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UNITED NATIONS CONFERENCE ON
SUCCESSION OF STATES IN
RESPECT OF TREATIES
(Vienna, 4 April - 6 May 1977)

ANALYTICAL COMPILATION OF COMMENTS OF GOVERNMENTS ON
THE FINAL DRAFT ARTICLES ON SUCCESSION OF STATES IN RESPECT
OF TREATIES

Working paper prepared by the Secretariat

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INTRODUCTION

1. In its report on the work of its twenty-sixth session held in 1974, the International Law Commission submitted to the General Assembly a final draft entitled "Draft articles on succession of States in respect of treaties". ^{1/} After considering the report, the General Assembly at its twenty-ninth session adopted resolution 3315 (XXIX), Part II, by which it invited Member States to submit to the Secretary-General their written comments on the draft articles. The comments submitted pursuant to that resolution are reproduced in document A/10198 and Add.1-6.
2. At its thirtieth session, the General Assembly considered the question again and adopted resolution 3496 (XXX) by which it urged Member States which had not yet been able to do so to submit their written comments on the draft articles. The comments submitted further to that resolution are reproduced in document A/31/144.
3. This analytical compilation of the written comments referred to in paragraphs 1 and 2 above and of the oral comments made by delegations in the Sixth Committee at the twenty-ninth and thirtieth sessions of the General Assembly has been prepared by the Secretariat in accordance with the practice followed for previous codification conferences.
4. The compilation consists of two sections: section I is devoted to comments on the draft as a whole and section II to comments on specific draft articles and questions including comments on the two proposals referred to in paragraph 75 of the Commission's report on the work of its twenty-sixth session concerning the question of multilateral treaties of universal character and the settlement of disputes.
5. For simplicity of presentation, abbreviated titles have been used throughout the compilation. The table below indicates, opposite each abbreviated title, the full title of the relevant document as well as its symbol number.

1/ Official Records of the General Assembly, Twenty-ninth Session, Supplement No. 10 (A/9610/Rev.1), Chap. II.

ABBREVIATED TITLE	OFFICIAL TITLE AND SYMBOL NUMBER
<u>Oral comments 1974</u>	<u>Official Records of the General Assembly, Twenty-ninth Session, Sixth Committee, Summary records of meetings</u>
<u>Written comments 1975</u>	Succession of States in respect of treaties - Report of the Secretary-General (A/10198 and Add. 1-6)
<u>Oral comments 1975</u>	<u>Official Records of the General Assembly, Thirtieth Session, Sixth Committee, Summary records of meetings</u>
<u>Written comments 1976</u>	Conference of Plenipotentiaries on Succession of States in respect of treaties - Report of the Secretary-General (A/31/144)

I. COMMENTS ON THE DRAFT AS A WHOLE

A. Value of the draft and usefulness of a convention on the topic

ARGENTINA

Oral comments 1975

The representative of Argentina

... congratulated ILC and the Special Rapporteurs on having produced a legal instrument which took into account the needs of new States entering international life.

1526th meeting, para. 38.

AUSTRALIA

Written comments 1975

The Australian Government considers that the draft articles adopted by the International Law Commission are generally acceptable.

Oral comments 1975

The representative of Australia stated:

... as ILC had noted in its report on the work of its twenty-sixth session, the principal problem involved in codifying the rules applicable to the succession of States in respect of treaties was to establish a balance between the principle of continuity and that of the "clean slate". The result to date of the Commission's work was far from perfect, as was inevitably the case with a set of compromises. It had obviously been necessary to bow frequently to practical and political considerations at the expense of precedent or purely legal principles. Nevertheless, his Government considered that the draft articles were generally acceptable.

1526th meeting, para. 19.

BANGLADESH

Oral comments 1975

The representative of Bangladesh stated that his country

- ... believed that the law on succession in respect of treaties was assuming great importance because of changes in the structure of international society. Although his delegation was highly satisfied with the work of ILC on the topic, it had reservations concerning some provisions of the draft articles,

1547th meeting, para. 12.

BELGIUM

Written comments 1975

The Belgian Government has studied with great interest the draft articles on succession of States in respect of treaties as adopted in second reading by the International Law Commission at its twenty-sixth session. It feels that this draft satisfies the need for certainty and clarity which has often been lacking in the past in this very important field of international relations. The draft is also important because its ultimate adoption by the international community will complete the task of codification of the general law of treaties.

BOTSWANA

Oral comments 1975

The representative of Botswana stated:

The draft articles on succession of States in respect of treaties, a great achievement on the part of ILC, were generally acceptable.

1547th meeting, para. 30.

BULGARIA

Oral comments 1975

The representative of Bulgaria stated:

While sharing the basic philosophy of the draft articles, his delegation felt that they could still be improved.

1535th meeting, para. 42.

BYELORUSSIAN SOVIET SOCIALIST REPUBLIC

Oral comments 1974

The representative of the Byelorussian SSR stated:

The Commission had studied the question of the succession of States in respect of treaties for more than 20 years and it was a problem of immediate interest for all the new States which had appeared during that period of time.

It was now a matter of urgency to complete that work.

1491st meeting, para. 2.

Written comments 1975

The work of the International Law Commission on the draft articles on the succession of States in respect of treaties represents an important aspect of the process of the progressive development of international law and is aimed at regulating on the basis of existing practice the transfer of rights and treaty obligations of a predecessor State to a successor State which has emerged as a result of the collapse of the colonial system of imperialism or as a result of the uniting or separation of States.

...

The draft articles prepared by the International Law Commission on the succession of States in respect of treaties constitutes, on the whole, an acceptable basis for discussion and further work. However, the comments and observations expressed earlier by a number of delegations, in particular at the twenty-seventh and twenty-ninth sessions of the General Assembly, should be taken into account in the further work of completing the draft.

Oral comments 1975

The representative of the Byelorussian SSR stated:

... ILC had accomplished a great deal of constructive work on the topic of succession of States in respect of treaties; ...

On the whole, however, the draft articles ... suffered from various drawbacks.

1536th meeting, paras. 5 and 6.

CANADA

Oral comments 1974

The representative of Canada stated:

With regard to the form of the draft, his delegation noted with interest the Commission's proposal, in paragraph 84 of the report, to the effect that after Member States had submitted their written comments and observations on the draft articles, an international conference should be convened to conclude a convention on the subject. Nevertheless, his delegation was not convinced that a convention would be the best type of instrument for advancing international law on the subject. First of all, as the Commission had pointed out, new States could only become parties to such a convention after they had acquired statehood. Secondly, it was unlikely a large number of further new States would emerge, so that to some extent such a convention might not be necessary.

...

It might be that a declaratory statement of principles formulated by the Sixth Committee would be just as effective as a guide to States.

1489th meeting, para. 41.

Oral comments 1975

The representative of Canada stated:

... ILC had recommended the usual practice of convening a diplomatic conference to consider the draft articles and adopt and open for signature a convention

based on the draft by ILC. His delegation, however, shared the reservations expressed by the Governments of Belgium and France in their written comments (see A/10198) as to whether the adoption of a convention was really the most appropriate and effective means of advancing the codification and progressive development of international law on the subject. On a practical and juridical plane, when, subsequent to the adoption and entry into force of a convention on State succession in respect of treaties, a State acquired independence--an event likely to arise much less frequently in future because the era of colonization was drawing to a close--it would of course not be bound by the convention. It might be assumed that the newly independent State would examine the treaties previously applicable to its territory, determine which it was prepared to apply and which it was not and declare itself accordingly. Only then, if at all, could it be expected to consider the question whether to accede to the convention.

States which had a particular interest in the question of the succession of States with respect of treaties might consider that the codification and progressive development of international law on the subject would be better served by the adoption of articles in the form of a code by a resolution of the General Assembly rather than by the adoption of a convention which might attract only a small number of ratifications and accessions.

1535th meeting, paras. 7-8.

CHILE

Oral comments 1975

The representative of Chile stated:

His delegation shared the view of ILC and of many States that the present draft articles should take the form of a convention ...

1537th meeting, para. 65.

CONGO

Oral comments 1975

The representative of the Congo stated:

The draft articles under consideration, which were the result of commendable work by ILC, were a useful basis for preparing a final text.

1537th meeting, para. 59.

CUBA

Oral comments 1974

The representative of Cuba stated:

... he recognized the importance of the work done by the Commission and considered that the draft articles on the succession of States in respect of treaties constituted a useful basis for the further consideration of the problem. As a whole the draft articles had been worked out carefully, taking into account both past experience and the current situation.

...

If the future convention was not to cover either the new forms of colonialism, or cases of social revolution, and if in accordance with article 7 it was to provide for the application of the principle of non-retroactivity, one could ask what purpose it would serve. It was clear that the draft articles did not correspond to the interests of either the new States which had emerged from the decolonization process or of those which would liberate themselves from new forms of colonialism in the future.

1490th meeting, paras. 18 and 24.

CYPRUS

Oral comments 1974

The representative of Cyprus stated:

The final set of 39 draft articles on succession of States in respect of treaties represented the culmination of a concentrated effort by the Commission, and he paid a

tribute to the dedicated work of the two Special Rapporteurs, Sir Humphrey Waldock and Sir Francis Vallat. Taking into account the comments submitted by Governments, the Commission had revised its first draft, changing somewhat its structure and amplifying some of the original provisions, but had nevertheless maintained its basic approach to the codification of the topic and confirmed the principles on which the draft was based. His delegation was in agreement with that attitude and was therefore able to support the draft as a whole as a suitable basis for the elaboration of a convention.

1496th meeting, para. 53.

CZECHOSLOVAKIA

Oral comments 1974

The representative of Czechoslovakia stated:

The draft articles adopted by the Commission derived from existing principles of State succession and could be a substantial contribution to the codification and progressive development of international law. It was clear from the report that the views of Member States had been taken into account, including those of her Government.

1488th meeting, para. 9.

Oral comments 1975

The representative of Czechoslovakia stated:

... his Government appreciated the considerable work done by ILC on succession of States in respect of treaties, particularly since the matter also involved the solution of questions closely related to the victorious liberation movements and the fight against colonialism.

His delegation welcomed the fact that the set of draft articles on succession of States in respect of treaties incorporated correct and progressive principles of international law and therefore could be regarded as a solid basis for the codification of that important topic.

1537th meeting, paras. 29-30.

DENMARK

Oral comments 1974

The representative of Denmark stated:

Another thing that was clear from the written observations of the Danish Government was that it would prefer the draft articles to take the form of a convention.

1491st meeting, para. 39.

ECUADOR

Oral comments 1974

The representative of Ecuador stated:

... his delegation found the Commission's report acceptable as a whole.

1494th meeting, para. 39.

Oral comments 1975

The representative of Ecuador stated:

One very interesting point raised in the observations of Member States was whether the text finally adopted should be given the form of a convention, a resolution or a declaration of principles. The succession of States had remained thus far subject to customary law and it was therefore quite legitimate to wonder whether it was worth making it the subject of a convention or whether it would be sufficient to formulate a set of general principles which would govern the subject. It should also be borne in mind that regulations of that type would be applied less and less since the cases of succession of States would inevitably diminish with the passage of time, as the process of decolonization and the formation of new States came to an end.

1530th meeting, para. 24.

EGYPT

Oral comments 1975

The representative of Egypt stated:

The question of succession of States in respect of treaties was one of the most important and delicate dealt with in the report of ILC on the work of its twenty-sixth session (A/9610/Rev.1), in that it involved legal questions arising out of the elimination of colonialism, the self-determination of colonized peoples and the integration of those peoples into the international community as full members. The draft articles (*ibid.*, chap. II, section D) filled a gap in international law, since there was no uniformity in the area, either in State practices or in the views of international legal scholars. ILC, with great foresight, had concerned itself with the practice of newly independent States without ignoring that of older States •••

His delegation believed that the draft articles on succession were generally acceptable.

...

The agreement reached at the conference would be of great importance in the future in connexion with the uniting and separation of States.

1537th meeting, paras. 2 and 11.

ETHIOPIA

Oral comments 1974

The representative of Ethiopia stated:

His delegation hoped that, subject to such further comments as Governments might make, the text of the draft articles would ultimately be embodied in a treaty, to be made supplementary to the Vienna Convention on the Law of Treaties, with which the topic was, in the nature of things, intimately linked.

His delegation was in general agreement with the draft articles ...

1496th meeting, paras. 38-39.

FINLAND

Oral comments 1974

The representative of Finland stated:

The present text was, on the whole, very satisfactory and constituted a good basis for a future convention on the subject.

1486th meeting, para. 21.

FRANCE

Oral comments 1974

The representative of France stated:

...

his delegation had its doubts about the appropriateness or even the feasibility of giving the draft articles the form of a convention. In that respect, paragraph 62 of the report was highly pertinent. His delegation questioned the advisability of codifying the law relating to succession of States in respect of treaties in the form of a convention, since under the general law of treaties a convention could be invoked only if the State concerned was a party to it, and then only from the date on which it became a party. Moreover, according to the rule of customary law incorporated in article 28 of the Vienna Convention on the Law of Treaties, the provisions of a treaty, in the absence of any intention to the contrary, did not bind a party in relation to any act or fact which had taken place before the date of the entry into force of that treaty with respect to that party. Therefore, the contemplated convention could be invoked against the new successor State only if it became a party to it and from that time only. The convention would not be binding on it in respect of acts which took place before the date on which it became a party and other States would not be bound with respect to the successor State before that date. It might therefore be preferable to give the draft articles another form, for instance, that of a resolution.

1492nd meeting, para. 85.

Written comments 1975

The question may indeed be raised as to what value there would be in codifying the law of the succession of States in respect of treaties in the form of a convention, in view of the fact that under the general law of treaties a convention is not binding upon a State unless and until it is a party to the convention. Moreover, under the customary rule embodied in article 28 of the Vienna Convention on the Law of Treaties, the provisions of a treaty, in the absence of a contrary intention, "do not bind a party in relation to any act or fact which took place ... before the date of the entry into force of the treaty with respect to the party concerned". The proposed convention would not be binding on the new successor

State unless and until it became party to it. There is a serious risk that the convention would not be binding upon it in respect of any acts which took place before the date on which it became a party, and that other States too would not be bound in relation to it before that date. The French Government has carefully taken note of the explanations given on this subject by the Chairman of the International Law Commission at its twenty-ninth session, concerning the scope of article 7 of the draft in conjunction with article 28 of the Vienna Convention. However, it believes that the question deserves further study.

The question may therefore be raised as to whether it would not be preferable to give the text some form other than that of a convention, once it has proved that it contains solutions which are generally acceptable to States as a whole. Although the French Government does not yet have a definite position on this subject, it considers that the text might possibly take the form of a resolution.

Oral comments 1975

The representative of France stated:

His Government paid tribute to the very important work accomplished by ILC. However, it did not believe that any set of draft articles produced by ILC in its task of codifying and developing international law should automatically take the form of a convention. His Government did not subscribe to the view that it was preferable to prepare a convention simply because such an instrument would enjoy greater authority. It would be a mistake to draw up in the form of a convention provisions which were not designed to govern in a directly binding manner cases of succession of States which might occur, because of the relative effect of treaties and particularly since in most cases there would be no succession to the convention on the succession of States in respect of treaties. Paragraph 62 of the report of ILC on the work of its twenty-sixth session (A/9610/Rev.1) contained some very relevant and convincing points in that regard. Technically, of course, it might be possible to remedy the imperfections of the existing draft. However, at the current stage, unless new ideas were brought forward to solve the problem, such a step could only be taken at the expense of doing violence to the principles of relativity and non-retroactivity, violence of such magnitude, particularly with regard to the security of legal relationships, that his Government would not be able to accept such a step. It would be more appropriate to draft model rules which, it was to be hoped, could be adopted unanimously rather than a convention which, in the final analysis, might not receive a sufficient number of ratifica-

tions to have the scope ILC had envisaged for it. In that connexion, he wondered whether it would have enhanced the authority of the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations (General Assembly resolution 2625 (XXV), annex) of its provisions had been embodied in a convention which might currently have been ratified by only a small number of States.

1536th meeting, para. 25.

GERMAN DEMOCRATIC REPUBLIC

Oral comments 1974

The representative of the German Democratic Republic stated:

... consideration of the draft articles on succession of States in respect of treaties had undoubtedly been a matter of priority at the twenty-sixth session of the Commission. It was with great interest that his delegation had taken note of the final draft articles.

1486th meeting, para. 47.

GERMANY, FEDERAL REPUBLIC OF

Oral comments 1974

The representative of the Federal Republic of Germany stated:

His delegation shared the view finally taken by the Commission that a convention on the subject had its own value irrespective of the possibility of any practical application. The consolidation of legal rules applicable to the succession of States was an important step forward in reaching international consensus in a most significant field of law. That progress was particularly to be welcomed because the draft articles were not simply an identification of existing rules, but also a progressive development of international law, given the fact that international practice in the field of the succession of States had produced few rules that were consistently applied. And yet the Commission's approach had enabled it to produce a text that could meet with a large measure of approval.

Despite its positive appraisal of the draft as a whole, however, his Government had some doubts on certain points.

1490th meeting, paras. 29-30.

Written comments 1975

1. The Government of the Federal Republic of Germany considers that the 39 draft articles approved by the International Law Commission after the second reading and submitted to the United Nations General Assembly constitute a sound basis for the further work of elaborating a convention on the subject of State succession in respect of treaties. The draft articles are to be welcomed as a step towards the development of law in this field. This attempt appears all the more constructive as a uniform State practice is, up to the present time hardly discernible. The present draft rules on the succession of States are therefore primarily seen as a valuable contribution to the progressive development of the international law discernible in this field.

2. The Government of the Federal Republic of Germany welcomes the decision of the International Law Commission to follow closely, in the formulation of the present draft, both the structure and the terminology of the Vienna Convention on the Law of Treaties. In fact, the draft expressly refers to certain articles of the Vienna Convention so as to achieve a coherent and uniform corpus juris of the international law of treaties.

Oral comments 1975

The representative of the Federal Republic of Germany stated:

In his Government's opinion, the draft articles provided an appropriate basis on which to continue to elaborate a convention on the succession of States in respect of treaties. ILC had acted wisely in deciding to model the draft on the structure and terminology of the Vienna Convention on the Law of Treaties, thus ensuring the emergence of a uniform and coherent body of law in that important field of international relations.

1526th meeting, para. 13.

GHANA

Oral comments 1975

The representative of Ghana stated:

... his delegation felt that the draft prepared by ILC was satisfactory, on the whole, and that its adoption would contribute to the development and codification of international law.

1526th meeting, para. 44.

GREECE

Oral comments 1974

The representative of Greece stated:

The progress which the Commission had made on the topic of succession of States in respect of treaties was largely due to the outstanding preparatory work of the Special Rapporteurs, all of whom were outstanding British jurists.

1493rd meeting, para. 2.

Oral comments 1975

The representative of Greece stated:

His delegation considered that the draft articles should take the form of a convention.

1537th meeting, para. 19.

HUNGARY

Written comments 1976

The Government of the Hungarian People's Republic is of the opinion that the International Law Commission has accomplished a very useful and successful work by drawing up the draft convention of 1974 on succession of States in respect of treaties. The draft basically corresponds to the practice of States and also develops international law on the subject.
...

The Government of the Hungarian People's Republic believes that the draft as a whole provides an adequate basis for further work, but still has a number of provisions that might give rise to problems.

INDIA

Oral comments 1974

The representative of India stated:

By and large, his delegation was satisfied with the draft articles ...
1495th meeting, para. 6.

Oral comments 1975

The representative of India stated:

... his delegation agreed with the unanimous view of the International Law Commission (ILC) (see A/9610/Rev.1, para. 63) that the draft articles on succession of States in respect of treaties (*ibid.*, chap. II, sect. D) should be given the same status as the Vienna Convention on the Law of Treaties¹ and that, accordingly, they should be established in the form of a convention rather than in the form of a declaration of principles. The primary objective in codifying that branch of law was to set forth an authoritative statement on the subject, which would be best realized by means of a convention.
1536th meeting, para. 1.

INDONESIA

Oral comments 1974

The representative of Indonesia stated:

... the confidence which his delegation had always placed in the Commission was strengthened by the important contribution which it had just made to the codification and progressive development of international law, in the form of the draft articles on the succession of States in respect of treaties.
1495th meeting, para. 31.

Oral comments 1975

The representative of Indonesia stated:

The preparation by ILC of the draft articles on succession of States in respect of treaties constituted a significant contribution to the progressive development and codification of international law.

1537th meeting, para. 43.

IRAN

Oral comments 1974

The representative of Iran stated:

His delegation supported the adoption of a convention based on the draft articles adopted by the Commission. A convention was, of course, applicable only to the States parties, but any independent State could be activated by the rules and principles embodied in a treaty to which it had not acceded, and apply them in its own international relations. In that respect, conventions constituted sources of customary law. However, an effort should first be made to remedy the short-comings of the draft with regard to non-retroactivity, and to word the provisions as a whole in a manner satisfactory to the largest number of States, in order to secure the widest possible participation in the future convention.

1494th meeting, para. 50.

Oral comments 1975

The representative of Iran stated:

Since the draft articles were to supplement the Vienna Convention on the Law of Treaties, it would seem logical for them to take the form of a convention, which should be adopted by an international conference of plenipotentiaries.

1548th meeting, para. 12.

IRAQ

Oral comments 1974

The representative of Iraq stated:

... the final draft articles ...
were in principle acceptable to his delegation and should
form the basis of discussion at a future conference of
plenipotentiaries convened to adopt a convention on
succession of States in respect of treaties.

1485th meeting, para. 8.

Oral comments 1975

The representative of Iraq stated:

With regard to the draft articles on succession of
States in respect of treaties, he felt they were acceptable
and formed the basis for the preparation of an agreement.
1547th meeting, para. 60.

ISRAEL

Oral comments 1974

The representative of Israel stated:

His delegation continued to think that, while the
Commission's practice of presenting its conclusions in the
form of draft articles capable of constituting a convention
was sound, that did not imply any automatic commitment
on the part of the Sixth Committee, as a political organ, to
transform the draft articles into a convention. In its view a
flexible approach was to be preferred.

1485th meeting, para. 21.

Oral comments 1975

The representative of Israel stated:

His delegation
therefore tended to sympathize with those who favoured a
declaration of principle on the topic, which might well be
of more lasting value than a convention with a very limited
number of parties.

1546th meeting, para. 9.

ITALY

Oral comments 1974

The representative of Italy stated:

Broadly speaking, the draft articles on succession of States in respect of treaties met the need for certainty and clarity in international relations.

1484th meeting, para. 52.

JAPAN

Oral comments 1974

The representative of Japan stated:

If a set of draft articles could be formulated which were just, reasonable and equitable and, therefore, generally acceptable, they would become an effective and useful guide for the international community even before their entry into force.

... the draft articles prepared by the Commission would serve as a useful basis for further consideration on the subject...

1487th meeting, para. 17.

Oral comments 1975

The representative of Japan stated:

With regard to the final form of the draft, his delegation had not yet taken a firm stand but had found the proposal of the representative of the United Kingdom (1536th meeting) concerning a study by ILC of modalities by which new States could be associated with the rules on succession of States in respect of treaties to be of great interest.

1546th meeting, para. 30.

JORDAN

Oral comments 1974

The representative of Jordan:

... expressed his delegation's appreciation of the contribution the Commission had made to the codification and progressive development of international law as a result of the progress it had achieved at its twenty-sixth session with regard to the items on its agenda, particularly the one relating to succession of States in respect of treaties.

1492nd meeting, para. 75.

KENYA

Oral comments 1974

The representative of Kenya stated:

... that reorganization of the draft articles on succession of States in respect of treaties and the rephrasing of some of the provisions, including the addition of a number of new articles, constituted significant improvements on the 1972 draft.

1493rd meeting, para. 26.

Oral comments 1975

The representative of Kenya, referring to the draft articles on succession of States in respect of treaties,

... said that his delegation ... was of the opinion that they might serve as a basis for the conclusion of a convention.

1545th meeting, para. 1.

LESOTHO

Oral comments 1974

The representative of Lesotho stated:

His delegation attached great importance to the question of succession of States in respect of treaties and commended the draft articles prepared by the Commission.
1493rd meeting, para. 49.

LIBERIA

Oral comments 1975

The representative of Liberia stated:

His delegation congratulated ILC on the work it had accomplished on the draft articles on succession of States in respect of treaties, the importance of which could not be over-emphasized. Their prompt adoption by the world community could further ensure the maintenance of international peace and order among nations which was a fundamental objective of the United Nations.
1536th meeting, para. 23.

LIBYAN ARAB REPUBLIC

Oral comments 1974

The representative of the Libyan Arab Republic stated:

The Commission's most prominent achievement at that session had been the completion of the second reading of the draft articles on the succession of States in respect of treaties.
1496th meeting, para. 16.

MADAGASCAR

Oral comments 1974

The representative of Madagascar stated:

The adoption by the Commission of definitive draft articles on the succession of States in respect of treaties was the result of a considerable amount of work.

...

With regard to the question whether the draft articles should take the form of a convention or a declaration, his delegation agreed with the views advanced by the Commission in favour of a convention. Complex political considerations were often an extremely important factor in a newly independent State's acceptance or refusal of succession in respect of treaties concluded by the predecessor State. However, as the Commission had pointed out in paragraph 63 of its report, a new State, though not formally bound by the convention, would find in its provisions the norms by which to be guided in dealing with questions arising from the succession of States.

1495th meeting, paras. 43 and 49.

Oral comments 1975

The representative of Madagascar stated:

His delegation congratulated ILC on the valuable work it had done since 1962 with regard to the codification of international law relating to the extremely difficult question of succession of States. ILC had once again demonstrated the importance of its role in that area and had helped to ensure the primacy of law in relations between States and, hence, the maintenance of international peace and security. However, in the case of succession of States in respect of treaties, political considerations had a great influence on legal considerations and it must therefore be determined whether draft articles drawn up by ILC on that topic struck the necessary balance between, on the one hand, the stability of conventional relations between States and, on the other, the imperatives of national sovereignty and equality of States, two conditions which were not always easily reconciled.

1537th meeting, para. 21.

MALI

Oral comments 1974

The representative of Mali stated:

... his delegation noted with satisfaction that, in pursuance of General Assembly resolution 3071 (XXVIII), the International Law Commission had completed 39 draft articles on succession of States in respect of treaties, which constituted an important contribution to the codification and progressive development of international law as well as to détente and international co-operation.

1496th meeting, para. 31.

Written comments 1976

The Government of Mali welcomes with great satisfaction the text of the draft articles on succession of States in respect of treaties.

The document prepared by the International Law Commission certainly constitutes a step forward in the codification of international law.

The draft takes into account the various problems that could arise in connexion with the succession of States.

MEXICO

Oral comments 1974

The representative of Mexico stated:

His delegation welcomed the draft articles on succession of States in respect of treaties ...

For more than a century, his country had had no problems of that type, since the situation had been completely resolved in 1836 with the signing of the Treaty of Peace and Friendship with the former metropolitan country. However, his Government realized that the problem was highly topical for many States which had recently achieved sovereignty, most of which had freed themselves from colonialism.

1492nd meeting, para. 53.

MONGOLIA

Oral comments 1974

The representative of Mongolia stated:

His delegation was pleased to note that the Commission had completed its work on the 39 draft articles on the succession of States in respect of treaties . . .

On the whole, the draft articles reflected current theory and practice in the matter.

1488th meeting, para. 2.

MOROCCO

Oral comments 1974

The representative of Morocco stated:

By adopting the draft articles on succession of States in respect of treaties, the Commission had taken another step forward in the codification and progressive development of international law. The question of succession of States was particularly important for the international community, because of the interests involved and the changes in international society caused by the emergence of new States.

1492nd meeting, para. 59.

Oral comments 1975

The representative of Morocco stated:

The draft articles on the succession of States in respect of treaties were of special importance to newly independent States. There was some question as to whether it was advisable to give the draft the form of a convention. In his delegation's opinion, it would be more appropriate for the text finally agreed on to be adopted in the form of a General Assembly resolution. . . .

The study conducted and the draft prepared by ILC were thorough and detailed. However, some draft articles called for further consideration.

1545th meeting, para. 29.

NETHERLANDS

Oral comments 1974

The representative of the Netherlands stated:

... his delegation viewed the draft articles on succession of States in respect of treaties with special interest in anticipation of important forthcoming changes in the composition of the Kingdom of the Netherlands. As was known, the three component parts of the Kingdom, namely Surinam, the Netherlands Antilles and the territory in Europe, would constitute three separate States as of 1975 for Surinam and as of a later date for the Netherlands Antilles. The doctrine of succession of States to be codified in the draft articles would serve as a basis for determining the treaty relations which would continue to exist for each of the three States.

1494th meeting, para. 15.

Oral comments 1975

The representative of the Netherlands stated:

With regard to the final form to be given to the draft articles, his delegation held the view that the form of a convention was appropriate, since the articles had been drafted as a supplement to the Vienna Convention on the Law of Treaties.

1535th meeting, para. 20.

NICARAGUA

Oral comments 1975

The representative of Nicaragua stated:

The draft articles were of great significance at a time when new States were coming into existence.

1549th meeting, para. 15.

NIGERIA

Oral comments 1974

The representative of Nigeria stated:

The report on ... /the/ twenty-sixth session was of immense importance to the newly independent States, particularly the chapter on the succession of States in respect of treaties. The Commission had duly taken into account the views of States which had achieved independence since the Second World War and had given full recognition to the practice of such States in respect of succession to treaties.

1494th meeting, para. 31.

PAKISTAN

Oral comments 1974

The representative of Pakistan stated that

... the topic of succession of States in respect of treaties had been of great concern to his country. His Government had submitted observations on the question ... His delegation had also noted that the Commission had taken into consideration some of the treaty precedents to which his country was a party.

1492nd meeting, para. 77.

PARAGUAY

Oral comments 1975

The representative of Paraguay stated:

His delegation was firmly convinced that the future convention would meet a widely felt need in the field of international legislation since there was currently a lack of uniform practice by States in that field.

1530th meeting, para. 35.

PERU

Oral comments 1974

The representative of Peru:

... expressed her appreciation for the accomplishments of the Commission during the past 26 years and congratulated its Chairman on his informative introduction of the Commission's report. The Commission's most important achievement at its twenty-sixth session had been the completion of the second reading of the draft articles on succession of States in respect of treaties.

... In her delegation's view, the draft articles on succession of States in respect of treaties should be submitted to an international conference of plenipotentiaries with a view to the conclusion of a convention on the subject.

1496th meeting, para. 8.

POLAND

Oral comments 1974

The representative of Poland stated:

His delegation considered that the draft articles on succession of States in respect of treaties ...

... were concise, well-drafted and supplemented by excellent commentaries.

1489th meeting, para. 5.

Written comments 1975

The Government of the Polish People's Republic has the honour to state that in its opinion the draft articles on succession of States in respect of treaties, prepared by the International Law Commission, constitute a good basis for the adoption of the future Convention on this subject.

Oral comments 1975

The representative of Poland stated:

...his delegation ... considered that the draft articles were generally acceptable and constituted a good basis for the preparation of a convention.

1526th meeting, para. 3.

ROMANIA

Oral comments 1974

The representative of Romania stated:

The Commission had continued to study the question of succession of States in respect of treaties, and the 39 draft articles with their commentaries were a praiseworthy contribution to the future development of international law. ...

The final adoption of the draft by the Commission at its twenty-sixth session was very important, and the document could serve as a solid base for the future preparation of a convention by a suitable international conference.

1486th meeting, paras. 36 and 39.

Oral comments 1975

The representative of Romania stated:

... the topic of the succession of States in respect of treaties was very important

... As to the juridical form which the draft articles currently under consideration might take, the Committee might consider, in addition to a convention or a code, a document similar to that on the Definition of Aggression and the Charter of Economic Rights and Duties of States, which would be adopted by a declaration or resolution of the General Assembly.

1530th meeting, para. 36.

SOMALIA

Oral comments 1974

The representative of Somalia stated:

On the whole, the new draft was a clear improvement over the previous one, in its wording, its conciseness and its commentaries.

1495th meeting, para. 28.

Oral comments 1975

The representative of Somalia stated:

... the draft articles submitted by ILC ...
could form a general basis for codification.

1540th meeting, para. 2.

SWAZILAND

Oral comments 1975

The representative of Swaziland stated:

Since the draft articles were intended to supplement the Vienna Convention on the Law of Treaties, they should be adopted in the form of a convention.

1549th meeting, para. 27.

SWEDEN

Oral comments 1974

The representative of Sweden stated:

The report submitted to the Committee was devoted mainly to the question of succession of States in respect of treaties. The Commission had now prepared a final draft of 39 articles on that topic and, in view of the difficulty of its task, his delegation could easily understand that the Commission had not been able to respond to the initiative of the Swedish Government, which had suggested in the antepenultimate paragraph of its observations on the draft articles ... that an alternative model should be prepared.

1489th meeting, para. 24.

Oral comments 1975

The representative of Sweden stated:

... in his delegation's view, the draft articles on the succession of States in respect of treaties was important from both the political and legal viewpoints. The draft articles reflected the rapid changes in the world resulting from the process of decolonization and were important for the development of international law, particularly since they covered a field not fully dealt with by customary law.

1526th meeting, para. 28.

SYRIAN ARAB REPUBLIC

Oral comments 1974

The representative of the Syrian Arab Republic stated:

On the whole, the Syrian delegation accepted the draft articles and considered that they constituted a useful working instrument for a conference of plenipotentiaries.

1491st meeting, para. 44.

Oral comments 1975

The representative of the Syrian Arab Republic stated:

On the whole, his delegation approved the draft articles on the succession of States in respect of treaties but at the appropriate time it would express reservations on certain articles.

1548th meeting, para. 52.

