britain and Northern Ireland* (A/CONF.80/C.1/L.11)

Add the following words at the end of paragraph 2:

[...] but without prejudice to any relevant rules of international law concerning rights or obligations arising for a third State from a treaty.

[Rejected; see para. 41 below.]

(b) *Malaysia* (A/CONF.80/C.1/L.15, as orally revised)⁶

Add the following words to the end of paragraph 1 of article 8:

unless the other parties to a particular treaty agree to accept the obligations or rights of the predecessor State as the obligations or rights of the successor State.

[Rejected; see para. 41 below.]

3. Proceedings of the Committee of the Whole

(i) Meetings

40. The Committee of the Whole initially considered article 8 and the amendments thereto at its 13th and 14th meetings on 15 April 1977. At its 31st meeting, on 28 April 1977, it considered the report of the Drafting Committee on the article.

(ii) Initial consideration

41. At its 14th meeting, the Committee of the Whole rejected the amendment by *Malaysia* (A/CONF.80/C.1/L.15, as orally revised) by 43 votes to 2, with 23 abstentions. At the same meeting, the Committee of the Whole rejected the amendment by the *United Kingdom* (A/CONF.80/C.1/L.11) by 28 votes to 23, with 21 abstentions. The Committee then adopted without a vote the text of the International Law Commission for the article and referred it to the Drafting Committee.

(iii) Consideration of the report of the Drafting Committee

42. At the 31st meeting of the Committee of the Whole, the Chairman of the Drafting Committee introduced a report of the Drafting Committee (A/CONF.80/C.1/1) containing the text of article 8 adopted by the Committee (for the text see para. 43 below). The Committee of the Whole approved without a vote the text of article 8 as recommended by the Drafting Committee.

(iv) Text approved by the Committee of the Whole

43. The Committee of the Whole recommends that the Conference should adopt the following text for article 8:

Article 8. Agreements for the devolution of treaty obligations or rights from a predecessor State to a successor State

1. The obligations or rights of a predecessor State under treaties in force in respect of a territory at the date of a succession of States do not become the obligations or rights of the successor State towards other States parties to those treaties in consequence only of the fact that the predecessor State and the successor State have concluded an agreement providing that such obligations or rights shall devolve upon the successor State.

2. Notwithstanding the conclusion of such an agreement, the effects of a succession of States on treaties which, at the date of that succession of States, were in force in respect of the territory in question are governed by the present Convention.

⁶ In its original version, the amendment read as follows: Add the following words to the end of paragraph 1 of article 8: "... unless the other States parties to those treaties agree otherwise."

ARTICLE 9

1. International Law Commission text

44. The text of the International Law Commission provided as follows:

Article 9. Unilateral declaration by a successor State regarding treaties of the predecessor State

1. The obligations or rights of a predecessor State under treaties in force in respect of a territory at the date of a succession of States do not become the obligations or rights of the successor States or of other States parties to those treaties in consequence only of the fact that the successor State has made a unilateral declaration providing for the continuance in force of the treaties in respect of its territory.

2. In such a case the effects of the succession of States on treaties which at the date of that succession of States were in force in respect of the territory in question are governed by the present articles.

2. Amendments

45. An amendment was submitted to article 9 by the *United Kingdom* (A/CONF.80/C.1/L.12).

46. This amendment was to the following effect:

Add the following words at the end of paragraph 2:

[...] but without prejudice to any relevant rules of international law concerning rights or obligations arising for a third State from such a unilateral declaration.

[Withdrawn; see para. 48 below.]

3. Proceedings of the Committee of the Whole

(i) *Meetings*

47. The Committee of the Whole initially considered article 9 and the amendment thereto at its 15th meeting on 18 April 1977. At its 31st meeting, on 28 April 1977, it considered the report of the Drafting Committee on the article.

(ii) *Initial consideration*

48. At the 15th meeting of the Committee of the Whole, the amendment by the *United Kingdom* (A/CONF.80/C.1/L.12) was withdrawn.

49. At the same meeting, the Committee of the Whole adopted without a vote the text of the International Law Commission for this article and referred it to the Drafting Committee.

(iii) *Consideration of the report of the Drafting Committee*

50. At the 31st meeting of the Committee of the Whole, the Chairman of the Drafting Committee introduced a report of the Drafting Committee (A/CONF.80/C.1/1) containing the text of article 9 adopted by the Committee (for the text, see para. 51 below). The Committee of the Whole approved without a vote the text of article 9 as recommended by the Drafting Committee.

(iv) *Text approved by the Committee of the Whole*

51. The Committee of the Whole recommends that the Conference should adopt the following text for article 9:

Article 9. Unilateral declaration by a successor State regarding treaties of the predecessor State

1. Obligations or rights under treaties in force in respect of a territory at the date of a succession of States do not become the obligations or rights of the successor State or of other States parties to those treaties in consequence only of the fact that the successor State has made a unilateral declaration providing for the continuance in force of the treaties in respect of its territory.

2. In such a case, the effects of the succession of States on treaties which, at the date of that succession of States, were in force in respect of the territory in question are governed by the present Convention.

PROPOSED NEW ARTICLE 9 *bis*

1. Text of the proposed new article

52. An amendment seeking to insert a new article 9 *bis* was submitted by the *United Kingdom* (A/CONF.80/C.1/L.13/Rev.1).⁷ The text of the proposed new article read as follows:

Article 9 bis. Consequences of a succession of States as regards the predecessor State

A treaty which is in force at the date of a succession of States in respect of the territory to which that succession relates shall not give rise, after that date, to rights or obligations for the predecessor State in respect of events or situations occurring thereafter unless that treaty otherwise provides.

2. Proceedings of the Committee of the Whole

(i) *Meetings*

53. The Committee of the Whole considered the proposed new article 9 *bis* at its 15th, 16th and 17th meetings, on 18 and 19 April 1977.

(ii) *Consideration of the proposed new article*

54. At its 17th meeting, the Committee of the Whole rejected the amendment by the *United Kingdom* seeking to insert a new article 9 *bis* (A/CONF.80/C.1/L.13/Rev.1) by 32 votes to 13, with 32 abstentions.

ARTICLE 10

1. International Law Commission text

55. The text of the International Law Commission provided as follows:

Article 10. Treaties providing for the participation of a successor State

1. When a treaty provides that, on the occurrence of a succession of States, a successor State shall have the option to

⁷ In its original version, the proposed new article read as follows:

"Article 9 bis. Consequences of a succession of States as regards the predecessor State

"The obligations or rights of a predecessor State under treaties in force in respect of a territory at the date of a succession of States cease automatically on that date to be binding upon itself in respect of that territory."

consider itself a party thereto, it may notify its succession in respect of the treaty in conformity with the provisions of the treaty or, failing any such provisions, in conformity with the provisions of the present articles.

2. If a treaty provides that, on the occurrence of a succession of States, the successor State shall be considered as a party, such a provision takes effect only if the successor State expressly accepts in writing to be considered.

3. In cases falling under paragraph 1 or 2, a successor State which establishes its consent to be a party to the treaty is considered as a party from the date of the succession unless the treaty otherwise provides or it is otherwise agreed.

2. Amendments

56. Amendments were submitted to article 10 by the *United Kingdom* (A/CONF.80/C.1/L.14, as orally revised) and orally by *Japan*.

57. These amendments were to the following effect:

(a) *United Kingdom of Great Britain and Northern Ireland* (A/CONF.80/C.1/L.14, as orally revised at the suggestion of the representative of France)⁸

At the end of paragraph 2, delete the words: "expressly accepts in writing to be so considered" and substitute the following:

"(a) expressly so agrees: or

"(b) by reason of its conduct, clearly manifested subsequent to the date of the succession of States, is to be considered as having so agreed."

[Rejected; see para. 59 below.]

(b) *Japan* (oral amendment)

Remove the article from Part I and transfer it to Section 1 of Part III.

[Withdrawn; see para. 59 below.]

3. Proceedings of the Committee of the Whole

(i) Meetings

58. The Committee of the Whole initially considered article 10 and the amendments thereto at its 16th meeting, on 18 April 1977. At its 31st meeting, on 28 April 1977, it considered the report of the Drafting Committee on the article.

(ii) Initial consideration

59. At the 16th meeting of the Committee of the Whole, the oral amendment by *Japan* was withdrawn. At the same meeting, subparagraph (a) of the amendment by the *United Kingdom* (A/CONF.80/C.1/L.14) was rejected by 32 votes to 24, with 16 abstentions and subparagraph (b) of the same amendment as orally revised at the suggestion of *France* was rejected by 45 votes to 13, with 18 abstentions.

⁸ In its original version, the amendment read as follows: At the end of paragraph 2, delete the words: "expressly accepts in writing to be so considered." and substitute the following:

"(a) expressly so agrees; or

"(b) by reason of its conduct is to be considered as having so agreed."

60. The Committee of the Whole then adopted without a vote the text of the International Law Commission for the article and referred it to the Drafting Committee.

(iii) Consideration of the report of the Drafting Committee

61. At the 31st meeting of the Committee of the Whole, the Chairman of the Drafting Committee introduced a report of the Drafting Committee (A/CONF.80/C.1/1) containing the text of article 10 adopted by the Committee (for the text see para. 62 below). The Committee of the Whole approved the text of article 10 as recommended by the Drafting Committee by 17 votes to 13, with 36 abstentions.

(iv) Text approved by the Committee of the Whole

62. The Committee of the Whole recommends that the Conference should adopt the following text for article 10:

Article 10. Treaties providing for the participation of a successor State

1. When a treaty provides that, on the occurrence of a succession of States, a successor State shall have the option to consider itself a party thereto, it may notify its succession in respect of the treaty in conformity with the provisions of the treaty or, failing any such provisions, in conformity with the provisions of the present Convention.

2. If a treaty provides that, on the occurrence of a succession of States, a successor State shall be considered as a party, the provision takes effect as such only if the successor State expressly accepts in writing to be so considered.

3. In cases falling under paragraph 1 or 2, a successor State which establishes its consent to be a party to the treaty is considered as a party from the date of the succession of States unless the treaty otherwise provides or it is otherwise agreed.

ARTICLE 11

1. International Law Commission text

63. The text of the International Law Commission provided as follows:

Article 11. Boundary régimes

A succession of States does not as such affect:

(a) a boundary established by a treaty; or

(b) obligations and rights established by a treaty and relating to the régime of a boundary.

2. Amendments

64. An amendment was submitted to articles 11 and 12 by *Afghanistan* (A/CONF.80/C.1/L.24).

65. This amendment was to the following effect:

(a) Replace the title of present article 11 "Boundary régimes" and the title of present article 12 "Other territorial régimes" by a single title reading as follows: "Territorial régimes".

(b) Under this title, insert as paragraph 1 the present text of article 11 and as paragraphs 2 and 3 the present text of article 12.

[The decision on point (a) was deferred, point (b) was withdrawn, see paras. 67 and 69 below.]

3. Proceedings of the Committee of the Whole

(i) Meetings

66. The Committee of the Whole initially considered article 11 and the amendment thereto at its 17th, 18th and 19th meetings on 19 April 1977. At its 33rd meeting, on 29 April 1977, it considered the report of the Drafting Committee on the article.

(ii) Initial consideration

67. At its 19th meeting, the Committee of the Whole agreed to defer its decision on the amendment by Afghanistan (A/CONF.80/C.1/L.24) until it had concluded its consideration of article 12.

68. At the same meeting, the Committee of the Whole adopted the text of the International Law Commission for article 11 by 55 votes to none, with 5 abstentions and referred it to the Drafting Committee on the understanding that such referral was without prejudice to the decision which the Committee of the Whole would take, after concluding its consideration of article 12, on the amendment by Afghanistan (A/CONF.80/C.1/L.24) to articles 11 and 12.

69. At the 21st meeting of the Committee of the Whole, point (b) of the amendment by *Afghanistan* was withdrawn.

(iii) Consideration of the report of the Drafting Committee

70. At the 33rd meeting of the Committee of the Whole, the Chairman of the Drafting Committee introduced a report of the Drafting Committee (A/CONF.80/C.1/2) containing the text of article 11 adopted by the Committee (for the text see para. 71 below). The Committee of the Whole approved without a vote the text of article 11 as recommended by the Drafting Committee. The title of the article [Boundary régimes] has not yet been considered pending further consideration of article 12 by the Committee of the Whole.

(iv) Text approved by the Committee of the Whole

71. The Committee of the Whole recommends that the Conference should adopt the following text for article 11:

Article 11. A succession of States does not as such affect:

- (a) a boundary established by a treaty; or
- (b) obligations and rights established by a treaty and relating to the régime of a boundary.

ARTICLE 13

1. International Law Commission text

72. The text of the International Law Commission provided as follows:

Article 13. Questions relating to the validity of a treaty

Nothing in the present articles shall be considered as prejudicing in any respect any question relating to the validity of a treaty.

2. Amendments

73. No amendment was submitted to article 13.

3. Proceedings of the Committee of the Whole

(i) Meetings

74. The Committee of the Whole initially considered article 13 at its 22nd meeting, on 21 April 1977. At its 34th meeting, on 2 May 1977, it considered the report of the Drafting Committee on the article.

(ii) Initial consideration

75. At its 22nd meeting, the Committee of the Whole adopted without a vote the text of the International Law Commission for the article, and referred it to the Drafting Committee.

(iii) Consideration of the report of the Drafting Committee

76. At the 34th meeting of the Committee of the Whole, the Chairman of the Committee of the Whole introduced a report of the Drafting Committee (A/CONF.80/C.1/2) containing the text of article 13 adopted by the Committee (for the text see para. 77 below). The Committee of the Whole approved without a vote the text of article 13 recommended by the Drafting Committee.

(iv) Text approved by the Committee of the Whole

77. The Committee of the Whole recommends that the Conference should adopt the following text for article 13:

Article 13. Questions relating to the validity of a treaty

Nothing in the present Convention shall be considered as prejudicing in any respect any question relating to the validity of a treaty.

ARTICLE 14

1. International Law Commission text

78. The text of the International Law Commission provided as follows:

Article 14. Succession in respect of part of territory

When part of the territory of a State, or when any territory, not being part of the territory of a State, for the international relations of which that State is responsible, becomes part of the territory of another State;

(a) treaties of the predecessor State cease to be in force in respect of the territory to which the succession of States relates from the date of the succession of States; and

(b) treaties of the successor State are in force in respect of the territory to which the succession of States relates from the date of the succession of States, unless it appears from the treaty or is otherwise established that the application of the treaty to that territory would be incompatible with its object and purpose or would radically change the conditions for the operation of the treaty.

2. Amendments

79. An oral amendment was submitted to article 14 by Sweden.

80. This amendment was to the following effect:

In subparagraph (b), delete the words "would be incompatible with its object and purpose or".

[Rejected; see para. 82 below.]

3. Proceedings of the Committee of the Whole

(i) Meetings

81. The Committee of the Whole initially considered article 14 and the amendment thereto at its 22nd and 23rd meetings, on 21 April 1977. At its 34th meeting, on 2 May 1977, it considered the report of the Drafting Committee on the article.

(ii) Initial consideration

82. At its 23rd meeting, the Committee of the Whole rejected the oral amendment by Sweden by 43 votes to 4, with 27 abstentions.

83. At the same meeting the Committee adopted without a vote the text of the International Law Commission for the article and referred it to the Drafting Committee.

(iii) Consideration of the report of the Drafting Committee

84. At the 34th meeting of the Committee of the Whole, the Chairman of the Drafting Committee introduced a report of the Drafting Committee (A/CONF.80/C.1/2) containing the text of article 14 adopted by the Committee (for the text, see para. 85 below). The Committee of the Whole approved without a vote the text of article 14 as recommended by the Drafting Committee.

(iv) Text approved by the Committee of the Whole

85. The Committee of the Whole recommends that the Conference should adopt the following text for article 14:

Article 14. Succession in respect of part of territory

When part of the territory of a State, or when any territory for the international relations of which a State is responsible, not being part of the territory of that State, becomes part of the territory of another State:

(a) treaties of the predecessor State cease to be in force in respect of the territory to which the succession of States relates from the date of the succession of States; and

(b) treaties of the successor State are in force in respect of the territory to which the succession of States relates from the date of the succession of States, unless it appears from the treaty or is otherwise established that the application of the treaty to that territory would be incompatible with the object and purpose of the treaty or would radically change the conditions for its operation.

ARTICLE 15

1. International Law Commission text

86. The text of the International Law Commission provided as follows:

Article 15. Position in respect of the Treaties of the predecessor State

A newly independent State is not bound to maintain in force, or to become a party to, any treaty by reason only of the fact that at the date of the succession of States the treaty was in force in respect of the territory to which the succession of States relates.

2. Amendments

87. No amendment was submitted to article 15.

3. Proceedings of the Committee of the Whole

(i) Meetings

88. The Committee of the Whole initially considered article 15 at its 23rd meeting, on 21 April 1977. At its 34th meeting, on 2 May 1977, it considered the report of the Drafting Committee on the article.

(ii) Initial consideration

89. At its 23rd meeting, the Committee of the Whole adopted without a vote the text of the International Law Commission for the article and referred it to the Drafting Committee.

(iii) Consideration of the report of the Drafting Committee

90. At the 34th meeting of the Committee of the Whole, the Chairman of the Drafting Committee introduced a report of the Drafting Committee (A/CONF.80/C.1/2) containing the text of article 15 adopted by the Committee (for the text, see para. 91 below). The Committee of the Whole approved without a vote the text of article 15 as recommended by the Drafting Committee.

(iv) Text approved by the Committee of the Whole

91. The Committee of the Whole recommends that the Conference should adopt the following text for article 15:

Article 15. Position in respect of the treaties of the predecessor State

A newly independent State is not bound to maintain in force, or to become a party to, any treaty by reason only of the fact that at the date of the succession of States the treaty was in force in respect of the territory to which the succession of States relates.

ARTICLE 16 AND PROPOSED NEW ARTICLE 16 bis

92. At its 23rd meeting, on 21 April 1977, the Committee of the Whole decided to consider jointly article 16, the amendment thereto submitted by the Netherlands (A/CONF.80/C.1/L.35) and the new article 16 bis proposed by the Soviet Union (A/CONF.80/C.1/L.22).

1. International Law Commission text

93. The text of the International Law Commission for article 16 provided as follows:

Article 16. Participation in treaties in force at the date of the succession of States

1. Subject to paragraphs 2 and 3, a newly independent State may, by a notification of succession, establish its status as a party to

any multilateral treaty which at the date of the succession of States was in force in respect of the territory to which the succession of States relates.

2. Paragraph 1 does not apply if it appears from the treaty or is otherwise established that the application of the treaty in respect of the newly independent State would be incompatible with its object and purpose or would radically change the conditions for the operation of the treaty.

3. When under the terms of the treaty or by reason of the limited number of the negotiating States and the object and purpose of the treaty, the participation of any other State in the treaty must be considered as requiring the consent of all the parties, the newly independent State may establish its status as a party to the treaty only with such consent.

2. Amendments to article 16 and proposed new article 16 *bis*

94. An amendment was submitted to article 16 by the *Netherlands* (A/CONF.80/C.1/L.35). In addition, the *Soviet Union* proposed to add a new article 16 *bis* (A/CONF.80/C.1/L.22).

95. These amendments were to the following effect:

(a) *Netherlands* (A/CONF.80/C.1/L.35)

1. Redraft the beginning of paragraph 1 as follows:

“Subject to paragraphs 2, 3 and 4 [...]”

2. Add a new paragraph 4 reading as follows:

(a) A newly independent State shall be presumed to be desirous of being a party to any multilateral treaty open to universal participation which was in force in respect of the territory to which the succession of States relates. Subject to the provisions of subparagraphs (b) and (c) of this paragraph, such treaty shall accordingly apply between the newly independent State and the other States parties to the treaty under the same conditions as were valid for the predecessor State;

(b) The newly independent State may terminate a treaty referred to in subparagraph (a) of this paragraph for that State by giving notice of termination in accordance with the provisions of the present Convention, provided it has not invoked the benefits of that treaty after the date of succession of States;

(c) A treaty referred to in subparagraph (a) of this paragraph ceases to be in force for the newly independent State

(i) at the date of the succession of States, if it has transmitted the notice referred to in subparagraph (b) of this paragraph within the period of twelve months following that date;

(ii) three months after it has transmitted the notice referred to in subparagraph (b) of this paragraph if the transmission has taken place more than twelve months after the date of the succession of States.⁹

[Withdrawn; see para. 97 below.]

(b) *Union of Soviet Socialist Republics* (A/CONF.80/C.1/L.22)

Insert a new article 16 *bis* reading as follows:

⁹ This amendment was accompanied by a *consequential amendment* to article 2, reading as follows:

Add to the text of article 2, paragraph 1, a subparagraph reading as follows:

“‘multilateral treaty open to universal participation’ means an international agreement open to participation by at least all States Members of the United Nations.”

Article 16 *bis*. Participation in treaties of a universal character in force at the date of the succession of States

1. Any treaty of universal character which at the date of a succession of States is in force in respect of the territory to which the succession of States relates shall be provisionally in force between the newly independent State and the other States parties until such time as the newly independent State gives notice of termination of the said treaty for that State.

2. Reservations to a treaty, and objections to reservations, made by the predecessor State with regard to any treaty referred to in paragraph 1 shall be provisionally valid for the newly independent State under the same conditions as for the predecessor State.

3. The consent of the predecessor State to be bound by only part of a treaty referred to in paragraph 1, or the choice of the predecessor State, under the conditions laid down in a treaty referred to in paragraph 1, between differing provisions thereof, shall be provisionally valid for the newly independent State under the same conditions as for the predecessor State.

4. At any time while a treaty referred to in paragraph 1 remains provisionally in force, in accordance with the provisions of that paragraph, for the newly independent State, that State may, by a notification of succession, establish its status as a party to the treaty.

5. A treaty referred to in paragraph 1 shall cease to be in force for the newly independent State three months after the notice referred to in paragraph 1 has been given.¹⁰

[Withdrawn; see para. 98 below.]

3. Proceedings of the Committee of the Whole

(i) Meetings

96. The Committee of the Whole initially considered article 16 and the amendment thereto and the proposed

¹⁰ This amendment was accompanied by the following consequential amendments:

(a) Consequential amendments to articles 16, 19, 20 and 21

1. In article 16, paragraph 1, after the words “Subject to paragraphs 2 and 3”, insert the words “and the provisions of article 16 *bis*,”.

2. In article 19, paragraphs 1 and 2, replace the words “under article 16 or 17” by the words “under article 16 and article 16 *bis*, paragraph 4, or article 17.”

3. In article 20, paragraph 1, replace the words “under article 16 or 17” by the words “under article 16 and article 16 *bis*, paragraph 4, or article 17”.

4. Head article 21 “Notification and notice”.

5. Amend article 21, paragraph 1, to read as follows:

“A notification of succession under article 16, article 16 *bis*, paragraph 4, or article 17 and a notice of termination of a treaty under article 16 *bis*, paragraph 1, must be made in writing.”

6. In article 21, paragraphs 2, 3 and 4, replace the words “the notification of succession” by the words “the notification or notice referred to in paragraph 1”.

(b) Consequential amendment to article 2

7. In article 2 insert a subparagraph (a *bis*) reading as follows:

(a *bis*) “treaty of a universal character” means a multilateral treaty which deals with the codification and progressive development of international law, or the object and purpose of which are of interest to the international community as a whole.

Note. This definition reproduces the text of the first preambular paragraph of the Declaration on Universal Participation in the Vienna Convention on the Law of Treaties, which forms an integral part of the Final Act of the United Nations Conference on the Law of Treaties.

new article 16 *bis* at its 23rd to 27th meetings, on 21, 22 and 25 April 1977. At its 35th meeting, on 4 May 1977, it considered the report of the Drafting Committee on article 16.

(ii) *Initial consideration*

97. At the 26th meeting of the Committee of the Whole, the amendment by the *Netherlands* (A/CONF.80/C.1/L.35) was withdrawn.

98. At its 27th meeting, the Committee of the Whole had before it a motion from the representative of *Bulgaria* calling for further negotiations on article 16 and submitted texts relating thereto. This motion was rejected by 29 votes to 19, with 31 abstentions. The new article 16 *bis* proposed by the *Soviet Union* (A/CONF.80/C.1/L.22) was then withdrawn.

99. Also at its 27th meeting, the Committee of the Whole adopted without a vote the text of the International Law Commission for the article and referred it to the Drafting Committee.

(iii) *Consideration of the report of the Drafting Committee*

100. At the 35th meeting of the Committee of the Whole, the Chairman of the Drafting Committee introduced a report of the Drafting Committee (A/CONF.80/C.1/3) containing the text of article 16 adopted by the Committee (for the text, see para. 101 below). The Committee of the Whole approved without a vote the text of article 16 recommended by the Drafting Committee.

(iv) *Text approved by the Committee of the Whole*

101. The Committee of the Whole recommends that the Conference should adopt the following text for article 16:

Article 16. Participation in treaties in force at the date of the succession of States

1. Subject to paragraphs 2 and 3, a newly independent State may, by a notification of succession, establish its status as a party to any multilateral treaty which at the date of the succession of States was in force in respect of the territory to which the succession of States relates.

2. Paragraph 1 does not apply if it appears from the treaty or is otherwise established that the application of the treaty in respect of the newly independent State would be incompatible with the object and purpose of the treaty or would radically change the conditions for its operation.

3. When, under the terms of the treaty or by reason of the limited number of the negotiating States and the object and purpose of the treaty, the participation of any other State in the treaty must be considered as requiring the consent of all the parties, the newly independent State may establish its status as a party to the treaty only with such consent.

ARTICLE 17

1. International Law Commission text

102. The text of the International Law Commission provided as follows:

Article 17. Participation in treaties not in force at the date of the succession of States

1. Subject to paragraphs 3 and 4, a newly independent State may, by a notification of succession, establish its status as a contracting State to a multilateral treaty which is not in force if at the date of the succession of States the predecessor State was a contracting State in respect of the territory to which that succession of States relates.

2. Subject to paragraphs 3 and 4, a newly independent State may, by a notification of succession, establish its status as a party to a multilateral treaty which enters into force after the date of the succession of States if at the date of the succession of States the predecessor State was a contracting State in respect of the territory to which that succession of States relates.

3. Paragraphs 1 and 2 do not apply if it appears from the treaty or is otherwise established that the application of the treaty in respect of the newly independent State would be incompatible with its object and purpose or would radically change the conditions for the operation of the treaty.

4. When, under the terms of the treaty or by reason of the limited number of the negotiating States and the object and purpose of the treaty, the participation of any other State in the treaty must be considered as requiring the consent of all the parties or of all the contracting States, the newly independent State may establish its status as a party or as a contracting State to the treaty only with such consent.

5. When a treaty provides that a specified number of contracting States shall be necessary for its entry into force, a newly independent State which establishes its status as a contracting State to the treaty under paragraph 1 shall be reckoned as a contracting State for the purpose of that provision unless a different intention appears from the treaty or is otherwise established.

2. Amendments

103. An amendment was submitted to article 17 by *Malaysia* (A/CONF.80/C.1/L.42 and Corr.1).

104. The amendment was to the following effect:

1. Substitute for paragraphs 1 and 2 the following:

1. Subject to paragraphs 2 and 3, a newly independent State may, by a notification of succession, establish its status as a contracting State to a multilateral treaty which is not in force or which enters into force after the date of succession of States if at the date of the succession of States the predecessor State was a contracting State in respect of the territory to which that succession of States relates.

2. Renumber 2 present paragraph 3 and substitute therein the words "Paragraph 1" for the words "Paragraphs 1 and 2".

3. Renumber 3 and 4 respectively present paragraphs 4 and 5.

[Referred to the Drafting Committee; see para. 106 below.]

3. Proceedings of the Committee of the Whole

(i) *Meetings*

105. The Committee of the Whole initially considered article 17 and the amendment thereto at its 27th meeting, on 25 April 1977. At its 35th meeting, on 4 May 1977, it considered the report of the Drafting Committee on the article.

(ii) *Initial consideration*

106. At its 27th meeting, the Committee of the Whole adopted without a vote the text of the International Law Commission for the article and referred it to the Drafting Committee. It also referred to the Drafting Committee the amendment by Malaysia (A/CONF.80/C.1/L.42 and Corr.1) as a drafting suggestion.

(iii) *Consideration of the report of the Drafting Committee*

107. At the 35th meeting of the Committee of the Whole, the Chairman of the Drafting Committee introduced a report of the Drafting Committee (A/CONF.80/C.1/3) containing the text of article 17 adopted by the Committee (for the text, see para. 108 below). With respect to the French text, the Committee of the Whole decided, at the suggestion of the representative of France, to redraft the end of paragraph 4 as follows: "*ne peut établir sa qualité d'Etat contractant ou de partie au traité qu'avec un tel consentement*" and to replace in paragraph 1 the words "*Etat contractant à un traité*" by "*Etat contractant à l'égard d'un traité*" and in paragraph 5 the words "*Etat contractant au traité*" [by the words "*Etat contractant à l'égard du traité*".] Subject to that change concerning the French text only, the Committee of the Whole approved without a vote the text of article 17 as recommended by the Drafting Committee.

(iv) *Text approved by the Committee of the Whole*

108. The Committee of the Whole recommends that the Conference should adopt the following text for article 17:

Article 17. Participation in treaties not in force at the date of the succession of States

1. Subject to paragraphs 3 and 4, a newly independent State may, by a notification of succession, establish its status as a contracting State to a multilateral treaty which is not in force if at the date of the succession of States the predecessor State was a contracting State in respect of the territory to which that succession of States relates.

2. Subject to paragraphs 3 and 4, a newly independent State may, by a notification of succession, establish its status as a party to a multilateral treaty which enters into force after the date of the succession of States if at the date of the succession of States the predecessor State was a contracting State in respect of the territory to which that succession of States relates.

3. Paragraphs 1 and 2 do not apply if it appears from the treaty or is otherwise established that the application of the treaty in respect of the newly independent State would be incompatible with the object and purpose of the treaty or would radically change the conditions for its operation.

4. When, under the terms of the treaty or by reason of the limited number of the negotiating States and the object and purpose of the treaty, the participation of any other State in the treaty must be considered as requiring the consent of all the parties or of all the contracting States, the newly independent State may establish its status as a party or as a contracting State to the treaty only with such consent.

5. When a treaty provides that a specified number of contracting States shall be necessary for its entry into force, a newly independent State which establishes its status as a contracting State to the treaty under paragraph 1 shall be counted as a contracting State for the purpose of that provision unless a different intention appears from the treaty or is otherwise established.

ARTICLE 18

1. *International Law Commission text*

109. The text of the International Law Commission provided as follows:

Article 18. Participation in treaties signed by the predecessor State subject to ratification, acceptance or approval

1. Subject to paragraphs 3 and 4, if before the date of the succession of States the predecessor State signed a multilateral treaty subject to ratification, acceptance or approval and by the signature intended that the treaty should extend to the territory to which the succession of States relates, the newly independent State may ratify, accept or approve the treaty as if it had signed that treaty and may thereby become a party or a contracting State to it.

2. For the purpose of paragraph 1, unless a different intention appears from the treaty or is otherwise established, the signature by the predecessor State of a treaty is considered to express the intention that the treaty should extend to the entire territory for the international relations of which the predecessor State was responsible.

3. Paragraph 1 does not apply if it appears from the treaty or is otherwise established that the application of the treaty in respect of the newly independent State would be incompatible with its object and purpose or would radically change the conditions for the operation of the treaty.

4. When, under the terms of the treaty or by reason of the limited number of the negotiating States and the object and purpose of the treaty, the participation of any other State in the treaty must be considered as requiring the consent of all the parties or of all the contracting States, the newly independent State may become a party or a contracting State to the treaty only with such consent.