TURKEY

Oral comments 1975

The representative of Turkey stated:

His delegation was not convinced that the law concerning the succession of States in respect of treaties should be codified in the form of a convention. Since a succession of States necessarily implied the establishment of a new State, a convention on the law of the succession of States in respect of treaties would be enforceable with respect to the successor State only if it became a party and from the date on which it became a party. In such a case, the convention would not be binding on the State in respect of an act prior to the date on which it had become a party. Furthermore, other States would not be bound by the convention in respect of the new State until that State became a party. The participation of the successor State would also raise problems regarding the mode of expression and the retroactive effect of consent to be bound by the convention. If appropriate provision was made in the final articles for the participation of a successor State to take effect on the date of succession, the form of a convention would have some merit. Although on the basis of the current content of the articles, his delegation favoured a declaration of principles rather than a convention, it was prepared to be guided by the wish of the majority.

1537th meeting, para. 39.

UKRAINIAN SOVIET SOCIALIST REPUBLIC

Written comments 1975

The draft articles on the succession of States in respect of treaties prepared by the International Law Commission of the United Nations concern a problem which is both important and very complex. They are to become a document bringing together provisions concerning the treaty rights and obligations of States in cases of succession.

The draft articles are designed to be applied to cases and situations of succession in respect of treaties connected with the emergence of States as a result of the collapse of the colonial system and also in cases of the uniting and separation of States. Their provisions embody the right of new independent States freely to decide which of the treaties concluded by the metropolitan country are binding on them. The draft thus takes account of the vital interests and needs of these States, guaranteeing them an opportunity to reject unequal treaties of the colonial type and thereby contributing to the implementation of the principle of self-determination and to the consolidation of their sovereignty.

Oral comments 1975

The representative of the Ukrainian SSR stated:

... the Committee had shown general agreement on the complex nature of the succession of States in respect of treaties and the quality of the draft articles drawn up by ILC after many years of effort.
1526th meeting, para. 31.

UNION OF SOVIET SOCIALIST REPUBLICS

Oral comments 1974

The representative of the USSR stated:

... the provisions of the draft were of considerable theoretical and also practical importance, since it seemed to be agreed that they reflected current international rules.
1489th meeting, para. 30.

Written comments 1975

The draft articles on the succession of States in respect of treaties prepared by the International Law Commission constitute the draft of an important international instrument aimed at the further progressive development of contemporary international law and designed to regulate in the light of existing practice the transfer of the treaty obligations and rights of the predecessor State to the successor State in cases of the formation of newly independent States and also in cases of the uniting and separation of States. The draft reflects the need to recognize the right of States which have emerged as a result of the collapse of the colonial system to decide which international treaties concluded by the metropolitan country are binding on them. It thus contributes to the completion of the historic process of eliminating the consequences of colonial oppression.

Careful analysis of the draft articles prepared by the International Law Commission leads to the conclusion that, on the whole, they provide an acceptable basis for further work in this field. The USSR delegation has already commented on the draft at the twenty-seventh and twenty-ninth sessions of the General Assembly. These comments and those made by delegations of other countries should be taken into account in finalizing the draft, which, as the discussions have shown, is considered desirable by many States.

Oral comments 1975

The representative of the USSR stated:

On the whole, the draft articles provided an acceptable basis for further work on the subject and many provisions of the draft reflected generally acknowledged rules of law and had consequently met with wide support in the Sixth Committee.

1544th meeting, para. 17.

UNITED REPUBLIC OF CAMEROON

Oral comments 1975

The representative of the United Republic of Cameroon stated:

The draft articles on succession of States in respect of treaties prepared by ILC were of undeniable importance. His delegation had noted with interest the way in which members of ILC had succeeded in reconciling apparently conflicting interests through an objective evaluation of State practice, judicial practice and the writings of jurists. The written observations submitted by Governments and the statements made in the Committee had revealed many areas of agreement on the draft articles. His delegation was prepared to support any constructive measure designed to further the consideration of the draft, which undoubtedly constituted a useful supplement to the work of codification already carried out in respect of the law of treaties. Even when the process of decolonization had been completed, and the concept of a newly independent State had disappeared from legal terminology, the future convention on the succession of States in respect of treaties would continue to provide pertinent answers to problems concerning the unification and separation of States.

1537th meeting, para. 48.

UNITED REPUBLIC OF TANZANIA

Oral comments 1974

The representative of the United Republic of Tanzania stated:

... the draft articles on succession of States in respect of treaties submitted by the Commission represented a considerable improvement over the draft that had been submitted two years before.

1496th meeting, para. 26.

UNITED STATES OF AMERICA

Oral comments 1974

The representative of the United States stated:

... his delegation admired the work of the Commission, which helped to eliminate ambiguities in customary international law. His delegation applauded the completion of the second reading of the draft articles on succession of States in respect of treaties, in which the Commission had taken into account the practice of States and their observations on the subject and had analysed critically the various approaches to codification of the question.

1494th meeting, para. 23.

Written comments 1975

... the importance of the subject-matter and the value of the draft articles support their further consideration ...

Oral comments 1975

The representative of the United States stated:

... he considered that ILC had successfully completed a difficult task in preparing draft articles which constituted a satisfactory basis for codification. The manner in which the draft had been harmonized with the Vienna Convention on the Law of Treaties was an important aspect of that work. However, some improvements could be made to the draft ...

His delegation considered that the subject matter of the draft articles was important and that the text constituted an excellent basis for codification.

1526th meeting, paras. 6 and 11.

VENEZUELA

Oral comments 1975

The representative of Venezuela stated:

The draft articles on succession of States in respect of treaties ... which ILC had so painstakingly prepared during a period of seven years, constituted an adequate basis for the drafting of an international instrument.

...

His delegation fully supported the provisions set forth in the draft articles as drafted by ILC.
1538th meeting, paras. 2 and 4.

YUGOSLAVIA

Oral comments 1974

The representative of Yugoslavia stated:

A number of problems which had merely been touched upon in the original draft had been dealt with in a more detailed manner in the new draft articles, and in that regard he wished to lay stress on the role played by the Special Rapporteur, Sir Francis Vallat.

1491st meeting, para. 14.

**B. General approach to the topic and basic principles
reflected in the draft***

AUSTRALIA

Oral comments 1974

The representative of Australia stated:

... in the 25 years of its existence, the International Law Commission had produced drafts or reports which had served as the basis for the negotiation and conclusion of major multilateral law-making treaties. The Commission's contribution to the codification and progressive development of international law had now been augmented with draft articles on succession of States in respect of treaties ...

The drafting of articles on that subject had been no easy task, since there was no general doctrine discernible in State practice in that field. Consequently, the Commission had not been able to confine itself to codification; it had had to elaborate or develop the applicable rules. In doing so, it had drawn on the Vienna Convention on the Law of Treaties, which had already acquired some authority, and on the principles of the Charter of the United Nations, in particular self-determination. However, those sources had not provided the solution to the particular problems of State succession in respect of treaties. The Commission had had to balance the principle of *de jure* continuity, derived from the principle *pacta sunt servanda*, with the principle—derived from the right of self-determination—that a new State began its treaty obligations with a “clean slate” regarding the treaty obligations of the predecessor State. It had not been easy to develop a universally practicable and politically acceptable régime which took these two principles into account. Although some of the draft articles appeared to be inconsistent with others, that was because they were the result of compromise. For example, the Commission had adopted different approaches to the validation of bilateral and multilateral treaties in respect, on the one hand, to newly independent States and, on the other, to States uniting or separating. It was therefore inevitable that the Commission should have agreed to compromise on certain

* The present subsection includes statements in which the principles underlying the draft are viewed in conjunction. Comments relating to individual principles will be found under the relevant articles.

points. Generally speaking, the Commission had taken into account both the desire to preserve stability and continuity in international relations and the need to recognize the reasonable aspirations of emergent States. For those reasons, the Australian Government considered that the draft articles constituted a good working basis . . .

Despite the importance of the principle of self-determination, it did not provide a solution to every problem connected with succession of States in respect of treaties. The Commission itself had recognized that the "clean slate" principle was at once too broad and too categorical. Such a principle too rigidly applied would be inimical not only to stability and continuity in international relations, but also to the interests of the newly independent State if it was thereby deprived of favourable treaty arrangements applying to it prior to independence. The "clean slate" principle must be considered in the context of all State succession situations. It was appropriate that emphasis should be placed on the right of self-determination in the case of newly independent States, but other situations must also be taken into account in order to ensure orderly regulation of international relations. The application of the "clean slate" principle was justified in the case of decolonization, but in other cases—especially where there had been no real succession of States, but a profound internal political or social revolution—more complicated problems might arise, involving State responsibility and the rights and duties of States under the law of treaties generally.

In their transitional agreements, newly independent States had placed widely differing emphasis on the principle of continuity of treaties. A number of States had deemed it desirable to maintain existing legal relationships; others had asserted that treaty rights and obligations were succeeded to upon independence by virtue of customary international law. In his delegation's view, it would be wrong to attribute those positions, in all cases, to a misconception of contemporary international law or of national interest. It was clear that, in some cases, States perceived that it was in their interest to opt for the continuity of legal obligations.

. . .

In the draft articles relating to the uniting and separation of States, the Commission had emphasized the continuity of treaty obligations except in the case where a part of the territory of a State separated from it and became a State in circumstances essentially identical to those existing in the case of the formation of a newly independent State. His delegation appreciated the reasons which had led the Commission to base itself on the principle of continuity in formulating those articles. At the same time it drew attention to certain political situations which illustrated that it was not always appropriate to draw a distinction between newly independent States and other

States. In some cases, the evolution towards independence was gradual and peaceful and in full accordance with internal legal norms; in that case, the extension of treaties concluded by the metropolitan State was seen by the peoples of the territories as advantageous. There were a number of historical precedents for such a course of action. In contrast, in some cases involving separating States, the advent of independence might be sudden and violent. The division of the predecessor State might be the result of a social revolution causing the separating State to challenge the pre-existing social, economic and political order and to that end to denounce certain treaties concluded by the predecessor State.

1494th meeting, paras. 3-5 and 11.

Written comments 1975

The Australian Government considers that the draft articles adopted by the International Law Commission are generally acceptable. They reflect a balance achieved with considerable difficulty between the need to recognize the continuity of international obligations and the need to accord newly independent States the right to self-determination.

As the Commission itself noted, a close examination of State practice affords no convincing evidence of any general doctrine to which the various problems of succession in respect of treaties could find their appropriate solution. The diversity in regard to solutions adopted makes it difficult to explain State practice in terms of any fundamental principles of "succession" producing specific solutions to each situation.

Neither the general principles of the law of treaties nor the principles of the Charter provide any clear solution to many of the detailed problems of State succession to treaties.

It was inevitable, therefore, that the International Law Commission had to follow in certain areas of the draft articles the path of compromise between different points of view.

In regard to the "clean slate" principle, the Australian Government notes that the International Law Commission has applied it only in certain parts of the draft articles; and it agrees with the view of the Commission that the metaphor of the clean slate principle, applied without qualification, is at once too broad and categorical.

...

In regard to part IV of the draft articles, the Australian Government notes that the emphasis is placed in this part on the continuity of treaty obligations in respect of the uniting and separation of States, except in the case where 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. This is in contrast with the provisions on newly independent States where the emphasis is on the principle of self-determination.

Oral comments 1975

The representative of Australia stated:

While his delegation recognized the importance of the principle that newly independent States should have the right to determine their own treaty commitments, it was pleased to see that certain reservations had been placed on that principle in the draft articles. The "clean-slate" principle, if rigidly applied, would not only jeopardize the stability and continuity of international relations but would also deprive newly independent States of the provisions of those treaty arrangements applying to them before independence which had been beneficial to them and which they still saw to be beneficial. It would be a mistake to assume that all treaties entered into by a colonial Power and applicable to its dependent Territories were motivated purely by self-interest and were therefore to the disadvantage of those Territories. In that regard, it might be useful to draw the Committee's attention to the position adopted by the new State of Papua New Guinea in a letter addressed to the Secretary-General. Papua New Guinea stated that it recognized the desirability of maintaining, so far as practicable, continuity in treaty relations with other States. It also recognized the need to examine all treaties previously applicable to it in order to determine whether they should continue in force. The Government of Papua New Guinea proposed to examine all previous bilateral and multilateral treaties with the intention of making a statement of intent in respect of each. Meanwhile, the Government of Papua New Guinea, on the basis of reciprocity, would honour all treaties applicable to its Territory prior to independence.

While it recognized the need to safeguard the legitimate interests of newly independent States, his Government was firmly of the opinion that a certain degree of continuity in international obligations was important. Australia, which had itself once been a colony, had considered itself bound by the imperial British treaties applicable to it before independence. Since then it had carefully examined such treaties and those which now appeared in the Australian treaties list were considered as continuing in force, while those not so listed were regarded

as no longer applying to Australia. In that way, at the outset of its involvement in international affairs, Australia had inherited a wide range of useful treaties which would otherwise have required renegotiation. As an example of some of the difficulties which might arise if the "clean-slate" principle were adopted without qualification, a State not wishing to be bound by an imperial British treaty could regard it as inapplicable between itself and Australia. As there was no provision for acts of novation in some imperial treaties appearing in the Australian treaties list, the acceptance of the "clean-slate" principle without qualification might call into question the continuing applicability of those treaties. For that reason, Australia could not endorse retrospective application of principles which could prejudice long-established treaty relations.

His delegation felt that the obvious advantages of a continuity of international obligations and the understandable desire of newly emerging States to review their treaty commitments must be balanced in order to achieve a universally accepted framework for treaty succession. ILC's general approach was perhaps, as a matter of practical politics, the most universally acceptable. Some States might consider that the draft did not go far enough in taking into account the principle of self-determination, whereas others might think that it did not lay sufficient stress on the principle of continuity; his delegation regarded the draft as constituting an acceptable balance between those two opposing views.

1526th meeting, paras. 20-22.

AUSTRIA

Oral comments 1974

The representative of Austria stated:

... his Government fully agreed with the structure of the draft articles on succession of States in respect of treaties ... and their underlying principles.

1490th meeting, para. 11.

BANGLADESH

Oral comments 1974

The representative of Bangladesh stated:

He felt that the principle of self-determination of peoples had not received adequate consideration by the Commission. Indeed, the "clean slate" principle had been accepted in the case of newly independent States not on the basis of the principle of self-determination of peoples but on that of the practice of States. However, his delegation commended the Commission for its adoption of that principle, not only in the case of newly independent States but also in the case of States formed from two or more territories. Nevertheless, his delegation wondered why the Commission had not extended the principle to cases of succession where the territory of a State was divided into several parts to form one or more States, and why it had adopted the principle of continuity in that case. Furthermore, the definition of newly independent States contained in article 2, paragraph 1(f), did not cover States formed in that way, even when they emerged as a result of the exercise of the right of peoples to self-determination. There appeared to be no justification in the report for the different treatment of the two categories of newly independent States.

...

It would seem that the draft articles denied the right of self-determination of peoples to territories other than dependencies or territories with similar status. That was contrary to the principles of the Charter and the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations (General Assembly resolution 2625 (XXV), annex, which made no distinction between the right of self-determination of the peoples of colonial and other territories. The considerations which had led the Commission to decide to accept the "clean slate" principle in the case of newly independent States were even more relevant to States formed by secession, which were sometimes subjected to worse forms of colonialism than the former colonies.

His delegation therefore urged that the "clean slate" principle should be extended to States which emerged following separation of one or more parts of the territory of a State, in exercise of the right of self-determination of their peoples. In doing so, it was acting in the interests of all peoples struggling for self-determination. Bangladesh was not bound by any treaties to which it had not consented. The Constitution of Bangladesh stated that no liability or obligation of any other Government which had at any time functioned in the territory of Bangladesh was or would be the liability or obligation of the Republic, unless it was expressly accepted by the Government of the Republic.

1494th meeting, paras. 34 and 36-37.

Oral comments 1975**The representative of Bangladesh stated:**

He said that ILC was to be congratulated for adopting the "clean-slate" principle, which was part of the progressive development of international law and was based on the principle of self-determination. The "clean-slate" principle meant that newly independent States had the right to choose not to be bound by old treaties concluded by a predecessor State. But ILC had not extended the "clean-slate" principle far enough in its definition in draft article 2, paragraph 1 (f), and had thus not given the principle of self-determination adequate consideration. According to his delegation, the concept of a "newly independent State" included not only all formerly dependent territories such as colonies, Trust Territories, mandate territories and protectorates, but also new States which emerged as a result of separation of part of an existing State or by social revolution, as well as religious, linguistic or cultural minorities of the territory of an existing State which had struggled for the right of self-determination based on the principles of the Charter of the United Nations and the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations (General Assembly resolution 2625 (XXV), annex). Those documents made no distinction between the right of self-determination of peoples of colonial and other territories.

1547th meeting, para. 13.

BELGIUMWritten comments 1975

The Belgian Government can on the whole express its agreement with the fundamental principles outlined in the draft; in its view, the draft is a successful compromise between the principle of continuity - derived from the rule pacta sunt servanda - and the "clean slate" principle which is derived from the right to self-determination.

The Belgian Government considers the draft articles to be generally acceptable; it is pleased that the International Law Commission has expanded considerably the provisions concerning cases of succession other than newly independent States while including all the proposals relating to such States.

...

It seems natural that a newly independent State, like any sovereign State, should be free to decide which of the treaties concluded by its predecessor will remain in effect and which treaties will be denounced. It would be contrary to the principle of the sovereign equality of States to consider newly independent States bound automatically, by virtue of the rule pacta sunt servanda, by treaty obligations which they did not contract themselves.

Moreover, it is in the interest of international society to ensure that the succession of States in respect of treaties does not disturb existing treaty relations established in accordance with international law, and does not jeopardize the balance indispensable for the maintenance of international order which will benefit the newly independent State also.

The Commission adopted the "clean slate" principle as one of the basic principles of the draft. The Belgian Government considers that this decision is not without drawbacks from the viewpoint of legal security. However, since the Commission made an effort to reach a compromise between this principle and the principle of continuity, and despite the fact that the draft has a slight bias against the principle of continuity, the Belgian Government is ready, bearing in mind inter alia the far-reaching changes that international relations are undergoing, to accept the general structure of the draft.

BOLIVIA

Oral comments 1974

The representative of Bolivia stated:

The emergence of a State had not always come about of itself. It had not been the consequence of the self-determination of a people but a result of a series of coinciding interests which did not necessarily seek to satisfy the inhabitants of the territory involved. Therefore, the succession of States had not required explicit legislation as was the case today where, together with political independence, new States also won the right to accept or reject the obligations contracted by other States on their behalf by virtue of the "clean slate" principle. The "clean slate" principle might have conflicting effects, but automatic succession would also give rise to serious difficulties for its proper application, even in the case of a State seeking to obtain membership to international

organizations, since that status could not be acquired by succession but only by admission in accordance with the machinery established by the relevant regulations. The Commission in that case based itself on the body of legal decisions established in recent years. As a result of decolonization, new types of associations had arisen which had nothing to do with succession but which had received international endorsement on the basis of the political will enjoyed by States in formation which were recognized as being almost as representative as fully fledged States.

1493rd meeting, para. 42.

Oral comments 1975

The representative of Bolivia stated:

The body of juridical rules proposed by ILC for the succession of States in respect of treaties applied mainly to the newly independent States, which ought to have the greatest possible freedom of choice with regard to duties and should not have to assume any duties which might limit the exercise of their sovereignty, hinder the protection of their natural resources or hamper their speedy and legitimate development. Certain economic agreements, for instance, could be harmful to the interests of a new State, ...

1530th meeting, para. 18.

BRAZIL

Oral comments 1974

The representative of Brazil stated:

The Commission had retained the "clean slate" doctrine, which recognized the right of a newly independent State to decide whether it wished to become a party to any treaty by which the predecessor State had been bound. The Commission had also preserved another essential feature of the 1972 draft, namely, the principle of continuity *ipso jure* of treaties in cases of succession relating to territories which had previously enjoyed sovereignty.

1487th meeting, para. 2

Written comments 1976

The preservation in the draft articles of the principle of the continuity "ipso jure" of treaties relating to territories which maintained their sovereignty during the process of success provides a sort of counterbalance to the application of the "clean slate" rule. Whereas the former derives from the rule pacta sunt servanda, the latter reflects the principle of self-determination.

BULGARIA

Oral comments 1974

The representative of Bulgaria stated:

His delegation fully approved the principles underlying the text submitted to the Sixth Committee. The draft was based mainly on the balance between two fundamental principles: the "clean slate" principle and that of continuity *ipso jure*.

1495th meeting, para. 20.

Oral comments 1975

The representative of Bulgaria stated:

... his delegation shared the basic philosophy of the draft articles on succession of States in respect of treaties prepared by ILC, since they were based, as a general rule, on the law of treaties, the general principles of international law and the Charter of the United Nations. ILC had succeeded in striking a proper balance between the two important principles, namely the "clean-slate" principle and the principle of continuity *ipso jure*.

1535th meeting, para. 40.

BYELORUSSIAN SOVIET SOCIALIST REPUBLIC

Oral comments 1974

The representative of the Byelorussian SSR stated:

The draft articles submitted to the Sixth Committee ... reflected the attention given to many aspects of the question such as the right of peoples to self-determination. It also showed the many analogies with the provisions of the Vienna Convention on the Law of Treaties.

The two fundamental concepts of the succession of States and of newly independent States should be unambiguously defined. The succession of States was the replacement of one State by another in the responsibility for the international relations of the territory. That succession was valid for all international relations and not only in respect of treaties; it also applied to all types of new States. Moreover, a newly independent State was a State whose territory had not been autonomous before succession and whose international relations had formerly been directed by another State. The concept therefore included all forms of accession to independence.

1491st meeting, paras. 2-3.

Oral comments 1975

The representative of the Byelorussian SSR stated:

... the present draft articles reflected such important aspects of the topic as the principle of self-determination of peoples and the question relating to succession in respect of territories and boundaries.

1536th meeting, para. 5.

CONGO

Oral comments 1975

The representative of the Congo stated:

International law should reflect the fundamental changes brought about by decolonization, in order that it might gain acceptance by the majority of States, particularly new States which acceded to international conventional relations after recovering their freedom. The question of succession of States in respect of treaties should therefore be studied seriously in the light of the experience acquired by new States since gaining their independence.

No one would disagree with the principle that a State had the right to determine freely and in good conscience the obligations which bound it, since many States had had to sign treaties under all kinds of pressure.

1537th meeting, paras. 57-58.

CUBA

Oral comments 1974

The representative of Cuba, referring to the draft, stated:

... its principal merit was that it had taken into consideration the consequences deriving from the principles established in the Charter, in particular that of self-determination.

1490th meeting, para. 19.

DENMARK

Oral comments 1974

The representative of Denmark stated:

At its last session, the Commission had completed the second reading of the draft articles on the succession of States in respect of treaties. Its work on those articles had been going on for a very long period of time, and the difficulties inherent in the whole matter of succession had

been brought out, both in the reports of the Special Rapporteurs and the observations of member States and in the debate. The original intention of the Commission had been to relate the law of treaties to the phenomenon of succession, but the draft articles as they now stood proved the impracticability of that approach. The "clean slate" principle, on which the draft articles were based, was in accord with the political trends of the present period of decolonization. As it had stated in its written observations (see A/9610, annex I) and at the previous session (1403rd meeting), the Danish Government was in favour of that principle.

1491st meeting, para. 32.

EGYPT

Oral comments 1974

The representative of Egypt stated:

[the ILC] ... and had based its work on the principles of the Charter of the United Nations, which all States had committed themselves to uphold. In its work on the succession question, ILC had correctly viewed the right of peoples to self-determination as one of the corner-stones of the Charter.

He agreed with the view expressed in paragraph 63 of the report of ILC that the relationship between the draft articles and the Vienna Convention on the Law of Treaties should be maintained as to both structure and language.
1537th meeting, paras. 2 and 8.

ETHIOPIA

Oral comments 1974

The representative of Ethiopia stated:

Generally speaking, the Commission's text struck a happy balance between the need for continuity in State relations in an increasingly interdependent world and the need for new States to be free from the shackles of the past. That had been made possible by the Commission's adoption of a method of work that put a

premium on a meticulous survey and evaluation of State practice as evidence of the *opinio juris* of the international community. By adopting such a scientific approach, the Commission avoided *ex cathedra* pronouncements based on dogmatic assertions of any one single principle.

1496th meeting, para. 39.

FRANCE

Oral comments 1974

The representative of France stated:

Despite the painstaking work of the Commission on the draft articles on succession of States in respect of treaties, his delegation did not find those draft articles completely satisfactory in their conception. His delegation had no objection to the Commission's approach, which was based on the principle that there was no automatic succession of States but provided for exceptions. However, in the current state of international law, it could not be maintained that international law laid down absolute rules in respect of succession to treaties, and his delegation had doubts about the way in which the Commission had arrived at its conclusions.

1492nd meeting, para. 86.

Written comments 1975

With regard to the approach taken by the Commission, it should be noted that it is not possible in the present state of international law to maintain that international law lays down absolute rules in respect of succession to treaties. It does not seem reasonable either to base the articles on a theory which gives successor States the right to succeed to the treaties of their predecessors and at the same time imposes on them the obligation to do so, or to base them on an absolute application of the so-called "clean slate" theory.

However, two intermediate approaches are possible:

(a) To adopt the principle that there is succession and envisage exceptions to that principle, or

(b) To adopt the principle that there is no automatic succession, and also envisage exceptions.

The Commission seems to have chosen this second course in respect of the treaties of States which it designates as "newly independent".

The French Government has no objection to this approach to the problem for the purposes of elaborating the draft articles.

However, it has doubts about the method adopted by the International Law Commission to reach the proposed conclusions.

Firstly, the Commission seems to consider that the adoption of the "clean slate" principle would constitute a codification of existing international law, this doctrine being derived from the practice of States and confirmed by the principle of self-determination.

The French Government recalls that opinions and practice on this subject are far from coherent. Moreover, the positions that may be adopted by the depositaries of treaties cannot be the source for a customary rule and cannot bind States parties to the treaties concerned, because the role of the depositary is purely administrative.

Furthermore, in the case of the succession of treaties, it would seem difficult to base the "clean slate" principle on the principle of self-determination. There is no clear link between the principle of self-determination and the fact that each new State should appear on the international scene free from all treaty commitments. The French Government has noted that, in accordance with article 33 of the draft, if a part of a State secedes, the successor State thus formed is bound by the treaties of the predecessor State, unless the new State has acquired its independence "in circumstances which are essentially of the same character as those existing in the case of the formation of a newly independent State". It can clearly be seen that this rule is difficult to accept because it would make the continuation or the disappearance of the treaty obligation depend on subjective assessments. But above all it illustrates the difficulties which the Commission has encountered through introducing in its draft a distinction between the States which it describes as "newly independent" and the States which it considers as having emerged from the separation of a part of that State. In so doing, it has referred to a political concept, the timeliness of whose inclusion in the draft is debatable, and which led it to solutions which could give rise to contradictions.

Subject to the preceding comments, and while admitting that the "clean slate" principle could be adopted as a general working hypothesis, the French Government

wonders whether the International Law Commission has adequately considered all the exceptions which could be made to the rules it lays down, so that those rules might be acceptable.

Firstly, with regard to the right of the successor State to take over the multilateral treaties of its predecessor, the Commission has perhaps not sufficiently envisaged all the hypotheses where under current practice this right is subject to the express consent, or to the unambiguous tacit consent, of the other parties.

Above all, if the absence of any general obligation on the part of the successor State with regard to the treaties of its predecessor is to be admissible, it is essential that certain categories of treaties should be considered as necessarily binding on the successor State. The Commission has only retained in this respect boundaries, boundary régimes, and certain territorial régimes established by treaty (article 11). The French Government cannot but approve the Commission's intentions on this point. However the Commission could certainly have made a more careful search for other categories of treaties which could be considered as binding on the successor State. What happens for example to treaties creating financial responsibilities? Perhaps this problem will be considered in the study on the succession of States in respect of matters other than treaties which has been undertaken by the Commission. It would be worth ascertaining the final result of this study before finalizing positions on the question.

. GERMAN DEMOCRATIC REPUBLIC

Oral comments 1974

The representative of the German Democratic Republic stated:

The codification of the succession of States in respect of treaties should achieve the following objectives.

On the one hand, it was in the interest of all States to ensure that cases of State succession did not disturb existing international treaty relations which had been established in accordance with the generally recognized principles of co-operation. On the other hand, the entry into international relations of the successor State should be facilitated so as to enable it to exercise its rights as a sovereign State and to examine critically the treaties concluded by its predecessor State in order to continue them, apply them provisionally or terminate them.

1486th meeting, paras. 48-49.

GERMANY, FEDERAL REPUBLIC OF

Written comments 1975

Any regulations of the succession of States in respect of treaties must seek to strike a balance between opposing principles: apart from the idea that the consent of newly independent States should be required for the continuation of treaties by way of succession (principle of consent, leading to the clean slate rule), there is the need to preserve the continuity and stability of treaty relations, irrespective of the question of State succession, especially as regards multilateral agreements.

The draft articles give newly independent States extensive rights of option; under them they would be free, in principle, to continue to operate, without the consent of other contracting parties, multilateral treaties that have been valid within their territories prior to the attainment of independence. While the draft articles make full provision for the preservation of stability of treaty relations with regard to boundaries and other territorial régimes, the assumption of a new State's obligation to continue existing treaties (favor contractus) would not apply to newly independent States. This distinction, which will have far-reaching consequences, should be reconsidered from the point of view of equal treatment. Another argument in favour of a more balanced distribution of rights and obligations is that under the clean slate rule the States benefiting from it will not be bound by the obligations of the envisaged convention while other newly emerging States will be and therefore have to continue to honour existing treaties concluded by their predecessor States (see section III, article 7 below). The provisions regarding mandatory continued operation of treaties should therefore be drafted with particular care so as to make them generally acceptable, permitting the States in question to ratify a convention on the succession of States in respect of treaties.

The draft must pay regard, in a satisfactory manner, to the requirements of clarity of treaty relations. In the opinion of the Government of the Federal Republic of Germany, this should be done by supplementing and improving the draft articles with a view to achieving greater transparency. For instance, as has already been proposed by several States, adequate time-limits should be envisaged for exercising the right of option, especially in cases where a newly independent State's declarations are to have retroactive effect. In any event, it seems indispensable to make provision for the satisfactory settlement of disputes in order to make up for the uncertainties necessarily involved in the application and interpretation of the rather vague and complex terms of the draft.

In the interest of legal adequacy, States should notify their decision regarding succession to treaties.

Oral comments 1975

The representative of the Federal Republic of Germany stated:

His Government had proposed that, parallel with its work on the draft articles, ILC should undertake a codification of the law of the succession of States in respect

of matters other than treaties. It might therefore be advisable to postpone a final decision on the contents of a convention on succession of States in respect of treaties until clearer concepts had emerged concerning the legal basis for the succession of States in respect of matters other than treaties.

1526th meeting, para. 14.

GREECE

Oral comments 1974

The representative of Greece stated:

The progress which the Commission had made on the topic of succession of States in respect of treaties was largely due to the outstanding preparatory work of the Special Rapporteurs, all of whom were outstanding British jurists. Some of the articles adopted by the Commission might appear to be not entirely necessary: for example, articles 5 and 7 ... overlapped to some extent with articles 43 and 28 of the Vienna Convention on the Law of Treaties.¹ However, it might be useful to retain articles 5 and 7 of the Commission's draft, since some States which were not parties to the Vienna Convention might wish to participate in the future convention on the succession of States in respect of treaties. In general, the draft articles sought to strike a balance between two fundamentally opposing principles: on the one hand, the principle of continuity of treaty relations and, on the other, the "clean slate" principle, according to which the successor State was not bound by treaties concluded by its predecessor. The Commission had examined a great variety of situations in which one or the other principle should apply and had achieved a remarkable degree of agreement among its members.

1493rd meeting, para. 2.

Oral comments 1975

The representative of Greece stated:

The draft articles sought to strike a balance between two opposing principles: the principle of the rupture of conventional relations and the principle of continuity. His

Government had accepted the principle of continuity and applied it on several occasions in its bilateral and multilateral relations. In that connexion, he observed that the agreements concluded between Greece and the United Kingdom in 1910 and 1926 concerning respectively extradition and the tonnage of merchant vessels, remained in force and were applied in relations between Greece and a number of former colonies of the United Kingdom.

1537th meeting, para. 14.

INDIA

Oral comments 1974

The representative of India stated:

With regard to succession of States in respect of treaties, the Commission had made a thorough analysis of State practice and had based its approach on some fundamental principles: that the consent of States was necessary to establish treaty relations; that where the consent could not be associated with the territory in question, that territory, upon becoming independent, should have the right to accept or refuse to be bound by a treaty; and that where the consent to be bound was expressed by a sovereign State, there should be a continuation of treaty obligations to the successor State whether the successor State or States were created by union or by separation.

The draft articles . . . emphasized the need for the maintenance of the system of multilateral treaties and of treaty relationships and showed that the Commission had concluded that the general rule should be the continuity of treaty obligations, except in the cases of newly independent States, which would nevertheless still be bound by treaties regarding boundary régimes and other territorial régimes. The rule of *ipso jure* continuity of treaty obligations applied to cases of uniting and separation of States, and the emergence of a State in such conditions did not make that State a newly independent State. The Commission had, however, envisaged that such provisions would not apply to cases of newly independent States formed from two or more territories, nor to those of succession in respect of part of the territory.

1495th meeting, paras. 2-3.

INDONESIA

Oral comments 1974**The representative of Indonesia stated:**

In part III of the draft, which dealt with newly independent States, the Commission had retained the "clean slate" principle set out in article 15. It was not only logical but also just to have based the draft articles on that principle. ...

Part IV of the draft, relating to the uniting and separation of States, was based on the principle of *ipso jure* continuity. That principle, while very suitable for such cases, should be applied with caution, and the Commission had rightly provided for derogations.

1495th meeting, paras. 35 and 37.