2. *Amendments*

110. An amendment was submitted to article 18 by Swaziland and Sweden (A/CONF.80/C.1/L.23).

111. This amendment was to the following effect:

Delete the article.

[Rejected; see para. 113 below.]

3. *Proceedings of the Committee of the Whole*(i) *Meetings*

112. The Committee of the Whole initially considered article 18 and the amendment thereto at its 27th meeting on 25 April 1977. At its 35th meeting, on 4 May 1977, it considered the report of the Drafting Committee on the article.

(ii) *Initial consideration*

113. At its 27th meeting, the Committee of the Whole rejected the amendment by Swaziland and Sweden (A/CONF.80/C.1/L.23) by 36 votes to 25, with 17 abstentions. At the same meeting, the Committee of the Whole, at the request of the representative of Greece, took a separate vote on paragraph 2 of the text proposed for the article by the International Law Commission. It decided by 43 votes to 3, with 29 abstentions, to retain the paragraph. Finally it adopted without a vote the text of the International Law Commission for the article as a whole and referred it to the Drafting Committee.

(iii) *Consideration of the report
of the Drafting Committee*

114. At the 35th meeting of the Committee of the Whole, the Chairman of the Drafting Committee introduced a report of the Drafting Committee (A/CONF.80/C.1/3) containing the text of article 18 adopted by the Committee (for the text, see para. 115 below). Subject to changes in the French text along the lines of those adopted for article 17 (see para. 107 above), the Committee of the Whole approved without a vote the text of article 18 as recommended by the Drafting Committee.

(iv) *Text approved by the Committee of the Whole*

115. The Committee of the Whole recommends that the Conference should adopt the following text for article 18:

Article 18. Participation in treaties signed by the predecessor State subject to ratification, acceptance or approval

1. Subject to paragraphs 3 and 4, if before the date of the succession of States the predecessor State signed a multilateral treaty subject to ratification, acceptance or approval and by the signature intended that the treaty should extend to the territory to which the succession of States relates, the newly independent State may ratify, accept or approve the treaty as if it had signed that treaty and may thereby become a party or a contracting State to it.

2. For the purpose of paragraph 1, unless a different intention appears from the treaty or is otherwise established, the signature by the predecessor State of a treaty is considered to express the intention that the treaty should extend to the entire territory for the international relations of which the predecessor State was responsible.

3. Paragraph 1 does not apply if it appears from the treaty or is otherwise established that the application of the treaty in respect of the newly independent State would be incompatible with the object and purpose of the treaty or would radically change the conditions for its operation.

4. When, under the terms of the treaty or by reason of the limited number of the negotiating States and the object and purpose of the treaty, the participation of any other State in the treaty must be considered as requiring the consent of all the parties or of all the contracting States, the newly independent State may become a party or a contracting State to the treaty only with such consent.

ARTICLE 19

1. International Law Commission text

116. The text of the International Law Commission provided as follows:

Article 19. Reservations

1. When a newly independent State establishes its status as a party or as a contracting State to a multilateral treaty by a notification of succession under article 16 or 17, it shall be considered as maintaining any reservation to that treaty which was applicable at the date of the succession of States in respect of the territory to which the succession of States relates unless, when making the notification of succession, it expresses a contrary intention or formulates a reservation which relates to the same subject matter as that reservation.

2. When making a notification of succession establishing its status as a party or as a contracting State to a multilateral treaty under article 16 or 17, a newly independent State may formulate a reservation unless the reservation is one the formulation of which would be excluded by the provisions of subparagraph (a), (b) or (c) of article 19 of the Vienna Convention on the Law of Treaties.

3. When a newly independent State formulates a reservation in conformity with paragraph 2, the rules set out in articles 20, 21, 22 and 23 of the Vienna Convention on the Law of Treaties apply in respect of that reservation.

2. Amendments

117. Amendments were submitted to article 19 by *Austria* (A/CONF.80/C.1/L.25), the *Federal Republic of Germany* (A/CONF.80/C.1/L.36) and orally by the *United Republic of Tanzania*.

118. These amendments were to the following effect:

(a) *Austria* (A/CONF.80/C.1/L.25)

1. At the end of *paragraph 1* delete the words "or formulates a reservation which relates to the same subject matter as that reservation".

2. Delete *paragraphs 2 and 3*.

[Point 1 was withdrawn, point 2 was rejected; see paras. 120 and 121 below.]

(b) *Federal Republic of Germany* (A/CONF.80/C.1/L.36).

1. Replace paragraph 1 by the following text:¹¹

When a newly independent State establishes its status as a party or as a contracting State to a multilateral treaty by a notification of succession under articles 16 or 17, or if it participates in a treaty signed by the predecessor State under article 18, any statement or instrument made in respect to the treaty in connexion with its conclusion or signature by the predecessor State, shall remain effective for the newly independent State. With respect to reservations the following rules shall apply:

(a) The newly independent State shall be considered as maintaining any reservation to the treaty which was applicable at the date of the succession of States in respect of the territory to which the succession of States relates unless, when making the notification of succession, it expresses a contrary intention or formulates a reservation which relates to the same subject-matter as that reservation.

2. Redesignate as (b) and (c) present *paragraphs 2 and 3*.

[Withdrawn; see para. 120 below.]

(c) *United Republic of Tanzania* (oral amendment)

In paragraph 1 replace the word "maintaining" by "discontinuing" and delete the words "or formulates a reservation which relates to the same subject-matter as that reservation."

[Rejected; see para. 121 below.]

3. Proceedings of the Committee of the Whole

(i) *Meetings*

119. The Committee of the Whole considered article 19 and the amendments thereto at its 27th and 28th meetings, on 25 and 26 April 1977. At its 35th meeting, on 4 May 1977, it considered the report of the Drafting Committee on the article.

¹¹ The new words to be inserted are in italics.

(ii) *Initial consideration*

120. At the 28th meeting of the Committee of the Whole, the amendment by the *Federal Republic of Germany* (A/CONF.80/C.1/L.36) and point 1 of the amendment by *Austria* (A/CONF.80/C.1/L.25) were withdrawn.

121. At the same meeting, the Committee of the Whole rejected point 2 of the amendment by *Austria* (A/CONF.80/C.1/L.25) by 39 votes to 4, with 36 abstentions; it also rejected the oral amendment by the *United Republic of Tanzania* by 26 votes to 14, with 41 abstentions. The Committee of the Whole then adopted the text of the International Law Commission for the article by 76 votes to none, with 6 abstentions and referred it to the Drafting Committee.

(iii) *Consideration of the report of the Drafting Committee*

122. At the 35th meeting of the Committee of the Whole, the Chairman of the Drafting Committee introduced a report of the Drafting Committee (A/CONF.80/C.1/3) containing the text of article 19 adopted by the Committee (for the text, see para. 123 below). Subject to changes in the French text along the lines of those adopted for article 17 (see para. 107 above), the Committee of the Whole approved without a vote the text of article 19 as recommended by the Drafting Committee.

(iv) *Text approved by the Committee of the Whole*

123. The Committee of the Whole recommends that the Conference should adopt the following text for article 19:

Article 19. Reservations

1. When a newly independent State establishes its status as a party or as a contracting State to a multilateral treaty by a notification of succession under article 16 or 17, it shall be considered as maintaining any reservation to that treaty which was applicable at the date of the succession of States in respect of the territory to which the succession of States relates unless, when making the notification of succession, it expresses a contrary intention or formulates a reservation which relates to the same subject-matter as that reservation.

2. When making a notification of succession establishing its status as a party or as a contracting State to a multilateral treaty under article 16 or 17, a newly independent State may formulate a reservation unless the reservation is one the formulation of which would be excluded by the provisions of subparagraph (a), (b) or (c) of article 19 of the Vienna Convention on the Law of Treaties.

3. When a newly independent State formulates a reservation in conformity with paragraph 2, the rules set out in articles 20, 21, 22 and 23 of the Vienna Convention on the Law of Treaties apply in respect of that reservation.

ARTICLE 20

1. *International Law Commission text*

124. The text of the International Law Commission provided as follows:

Article 20. Consent to be bound by part of a treaty and choice between differing provisions

1. When making a notification of succession under article 16 or 17 establishing its status as a party or contracting State to a

multilateral treaty, a newly independent State may express its consent to be bound by part of the treaty or make a choice between differing provisions under the conditions laid down in the treaty for expressing such consent or making such choice.

2. A newly independent State may also exercise, under the same conditions as the other parties or contracting States, any right provided for in the treaty to withdraw or modify any consent or choice made by itself or made by the predecessor State in respect of the territory to which the succession of State relates.

3. If the newly independent State does not in conformity with paragraph 1 express its consent or make a choice, or in conformity with paragraph 2 withdraw or modify the consent or choice of the predecessor State, it is considered as maintaining:

(a) the consent of the predecessor State, in conformity with the treaty, to be bound, in respect of the territory to which the succession of States relates, by part of that treaty; or

(b) the choice of the predecessor State, in conformity with the treaty, between differing provisions in the application of the treaty in respect of the territory to which the succession of States relates.

2. *Amendments*

125. No amendment was submitted to article 20.

3. *Proceedings of the Committee of the Whole*(i) *Meetings*

126. The Committee of the Whole initially considered article 20 at its 28th meeting, on 26 April 1977. At its 35th meeting, on 4 May 1977, it considered the report of the Drafting Committee on this article.

(ii) *Initial consideration*

127. At its 28th meeting, the Committee of the Whole adopted without a vote the text of the International Law Commission for the article and referred it to the Drafting Committee. It also referred to the Drafting Committee oral suggestions made by *France*¹² and the *Philippines*.¹³

(iii) *Consideration of the report of the Drafting Committee*

128. At the 35th meeting of the Committee of the Whole, the Chairman of the Drafting Committee introduced a report of the Drafting Committee (A/CONF.80/C.1/3) containing the text of article 20 adopted by the Committee.

129. At the same meeting, the representative of Ethiopia moved the closure of the debate on article 20; the motion was rejected by 24 votes to 13, with 38 abstentions.

130. Also at the same meeting the representative of *Spain* introduced an oral amendment to the text recommended

¹² The oral suggestion made by *France* was to the following effect.

Insert before the words "under the conditions" at the end of paragraph 1 the words "where the treaty so permits and" (see A/CONF.80/DC.11, para. 5).

¹³ The oral suggestion of the *Philippines* was that the Drafting Committee should review the title of the article in the light of the wording of its text (see A/CONF.80/DC.11, para. 5).

by the Drafting Committee for article 20; this amendment sought to replace the phrase "where the treaty so permits" in paragraph 1 by the words "if the treaty so permits". The Committee of the Whole adopted this amendment by 37 votes to 7, with 26 abstentions. It then approved without a vote, subject to changes in the French text along the lines of those adopted for article 17 (see para. 107 above), the text of article 20 recommended by the Drafting Committee, as amended.

(iv) *Text approved by the Committee of the Whole*

131. The Committee of the Whole recommends that the Conference should adopt the following text for article 20:

Article 20. Consent to be bound by part of a treaty and choice between differing provisions

1. When making a notification of succession under article 16 or 17 establishing its status as a party or contracting State to a multilateral treaty, a newly independent State may, if the treaty so permits, express its consent to be bound by part of the treaty or make a choice between differing provisions under the conditions laid down in the treaty for expressing such consent or making such choice.

2. A newly independent State may also exercise, under the same conditions as the other parties or contracting States, any right provided for in the treaty to withdraw or modify any consent or choice made by itself or made by the predecessor State in respect of the territory to which the succession of State relates.

3. If the newly independent State does not in conformity with paragraph 1 express its consent or make a choice, or in conformity with paragraph 2 withdraw or modify the consent or choice of the predecessor State, it shall be considered as maintaining:

(a) the consent of the predecessor State, in conformity with the treaty, to be bound, in respect of the territory to which the succession of States relates, by part of that treaty; or

(b) the choice of the predecessor State, in conformity with the treaty, between differing provisions in the application of the treaty in respect of the territory to which the succession of States relates.

ARTICLE 21

1. International Law Commission text

132. The text of the International Law Commission provided as follows:

Article 21. Notification of succession

1. A notification of succession in respect of a multilateral treaty under article 16 or 17 must be made in writing.

2. If the notification of succession is not signed by the Head of State, Head of Government or Minister of Foreign Affairs, the representative of the State communicating it may be called upon to produce full powers.

3. Unless the treaty otherwise provides, the notification of succession shall:

(a) be transmitted by the newly independent State to the depositary or, if there is no depositary, to the parties or the contracting States;

(b) be considered to be made by the newly independent State on the date on which it has been received by the depositary or, if there is no depositary, on the date on which it has been received by all the parties or, as the case may be, by all the contracting States.

4. Paragraph 3 does not affect any duty that the depositary may have, in accordance with the treaty or otherwise, to inform the parties or the contracting States of the notification of succession or

any communication made in connexion therewith by the newly independent State.

5. Subject to the provisions of the treaty, such notification of succession or such communication shall be considered as received by the State for which it was intended only when the latter State has been informed by the depositary.

2. Amendments

133. An amendment was submitted to article 21 by Australia (A/CONF.80/C.1/L.29).

134. This amendment was to the following effect:

In paragraph 3, subparagraph (a), delete the words: "the parties or the contracting States" and substitute the words: "all States which have consented to be bound by the treaty".

In paragraph 3, subparagraph (b), delete the words: "the parties or, as the case may be, by all the contracting States" and substitute the words: "States which have consented to be bound by the treaty".

[Referred to the Drafting Committee; see para. 136 below.]

3. Proceedings of the Committee of the Whole

(i) Meetings

135. The Committee of the Whole initially considered article 21 and the amendment thereto at its 28th meeting, on 26 April 1977. At its 35th meeting, on 4 May 1977, it considered the report of the Drafting Committee on the article.

(ii) Initial consideration

136. At its 28th meeting, the Committee of the Whole adopted without a vote the text of the International Law Commission for the article and referred it to the Drafting Committee. It also referred to the Drafting Committee the amendment by Australia (A/CONF.80/C.1/L.29) as a drafting suggestion.

(iii) Consideration of the report of the Drafting Committee

137. At the 35th meeting of the Committee of the Whole, the Chairman of the Drafting Committee introduced a report of the Drafting Committee (A/CONF.80/C.1/3) containing the text of article 21 adopted by the Committee (for the text, see para. 138 below). The Committee of the Whole approved without a vote the text of article 21 as recommended by the Drafting Committee.

(iv) Text approved by the Committee of the Whole

138. The Committee of the Whole recommends that the Conference should adopt the following text for article 21:

Article 21. Notification of succession

1. A notification of succession in respect of a multilateral treaty under article 16 or 17 shall be made in writing.

2. If the notification of succession is not signed by the Head of State, Head of Government or Minister of Foreign Affairs, the representative of the State communicating it may be called upon to produce full powers.

3. Unless the treaty otherwise provides, the notification of succession shall:

(a) be transmitted by the newly independent State to the depositary, or, if there is no depositary, to the parties or the contracting States;

(b) be considered to be made by the newly independent State on the date on which it has been received by the depositary or, if there is no depositary, on the date on which it has been received by all the parties or, as the case may be, by all the contracting States.

4. Paragraph 3 does not affect any duty that the depositary may have, in accordance with the treaty or otherwise, to inform the parties or the contracting States of the notification of succession or any communication made in connexion therewith by the newly independent State.

5. Subject to the provisions of the treaty, the notification of succession or the communication made in connexion therewith shall be considered as received by the State for which it was intended only when the latter State has been informed by the depositary.

ARTICLE 22

1. International Law Commission text

139. The text of the International Law Commission provided as follows:

Article 22. Effects of a notification of succession

1. Unless the treaty otherwise provides or it is otherwise agreed, a newly independent State which makes a notification of succession under article 16 or article 17, paragraph 2, shall be considered a party to the treaty from the date of the succession of States or from the date of entry into force of the treaty, whichever is the later date.