Oral comments 1975**The representative of Indonesia stated:**

The preparation by ILC of the draft articles on succession of States in respect of treaties constituted a significant contribution to the progressive development and codification of international law. His delegation was particularly grateful to the Commission for adopting the "clean-slate" principle as the basic tenet of the legal régime concerning newly independent States, a principle which was in conformity with the principle of self-determination recognized by the Charter of the United Nations. As a sovereign State, a newly independent State was not, *ipso jure*, under any obligation to continue to enforce treaties concluded by the predecessor State and previously applicable to its territory. At the same time, it was noteworthy that ILC had successfully balanced the "clean-slate" principle with the principle of *ipso jure* continuity in part IV of the draft. In succession resulting either from the merger of two or more States or from the separation of a part or parts of a State to form one or more independent States, the successor State was an independent State already having international personality, or part of a State which had enjoyed a great degree of independence at the date of succession. In such cases, the element of consent on the part of the successor States existed prior to the date of succession. The *ipso jure* continuity principle, deriving from the *pacta sunt servanda* principle, should indeed prevail over the "clean-slate" doctrine, so that juridical certainty and continuity in treaty relations could be maintained. Moreover, with the process of decolonization nearing an end, States would be more often confronted with cases of succession which fell under part IV of the draft articles embodying the *ipso jure* continuity principle.

1537th meeting, para. 43.

IRAN

Oral comments 1974

The representative of Iran stated:

Its work on the succession of States in respect of treaties would complete the Vienna Convention on the Law of Treaties by putting into concrete form the ideas which had emerged as a result of the end of the colonial era. The draft articles which were being considered by the Sixth Committee showed a careful balance between the major principles applicable in that connexion. With reference more specifically to the principle of self-determination, his delegation could not agree to consider that a newly independent State was presumed to be bound by a treaty, unless that State expressed an intention to the contrary.

1494th meeting, para. 50.

Oral comments 1975

The representative of Iran stated:

The draft articles on the succession of States in respect of treaties (see A/9610/Rev.1, chap. II, sect. D) reflected the changes in the world resulting from the process of decolonization and represented a step forward in the progressive development of international law. A delicate balance had been struck between the principle of continuity, derived from the rule *pacta sunt servanda*, and the "clean-slate" principle, derived from the right to self-determination.

1548th meeting, para. 11.

IRAQ

Oral comments 1974

The representative of Iraq stated:

He welcomed the pragmatic principles underlying the draft articles, which would provide a solution acceptable to the whole international community and meet the variety of situations arising in the succession of States. He supported one such principle which was already being applied in international practice, namely, the "moving treaty frontiers" rule whereby, if any State expanded as a result of annexation, or as a result of any means other than decolonization that did not raise the problem of the emergence of a new State, then the treaties of that State extended to the new portion of its territory. He also supported the "clean slate" principle, whereby newly independent States, in accordance with the principle

of the right to self-determination, were free to decide which treaties to maintain and which to reject. That principle was particularly important because the former colonial Powers might have entered into treaties which would not be in the best interest of the newly independent State. The "clean slate" principle was a wise approach which effectively reconciled the interests of the new State with those of the international community and provided for the continuity of international relations.

...

The other basic principle underlying the draft articles was the principle of continuity, which rested on the principle *pacta sunt servanda*. The Commission had reserved that principle for cases of union and separation where there was no question of decolonization. It was fully justified in that context, for States could not shirk their obligations by division or union. Accordingly, the Commission's conclusions had been wise, and, not wishing to impose that principle unconditionally even in that restricted context, the Commission had provided for certain exceptions, allowing for situations where union or separation created a total change and continuity would be inappropriate. Accordingly, where the circumstances of division or separation were such that they could be compared to the decolonization process, the "clean slate" principle should apply. In brief, the Commission had made great efforts to formulate detailed and varied solutions which could apply to the unlimited range of situations which might arise from cases of succession of States.

1485th meeting, paras. 8 and 10.

ITALY

Oral comments 1974

The representative of Italy stated:

The Commission had managed to balance in a satisfactory manner the demands for freedom of action on the part of successor States with the somewhat conflicting need for stability and continuity in international rights and obligations, and certainty and clarity in treaty relationships. His delegation supported the Commission's solution of adopting, with a few qualifications, the principle of *ipso jure* continuity with regard both to successions resulting from the merger of two or more States (articles 30-32) and to cases of dismemberment or dissolution of an existing State or secession from such a State (articles 33-36).

1484th meeting, para. 50.

JAMAICA

Oral comments 1974

The representative of Jamaica stated:

... the draft articles on succession of States in respect of treaties reflected the delicate interaction between some of the fundamental principles of international law and that the Commission had had to take into account the implications of the principles of consent, self-determination and the sovereignty and equality of States.

1495th meeting, para. 11.

JAPAN

Oral comments 1974

The representative of Japan stated:

The difficult nature of the topic of succession of States in respect of treaties was borne out by paragraph 51 of the Commission's report. The difficulty was inherent in the complexity of the subject, in which there was an interplay of fundamental rules and principles of international law, such as the principle of consent and good faith, the principle of equality of States—whether a predecessor State or a successor State—and the principle of self-determination. The principle of equality of States should be fully taken into consideration in formulating rules on succession of States in respect of treaties, and also due respect should be paid for the interest of all States concerned to the principle of continuity of treaty relations, which promoted stability in international society.

He had been interested to note references in the Commission's report to treaty precedents where Japan had been one of the parties concerned. His Government had made a practice of respecting the stability and continuity of treaty relations but had also been willing to enter into negotiations on new agreements when those were desired by the newly emerging States. Since the practices of States were diverse and sometimes equivocal, work in the field of succession of States in respect of treaties had to be more in the nature of a progressive development of international law rather than a codification of existing practice. Careful deliberation was necessary to ensure that the outcome would not prejudice existing treaty relations among States.

... Moreover, the draft articles prepared by the Commission would serve as a useful basis for further consideration on the subject, especially in view of the Commission's interesting approach in attempting to draw a distinction between the case of a newly independent State, where the "clean slate" principle would apply even in the case of the so-called law-making general

multilateral treaties and the cases of uniting and separation, where the principle of continuity would apply. However, he noted that the "clean slate" principle had a certain flexibility, as was clear from articles 19 and 29.

...

Although it was very difficult to define precisely which treaty rights and obligations would be inherited automatically, it might be worth-while to attempt to find appropriate criteria to define the continuing rights and obligations of newly independent States for the sake of legal stability.

1487th meeting, paras. 16-17 and 19.

Oral comments 1975

The representative of Japan stated:

His delegation did not see much reason to defer the finalization of the draft for a long time, for example, until the draft on succession of States in respect of matters other than treaties had been prepared by ILC. The close relationship between the two drafts was undeniable, but when ILC had decided to consider the question of the succession of States in respect of treaties in the framework of the Vienna Convention on the Law of Treaties, rather than in the framework of the general theory of State succession, the subjects had become virtually separate.

1546th meeting, para. 30.

JORDAN

Oral comments 1974

The representative of Jordan stated:

With respect to the draft articles on that question, his delegation subscribed to the "clean slate" principle for newly independent States, deeming it harmonious with the situation of a newly independent State and consistent with the principle of self-determination.

...

Concerning the uniting and separation of States, his delegation supported the principle of continuity as expressed in the draft articles. With reference to succession of Governments, a change of régime should not be treated in the same way as the emergence of a newly independent State, unless the circumstances of the change of régime were essentially the same as those existing in the case of the formation of a newly independent State.

1492nd meeting, paras. 75-76.

LESOTHO

Oral comments 1974

The representative of Lesotho stated:

The adoption of the "clean slate" principle represented a progressive development of international law and was a direct outcome of the principle of self-determination. His delegation was particularly gratified that the Commission had rejected the proposal that there should be a presumption that a newly independent State consented to be bound by treaties previously enforced in its territory unless it declared a contrary intention within a reasonable time. It was unfortunate that some members of the Commission and of the Sixth Committee found it difficult to go along with the generally accepted "clean slate" principle, which recognized that all States were equal and sovereign and thus must enjoy the same sovereign rights. There was no reason why independent States should be burdened by obligations which were not in their national interest, while their predecessors had had a free hand in exercising their sovereign power of consenting to be bound. Those who attacked the "clean slate" theory might be suspected of trying to impose a new form of colonialism on newly independent States. It scarcely needed to be pointed out that, in most cases, treaties concluded under colonialism served the interests of the colonial Powers, not the interests of the rightful inhabitants of the Territories.

1493rd meeting, para. 49.

MADAGASCAR

Oral comments 1974

The representative of Madagascar stated:

In the case of the uniting or separation of States, the Commission had retained the principle of continuity, while including provisions to cover certain particular situations, and enshrining application of the "clean slate" principle in the case of newly independent States. It had given particular emphasis to the latter, since they had and would continue to have particular significance in the international community. Accession to independence was the most important form of succession of States.

1495th meeting, para. 45.

Oral comments 1975

The representative of Madagascar stated:

... his delegation thought that the Vienna Convention on the Law of Treaties and the present draft articles did not have the same scope and that the law relating to the succession of States had implications which were much more complex than those of the law codified in the Vienna Convention. Moreover, the question of the succession of States in respect of treaties, in particular treaties involving financial obligations, was closely related to the question of succession in respect of matters other than treaties. Common principles might govern the two cases of succession and it might be wondered whether they should not be the subject of a single draft.

1537th meeting, para. 28.

MALI

Oral comments 1974

The representative of Mali stated:

The doctrine of succession of States had been a very controversial one and had given rise to complex and confusing situations. The Commission, having realized that there was no over-all doctrine that might provide an appropriate solution to the various problems of succession in respect of treaties, had stressed that the codification of the law in that regard would consist of determining the impact of a succession of States within the context of the law of treaties and bearing in mind the principles of the Charter

1496th meeting, para. 31.

MEXICO

Oral comments 1974

The representative of Mexico stated:

In the draft articles, a balance had been achieved between the principle of observing boundary agreements and other territorial situations, the subsistence of which was essential to the maintenance of peace, with the "clean slate" principle, whereby newly independent peoples were from the outset masters of their own destiny.

1492nd meeting, para. 53.

Written comments 1975

As a general comment, it is considered that an express reference should be made in the draft articles to the Vienna Convention on the Law of Treaties in terms similar to those which appear in the International Law Commission's report: "the draft articles should be understood and applied in the light of the rules of international law relating to treaties, and in particular of the rules of law stated in the Vienna Convention ... matters not regulated by the draft articles would be governed by the relevant rules of the law of treaties."

MONGOLIA

Oral comments 1974

The representative of Mongolia stated:

On the whole, the draft articles reflected current theory and practice in the matter.

1488th meeting, para. 2.

MOROCCO

Oral comments 1974

The representative of Morocco stated:

His country, on achieving independence, had had to face complex problems of succession and therefore welcomed the Commission's approach to the problem, particularly the distinction it made between the succession of newly independent States and other types of succession.

1492nd meeting, para. 59.

Oral comments 1975

The representative of Morocco stated:

In preparing the set of draft articles, ILC had preferred to base itself on the principle that there was no automatic succession and to provide for exceptions to that principle, instead of choosing the opposite approach. In doing so, ILC had adopted a wise solution, but one which necessarily led to radical positions, as evidenced in article 11. As ILC had itself pointed out, a close examination of State practice had afforded no convincing evidence of any general doctrine by reference to which the various problems involved could find their appropriate solution. It was inevitable, therefore, that in certain cases ILC should adopt a compromise between different points of view.

1545th meeting, para. 29.

NETHERLANDS

Oral comments 1974

The representative of the Netherlands stated:

The draft articles sought to strike a delicate balance between the preservation of the continuity of treaty relations and the interest of new States, as expressed by the "clean slate" principle. Historical consequences perhaps made it inevitable that the balance should tip somewhat in

favour of the latter interest. It should be kept in mind, however, that those draft articles were to govern future treaty relations and time would undoubtedly show that the draft did, in fact, have many characteristics of transitional law. It should also be kept in mind that the international community was experiencing and would continue to experience cases of smooth transition from dependence to full independence in which the people concerned exercised, during a certain period of time, the right to consent to the establishment of treaty relations affecting their interests and their territory. It was difficult to distinguish between cases of evolutionary separation and revolutionary separation and attempts must be made to introduce those considerations into the draft articles, while, of course, ensuring the application of the "clean slate" principle in cases such as decolonization by struggle and revolutionary separation.

1494th meeting, para. 16.

Written comments 1975

In the draft articles, the central position of States attaining independence as a result of the process of decolonization has been maintained. However, now that the process of decolonization is nearly completed, the question may be asked whether rules intended to govern State succession in future in all its forms should still focus primarily on this specific but soon outdated form of State succession.

NEW ZEALAND

Oral comments 1974

The representative of New Zealand stated:

The succession of States in respect of treaties was a particularly difficult branch of the law of treaties. However, it was a field which had given rise to few disputes and one in which States respected each other's interests.

Like all the other Special Rapporteurs, Sir Humphrey Waldock had regarded himself as being at the service of the Commission, not in order to put forward his own ideas, but to take into account legal scholarship. Legal scholarship had taken rather a different turn from that of his draft articles. That was why O'Connell, the New Zealand author of a vast study of State practice in the field of succession to treaties, and the International Law Association were in favour of continuity of obligations. Sir Humphrey had first followed another course, one seldom found in Anglo-Saxon scholar-

ship but the starting-point of which was a right recognized in the United Nations, the right of self-determination. Basing himself on State practice, and the practice of the Secretary-General of the United Nations as the depositary of international treaties and unilateral declarations by newly independent States as to their attitude towards the treaty obligations incurred by predecessor States, the Special Rapporteur had come to the conclusion that the "clean slate" principle took precedence over that of continuity. That starting-point was not easy for lawyers in Oceania to accept, since they were used to regarding their countries as heirs to the rights and obligations of the United Kingdom and any other Power from which they originated. At the second reading of the draft articles, Tonga had called in question the relevance of the "clean slate" principle. His own country had often invoked old bilateral treaties concluded by the United Kingdom long before New Zealand's birth. It took time for a new State to conclude new treaties, and his Government knew by experience that a newly independent State should not be deprived of its place in international society from the moment it emerged. That was why the principle of continuity should be taken into consideration, even in the case of new States. One member of the Commission, Mr. Tammes, had pointed out that the rule of continuity should be applied at least to universal law-making treaties. However, the majority of the Commission members had considered that the right of self-determination should be the key to the draft articles, and had pointed out that State practice in respect of treaty succession had never been uniform. Another member of the Commission, Mr. Ago, had recalled that the principle of continuity had not been applied at the time of the unification of Italy. That had also been true in the case of the dissolution of the Austro-Hungarian empire. States showed consideration for each other and attached some importance to the attitude of the newly independent State itself.

As the draft articles were considered by the Commission, the anxieties of some of its members had been allayed when they had realized that the Special Rapporteur took sufficient account of the interests of newly independent States. In particular, the draft articles of 1972 enunciated in part III, section 2, the principle according to which a newly independent State had the right to become a party to a general multilateral treaty without the consent of the other parties to that treaty. A procedure was laid down whereby the newly independent State could indicate first in a preliminary way and later in a definitive way that it chose to succeed to the rights and obligations of the predecessor State.

The desire to give special preference to newly independent States was accompanied by a concern for third States. International practice, which was not uniform, seemed to suggest that in the case of a bilateral treaty or a limited multilateral treaty, the rights and obligations only passed to the successor State with the consent of both parties to the treaty.

The Commission had then taken into account the position of States other than newly independent States. It had recognized that in the case of the formation or dissolution of a union of States, it was desirable and in accordance with State practice that treaty rights and obligations should be maintained; it had also recognized that in some cases of the disruption of a State, where the part that had broken away did not regard itself bound by the agreements concluded by the predecessor State, the "clean slate" principle should be applied. That was when Sir Francis Vallat had replaced Sir Humphrey Waldock as the Special Rapporteur, and he too had effaced his own opinions in favour of the general view. In turn, Sir Francis had accorded some importance to the principle of continuity, and had drawn up the draft articles in consequence. His draft articles retained in essence all that had been proposed concerning newly independent States in the earlier draft; however, Sir Francis had elaborated on the part dealing with cases of succession not involving newly independent States. He had dealt in greater detail with cases of the formation and dissolution of unions of States and had provided for the case where a part of an independent State separating from it might regard itself as not being a successor to that State.

That glimpse of the Commission's work demonstrated clearly its working method. The time was gone when in every field of knowledge world opinion would crystallize around the views of a given theoretician, as was the case in international law for the theories of Grotius. The system of the Special Rapporteur, who was responsible only to the Commission and the General Assembly, was more complex. The Special Rapporteur did not work alone; he took into account the views, criticisms and questions of his colleagues and the members of the Committee as well as the commentaries of Governments. Such collegiality and sharing of responsibilities did not prevent the Rapporteur from taking initiatives. Moreover, the system of special rapporteurs, who were not responsible to their own Governments and whose work was, in the first instance, criticized by their colleagues, who also did not receive instructions from their Governments, was perhaps peculiar to the fellowship of the law. It was not found in other United Nations bodies, but it had some definite advantages. Since they were independent, the members of the Commission could work in an atmosphere of impartiality and loyalty which was certainly a positive factor in the development of international relations.

NIGERIA

Oral comments 1974

The representative of Nigeria stated:

The Commission had duly taken into account the views of States which had achieved independence since the Second World War and had given full recognition to the practice of such States in respect of succession to treaties.

1494th meeting, para. 31.

Oral comments 1975

The representative of Nigeria stated:

... at the current stage of international relations all that it was possible to produce in the way of international law was compromises derived from political interests, compromises which would be modified with the passage of time. In fact, part of the task of the Committee was to identify those areas where improvements were needed. If all the ideas contributed by representatives were combined it would be possible to work out an orderly international arrangement. When all interests became one, then the world would have more stable international laws and regulations. The question of succession of States in respect of treaties was a delicate and important one in that the aim was to eliminate relationships of domination so that peoples could exercise their right of self-determination. Newly independent States must have the right to review treaties entered into on their behalf by predecessor States in matters concerning sovereignty over their territory and to choose those by which they wished to be bound. Therefore, Nigeria found acceptable the "clean-slate" principle, which, if properly applied, would not be prejudicial to the principle of continuity, which envisaged the preservation of international norms the value of which had been established. After review, treaties concluded in the obvious interest of the successor State by the predecessor State could doubtless easily be adopted by the successor State. Recalling a maxim of the representative of Ghana that one's friends should not help one to choose one's enemies, she said that thanks to those principles a newly independent State would begin life among other members of the world community with a relaxed and mature attitude.

Her delegation recognized the need to safeguard the interests of newly independent States, while also believing that no newly independent State would reject treaties entered into on its behalf by a predecessor State just for the sheer joy of exercising its right of self-determination. Her delegation welcomed the general approach adopted by ILC in formulating the draft articles ...

1548th meeting, paras. 49-50.

PAKISTAN

Oral comments 1974

The representative of Pakistan stated:

His delegation considered that in the case of succession of newly independent States, the "clean slate" principle adopted by the Commission was appropriate.

... Moreover, there was a need to prevent the complete rupture of treaty obligations on account of the application of the "clean slate" principle in respect of newly independent States. In cases where succession was the result of uniting or dissolution of States, the prevailing principle of continuity was to be maintained in the interest of peaceful international relations and security.

1492nd meeting, para. 78.

PARAGUAY

Oral comments 1975

The representative of Paraguay stated:

... the principle of *pacta sunt servanda* had currently given way largely to the concept of *rebus sic stantibus*. The "clean-slate" principle, which constituted the corner-stone of the draft articles, reflected that trend perfectly. Article 15 of the draft left no doubt in that regard. Quite rightly, ILC had accorded priority to the inherent right of a newly independent State to genuine self-determination rather than to the principle of continuity and legal stability in international relations. That step represented a *de jure* application of the principle of the sovereign equality of all States to decide for themselves which conventional obligations undertaken on their behalf by their predecessors should be continued and which should be renounced. However, in view of the increasing interdependence of relations between States regardless of their level of development and their economic, social and political systems, it was also in the interest of the newly independent State, as a member of the international community, to ensure that the succession had the minimum effect on existing conventional relations established in accordance with international law, and to contribute to the equilibrium essential for the maintenance of a harmonious international order.

1530th meeting, para. 28.

PERU

Oral comments 1974

The representative of Peru stated:

... her delegation agreed with the idea that a newly independent State began its existence with a "clean slate" in so far as treaties were concerned. The "clean slate" principle was consistent with the principle of self-determination, under which formerly dependent territories were entitled to conduct their international relations as sovereign and equal States.

1496th meeting, para. 8.

PHILIPPINES

Oral comments 1975

The representative of the Philippines stated:

His delegation supported the principles underlying the draft articles on the succession of States in respect of treaties. The adoption of the draft articles by the international community would contribute to the completion of the codification of the law of treaties. The draft articles represented a fair compromise between the principle of continuity and the "clean-slate" principle. However the "clean-slate" principle should leave the new State the power to decide whether or not to be party to a treaty at the time of the succession.
1549th meeting, para. 66.

ROMANIA

Oral comments 1974

The representative of Romania stated:

On completing its work on that question, the Commission had singled out certain principles which were particularly applicable in international law. It had also given due attention to the importance of analogies with internal law for questions in international law. The Commission had also considered State practice, the concept of "succession of States", the relationship between succession in respect of treaties and the general law of treaties, and the principle of self-determination and the law relating to succession in respect of treaties. Its report indicated the scope and usefulness of the draft articles and the commentaries. In the modern world, with the definitive condemnation of colonialism and its gradual disappearance, new independent States were emerging, and the Commission's study was therefore of great current interest. The Commission's activities during the 25 years of its existence were of the greatest importance for the establishment of legal principles, definitions and standards for the modern organization of international relations; the definitions contained in article 2 were a good example. The Commission had made a good choice of models for certain articles and definitions by following the Vienna Convention on the Law of Treaties.

The Commission had taken into account the modern context of State practice with regard to succession. It had emphasized that the much greater interdependence of States in the modern world would make it necessary for successor States to maintain in effect the treaty relations of the territory to which they had succeeded, on the basis of the principles of the United Nations Charter. In that connexion, he drew attention to the Commission's concern with the question of recognition by the successor State of the obligations or rights of a predecessor State. The Commission had also been concerned to determine the necessary conditions under which a treaty was considered as being in force in the case of a succession of States. It should be emphasized that new States should be born and live in total independence. The principle of the independence of a successor State should be proclaimed in the draft articles, perhaps in one of the first of them. At the same time, there were sometimes obligations, mainly economic in nature, which were based on the international agreements concluded by the predecessor State. International legality made it necessary in such cases to identify the moment when the obligations of the successor State began and to specify the principles and the method to be applied in order that a predecessor State or a territory that became a new State might continue its international life in the world community. The forthcoming conference which was to prepare a convention on succession of states in respect of treaties might wish to examine such problems with a view to expanding articles 15-19 and 24 of the draft.

The draft and the commentaries made a constructive approach to the questions concerning the effects of the uniting and separation of States.

1486th meeting, paras. 36-38.

SRI LANKA

Oral comments 1975

The representative of Sri Lanka stated:

... the draft articles reflected an acceptable compromise between the "clean-slate" principle and the principle of continuity.

1538th meeting, para. 61.

SWAZILAND

Oral comments 1975

The representative of Swaziland stated:

His delegation was pleased by the progressive and pragmatic approach taken by ILC to the question of succession of States in respect of treaties. In that connexion, the central problem seemed to be the extent to which treaties previously applicable to a given territory remain applicable after a change in sovereignty over that territory.

...

Part IV of the draft articles, entitled "Uniting and separation of States", seemed to be based on a principle that was diametrically opposed to the "clean-slate" principle. It was difficult to see what difference there was between newly independent States and new States formed by unification or division which justified the application of the "clean-slate" principle in the case of the former but not 1549th meeting, paras. 20 and 23.

THAILAND

Oral comments 1974

The representative of Thailand stated:

The Commission was to be commended for achieving a judicious balance between continuity of treaty rights and obligations and the "clean slate" rule.

1496th meeting, para. 2.

TURKEY

Oral comments 1974

The representative of Turkey stated:

The "clean slate" principle was maintained in the case of newly independent States, and that of continuity *ipso jure* in cases of succession involving previously sovereign territories.

1494th meeting, para. 45.

UGANDA

Oral comments 1975

The representative of Uganda stated:

... the principles of interdependence, sovereignty and self-determination were gaining increasing acceptance in the international community. With regard to treaties, each State should be given an opportunity to decide by which treaties it intended to be bound. In that respect a new State was in a way an unfortunate State. More often than not it had gone through a difficult period at the hands of colonialists, and therefore the "clean-slate" principle was the only one that could make international law truly international, and no longer the customary law of European States. There was reason to presume that whatever the colonialists did was first in their own interest, secondly in the interests of their allies and lastly in the interests of the colonized people. Now the order of interests was reversed, and the *ipso jure* continuity principle derived from the *pacta sunt servanda* theory was unacceptable under existing circumstances. The "clean-slate" principle was compatible with the principle of self-determination and there was no reason to fear that the new States would abuse the advantages of those principles.

1549th meeting, para. 54.

UKRAINIAN SOVIET SOCIALIST REPUBLIC

Oral comments 1975

The representative of the Ukrainian SSR stated:

Each set of draft articles relating to international law must be considered by the Sixth Committee since they were to become an essential part of contemporary law and would contribute to the progressive development of international law in general. It was even more necessary to observe those criteria when dealing with the succession of States, because that question was closely linked to the principles of the sovereign equality of States and self-determination of peoples as well as to the right of new States to decide which treaties should remain in force for them and which should not, in the interest of balanced and stable international relations. The ILC draft met those demands; it embodied a just concept of the succession of States and was aimed at facilitating access to international treaty relations for many new States. ...

Attention should also be drawn to the close link between succession in respect of treaties and succession in respect of matters other than treaties. In both cases, the general provisions should be identical, particularly with regard to the concept and date of succession. A satisfactory drafting of the provisions common to these two aspects of the succession of States could be achieved only if decisions were taken on the basis of a detailed consideration of both aspects.

1526th meeting, paras. 31 and 35.

UNITED STATES OF AMERICA

Written comments 1975

The maintenance of the close relationship between the draft articles and the Vienna Convention on the Law of Treaties is an essential and important element. Obviously parallelism can be maintained only to a limited extent, but where there are common features, as in articles 1 to 5 inclusive, then, from the standpoint of the proper codification of international law, both the content and the language of the articles should be as near uniformity as possible. This should not mean, on the other hand, that articles of the Vienna Convention should be incorporated into the succession on articles if there are sound reasons for not doing so.

YUGOSLAVIA

Oral comments 1974

The representative of Yugoslavia stated:

In elaborating the draft articles, the Commission had proceeded from two points of view: from the general law of treaties or from the Vienna Convention on the Law of Treaties, and from the various aspects that succession in respect of international treaties might acquire in practice. The Commission had endeavoured to implement the Vienna Convention as consistently as possible and had largely succeeded in doing so. Furthermore, it had elaborated more thoroughly the rules concerning succession through the uniting or separation of States.

1491st meeting, para. 15.

ZAIRE

Oral comments 1975

The representative of Zaire stated:

His country was one of those which supported the idea of the continuity of treaties, reconciling easily the concept of the succession of States in respect of treaties with the *pacta sunt servanda* rule. Nevertheless, it accepted the "clean-slate" principle whenever the fundamental principles of its sovereignty were endangered.

As the expression "succession of States" meant the replacement of one State by another in the responsibility for the international relations of territory, his Government had opted for automatic succession, with benefit of inventory, to use a term derived from private law. In other words, his country agreed to accept responsibility for treaties negotiated and signed in its absence, with the possibility of denouncing at a later stage those which affected its fundamental interests.

Thus, the rights and obligations of the predecessor State had been transferred to his State without any action on its part and even against its will, i.e. automatically. A change in sovereignty did not therefore change international relations.

His country's practice with regard to succession to both bilateral treaties and multilateral treaties of a universal or restricted nature was therefore in accordance with the provision in its Constitution that international treaties concluded before 30 June 1960 would be valid only if they were not modified by national legislation.

The principle was therefore that of the preservation of treaties signed on his country's behalf by the predecessor State—Belgium. His Government nevertheless reserved the right to reject or denounce those which had not been prompted by noble ideals. Such a position obliged his Government to make a careful examination of such treaties, which was not an easy task since they were over 200 in number. It was on the basis of those principles that the Republic of Zaire had preferred to renegotiate its membership of the General Agreement on Tariffs and Trade (GATT), whereas it had accepted the succession with regard to the International Labour Organisation.

In spite of the clear language of the Constitution of Zaire, some States had preferred to renegotiate certain agreements with the new independent country, particularly in the case of agreements relating to air transport, trade and investment guarantees. Furthermore, many States had

rejected the succession of Zaire to the rights and duties of the former metropolitan country in so-called extradition and legal assistance agreements. His country believed in a genuine succession of States in respect of treaties and favoured the idea of a slate which was not entirely clean, in other words, the principle of continuity of a certain type, which could be called succession with benefit of inventory.

In general, his delegation welcomed the way in which the draft articles had been prepared, i.e. the consistent desire to ensure an indisputable succession based on the two corollaries of continuity, *rebus sic stantibus* and the relativity of commitments *res inter alios acta*. Where there was a change in circumstances or in partners, commitments could be modified.

1535th meeting, paras. 28-34.

C. Scope and structure of the draft

AFGHANISTAN

Oral comments 1975

The representative of Afghanistan stated:

On the question of social revolution, referred to in paragraph 66 of the report, his delegation was inclined to support the line of reasoning advanced by ILC and considered that phenomenon as a succession of governments rather than a succession of States.

1543rd meeting, para. 9.

AUSTRIA

Oral comments 1974

The representative of Austria stated:

... his Government fully agreed with the structure of the draft articles on succession of States in respect of treaties ...

1490th meeting, para. 11.

BANGLADESH

Oral comments 1975

The representative of Bangladesh stated:

... ILC had not extended the "clean-slate" principle far enough in its definition in draft article 2, paragraph 1 (f), and had thus not given the principle of self-determination adequate consideration. According to his delegation, the concept of a "newly independent State" included not only all formerly dependent territories such as colonies, Trust Territories, mandate territories and protectorates, but also new States which

emerged as a result of separation of part of an existing State or by social revolution, as well as religious, linguistic or cultural minorities of the territory of an existing State which had struggled for the right of self-determination based on the principles of the Charter of the United Nations and the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations (General Assembly resolution 2625 (XXV), annex). Those documents made no distinction between the right of self-determination of peoples of colonial and other territories.

1547th meeting, para. 13.

BOLIVIA

Oral comments 1974

The representative of Bolivia stated:

The Commission had excluded from the scope of the draft articles on succession of States problems of succession arising as a result of changes of régime brought about by social or other forms of revolution, since in its view, in the majority of cases, a revolution or coup d'état brought about a change of government while the identity of the State remained the same. That was the usual procedure, since otherwise, in the period of consolidation of a recently formed State, there were almost always changes in which the alternatives of power could produce real or apparent radical changes in the predominant political trends, but which did not of necessity alter the identity of a State or affect its duties to the community to which it belonged.

1493rd meeting, para. 43.

BRAZIL

Oral comments 1974

The representative of Brazil stated:

The slight modifications that had been made in the articles in part I had considerably improved the language, the structure and the conciseness of the text, while maintaining the spirit and substance of the original formulation.

In part IV, the distinction between dissolution and separation of States had been eliminated and replaced by two hypotheses of separation. Those two cases were dealt with in the commentaries, thus duly covering the concept of dissolution of a State.

Part V retained the saving clause that the articles should not prejudice any question arising from the international responsibility of a State or from the outbreak of hostilities between States. The other saving clause, concerning military occupation, had been placed in a separate article.
1487th meeting, paras. 2-4.

BULGARIA

Oral comments 1974

The representative of Bulgaria stated:

... the draft articles were not flawless. His delegation had great difficulty in accepting the Commission's conclusion that it was appropriate to exclude, from the scope of the draft articles, problems of succession arising as a result of changes brought about by a social revolution. It could not understand why the Commission preferred, in paragraph 66 of its report, to establish no difference between a revolution and a coup d'état. Furthermore, the Commission stated that "in the majority of cases" a revolution or a coup d'état did not change the identity of the State: that was an acknowledgement, at least implicitly, that there were cases in which a revolution did effectively change the identity of the State concerned. The argument that those questions were charged with overtones of a political and philosophical character might serve as a pretext, but it was no justification for ignoring the practice of a number of States.

1495th meeting, para. 21.

Oral comments 1975

The representative of Bulgaria stated:

He strongly questioned the conclusion by ILC that it was inappropriate to include in the scope of the draft articles problems of succession arising as a result of changes brought about by social revolution.
1535th meeting, para. 42.

BYELORUSSIAN SOVIET SOCIALIST REPUBLIC

Oral comments 1974

The representative of the Byelorussian SSR stated:

The Commission had ignored certain aspects of contemporary reality; for example, it had not stated its opinion on the elimination of certain colonial régimes. Nor had it tackled the question of the succession of States in cases of social revolution. That type of situation could constitute decolonization as the change of régime fundamentally modified the status of a subject of international law, and the new State must be able to reconsider its international relations. That was the road which the Soviet Union had followed after the revolution in October 1917 when it had annulled the treaties concluded by czarist Russia which were contrary to the interests of the workers. Other countries had found or would find themselves in the same situation and those countries must be able to make a free choice of the obligations which they wished to assume.

In its report the Commission sometimes rightly made a distinction between States and international organizations in respect of international law; but, in other cases, it seemed to make no such distinction. However, there was no doubt that the status of a subject of international law was not the same for States and for organizations. For example, in paragraph (4) of its commentary to article 32, the Commission seemed to consider the European Economic Community (EEC) as a community of States with the status of a subject of international law. However, the EEC was not a single State but an association of States, i.e. an international organization. In its studies of practice relating to treaties the Commission should have preferably confined itself to the institutions of the United Nations system.
1491st meeting, paras. 4-5.

Oral comments 1975

The representative of the Byelorussian SSR stated:

It should also be recalled that new States might arise not only as a result of decolonization but also by means of a social revolution, and States of the latter type should enjoy the right to apply the same principles as were applied in the case of States which had emerged as a result of decolonization. ILC had failed to give proper attention to problems relating to succession of States in the event of social revolution. It was essential that such cases should be covered by the draft articles

1536th meeting, para. 7.

CANADA

Oral comments 1974

The representative of Canada stated:

The question of succession of Governments was a matter of obvious significance and one which in many respects could be the source of more problems than the succession of States. The present time was the twilight of the colonialist era and the succession of States would progressively diminish in importance, whereas the same could not be said of the question of the succession of Governments. Although the Commission had given priority to succession of States, his delegation recalled that the topic had originally been entitled "Succession of States and Governments". In 1963, the Commission approved the recommendation of the Sub-Committee on the Succession of States and Governments that the Special Rapporteur should study succession of Governments only to the extent necessary to complement the study of State succession.² Although the General Assembly in resolution 1902 (XVIII) had endorsed that decision, the question that might be asked was whether it might not be preferable to consider the codification of the entire question of succession with respect to treaties, including both the succession of States and the succession of Governments. His delegation suggested that such a possibility should be considered.

1489th meeting, para. 42.

CONGO

Oral comments 1975

The representative of the Congo stated:

... his delegation regretted that article 2 referred only to newly independent States and did not refer to States in which profound changes had taken place, particularly through the replacement of an old social order by a new one. The Committee would be criticized if it were to disturb international stability, but it would be criticized much more if it were to impose on a State obligations which flagrantly contradicted that State's concept of society. The emphasis on newly independent States in the draft articles led his delegation to wonder how many Territories would still be dependent when the final text entered into force.

1537th meeting, para. 59.

CUBA

Oral comments 1974

The representative of Cuba stated:

Similarly, his delegation could not share the opinion expressed in paragraph 66 of the Commission's report on the subject of social revolution. A revolution which completely transformed the economic and social structure and which entailed the transfer of political power to the exploited classes did not involve a mere change of government alone but the birth of a new type of State. That was not a theoretical problem but a real problem and a phenomenon which had appeared with the Great October Revolution of 1917, the point of departure for profound transformations in the development of mankind and in the concept of a State and in law.

1490th meeting, para. 23.

CZECHOSLOVAKIA

Oral comments 1975

The representative of Czechoslovakia stated:

His delegation regarded as a flaw the fact that the proposed draft articles failed to recognize situations where new States were formed as a result of a social revolution. The concept of a newly independent State set out in article 2, paragraph 1 (f), did not cover all cases of the formation of new States and the matter required further study.

1537th meeting, para. 33.

DENMARK

Oral comments 1974

The representative of Denmark stated:

The changes and additions made to the draft articles during the second reading showed, however, that the text would apply mainly to different problems from those which marked the period of decolonization. In the same written observations, the Danish Government had also said that the structuring and delimitation of the draft were acceptable; ...

1491st meeting, para. 32.

Written comments 1975

In its earlier written observations, the Government of Denmark expressed its satisfaction with the scope and structure of the first set of draft articles on succession of States in respect of treaties. The additions and changes made by the International Law Commission during the second reading in 1974 are also generally acceptable to the Danish Government.

ECUADOR

Oral comments 1974

The representative of Ecuador stated:

His delegation welcomed the distinction made between the various forms of successions of States and their legal implications. It endorsed the decision to exclude social revolution from cases of succession of States, since such an event merely gave rise to a succession of Governments. However, no definite position could be taken on that subject until the problem had been considered in greater detail.

1494th meeting, para. 40.

FINLAND

Oral comments 1974

The representative of Finland stated:

... the Commission's first set of draft articles on the topic had been well received in the Sixth Committee at the twenty-seventh session and that at that time (1320th meeting) his delegation had stated that the draft articles were based on sound principles that were accepted by a majority of States and of legal authorities. The new set of draft articles

... was in many respects a considerable improvement on the earlier one. The substance and, in particular, the form of various provisions had been changed, generally for the better. The order of the articles had been changed, some articles had been combined and others divided up, and some new articles and supplementary provisions had been added to make the text clearer, although it had in places become rather cumbersome.

1486th meeting, para. 21.

FRANCE

Oral comments 1974

The representative of France referred to:

... the difficulties the Commission had encountered as a result of introducing into the draft the distinction between "newly independent States" and States emerging from the separation of parts of a State. By so doing, it had introduced a political concept which had no place in the draft articles and had led it to adopt solutions which might give rise to contradictions.

1492nd meeting, para. 86.

GERMAN DEMOCRATIC REPUBLIC

Oral comments 1974

The representative of the German Democratic Republic stated:

The draft articles did not contain any provision concerning the relationship between recognition and State succession in respect of treaties. Apart from succession in respect of bilateral treaties, which could hardly be effected without mutual recognition, it would seem necessary to include in the future convention a provision that would make it clear that succession in respect of multilateral treaties occurred independently of the recognition of a State. That would also take account of the generally recognized principle of international law that the international personality of a State existed independently of its recognition by other States.

The draft articles dealt mainly with those cases of State succession which had emerged from the process of decolonization. His delegation held that the principles contained in the draft applicable to such States could also be applied to other cases where successor States had emerged in the exercise of the right of peoples to self-determination. In a successor State which had come into being after the destruction of the former German Reich by the anti-Hitler coalition, the people of the German Democratic Republic was shaping the developed system of socialist society. Today there existed a socialist State, the German Democratic Republic, in which the socialist nation was developing, and the capitalist Federal Republic of Germany, in which the capitalist nation existed.

1486th meeting, paras. 53-54.

GERMANY, FEDERAL REPUBLIC OF

Written comments 1975

The International Law Commission rightly assumed that social revolutions generally result in a change of government rather than in a succession of State, the identity of the State remaining the same. The Government of the Federal Republic of Germany shares this view and approves, in the interest of stability and continuity of treaties, the solution embodied in the draft articles.

GREECE

Oral comments 1974

The representative of Greece stated:

... It should ... be borne in mind. ...

that the era of decolonization was coming to an end and that the case of newly independent States would not be the commonest form of succession in the future.

Part IV of the draft articles, which dealt with uniting and separation of States, also suffered from imprecision.

1493rd meeting, paras. 3-4.

Oral comments 1975

The representative of Greece stated:

... his delegation shared the view that as the era of colonialism was drawing to a close, it was necessary for the draft to contain provisions covering other cases of the appearance of new States.

1537th meeting, para. 16.

GUATEMALA

Oral comments 1974

The representative of Guatemala stated:

His delegation welcomed the fact that the Commission had excluded from its draft articles dealing with the uniting of States, associations of States having the character of intergovernmental organizations. There was, however, a difference between purely governmental associations and some communities based on economic or economic and political union, which thereby became new subjects of international law. Sometimes the States members of a community were obliged to terminate commitments which might prejudice the relations of the community with third States, so that the community would not be bound by a former régime. In other cases, by separating from a community, a State might or might not succeed to the community with regard to a legal régime relating to a territory or a boundary régime directly affecting the successor State. It would therefore be desirable to harmonize the various points of view on the question.

1490th meeting, para. 6.

HUNGARY

Written comments 1976

While Part IV of the 1974 draft, entitled "Uniting and Separation of States", is much more thorough and detailed than the corresponding part of the 1972 draft, it nevertheless seems to be in need of further improvement, for after the imminent complete liquidation of the colonial system, it will be the cases regulated in this Part that will be of the greatest importance from the point of view of State succession. Thus it seems justified that the future convention should pay still more attention to this fact.

JAMAICA

Oral comments 1974

The representative of Jamaica stated:

In paragraph 66 of its report, the Commission excluded social revolution from the circumstances which could give rise to a succession of States, stressing that "in the majority of cases" a revolution brought about only a change of Government while the identity of the State remained the same. The wording used in the report did not rule out the possibility that there were in fact some forms of social revolution which involved a change in the identity of the State and therefore fell within the scope of the work on succession of States. The problem was, of course, complex, but the Commission might consider the possibility of defining that category of revolution by examining the constitutional features of the new system instead of referring to the general concept of the constituent elements of the State.

1495th meeting, para. 15.

JAPAN

Oral comments 1974

The representative of Japan questioned:

... the accuracy of the statement in paragraph (7) of the Commission's commentary on article 2, that the characteristics of the various historical types of dependent Territories—colonies, trusteeships, mandates, protectorates, etc.—did not today justify differences in treatment from the standpoint of the general rules governing succession of States in respect of treaties. In many instances, the process of accession to full independence was gradual, and before they achieved full independence dependent Territories might enjoy a certain degree of autonomy, a limited international status and limited responsibilities for their own international relations, and they might well be fully consulted in advance on whether they concurred in the conclusion of international agreements applicable to them. His delegation's concern was that if the "clean slate" principle was adopted, disregarding different stages of dependency, and the legal nexus was denied between dependencies and treaties in the conclusion or application of which the dependencies had freely concurred, a formula might be obtained which would lead to contradictory results and

deny the self-determination of the dependencies prior to full independence. Such contradictions became more evident if the local authorities were entitled to provide—and had provided—local domestic legislation and budgetary appropriation for the implementation of such treaties. Therefore, the types of dependent Territories, the circumstances of the conclusion or application of treaties, and the nature of the treaties were relevant factors in determining the effect of the succession.

1487th meeting, para. 18.

KENYA

Oral comments 1974

The representative of Kenya stated:

His delegation was in general agreement with the provisions of parts IV and V of the draft articles.

1493rd meeting, para. 33.

MONGOLIA

Oral comments 1974

The representative of Mongolia stated:

However, the draft articles contained a serious inadequacy with regard to the succession of States in cases of social revolution. When the draft articles had been studied by the Sixth Committee at the twenty-seventh session of the General Assembly, his delegation had stated (1325th meeting) that a specific reference should be made to the problem of succession of States in cases of social revolution; in such cases, the new State had the right to reject unacceptable treaties. It was unfortunate that the Commission had not made the appropriate changes. Social revolution was an instance of succession of States in respect of treaties, as the practice of many States showed. For example, after the 1921 revolution in Mongolia the question had arisen of succession in respect of treaties, and all unacceptable treaties had been rejected. Thus, it was stated in the preamble to the 1921 Agreement on the establishment of friendly relations between Mongolia and the Russian Soviet Federative Socialist Republic that all previous treaties between the former Governments of the two countries were null and void as a result of the

new situation that had been created in both countries. The significance of that agreement was not limited to the solution of the problem of the law of succession of treaties and agreements. Its distinguishing feature was that it was the first international agreement concluded between qualitatively new subjects of international law, namely, two States in which power belonged to the people. From the juridical point of view, there was every reason to consider it as the first international treaty to lay the foundation for a new kind of international relations; that was its historical significance in his delegation's opinion.

His delegation considered that a new contribution had thus been made to international law. It could not agree with the arguments adduced by the Commission in paragraph 66 of its report for excluding social revolution, since ordinary changes of Government or revolts usually meant a social revolution.

1488th meeting, paras. 2-3.

MOROCCO

Oral comments 1974

The representative of Morocco stated:

However, his delegation wondered why the Commission had not made a distinction between those newly independent States which had been subject to a colonial régime proper and those which had known some other form of colonization, such as protectorates. Of course, such a distinction would not affect the "clean slate" principle, but was of interest because of the status of some countries such as his own, which had been part of international life before the establishment of the colonial régime and had consequently taken part in international conferences and concluded important international conventions. It would be interesting to know what fate would be reserved, in the context of succession of States, for such conventions, whose provisions had often been violated by the colonial Powers.

1492nd meeting, para. 61.

NETHERLANDS

Written comments 1975

In the draft articles, the central position of States attaining independence as a result of the process of decolonization has been maintained. However, now that the process of decolonization is nearly completed, the question may be asked whether rules intended to govern State succession in future in all its forms should still focus primarily on this specific but soon outdated form of State succession.

The Netherlands Government would like to stress this point, notwithstanding the fact that the present draft, as compared with its predecessor, turns out to be more balanced, or at least more symmetrical, inasmuch as certain provisions, notably articles 31, 32 and 35-37 have been added to part IV, whereas the former draft dealt with the aspects covered by these articles only in part III. Furthermore, a growing appreciation of the controversial advantages of a too strict application of the "clean slate" formula appears from the different wording of article 33, paragraph 3, as compared with the corresponding article of the first draft (art. 28, para. 2). A State emerging as a result of separation of territory is no longer automatically put in the position of a newly independent State. In the present wording, this legal position is provided for only under the condition that such a territory "... 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 ...". However preferable the tenor of this paragraph in its present drafting may be, the present wording is likely to give rise to differences of opinion with regard to its interpretation, especially on the question which "circumstances" warrant a position similar to that of a newly independent State.

POLAND

Written comments 1975

In the opinion of the Government of the Polish People's Republic, the draft articles (version of 1974) have been considerably improved in comparison with the preliminary draft (version of 1972). Especially the problems of a uniting of States and separation of parts of a State were treated in much greater detail (new arts. 31, 32, 35, 36 and 37).

SWEDEN

Oral comments 1974

The representative of Sweden stated:

One general feature of the draft must be stressed. In practice, the application of the provisions of the draft would probably give rise to conflicting interpretations by the parties concerned. He noted, for example, that the rules applicable to newly independent States depended on whether the new State acquired independence or was created as a result of the separation of one or several parts of a State. A newly independent State was thus a State which had been a dependent territory before succession. The draft articles did not, however, contain a definition of the concept of a dependent territory and it might therefore be asked what legal criteria distinguished a dependent territory from a part of a State. The matter was further complicated by the fact that the draft also referred in article 33 to an intermediate category, namely "a part of the territory of a State" which "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".

1489th meeting, para. 25.

TURKEY

Oral comments 1974

The representative of Turkey stated:

It was important to examine carefully the differences between multilateral treaties and bilateral treaties within the framework of succession.

1494th meeting, para. 45.

UKRAINIAN SOVIET SOCIALIST REPUBLIC

Oral comments 1974

The representative of the Ukrainian SSR stated:

As the Commission had correctly observed in paragraph 45, the case of newly independent States was the commonest form in which the issue of succession had arisen during the past 25 years and the stress laid on it needed neither justification nor explanation. However, as was pointed out in paragraph 46, the era of decolonization was nearing its completion and in the future problems of succession were likely to arise in connexion with other cases. The value of the Commission's work would thus depend to a considerable degree on the breadth of the sphere of application of the articles. In that regard, her delegation shared the views expressed in the general debate by the representative of Canada (1467th meeting) to the effect that the future convention should cover a broader range of cases of succession.

A particular problem of succession in respect of treaties arose in the case of social revolution. Her delegation could not agree with the views expressed by the Commission on that subject in paragraph 66 of the report. The Commission wrongly identified social revolution with a change of government and claimed, without sufficient justification, that the problem of the effect of a revolution, as regards the question of succession in respect of treaties, fell within the scope of "succession of Governments" rather than within that of "succession of States". The practice of succession in the Soviet Union and other socialist States indicated that a socialist revolution gave rise to a historically new form of State and a qualitatively new subject of international law. That was a succession of States, not of Governments. Her delegation therefore fully shared the views expressed in that regard by the representative of the Soviet Union (1470th meeting) and Mongolia (1488th meeting) and supported suggestions made by the representatives of the German Democratic Republic and Czechoslovakia in the written observations on the draft articles . . . to the effect that the corresponding provisions of the draft articles should be reformulated so as to cover a broader range of cases of succession, including cases of social revolution.

1492nd meeting, paras. 66 and 67.

Oral comments 1975

The representative of the Ukrainian SSR stated:

... the matter of which cases were covered by the draft posed difficult problems. The draft did not mention cases of social revolution and dealt particularly with cases of accession to independence following the fall of a colonial régime. Yet the process of decolonization was nearing its end, whereas cases of succession as a result of merging, unification or separation of territories might well become more numerous; but such cases were dealt with in less detail in the draft articles.

1526th meeting, para. 33.

UNION OF SOVIET SOCIALIST REPUBLICS

Oral comments 1974

The representative of the USSR stated:

The "clean slate" principle and the question of the invalidity of unjust treaties were closely related to the legal consequences of social revolution. His delegation regretted that the authors of the draft articles had not concerned themselves with the problems raised in the case of social revolution, and it could not accept the argument contained in paragraph 66 of the report, which rejected the distinction between social revolution and coup d'état. If the Special Rapporteur and the Commission had analysed the experience of the social revolution of October 1917 and that of other countries, they would undoubtedly have reached a different conclusion. He remarked that the draft articles contained other lacunae and inadequacies, and could not therefore be submitted in its present state to a conference convened for the purpose of concluding a convention. The text of the draft would have to be submitted to States for their observations, and the Commission should re-examine it in the light of the comments made by Governments and by the Sixth Committee and of the proposals concerning multilateral treaties of universal character and methods for settlement of disputes concerning the provisions of the future convention.

1489th meeting, para. 34.

UNITED STATES OF AMERICA

Written comments 1975

The United States welcomes the changes that have been made in part IV on the uniting and separation of States. The inclusion of new articles to deal with treaties not in force, or which have been signed by the predecessor State prior to the uniting or separation, are valuable additions.

The combination of the 1972 articles on dissolution and on separation of States in one set of articles on the separation of States is a substantial improvement. The result is to eliminate the extremely difficult question of distinguishing between what is a dissolution of a State and what is a separation. The maintenance in force of treaties previously applicable in the dissolved territory, except with respect to any part of a State which becomes a new State in circumstances essentially of the same character as those surrounding the formation of a newly-independent State, provides a reasonable compromise between the principle of continuity and the principle of freedom of choice. The exception, however, may give rise to difficulties in application. The draft articles do not lay down tests for determining what are the circumstances in which a new State should be considered to be "a newly-independent State". The single test would appear to be whether it had been a "dependent territory" within the meaning of article 2. There have been a number of cases in which parts of a State that were formally described as integral parts of a State were treated as dependent territories. On the other hand, there are cases in which the question would be extremely difficult to answer. The United States is inclined to the view that the circumstances in each case of dissolution that may arise in the future can be so diverse that any further attempt to elaborate the definition would be self-defeating. The existence of this difficult problem, however, underscores the necessity for having an effective and impartial procedure for the settlement of disputes.

YUGOSLAVIA

Oral comments 1974

The representative of Yugoslavia stated:

The rules concerning uniting and separation of States which established the principle of continuity, had been elaborated in greater detail than in the first draft articles, which might have conveyed the impression that the Commission had been concerned primarily with the situation of newly independent States, which was now no longer the case.

1491st meeting, para. 15.

ZAIRE

Oral comments 1975

The representative of Zaire stated:

His country had some difficulty in accepting the distinction drawn between multilateral treaties (article 16) and bilateral treaties (article 23). It was hard to see why the presumption of acceptance of succession to bilateral treaties should not apply to multilateral treaties. That would contribute to respect for the principle of continuity in international relations.

1535th meeting, para.39.

II. COMMENTS ON SPECIFIC DRAFT ARTICLES AND QUESTIONS

Article 1

Scope of the present articles*

UNITED STATES OF AMERICA

See, in subsection B of section I supra, the statement by the United States reproduced under Written comments 1976.

* See also subsection C of section I supra.

Article 2

Use of terms

Article as a whole

UNITED STATES OF AMERICA

See in subsection B of section I supra the statement by the United States reproduced under Written comments 1975.

Paragraph 1 (b)

BYELORUSSIAN SOVIET SOCIALIST REPUBLIC

Oral comments 1974

The representative of the Byelorussian SSR stated:

The two fundamental concepts of the succession of States and of newly independent States should be unambiguously defined. The succession of States was the replacement of one State by another in the responsibility for the international relations of the territory. That succession was valid for all international relations and not only in respect of treaties; it also applied to all types of new States.

1491st meeting, para. 3.

CUBA

Oral comments 1974

The representative of Cuba stated:

With regard to the meaning and scope of some of the terms used in the draft articles, his delegation did not share the idea that the concept "succession of States" meant "the replacement of one State by another in the responsibility for the international relations of territory", as stated in article 2, paragraph 1 (b); the term "responsibility" had a special connotation in international law and it was not simply a matter of "international relations of territory" but of relations affecting sovereignty over a particular territory. Since the people of a given territory was called on to exercise its sovereignty and its right to self-determination, it was for that people to say whether or not it wished to assume the responsibilities deriving from the pre-existing conventional relations, which involved both rights and obligations.

1490th meeting, para. 21.

GERMANY, FEDERAL REPUBLIC OF

See in subsection C of section I supra, the statement of the Federal Republic of Germany reproduced under Written comments 1975.

MADAGASCAR

Oral comments 1974

The representative of Madagascar stated:

His delegation agreed with the meaning given to the term "succession of States" in article 2 (b) of the draft. That term was perhaps not the happiest choice, since a State could not succeed another State and transfer its sovereignty to it, but it was convenient and should be interpreted as applying to the replacement of one State by another in the responsibility for the international relations of territory, as stipulated in that subparagraph.

1495th meeting, para. 44.

PARAGUAY

Oral comments 1975

The representative of Paraguay stated:

His delegation agreed in general with the substance of the draft submitted by ILC. However, he felt that, in article 2, paragraph 1 (b), the words "of territory" should be replaced by "of the territory to which the succession of States relates". That amendment would render the article less vague and at the same time conform with the terminology used elsewhere in the paragraph.
1530th meeting, para. 29.

Paragraph 1 (e)

CZECHOSLOVAKIA

Oral comments 1974

The representative of Czechoslovakia stated:

The question of the period of notification also had a wider significance because of the danger that a lack of confidence in treaty relations generally would emerge. It would be advisable for the Commission to examine that issue more closely and to clarify precisely the concept of the moment of succession. The Commission might consider whether the determining factors should be purely objective, i.e. a declaration by the successor State, or whether other factors should be taken into account. Article 2, paragraph 1 (e), did not provide a clear answer.
1488th meeting, para. 12.

Oral comments 1975

The representative of Czechoslovakia stated:

The question of the date of succession should also be resolved, since failure to do so might have serious legal consequences. It could be asked whether it was possible to establish the date of succession from an objective standpoint. Article 2, paragraph 1 (e) did not give a sufficiently clear reply to that question. Succession of States meant the replacement of one State by another in respect of responsibility for the international relations of territory. If the matter depended solely on a subjective act by the new State, problems might arise in respect of the determination of its international responsibility. There might also be problems if the new State failed to give a notification stipulating the date of succession. His delegation therefore considered that it would be useful to base the determination of the date of succession on objective facts. That question, too, deserved further study.

1537th meeting, para. 35.

Paragraph 1 (f)

BANGLADESH

Oral comments 1974

The representative of Bangladesh stated:

... the definition of newly independent States contained in article 2, paragraph 1 (f), did not cover States formed in that way, even when they emerged as a result of the exercise of the right of peoples to self-determination. There appeared to be no justification in the report for the different treatment of the two categories of newly independent States.

1494th meeting, para. 34.

BANGLADESH

Oral comments 1975

The representative of Bangladesh stated:

... his delegation ... had reservations concerning ...
the definition of "newly independent State" in article 2, paragraph 1 (f), and the formulation of article 33, paragraph 3.

... ILC had not extended the "clean-slate" principle far enough in its definition in draft article 2, paragraph 1 (f), and had thus not given the principle of self-determination adequate consideration. According to his delegation, the concept of a "newly independent State" included not only all formerly dependent territories such as colonies, Trust Territories, mandate territories and protectorates, but also new States which emerged as a result of separation of part of an existing State or by social revolution, as well as religious, linguistic or cultural minorities of the territory of an existing State which had struggled for the right of self-determination based on the principles of the Charter of the United Nations and the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations (General Assembly resolution 2625 (XXV), annex). Those documents made no distinction between the right of self-determination of peoples of colonial and other territories.

1547th meeting, paras. 12-13.

CZECHOSLOVAKIA

See in subsection C of Section I supra, the statement by Czechoslovakia reproduced under Oral comments 1975.

BYELORUSSIAN SOVIET SOCIALIST REPUBLIC

Oral comments 1974

The representative of the Byelorussian SSR stated:

... a newly independent State was a State whose territory had not been autonomous before succession and whose international relations had formerly been directed by another State. The concept therefore included all forms of accession to independence.

1491st meeting, para. 3.

CUBA

Oral comments 1974

The representative of Cuba stated:

Concerning the expression "newly independent State", paragraph (6) of the commentary to article 2 in the Commission's report indicated that it signified a State which had arisen from a succession of States in a territory which immediately before the date of the succession of States had been a dependent territory for the international relations of which the predecessor State had been responsible. But the Commission, after studying the various historical types of dependent territories, such as colonies, trusteeships, mandates and protectorates, had excluded the categories of associated States from the concept of a newly independent State. However, the terms of free association often concealed what was purely and simply integration. Moreover, in order to achieve the progressive development of international law, it was necessary to include the new forms of colonialism in the concept of dependent territories. Liberation from neo-colonialism and the installation of a new régime which was fully independent both politically and economically also involved a succession of States.

1490th meeting, para. 22.

GHANA

Oral comments 1975

The representative of Ghana stated:

The definition of "newly independent State" contained in article 2, paragraph 1 (f) was very important, since it determined the circumstances in which the "clean-slate" principle would apply to successor States. In effect, it would limit that principle to States emerging from colonialism and similar processes of emancipation. However, when it was read in conjunction with article 33, paragraph 3, there would appear to be a need to be more precise and to complete the criteria laid down in article 2.

1526th meeting, para. 44.

INDIA

See in the subsection on article 7 infra the statement by India reproduced under Oral comments 1974.

JAPAN

See in subsection C of section I supra the statement by Japan reproduced under Oral comments 1974.

NETHERLANDS

Oral comments 1974

The representative of the Netherlands stated:

He added that a number of concepts in the draft and, in particular, the concept of "newly independent States", should be made clearer because neither the definition contained in article 2, paragraph 1 (f), nor the commentary to that article made a distinction between a territory which acquired its independence by succession and a formerly dependent territory. The application of article 33, paragraph 3, could cause serious problems in that respect.

1494th meeting, para. 18.

Paragraph 1 (g)

NIGERIA

Oral comments 1974

The representative of Nigeria stated:

He considered that a useful definition of the term "notification of succession" was given in article 2, paragraph 1 (g). In that connexion, he pointed out that notification of succession did not have a retroactive effect except under the conditions stipulated in article 22, paragraph 2. 1494th meeting, para. 32.

Paragraph 1 (h), (i) and (j)

PARAGUAY

Oral comments 1975

The representative of Paraguay stated:

In subparagraph (h) it would be clearer and more concise to replace the words "of a State" and "the State" by "of the successor State" and "that State" respectively. Similar changes should be made in subparagraphs (i) and (j). Furthermore, the wording of the last part of subparagraph (h) was defective because of the repetition of the word "notification".

1530th meeting, para. 29.

Article 3

Cases not within the scope of the present articles

UNITED STATES OF AMERICA

See in subsection C of section I supra the statement by the United States reproduced under Written comments 1975.

Article 4

Treaties constituting international organizations and
treaties adopted within an international organization

PAKISTAN

Oral comments 1974

The representative of Pakistan stated:

In the case of multilateral treaties which were constituent instruments of international organizations, there was no automatic succession.

1492nd meeting, para. 79.

ROMANIA

Oral comments 1975

The representative of Romania stated:

... with reference to article 4, that no rules other than the rules concerning acquisition of membership in an international organization should affect the application or acceptance of certain conventional instruments adopted within international organizations.

1530th meeting, para. 37.

UNITED STATES OF AMERICA

See in subsection B of section I supra the statement by the United States reproduced under Written comments 1975.

Article 5

Obligations imposed by international law
independently of a treaty

BYELORUSSIAN SOVIET SOCIALIST REPUBLIC

Written comments 1975

It is well known that there is a whole range of generally accepted principles and rules of international law without the observance of which it would be impossible to maintain normal relations between States in circumstances where countries have different social systems. Those principles and rules of international law have been reflected and consolidated in such multilateral international treaties as the United Nations Charter, the 1949 Geneva Conventions for the protection of war victims, the 1961 Vienna Convention on Diplomatic Relations and a number of others. The generally accepted rules of international law which have taken shape in the process of the interaction of States with different social systems as a result of the consistent introduction into international practice of the basic principle of peaceful coexistence may not be disregarded by any State, regardless of the historical circumstances in which it came into being. It is extremely important to ensure that the application of the clean-slate principle in no way prejudices the generally accepted principles and rules of international law and the treaty obligations deriving from those principles and rules for every State.

The future international instrument on the question of the succession of States must clearly and specifically indicate to newly independent States, which have emerged and are emerging as a result of the elimination of colonialism, that, when they enter the international community as new members and exercise their discretion as to the fate of the international treaties concluded by predecessor States, they must act on the basis of a strict obligation to comply with the generally accepted principles and rules of international law. Consequently, it is necessary that the provisions of article 5 of the draft should be made more precise and amplified.

Oral comments 1975

The representative of the Byelorussian SSR stated:

... in referring to the "clean-slate" principle, the draft was defective in that it left open the possibility that the successor State might take advantage of that principle in order to refuse to comply with generally accepted rules of international law, particularly obligations assumed by the predecessor State as a party to multilateral treaties. Predecessor States, such as colonial Powers, might also take advantage of that principle as an excuse to shirk their responsibility for unlawful actions committed in the territory in question before it had become independent.

1536th meeting, para. 6.

GREECE

See in subsection B of section I supra the statement by Greece reproduced under Oral comments 1974.

PARAGUAY

Oral comments 1975

The representative of Paraguay stated:

At the same time, it was absolutely necessary that new States, regardless of the measures that they might adopt with regard to the conventional relations of the predecessor States, should recognize the general principles of international law emanating, for example, from the geographical position of their territories. Such was the situation for the transit States whose territory was used for international river navigation or other forms of transit recognized under customary international law. Those territories had the character of rights of way and the resulting obligations must, in normal circumstances, pass to the new State. In that regard, his delegation felt that article 5 afforded sufficient safeguards for the principle in question. The same was true for the so-called "multilateral treaties of a universal character".

1530th meeting, para. 28.

ROMANIA

Oral comments 1975

The representative of Romania stated:

With reference to article 5, he said that the use of article 43 of the Vienna Convention on the Law of Treaties as a source was not completely appropriate. Article 5 dealt with the application or accession in the future to certain treaties as a whole and not to separate rules which had already become or would become customary rules.

1530th meeting, para. 38.

UNION OF SOVIET SOCIALIST REPUBLICS

Written comments 1975

The international instrument on the question of the succession of States must clearly and specifically indicate to newly independent States that, when they enter the international community as new members and exercise their discretion as to the fate of the international treaties concluded by predecessor States, they must act on the basis of an absolute duty to comply with the generally accepted principles and rules of international law reflected in the relevant treaties. We therefore feel that the provisions of article 5 of the draft could be amplified and further developed.

Oral comments 1975

The representative of the USSR stated:

It was necessary to draw particular attention to the fact that the application of the "clean-slate" principle should in no way prejudice the generally accepted principles and rules of international law and the obligations of all States deriving from those principles and rules.

1544th meeting, para. 17.

UNITED STATES OF AMERICA

See in subsection B of section I supra the statement by the United States reproduced under Written comments 1975.

Article 6

Cases of succession of States covered
by the present articles

AFGHANISTAN

Oral comments 1974

The representative of Afghanistan stated:

... he endorsed the stipulation in article 6 to the effect that the articles applied 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. Any departure from that principle would deprive the draft of a very important safeguard clause. It was well known that most of the older treaties, particularly those establishing boundaries, were irregular. Such instruments were illicit and therefore invalid, because they were contrary to the principles of *jus cogens* incorporated in the Charter. Article 6 should therefore be maintained.

1496th meeting, para. 19.

BYELORUSSIAN SOVIET SOCIALIST REPUBLIC

Oral comments 1974

The representative of the Byelorussian SSR stated:

The text of the draft clearly specified that the articles applied only to the effects of a succession of States occurring in conformity with international law, so that cases of aggression or occupation were excluded.

1491st meeting, para. 3.

Oral comments 1975

The representative of the Byelorussian SSR stated:

As the draft correctly pointed out, succession of States took place in accordance with international law and in accordance with the principles of international law laid down in the Charter of the United Nations.

1536th meeting, para. 5.

FINLAND

Oral comments 1974

The representative of Finland stated:

His delegation ... would ... ~~[not]~~ oppose article 6, although it seemed to go without saying that the articles of the draft would apply only to the effects of a succession occurring in conformity with international law.

1486th meeting, para. 23.

GHANA

Oral comments 1975

The representative of Ghana stated:

While appreciating the rationale behind article 6, in the absence of more positive criteria for determining illegality his delegation could foresee the possibility of treaty vacuums with respect to certain successor States flowing from that provision.

1526th meeting, para. 44.

ROMANIA

Oral comments 1975

The representative of Romania stated:

... the question whether a succession conformed to the principles of international law was too complex to be treated in such a concise manner with reference to succession to treaties. If the article was retained, it would be necessary to establish basic criteria for defining a succession of States.

1530th meeting, para. 39.

UKRAINIAN SOVIET SOCIALIST REPUBLIC

Oral comments 1974

The representative of the Ukrainian SSR stated:

Article 6 could also give rise to erroneous interpretations and should, in her delegation's view, be deleted

...

If the articles she had referred to were not deleted, they should at least be reformulated so as to exclude any possibility that they would be used in a restrictive and incorrect interpretation of article 11.

1492nd meeting, para. 69.

UNION OF SOVIET SOCIALIST REPUBLICS

Oral comments 1974

The representative of the USSR stated:

Articles 6, 7 and 13 should be drafted in such a way as to avoid any ambiguity or any interpretation which might detract from the provisions of article 11. While the basic concept of article 6 was not open to doubt, his delegation was not satisfied with its wording.

1489th meeting, para. 31.

Article 7

Non-retroactivity of the present articles *

AFGHANISTAN

Oral comments 1975

The representative of Afghanistan stated:

With regard to article 7, his delegation considered that, in the light of the wording of article 6, it was necessary to specify that the draft articles would have no retroactive effect. The inclusion of article 7 might encourage a number of States which would otherwise abstain to accede to the instrument. It was entirely unnecessary to make any reference to the Vienna Convention on the Law of Treaties, which was not accepted by a sufficient number of States. Article 7 should be retained in the position next to article 6.