2. Nevertheless, the operation of the treaty shall be considered as suspended as between the newly independent State and the other parties to the treaty until the date of making of the notification of succession except so far as that treaty may be applied provisionally in accordance with article 26 or as may be otherwise agreed.

3. Unless the treaty otherwise provides or it is otherwise agreed, a newly independent State which makes a notification of succession under article 17, paragraph 1, shall be considered a contracting State to the treaty from the date on which the notification of succession is made.

2. Amendments

140. An amendment was submitted to article 22 by *Austria* (A/CONF.80/C.1/L.26).

141. This amendment was to the following effect:

Replace paragraph 2 of the article by the following:

2. Nevertheless, the newly independent State and the other parties to the treaty shall be considered as having consented to the suspension of the operation of the treaty from the date of succession until the date of making of the notification of succession except so far as that treaty may be applied provisionally in accordance with article 26 or as may be otherwise agreed.

[Referred to the Drafting Committee; see para. 143 below.]

3. Proceedings of the Committee of the Whole

(i) Meetings

142. The Committee of the Whole initially considered article 22 and the amendment thereto at its 29th meeting, on 26 April 1977. At its 35th meeting, on 4 May 1977, it

considered the report of the Drafting Committee on the article.

(ii) Initial consideration

143. At its 29th meeting, the Committee of the Whole adopted without a vote the text of the International Law Commission for the article and referred it to the Drafting Committee. It also referred to the Drafting Committee the amendment by *Austria* (A/CONF.80/C.1/L.26) as a drafting suggestion.

(iii) Consideration of the report of the Drafting Committee

144. At the 35th meeting of the Committee of the Whole, the Chairman of the Drafting Committee introduced a report of the Drafting Committee (A/CONF.80/C.1/3) containing the text of article 22 adopted by the Committee (for the text, see para. 145 below). Subject to a change in the French text along the lines of those adopted for article 17 (see para. 107 above), the Committee of the Whole approved without a vote the text of article 22 as recommended by the Drafting Committee.

(iv) Text approved by the Committee of the Whole

145. The Committee of the Whole recommends that the Conference should adopt the following text for article 22:

Article 22. Effects of a notification of succession

1. Unless the treaty otherwise provides or it is otherwise agreed, a newly independent State which makes a notification of succession under article 16 or article 17, paragraph 2, shall be considered a party to the treaty from the date of the succession of States or from the date of entry into force of the treaty, whichever is the later date.

2. Nevertheless, the operation of the treaty shall be considered as suspended as between the newly independent State and the other parties to the treaty until the date of making of the notification of succession except so far as that treaty may be applied provisionally in accordance with article 26 or as may be otherwise agreed.

3. Unless the treaty otherwise provides or it is otherwise agreed, a newly independent State which makes a notification of succession under article 17, paragraph 1, shall be considered a contracting State to the treaty from the date on which the notification of succession is made.

ARTICLES 23 AND 24

1. International Law Commission text

146. The text of the International Law Commission provided as follows:

Article 23. Conditions under which a treaty is considered as being in force in the case of a succession of States

1. A bilateral treaty which, at the date of a succession of States was in force in respect of the territory to which the succession of States relates is considered as being in force between a newly independent State and the other State party in conformity with the provisions of the treaty when:

(a) they expressly so agree; or

(b) by reason of their conduct they are to be considered as having so agreed.

2. A treaty considered as being in force under paragraph 1 applies in the relations between the newly independent State and

the other State party from the date of the succession of States, unless a different intention appears from their agreement or is otherwise established.

Article 24. The position as between the predecessor State and the newly independent State

A treaty which under article 23 is considered as being in force between a newly independent State and the other State party is not by reason only of that fact to be considered as in force also in the relations between the predecessor States and the newly independent State.

2. Amendments

147. Amendments were submitted to articles 23 and 24 by *Finland* (A/CONF.80/C.1/L.30) and to article 23 by *Australia* (A/CONF.80/C.1/L.33).

148. These amendments were to the following effect:

(a) *Finland* (A/CONF.80/C.1/L.30, as orally revised at the suggestion of the representative of the United Arab Emirates)¹⁴

1. Replace the existing text of subparagraph 1 (b) of article 23 by the following:

(b) by reason of their conduct, and in particular by applying the treaty, they are to be considered as having so agreed;

2. Delete article 24 and add the following new paragraph 3 to article 23:

3. A treaty considered as being in force under this article between the newly independent State and the other State party is not by reason only of that fact to be considered as in force also in the relations between the predecessor State and the newly independent State.

[Referred to the Drafting Committee; see paras. 151 and 152 below.]

(b) *Australia* (A/CONF.80/C.1/L.33)

At the end of paragraph 1, add an additional subparagraph as follows:

(c) At the time of the conclusion of the treaty constitutional procedures in force in the newly independent State prior to the date of the succession of States required the consent of the authorities elected by the people of the territory constituting the newly independent State to the application or extension of the treaty to that territory.

[Withdrawn; see para. 150 below.]

3. Proceedings of the Committee of the Whole

(i) Meetings

149. The Committee of the Whole initially considered articles 23 and 24 and the amendments thereto at its 29th meeting, on 26 April 1977. At its 35th meeting, on 4 May 1977, it considered the report of the Drafting Committee on the articles.

¹⁴ In the original version of the amendment, point 1 read as follows:

Replace the existing text of subparagraph 1 (b) of article 23 by the following:

“(b) By applying the treaty or otherwise by reason of their conduct they are to be considered as having so agreed.”

(ii) Initial consideration

150. At the 29th meeting of the Committee of the Whole, the amendment by *Australia* (A/CONF.80/C.1/L.33) was withdrawn.

151. At the same meeting, the Committee of the Whole took a separate vote on subparagraph 1 (b) of article 23 as a whole at the request of the representative of Madagascar. It decided to retain that subparagraph by 56 votes to 6, with 12 abstentions. It then adopted without a vote the text of the International Law Commission for article 23 and referred it to the Drafting Committee. It also referred to the Drafting Committee the revised version of point 1 of the amendment by *Finland* (A/CONF.80/C.1/L.30, as orally revised at the suggestion of the representative of the United Arab Emirates) as a drafting suggestion.

152. Also at its 29th meeting, the Committee of the Whole adopted the text of the International Law Commission for article 24 by 57 votes to 8, with 7 abstentions, and referred it to the Drafting Committee. It also referred to the Drafting Committee, as a drafting suggestion, the question of the merger of articles 23 and 24 as proposed in point 2 of the amendment by *Finland* (A/CONF.80/C.1/L.30).

(iii) Consideration of the report of the Drafting Committee

153. At the 35th meeting of the Committee of the Whole, the Chairman of the Drafting Committee introduced a report of the Drafting Committee (A/CONF.80/C.1/3) containing the text of article 23 adopted by the Committee (for the text, see para. 155 below). Subject to a change in the French text suggested by the representative of Senegal (to replace in para. 1 (b) “à raison” by “en raison”), the Committee of the Whole approved without a vote the text of article 23 as recommended by the Drafting Committee.

154. Also at the 35th meeting of the Committee of the Whole, the Chairman of the Drafting Committee introduced a report of the Drafting Committee (A/CONF.80/C.1/3) containing the text of article 24 adopted by the Committee (for the text, see para. 155 below). The Committee of the Whole approved without a vote the text of article 24 as recommended by the Drafting Committee.

(iv) Texts approved by the Committee of the Whole

155. The Committee of the Whole recommends that the Conference should adopt the following texts for articles 23 and 24:

Article 23. Conditions under which a treaty is considered as being in force in the case of a succession of States

1. A bilateral treaty which at the date of a succession of States was in force in respect of the territory to which the succession of States relates is considered as being in force between a newly independent State and the other State party when:

(a) they expressly so agree; or

(b) by reason of their conduct they are to be considered as having so agreed.

2. A treaty considered as being in force under paragraph 1 applies in the relations between the newly independent State and the other State party from the date of the succession of States,

unless a different intention appears from their agreement or is otherwise established.

Article 24. The position as between the predecessor State and the newly independent State

A treaty which under article 23 is considered as being in force between a newly independent State and the other State party is not by reason only of that fact to be considered as in force also in the relations between the predecessor State and the newly independent State.

ARTICLE 25

1. International Law Commission text

156. The text of the International Law Commission provided as follows:

Article 25. Termination, suspension of operation or amendment of the treaty as between the predecessor State and the other State party

1. When under article 23 a treaty is considered as being in force between a newly independent State and the other State party, the treaty:

(a) does not cease to be in force between them by reason only of the fact that it has subsequently been terminated as between the predecessor State and the other State party;

(b) is not suspended in operation as between them by reason only of the fact that it has subsequently been suspended in operation as between the predecessor State and the other State party;

(c) is not amended as between them by reason only of the fact that it has subsequently been amended as between the predecessor State and the other State party.

2. The fact that a treaty has been terminated or, as the case may be, suspended in operation as between the predecessor State and the other State party after the date of the succession of States does not prevent the treaty from being considered to be in force, or, as the case may be, in operation as between the newly independent State and the other State party if it is established in accordance with article 23 that they so agreed.

3. The fact that a treaty has been amended as between the predecessor State and the other State party after the date of the succession of States does not prevent the unamended treaty from being considered to be in force under article 23 as between the newly independent State and the other State party, unless it is established that they intended the treaty as amended to apply between them.

2. Amendments

157. No amendment was submitted to article 25.

3. Proceedings of the Committee of the Whole

(i) Meetings

158. The Committee of the Whole initially considered article 25 at its 30th meeting, on 28 April 1977. At its 35th meeting, on 4 May 1977, it considered the report of the Drafting Committee on the article.

(ii) Initial consideration

159. At its 30th meeting, the Committee of the Whole adopted without a vote the text of the International Law Commission for the article and referred it to the Drafting Committee.

(iii) Consideration of the report of the Drafting Committee

160. At the 35th meeting of the Committee of the Whole, the Chairman of the Drafting Committee introduced a report of the Drafting Committee (A/CONF.80/C.1/3) containing the text of article 25 adopted by the Committee (for the text, see para. 161 below). The Committee of the Whole approved without a vote the text of article 25 as recommended by the Drafting Committee.

(iv) Text approved by the Committee of the Whole

161. The Committee of the Whole recommends that the Conference should adopt the following text for article 25:

Article 25. Termination, suspension of operation or amendment of the treaty as between the predecessor State and the other State party

1. When under article 23 a treaty is considered as being in force between a newly independent State and the other State party, the treaty:

(a) does not cease to be in force between them by reason only of the fact that it has subsequently been terminated as between the predecessor State and the other State party;

(b) is not suspended in operation as between them by reason only of the fact that it has subsequently been suspended in operation as between the predecessor State and the other State party;

(c) is not amended as between them by reason only of the fact that it has subsequently been amended as between the predecessor State and the other State party.

2. The fact that a treaty has been terminated or, as the case may be, suspended in operation as between the predecessor State and the other State party after the date of the succession of States does not prevent the treaty from being considered to be in force or, as the case may be, in operation as between the newly independent State and the other State party if it is established in accordance with article 23 that they so agreed.

3. The fact that a treaty has been amended as between the predecessor State and the other State party after the date of the succession of States does not prevent the unamended treaty from being considered to be in force under article 23 as between the newly independent State and the other State party, unless it is established that they intended the treaty as amended to apply between them.

ARTICLES 26 AND 27

1. International Law Commission text

162. The text of the International Law Commission provided as follows:

Article 26. Multilateral treaties

1. If, at the date of the succession of States, a multilateral treaty was in force in respect of the territory to which the succession of States relates and the newly independent State gives notice of its intention that the treaty should be applied provisionally in respect of its territory, that treaty shall apply provisionally between the newly independent State and any party which expressly so agrees or by reason of its conduct is to be considered as having so agreed.

2. Nevertheless, in the case of a treaty which falls within the category mentioned in article 16, paragraph 3, the consent of all the parties to such provisional application is required.

3. If, at the date of the succession of States, a multilateral treaty not yet in force was being applied provisionally in respect of the

territory to which the succession of States relates and the newly independent State gives notice of its intention that the treaty should continue to be applied provisionally in respect of its territory, that treaty shall apply provisionally between the newly independent State and any contracting State which expressly so agrees or by reason of its conduct is to be considered as having so agreed.

4. Nevertheless, in the case of a treaty which falls within the category mentioned in article 16, paragraph 3, the consent of all the contracting States to such continued provisional application is required.

5. Paragraphs 1 to 4 do not apply if it appears from the treaty or is otherwise established that the application of the treaty in respect of the newly independent State would be incompatible with its object and purpose or would radically change the conditions for the operation of the treaty.

Article 27. *Bilateral treaties*

A bilateral treaty which at the date of a succession of States was in force or was being provisionally applied in respect of the territory to which the succession of States relates is considered as applying provisionally between the newly independent State and the other State concerned when:

(a) they expressly so agree; or

(b) by reason of their conduct they are to be considered as having agreed to continue to apply the treaty provisionally.

2. Amendments

163. Amendments were submitted to articles 26 and 27 by *Finland* (A/CONF.80/C.1/L.31, as orally revised) and to article 26 by *Australia and Ireland* (A/CONF.80/C.1/L.34/Rev.1).

164. These amendments were to the following effect:

(a) *Finland* (A/CONF.80/C.1/L.31, as orally revised)¹⁵

Article 26

In paragraphs 1 and 3, after the words "by reason of its conduct" insert the words "and in particular by applying the treaty".

Article 27

In subparagraph (b), after the words "by reason of their conduct" insert the words "and in particular by applying the treaty".

[Referred to the Drafting Committee; see para. 166 below.]

(b) *Australia and Ireland* (A/CONF.80/C.1/L.34/Rev.1, as orally corrected)¹⁶

Article 26

1. In paragraph 1, [...] insert the words "in writing" after the word "notice".

2. In paragraph 1, replace the words "any party which expressly so agrees or by reason of its conduct is to be considered as having so agreed" by the words:

"the parties to the treaty, provided that within a period of [] months from the date of receipt of such notification, a party may by notice in writing expressly reject provisional application as between itself and the successor State".

3. In paragraph 3, [...] insert the words "in writing" following the word "notice".

4. In paragraph 3, replace the words "any contracting State which expressly so agrees or by reason of its conduct is to be considered as having so agreed" by the words:

"the contracting States to the treaty, provided that, within a period of [] months from the date of receipt of such notification, a contracting State may by notice in writing expressly reject provisional application as between itself and the successor State".

5. Add a new paragraph 6 as follows:

6. A notice given by a newly independent State under paragraph 1 or paragraph 3 shall be transmitted to the depositary or, if there is no depositary, to the parties or to the contracting States, and shall take effect on the date of its receipt by the party or contracting State in question.

6. Add a new paragraph 7 as follows:

7. A notice of rejection given by a party or a contracting State to a treaty under paragraph 1 or paragraph 3 shall take effect as though the newly independent State had not given notice to that party or contracting State of its intention that the treaty should be applied provisionally, unless the treaty was provisionally applied between the newly independent State and that party or contracting State between the date of notice by the newly independent State and the date of rejection by that party or contracting State, in which case the notice of rejection shall take effect from the date of its receipt by the newly independent State.

[Rejected; see para. 166 below.]

¹⁵ In its original version, the amendment read as follows:

Article 26

1. In paragraphs 1 and 3 of article 26, replace the words "by reason of its conduct" by the following:

"by applying the treaty or otherwise by reason of its conduct".

Article 27

2. In paragraph (b) of article 27, replace the words "(b) by reason of their conduct" by the following:

"(b) by applying the treaty or otherwise by reason of their conduct".

¹⁶ In its original version, the amendment was sponsored by *Australia* only and read as follows:

1. In paragraph 1, replace the words "any party which expressly so agrees or by reason of its conduct is to be considered as having so agreed" by the words:

"the parties to the treaty, provided that a party may by notice in writing expressly reject provisional application as between itself and the successor State".