1543rd meeting, para. 2.

ARGENTINA

Oral comments 1975

The representative of Argentina stated:

Article 7 on non-retroactivity was not in the right place and its wording could give rise to certain difficulties in the future

1526th meeting, para. 39.

BELGIUM

Written comments 1975

This article recalls the rule of non-retroactivity, a general principle of the law of treaties contained in article 28 of the Vienna Convention; the Belgian Government feels that article 7 of the Commission's draft is therefore a duplication. It seems to have been included in order to allay the misgivings which had been voiced about the implications of article 6 with respect to past events.

It is, however, legitimate to wonder whether this is the right place for such a provision. It was felt that to make only one specific article non-retroactive might raise doubts as to the retroactive effect of the other articles; consequently the text was presented not as part of article 6 but as a general autonomous provision which, however, immediately followed article 6. The Belgian Government feels that, in order to dispel doubts of this nature, it would be more appropriate to recall a general principle such as that of non-retroactivity in the final general provisions of the draft and that that would in no way detract from its interpretative value as regards article 6.

* See also subsection A of Section I supra.

BRAZIL

Oral comments 1974

The representative of Brazil stated:

A new article had been added in part I, article 7 on the non-retroactivity of the draft articles, ...
1487th meeting, para. 2.

BULGARIA

Oral comments 1974

The representative of Bulgaria stated:

His delegation noted that article 7 on non-retroactivity had been adopted only by a narrow majority. It seemed that in drastically reducing the importance of the whole draft, that article created more problems than it solved.
1495th meeting, para. 22.

Oral comments 1975

The representative of Bulgaria stated:

Article 7.
dealing with the question of non-retroactivity, had ... been adopted by a narrow majority and the importance of the draft articles as a whole had thereby been drastically reduced. The question of non-retroactivity deserved further study and discussion.
1535th meeting, para. 42.

BYELORUSSIAN SOVIET SOCIALIST REPUBLIC

Oral comments 1975

The representative of the Byelorussian SSR stated:

There were certain deficiencies in the formulation of article 7 relating to non-retroactivity, particularly the fact that the provisions of that article applied only in respect of a succession of States occurring "after the entry into force of these articles". That would mean that many cases of succession which had occurred in the past as a result of the collapse of the colonialist system of imperialism might be outside the convention's sphere of application.

1536th meeting, para. 7.

CANADA

Oral comments 1975

The representative of Canada stated:

With regard to the draft articles on the succession of States in respect of treaties (see A/9610/Rev.1, chap. II, section D), he noted that the commentary on article 7 suggested that the purpose of that article was to incorporate in the draft a provision similar to article 4 of the Vienna Convention on the Law of Treaties and the general principle of non-retroactivity of treaties reflected in article 28 of that Convention. His delegation agreed with the view expressed by the Government of the Federal Republic of Germany in its comments on the draft articles (A/10198/Add.1) that the deliberate drafting of the article with a view to its application to any succession of States which might occur after the general entry into force of the articles, rather than after their entry into force with respect to a particular party, was a clear departure from the principle of non-retroactivity reflected in article 28 of the Vienna Convention. It was questionable whether such a departure from a fundamental principle of treaty law was justified and whether a provision of that kind was likely to make the articles as a whole more or less acceptable to States which became independent after their general entry into force.

The succession by Canada to treaties concluded on its behalf by the United Kingdom had been governed by the principles of customary international law which Canada considered to be in force at the time of that succession and which did not correspond in all respects to the principles reflected in the present draft articles. The latter articles took into account much of more recent State practice. His Government had consistently taken the position, for instance, that, upon attaining the status of an independent State, Canada had succeeded to extradition treaties concluded by the United Kingdom and applied to Canada prior to the acquisition of independent status by Canada. There existed considerable State practice between Canada and its treaty partners which confirmed that view of customary international law as it existed at the time of the State succession in respect of Canada.

1535th meeting, paras. 2 and 3.

CUBA

See in subsection A of section I supra the statement by Cuba reproduced under Oral comments 1974.

CZECHOSLOVAKIA

Oral comments 1975

The representative of Czechoslovakia stated:

Although article 7 contained the expression "except as may be otherwise agreed", his delegation considered that the provision stipulating that the draft articles applied only in respect of a succession of States which had occurred after the entry into force of the articles deserved further study, in particular in connexion with the gradual disappearance of the colonial system.

1537th meeting, para. 34.

EGYPT

Oral comments 1975

The representative of Egypt stated:

He agreed with the view expressed in paragraph 63 of the report of ILC that the relationship between the draft articles and the Vienna Convention on the Law of Treaties should be maintained as to both structure and language. Therefore, so long as the text of article 7 was compatible with article 28 of the Vienna Convention it should be retained. The draft articles could stand by themselves and at the same time be compatible with the Convention.

1537th meeting, para. 8.

FINLAND

Oral comments 1974

The representative of Finland stated:

Article 7
seemed superfluous since non-retroactivity was a general principle of the law of treaties reflected in article 28 of the Vienna Convention on the Law of Treaties.

1486th meeting, para. 23.

FRANCE

Written comments 1975

The question may indeed be raised as to what value there would be in codifying the law of the succession of States in respect of treaties in the form of a convention, in view of the fact that under the general law of treaties a convention is not binding upon a State unless and until it is a party to the convention. Moreover, under the customary rule embodied in article 28 of the Vienna Convention on the Law of Treaties, the provisions of a treaty, in the absence of a contrary intention, "do not bind a party in relation to any act or fact which took place ... before the date of the entry into force of the treaty with respect to the party concerned". The proposed convention would not be binding on the new successor State unless and until it became party to it. There is a serious risk that the convention would not be binding upon it in respect of any acts which took place before the date on which it became a party, and that other States too would not be bound in relation to it before that date. The French Government has carefully taken note of the explanations given on this subject by the Chairman of the International Law Commission at its twenty-ninth session, concerning the scope of article 7 of the draft in conjunction with article 28 of the Vienna Convention. However, it believes that the question deserves further study.

GERMANY, FEDERAL REPUBLIC OF

Oral comments 1974

The representative of the Federal Republic of Germany stated:

... the Commission, in accordance with its established practice, had put the results of its work on the succession of States in respect of treaties into the form of draft articles. However, it had not done so without hesitation, and had first had to determine to what extent a convention on the succession of States would actually be applied in practice. Its doubts on that point had grown with the insertion of article 7 which precluded any retroactive application of the rules set forth in the articles. Nevertheless, his delegation agreed with the insertion of article 7—a provision that expressly precluded the retroactivity of the convention in respect of succession which had occurred before the entry into force of the convention. His delegation was also aware of the consequences arising out of article 28 of the Vienna Convention on the Law of Treaties which set out the principle of non-retroactivity of treaties. As the Commission had recognized in paragraph 62 of its report, participation by successor States would involve delicate problems relating to the method of giving consent to be bound by the convention and the retroactive effect thereof.

1490th meeting, para. 28.

Written comments 1975

The Government of the Federal Republic of Germany assumes, in the light of paragraph (3) of the International Law Commission commentary, that article 7 not only makes for clarification but is a clear departure from the principle of strict non-retroactivity laid down in article 28 of the Vienna Convention on the Law of Treaties, for if the words "entry into force of these articles" in article 7 refer to the general coming into force of the present convention (rather than to the entry into force for the individual State), as must be deduced from the International Law Commission commentary, the general non-retroactivity regarding "any act or fact ... which took place before the entry into force of the treaty with respect to that party" (article 28 of the Vienna Convention) will not obtain. This means that the newly emerging State, as a successor State under the present convention, would be bound by virtue of the rules on continuity, by the "inherited" provisions of the present convention in the same manner as other States that have ratified the convention, if the succession has taken place after its general coming into force. Article 7, thus interpreted, would have tangible consequences in those cases of succession in which the present convention prescribes continuity of treaty relations (see articles 12, 29, 30, 33), that does not lie within customary international law.

As the inclusion of this provision will clarify the interrelationship of the substantive rules of the convention, the time factor and the succession of new States to the present convention, it is suggested that it be redrafted to make quite clear the consequences of this important provision, which was adopted by the International Law Commission by a slight majority of only 8 votes to 4 with 5 abstentions.

GREECE

See in subsection B of section I supra the statement by Greece reproduced under Oral comments 1974.

HUNGARY

Written comments 1976

The Government of the Hungarian People's Republic believes that the question of retroactivity in respect of State succession is rather complicated both theoretically and practically, so that the draft needs further improvement in this respect.

INDIA

Oral comments 1974

The representative of India stated:

In so far as the newly independent States were concerned, State practice was already based largely on the "clean slate" principle, with the qualifications and conditions set out in the draft articles. However, if the principle of non-retroactivity were adopted, as proposed in article 7, it was doubtful whether the restricted meaning given to the term "newly independent State" would have any utility. The problem might perhaps be solved by enabling the parties to the future convention to apply it retroactively from the date of their succession; but if that were done by all newly independent States, why not omit article 7? Application to the draft articles of the principle of non-retroactivity, which was a general rule of the law of treaties, and the adoption of the principle of *ipso jure* continuity in some cases and of the "clean slate" principle in others, would require further careful consideration. Whether a newly independent State, created by a uniting or separation of States, would be willing to accept treaty obligations contracted by the predecessor State should be left to that new State to determine for itself, since it would be preferable to apply the same principle of the transmission of treaties to all States.

1495th meeting, para. 5.

KENYA**Oral comments 1974****The representative of Kenya stated:**

His delegation saw no need for the inclusion of a non-retroactivity clause, as contained in article 7, in a treaty of that nature. Non-retroactivity was a general principle of the law of treaties which had become enshrined in article 28 of the Vienna Convention on the Law of Treaties and therefore it would, as a principle, be generally applicable to all treaties. The emphasis on non-retroactivity in that particular kind of treaty would tend to weaken the codification aspects of the proposed treaty on succession of States. Such a treaty, to be of any use, particularly in so far as it concerned the emergence of new States, should be taken as declaratory of the law on that important subject as it currently existed, and thus help to clarify the rights and duties of States, in view of conflicting State practice on the subject. Taken that way, the treaty, when concluded, would have a much broader impact as a concise statement on the law on the subject, an impact which would not be limited only to States parties. Such an impact would be similar to that achieved in the Vienna Convention on the Law of Treaties, which was considered to be law by a great majority of States—many more than those that had signed or ratified it. In that context, therefore, to emphasize non-retroactivity of the draft convention would only have a negative effect.

1493rd meeting, para. 27.

MADAGASCAR

Oral comments 1974

The representative of Madagascar stated:

Article 7 enshrined a general principle of treaty law, namely, non-retroactivity. That provision had only been adopted by a narrow majority in the Commission, because of the reservations of certain members. In that connexion, his delegation wished to point out that the words "except as may be otherwise agreed" enabled Governments, in due course, to consider the question of non-retroactivity in connexion with the final clauses for inclusion in a future convention.

1495th meeting, para. 48.

MEXICO

Written comments 1975

This article should be omitted since, on the one hand, the non-retroactivity of treaties is a general principle of the law relating to treaties reflected in article 28 of the Vienna Convention, and on the other hand, if an article like that suggested in the paragraph above* is included, this question is sufficiently covered.

MOROCCO

Oral comments 1975

The representative of Morocco stated:

Article 7, which had been adopted by a very small majority, should be deleted since non-retroactivity was a general principle of the law of treaties. Furthermore, the proposed wording lacked precision, and it was not certain what was meant by the words "as may be otherwise agreed".

1545th meeting, para. 30.

* For the text of the suggested additional article, see in subsection D of this section infra the statement by Mexico reproduced under Written comments 1975.

NIGERIA

Oral comments 1974

The representative of Nigeria stated:

He welcomed the provisions of article 7, on non-retroactivity.

1494th meeting, para. 32.

POLAND

Written comments 1975

Concerning the question of retroactivity or non-retroactivity of the provisions of the draft (art. 7 and para. 72 of the introduction to the draft), the Government of the Polish People's Republic believes that it might be studied and finally solved at a diplomatic conference of plenipotentiaries.

Oral comments 1975

The representative of Poland stated:

... his delegation noted that some problems had not yet been resolved; they concerned, *inter alia*, article 7 ...
1526th meeting, para. 4.

SWAZILAND

Oral comments 1975

The representative of Swaziland stated:

Article 7 regarding the principle of non-retroactivity seemed unnecessary as that general principle of the law of treaties was already reflected in article 28 of the Vienna Convention. Moreover, it might minimize the usefulness of the draft articles for newly independent States, despite the inclusion of the words "except as may be otherwise agreed". It would be preferable to incorporate in the draft a provision stipulating that a successor State could, if it so wished, have the draft articles apply to it as from the date of succession.

1549th meeting, para. 24.

UKRAINIAN SOVIET SOCIALIST REPUBLIC

Oral comments 1974

The representative of the Ukrainian SSR stated:

Having noted the relationship between succession in respect of treaties and the general law of treaties, the Commission had stated that it would endeavour to avoid re-stating in the present draft articles general rules applicable to treaties. That decision was fully warranted and the Commission should not have deviated from it in connexion with articles 7 and 13, which raised general problems relating to the law of treaties. The brief and insufficiently clear exposition of those general rules in connexion with succession could lead to confusion and misinterpretation. Her delegation therefore felt that articles 7 and 13 should be deleted from the draft.

...

If the articles she had referred to were not deleted, they should at least be reformulated so as to exclude any possibility that they would be used in a restrictive and incorrect interpretation of article 11.

1492nd meeting, para. 69.

UNION OF SOVIET SOCIALIST REPUBLICS

Oral comments 1974

The representative of the USSR stated:

Articles 6, 7 and 13 should be drafted in such a way as to avoid any ambiguity or any interpretation which might detract from the provisions of article 11. While the basic concept of article 6 was not open to doubt, his delegation was not satisfied with its wording. Article 7 corresponded to the law in force, and in that connexion he called to mind the historic period linked to the creation of some 10 independent States in Asia and Africa as a result of decolonization.

1489th meeting, para. 31.

UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND

Oral comments 1975

The representative of the United Kingdom stated:

A third question which ILC might usefully be asked to examine further concerned the modalities by which a newly independent or successor State should be enabled to apply the régime embodied in the articles to its own situation. That question was obviously crucial to the effectiveness of the proposed rules, since they could only be effective in any particular instance of State succession if they applied to the successor State. The longer the delay in their becoming applicable, the greater the difficulties that were liable to arise, particularly in respect of the question of retroactivity. Like other members of the Committee, he was not altogether satisfied that the difficulties inherent in the problem had been satisfactorily resolved by the existing article 7.

1536th meeting, para. 13.

UNITED STATES OF AMERICA

Oral comments 1975

The representative of the United States of America stated:

In the view of his Government, the draft's handling of the question of non-retroactivity needed further examination. There did not seem to be any reason for preventing a State which gained independence prior to the entry into force of the proposed convention from becoming a party thereto after it had entered into force and making full use of its provisions in regulating its treaty relations in the light of the situation existing at the time when the articles became applicable to the successor State.

1526th meeting, para. 7.

Written comments 1975

The United States Government considers that article 7 of the draft on non-retroactivity, which is modelled, in part, on article 4 of the Vienna Convention, is uncertain in its application and that there are sound objections to including this type of non-retroactivity provision in the Convention. For example, the articles contain, in section 2 of part III, a series of provisions regulating the procedural aspects of succession when a newly-independent State decides to maintain in effect a multilateral convention which had been applied in its territory prior to independence. These include article 16, which provides for establishing status as a party to such a multilateral treaty "... by a notification of succession", article 19 dealing with reservations and article 20 on consent to be bound by part of a treaty and choice between differing provisions. There does not seem to be any basis, in principle, for preventing a State, which becomes newly independent prior to entry into effect of the draft articles, from becoming a party thereto after their entry into effect and making use of these provisions in regulating its treaty relationships to the fullest extent possible in light of the situation as it exists at the time the articles become applicable to the successor State. Whatever other effects article 7 may have, it certainly seems designed to make the draft articles less attractive to newly-independent States.

ZAIRE

Oral comments 1975

The representative of Zaire stated:

With regard to article 7, his delegation had some difficulty with the principle of non-retroactivity which it set forth. Although the Vienna Convention on the Law of Treaties embodied that principle, on the basis of the principle of non-retroactivity of laws in internal law, the same was not the case with regard to the succession of States in respect of treaties. His delegation agreed that laws were enacted only in respect of the future. However, it was essential not to lose sight of the fact that treaties were signed in order to be implemented. His delegation therefore considered that the article in question had been made meaningless by article 22, which re-established the principle of retroactivity for the newly independent countries. Since the principle of the non-retroactivity of treaties was already contained in the Vienna Convention, article 7 should be deleted.

1535th meeting, para. 35.

Article 8

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

BRAZIL

Oral comments 1974

The representative of Brazil stated:

... the Commission had retained the generally accepted doctrine that devolution agreements were little more than a statement of intentions.

1487th meeting, para. 2.

CUBA

Oral comments 1974

The representative of Cuba stated:

Concerning transfer agreements, they clearly had no legal value unless they represented the freely expressed will of the successor State. Conventions of that type had sometimes been imposed by coercion and such a situation naturally invalidated the transfer agreement.

1490th meeting, para. 20.

DENMARK

Oral comments 1974

The representative of Denmark stated:

Since the idea in articles 8 and 9 was the same—namely, that the draft articles should override devolution agreements and declarations of continuance—it should be possible to merge those two articles. In the view of the Danish delegation, any chance of simplifying the text of the draft should be seized, for it was still too complicated.

1491st meeting, para. 33.

FINLAND

Oral comments 1974

The representative of Finland stated:

Article 8,
paragraph 2, and article 9, paragraph 2, should be deleted
since they added nothing, as should article 13.

1486th meeting, para. 23.

INDIA

Oral comments 1974

The representative of India stated:

The draft articles also provided that neither a devolution agreement nor a unilateral declaration by a successor State would constitute a notification of succession for newly independent States. A newly independent State would have to express its own consent to be bound by a treaty. In practice, India had conformed to that principle: when it had become independent, it had found that although it was willing to be bound by certain pre-1947 agreements, the other parties to those agreements were not; the treaties in question could not, therefore, be regarded as having devolved *ipso jure*. In other cases, pre-1947 agreements had continued in force by express agreement between the parties.

1495th meeting, para. 4.

INDONESIA

Oral comments 1974

The representative of Indonesia stated:

His delegation endorsed article 8. Under that provision, a devolution agreement between a predecessor State and a successor State merely constituted a statement of intent on the part of the successor State with regard to the rights and obligations under the treaties concluded by the predecessor State with third States. A devolution agreement indicated the willingness of the successor State to continue the treaties of its predecessor. Its legal effects were limited to the two parties concerned; it created no legal nexus

between the successor State and third States. Such an approach was consistent with the principle of sovereign equality of States and respected the independence of third States in their relations with the successor State. Article 8 was in fact merely a reflection of the practice of States. For the same reasons, his delegation endorsed article 9 relating to the unilateral declaration by a successor State.

1495th meeting, para. 33.

JAMAICA

Oral comments 1974

The representative of Jamaica stated:

Some delegations had expressed doubts about such a broad application of the "clean slate" doctrine and, in that connexion, had referred to the practice of States and, in particular, that of newly independent States which had concluded devolution agreements. In fact, when a new State concluded a devolution agreement, it did not do so because it considered that the obligations derived from the treaties concluded by its predecessor continued to bind it, since it knew that the only treaty obligations which continued in force were those which embodied customary international law. The devolution agreement was actually a confirmation of the "clean slate" principle, since the need to conclude such agreements resulted from the view that the treaties concluded by the predecessor were no longer in force.

...

His delegation agreed with the Commission's position with regard to devolution agreements and considered that they had their primary value simply as an expression of the successor State's willingness to continue the treaties of its predecessor.

1495th meeting, paras. 13 and 16.

KENYA

Oral comments 1974

The representative of Kenya stated:

His delegation was particularly satisfied with articles 8 and 9 which resolved the controversy about the effect of devolution agreements entered into on the achievement of independence and unilateral declarations made by newly independent States. By themselves such agreements or declarations could not in any way create obligations or rights binding on successor States or on third parties. The "clean slate" principle, which provided the new State with the opportunity of exercising its right of self-determination, was unaffected by the conclusion of devolution agreements or unilateral declarations.

1493rd meeting, para. 28.

MEXICO

Written comments 1975

Such agreements and declarations have been made in the past precisely because of the absence of clear rules of international law on the succession of States in respect of treaties. The draft articles, if approved, will govern the effects of a succession of States and therefore the agreements and declarations referred to in articles 8 and 9 will become superfluous. Articles 8 and 9 could therefore be omitted.

MOROCCO

Oral comments 1975

The representative of Morocco stated:

Articles 8 and 9, relating to agreements for the devolution of treaty obligations or rights from a predecessor State to a successor State and to unilateral declaration by a successor State regarding treaties of the predecessor State, also seemed unnecessary. If the draft was adopted, the subject would be governed by its own provisions, which in fact provided for the same solution. Articles 8 and 9 seemed, therefore, to duplicate the rest of the text.

1545th meeting, para. 31.

NETHERLANDS**Oral comments 1974****The representative of the Netherlands stated:**

First, article 8 might be completed by the addition of a formula providing that a devolution agreement could contribute to the transfer of obligations and rights from the predecessor State to the successor State, on the condition that the agreement clearly indicated the intention of the successor State to give it legal effect, either for certain specific treaties or for all treaties to which the predecessor had been a party. The legal effect would be, for the bilateral or multilateral treaties referred to in article 16, paragraph 3, an offer to accept certain treaty relations of the predecessor, which offer would have to be completed by the consent of the other parties; and for multilateral treaties not referred to in article 16, paragraphs 2 and 3, be a notification of succession to the depositary. The notification would become effective by registration of the devolution agreement under Article 102 of the Charter. It was thus necessary to give more value to devolution agreements.

1494th meeting, para. 17.

NIGERIA**Oral comments 1974****The representative of Nigeria stated:**

Article 8, on agreements for the devolution of treaty obligations or rights from a predecessor State to a successor State, was of historic importance for his country, which had inherited over a hundred treaties by virtue of the exchange of letters between the United Kingdom and Nigeria on 1 October 1960. Nigeria had recognized as binding nearly all the multilateral conventions signed by the United Kingdom, but had declined to assume the United Kingdom's obligations in respect of certain bilateral agreements, and the provisions of such agreements had been renegotiated.

1494th meeting, para. 32.

YUGOSLAVIA

Oral comments 1974

The representative of Yugoslavia stated:

By the same token, taking into account the conditions in which devolution agreements had been concluded, especially in the case of newly independent States, the rules envisaged in article 8 relating to agreements transferring devolution of obligations or of treaty rights from a predecessor State, seemed to be fully justified.

1491st meeting, para. 15.

Article 9

Unilateral declaration by a successor State
regarding treaties of the predecessor State

DENMARK

See in the subsection on article 8 supra the statement by Denmark reproduced under Oral comments 1974.

FINLAND

See in the subsection on article 8 supra the statement by Finland reproduced under Oral comments 1974.

GHANA

Oral comments 1975

The representative of Ghana stated:

Article 9 was
a useful codification of a practice quite common with
newly independent States and was complementary to
article 26.

1526th meeting, para. 44.

INDIA

See in the subsection on article 8 supra the statement by India reproduced under Oral comments 1974.

INDONESIA

See in the subsection on article 8 supra the statement by Indonesia reproduced under Oral comments 1974.

MEXICO

See in the subsection on article 8 supra the statement by Mexico reproduced under Written comments 1975.

MOROCCO

See in the subsection on article 8 supra the statement by Morocco reproduced under Oral comments 1975.

ROMANIA

Oral comments 1975

The representative of Romania stated:

... that unilateral declarations concerning the application of a treaty by a newly independent State ought to be considered at least as offers to continue to exercise certain rights and obligations. However, such declarations could not be considered as general declarations of intent which awaited confirmation. If they were sufficiently exact they could be considered as notification of the acceptance of certain treaties.

1530th meeting, para. 40.

Article 10

Treaties providing for the participation of a
successor State

DENMARK

Oral comments 1974

The representative of Denmark stated:

Article 10, paragraph 2, stipulated that for a successor State to be a party to a treaty, there must be an acceptance in writing, even if the treaty itself contained a provision for succession. The Danish delegation agreed with the Special Rapporteur that that stipulation lacked flexibility and that there should be other ways in which the successor State could indicate its acceptance.

1491st meeting, para. 34.

ROMANIA

Oral comments 1975

The representative of Romania stated:

... that if a treaty provided for the possibility of a newly independent State's considering itself a party to a treaty, it was not clear why that State should have to announce its succession to the treaty instead of making the usual notification. The new State should be considered a party from the date on which it gave its consent.

1530th meeting, para. 41.

Article 11

Boundary régimes

Article 12

Other territorial régimes

AFGHANISTAN

Oral comments 1974

The representative of Afghanistan stated:

Articles 11 and 12, concerning boundary régimes and other territorial régimes, and the relevant commentary did not satisfy his delegation. Those articles postulated the controversial principle of the inviolability of boundaries and territories and were in flagrant contradiction with the principle of self-determination. The right of peoples to self-determination was the main consideration to be borne in mind in contemporary international law. His delegation did not share the view of the Commission that under certain circumstances other principles should prevail over that of the "clean slate". Articles 11 and 12 were not in keeping with historical reality. Many boundaries had been outlined by the colonial Powers to meet certain strategic or economic objectives without any regard for the geographic or ethnic realities of nations. The legalization of such abnormal and unjust situations would lead to instability and tension among certain States and that would be contrary to the goals of the Commission.

The law of succession in respect of treaties was a very complex branch of international law and was governed by very pragmatic considerations. Thus, it was not unusual for the same State to adopt diametrically opposed positions on the subject. The most complex part of that branch of law was undoubtedly the law of succession of States in respect of boundary régimes or territorial régimes established by a treaty.

In paragraph (11) of its commentary to articles 11 and 12, the International Law Commission referred to decisions taken by OAU. The fact that States members of OAU had undertaken to honour existing boundaries at the time of their accession to independence, for reasons that were undoubtedly valid in Africa, did not necessarily imply that their decision was applicable in other regions of the world and in different situations. The precedents mentioned in the Commission's report to justify articles 11 and 12 were not convincing. The manner in which the two articles were formulated gave them a political connotation and that was why they had been supported by quite a few countries. Indeed, like article 62 of the Vienna Convention on the Law of Treaties, articles 11 and 12 of the draft articles on the succession of States in respect of treaties merely reflected the practice followed by the United Kingdom during the eighteenth and nineteenth centuries when it had arbitrarily outlined boundaries in many parts of the world.

It would be interesting to see what effect the two articles would have at the international level in the event they should be adopted and included in a convention. Those articles directly concerned only two categories of States: States that were favoured by a previous treaty and States that considered themselves harmed by a previous treaty and wished to challenge its validity. Assuming those articles should be adopted by the General Assembly, would the States that considered themselves harmed agree to be bound by a convention only part of which they could accept? If they did not consider themselves bound by the convention, what would be the practical usefulness of the articles in question?

His delegation held the view that the role to be played by arbitration and conciliation in connexion with boundary disputes should not be underestimated. Experience had shown that such procedures could undoubtedly be of greater help than the rigid framework proposed by the Commission in finding an appropriate solution to problems that might arise in that field. Therefore, although his delegation congratulated the Commission and the Special Rapporteurs for the very interesting work they had done on the draft articles on succession of States in respect of treaties, it felt that the question of territorial treaties should be reviewed with a view to establishing rules that would be in harmony with the realities of the contemporary world and the fundamental principles of modern international law.

1496th meeting, paras. 20 - 24.

Oral comments 1975

The representative of Afghanistan stated:

Regarding articles 11 and 12, he recalled that his delegation had already expressed its views at the twenty-eighth session (1406th meeting). He noted that a number of delegations, including those of Madagascar, Somalia and the United Republic of Tanzania, had stated they found it difficult to accept those two articles as currently worded. The categorical statements made in the current version were at variance with the evolution of contemporary international law and might have detrimental consequences for its future. As ILC itself had acknowledged in paragraph (1) of the commentary on article 11, the question of territorial treaties was a most delicate one, since such treaties were important, complex and controversial. The opinions of modern writers on the subject differed widely. His delegation shared the view that the doctrine of *rebus sic stantibus* should apply in the case of territorial treaties whenever a fundamental change in circumstances had occurred. It could be argued that the dissolution of the

colonial empires in the first half of the twentieth century had brought about a fundamental change in circumstances with vast juridical implications for State boundaries. According to that line of reasoning, all agreements concerning the territorial possessions and sovereignty of the colonial Power were no longer valid. Some States, in fact, had suffered grave losses not only as a result of colonization but also as a result of decolonization, because it had allegedly not been possible to apply the doctrine of *rebus sic stantibus* with respect to them. ILC had put forward another argument based on article 62, paragraph 2, of the Vienna Convention on the Law of Treaties, to which many States had not acceded. It had also attempted to justify articles 11 and 12 by arguing that the application of the "clear-slate" principle with regard to territorial treaties might create dangerous friction between States instead of becoming an instrument for peaceful development. His delegation, however, believed that relations between neighbouring States, which otherwise might live in concord and mutual respect for each other's sovereignty, were only complicated by such considerations.

The question of treaties establishing boundaries from the angle of the principle of self-determination had also been considered by ILC. Its views in that regard were given in paragraph (10) of the commentary on articles 11 and 12, in a quotation from its commentary on what had become article 62 of the Vienna Convention on the Law of Treaties, which stated that the Commission had taken the view that " 'self-determination', as envisaged in the Charter of the United Nations, was an independent principle and that it might lead to confusion if, in the context of the law of treaties, it were presented as an application of the rule contained in the present article. By excepting treaties establishing a boundary from its scope the present article would not exclude the operation of the principle of self-determination in any case where the conditions for its legitimate operation existed". His delegation considered those comments to be excessive and disjointed.

His delegation therefore shared the view that it would be going too far to exclude territorial treaties completely from the rule of fundamental change in circumstances and that such an exclusion would be inconsistent with the principle of self-determination laid down in the Charter. Needless to say, the principle of self-determination as set forth in the Charter was accompanied by another principle of equal importance, namely that of the equal rights of peoples. In their accession to independence, the majority of African States, like those of South America, being confronted with the existence of arbitrary colonial boundaries, had not been able to find any other solution but to accept them as they were. However, such a solution was difficult to apply in Asia, where long-established States had existed

prior to the relatively short colonial period and where colonial boundaries had been nothing more than imaginary lines separating peoples and régimes whose political cohesion was greater than that which had existed in other colonialized continents.

Against that background, ILC had adopted the majority view that the boundaries of the newly independent States and others were inviolable, thus setting itself at variance with the will of peoples living in border areas, who were extremely jealous of their independence. Moreover, in opting for the principle of the continuity of boundary treaties, ILC had cast aside the principle of the equal rights of peoples and their right to self-determination as set forth in the Charter of the United Nations.

The application of the principle of continuity with respect to colonial territorial treaties had in a number of cases resulted in the replacement of the colonial system by alien and foreign domination, which was condemned by the United Nations, and in that perspective the current wording of articles 11 and 12 was not consistent with United Nations practice or the democratic concept of progressive international law. His delegation was not opposed to the application of the principle of continuity with respect to territorial treaties; however, it did believe that that principle was only valid to the extent that it passed the test of self-determination. In that connexion, he drew attention to the new peremptory norm of international law known as *jus cogens*, which was designed to promote the liberation of subject peoples and which maintained that any legal view to the contrary was null and void. Thus, the application of the "clean-slate" principle with regard to territorial treaties was entirely justified, as it afforded an opportunity for all those who had suffered under colonialism to regain their rights, their property and their territorial integrity. Without such a reservation, the liberation of a State would only perpetuate unequal treaties or those imposed by force, which lay at the heart of many international tensions. His delegation therefore felt in duty bound to request ILC to reconsider its position on that matter.

1543rd meeting, paras. 3 - 7.

ALGERIA

Oral comments 1974**The representative of Algeria stated:**

The exception to the "clean slate" principle provided for in articles 11 and 12 of the draft, concerning boundary régimes and other territorial régimes was entirely consistent with the principle of self-determination. The formulation adopted by the Commission was balanced and realistic. In that connexion, he noted that the Organization of African Unity (OAU) had adopted a resolution which solemnly declared that all member States undertook to respect the boundaries existing at the time of their accession to independence. That resolution had confirmed the principle of *uti possidetis*, which had already been accepted by many States. Before convening a conference of plenipotentiaries to study the draft articles and to conclude a convention on the topic, it might be helpful if the Commission could take up at its next session the question of succession of States in respect of matters other than treaties and quickly complete its study of that topic, thus making available a *corpus juris* as complete as possible on the question of succession of States.

1496th meeting, para. 14.

AUSTRALIA

Oral comments 1974**The representative of Australia stated:**

He welcomed the provisions in the draft articles dealing with boundary and other territorial régimes, which reflected the opinion among jurists that treaties of a territorial character constituted a special category and were not affected by a succession of States. Since those provisions were without prejudice to the question of the legality or validity of such treaties, it was clear that they were not intended to force unlawful or invalid treaties on newly independent States. They were merely a qualification of the "clean slate" principle, stressing that a newly independent State was not born into a legal vacuum but became a member of international society. The stability of the territorial limits of all member States of the international community was essential for peace and security. It should be noted that those provisions of the draft articles were binding not only on the newly independent States but also on third States which, in the absence of such provisions, might use the occasion of independence to terminate their obligations under treaties of a territorial character, thus threatening the territorial integrity of the newly independent States.

1494th meeting, para. 6.

Written comments 1975

The Australian Government welcomes in the draft articles the provisions dealing with boundary and other territorial régimes which reflect the weight of opinion among jurists that treaties of a territorial character constitute a special category and are not affected by a succession of States. These provisions are a necessary qualification on a clean slate principle and stem from the fact that a newly independent State is not born into a legal vacuum but becomes a member of an international society by virtue of the laws constituting and governing that society. These provisions are binding not only on the newly independent State but also on third States which are bound to respect the territorial integrity of the newly independent State.

BELGIUM

Written comments 1975

In fact, it considers that the Commission has applied the "clean slate" principle with prudence and flexibility and that, in addition, the scope of application of the principle is limited. Indeed, boundary and other territorial régimes are excluded from the application of the "clean slate" principle; articles 11 and 12 of the draft stipulate that a succession of States does not affect those régimes as such. The Belgian Government feels that the withdrawal of these matters from the application of the "clean slate" principle will help to guarantee the stability of international relations.

Moreover, these articles should not apply only to newly independent States but also to third States which, in the absence of such provisions, might take advantage of a succession of States in order to terminate some of their international commitments, thereby tending to jeopardize the territorial integrity of newly independent States. Application of the "clean slate" principle in territorial matters might introduce a factor of uncertainty that would be dangerous for the international community.

The Belgian Government feels that to argue that articles 11 and 12 are contrary to the right of people to self-determination might in fact be detrimental to the interests of the newly independent States.

BOLIVIA

Oral comments 1975

The representative of Bolivia stated:

He approved of the choice by ILC of the "clean-slate" principle with regard to succession and the establishment of exceptions with regard to territorial régimes as contained in articles 11 and 12 of the draft ...

1530th meeting, para. 19.

BOTSWANA

Oral comments 1975

The representative of Botswana stated:

His delegation ... appreciated the exception to the "clean-slate" principle embodied in article 11, which sought to ensure that emergent States did not engage in border disputes on attaining sovereignty. The delimitation of boundaries by colonial Powers had been so arbitrary that if no such exception were made to the principle, withdrawal of those Powers might trigger border feuds. However, the exception in article 11, though necessary, should not be interpreted as absolute, since there might be circumstances in which an emergent State might claim an adjustment of boundaries on valid legal grounds. It was for that reason that his delegation welcomed article 13.

The compelling arguments in favour of article 11 did not appear to apply to article 12, which seemed to give rise to more problems than it would solve. In the first place, the article was very vague and did not specify which obligations relating to the territory would be inherited by a successor State. If the article encompassed an agreement allowing foreign troops to remain in the territory, it was contrary to the cardinal principle of State sovereignty, and if it did not, then it was defective by omission and therefore likely to lead to future controversy.

Treaties concerning water rights had been considered by ILC in its drafting of article 12. It was clear from those treaties that some riparian States had been given more rights to the water in common rivers than other States, in

total disregard of the development of the States on whose behalf the treaties were signed. Riparian States should always agree on the best method of equitable distribution of water, but his delegation was opposed to any treaty that gave one State unfettered power to decide how much water other riparian States should get. If treaties of that nature were to bind successor States automatically they would not only seriously infringe on the sovereignty of those States but would in certain circumstances deprive them of their means of livelihood. It was for that reason that his delegation found that article most unpalatable and would be pleased to see it deleted.

1547th meeting, paras. 30-32.

BRAZIL

Oral comments 1974

The representative of Brazil stated:

Boundary treaties were an exception to the "clean slate" rule; the Commission had always regarded those treaties as not being affected by succession. Of course, boundary treaties could be challenged, but on grounds other than the "clean slate" rule. Newly independent States were not, however, bound to accept an inheritance of injustice; they were free to challenge the legality of a controversial territorial treaty by the normal means established in the Charter of the United Nations for the settlement of international disputes.

1487th meeting, para. 2.

Oral comments 1975

The representative of Brazil stated:

His delegation endorsed article 12 in the form in which it had been proposed by ILC and believed that it was not necessary to provide for exceptions in the case of certain types of treaties.

1526th meeting, para. 26.

BULGARIA

Oral comments 1974

The representative of Bulgaria stated:

His delegation however reaffirmed its approval expressed at the twenty-seventh session (1326th meeting) of the provisions of article 11 of the draft which made an exception to the "clean slate" rule with respect to the régime of a boundary.

1495th meeting, para. 20.

Oral comments 1975

The representative of Bulgaria stated:

... certain exceptions to the "clean-slate" principle were needed to protect the interests of both the newly independent States and the international community as a whole. One example was article 11, dealing with the question of boundaries.

1535th meeting, para. 41.

CANADA

See in the subsection on article 15 infra the statement by Canada reproduced under Oral comments 1974.

CUBA

Oral comments 1974

The representative of Cuba stated:

His delegation considered that the provisions of article 12 should be made clearer, because they could be interpreted to cover an infinite range of supposedly territorial treaties.

1490th meeting, para. 20.

EGYPT

Oral comments 1975

The representative of Egypt stated:

His delegation understood the considerations which had led ILC to treat certain agreements, namely boundary settlements and certain other situations of a territorial character, as limitations on the "clean-slate" principle. It understood ILC to take the view that such agreements did not form a separate class unto themselves, but rather that the situations arising from such agreements called for stability and continuity. In that regard, ILC had succeeded in reconciling the "clean-slate" principle with the principle of continuity and his delegation agreed fully with that approach.

1537th meeting, para. 5.

ETHIOPIA

Oral comments 1975

The representative of Ethiopia stated:

... ILC had been right to provide for the application of the principle of continuity in certain exceptional cases, such as that of treaties establishing boundaries. That exception to the "clean-slate" rule, which was based on long established and universally recognized principles of international law, was reflected in the practice of the large majority of States and supported by most writers. Moreover, the United Nations Conference on the Law of Treaties had decided to exclude treaties establishing boundaries from the application of the funda-

mental change of circumstances rule. In addition, the principle of respect for established boundaries had been endorsed by the majority of African States when the Assembly of Heads of State and Government of OAU, meeting in Cairo in 1964, had adopted a resolution in which they had pledged themselves to respect borders existing on their achievement of national independence. His delegation failed to understand how a contradiction could exist between the principle of the continuity of treaties establishing boundaries and the right to self-determination. It was therefore of the opinion that article 11 had a solid basis in international law and the practice of States and that its retention in the future convention was an essential condition for the convention's broad acceptance.

1545th meeting, para. 11.

FRANCE

Written comments 1975

Above all, if the absence of any general obligation on the part of the successor State with regard to the treaties of its predecessor is to be admissible, it is essential that certain categories of treaties should be considered as necessarily binding on the successor State. The Commission has only retained in this respect boundaries, boundary régimes, and certain territorial régimes established by treaty (article 11). The French Government cannot but approve the Commission's intentions on this point. However the Commission could certainly have made a more careful search for other categories of treaties which could be considered as binding on the successor State. What happens for example to treaties creating financial responsibilities? Perhaps this problem will be considered in the study on the succession of States in respect of matters other than treaties which has been undertaken by the Commission. It would be worth ascertaining the final result of this study before finalizing positions on the question.

GERMAN DEMOCRATIC REPUBLIC

Oral comments 1974

The representative of the German Democratic Republic stated:

Draft articles 11 and 12, which stipulated that treaties establishing a boundary or a territorial régime were not affected by a succession of States, were in full harmony with State practice and the generally recognized principles of international law. His delegation agreed with the decision adopted by the Commission at its 1296th meeting on those articles—which appeared in part V of the 1972 draft as articles 29 and 30—whereby they were transferred to part I of the current draft, entitled “General provisions”, for that would make it more obvious that they were applicable to all cases of State succession. For the maintenance of world peace and the strengthening of international security, it was of particular importance that a boundary or a territorial régime established by a treaty should not be affected by a succession of States.

1486th meeting, para. 51.

GHANA

Oral comments 1975

The representative of Ghana stated:

Articles 11 and 12 dealt with treaties establishing “local obligation”. Article 11 safeguarded boundaries from the effects of succession of States and would facilitate international stability. Article 12, however, was less acceptable. In effect, the territorial régimes protected by that article would seem to include naval bases established by treaty in perpetuity, or at least for a considerable length of time, as well as demilitarized zones and territories that had been originally demilitarized in the interest of the predecessor State and its allies. The effect of that article was that the successor State was bound by servitudes on its territory which were not necessarily in its political or military interest. The compromise intended by article 13 would not always prove a safeguard, since such a treaty might be perfectly legal and valid.

1526th meeting, para. 44.

GREECE

Oral comments 1974

The representative of Greece stated:

Commenting in a preliminary way, he was pleased to note that in dealing with territorial régimes (articles 11 and 12) the Commission had rightly given preference to the principle of continuity
1493rd meeting, para. 2.

Oral comments 1975

The representative of Greece stated:

It was with respect to territorial régimes that the principle of continuity found its most fitting application. In that connexion ILC had rightly given preference to the continuity of contractual relations, which was in accordance with customary rules and usual practice.

1537th meeting, para. 15.

GUATEMALA

Oral comments 1974

The representative of Guatemala stated:

In studying boundary régimes, the Commission had not taken into account changes in the situation or the circumstances under which treaties establishing the boundary or boundaries might be signed. There had been cases where countries had been obliged to establish their boundaries under disadvantageous circumstances and, under pressure, to cede part of their territory which they would not otherwise have given up. In the case of both succession and secession, boundaries established by conventions were stable and caused no problems so long as the parties had freely consented thereto.

1490th meeting, para. 5.

Oral comments 1975

The representative of Guatemala stated:

His delegation agreed with ILC that boundary treaties were not, in principle, affected by a succession of States, but wished to stress that if a treaty concerning the ceding of territory became void it could not then be claimed that the delimitation of boundaries which it established was immutable. As was shown by paragraph (17) of the commentary on article 11, the mere occurrence of a succession of States did not consecrate a boundary established in an earlier boundary treaty when that boundary was challenged or the validity of the treaty was questioned because it had become void. In such cases, it could not be considered that the boundary was established in a mandatory manner and it could even be claimed that there was no boundary at all. In practice, all kinds of situations could give rise to controversy regarding the existence or legal scope of such treaties at the time of a succession of States, and the successor State could then invoke the "clean-slate" principle.

1548th meeting, para. 26.

HUNGARY

Written comments 1976

See in the subsection on article 15 infra the statement by Hungary reproduced under Written comments 1976.

INDONESIA

Oral comments 1974

The representative of Indonesia stated:

Articles 11 and 12 relating respectively to boundary régimes or other territorial régimes, set forth a rule established by the practice of States, approved by writers on the subject and endorsed by the Conference on the Law of Treaties, under which "dispositive" or "territorial" treaties were excepted from the fundamental change of circumstances rule. The exception of such dispositive treaties from the "clean slate" principle was necessary to guarantee certainty and stability in international relations.

As indicated in article 13, such derogation was not however prejudicial to the question of a treaty's validity.

1495th meeting, para. 36.

IRAN

Oral comments 1975

The representative of Iran stated:

... ILC had adopted the "clean-slate" principle as the basic principle, but had provided for exceptions in the case of boundary régimes and other territorial régimes. His delegation had no objection to an exception being made in the case of the boundary régimes dealt with in article 11. On the other hand, in the case of other territorial régimes, which were the subject of article 12, the successor State should be given the opportunity to refuse or accept obligations contracted by the predecessor State. Article 12 should therefore be deleted.

1548th meeting, para. 11.

ITALY

Oral comments 1974

The representative of Italy stated:

He further endorsed the Commission's solution, which was in keeping with long-established customary law, of making the principle of continuity applicable to treaties establishing boundaries (article 11) and to other so-called territorial treaties (article 12). Despite the possible misgivings of some States concerning article 11, his delegation considered that inasmuch as that provision governed only the possible impact of State succession on boundaries, it should be accepted. It merely provided that a succession of States as such did not affect a boundary established by a treaty.

1484th meeting, para. 50.

JAMAICA

Oral comments 1974

The representative of Jamaica stated:

His delegation was slightly unhappy with the Commission's treatment of boundary and other territorial régimes. In principle, it could not understand why the "clean slate" doctrine should not apply and why the doctrine of continuity of obligations should be stressed in relation to those treaty régimes, but not in relation to other treaty régimes. Nor could he understand the distinction between treaties establishing boundaries and the boundary régime established by the treaty. The Commission justified its approach by referring to the practice of States. If it were established that disputes over boundaries had been historically a source of frequent conflicts and that it was therefore in the interest of States and the entire international community to exclude treaties which establish boundaries from the field of application of the "clean slate" doctrine, then his delegation would be prepared to acknowledge that a distinction based on such pragmatic grounds was fully justified. However, if the distinction arose merely because those treaties had "dispositive" effects, then the question might be properly asked whether those were the only treaties having such effects. Such an approach would lead to a proliferation of exemptions from the "clean slate" rule, in other words, it would jeopardize the principles of consent and self-determination. Furthermore, if an exception was made for boundaries established by treaties, the same exception would not necessarily be justified for other territorial régimes. The evidence submitted by the Commission with respect to boundaries was

more convincing than that which it had put forward with respect to other territorial régimes. The statement of the West Indies Federation which was in paragraph (25) of the commentary to articles 11 and 12 was perfectly consistent with a "clean slate" principle in respect of those territorial agreements. One should proceed with the greatest caution in an area in which there was an interplay of the principles of consent and self-determination and the rule of *pacta sunt servanda*.

1495th meeting, para. 17.

JAPAN

Oral comments 1974

The representative of Japan stated:

With regard to the effects of a notification of succession as provided in article 22, there had been a constructive development on the question of the retroactivity of multilateral treaties. However, his delegation considered that more study was necessary before taking the legal position that the treaty was considered suspended unless or until it was applied provisionally by agreement; the method of provisional application and its termination required careful study. In that connexion, he noted in article 23 that, unlike multilateral treaties, bilateral treaties applied in the relations between the newly independent State and the other State party as from the date of the succession of States unless a different intention appeared from their agreement or was otherwise established.

1487th meeting, para. 21.

JORDAN

Oral comments 1974

The representative of Jordan stated his delegation:

- ... accepted the exceptions made to that rule in articles 11 and 12. However, although treaties of a territorial character constituted a special category and for practical reasons should not be affected by a succession of States, the wording of article 13 was salutary and complementary to articles 11 and 12.

1492nd meeting, para. 75.

KENYA

Oral comments 1974**The representative of Kenya stated:**

One major improvement over the 1972 draft was the incorporation of articles 11 and 12 dealing with boundary régimes and other territorial régimes. That arrangement made it more evident that in the Commission's view those régimes remained unaffected by the succession of States as such, irrespective of the type of succession involved. His delegation shared the conclusion reached by the Commission concerning boundary régimes in article 11. His Government's view had been stated in the Committee during the twenty-seventh session (1324th meeting), and its observations on article 11 were set forth in annex I of the Commission's report. However, his delegation was not satisfied with the formulation of article 12, which assimilated "dispositive", "real" or "localized" treaties to the régime of boundaries. He quoted the first part of article 12 and said that the second part of that article dealt with the same type of treaties where obligations or benefits were created for the benefit of a group of States. Article 12 was too categorical and extreme. A State in exercise of its sovereignty might confer any benefit or undertake any obligations it so desired with respect to its territory by treaty. It was for the State to judge for itself what it should receive in return. Once such a choice was made the States concerned must respect their mutual undertakings. It was, however, going too far to say that a newly independent State should, with respect to the enjoyment of its territory and use of its resources for the benefit of its peoples, be permanently fettered by servitudes imposed on the territory by the former colonial Power for the benefit of other States in consideration of motives which might have been satisfactory to the predecessor State but not consented to by the successor State. Such a proposal could hardly be consistent with the principle of self-determination. The Commission, in its commentary on article 12 (para. 23), had given instances of recent treaties alleged to have created such localized treaties, including the Belbases Agreements of 1921 and 1951 creating a lease in perpetuity for a nominal rent over the port facilities at Kigoma and Dar es Salaam in Tanganyika. Contrary to the understanding of the Commission, those agreements had been rejected by the United Republic of Tanzania and were in the process of being substantially modified. Another example given in that

commentary (para. (27)) was the Nile Waters Agreement of 1929 concluded between the United Kingdom and Egypt. That Agreement purported to restrict the exercise of permanent sovereignty over the upper riparian State's water resources and to subject any use of such waters for irrigation, industrial or power works to the prior consent of the lower riparian State and as such was not one to which a successor State could in fairness be asked to submit. Therefore, the States affected by the 1929 Nile Waters Agreement had insisted on negotiations among interested Governments to ensure equitable regulation of the use of Nile waters. Moreover, regular machinery for consultations between the countries concerned had been established.

His delegation considered that in cases of localized treaties a newly independent State did not inherit the territorial régime created but it did inherit an obligation where necessary to re-negotiate the provisions of such a treaty so as to achieve the protection of the vital interests of a beneficiary State while not jeopardizing the successor State's independence.

1493rd meeting, paras. 29 and 30.

Oral comments 1975

The representative of Kenya stated:

Although some delegations had highlighted the diversity of historical factors which had led to the establishment of certain boundaries, his delegation supported article 11 because its rejection would create innumerable and insoluble problems affecting the maintenance of peace and security among nations. It was after having seriously considered the writings of jurists and the practice of States that ILC had reached the conclusion that the majority of modern writers and States supported the traditional doctrine that treaties of a territorial character constituted a special category and were not affected by a succession of States. In 1963, similar considerations had motivated the Organization of African Unity (OAU) to include in its charter two provisions stating that the member States of OAU solemnly declare their adherence to the principle of respect for the sovereignty and territorial integrity of each State and for its inalienable right to independent existence and also pledged themselves to observe that principle scrupulously. Moreover, the purpose of boundary treaties was to mark out with precision the limits of a particular State's sovereignty. Once that had been done, those treaties constituted only documentary evidence. In the event of a succession, the successor State replaced the predecessor State as far as boundaries were concerned not because of the boundary treaty but because of the mere fact of the existence of such boundaries. In such a case, it was irrelevant and confusing to raise the issue of self-determination.

1545th meeting, para. 2.

LESOTHO

Oral comments 1974

The representative of Lesotho stated:

His delegation was not convinced by the arguments adduced in favour of making boundary treaties an exception to the "clean slate" principle. While it was true that all countries must respect the existing boundaries, that did not mean that newly independent States should automatically be presumed to have succeeded to treaties establishing those boundaries. His Government did not accept the boundaries imposed on Lesotho by colonial Powers, nor did it regard itself bound by their treaties to that effect. However, it respected the *de facto* existence of the present boundaries and understood respect to mean that States should not resort to violence in order to solve boundary disputes. Boundary treaties should not be regarded as sacrosanct and unchallengeable.

1493rd meeting, para. 50.

Oral comments 1975

The representative of Lesotho stated:

... his Government supported the position taken by OAU with regard to boundary treaties.

1545th meeting, para. 17.

MADAGASCAR

Oral comments 1974

The representative of Madagascar stated:

The draft envisaged two exceptions to the "clean slate" principle, namely boundary régimes and other territorial régimes. In accordance with articles 11 and 12 the principle of immutability applied to treaties concerning such régimes. That principle, which was enshrined in State practice, was aimed at safeguarding the stability of international relations. Article 13, which stated that nothing in the draft articles should be considered as prejudicing in any respect any question relating to the validity of a treaty, should be interpreted in the light of articles 11 and 12. So-called unequal territorial treaties should be regarded as a violation of a basic rule of international law, in the light of articles 53, 64 and 71 of the Vienna Convention on the Law of Treaties, and consequently should be declared null.

1495th meeting, para. 46.

Oral comments 1975

The representative of Mali stated:

His delegation agreed, ... with ILC that the "clean-slate" principle should not affect boundary régimes and other territorial régimes. That exception, embodied in articles 11 and 12 of the draft, was based on article 62 of the Vienna Convention on the Law of Treaties, in paragraph 2 of which it was provided that "A fundamental change of circumstances may not be invoked as a ground for terminating or withdrawing from a treaty" if the treaty established a boundary. That exception was also established by jurisprudence and by the practice of States and of regional and international organizations. The States members of OAU, in a resolution adopted in 1964, had also undertaken to respect the frontiers existing at the time when they had attained independence, and a similar resolution had been adopted during the same year by the Conference of Heads of State or Government of Non-Aligned Countries.

The deletion of articles 11 and 12 might be a source of instability and discord among States, which would pose a threat to international peace and security.

1549th meeting, paras. 59 and 60.

Written comments 1976

However, this is not an absolute principle to which no exceptions may be made. It cannot affect the régime of boundaries and other territorial régimes, which form a separate category of treaty law. Mali, for one, has always supported the principle of respect for boundaries inherited from the former Administering Power. In Africa, this doctrine is applied by the OAU.

We accordingly endorse articles 11 and 12 of the draft, which confirm the provisions of treaty law whereby "a ... change of circumstances may not be invoked as a ground for terminating or withdrawing from a treaty ... if the treaty establishes a boundary". These provisions are designed to avoid tensions and conflicts which constitute a threat to international peace.

MEXICO

Written comments 1975

Although the exception to the "clean slate" principle contained in article 11 seems reasonable, since it guarantees a definite frontier to a new State, the same cannot be said of article 12, paragraph 1, which is broad enough to cover all types of difficult situations for the new State, such as, for example, the maintenance of foreign bases on its territory. The successor State should be given the opportunity to refuse to accept obligations of this nature contracted by the predecessor State and, consequently, it is considered that paragraph 1 should be omitted.

MONGOLIA

Oral comments 1974

The representative of Mongolia stated:

His delegation agreed with the Commission that the "clean slate" principle should not apply to treaties relating to boundary régimes and other territorial régimes.

1488th meeting, para. 4.

MOROCCO

Oral comments 1974

The representative of Morocco stated:

The situation was even more obvious in the case of territorial treaties. However, in articles 11 and 12 the Commission had provided an exception to the "clean slate" principle with regard to such treaties. In so doing, the Commission had not taken into account any consideration that would keep that exception within reasonable limits. The reasons it had given for so doing were not completely convincing and were based mainly on the declarations and practices of former colonial Powers. Unjust treaties whose object was to divide a territory into zones of influence

could not be regarded as surviving into the era of State independence. The same was true of treaties concluded among the colonial Powers to divide a country into different zones under different administrative systems. In accordance with the principles of law and justice, such treaties must be treated in the same way as those to which the "clean slate" principle was applied simply because the administering Power had possessed only limited competence and had therefore had no right to dispose of a territory. Such treatment was all the more justified when such treaties ran counter to the provisions of other treaties concluded earlier, as was often the case. His delegation therefore hoped that the concept of a territorial treaty would be revised in the light of the observations of Governments.

1492nd meeting, para. 62.

Oral comments 1975

The representative of Morocco stated:

Article 11, which constituted a very important exception to the "clean-slate" principle, provided, *inter alia*, that a succession of States did not as such affect a boundary established by a treaty. In its commentary ILC of course made it clear that such a provision would have no effect whatsoever on any other grounds which might be invoked in calling for the revision or rejection of a boundary settlement, whether such grounds were self-determination, or the invalidity or termination of the treaty. Nor would it affect the legal arguments which might be invoked to justify any claim. ILC had added in paragraph (17) of its commentary on articles 11 and 12 that the mere occurrence of a succession of States would not consecrate the existing boundary, if it was open to challenge. That assertion appeared to conflict with the purpose of the draft as a whole and the explanations provided by ILC gave his delegation some cause for concern with regard to the scope of the draft itself. Morocco, which had been the victim of actual dismemberment in 1912, had since its independence consistently proclaimed its right to its territorial integrity and had called for the restitution of its territories still under foreign domination. It had regularly voiced its reservations whenever the principle of the inviolability of boundaries had been put forward—for example, when article 62, subparagraph 2 (a), of the Vienna Convention had been adopted, or when, in 1964, the Assembly of Heads of State and Government of OAU had adopted a resolution proclaiming that all member States pledged themselves to respect the borders existing on their achievement of national independence. Article 11, which adopted the same approach, gave rise to the same reservations. To take

account only of treaties, many of which had been concluded to the disadvantage of the decolonized States, was tantamount to perpetuating, as it were, the effects of colonization. The choice made by ILC appeared in that respect to have been guided by the importance which it accorded to the concept of self-determination. However, in the area of decolonization, that concept was not exclusive of all others. The Declaration on the Granting of Independence to Colonial Countries and Peoples (General Assembly resolution 1514 (XV)), while proclaiming the principle of the right of peoples to self-determination, also provided in paragraph 6 that "Any attempt aimed at the partial or total disruption of the national unity and the territorial integrity of a country is incompatible with the purposes and principles of the Charter of the United Nations". Furthermore, in principle VI of the annex to General Assembly resolution 1541 (XV), it was provided that a Non-Self-Governing Territory reached a full measure of self-government by: (a) emergence as a sovereign independent State; (b) free association with an independent State; or (c) integration with an independent State. The case of West Irian, which had been restored to Indonesia, was significant in that connexion, and the fact that the General Assembly had adopted resolution 3292 (XXIX), in which it had requested the opinion of the International Court of Justice on the legal ties which had existed, at the time of colonization, between Western Sahara, on the one hand, and Mauritania and Morocco, on the other, proved that the United Nations recognized the existence of specific cases requiring special solutions. Moreover, ILC had retained only boundary régimes or certain territorial régimes established by treaty as exceptions to the "clean-slate" rule. It could perhaps have studied more diligently the question of what other kinds of treaty could be regarded as binding the successor State, which would necessarily have focused its attention on other aspects of the problem and perhaps have led it to adopt a less categorical solution. His delegation reserved its position on article 11 and also on article 12, which completed it.

1545th meeting, para. 32.

NETHERLANDS

Oral comments 1974

The representative of the Netherlands stated:

... his delegation commended the Commission for its decision to improve the clarity of the draft as a whole by making the contents of articles 29 and 30 of the earlier draft the subject matter of articles 11 and 12 of the final draft.

1494th meeting, para. 17.

NIGERIA

Oral comments 1974

The representative of Nigeria stated:

Articles 11 and 12 dealt with boundary régimes and other territorial régimes: article 11 was complementary to the relevant provisions of the Vienna Convention on the Law of Treaties, and also conformed to the resolution adopted in 1964 at Cairo at the Conference of Heads of State and Government of the Organization of African Unity. Article 13, which provided that nothing in the articles should be "considered as prejudicing in any respect any question relating to the validity of a treaty", implied that the régimes covered by articles 11 and 12 were not sacrosanct, since the treaties establishing them might be impeached.

1494th meeting, para. 32.

PAKISTAN

Oral comments 1974

The representative of Pakistan stated:

... the "clean slate"

principle could not be applied to "territorial", "dispositive", "localized" or "real" treaties. Territorial treaties were binding on the successor State as well as on the other State party in relation to the successor State.

1492nd meeting, para. 78.

Written comments 1975

The representative of Pakistan stated:

- ... in regard to territorial treaties, his delegation supported the principle of continuity in the interests of amity and international peace and security.
1541st meeting, para.18.

PARAGUAY

Oral comments 1975

The representative of Paraguay stated:

His delegation was ... doubtful about the current wording of article 12, in particular the use of the words "does not as such affect" in connexion with the obligations and rights applying to territories by virtue of treaties. It was not clear whether those obligations and rights would continue in effect as a result of a succession of States or whether that succession would nullify the effects of an existing treaty, as far as the rights and obligations considered as attaching to the territories were concerned. The same observation applied to article 11.
1530th meeting, para. 32.

PERU

Oral comments 1974

The representative of Peru stated:

... her delegation supported the inclusion of article 11, which made territorial treaties an exception to the "clean slate" principle.
1496th meeting, para. 8.

PHILIPPINES

Oral comments 1975

The representative of the Philippines stated:

The Commission proposed two exceptions to that principle, in articles 11 and 12 concerning boundary régimes and other territorial régimes

...

It was possible that articles 11 and 12 might be contrary to the right to self-determination and in some cases to the interests of newly independent States which challenged a boundary on the grounds that it had been established by a treaty in which it had not participated. However, if those matters were removed from the application of the principle of continuity, the stability of international relations could be jeopardized, so that his delegation had an open mind on articles 11 and 12.

1549th meeting, para. 66.

POLAND

Oral comments 1975

The representative of Poland stated:

... ILC had done well to incorporate articles 11 and 12 in the first part of the draft (General provisions). His delegation supported article 11 (Boundary régimes) ...

1526th meeting, para. 3.

Written comments 1975

The Government of the Polish People's Republic states that although "progressive development" of international law is reflected in a considerable number of provisions, binding norms of customary international law are nevertheless respected in the draft. That is especially and undoubtedly true of article 11 ("Boundary régimes") ... The Government of the Polish People's Republic fully supports the above-mentioned provision of the draft articles in its present form.

...

The decision to include the provisions concerning territorial problems (arts. 11 and 12) under the general provisions appears also justified.

ROMANIA

Oral comments 1975

The representative of Romania stated:

The provisions of article 12 were debatable and the commentary of the Commission lacked conviction. It contained many references to practice and the writings of jurists of certain metropolitan countries and not to the practice and views of the new States. He could not support the proposal of ILC to exclude territorial treaties from the application of the "clean-slate" principle. Article 12 would impose on the newly independent State the obligation to respect conditions conceded by the metropolitan State towards other States. The article should instead provide that the successor State might, with a view towards good relations with its neighbours, maintain such facilities as transit, for example, but only to the extent that it felt the continuance of those facilities would not impinge on its sovereignty or its right to use its resources as it saw fit. If article 12 could not be improved, it should be deleted.

1530th meeting, para. 42.

SOMALIA

Oral comments 1975**The representative of Somalia stated:**

Given the different and sometimes conflicting concepts and positions on the matter of the succession of States, it would be a mistake to assume that there existed uniform and universally acceptable principles and doctrines on the subject, particularly with regard to treaties of a territorial character (dispositive treaties). No rigid universal principle could be laid down to govern all treaties on boundaries and territorial régimes, unless saving clauses were incorporated to provide for special situations. The line of argument put forward by some delegations in favour of the rule that dispositive treaties constituted a special category and should be considered an exception to the "clean-slate" principle was, he felt, politically oriented and influenced by extraneous considerations not consistent with universal juridical principles and international morality.

The codification of international legal principles should not be viewed within the narrow context of political arrangements geared to regional co-operation and security. Similarly, it would not be in the interest of peace and the welfare of nations if international rules formulated through the influence and pressure of former colonial Powers were confirmed. Serious political and human implications would arise if the doctrine of the inviolability of frontiers were applied to all peoples and countries, without due regard to the historical, political and social factors peculiar to them. His delegation could not agree to the evolution of legal principles and rules which merely condoned colonial legacies and arbitrary decisions and were in clear contradiction with the purposes of the Charter of the United Nations. The protagonists of the exclusionary rule regarding dispositive treaties apparently based their opinion on customary international law as reflected in the traditional norms and principles applied by European Powers during the colonization era. More emphasis needed to be placed on the modern practice of States, with particular regard for the situation of emerging countries in Africa and Asia.

The argument in paragraph (11) of the commentary on Articles 11 and 12 citing a resolution of the Assembly of Heads of State and Government of the Organization of African Unity held in Cairo in 1964, as substantiating the doctrine of the inviolability of frontiers as applicable to all boundary and territorial cases, should be viewed with the utmost caution. A number of countries, including his own, had reserved their position with regard to that resolution.

His country was one of the few States which had inherited serious territorial problems from the colonial period. The cases cited by the Rapporteur in favour of the inviolability of frontiers were applicable only to circumstances and situations prevailing during the eighteenth and nineteenth centuries and could not be taken as a precedent establishing a general principle on boundary régimes in modern times. It followed, therefore, that the distinction drawn between dispositive treaties and other treaties was based neither on a concrete principle of international law nor on modern State practice. The attempt in the report to establish an exception to the "clean-slate" principle with regard to dispositive treaties was unsuccessful.

Reference had been made to the concepts of continuity and stability as the underlying principles supporting the inviolability of frontiers as an exception to the "clean-slate" principle. If the application of that rule were confined to permanent frontiers demarcated on a just basis and with due regard to the rights and interests of the peoples concerned, there would be grounds for its adoption in the interest of continuity and stability in international relations. It was, however, questionable whether that would be a valid argument in the case of dispositive colonial treaties, which had been concluded purely to safeguard and promote the selfish interests and ambitions of colonial Powers. International peace and security would be seriously jeopardized if the validity of unequal colonial treaties dealing with boundary régimes created by the colonial Powers in the eighteenth and nineteenth centuries and clearly in contradiction with the right of self-determination and the sovereign equality of States were confirmed. It was time for the international community, through institutional procedures, to formulate legal principles, not only with regard to the building of new titles on the basis of *de facto* provisions but also, where appropriate, in the case of old territorial titles, with a view to investigating, analysing and appraising their legitimacy on the basis of peace and justice.

His delegation shared the concern expressed by the representative of Madagascar (1537th meeting) and others with regard to the validity of articles 11 and 12. He proposed that those articles should be deleted from the draft, as international boundaries and territorial arrangements were matters which fell essentially within the domain of bilateral negotiations, conclusion and arbitration. Problems arising from boundary treaties could not be satisfactorily solved by universal rigid rules which were in contradiction with the right of self-determination and independence.

1540th meeting, paras. 3 - 7.

SWAZILAND

Oral comments 1975**The representative of Swaziland stated:**

Articles 11 and 12 pertaining to boundary régimes and other territorial régimes constituted the principle exception to the "clean-slate" principle. While they represented a laudable effort by ILC to ensure peace and tranquillity, they could be criticized on the ground that they did not respect the principles of self-determination and the sovereign equality of States that underlay article 15. Colonial frontiers had been established for strategic or economic reasons, without any regard to geographical or ethnic considerations. The fact that in 1964 both the Assembly of Heads of State and Government of the Organization of African Unity (OAU) and the Conference of Heads of State or Government of Non-aligned Countries had adopted resolutions whereby States Members pledged to respect the borders existing on their achievement of national independence did not necessarily mean that a future convention on succession of States in respect of treaties should elevate to the status of a rule of international law a provision which had been adopted at a given moment in history in the interests of stability. While it was correct that article 62 of the Vienna Convention on the Law of Treaties stated that the argument "*rebus sic stantibus*" could not be invoked as a ground for terminating or withdrawing from boundary treaties, that article must be read in the light of other well-established rules of international law. The Vienna Convention and customary international law provided that a State could be bound only by an act of will establishing consent to be bound. Without that consensual element, there was no reason why a successor State should automatically succeed to a treaty establishing a boundary or other territorial régime concluded by the predecessor State. He was not denying the need for territorial treaties, but if it was necessary to formulate rules governing boundary and other territorial régimes, they should be in keeping with current realities and in harmony with widely accepted rules of international law.