2. In paragraph 3, replace the words "any contracting State which expressly so agrees or by reason of its conduct is to be considered as having so agreed" by the words:

"the contracting States to the treaty, provided that a contracting State may by notice in writing expressly reject provisional application as between itself and the successor State".

3. Proceedings of the Committee of the Whole

(i) Meetings

165. The Committee of the Whole initially considered articles 26 and 27 and the amendments thereto at its 30th and 32nd meetings, on 28 and 29 April 1977. At its 35th meeting, on 4 May 1977, it considered the report of the Drafting Committee on the articles.

(ii) Initial consideration

166. At its 32nd meeting, the Committee of the Whole rejected the amendment by *Australia and Ireland* (A/CONF.80/C.1/L.34/Rev.1) by 23 votes to 23 with 29 abstentions. It then adopted without a vote the texts of the International Law Commission for articles 26 and 27 and referred them to the Drafting Committee. It also referred to the Drafting Committee the amendment by Finland (A/CONF.80/C.1/L.31, as orally revised) as a drafting suggestion.

(iii) Consideration of the report of the Drafting Committee

167. At the 35th meeting of the Committee of the Whole, the Chairman of the Drafting Committee introduced a report of the Drafting Committee (A/CONF.80/C.1/3) containing the text of article 26 adopted by the Committee (for the text, see para. 169 below). Subject to changes in the French text similar to that made in article 23 (see para. 153 above), the Committee of the Whole approved without a vote the text of article 26 as recommended by the Drafting Committee.

168. Also at the 35th meeting of the Committee of the Whole, the Chairman of the Drafting Committee introduced a report of the Drafting Committee (A/CONF.80/C.1/3) containing the text of article 27 adopted by the Committee (for the text, see para. 169 below). Subject to a change in the French text similar to that made in article 23 (see para. 153 above), the Committee of the Whole approved without a vote the text of article 27 as recommended by the Drafting Committee.

(iv) Texts approved by the Committee of the Whole

169. The Committee of the Whole recommends that the Conference should adopt the following text for articles 26 and 27:

Article 26. Multilateral treaties

1. If, at the date of the succession of States, a multilateral treaty was in force in respect of the territory to which the succession of States relates and the newly independent State gives notice of its intention that the treaty should be applied provisionally in respect of its territory, that treaty shall apply provisionally between the newly independent State and any party which expressly so agrees or by reason of its conduct is to be considered as having so agreed.

2. Nevertheless, in the case of a treaty which falls within the category mentioned in article 16, paragraph 3, the consent of all the parties to such provisional application is required.

3. If, at the date of the succession of States, a multilateral treaty not yet in force was being applied provisionally in respect of the territory to which the succession of States relates and the newly

independent State gives notice of its intention that the treaty should continue to be applied provisionally in respect of its territory, that treaty shall apply provisionally between the newly independent State and any contracting State which expressly so agrees or by reason of its conduct is to be considered as having so agreed.

4. Nevertheless, in the case of a treaty which falls within the category mentioned in article 16, paragraph 3, the consent of all the contracting States to such continued provisional application is required.

5. Paragraphs 1 to 4 do not apply if it appears from the treaty or is otherwise established that the application of the treaty in respect of the newly independent State would be incompatible with the object and purpose of the treaty or would radically change the conditions for its operation.

Article 27. Bilateral treaties

A bilateral treaty which at the date of a succession of States was in force or was being provisionally applied in respect of the territory to which the succession of States relates is considered as applying provisionally between the newly independent State and the other State concerned when:

(a) they expressly so agree; or

(b) by reason of their conduct they are to be considered as having so agreed.

ARTICLE 28

1. International Law Commission text

170. The text of the International Law Commission provided as follows:

Article 28. Termination of provisional application

1. Unless the treaty otherwise provides or it is otherwise agreed, the provisional application of a multilateral treaty under article 26 may be terminated:

(a) by reasonable notice of termination given by the newly independent State or the party or contracting State provisionally applying the treaty and the expiration of the notice; or

(b) in the case of a treaty which falls within the category mentioned in article 16, paragraph 3, by reasonable notice of termination given by the newly independent State or the parties or, as the case may be, the contracting States, and the expiration of the notice.

2. Unless the treaty otherwise provides or it is otherwise agreed, the provisional application of a bilateral treaty under article 27 may be terminated by reasonable notice of termination given by the newly independent State or the other State concerned and the expiration of the notice.

3. Unless the treaty provides for a shorter period for its termination or it is otherwise agreed, reasonable notice of termination shall be twelve months' notice from the date on which it is received by the other State or States provisionally applying the treaty.

4. Unless the treaty otherwise provides or it is otherwise agreed, the provisional application of a multilateral treaty under article 26 shall be terminated if the newly independent State gives notice of its intention not to become a party to the treaty.

2. Amendments

171. An oral amendment was submitted to article 28 by the *United Kingdom*.

172. This amendment was to the following effect:

Insert in the last part of paragraph 1 (b) the words "one of" between the words "independent State or" and the

words “the parties” as well as between the words “as the case may be” and the words “the contracting States”.

[Rejected; see para. 174 below.]

3. Proceedings of the Committee of the Whole

(i) Meetings

173. The Committee of the Whole initially considered article 28 and the amendment thereto at its 30th and 32nd meetings, on 28 and 29 April 1977. At its 35th meeting, on 4 May 1977, it considered the report of the Drafting Committee on the article.

(ii) Initial consideration

174. At its 32nd meeting, the Committee of the Whole rejected the oral amendment by the *United Kingdom* by 34 votes to 13, with 30 abstentions. At the same meeting, it adopted without a vote the text of the International Law Commission for the article and referred it to the Drafting Committee.

(iii) Consideration of the report of the Drafting Committee

175. At the 35th meeting of the Committee of the Whole, the Chairman of the Drafting Committee introduced a report of the Drafting Committee (A/CONF.80/C.1/3) containing the text of article 28 adopted by the Committee.

176. At the same meeting the representative of the United States submitted an oral amendment seeking to insert in paragraph 1 (b) the words “all of” after “the newly independent State or” as well as after “as the case may be”. The Committee decided by 46 votes to 19, with 10 abstentions that the amendment by the United States was not a reconsideration of a decision taken by the Committee at its 32nd meeting (see para. 174 above). It then adopted the oral amendment of the United States by 46 votes to 19, with 11 abstentions.

177. The Committee then approved without a vote the text of article 28 recommended by the Drafting Committee, as amended.

(iv) Text approved by the Committee of the Whole

178. The Committee of the Whole recommends that the Conference should adopt the following text for article 28:

Article 28. Termination of provisional application

1. Unless the treaty otherwise provides or it is otherwise agreed, the provisional application of a multilateral treaty under article 26 may be terminated:

(a) by reasonable notice of termination given by the newly independent State or the party or contracting State provisionally applying the treaty and the expiration of the notice; or

(b) in the case of a treaty which falls within the category mentioned in article 16, paragraph 3, by reasonable notice of termination given by the newly independent State or all of the parties or, as the case may be, all of the contracting States and the expiration of the notice.

2. Unless the treaty otherwise provides or it is otherwise agreed, the provisional application of a bilateral treaty under article 27 may be terminated by reasonable notice of termination given by the newly independent State or the other State concerned and the expiration of the notice.

3. Unless the treaty provides for a shorter period for its termination or it is otherwise agreed, reasonable notice of termination shall be twelve months' notice from the date on which it is received by the other State or States provisionally applying the treaty.

4. Unless the treaty otherwise provides or it is otherwise agreed, the provisional application of a multilateral treaty under article 26 shall be terminated if the newly independent State gives notice of its intention not to become a party to the treaty.

ARTICLE 29

1. International Law Commission text

179. The text of the International Law Commission provided as follows:

Article 29. Newly independent States formed from two or more territories

1. Articles 15 to 28 apply in the case of a newly independent State formed from two or more territories.

2. When a newly independent State formed from two or more territories is considered as or becomes a party to a treaty by virtue of articles 16, 17 or 23 and at the date of the succession of States the treaty was in force, or consent to be bound had been given, in respect of one or more, but not all, of those territories, the treaty shall apply in respect of the entire territory of that State unless:

(a) it appears from the treaty or is otherwise established that the application of the treaty in respect of the entire territory would be incompatible with its object and purpose or would radically change the conditions for the operation of the treaty;

(b) in the case of a multilateral treaty not falling under article 16, paragraph 3, or under article 17, paragraph 4, the notification of succession is restricted to the territory in respect of which the treaty was in force at the date of the succession of States, or in respect of which consent to be bound by the treaty had been given prior to that date;

(c) in the case of a multilateral treaty falling under article 16, paragraph 3, or under article 17, paragraph 4, the newly independent State and the other States parties or, as the case may be, the other contracting States otherwise agree; or

(d) in the case of a bilateral treaty, the newly independent State and the other State concerned otherwise agree.

3. When a newly independent State formed from two or more territories becomes a party to a multilateral treaty under article 18 and by the signature or signatures of the predecessor State or States it had been intended that the treaty should extend to one or more, but not all, of those territories, the treaty shall apply in respect of the entire territory of the newly independent State unless;

(a) it appears from the treaty or is otherwise established that the application of the treaty in respect of the entire territory would be incompatible with its object and purpose or would radically change the conditions for the operation of the treaty;

(b) in the case of a multilateral treaty not falling under article 18, paragraph 4, the ratification, acceptance or approval of the treaty is restricted to the territory or territories to which it was intended that the treaty should extend; or

(c) in the case of a multilateral treaty falling under article 18, paragraph 4, the newly independent State and the other States parties or, as the case may be, the other contracting States otherwise agree.

2. Amendments

180. Amendments were submitted to article 29 by *Swaziland* and *Sweden* (A/CONF.80/C.1/L.23), *Finland* (A/CONF.80/C.1/L.32) and *Malaysia* (A/CONF.80/C.1/L.43).

181. Those amendments were to the following effect:

(a) *Swaziland* and *Sweden* (A/CONF.80/C.1/L.23)

Delete paragraph 3.

[Rejected; see para. 184 below.]

(b) *Finland* (A/CONF.80/C.1/L.32)

1. Add to paragraph 2 of article 29 after the words "... or becomes a party to a ..." the following:

"... multilateral or bilateral ...".

2. Add to subparagraph (a) of paragraph 2 of article 29 after the words "(a) it appears from ..." the following:

"... multilateral or bilateral ...".

3. Delete in subparagraphs (b) and (c) of paragraph 3 of article 29 the word "multilateral ...".

[Rejected; see para. 184 below.]

(c) *Malaysia* (A/CONF.80/C.1/L.43)

In subparagraphs (b) and (c) of paragraph 2, replace the words "article 17, paragraph 4", by the words "article 17, paragraph 3".

[This amendment is consequential upon the amendment submitted by Malaysia to article 17 (A/CONF.80/C.1/L.42 and Corr.1).]

[Referred to the Drafting Committee; see para. 184 below.]

3. Proceedings of the Committee of the Whole

(i) Meetings

182. The Committee of the Whole initially considered article 29 and the amendments thereto at its 32nd, 33rd and 34th meetings, on 29 April and 2 May 1977. At its 35th meeting, on 4 May 1977, it considered the report of the Drafting Committee on the article.

(ii) Initial consideration

183. At the 34th meeting of the Committee of the Whole, the representative of Norway proposed that the Committee defer consideration of article 29 and the amendments thereto to the next session of the Conference. This motion was rejected by 34 votes to 18, with 26 abstentions.

184. The Committee then took the following decisions on article 29 and the amendments thereto:

(a) It rejected the amendment by *Swaziland* and *Sweden* (A/CONF.80/C.1/L.23) by 35 votes to 18, with 24 abstentions;

(b) It rejected the amendment by *Finland* (A/CONF.80/C.1/L.32) by 23 votes to 16, with 37 abstentions.

(c) It adopted the text of the International Law Commission for the article by 69 votes to none, with 9 abstentions;

(d) It referred this text to the Drafting Committee together with the amendment by Malaysia (A/CONF.80/C.1/L.43) as a drafting suggestion.

(iii) Consideration of the report of the Drafting Committee

185. At the 35th meeting of the Committee of the Whole, the Chairman of the Drafting Committee introduced a report of the Drafting Committee (A/CONF.80/C.1/3) containing the text of article 29 adopted by the Committee (for the text, see para. 186 below). The Committee of the Whole approved without a vote the text of article 29 as recommended by the Drafting Committee.

(iv) Text approved by the Committee of the Whole

186. The Committee of the Whole recommends that the Conference should adopt the following text for article 29:

Article 29. Newly independent States formed from two or more territories

1. Articles 15 to 28 apply in the case of a newly independent State formed from two or more territories.

2. When a newly independent State formed from two or more territories is considered as or becomes a party to a treaty by virtue of article 16, 17 or 23 and at the date of the succession of States the treaty was in force, or consent to be bound had been given, in respect of one or more, but not all, of those territories, the treaty shall apply in respect of the entire territory of that State unless:

(a) it appears from the treaty or is otherwise established that the application of the treaty in respect of the entire territory would be incompatible with the object and purpose of the treaty or would radically change the conditions for its operation;

(b) in the case of a multilateral treaty not falling under article 16, paragraph 3, or under article 17, paragraph 4, the notification of succession is restricted to the territory in respect of which the treaty was in force at the date of the succession of States, or in respect of which consent to be bound by the treaty had been given prior to that date;

(c) in the case of a multilateral treaty falling under article 16, paragraph 3, or under article 17, paragraph 4, the newly independent State and the other States parties or, as the case may be, the other contracting States otherwise agree; or

(d) in the case of a bilateral treaty, the newly independent State and the other State concerned otherwise agree.

3. When a newly independent State formed from two or more territories becomes a party to a multilateral treaty under article 18 and by the signature or signatures of the predecessor State or States it had been intended that the treaty should extend to one or more, but not all, of those territories, the treaty shall apply in respect of the entire territory of the newly independent State unless:

(a) it appears from the treaty or is otherwise established that the application of the treaty in respect of the entire territory would be incompatible with the object and purpose of the treaty or would radically change the conditions for its operation;

(b) in the case of a multilateral treaty not falling under article 18, paragraph 4, the ratification, acceptance or approval of the treaty is restricted to the territory or territories to which it was intended that the treaty should extend; or

(c) in the case of a multilateral treaty falling under article 18, paragraph 4, the newly independent State and the other States parties or, as the case may be, the other contracting States otherwise agree.

B. DRAFT ARTICLES WHOSE CONSIDERATION BY THE COMMITTEE OF THE WHOLE HAS NOT YET BEEN COMPLETED

1. *Draft article referred to the Drafting Committee and not yet reported on by that Committee*

PROPOSED NEW ARTICLE 22 *bis*

1. Text of the proposed new article

187. An amendment seeking to insert a new article 22 *bis* was submitted by *Czechoslovakia, Poland* and the *Ukrainian SSR* (A/CONF.80/C.1/L.28).

188. The text of the proposed new article read as follows:

Article 22 bis. Notification by a depositary

1. The depositary, if any, of a treaty referred to in articles 16, 16 *bis*, 17 and 18 shall notify the newly independent State that the said treaty has been extended to the territory to which the succession of States relates and of all other particulars relating to the treaty.

2. The notification referred to in paragraph 1 must be made by the depositary in writing as soon as possible.

189. A revised version of the text was subsequently submitted by *Czechoslovakia, Poland, Singapore* and the *Ukrainian SSR* (A/CONF.80/C.1/L.28/Rev.1).

190. It read as follows:

Article 22 bis

The depositary, if any, of a treaty referred to in articles 16, 17 or 18 shall, as far as may be practicable, by writing inform the newly independent State that the said treaty has been previously extended to the territory to which the succession of States relates and such information will include all other relevant particulars relating to the treaty.

2. Proceedings of the Committee of the Whole

191. The Committee of the Whole considered the proposed new article 22 *bis* at its 29th, 31st and 32nd meetings, on 26, 28 and 29 April 1977.