1549th meeting, para. 22.

SYRIAN ARAB REPUBLIC

Oral comments 1975

The representative of the Syrian Arab Republic stated:

Consequently, his delegation had reservations on articles 11 and 12. Indeed, the principle underlying those articles was contrary to the inalienable right of people to self-determination. The international community could not confer any legitimacy on territorial concessions granted with the aim of achieving political objectives which failed to take into account the geographical and historical unity of the colonized country. On the whole, his delegation approved the draft articles on the succession of States in respect of treaties but at the appropriate time it would express reservations on articles 11, 12 and 12 *bis*, which required further review
1548th meeting, para. 52.

TURKEY

Oral comments 1974

The representative of Turkey stated:

... an exception to the "clean slate" principle had rightly been made in the case of boundary treaties.
1494th meeting, para. 45.

UKRAINIAN SOVIET SOCIALIST REPUBLIC

Oral comments 1974

The representative of the Ukrainian SSR stated:

With regard to articles 11 and 12, her delegation endorsed the Commission's decision to include them in part I of the draft, entitled "General provisions". Her delegation entirely agreed with the Commission's conclusion that a succession of States as such did not affect boundaries. That was a firmly established and generally accepted norm of international law. Those articles rightly recognized that territorial treaties constituted a special category of treaties which were not affected by succession.
1492nd meeting, para. 68.

Oral comments 1975

The representative of the Ukrainian SSR stated:

The draft took into account the major trends of modern treaty law as well as the general rule, embodied in articles 11 and 12 of the draft, to the effect that the succession of States did not affect boundary régimes or certain territorial régimes established by a treaty.

1526th meeting, para. 31.

UNION OF SOVIET SOCIALIST REPUBLICS

Oral comments 1974

The representative of the USSR stated:

Draft article 11 provided that a succession of States did not affect a boundary established by a treaty or obligations and rights established by a treaty and relating to the régime of a boundary. Boundary treaties established an objective régime which confirmed a *de jure* and *de facto* situation of great importance for the maintenance of peace and international security. The newly independent State inherited the situation, not the boundary treaty. Article 11 therefore reflected a strongly entrenched rule. However, the relationship between article 11 and articles 6, 7 and 13 was not clearly defined.

1489th meeting, para. 31.

Oral comments 1975

The representative of the USSR stated:

... many provisions of the draft reflected generally acknowledged rules of law ...

That was particularly true of one of the fundamental ideas set forth in the draft articles, namely that a succession of States as such did not affect boundaries.

1544th meeting, para. 17.

UNITED REPUBLIC OF CAMEROON

Oral comments 1975

The representative of the United Republic of Cameroon stated:

The provisions of article 11 concerning boundary régimes conformed closely to the principle of the inviolability of boundaries which the African States had incorporated into the Charter of the Organization of African Unity, and which had been adopted by the political leaders of the United Republic of Cameroon. Although the colonial administration had been prejudicial to his country's interests with regard to boundaries, his Government adhered to the principle of inviolability of boundaries because it seemed preferable to serve the interests of peace, understanding and stability in Africa.

The concept of other territorial régimes used in article 12, however, could give rise to misunderstandings and impose excessive burdens. To the extent that that notion related to such international obligations as leasing, and foreign military bases, it seemed justified to make the enjoyment of such rights after independence conditional on a new arrangement between the successor State and the other parties concerned. The commentary by ILC indicated, moreover, that the concept of international obligation had often been accepted in exceptional circumstances either to permit an international settlement in the general interest of the international community, or of a region, or by virtue of firmly established local custom. In the absence of such circumstances, a new contractual arrangement was called for in order to take account of the interests of the new sovereign State. Consequently, it would be advisable to delete article 12.

1537th meeting, paras. 51 and 52.

UNITED REPUBLIC OF TANZANIA

Oral comments 1974

The representative of the United Republic of Tanzania stated his delegation:

... did not agree on the exceptions to ...
[the "clean slate"/principle proposed by the Commission in
articles 11 and 12 on boundary régimes and other territorial
régimes. The arguments adduced by the Commission did
not justify those exceptions. Territorial treaties should be
dealt with in exactly the same manner as any others. In the
case, for example, of the Belbases Agreements of 1921 and
1951, the United Kingdom, as administering Power, had
made certain territorial commitments for Tanganyika; once
that country had become independent, it had announced its
intention to treat the Agreements as void. The same had
been true in the case of the Nile Waters Agreement of 1929
That did not mean that the services referred to in the
treaties had been discontinued; services could be continued
despite the termination of a treaty.

1496th meeting, para. 26.

Oral comments 1975

The representative of the United Republic of Tanzania:

... noted that
the principle enunciated by ILC was that of a "clean-slate"
with exceptions in respect of treaties relating to boundaries
and other treaties relating to the rights of third States to
use the territory. In that connexion, it was important to
take into account the fact that when such treaties had been
concluded by the predecessor State, the latter had not
always had the authority to confer such rights of utilization
on third States. That had been the case, for example, when
the powers of sovereignty of a colonial Territory had been
entrusted to an administering Power. There had been cases
where treaties had been concluded by an administering
Power overstepping its mandate. His delegation therefore
believed that before such treaties could be considered as
being succeeded to, it was essential to be certain of their
validity.

1542nd meeting, para. 13.

UNITED STATES OF AMERICA

Written comments 1975

The changes in articles 11 and 12 on boundary régimes and other territorial régimes are useful clarifications. The Government of the United States continues to consider these articles as a codification of international custom which makes a positive contribution to broader understanding of the principles of sovereign equality and the development of friendly relations among nations.

ZAIRE

Oral comments 1975

The representative of Zaire stated:

With regard to article 11, relating to boundaries, his delegation approved of the "clean-slate" principle adopted by ILC. There could be no succession to treaties establishing boundaries. His country rejected such succession and took note of existing situations, i.e. boundaries which constituted the limits of the exercise of its sovereignty. Thus, the Assembly of Heads of State and Government of the Organization of African Unity meeting in Cairo at its first ordinary session had stated that the member States of the organization pledged themselves to respect the boundaries existing on their achievement of national independence.

To accept the application of the succession of States in the matter would be tantamount to recognizing that any successor State had the right to denounce a boundary treaty on the basis of article 23, paragraph 2, which would give rise to many border conflicts. The Republic of Zaire was not an expansionist country and respected certain boundaries established by agreements signed by Belgium and Portugal. It approved of the wording of article 11 in its entirety.

Referring to article 12, he said that even though it was poorly drafted, his delegation approved of the exclusion of the treaties in question from the scope of the succession of States in respect of treaties. The provisions of the article were in conformity with history and with the new political order.

1535th meeting, paras. 36 - 38.

ZAMBIA

Oral comments 1975

The representative of Zambia stated:

He was also gratified to see that ILC had sought to give effect to the decision of the Assembly of Heads of State and Government of the Organization of African Unity (OAU) with respect to boundaries, wherein all States members of OAU had pledged themselves to respect the borders existing on the achievement of national independence.

1550th meeting, para. 8.

Article 13

Questions relating to the validity of a treaty

BOTSWANA

See in the subsection on articles 11 and 12 supra the statement by Botswana reproduced under Oral comments 1975.

BYELORUSSIAN SOVIET SOCIALIST REPUBLIC

Oral comments 1975

The representative of the Byelorussian SSR stated:

In his delegation's view, article 13 substantially weakened the provisions set forth in article 11 concerning the inviolability of boundaries:

1536th meeting, para. 8.

CUBA

Oral comments 1974

The representative of Cuba stated:

It should not be forgotten that the established practice originated mainly from the traditions of the colonial Powers which had tried to make all countries accept the rules which they had imposed through pressure on small and weak States. Hence the importance of article 13, which provided that "Nothing in the present articles shall be considered as prejudicing in any respect any question relating to the validity of a treaty." That provision was closely related to article 52 of the Vienna Convention on the Law of Treaties,³ under which "A treaty is void if its conclusion has been procured by the threat or use of force in violation of the principles of international law embodied in the Charter of the United Nations". Before the First World War, international law had not taken into account such acts of coercion exercised by one State over another to extort its consent. However, with the coming of the Charter of the

United Nations the invalidity *ab initio* of any treaty whose conclusion had been procured through the use of force was enshrined as a principle of international law. In the opinion of his delegation the interpretation of the term "force" should not be restricted because, besides armed force, economic or political pressures constituted acts of coercion, as the Conference of Heads of State or Government of Non-Aligned Countries held at Cairo in 1964 had declared. **1490th meeting, para. 18.**

FINLAND

Oral comments 1974

The representative of Finland stated:

/article 13/ should be deleted ...
1486th meeting, para. 23.

GHANA

See in the subsection on articles 11 and 12 supra the statement by Ghana reproduced under Oral comments 1975.

INDONESIA

See in the subsection on articles 11 and 12 supra the statement by Indonesia reproduced under Oral comments 1974.

JORDAN

See in the subsection on articles 11 and 12 supra the statement by Jordan reproduced under Oral comments 1974.

KENYA

Oral comments 1974

The representative of Kenya stated:

His delegation had no objection to the saving clause, article 13, although it regarded it as superfluous.
1493rd meeting, para. 31.

MADAGASCAR

See in the subsection on articles 11 and 12 supra the statement by Madagascar reproduced under Oral comments 1974.

MEXICO

Written comments 1975

This article may be omitted if, as suggested in the first paragraph*, of these observations a general and express reference to the Vienna Convention is included.

NIGERIA

See in the subsection on articles 11 and 12 supra the statement by Nigeria reproduced under Oral comments 1974.

* For the text of the suggested additional article see in subsection D of this section infra the statement by Mexico reproduced under Written comments 1975.

POLAND

Written comments 1975

The new article 13 ("Questions relating to the validity of a treaty"), although repeating an evident rule, may play a useful role in the draft.

Oral comments 1975.

The representative of Poland stated:

The new article 13 (Questions relating to the validity of a treaty) was certainly useful from the point of view of the draft as a whole.
1526th meeting, para. 3.

UKRAINIAN SOVIET SOCIALIST REPUBLIC

See in the subsection on article 7 supra the statement by the Ukrainian SSR reproduced under Oral comments 1974.

UNION OF SOVIET SOCIALIST REPUBLICS

Oral comments 1974

The representative of the USSR stated:

He questioned whether article 13 should be retained, since questions relating to the validity of a treaty were the concern of the Vienna Convention on the Law of Treaties.
1489th meeting, para. 31.

Article 14

Succession in respect of part of territory

BRAZIL

Written comments 1976

... the Government of Brazil fully agrees with the formula adopted in article 14 ... of the draft.

FINLAND

Oral comments 1974

The representative of Finland stated:

The words "any territory, not being part of the territory of a State, for the international relations of which that State is responsible" in the introductory part of article 14 were not clear, and he suggested that the expression "territory under the ... administration of a State", contained in article 10 of the 1972 draft, should be used instead. On the other hand, he supported the addition of the words "or would radically change the conditions for the operation of the treaty" at the end of article 14 (b).

1486th meeting, para. 24.

INDONESIA

Oral comments 1974

The representative of Indonesia stated:

Under article 14, the treaties of the successor State automatically applied to that territory as from the date of the succession of States, whereas the treaties of the predecessor State ceased automatically in respect of the territory. That rule, otherwise known as the "moving treaty frontier" rule, had its basis in State practice and in writings on the subject. Furthermore, it was supported by article 29 of the Vienna Convention on the Law of Treaties, whereby a treaty was binding on each party in respect of its entire territory.

1495th meeting, para. 34.

IRAQ

Oral comments 1974

The representative of Iraq stated:

He supported one such principle which was already being applied in international practice, namely, the "moving treaty frontiers" rule whereby, if any State expanded as a result of annexation, or as a result of any means other than decolonization that did not raise the problem of the emergence of a new State, then the treaties of that State extended to the new portion of its territory.

1485th meeting, para. 8.

KENYA

Oral comments 1974

The representative of Kenya stated:

His delegation was in general agreement with part II of the draft articles.

1493rd meeting, para. 31.

POLAND

Written comments 1975

The Government of the Polish People's Republic states that although "progressive development" of international law is reflected in a considerable number of provisions, binding norms of customary international law are nevertheless respected in the draft. That is especially and undoubtedly true of ... article 14 ("Succession in respect of part of territory"). The Government of the Polish People's Republic fully supports the above-mentioned provision of the draft articles in [its] present form.

Oral comments 1975

The representative of Poland stated:

(General provisions). His delegation supported article
... 14 (Succession in respect of part of
territory) of the final version of the draft articles.
1526th meeting, para. 3.

Article 15

Position in respect of the treaties of the
predecessor State

ALGERIA

Oral comments 1974

The representative of Algeria stated:

The Commission had done well to take the "clean slate" principle as the basis for its elaboration of the draft articles. That principle was in conformity with the principle of self-determination and consistent with the general freedom enjoyed by a newly independent State with respect to the treaty obligations of the predecessor State.

1496th meeting, para. 14.

AUSTRALIA

Oral comments 1974

The representative of Australia stated:

Despite the importance of the principle of self-determination, it did not provide a solution to every problem connected with succession of States in respect of treaties. The Commission itself had recognized that the "clean slate" principle was at once too broad and too categorical. Such a principle too rigidly applied would be inimical not only to stability and continuity in international relations, but also to the interests of the newly independent State if it was thereby deprived of favourable treaty arrangements applying to it prior to independence. The "clean slate" principle must be considered in the context of all State succession situations. It was appropriate that emphasis should be placed on the right of self-determination in the case of newly independent States, but other situations must also be taken into account in order to ensure orderly regulation of international relations. The application of the "clean slate" principle was justified in the case of decolonization, but in other cases—especially where there had been no real succession of States, but a profound internal political or social revolution—more complicated problems might arise, involving State responsibility and the rights and duties of States under the law of treaties generally.

In their transitional agreements, newly independent States had placed widely differing emphasis on the principle of continuity of treaties. A number of States had deemed it desirable to maintain existing legal relationships; others had asserted that treaty rights and obligations were succeeded to upon independence by virtue of customary international law. In his delegation's view, it would be wrong to attribute those positions, in all cases, to a misconception of contemporary international law or of national interest. It was clear that, in some cases, States perceived that it was in their interest to opt for the continuity of legal obligations.

...

With reference to article 15, under which "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", his delegation wished to draw attention to the transitional legal or constitutional arrangements which might exist immediately before independence. In most cases, such transitional arrangements did not affect the treaty-making power or, if they did, it was only to a very limited extent. Until the moment of independence, treaties affecting the dependent Territory would be concluded by the colonial or metropolitan Power. In some cases, however, the dependent Territory might enjoy in the transitional period a limited competence in treaty-making and in concluding agreements in its own name, or it might participate directly with the colonial or metropolitan State in the conclusion of treaties. In that case, it might well wish to consider the treaties or agreements thus concluded to be still in force after independence. It would therefore be inconsistent with the principle of self-determination, which accorded legal significance to the clearly manifested political will of peoples, to maintain that no such treaty could remain in force without consensual validation of the newly independent State.

He cited the following example: a territory that was not formally independent, but which had none the less been accorded by the administering Power almost plenary powers in foreign affairs, concluded an agreement with a third State in its own name. It regarded that agreement as binding in international law, and according to the principle of State responsibility, was responsible to the third State for the implementation of its obligations. On independence, it might seek to assert the continuing validity of that agreement; but the third State, considering the agreement disadvantageous to it, even though it had freely entered into it, might invoke article 15 to justify its refusal to consider the treaty in force after independence. In such a case, the rules relating to bilateral treaties affecting newly

independent States would have been invoked by the third State to the detriment of the newly independent State and in disregard of the legal and political realities existing prior to the formal independence.

His delegation therefore felt that the question of transitional arrangements should be reviewed to make sure that the formulation of article 15 adequately reflected all the implications of the principle of self-determination.

1494th meeting, paras. 4-5 and 7-9.

Written comments 1975

In regard to article 15 governing the position in respect of the treaties of the predecessor State, the Australian Government would like to observe that there have been many cases of State practice where, without difficulty or controversy, the States have continued to apply treaties after a succession of States has taken place. This practice seems to indicate a widely held presumption of continuity.

The Australian Government also notes the many cases where newly independent States, including Australia, concluded that they succeeded to treaties by operation of law.

In so far as a newly independent State judges freely for itself that a presumption of continuity is desirable, the Australian Government believes that such a presumption is wholly reconcilable with the principle of self-determination.

In this area it seems clear that States will be guided less by the application of general principles than by their own conception of their legitimate interests and the interests of the international community as a whole.

A major advantage of a presumption of continuity based on the notion that certain treaties are succeeded to by operation of law is that a newly independent State can temporarily leave open the question of which treaties it has succeeded to with a reduced risk, compared to cases where a clean slate principle is applied, that third States will use the lack of determination to consider treaties favourable to the newly independent State as not applying to that State. It will be recalled, of course, that the clean slate principle operates both ways, conferring freedom of decision on not only newly independent States but on third States as well.

A major advantage of the "clean slate" principle, on the other hand, is that it makes it easier for the newly independent State to avoid being bound by obligations which it regards as unreasonable or unjust.

It seems to the Australian Government that the question of which approach is the better one from the point of view of the newly independent State can only be answered satisfactorily by having regard to the particular circumstances of each country. The circumstances in which new States emerge vary enormously and it is not possible to give a simple answer which will hold good universally. That fact, the Australian Government believes, has been amply demonstrated by State practice.

For this reason the Australian Government believes that it is inevitable that the draft articles, if they are to be universally acceptable, must take adequate account of the diversity of circumstances and of legitimate national interests. A too simplistic doctrinal approach, or a too narrow nationalistic one, taken in regard to the principles of State succession as a whole is likely to produce only an unbalanced and unworkable régime of law.

In regard to draft article 15, the Australian Government wishes in particular to draw attention to the problem of transitional legal or constitutional arrangements which may exist in the period preceding independence. In some cases the dependent territory may either enjoy in the transitional period a limited competence in treaty making and conclude agreements in its own name as a free exercise of its semi-sovereign rights, or it may participate directly with the colonial or metropolitan State on the conclusion of treaties, in some cases endorsing the ratification or implementation of a treaty by legislative or executive action. On the peaceful attainment of independence, the newly independent State might well wish to consider the treaties entered into before independence as still in force. To maintain rigidly in such a case that no such treaty could continue to remain in force without consensual validation, which in the case of a bilateral treaty would involve the consent of a third State, would seem to be unreasonable.

...

The inclusion of a provision in paragraph 3 of article 33 to cover a situation assimilable to the circumstances existing in the case of the formation of a newly independent State raises the question whether a similar exception should not be recognized in regard to article 15 to cover the case where the emergence of a newly independent State takes place in circumstances closely similar to the circumstances covered by article 33 (1). The inclusion of such a provision would seem to cover the case of countries like Australia which obtained full independence and sovereignty after being British colonies. In Australia's case it was decided to consider treaties concluded by Britain and applying to Australia before independence as continuing to apply to Australia after independence. This decision was, of course, more than a consequence of policy but was based on a universally accepted interpretation of the applicable law.

BANGLADESH

See in subsection B of section I supra the statements by Bangladesh reproduced under Oral comments 1974 and Oral comments 1975.

BELGIUM

Written comments 1975

The Belgian Government wishes to emphasize that it interprets the "clean slate" principle to mean that a new State is entitled to opt to be party to a treaty or not to be party; according to this interpretation, the "clean slate" principle cannot mean that a newly independent State should be deprived automatically at the date of the succession, of the rights stemming from treaties concluded by its predecessor.

BOLIVIA

Oral comments 1975

The representative of Bolivia stated:

He approved of the choice by ILC of the "clean-slate" principle with regard to succession ... exceptions

...

[to that principle] should also include free navigation and access to the sea for land-locked countries.

1530th meeting, para. 19.

BOTSWANA

Oral comments 1975

The representative of Botswana stated:

His delegation welcomed the "clean-slate" principle, which was consonant with the principle of self-determination. It was common knowledge that treaties entered into by colonial Powers on behalf of their colonies frequently served the interests of the colonialists themselves more than those of the colonies. Therefore, to ask newly independent States to be bound automatically by such treaties was tantamount to denying them their sovereignty.

1547th meeting, para. 30.

BRAZIL

Written comments 1976

... the Brazilian Government believes that the formula provided for in article 15, which incorporates the "clean slate" rule with regard to newly independent States, is consistent with the general law of treaties, according to which the consent of the State is the decisive element in treaty-making procedure. All States should emerge to international life with the right to decide whether to accede or not to any treaty whatsoever, for the denial of such a right would be discriminatory and unfair.

...

The Government of Brazil fully agrees with the formula adopted in article ... 15 of the draft.

BULGARIA

Oral comments 1974

The representative of Bulgaria stated:

His delegation supported the "clean slate" principle whereby a newly independent State was born free and had the inherent right of commencing its new and independent life with a "clean slate".

1495th meeting, para. 20.

Oral comments 1975

The representative of Bulgaria stated:

His delegation firmly supported the "clean-slate" principle. The population of a territory under colonial domination could not be bound by treaties to which it had not consented.

1535th meeting, para. 41.

BYELORUSSIAN SOVIET SOCIALIST REPUBLIC

Written comments 1975

In essence the draft reflects the need to recognize the right of independent States, whatever their degree of former subordination to the metropolitan country, to express their sovereign will in the solution of questions of succession in respect of international treaties. Thus the draft prepared by the International Law Commission is aimed at contributing to the elimination of the vestiges of colonialism.

... particular attention should be paid to the terms and formulations used in the draft, which might in the future lead to serious consequences both of a political nature and in relation to international law. This applies in particular to the application by newly independent States of such a principle as the clean-slate principle to succession in respect of treaties.

CANADA

Oral comments 1974

The representative of Canada stated:

The Commission had rightly given due attention throughout its study of the question to the practice of newly independent States, as recommended by the General Assembly. His delegation, however, had some doubt whether enough weight had been given, in the introductory portion of the report on that topic, to the many instances in which, without controversy, new States had continued to apply the treaties entered into by their predecessors. The report in paragraph 58 referred to the traditional "clean slate" principle as the underlying norm for cases of newly independent States or for cases that might be assimilated to them; and it went on to say in the following paragraph that the "clean slate" metaphor was merely a convenient and succinct way of referring to a newly independent State's general freedom from obligation in respect of its predecessor's treaties. The impression was thus conveyed that that represented evidence of State practice. As some Governments had noted in their observations on the draft articles, it was questionable whether a study of State practice led irresistibly to the "clean slate" conclusion. In many cases State practice in connexion with devolution agreements and with unilateral declarations appeared to demonstrate a presumption of continuity. That had been argued by some distinguished writers who saw in the high rate of treaty

succession during the decolonization era or the recent past and present substantial evidence of the continuity of rights and obligations. There were also some cases where the practice of newly independent States had been ambiguous. It therefore seemed somewhat misleading to speak of the "clean slate" theory as though it were derived from a study of State practice and amounted to a codification of existing law.

His delegation supported the general approach taken in part III of the draft, regarding newly independent States. In article 15 the so-called "clean slate" rule was not framed as a presumption against succession but simply as a denial of automatic succession. A newly independent State was 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 succession of the State the treaty applied to its territory. The option thus given to a newly independent State was without prejudice to the rights and obligations of the other States concerned as set forth in the relevant provisions of the articles. Those articles provided a balance between the protection of the interests of the new State and those of any interested State with regard to the so-called localized, territorial or depositary treaties dealt with in articles 11 and 12. The approach taken by the Commission corresponded to the practice of the Secretary-General as depositary, as noted in paragraph (9) of the commentary to article 15. In general, the articles appeared to make as flexible as possible the position of a new State which wished to continue to participate in a treaty.

1489th meeting, paras. 39-40.

CHILE

Oral comments 1974

The representative of Chile stated:

His delegation noted with satisfaction that the draft articles had as a general rule been based on the "clean slate" principle. Moreover, the draft also took into account the interest of the international community in facilitating the accession of a successor State to international treaties concerning it, especially in the case of multilateral treaties.

1491st meeting, para. 23.

CUBA

Oral comments 1974

The representative of Cuba mentioned as the principle merit of the draft:

... that it had taken into consideration the consequences deriving from the principles established in the Charter, in particular that of self-determination. The Commission had reached the conclusion, set forth in article 15, that a new independent State was exempt from any obligations in respect of treaties concluded by the predecessor State. According to article 15, the "clean slate" principle applied to all treaties, both bilateral and multi-lateral, with the exception of cases of treaties concerning boundary régimes and other territorial problems as envisaged in articles 11 and 12.

1490th meeting, para. 19.

CYPRUS

Oral comments 1974

The representative of Cyprus stated:

In particular, his delegation agreed that the "clean slate" principle should be at the basis of the regulation of the position of newly independent States, since it was the best designed to meet their situation.

1496th meeting, para. 54.

CZECHOSLOVAKIA

Oral comments 1974

The representative of Czechoslovakia stated:

One major principle underlying the draft articles was the "clean slate" principle, which was a sound approach. However, since the principle had not been carried to its logical conclusion, ambiguities had arisen. That was particularly clear in respect of States formed as a result of separation of parts of a State, in which case the Commis-

sion proposed that the agreement should continue to have effect, i.e. it applied the principle of continuity, as laid down in article 33. Her delegation regarded the "clean slate" principle as essential in the case of States resulting from separation and offered the example of her country in 1918, which had come into being following the collapse of the Austro-Hungarian Empire. The Czech and Slovak peoples had had no opportunity to express their approval or disapproval of the treaties concluded by Austria-Hungary, and, as an independent State, Czechoslovakia had had every right to decide which treaties would be applied. Moreover, the "clean slate" principle did not run counter to the proposed article 12 *his* on multilateral treaties of universal character.

1488th meeting, para. 10.

Oral comments 1975

The representative of Czechoslovakia stated:

His delegation had noted with satisfaction that the "clean-slate" rule was one of the main principles underlying the draft. It regarded that approach as correct but wished to draw attention to the fact that that principle was not fully formulated in the draft, in particular in so far as it concerned the question of succession in respect of divided States. It considered that the "clean-slate" principle should also be applied when a new State appeared as the result of the dismemberment of the predecessor State. His Government's position in that respect was based on its own experience, since it had come into existence in 1918 as the result of the dismemberment of the Austro-Hungarian Empire. His Government considered that in such cases there was no reason for the continuity of treaties. However, that did not mean that his country did not admit of exceptions to the "clean-slate" principle.

1537th meeting, para. 32.

EGYPT

Oral comments 1975

The representative of Egypt stated:

Newly independent States must enjoy complete freedom to re-examine treaties entered into by predecessor States in matters concerning sovereignty over their territory and to determine which of those treaties were consonant with their national principles and amenable to succession. They would thus avoid entering into unacceptable or unjust obligations, for history showed that many treaties entered

into by predecessor States involving the sovereignty of successor States were unjust. A clear example was the case of South Africa, whose occupation of Namibia had been declared illegal by the International Court of Justice. South Africa had allowed foreign interests, pursuant to treaties, to exploit the natural resources of Namibia to the detriment of its people and those treaties could not continue after Namibia achieved independence.

The "clean-slate" principle was a just one and should form the basis of succession of States in respect of treaties. ILC had rightly stated in paragraph 58 of its report that the "traditional" principle that a "new State" began its treaty relations with a "clean slate", if properly understood and limited, was consistent with the principle of self-determination and well designed to meet the situation of newly independent States.

...

His delegation did not share the fear that the "clean-slate" principle would predominate over that of continuity. The newly independent States were politically aware, as was shown by their enthusiastic work in the United Nations with regard to codification, and it should not be assumed that they would apply the "clean-slate" principle from a narrow territorial viewpoint. They understood the principle well and it would be unreasonable to expect a newly independent State which found advantages in a certain treaty to refuse to succeed to it. If such a State freely chose to continue to be bound by the obligations of a treaty entered into by a predecessor State, and so declared, then it would not be doing so under compulsion of law but would be expressing its free will and independence.

1537th meeting, paras. 3-4 and 6.

ETHIOPIA

Oral comments 1975

The representative of Ethiopia noted:

... with satisfaction that ILC had adopted the "clean-slate" principle, which reflected the reality of modern international relations. That principle endorsed the primacy of consent in treaty relations. Thus, a newly independent State did not automatically inherit, without its consent, the treaties of the predecessor State.

1545th meeting, para. 11.

FRANCE

Oral comments 1974

The representative of France stated:

The Commission seemed to consider that the adoption of the "clean slate" principle would constitute a codification of existing international law, that theory being based on State practice and confirmed by the principle of self-determination.

...

Opinions and practice on that topic were far from consistent. Moreover, as his delegation had observed at the twenty-seventh session (1318th meeting), the positions that depositaries might adopt could not be the source of a customary rule or be binding on States parties to treaties, since their role was purely administrative. Furthermore, it seemed difficult to base the "clean slate" principle for succession to treaties on the principle of self-determination. His delegation saw no obvious link between the two. Moreover, his delegation noted that according to draft article 33 it seemed that the maintenance or disappearance of a treaty obligation would depend on subjective assessments. The rule in question was therefore difficult to accept. ...

In the light of the foregoing, while accepting the "clean slate" principle as a working hypothesis, his delegation wondered whether the Commission had fully considered all the exceptions which should be made to the rules it laid down in order to make them acceptable.

... if the idea that the successor State had no general obligations in respect of its predecessor's treaties was to be admissible, it was essential that some types of treaty should be regarded as necessarily binding on the successor State. In that connexion, the Commission had mentioned only boundary régimes and certain territorial régimes established by treaties; it should also have considered, for example, treaties involving financial burdens.

1492nd meeting, paras. 86-87.

See also in subsection B of section I supra the statement by France reproduced under Written comments 1975.

GERMAN DEMOCRATIC REPUBLIC

Oral comments 1974

The representative of the German Democratic Republic stated:

The draft articles adopted by the Commission were now based essentially on the "clean slate" principle, which, in accordance with the right of self-determination and the principle of sovereign equality, gave the successor State the right of free decision regarding the treaties concluded by its predecessor State, except for boundary treaties and a few other categories of treaties. His delegation gave its general support to the "clean slate" principle.

1486th meeting, para. 50.

GERMANY, FEDERAL REPUBLIC OF

Oral comments 1974

The representative of the Federal Republic of Germany stated:

... the Commission had felt that the "clean slate" principle, which had been supported by many States, was a proper basis for dealing with the succession problems facing newly independent States. His delegation thought that the principle must be qualified and noted that the only exceptions in the draft concerned boundary and territorial régimes. Apart from that, the draft did not differentiate between various categories of treaties. His delegation would have preferred to see an obligation of continuity stipulated in the case of certain treaties. In order to prevent too extensive an interpretation of the "clean slate" principle, it might be useful to incorporate a reference to the concept of continuity elsewhere in the draft, possibly in the preamble.

1490th meeting, para. 30.

GREECE

Oral comments 1974

The representative of Greece stated:

In part III of the draft articles, which dealt with questions relating to newly independent States, the Commission had given greater weight to the "clean slate" principle which it had felt to be more in conformity with the right to self-determination than the principle of continuity.

1493rd meeting, para. 3.

Oral comments 1975

The representative of Greece stated:

... in the case of newly independent countries, ILC had opted in favour of the "clean-slate" principle, which was in conformity with the right of self-determination of peoples. His delegation considered, however, that the appearance of a newly independent State did not necessarily mean the disappearance of all conventional relations.

1537th meeting, para. 16.

GUATEMALA

Oral comments 1974

The representative of Guatemala stated:

With reference to the succession of States in respect of treaties, the Commission had pursued its study on two points which were closely related in so far as there was a legal bond between a territory and an international treaty. Therefore, that question covered both the succession of States and the secession of one or several States. The "clean slate" principle held good in either case, so that the consensual element was of capital importance in both cases.

1490th meeting, para. 4.

HUNGARY

Written comments 1976

Especially commendable are the detailed rules concerning the newly independent States and the "clean slate" principle governing a major part of the draft and allowing a newly independent State not to continue being bound by treaties formerly in force in respect of its territory.

...

The Government of the Hungarian People's Republic agrees that the newly independent States should have a clean slate in respect of treaty relations, since their interests are best served by it. At the same time, regard should be had to the interests of other States, to those of a whole community of States. This principle prevails, correctly, e.g. in draft article 11, which makes an exception to the clean slate rules of State succession in respect of boundary régimes.

See also in subsection A of this section infra the statement by Hungary reproduced under Written comments 1976.

INDONESIA

Oral comments 1974**The representative of Indonesia stated:**

In part III of the draft, which dealt with newly independent States, the Commission had retained the "clean slate" principle set out in article 15. It was not only logical but also just to have based the draft articles on that principle. A newly independent State should not be automatically under any obligation to maintain in force treaties concluded by its predecessor in respect of its territory when it had not consented to the conclusion of those treaties. It was also just that a newly independent State, as a sovereign State and subject to the character of the treaties in question, should have the right to become a party to the treaties concluded by its predecessor regardless of whether such treaties were or were not in force on the date of the succession of States or were treaties signed by the predecessor State subject to ratification, acceptance or approval. His delegation, therefore, accepted articles 16, 17 and 18, but took the view that the principle set out in the provisions of those articles should be considered as a right and not merely as an option open to the successor State.

1495th meeting, para. 35.

ISRAEL

Oral comments 1975

The representative of Israel stated:

The question of succession of States in respect of treaties, referred to in the report of ILC on its twenty-sixth session (A/9610/Rev.1), in particular, was a subject of more than academic interest to his country. Upon the termination of the British Mandate in Palestine, the problem had arisen as to how far, if at all, treaties to which the Mandatory Power had been a party were binding on Israel. Israel had adopted the position that, as a new international personality, it was not automatically bound by the treaties to which Palestine had been a party and that its future treaty relations with foreign Powers were to be regulated directly between Israel and the foreign Powers concerned.