192. At its 29th meeting, the Committee of the Whole adopted a motion to close the debate on the original version of the proposed new article 22 *bis* (A/CONF.80/C.1/L.28) by 31 votes to 6, with 34 abstentions. It then agreed to suspend its consideration of the proposed new article 22 *bis* pending consultations among the co-sponsors and the delegations that had proposed drafting changes and other interested delegations.

193. At its 32nd meeting, the Committee had before it the revised version of the proposed new article 22 *bis* (A/CONF.80/C.1/L.28/Rev.1). It referred it to the Drafting Committee together with the suggestions that had been made orally by various delegations during the Committee's consideration of the proposed article 22 *bis* at the 31st and 32nd meetings. The Drafting Committee was requested to prepare a formulation taking into account the text in document A/CONF.80/C.1/L.28/Rev.1 and the referred

oral suggestions relating thereto.¹⁷ The Committee agreed to defer its decision on the proposed new provision until the Drafting Committee had recommended the requested formulation.

194. At its 35th meeting, on 4 May 1977, the Committee of the Whole was informed by the Chairman of the Drafting Committee that the Drafting Committee would report on article 22 *bis* at the next session of the Conference. The Committee of the Whole took note of that statement.

¹⁷ As listed in document A/CONF.80/DC.16, the suggestions made included the following:

1. *Suggestions concerning the text of the new provision*

(a) *France*

(i) At the beginning of the text, insert the words: "A State party to the present Convention which is" and begin the expression "the depositary" with a small letter.

(ii) Delete the words", if any,".

The beginning of the text would then read as follows:

"A State party to the present Convention which is the depositary of a treaty referred to in article 16, 17 or 18".

(b) *Pakistan*

(i) Replace the words "the newly independent State" by the words "the successor State".

(ii) Replace the words "the said treaty has been previously extended" by the words "the said treaty was previously applicable".

(c) *Malaysia*

(i) Amend the words "by writing" to read "in writing".

(ii) Replace the words "as far as may be practicable" by the words "as soon as possible".

(d) *Netherlands*

At the end of the text, after the words "all other particulars relating to the treaty", add the words "which are referred to in article 77, paragraph 1, subparagraphs (e) and (f), of the 1969 Vienna Convention on the Law of Treaties."

(e) *Senegal* (suggested subamendment to the Netherlands amendment)

Replace the words "which are referred to" by the words ", especially those referred to".

(f) *Italy*

Amend the words "has been previously extended" to read "had been previously extended".

(g) *Greece*

(i) At the end of the text, delete the word "all".

(ii) Prepare a title for the proposed provision.

II. *Suggestions concerning the position of the new provision*

It was suggested by the *Netherlands, Pakistan, Sri Lanka* and the *United Kingdom* that the new provision should be included in a declaration or resolution forming part of the Final Act.

The *United Kingdom* further mentioned the possibility of including the new provision in the preamble.

2. Draft articles whose consideration has been referred to an informal consultations group¹⁸

ARTICLE 6

1. International Law Commission text

195. The text of the International Law Commission provided as follows:

Article 6. Cases of succession of States covered by the present articles

The present articles apply only to the effects of a succession of States occurring in conformity with international law and, in particular, the principles of international law embodied in the Charter of the United Nations.

2. Amendments

196. Amendments to article 6 were submitted by *Australia* (A/CONF.80/C.1/L.3),

Romania (A/CONF.80/C.1/L.5), *Ethiopia* (A/CONF.80/C.1/L.6), the *Soviet Union* (A/CONF.80/C.1/L.8), and *Singapore* (A/CONF.80/C.1/L.17).

197. These amendments were to the following effect:

(a) *Australia* (A/CONF.80/C.1/L.3)

Delete the text of article 6 and substitute the following:

Nothing in the present Convention shall be interpreted as obliging a State party to the present Convention to apply its provisions to the effects of events which have occurred contrary to international law including the principles of international law embodied in the Charter of the United Nations.

[Withdrawn; see para. 199 below.]

(b) *Romania* (A/CONF.80/C.1/L.5)

Replace the present text by the following:

Article 6. Cases of succession of States covered by the present articles

The present Convention applies to cases of succession of States occurring in conformity with the fundamental principles embodied in the Charter of the United Nations, in the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States and in other international instruments.

[Referred to the Informal Consultations Group; see para. 201 below.]

(c) *Ethiopia* (A/CONF.80/C.1/L.6).

Replace the text of the article by the following:

Article 6. Cases of succession of States covered by the present articles

The present articles shall not apply to the effects of a succession of States occurring in violation of international law and, in particular, the principles of international law embodied in the Charter of the United Nations.

[Referred to the Informal Consultations Group; see para. 201 below.]

(d) *Union of Soviet Socialist Republics* (A/CONF.80/C.1/L.8)

Replace the present text by the following:

Article 6. Questions relating to the validity of a succession of States

Nothing in the present articles shall be considered as prejudicing in any respect any question relating to the validity of a succession of States as such.

[Withdrawn; see para. 200 below.]

(e) *Singapore* (A/CONF.80/C.1/L.17)

Replace the existing text by the following:

The present articles apply to the effects of a succession of States only in cases where such succession is valid in accordance with international law and in particular the principles of international law embodied in the Charter of the United Nations.

[Referred to the Informal Consultations Group; see para. 201 below.]

3. Proceedings of the Committee of the Whole

198. The Committee of the Whole initially considered article 6 and the amendments thereto at its 6th to 9th meetings on 8, 12 and 13 April 1977.

199. At the 7th meeting of the Committee of the Whole, the amendment by *Australia* (A/CONF.80/C.1/L.3) was withdrawn.

200. At the 9th meeting of the Committee of the Whole, the amendment by the *Soviet Union* (A/CONF.80/C.1/L.8) was withdrawn.

201. Also at the 9th meeting, the Committee decided to refer article 6 and the remaining amendments thereto to the Informal Consultations Group.

202. At its 34th meeting, on 2 May 1977, the Committee of the Whole was informed by the Vice-Chairman, who had chaired the Informal Consultations Group, that consultations were still going on and that a substantive report on article 6 together with articles 7 and 12 would be made at the next session of the Conference. The Committee took note of that statement.

ARTICLE 7

1. International Law Commission text

203. The text of the International Law Commission provided as follows:

Article 7. Non-retroactivity of the present articles

Without prejudice to the application of any of the rules set forth in the present articles to which the effects of a succession of States would be subject under international law independently of these articles, the present articles apply only in respect of a succession of States which has occurred after the entry into force of these articles except as may be otherwise agreed.

2. Amendments

204. Amendments were submitted to article 7 by the *Byelorussian SSR* (A/CONF.80/C.2/L.1), *Malaysia* (A/CONF.80/C.1/L.7), *Cuba and Somalia* (A/CONF.80/

¹⁸ See para. 10 above.

C.1/L.10/Rev.2) and the *United States of America* (A/CONF.80/C.1/L.16).¹⁹

205. These amendments were to the following effect:

(a) *Byelorussian Soviet Socialist Republic* (A/CONF.80/C.1/L.1)

Replace the title of article 7 by the following:

The present Convention applies to a succession of States occurring after its entry into force.

[Referred to the Informal Consultations Group; see para. 207 below.]

(b) *Malaysia* (A/CONF.80/C.1/L.7)

Replace the existing text by the following:

Article 7. Non-retroactivity of the present articles

The present articles apply only in respect of succession of States which has occurred after the entry into force of these articles except as may be otherwise agreed:

Provided that such application [the application of the present articles] shall be without prejudice to the application of any of the rules set forth in the present articles to which the effects of a succession of States would be subject under international law independently of these articles.

[Referred to the Informal Consultations Group; see para. 207 below.]

(c) *Cuba and Somalia* (A/CONF.80/C.1/L.10/Rev.2)²⁰

Number the paragraph of the draft "1" and add a paragraph 2 reading as follows:

2. Nevertheless, States which have attained their independence as a result of the decolonization process or the liberation struggle before the entry into force of the present convention and which have not resolved their status as successor States by virtue of the application of international law may, if they so wish and in the exercise of their sovereign rights, avail themselves of the provisions of the convention, indicating at the time of so doing the treaties in respect of which they wish to declare themselves successor State.

[Referred to the Informal Consultations Group; see para. 207 below.]

¹⁹ A working paper was submitted in connexion with article 7 by the *United Kingdom* (A/CONF.80/C.1/L.9). It contains a proposal relating to the final clauses which is reproduced in chap. III below.

²⁰ The original and the first revised version of this amendment were sponsored by *Cuba* only. The original version of the proposed new paragraph (A/CONF.80/C.1/L.10) read as follows:

"2. Nevertheless, States which have attained their independence as a result of the decolonization process or the liberation struggle, before the entry into force of the present Convention, are excepted from the provisions of paragraph 1 in regard to succession of States".

The first revised version of the paragraph (A/CONF.80/C.1/L.10/Rev.1) read as follows:

2. Nevertheless, States which have attained their independence as a result of the decolonization process or the liberation struggle before the entry into force of the present convention and which have not resolved their status as successor States by virtue of the application of international law may avail themselves of the provisions of the convention, indicating at the time of so doing the treaties in respect of which they wish to declare themselves successor State."

(d) *United States of America* (A/CONF.80/C.1/L.16)

Replace the existing text by the following:

Article 7. Application of the present articles

Except as may be otherwise agreed by the successor State and the Party or Parties to a treaty, the present articles apply:

(a) in respect of a succession of States which has occurred after the entry into force of these articles;

(b) in respect of a succession that occurred before the entry into force of these articles, except when the status of the successor State in relation to the treaty has been resolved prior to the entry into force of these articles.

[Referred to the Informal Consultations Group; see para. 207 below.]

3. Proceedings of the Committee of the Whole

206. The Committee of the Whole initially considered article 7 and the amendments thereto at its 9th, 10th, 11th and 12th meetings on 13 and 14 April 1977.

207. At its 12th meeting, on 14 April 1977, the Committee of the Whole decided to refer article 7 and the amendments thereto to the Informal Consultations Group.

208. At its 34th meeting, on 2 May 1977, the Committee of the Whole was informed by the Vice-Chairman, who had chaired the Informal Consultations Group, that consultations were still going on and that a substantive report on article 7, as indicated in paragraph 202 above, would be made at the next session of the Conference. The Committee took note of that statement.

ARTICLE 12

1. International Law Commission text

209. The text of the International Law Commission provided as follows:

Article 12. Other territorial régimes

1. A succession of States does not as such affect:

(a) obligations relating to the use of any territory, or to restrictions upon its use, established by a treaty for the benefit of any territory of a foreign State and considered as attaching to the territories in question;

(b) rights established by a treaty for the benefit of any territory and relating to the use, or to restrictions upon the use, of any territory of a foreign State and considered as attaching to the territories in question.

2. A succession of States does not as such affect:

(a) obligations relating to the use of any territory, or to restrictions upon its use, established by a treaty for the benefit of a group of States or of all States and considered as attaching to that territory;

(b) rights established by a treaty for the benefit of a group of States or of all States and relating to the use of any territory, or to restrictions upon its use, and considered as attaching to that territory.

2. Amendments

210. Amendments were submitted to article 12 by *Finland* (A/CONF.80/C.1/L.18), *Mexico* (A/CONF.80/C.1/L.19), *Cuba* (A/CONF.80/C.1/L.20), *Malaysia* (A/CONF.80/C.1/L.21) and *Afghanistan* (A/CONF.80/

C.1/L.24). A subamendment was submitted by *Argentina* (A/CONF.80/C.1/L.27) to the amendment by *Mexico* (A/CONF.80/C.1/L.19).

211. The amendments and the subamendment were to the following effect:

(a) *Finland* (A/CONF.80/C.1/L.18)

Delete the text of article 12 and substitute the following:

Article 12. Other territorial régimes

A succession of States does not as such affect:

(a) obligations relating to the use of any territory, or to restrictions upon its use, established by a treaty for the benefit of any territory of a foreign State and considered as attaching to the territories in question or for the benefit of a group of States or of all States and considered as attaching to that territory;

(b) rights established by a treaty for the benefit of any territory and relating to the use, or to restrictions upon the use, of any territory of a foreign State and considered as attaching to the territories in question or for the benefit of a group of States or of all States and relating to the use of any territory, or to restrictions upon its use, and considered as attaching to that territory.

[Referred to the Informal Consultations Group; see para. 213 below.]

(b) *Mexico* (A/CONF.80/C.1/L.19)

Add a new paragraph reading as follows:

3. Treaties relating to military, naval or air bases established in the territory of the successor State for the benefit of the predecessor State or of other States are not subject to the effects of this article. Such treaties shall cease to be in force by reason of the succession.

[Referred to the Informal Consultations Group; see para. 213 below.]

(c) *Argentina*: subamendment (A/CONF.80/C.1/L.27) to the amendment by *Mexico* (A/CONF.80/C.1/L.19)

Replace the first sentence of the new paragraph proposed by Mexico by the following:

Obligations relating to the use of any territory of a successor State, or to restrictions upon its use, imposed by a treaty relating to the establishment of military bases of the predecessor State or of another State party, or by a treaty which impedes the full exercise by the successor State of its sovereignty over the natural wealth and resources of its own territory, shall be excluded from the application of the provisions of the foregoing paragraphs.

[Referred to the Informal Consultations Group; see para. 213 below.]

(d) *Cuba* (A/CONF.80/C.1/L.20)

Add the following new paragraph:

3. Treaties which were concluded and concessions which were granted in conditions of inequality or which disregard or detract from the sovereignty of the successor State over any part of its territory, particularly in the case of the establishment or attempted establishment of military, naval or air bases, shall be excluded from the application of the provisions contained in the foregoing paragraphs and shall be considered illegal, being contrary to the principles of the Charter of the United Nations.

[Referred to the Informal Consultations Group; see para. 213 below.]

(e) *Malaysia* (A/CONF.80/C.1/L.21)

Replace the present text by the following:

A succession of States does not as such affect:

(a) obligations relating to the use of any territory, or to restrictions upon its use, established by a treaty for the benefit or any territory of a foreign State, group of States, or of all States and considered as attaching to the territories in question;

(b) rights established by a treaty for the benefit of any territory, group of States or of all States and relating to the use, or to restrictions upon the use, of any territory of a foreign State and considered as attaching to the territories in question.

[Referred to the Informal Consultations Group; see para. 213 below.]

(f) *Afghanistan* (A/CONF.80/C.1/L.24)

Replace the title of article 11 "Boundary régimes" and the title of article 12 "Other territorial régimes" by a single title reading as follows: "Territorial régimes".

[Deferred; see para. 68 above.]

3. Proceedings of the Committee of the Whole

212. The Committee of the Whole initially considered article 12 and the amendments thereto at its 19th, 20th and 21st meetings, on 19 and 20 April 1977.

213. At its 21st meeting, on 20 April 1977, the Committee of the Whole decided to refer article 12 and the amendments thereto to the Informal Consultations Group.

214. At its 34th meeting, on 2 May 1977, the Committee of the Whole was informed by the Vice-Chairman, who had chaired the Informal Consultations Group, that consultations were still going on and that a substantive report on article 12, as indicated in paragraph 202 above, would be made at the next session of the Conference. The Committee took note of that statement.

3. Draft article whose consideration has been suspended after initial debate

ARTICLE 2²¹

1. International Law Commission text

215. The International Law Commission text provided as follows:

Article 2. Use of terms

1. For the purposes of the present articles:

(a) "treaty" means an international agreement concluded between States in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation;

(b) "succession of States" means the replacement of one State by another in the responsibility for the international relations of territory;

(c) "predecessor State" means the State which has been replaced by another State on the occurrence of a succession of States;

²¹ In the context of the discussion on article 2, a number of delegations made statements of principle, as agreed at the 1st meeting of the Committee of the Whole (see para. 8 above).

(d) "successor State" means the State which has replaced another State on the occurrence of a succession of States;

(e) "date of the succession of States" means the date upon which the successor State replaced the predecessor State in the responsibility for the international relations of the territory to which the succession of States relates;

(f) "newly independent State" means a successor State the territory of which immediately before the date of the succession of States was a dependent territory for the international relations of which the predecessor State was responsible;

(g) "notification of succession" means in relation to a multilateral treaty any notification, however phrased or named, made by a successor State expressing its consent to be considered as bound by the treaty;

(h) "full powers" means in relation to a notification of succession or a notification referred to in article 37 a document emanating from the competent authority of a State designating a person or persons to represent the State for communicating the notification of succession or, as the case may be, the notification;

(i) "ratification", "acceptance" and "approval" mean in each case the international act so named whereby a State establishes on the international plane its consent to be bound by a treaty;

(j) "reservation" means a unilateral statement, however phrased or named, made by a State when signing, ratifying, accepting, approving or acceding to a treaty or when making a notification of succession to a treaty, whereby its purports to exclude or to modify the legal effect of certain provisions of the treaty in their application to that State;

(k) "contracting State" means a State which has consented to be bound by the treaty, whether or not the treaty has entered into force;

(l) "party" means a State which has consented to be bound by the treaty and for which the treaty is in force;

(m) "other State party" means in relation to a successor State any party, other than the predecessor State, to a treaty in force at the date of a succession of States in respect of the territory to which that succession of States relates;

(n) "international organization" means an intergovernmental organization.

2. The provisions of paragraph 1 regarding the use of terms in the present articles are without prejudice to the use of those terms or to the meanings which may be given to them in the internal law of any State.

2. Amendments

216. Amendments were submitted to article 2 by *France* and *Switzerland* (A/CONF.80/C.1/L.41) and by *Cuba* (A/CONF.80/C.1/L.46).²²

217. Those amendments were to the following effect:

(a) *France* and *Switzerland* (A/CONF.80/C.1/L.41)

(i) *Paragraph 1, subparagraph (b)*

Replace the existing text by the following:

(b) "Succession of States" means the replacement of one State by another in the exercise of competence for international relations in respect of a particular territory;

(ii) *Paragraph 1, subparagraph (f)*

Replace the existing text by the following:

(f) "Newly independent State" means a successor State the territory of which immediately before the date of the succession of States was a territory the competence of which for international relations was exercised either by a single predecessor State or by two or more predecessor States which continue to exist;

Consequential amendments

(i) *Article 33*

Delete paragraph 1, subparagraph (a), and paragraph 3.

(ii) *Renumber article 34 as article 15 bis.*

[Submitted after the conclusion of the preliminary consideration of article 2 and therefore not yet considered.]

(b) *Cuba* (A/CONF.80/C.1/L.46)

Paragraph 1

(i) In subparagraph (a), insert the word "validly" between the word "agreement" and the word "concluded".

(ii) In subparagraph (b), replace the words "the responsibility for" by the words "the rights and obligations deriving from".

[Submitted after the conclusion of the preliminary consideration of article 2 and therefore not yet considered.]

(c) *Afghanistan* (oral amendment)

Place subparagraphs (l) and (m) of paragraph 1 after subparagraph (d).

[Not yet considered.]

3. Proceedings of the Committee of the Whole

218. The Committee of the Whole considered article 2 at its 3rd and 5th meetings, on 6 and 7 April 1977. In accordance with an understanding reached at the 1st meeting of the Committee of the Whole on 5 April 1977, article 2 was not submitted for adoption immediately after having been discussed, and decisions on the article and the amendments thereto were left to a later stage.

C. DRAFT ARTICLES AND AMENDMENTS NOT YET CONSIDERED BY THE COMMITTEE OF THE WHOLE

219. The Committee of the Whole has not yet considered articles 30 to 39 of the draft articles adopted by the International Law Commission and amendments thereto nor proposed new articles 36 *bis*, 37 *bis* and 39 *bis* submitted by participating delegations.

ARTICLE 30

1. International Law Commission text

220. The International Law Commission text provided as follows:

²² Amendments were also submitted to article 2 by the *Soviet Union* (A/CONF.80/C.1/L.22) and by the *Netherlands* (A/CONF.80/C.1/L.35). Since however these amendments were consequential upon amendments relating to articles 16 and 16 *bis* their text is reproduced in the subsection dealing with those articles (see paras. 92-101 above).

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

1. When two or more States unite and so form one successor State, any treaty in force at the date of the succession of States in respect of any of them continues in force in respect of the successor State unless:

(a) the successor State and the other State party or States parties otherwise agree; or

(b) it appears from the treaty or is otherwise established that the application of the treaty in respect of the successor State would be incompatible with its object and purpose or would radically change the conditions for the operation of the treaty.

2. Any treaty continuing in force in conformity with paragraph 1 shall apply only in respect of the part of the territory of the successor State in respect of which the treaty was in force at the date of the succession of States unless:

(a) in the case of multilateral treaty other than one falling within the category mentioned in article 16, paragraph 3, the successor State makes a notification that the treaty shall apply in respect of its entire territory;

(b) in the case of a multilateral treaty falling within the category mentioned in article 16, paragraph 3, the successor State and all the parties otherwise agree; or

(c) in the case of a bilateral treaty, the successor State and the other State party otherwise agree.

3. Paragraph 2 (a) does not apply if it appears from the treaty or is otherwise established that the application of the treaty in respect of the entire territory of the successor State would be incompatible with its object and purpose or would radically change the conditions for the operation of the treaty.

2. Amendments

221. Amendments to article 30 were submitted by Switzerland and the Federal Republic of Germany. They read as follows:

(a) *Switzerland* (A/CONF.80/C.1/L.44)

Add to article 30 a paragraph 4 reading as follows:

In the case of two or more States which unite to form a successor State and which retain, after uniting, the capacity to be bound by a treaty, article 14 of the present Convention applies *mutatis mutandis* to treaties maintained in force in respect of their territory under paragraph 2 of this article, when that territory is subsequently modified.

(b) *Federal Republic of Germany* (A/CONF.80/C.1/L.45)

Paragraph 1

Add the following subparagraph:

(c) it appears from the treaty or is otherwise established that the application of the treaty, wholly or in part, in respect of the successor State would be incompatible with another treaty obligation; in this case neither of the conflicting provisions shall continue in force for the successor State.²³

ARTICLE 31

1. International Law Commission text

222. The International Law Commission text provided as follows:

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

1. Subject to paragraphs 3 and 4, a successor State falling within article 30 may, by making a notification, establish its status as a contracting State to a multilateral treaty which is not in force if, at the date of the succession of States, any of the predecessor States was a contracting State to the treaty.

2. Subject to paragraphs 3 and 4, a successor State falling within article 30 may, by making a notification, establish its status as a party to a multilateral treaty which enters into force after the date of the succession of States if at that date any of the predecessor States was a contracting State to the treaty.

3. Paragraphs 1 and 2 do not apply if it appears from the treaty or is otherwise established that the application of the treaty in respect of the successor State would be incompatible with its object and purpose or would radically change the conditions for the operation of the treaty.

4. If the treaty is one falling within the category mentioned in article 16, paragraph 3, the successor State may establish its status as a party or as a contracting State to the treaty only with the consent of all the parties or of all the contracting States.

5. Any treaty to which the successor State becomes a contracting State or in conformity with paragraph 1 or 2 shall apply only in respect of the part of the territory of the successor State in respect of which consent to be bound by the treaty had been given prior to the date of the succession of States unless:

(a) in the case of a multilateral treaty not falling within the category mentioned in article 16, paragraph 3, the successor State indicates in its notification made under paragraph 1 or 2 that the treaty shall apply in respect of its entire territory; or

(b) in the case of a multilateral treaty falling within the category mentioned in article 16, paragraph 3, the successor State and all the parties or, as the case may be, all the contracting States otherwise agree.

6. Paragraph 5 (a) does not apply if it appears from the treaty or is otherwise established that the application of the treaty in respect of the entire territory of the successor State would be incompatible with its object and purpose or would radically change the conditions for the operation of the treaty.

2. Amendments

223. No amendment was submitted to article 31.

ARTICLE 32

1. International Law Commission text

224. The International Law Commission text provided as follows:

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

1. Subject to paragraphs 2 and 3, if before the date of the succession of States one of the predecessor States had signed a multilateral treaty subject to ratification, acceptance or approval, a successor State falling within article 30 may ratify, accept or approve the treaty as if it had signed that treaty and may thereby become a party or a contracting State to it.

2. Paragraph 1 does not apply if it appears from the treaty or is otherwise established that the application of the treaty in respect of the successor State would be incompatible with its object and purpose or would radically change the conditions for the operation of the treaty.

3. If the treaty is one falling within the category mentioned in article 16, paragraph 3, the successor State may become a party or a contracting State to the treaty only with the consent of all the parties or of all the contracting States.

²³ The amendment by the Federal Republic of Germany seeking to add an article 36 *bis* (A/CONF.80/C.1/L.47) (see para. 234 below) includes a consequential amendment to article 30.

4. Any treaty to which the successor State becomes a party or a contracting State in conformity with paragraph 1 shall apply only in respect of the part of the territory of the successor State in respect of which the treaty was signed by one of the predecessor States unless:

(a) in the case of a multilateral treaty not falling within the category mentioned in article 16, paragraph 3, the successor State when ratifying, accepting or approving the treaty gives notice that the treaty shall apply in respect of its entire territory; or

(b) in the case of a multilateral treaty falling within the category mentioned in article 16, paragraph 3, the successor State and all the parties or, as the case may be, all the contracting States otherwise agree.

5. Paragraph 4 (a) does not apply if it appears from the treaty or is otherwise established that the application of the treaty in respect of the entire territory of the successor State would be incompatible with its object and purpose or would radically change the conditions for the operation of the treaty.

2. Amendments

225. The following amendment was submitted to article 32:

Swaziland and Sweden (A/CONF.80/C.1/L.23)

Delete the article.

ARTICLE 33

1. International Law Commission text

226. The International Law Commission text provided as follows:

Article 33. Succession of States in cases of separation of parts of a State

1. When a part or parts of the territory of a State separate to form one or more States, whether or not the predecessor State continues to exist:

(a) any treaty in force at the date of the succession of States in respect of the entire territory of the predecessor State continues in force in respect of each successor State so formed;

(b) any treaty in force at the date of the succession of States in respect only of that part of the territory of the predecessor State which has become a successor State continues in force in respect of that successor State alone.

2. Paragraph 1 does not apply if:

(a) the States concerned otherwise agree; or

(b) it appears from the treaty or is otherwise established that the application of the treaty in respect of the successor State would be incompatible with its object and purpose or would radically change the conditions for the operation of the treaty.

3. Notwithstanding paragraph 1, if a part of the territory of a State separates from it and becomes a State in circumstances which are essentially of the same character as those existing in the case of the formation of a newly independent State, the successor State shall be regarded for the purposes of the present articles in all respects as a newly independent State.

2. Amendments

227. No amendment was submitted to article 33.²⁴

²⁴ The amendment by *France and Switzerland* to article 2 (A/CONF.80/C.1/L.41) (see para. 217(a) above) and the amendment by the *Federal Republic of Germany* seeking to add a new article 36 *bis* (A/CONF.80/C.1/L.47) (see para. 234 below) include consequential amendments to article 33.

ARTICLE 34

1. International Law Commission text

228. The International Law Commission text provided as follows:

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

When, after separation of any part of the territory of a State, the predecessor State continues to exist, any treaty which at the date of the succession of States was in force in respect of the predecessor State continues in force in respect of its remaining territory unless:

(a) it is otherwise agreed;

(b) it is established that the treaty related only to the territory which has separated from the predecessor State; or

(c) it appears from the treaty or is otherwise established that the application of the treaty in respect of the predecessor State would be incompatible with its object and purpose or would radically change the conditions for the operation of the treaty.

2. Amendments

229. No amendment was submitted to article 34.²⁵

ARTICLE 35

1. International Law Commission text

230. The International Law Commission text provided as follows:

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

1. Subject to paragraphs 3 and 4, a successor State falling within article 33, paragraph 1, may by making a notification, establish its status as a contracting State to a multilateral treaty which is not in force if, at the date of the succession of States, the predecessor State was a contracting State to the treaty in respect of the territory to which the succession of States relates.

2. Subject to paragraphs 3 and 4, a successor State falling within article 33, paragraph 1, may by making a notification, establish its status as a party to a multilateral treaty which enters into force after the date of the succession of States if at that date the predecessor State was a contracting State to the treaty in respect of the territory to which the succession of States relates.

3. Paragraphs 1 and 2 do not apply if it appears from the treaty or is otherwise established that the application of the treaty in respect of the successor State would be incompatible with its object and purpose or would radically change the conditions for the operation of the treaty.

4. If the treaty is one falling within the category mentioned in article 16, paragraph 3, the successor State may establish its status as a party or as a contracting State to the treaty only with the consent of all the parties or of all the contracting States.

2. Amendments

231. The following amendment was submitted to article 35:

Finland (A/CONF.80/C.1/L.39)

Replace the existing text by the following:

²⁵ The amendment by *France and Switzerland* to article 2 (A/CONF.80/C.1/L.41) (see para. 217 (a) above) includes a consequential amendment to article 34.

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

1. Subject to paragraph 2, on participation as a contracting State or as a party to multilateral treaties not in force at the date of the succession of States under article 33, paragraph 1, the provisions of article 17, paragraphs 1, 2 and 3 respectively shall be applied.

2. If the treaty is one falling within the category mentioned in article 16, paragraph 3, the successor State may establish its status as a party or as a contracting State to the treaty only with the consent of all the parties or of all the contracting States.

ARTICLE 36

1. International Law Commission text

232. The International Law Commission text provided as follows:

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

1. Subject to paragraphs 2 and 3, if before the date of the succession of States the predecessor State had signed a multilateral treaty subject to ratification, acceptance or approval and the treaty, if it had been in force at that date, would have applied in respect of the territory to which the succession of States relates, a successor State falling within article 33, paragraph 1, may ratify, accept or approve the treaty as if it had signed that treaty and may thereby become a party or a contracting State to it.

2. Paragraph 1 does not apply if it appears from the treaty or is otherwise established that the application of the treaty in respect of the successor State would be incompatible with its object and purpose or would radically change the conditions for the operation of the treaty.

3. If the treaty is one falling within the category mentioned in article 16, paragraph 3, the successor State may become a party or a contracting State to the treaty only with the consent of all the parties or of all the contracting States.

2. Amendments

233. The following amendment was submitted to article 36:

Swaziland and Sweden (A/CONF.80/C.1/L.23)

Delete the article.

PROPOSED NEW ARTICLE 36 bis

234. The Federal Republic of Germany proposed the insertion of a new article 36 bis (A/CONF.80/C.1/L.47) reading as follows:

Article 36 bis

1. Articles 30 and 33 apply to bilateral treaties which, at the date of a succession of States, were in force in respect of the territory to which the succession relates, when

(a) the successor State and the other State party expressly so agree

(b) the successor State and the other State party by reason of their conduct, and in particular of the fact that they apply the treaty, are to be considered as having so agreed.

2. A treaty in force under paragraph 1 applies in the relations between the successor State and the other State party from the date of the succession of States unless a different intention appears from their agreement or is otherwise established.

Consequential changes:

Article 30, paragraph 1:

Insert: "multilateral" between "any" and "treaty" [any multilateral treaty in force].

Article 30, paragraph 1 (a):

Delete "State party or".

Article 30, paragraph 2 (c):

Delete subparagraph (c).

Article 33, paragraph 1 (a):

Insert: "multilateral" between "any" and "treaty" [any multilateral treaty in force]

Article 33, paragraph 1 (b):

Insert: "multilateral" between "any" and "treaty" [any multilateral treaty]

ARTICLE 37

1. International Law Commission text

235. The International Law Commission text provided as follows:

Article 37. Notification

1. Any notification under article 30, 31 or 35 must be made in writing.

2. If the notification is not signed by the Head of State, Head of Government or Minister for Foreign Affairs, the representative of the State communicating it may be called upon to produce full powers.

3. Unless the treaty otherwise provides, the notification shall:

(a) be transmitted by the successor State to the depositary or, if there is no depositary, to the parties or the contracting States;

(b) be considered to be made by the successor State on the date on which it has been received by the depositary or, if there is no depositary, on the date on which it has been received by all the parties or, as the case may be, by all the contracting States.

4. Paragraph 3 does not affect any duty that the depositary may have, in accordance with the treaty or otherwise, to inform the parties or the contracting States of the notification or any communication made in connexion therewith by the successor State.

5. Subject to the provisions of the treaty, such notification or communication shall be considered as received by the State for which it was intended only when the latter State has been informed by the depositary.

2. Amendments

236. The following amendment was submitted to article 37:

Finland (A/CONF.80/C.1/L.40)

Replace the existing text by the following:

Article 37. Notification

The provisions of article 21 shall be applied to any notification under articles 30, 31 or 35.

PROPOSED NEW ARTICLE 37 bis

237. *The United States of America* proposed the insertion of a new article 37 bis (A/CONF.80/C.1/L.37) reading as follows:

Article 37 bis

1. An objection to the succession of a State to a treaty on the ground of incompatibility with the object and purpose of the treaty or on the ground that the succession of the State to the treaty would radically change the conditions of its operation, shall be made by notification in writing to the parties to the treaty and to the successor State, when appropriate, within twelve months either of the date of the succession of States if the objection is made by the successor State or of the receipt of the notification of succession if the objection is made by a party to the treaty.

2. An objection to succession to a treaty made pursuant to paragraph 1 shall prevent the application of the treaty to the successor State unless the objection has been rejected within twelve months from the date of the receipt of the objection by one or more of the recipients. Rejection shall be made by written notification to the parties to the treaty and to the successor State, when appropriate. If the objection has been rejected, a solution should be sought through the means indicated in article 39 bis of the Convention.

ARTICLE 38**1. International Law Commission text**

238. The International Law Commission text provided as follows:

Article 38. Cases of State responsibility and outbreak of hostilities

The provisions of the present article shall not prejudice any question that may arise in regard to the effects of a succession of States in respect of a treaty from the international responsibility of a State or from the outbreak of hostilities between States.

2. Amendments

239. No amendment was submitted to article 38.

ARTICLE 39**1. International Law Commission text**

240. The International Law Commission text provided as follows:

Article 39. Cases of military occupation

The provisions of the present articles do not prejudice any question that may arise in regard to a treaty from the military occupation of a territory.

2. Amendments

241. No amendment was submitted to article 39.

PROPOSED NEW ARTICLE 39 bis

242. *The United States of America* proposed the insertion of a new article on settlement of disputes, called article 39 bis (A/CONF.30/C.1/L.38), reading as follows:

Article 39 bis

1. Any dispute between two or more States Parties concerning whether one or more of them is a newly independent State or has become a State in circumstances which are essentially of the same

character as those existing in the case of the formation of a newly independent State, which is not settled through the means indicated in Article 33 of the Charter of the United Nations, may be referred by any one of those Parties to the International Court of Justice in conformity with the Statute of the Court.

2. Subject to paragraph 3 of this article, any other disputes regarding the interpretation or application of this Convention that are not settled through diplomatic channels may be submitted to arbitration by any party or parties to the dispute by means of a written notification to the other party or parties to the dispute. If the arrangements necessary to permit this arbitration to proceed, including the selection of the arbitrator or arbitrators, have not been completed within one year of the date of receipt of the notification, any party or parties to the dispute who are not primarily responsible for the failure to complete the arrangements may submit the disputes to the International Court of Justice for decision in accordance with the Statute of the Court.

3. Each State Party may at the time of signature or ratification of this Convention or accession thereto declare that it does not consider itself bound by paragraph 2 of this article. The other States Parties shall not be bound by paragraph 2 of this article with respect to any State Party which has made such a declaration.

4. Any State Party which has made a declaration in accordance with paragraph 3 of this article may at any time withdraw that declaration by notification to the Secretary-General of the United Nations.

5. When a dispute concerning the interpretation or application of this Convention includes a State Party which has made a declaration under paragraph 3, if the dispute is not settled through negotiations or by other agreed means, any party to the dispute may submit it to the conciliation procedure in the annex to the Convention by submitting a request to that effect to the Secretary-General of the United Nations.

ANNEX TO THE CONVENTION*Conciliation procedure*

1. Each conciliation commission shall be composed of three members: two members who shall be appointed respectively by the State or States Party to each side of the dispute, and a Chairman appointed in accordance with paragraph 2 of this annex. Each State Party to the present Convention shall designate in advance a person to serve as a member of such a commission. It shall notify the designation to the United Nations, which shall maintain a register of persons so designated. If it does not make the designation in advance, it may do so during the conciliation procedure up to the moment at which the Commission begins to draft the report which it is to prepare in accordance with paragraph 6 of this annex.

2. The chairman of the Commission shall be chosen by the other two members. If the other two members are unable to agree within sixty days from receipt of the request referred to in paragraph 5 of article 39 bis or if one of the parties to the dispute has not availed itself of its right to designate a member of the Commission, the Chairman shall be designated at the request of one of the parties to the dispute by the Secretary-General of the United Nations. The appointment shall be made within a period of one month from such a request. The Secretary-General shall appoint as the Chairman a qualified jurist who is not a national of any State party to the dispute.

3. Any vacancy shall be filled in the manner prescribed for the initial appointment.

4. The Commission shall function as soon as the Chairman has been appointed even if its composition is incomplete.

5. The Commission shall establish its own rules of procedure and shall reach its decisions and recommendations by a majority vote. It may recommend to the United Nations that an advisory opinion be requested from the International Court of Justice regarding the application or interpretation of the present Convention.

6. If the Commission is unable to obtain an agreement among the parties to the dispute on a settlement of the dispute within six months from the appointment of its Chairman, it shall prepare as soon as possible a report of its proceedings and transmit it to the parties to the dispute. The report shall include the Commission's conclusions upon the facts and questions of law and the recommendations which it has submitted to the parties to the dispute in order to facilitate a settlement of the dispute. The six months time-limit may be extended by decision of the Commission. The recommendations in the report of the Commission shall not be binding on the parties to the dispute unless all the parties to the

dispute have accepted them. Nevertheless, any party to the dispute may declare unilaterally that it will abide by the recommendations in the report so far as it is concerned.

7. The Secretary-General shall provide the Commission with such assistance and facilities as it may require. The expenses of the Commission shall be borne by the United Nations.

D. PARTS AND SECTIONS INTO WHICH THE DRAFT ARTICLES ARE DIVIDED

243. No decision has yet been taken concerning the division of the draft into parts and sections nor on the titles of those parts and sections.

Chapter III

PREAMBLE AND FINAL CLAUSES

244. As indicated in paragraph 9 above, the Committee of the Whole entrusted to the Drafting Committee the preparation of drafts, for submission directly to the Plenary, concerning the preamble and the final clauses of the future convention.

A. PREAMBLE

245. Proposals for the preamble were submitted by *Spain* (A/CONF.80/DC.9) and the *United Nations Council for Namibia* (A/CONF.80/DC.13).

246. They read as follows:

(a) *Spain*: proposal for the preamble to the Convention (A/CONF.80/DC.9)

The States Parties to the present Convention,

Considering the profound transformation of the international community wrought by the decolonization process,

Considering also the present trends in the international community towards greater integration and unification between States,

Convinced of the desirability of properly regulating the effects of such transformations upon treaty relations between States,

Convinced also that the codification and progressive development of the rules relating to succession of States in respect of treaties will contribute to the achievement of the purposes of the United Nations as set forth in the Charter,

Having in mind the principles of international law embodied in the Charter of the United Nations, particularly the principles of the equal rights and self-determination of peoples, of the sovereign equality and independence of all States, of non-interference in the domestic affairs of States, of the prohibition of the threat or use of

force and of respect for, and observance of, human rights and fundamental freedoms for all,

Reaffirming that any attempt to disrupt partly or completely the national unity and territorial integrity of a State or its political independence is incompatible with the purposes and principles of the Charter,

Having in mind also the provisions of the 1969 Vienna Convention on the Law of Treaties,

Mindful that any question relating to the legality of a succession of States is governed by international law and, in particular, by the principles of international law embodied in the Charter of the United Nations and set forth in the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations,

Affirming that the rules of customary international law will continue to govern questions not regulated by the present Convention,

Have agreed as follows:

(b) *United Nations Council for Namibia*: proposal for the preamble to the Convention (A/CONF.80/DC.13)

Taking into account General Assembly resolution 2145 (XXI) of 27 October 1966, by which the General Assembly of the United Nations terminated the Mandate of South Africa over South West Africa (Namibia) and assumed direct responsibility for the Territory until its independence,

B. FINAL CLAUSES

247. A draft article of a final clause was submitted by the *United Kingdom* in an annex to a working paper presented by that same delegation in connexion with article 7 (A/CONF.80/C.1/L.9).²⁶ The draft article proposed for inclusion in the final clauses read as follows:

Article X. Participation in this Convention by a future successor State

1. Where a succession of States occurs on or after the date on which the present Convention is opened for signature [in Vienna], the successor State may express its consent to be bound thereby only by signature in accordance with article A followed by ratification in accordance with article B or by accession in accordance with article C; it may not become a party or a contracting State by notification of succession in accordance with articles [16,

²⁶ See foot-note 19 above.

17, 29, 30, 31 or 35] or by ratifying the signature of its predecessor State in accordance with articles [18, 32 or 36] or otherwise by virtue of any of the provisions of parts III or IV of the present Convention.

2. A successor State which, as provided for in paragraph 1, signs the present Convention in accordance with article A or ratifies or accedes to it in accordance with articles B or C may, at the time of signature or of the deposit of its instrument of ratification or accession, declare that it will apply the provisions of the present Convention in respect of its own succession.

3. Where a successor State has made a declaration in accordance with paragraph 2, then, notwithstanding article 7, the provisions of the present Convention shall apply as between the successor State and any other party to the present Convention, to the effects of the particular succession of States in question and shall, subject to paragraph 5, so apply as from the date on which the present Convention enters into force for the successor State.

4. A successor State which has made a declaration in accordance with paragraph 2 may, at the time of making the declaration or at any time thereafter, further declare it will provisionally apply the provisions of the present Convention in respect of its own succession.

5. Where a successor State has made a declaration in accordance with paragraph 4, then, notwithstanding article 7, the provisions of the present Convention shall apply provisionally, as between the successor State and any other State which is a contracting State, to the effects of the succession of States in question.

6. A declaration made in accordance with paragraph 2 or paragraph 4 shall be contained in a written notification addressed to the Secretary-General of the United Nations who shall inform the parties and the States entitled to become parties to the present Convention of the deposit with him of that notification and of its terms.

ANNEX

Check list of documents submitted during the 1977 session of the Conference to the Committee of the Whole by States participating in the Conference

[In the list which follows, the reference under the heading "Paragraphs" is to the paragraph or paragraphs of this report in which the text of the document may be found.]

<i>Document No.</i>	<i>Sponsors</i>	<i>Article</i>	<i>Paragraphs</i>
A/CONF.80/C.1/L.1	Byelorussian Soviet Socialist Republic	7	205, <i>a</i>
A/CONF.80/C.1/L.2	Romania	1, 3 and 4	18
A/CONF.80/C.1/L.3	Australia	6	197, <i>a</i>
A/CONF.80/C.1/L.4	Romania	5	32
A/CONF.80/C.1/L.5	Romania	6	197, <i>b</i>
A/CONF.80/C.1/L.6	Ethiopia	6	197, <i>c</i>
A/CONF.80/C.1/L.7	Malaysia	7	205, <i>b</i>
A/CONF.80/C.1/L.8	Union of Soviet Socialist Republics	6	197, <i>d</i>
A/CONF.80/C.1/L.9	United Kingdom of Great Britain and Northern Ireland: working paper	7 and final clauses	247, see foot-note 19
A/CONF.80/C.1/L.10 and Rev.1	Cuba	7	See foot- note 20
A/CONF.80/C.1/L.10/Rev.2	Cuba and Somalia	7	205, <i>c</i>
A/CONF.80/C.1/L.11	United Kingdom of Great Britain and Northern Ireland	8	39, <i>a</i>
A/CONF.80/C.1/L.12	United Kingdom of Great Britain and Northern Ireland	9	46
A/CONF.80/C.1/L.13	United Kingdom of Great Britain and Northern Ireland	9 <i>bis</i>	See foot- note 7.
A/CONF.80/C.1/L.13/Rev.1	United Kingdom of Great Britain and Northern Ireland	9 <i>bis</i>	52
A/CONF.80/C.1/L.14	United Kingdom of Great Britain and Northern Ireland	10	57, <i>a</i> See foot- note 8.
A/CONF.80/C.1/L.15	Malaysia	8	39, <i>b</i>
A/CONF.80/C.1/L.16	United States of America	7	205, <i>d</i>
A/CONF.80/C.1/L.17	Singapore	6	197, <i>e</i>

<i>Document No.</i>	<i>Sponsors</i>	<i>Article</i>	<i>Paragraphs</i>
A/CONF.80/C.1/L.18	Finland	12	211, <i>a</i>
A/CONF.80/C.1/L.19	Mexico	12	211, <i>b</i>
A/CONF.80/C.1/L.20	Cuba	12	211, <i>d</i>
A/CONF.80/C.1/L.21	Malaysia	12	211, <i>e</i>
A/CONF.80/C.1/L.22	Union of Soviet Socialist Republics	16 <i>bis</i>	95, <i>b</i>
A/CONF.80/C.1/L.23	Swaziland and Sweden	18, 29 32 and 36	111; 181, <i>a</i> 225; 233
A/CONF.80/C.1/L.24	Afghanistan	11 and 12	65; 211, <i>f</i>
A/CONF.80/C.1/L.25	Austria	19	118, <i>a</i>
A/CONF.80/C.1/L.26	Austria	22	141
A/CONF.80/C.1/L.27	Argentina: Subamendment to the amendment by Mexico (A/CONF.80/C.1/L.19)	12	211, <i>c</i>
A/CONF.80/C.1/L.28	Czechoslovakia, Poland and Ukrainian Soviet Socialist Republic	22 <i>bis</i>	188
A/CONF.80/C.1/L.28/Rev.1	Czechoslovakia, Poland, Singapore, Ukrainian Soviet Socialist Republic	22 <i>bis</i>	190
A/CONF.80/C.1/L.29	Australia	21	134
A/CONF.80/C.1/L.30	Finland	23 and 24	148, <i>a</i>
A/CONF.80/C.1/L.31	Finland	26 and 27	164, <i>a</i>
A/CONF.80/C.1/L.32	Finland	29	181, <i>b</i>
A/CONF.80/C.1/L.33	Australia	23	148, <i>b</i>
A/CONF.80/C.1/L.34	Australia	26	See foot- note 16.
A/CONF.80/C.1/L.34/Rev.1	Australia and Ireland	26	164, <i>b</i>
A/CONF.80/C.1/L.35	Netherlands	16 and 2	95, <i>a</i> See foot- note 22.
A/CONF.80/C.1/L.36	Federal Republic of Germany	19	118, <i>b</i>
A/CONF.80/C.1/L.37	United States of America	37 <i>bis</i>	237
A/CONF.80/C.1/L.38	United States of America	39 <i>bis</i>	237
A/CONF.80/C.1/L.39	Finland	35	231
A/CONF.80/C.1/L.40	Finland	37	236
A/CONF.80/C.1/L.41	France and Switzerland	2, 33 and 34	217, <i>a</i> See foot- notes 24 and 25.
A/CONF.80/C.1/L.42 and Corr.1	Malaysia	17	104
A/CONF.80/C.1/L.43	Malaysia	29	181, <i>c</i>
A/CONF.80/C.1/L.44	Switzerland	30	221, <i>a</i>
A/CONF.80/C.1/L.45	Federal Republic of Germany	30	221, <i>b</i>
A/CONF.80/C.1/L.46	Cuba	2	217, <i>b</i>
A/CONF.80/C.1/L.47	Federal Republic of Germany	36 <i>bis</i>	234