1546th meeting, para. 8.

ITALY

Oral comments 1974

The representative of Italy stated:

His delegation supported the adoption by the Commission of the "clean slate" principle with respect to the succession of newly independent countries, whereby States emerging from former dependent territories could enter into international relations as sovereign and equal States. The "clean slate" principle was in keeping with the general principle of the self-determination of peoples.

1484th meeting, para. 51.

JAMAICA

Oral comments 1974

The representative of Jamaica stated:

The adoption of the "clean slate" principle was not only commendable in theory but was based on the practice of States, as illustrated by the process of decolonization which had followed the Second World War. In cases of succession involving the separation or uniting of sovereign States, in which no problem of decolonization arose, the Commission had stressed that the rule of *pacta sunt servanda*, which derived from the principle of consent, was applicable and had thus adopted the principle of *ipso jure* continuity. The "clean slate" doctrine was nothing more than a confirmation of the principle of consent, since a new State could hardly be expected to be bound by a predecessor's treaty to which it was not a party and to which it had not given its consent. By the same token the *de jure* continuity doctrine was also a mere reflection of the principle of consent since the successor States were originally parties to the treaties to which they succeeded.

1495th meeting, para. 12.

KENYA

Oral comments 1974

The representative of Kenya stated:

Concerning part III, his delegation endorsed the Commission's decision to adhere to the "clean slate" principle, which was now supported by an overwhelming majority of States. With respect to a dependent Territory in a colonial status, the peoples of such Territory had been denied the capacity to give consent to the treaties by the metropolitan Power and could not therefore be bound by any treaty concluded by the metropolitan Power after attainment of independence. The principle of "contracting out" would be inconsistent with the principle of self-determination.

1493rd meeting, para. 31.

LESOTHO

Oral comments 1974

The representative of Lesotho stated:

The adoption of the "clean slate" principle represented a progressive development of international law and was a direct outcome of the principle of self-determination. His delegation was particularly gratified that the Commission had rejected the proposal that there should be a presumption that a newly independent State consented to be bound by treaties previously enforced in its territory unless it declared a contrary intention within a reasonable time. It was unfortunate that some members of the Commission and of the Sixth Committee found it difficult to go along with the generally accepted "clean slate" principle, which recognized that all States were equal and sovereign and thus must enjoy the same sovereign rights. There was no reason why independent States should be burdened by obligations which were not in their national interest, while their predecessors had had a free hand in exercising their sovereign power of consenting to be bound. Those who attacked the "clean slate" theory might be suspected of trying to impose a new form of colonialism on newly independent States. It scarcely needed to be pointed out that, in most cases, treaties concluded under colonialism served the interests of the colonial Powers, not the interests of the rightful inhabitants of the Territories.

1493rd meeting, para. 49.

Oral comments 1975

The representative of Lesotho stated:

On the question of succession of States in respect of treaties, his delegation fully supported the "clean-slate" theory. It was true that in practice Lesotho had followed the principle of the continuity of treaties in order to give itself the possibility of reviewing the treaties concluded before independence. However, it should be noted that, eight years after independence, that review had not yet been completed. He wished to thank the Australian Government for the assistance it had provided to his Government in that regard. However, in the meantime the Government was saddled with responsibilities which it could not possibly carry out. Thus, the United Kingdom, a maritime Power, had extended maritime treaties to Lesotho, a land-locked country. That was why his Government preferred a system based on free accession of the successor State rather than the presumption of continuity.

1545th meeting, para. 17.

LIBERIA

Oral comments 1975

The representative of Liberia stated:

... his delegation supported the thesis that every State had the inherent right to determine for itself by what it would be bound. That inherent right was embodied in the principles of self-determination and the sovereign equality of States. It would be a gross violation of those well-established principles if newly independent States were compelled to be automatically bound by treaty obligations in whose formulation they had played no part. Every sovereign State should remain free to decide for itself which bilateral or multilateral treaty entered into—in most instances—by the former colonial Power would be binding upon it and which treaties would be rejected. Newly independent States, especially African States, prior to attaining their independence, had not been consulted when those treaties were concluded, nor had their interests been taken into account. Every new State should be free to examine critically treaties concluded by the predecessor State and then to make a determination as to which treaties were beneficial.

...

His delegation whole-heartedly accepted the "clean-slate" principle as set out by ILC. That proposal was a fair and workable one and strengthened the freedom of choice of newly independent States.

1536th meeting, paras. 20 and 22.

LIBYAN ARAB REPUBLIC

Oral comments 1974

The representative of the Libyan Arab Republic stated:

His delegation was pleased that the Commission had based its work on the "clean slate" principle, according to which a newly independent State had complete freedom to decide whether to continue in force or to terminate treaties concluded by its predecessor. The Commission had rightly rejected the view that newly independent States continued to be bound by treaties formerly in force with respect to their territory.

1496th meeting, para. 16.

MADAGASCAR

Oral comments 1974

The representative of Madagascar stated:

The "clean slate" principle enshrined in article 15 of the draft, had already been accepted by the Sixth Committee; furthermore, it was in accordance with the principle of equal sovereignty of States and the right to self-determination. Under the terms of the draft, succession in respect of treaties concluded by the predecessor State, constituted an entitlement and not an obligation, of newly independent States.

1495th meeting, para. 45.

Oral comments 1975

The representative of Madagascar stated:

... adopting the "clean-slate" principle, the draft articles sought to respect the principle of self-determination and equality of States, which was embodied in article 15. In his delegation's opinion, the expression "clean-slate" principle meant that the successor State had the right but not the obligation to become a party to treaties concluded by the predecessor State.

1537th meeting, para. 22.

MALI

Oral comments 1974

The representative of Mali stated:

One of the fundamental principles on which the draft articles were based was the "clean slate" principle, which provided a new State with the opportunity of denouncing all previous treaties concluded on its behalf by a colonial Power.

Many of the provisions of treaties concluded by former administering Powers were contrary to the interests and aspirations of the peoples of newly independent States, and the "clean slate" principle ensured that the new State was entirely independent with regard to its political, economic and social options.

1496th meeting, paras. 31-32.

Oral comments 1975

The representative of Mali stated:

... the body of doctrine on the succession of States reflected three major schools of thought, which comprised the theory of universal succession, the theory of continuity and the theory of individual succession. Some States had adopted one or the other of those theories whereas other States had applied all three of them to similar cases at different times. ILC had taken a broad view of the problem, having regard to the accession to independence of new States whose social organization and political philosophy often differed from those of the States which had left their mark on classical international law. ILC was right to consider that the codification of the law in that field consisted in determining, within the framework of treaty law, the implications of a State succession in the light of the principles of the Charter of the United Nations. The "clean-slate" principle was the one most in keeping with the concept of the right to self-determination.

The application to a newly independent Territory of international treaties relating, for example, to the régime of that Territory, to territorial servitudes and to privileges in the matter of investments, would in effect jeopardize the newly acquired sovereignty

1549th meeting, paras. 58-59.

Written comments 1976

... the Commission rightly applied the "clean slate" principle. This principle accords best with our conception of the right of peoples to self-determination, since it allows the new State freedom of action. The new State is the sole judge of its fundamental interests and its political, economic and social options and makes its own decision to accede to a particular treaty that it deems consistent with its aspirations.

MONGOLIA

Oral comments 1974

The representative of Mongolia stated:

The Commission had been right to follow the "clean slate" principle with regard to newly independent States.

1488th meeting, para. 2.

MOROCCO

Oral comments 1974

The representative of Morocco stated:

[The Commission] ...

had rightly rejected the theory that it could be presumed that a newly independent State consented to be bound by a former international treaty relating to its territory unless it expressed the contrary intention within a reasonable period of time. Although the principle of continuity should generally be applied in order to ensure the stability of treaty relations, the Commission had been well advised to adopt the traditional "clean slate" principle for newly independent States, since that was the only principle which was in harmony with the principle of self-determination. It would be unjust and contrary to the principle of the sovereign equality of States if newly independent States were bound, by virtue of the principle of continuity, by treaty obligations which they had not themselves contracted directly and which more often than not had been to their detriment.

It had been proposed that the "clean slate" principle should not apply in the case of nominative or universal treaties, since such treaties contained fundamental rules of international law. That exception, however, would merely have caused confusion, since it would be difficult to determine which treaties could be placed in that category. The Commission had rightly considered that the fundamental rules of international law contained in those treaties existed by virtue of another source of international law, namely international custom.

1492nd meeting, paras. 59-60.

NETHERLANDS

Written comments 1975

The Government agrees that obligations voluntarily agreed upon are more likely to be met than obligations which are looked upon as being imposed. However, whereas the presumption of "imposed" obligations forms the rationale for application of the "clean slate" principle, this presumption does not necessarily reflect reality in all cases of formerly dependent Territories. Especially in cases where full independence is preceded by a period of self-government, future independent peoples will have exercised rights of advice and consent in respect of the acceptance of such treaty relations as affected their interests and their Territories. The Netherlands Government would have welcomed some reflection of this "fact of political life" in the present draft.

NEW ZEALAND

Oral comments 1975

The representative of New Zealand stated:

... the starting point of the draft articles—the idea that a newly independent State commenced life with a “clean-slate”—was one which it was initially inclined to doubt. The “clean-slate” principle did not seem to fit with the practice in the part of the world in which New Zealand was situated, where countries had always considered themselves the rightful heirs to the obligations and rights they had inherited from the United Kingdom or from whatever other Power they had sprung. He recalled the statement by his delegation the previous session in the Committee’s debate . . . on the report of ILC that his country had in its own practice as a State time and again invoked aging bilateral conventions concluded by the United Kingdom long before the birth of New Zealand as something to which it was entitled and which was a practical advantage, because in many fields, such as extradition and reciprocal enforcement of judgements, governed by bilateral treaties, a considerable period of time was required to make new treaties. Nevertheless, bearing in mind that the work of ILC would not have retrospective application, his delegation had accepted that in establishing its basic principle ILC was justified in giving a certain priority to more recent practice than its own as evidence of the *opinio juris* of the modern world and that it was equally justified in paying special attention to the United Nations principle of self-determination. Moreover, as the articles drawn up by ILC had taken shape, his Government had seen that its concern, based on its own experience, for the protection of the real interests of newly independent States was being adequately taken account of, most notably in the enunciation of a principle that a newly independent State had the right to establish its status as a party to general multilateral treaties.

1535th meeting, para. 21.

NICARAGUA

Oral comments 1975

The representative of Nicaragua stated:

... his delegation endorsed the “clean-slate” principle on the ground that every new State must be able to accept or reject with complete freedom the treaties to which the predecessor State had been a party, in accordance with the principles of self-determination, State sovereignty and freedom of decision. Furthermore, ILC had struck a balance between the “clean-slate” principle and the principle of *pacta sunt servanda*.

1549th meeting, para. 15.

NIGERIA

Oral comments 1974

The representative of Nigeria stated:

His delegation also supported article 15 on the position of newly independent States in respect of the treaties of the predecessor State, since it corresponded to State practice.

1494th meeting, para. 32.

PAKISTAN

Oral comments 1974

The representative of Pakistan stated:

His delegation considered that in the case of succession of newly independent States, the "clean slate" principle adopted by the Commission was appropriate. However . . . there was a need to prevent the complete rupture of treaty obligations on account of the application of the "clean slate" principle in respect of newly independent States. In cases where succession was the result of uniting or dissolution of States, the prevailing principle of continuity was to be maintained in the interest of peaceful international relations and security.

1492nd meeting, para. 78.

SOMALIA

Oral comments 1974

The representative of Somalia stated:

Many decolonized countries had found themselves successors to treaties most of which would have had adverse effects on their economic, social and political status. It was the refusal of many of those newly independent States to accept succession to those treaties that had led the Commission to institute the "clean slate" principle in its draft articles on the succession of States in respect of treaties. His delegation accepted that principle which, moreover, had already been accepted by the Sixth Committee.

1495th meeting, para. 28.

Oral comments 1975

The representative of Somalia stated:

His delegation expressed its appreciation to ILC for the progressive stand it had taken in adopting the "clean-slate" principle as a fundamental basis for its draft. That decision was a true reflection of the contemporary universal trend of the international community towards the institution of necessary reforms in international law with a view to making it consistent with current realities and the aspirations of mankind as a whole.

1540th meeting, para. 2.

SWAZILAND

Oral comments 1975

The representative of Swaziland stated:

With regard to newly independent States, article 15, which provided that a newly independent State was not *ipso jure* bound by the treaties concluded by the predecessor State nor under any obligation to become a party to them, was based on the "clean-slate" principle and took due account of the principle of self-determination and equality of States. However, articles 16 and 17 granted a newly independent State the right, if it wished, to participate in a multilateral treaty on its own behalf as a separate contracting party by a notification of succession. In accordance with article 22, paragraph 2, the operation of such a treaty was regarded as suspended between the date of a succession of States and the date of making the notification of succession. Nevertheless, the treaty could be applied provisionally during the interim period in accordance with article 26. Those provisions were, in a sense, a departure from the "clean-slate" principle, since they presupposed some legal relationship between a new State and its predecessor.

1549th meeting, para. 21.

SWEDEN

Oral comments 1974

The representative of Sweden stated:

... his country fully accepted the right of any newly independent State to decide in full sovereignty whether or not it wished to be bound by treaties concluded before its independence. There were several technical means of arriving at that result and his delegation was prepared to accept any solution which received the support of a vast majority of States.

1489th meeting, para. 24.

SYRIAN ARAB REPUBLIC

Oral comments 1974

The representative of the Syrian Arab Republic stated:

Concerning the succession of States in respect of treaties, he welcomed the fact that the Commission had adopted the "clean slate" principle, according to which a newly independent State was free to accept or to reject commitments made in its name by the predecessor State. That principle was all the more important because some colonial Powers had concluded treaties which were not in the interest of the territories under their administration.

1491st meeting, para. 44.

Oral comments 1975

The representative of the Syrian Arab Republic stated:

His delegation supported the "clean-slate" principle because countries formerly dominated by colonial Powers could not be compelled to respect treaties concluded without their consent.

1548th meeting, para. 52.

THAILAND

Oral comments 1974

The representative of Thailand stated:

With the era of decolonization nearing its completion, it seemed inevitable that the "clean slate" rule would find less and less application in regard to newly independent States emerging from dependent Territories, but would instead be increasingly applicable to the situations contemplated in draft article 33, paragraph 3, where the separation of a new State occurred "in circumstances which are essentially of the same character as those existing in the case of the formation of a newly independent State". In that connexion, there was a paucity of State practice, which might partly account for the vague formulation of the draft, and a statement of the law in that regard might be premature at the present time. However, there was a recognizable political trend towards greater extension of the "clean slate" principle.

1496th meeting, para. 2.

UKRAINIAN SOVIET SOCIALIST REPUBLIC

Oral comments 1974

The representative of the Ukrainian SSR stated:

Her delegation endorsed the Commission's decision to adopt the "clean slate" principle in questions of succession relating to newly independent States. The importance of an adequate formulation of the "clean slate" principle was unquestionable, and her delegation supported the general rule laid down in article 15. In specific cases, however, it was necessary to maintain a distinction between unjust treaties concluded during the period of colonialism and multilateral treaties of universal character which enunciated generally accepted norms of international law.

1492nd meeting, para. 70.

UNION OF SOVIET SOCIALIST REPUBLICS

Oral comments 1974

The representative of the USSR stated:

Draft article 15 provided that a newly independent State was not bound to maintain a treaty in force, with the exception of boundary treaties. That thesis was not satisfactory because it did not distinguish between unjust treaties concluded in the framework of a colonial situation and contemporary treaties concluded between States with different social systems and based on the principle of peaceful coexistence. Furthermore, it did not take into account multilateral treaties regarding international peace and security and co-operation on a non-discriminatory basis.

...

He pointed out that his delegation's attitude should not be construed as opposition to the "clean slate" principle, but only to the formulation of that principle in the draft. His delegation supported the "clean slate" principle inasmuch as it was based on the freedom of newly independent States to maintain a treaty in force or not. All treaties should not automatically lapse for a newly independent State, since treaties created not only obligations but also rights which might turn out to be indispensable. It would therefore be appropriate to adopt a different viewpoint in cases of unjust treaties and in cases of treaties which conformed to the Charter.

1489th meeting, paras. 32-33.

Written comments 1975

A very serious approach to the task of preparing the draft is necessary, in the first instance, because of the fact that a number of its provisions have major theoretical significance and far-reaching consequences at the level of policy and practice. This applies in particular to the application of the clean-slate principle by newly independent States to succession in respect of treaties.

See also in subsection A of this section infra the statements by the USSR reproduced under Oral comments 1974 and Written comments 1975.

UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND

See in subsection A of this section infra the statement by the United Kingdom reproduced under Oral comments 1974.

UNITED REPUBLIC OF CAMEROON

Oral comments 1975

The representative of the United Republic of Cameroon stated:

Referring to article 15, he said that his delegation approved of the "clean-slate" principle adopted by ILC as a working hypothesis. Accession to independence in no way implied obligatory acceptance of commitments entered into by a colonial administration. That principle was applied by his country because it conformed more closely to the demands of its sovereignty, to its freedom to determine its own conventional relations and to its determination to accept commitments entered into by the predecessor State only on strict conditions. In practice, the "clean-slate" principle had been applied in general by the newly independent countries with sufficient responsibility and regard for the interests of the international community to obviate the need for further safeguards.

1537th meeting, para. 49.

UNITED REPUBLIC OF TANZANIA

Oral comments 1974

The representative of the United Republic of Tanzania stated:

His delegation whole-heartedly supported the "clean slate" principle with regard to the succession of newly independent States.

1496th meeting, para. 26.

UNITED STATES OF AMERICA

Oral comments 1974

The representative of the United States noted:

... with satisfaction that the Commission had adopted the "clean slate" principle, and pointed out that the United States was probably the first country to have enunciated that doctrine when it attained independence almost 200 years ago.

1494th meeting, para. 23.

YUGOSLAVIA

Oral comments 1974

The representative of Yugoslavia stated:

The Commission had based itself on the "clean slate" principle, which was in conformity with the principle of self-determination and applied fully to newly independent States, which was not the case of the principle of continuity *de jure*. His delegation welcomed the solution adopted by the Commission, as it saw in it a confirmation of the right of peoples to self-determination as a fundamental principle of contemporary international law in general.

1491st meeting, para. 15.

ZAIRE

Oral comments 1975

The representative of Zaire stated:

With regard to articles 15 to 29, which dealt with the newly independent States, he said that his country could not approve of the "clean-slate" principle set out in article 15. It would favour a formula that would embody the *pacta sunt servanda* principle, with the possibility of denouncing those treaties which were incompatible with the new political and legal order. Article 15 was contrary to the practice followed thus far by the majority of the new countries in respect of treaties concluded by the former

metropolitan country. Either they remained silent or they negotiated a new treaty with the predecessor State. In its commentary on article 15, ILC had given examples of countries such as the United States of America, Belgium, Panama, Ireland, Poland, Czechoslovakia and Finland, which in his view were not newly independent States.

1535th meeting, para. 39.

ZAMBIA

Oral comments 1975

The representative of Zambia stated:

... he was pleased to note that ILC had based its work on the "clean-slate" principle.

1550th meeting, para. 8.

Article 16

Participation in treaties in force at the date
of the succession of States *

CHILE

See in the subsection on article 15 supra the statement by Chile reproduced under Oral comments 1974.

FINLAND

Oral comments 1974

The representative of Finland stated:

He supported the appropriate changes which had been
made in articles 16-19 ...
1486th meeting, para. 25.

FRANCE

Oral comments 1974

The representative of France stated:

...concerning the right of the successor State to maintain the
multilateral treaties of its predecessor, the Commission had
not sufficiently contemplated, taking current practice into
account, all the possible situations where that right was
subject to the express or unequivocal tacit consent of the
other parties.

1492nd meeting, para. 87.

* See also subsection C of this section infra.

Written comments 1975

Firstly, with regard to the right of the successor State to take over the multilateral treaties of its predecessor, the Commission has perhaps not sufficiently envisaged all the hypotheses where under current practice this right is subject to the express consent, or to the unambiguous tacit consent, of the other parties.

GERMANY, FEDERAL REPUBLIC OFWritten comments 1975

The Government of the Federal Republic of Germany regards this provision as the logical consequence of the clean-slate rule laid down in article 15. The consent of other parties to the treaty would not be required, with the exception of paragraph 3, and notwithstanding the fairly objective test of paragraph 2. This is consistent with the fact that, up to now, declarations of succession to multilateral treaties concluded by the predecessor State expressed by successor States have generally been tacitly accepted, though no corresponding right of option can be deduced from State practice.

The exception from the rule laid down in paragraph 2 does not, however, appear to be an optimum solution owing to the extreme vagueness of the language chosen. It is quite probable that some parties to a multilateral treaty will accept the notification of succession while others will hold the view that the application of the treaty in respect of the new State would be "incompatible with its object and purpose" or "would radically change the conditions for the operation of the treaty". In regard to such cases, the possibility of the treaty relations being continued on a partial basis (splitting) has been considered, the new State entering into treaty relations only with those parties who do not oppose the treaty's entry into force vis-à-vis the successor State. As such a splitting of the treaty - to be avoided, in any event, if possible - ought to be recognizable in the interest of clarity and legal adequacy, an opposing party should be required under the present convention to notify, within an appropriate period of time, the parties to the treaty as well as the new State of its decision to invoke exemptions pursuant to paragraph 2. As a follow-up, procedure should be introduced for the settlement of such differences of view by an impartial body, with the result being effective erga omnes, as far as this is feasible.

GREECE

Oral comments 1974

The representative of Greece stated:

Articles 15 and 16 should be read together. The emergence of a newly independent State did not necessarily imply the disappearance of all treaty relations. While a newly independent State had no obligation to continue the treaty régime of its predecessor, it retained the option to continue its participation in multilateral treaties. The wording of paragraphs 2 and 3 of article 16 was not sufficiently clear and could give rise to serious differences of interpretation because of the use of general concepts or expressions. In view of the practical significance of the participation of newly independent States in multilateral treaties, he hoped that a greater effort would be made to achieve maximum clarity in the drafting of articles 16, 17 and 18.

1493rd meeting, para. 3.

GUATEMALA

Oral comments 1975

The representative of Guatemala stated:

[consideration should also be given to]
... the case of multilateral treaties which required that certain conditions be fulfilled before the successor State could give its consent.

1548th meeting, para. 26.

HUNGARY

Written comments 1976

[Especially commendable] are ... the draft articles which entitle a newly independent State to give notification of its intention to keep in force multilateral treaties whose application was formerly extended to its territory.

Paragraphs 2 and 3 of draft article 16 allow an excessively wide range of exceptions to the right of the newly independent States to give notification of their intention to consider themselves bound by multilateral treaties. This prejudices both the interests of the newly independent States and those attached to the continuity of treaties. The exceptions should be defined in clearer and more precise terms.

INDONESIA

See in the subsection on article 15 supra the statement by Indonesia under Oral comments 1974.

JAMAICA

Oral comments 1974

The representative of Jamaica stated:

His delegation was not quite satisfied with the use of the term "establish its status" as used in article 16 because of the suggestion implicit in it of a burden being placed on the newly independent State when the Commentary made it clear that the newly independent State was exercising a general right of option to be a party to the treaty. That intention should be more clearly expressed.

1495th meeting, para. 18.

MADAGASCAR

Oral comments 1974

The representative of Madagascar stated:

With regard to multilateral treaties of a restrictive character or treaties whose purposes were incompatible with participation by the newly independent State, the consent of other States parties was an essential condition of its participation. On the other hand, the newly independent State had the right to become party to multilateral treaties in general in accordance with draft articles 16-18

1495th meeting, para. 47.

NEW ZEALAND

See in the subsection on article 15 supra the statement by New Zealand reproduced under Oral comments 1975.

SWAZILAND

See in the subsection on article 15 supra the statement by Swaziland reproduced under Oral comments 1975.

SWEDEN

Oral comments 1974

The representative of Sweden stated:

Another example of a basic provision open to different interpretations was draft article 16, paragraph 1 of which contained a general rule which paragraphs 2 and 3 limited by exceptions giving legal effect to circumstances difficult to determine in any definite way. There was no doubt that the structure of the draft articles justified and even required the inclusion of provisions of that kind, but his delegation wished to stress that their interpretation might give rise to disputes between the parties concerned.
1489th meeting, para. 26.

Article 17

Participation in treaties not in force at the
date of the succession of States *

FINLAND

See in the subsection on article 16 supra the statement by Finland reproduced under Oral comments 1974.

GHANA

See in the subsection on article 26 infra the statement by Ghana reproduced under Oral comments 1975.

GREECE

See in the subsection on article 16 supra the statement by Greece reproduced under Oral comments 1974.

INDONESIA

See in the subsection on article 15 supra the statement by Indonesia reproduced under Oral comments 1974.

MADAGASCAR

See in the subsection on article 16 supra the statement by Madagascar reproduced under Oral comments 1974.

* See also subsection C of this section infra.

ROMANIA

Oral comments 1975

The representative of Romania stated:

With reference to article 17, he felt that some of the terms used were vague and that the participation of newly independent States in treaties not in force at the date of their succession should be covered by the general rules concerning treaties.

1530th meeting, para. 43.

SWAZILAND

See in the subsection on article 15 supra the statement by Swaziland reproduced under Oral comments 1975.

Article 18

Participation in treaties signed by the predecessor State subject to ratification, acceptance or appraisal *

DENMARK

Oral comments 1974

The representative of Denmark stated:

Article 18, on succession to treaties signed by the predecessor State, had given rise to a lengthy discussion in the Commission on the question of the inequality of treaties. The Danish delegation doubted whether it was worth while to retain that article, which had been suggested by the Commission as a trial balloon and which nobody seemed to favour very much.

1491st meeting, para. 35.

FINLAND

See in the subsection on article 16 supra the statement by Finland reproduced under Oral comments 1974.

GERMANY, FEDERAL REPUBLIC OF

Written comments 1975

The Government of the Federal Republic of Germany shares the doubt expressed by members of the International Law Commission, particularly the Special Rapporteur on the topic, whether there is a need for this article, which has no precedent and would hardly ever be applied. It would produce unequal treatment in that new States would be entitled to ratify treaties signed by the predecessor, whereas they would not up till then be bound, at least in the view of the majority of International Law Commission members, by pre-contractual obligations vis-à-vis other contracting parties, such as have been described in article 18 of the Vienna Convention on the Law of Treaties.

* See also subsection C of this section infra.

GHANA

Oral comments 1975

The representative of Ghana stated:

Article 18, although not based on solid State practice, was a natural corollary to articles 15 and 16 and contributed to the development of international law.

1526th meeting, para. 45.

GREECE

See in the subsection on article 16 supra the statement by Greece reproduced under Oral comments 1974.

INDONESIA

See in the subsection on article 15 supra the statement by Indonesia reproduced under Oral comments 1974.

IRAQ

Oral comments 1974

The representative of Iraq stated:

He found article 18 of the draft particularly commendable, since it afforded the possibility for a newly independent State to continue the work of the predecessor State in respect of treaties which had been signed but which still remained to be ratified, accepted or approved. That solution was in the interests of the progressive development of international law and reconciled the interests of States with the interests of the international community as a whole with regard to the continuity of treaty relations and efforts to elaborate new norms. The provisions of article 18 applied to all categories of succession of States, as was clear from articles 32 and 36.

1485th meeting, para. 11.

MADAGASCAR

See in the subsection on article 16 supra the statement by Madagascar reproduced under Oral comments 1974.

ROMANIA

Oral comments 1975

The representative of Romania stated:

Article 18 should be deleted, since the nexus between the predecessor State and the treaty was very weak. A State could not ratify or approve the signature of another State. It would be more useful to study the situation in which the predecessor State had had the right to accede to a treaty, particularly a restricted treaty, but had not exercised that right.

1530th meeting, para. 44.

SWAZILAND

Oral comments 1975

The representative of Swaziland stated:

Articles 18, 32 and 36, which related to participation in treaties signed by the predecessor State subject to ratification, acceptance or approval, likewise seemed unnecessary and should be deleted. In such cases, at the moment of the succession of States, the predecessor State had not contracted or acquired any definitive obligations or rights which could be transmitted to the successor State. Moreover, in accordance with the decisions of the International Court of Justice and article 14 of the Vienna Convention on the Law of Treaties, a signature subject to ratification, acceptance or approval did not bind the State in question.

1549th meeting, para. 21.

Article 19

Reservations

ARGENTINA

Oral comments 1975

The representative of Argentina stated:

The observations of the Austrian Government on paragraph 2 of article 19 (see A/10198) were entirely valid because, even if that provision did not exist, it would be possible to formulate reservations through the appropriate machinery without prejudice to the "clean-slate" principle.

1526th meeting, para. 39.

AUSTRIA

Oral comments 1974

The representative of Austria stated:

... his Government, in its written observations submitted in 1973, had disagreed with the provisions of paragraph 2 of draft article 19—article 15 of the 1972 draft —concerning the reservations which a newly independent State could formulate when making a notification of succession establishing its status as a party or as a contracting State to a multilateral treaty. However, in view of the reasons given by the Commission in paragraph 20 of its commentary on that article, it would reassess its position.

1490th meeting, para. 14.

Written comments 1975

A specific comment on article 19, paragraph 2, stipulating that a newly independent State may under certain conditions formulate a new reservation when establishing its status as a party or a contracting State to a multilateral treaty must however be made. The idea embodied in that provision seems to arise from a misunderstanding of the concept of succession. A new State inherits conventions in precisely the same State in which they apply to its territorial predecessors and therefore inherits the latter's reservations. It may waive these reservations because that is also the right of its predecessor, but it may not make new ones since its predecessor cannot do so. If a newly independent State wishes to make reservations, it ought to use the process of ratification or accession to become a party to the multilateral treaty.

FINLAND

See in the subsection on article 16 supra the statement by Finland reproduced under Oral comments 1974.

GERMANY, FEDERAL REPUBLIC OF

Written comments 1975

The Government of the Federal Republic of Germany welcomes the privilege granted to newly independent States to formulate new reservations in succeeding to a treaty which was applicable in respect of its territory, to operate only part of the treaty or make a choice between differing provisions. These rights of option, wisely exercised, will greatly facilitate the convention's purpose of suitably adapting treaty relations to the new situation, in particular the special requirements of the new State; difficulties in applying the provisions of the treaty or arising from the test of compatibility laid down in article 16, paragraph 2, can thus be avoided or at least.

JAPAN

See in subsection B of section I supra the statement by Japan reproduced under Oral comments 1974.

KENYA

Oral comments 1974

The representative of Kenya stated:

His delegation found it difficult to reconcile article 19 with the "clean slate" principle. If a new State had a "clean slate", then logically that should be applicable not only to the treaty itself, but also to any reservations made by the predecessor State. Should it wish to be bound by existing reservations, the new State should make its views clear on becoming a party to a convention either by expressly adopting the reservations of the predecessor State or by formulating its own specific reservations.

1493rd meeting, para. 32.

Oral comments 1975

The representative of Kenya stated:

... that article 19 relating to reservations was completely out of step with the "clean-slate" principle. That provision was based on the assumption that the successor State automatically inherited reservations in the absence of any evidence of their withdrawal, but the commentary on that article gave a number of practical examples which contradicted that assumption.

1545th meeting, para. 3.

PARAGUAY

Oral comments 1975

The representative of Paraguay stated:

It would also be preferable if the reservations referred to in article 19 were limited to a minimum to avoid weakening the effectiveness of that or any other convention. Such reservations should not be used to nullify or weaken the principle of continuity and stability of relations between States.

1530th meeting, para. 33.

ROMANIA

Oral comments 1975

The representative of Romania stated:

With reference to article 19, he felt that it would be useful to study the question of objection by the predecessor State to reservations by third States, as well as the objection of the newly independent State.

1530th meeting, para. 45.

Article 20

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

FINLAND

Oral comments 1974

The representative of Finland stated:

He supported ... the more flexible wording given to article 20.

1486th meeting, para. 25.

GERMANY, FEDERAL REPUBLIC OF

See in the subsection on article 19 supra the statement by the
Federal Republic of Germany reproduced under Written comments 1975.

Article 21

Notification of succession

FINLAND

Oral comments 1974

The representative of Finland stated:

Article 21 also differed in a number of ways from the corresponding article of the 1972 draft, and it would seem that the new paragraph 4 was superfluous.

1486th meeting, para. 25.

See also in the subsection on article 37 infra the statement by Finland reproduced under Oral comments 1974.

ROMANIA

See in the subsection on article 37 infra the statement by Romania reproduced under Oral comments 1975.

Article 22

Effects of a notification of succession

BELGIUM

Written comments 1975

This article, the appropriateness of which has also been questioned, deals with the legal effects of a notification of succession. The draft seeks to provide for the element of continuity implied by the notion of succession of States, having regard for the legal bond between a multilateral treaty and the territory of the newly independent State on the date of succession, at the same time avoiding the untoward consequences of granting retroactive effect to the notification of succession on the rights and obligations that exist, by virtue of the treaty, between that State and the Parties to the treaty. The Commission finally decided that that goal could be achieved by stipulating that a newly independent State which notifies its succession to a multilateral treaty should be considered a party to the treaty from the date of the succession, but that the operation of the treaty would be considered suspended between the date of a succession of States and the date on which notification is made.

Although this text does not agree completely with all the provisions of the Vienna Convention, it does not diverge from the spirit of articles 28 (non-retroactivity of treaties) and 57 (possibility of suspension of the operation of a treaty by consent of the parties) of the Convention; article 73 of which provides, in addition, that its provisions shall not prejudice any question that may arise in regard to a treaty from a succession of States.

Besides, the solution advocated in article 22 is consistent with the general tenor of the draft, based on the compromise which it seeks to establish between the principle of de jure continuity and "clean slate" principle. It would give retroactive effect to the notification with respect to the newly independent State's position as party to the treaty, and at the same time avoid the consequences of considering the treaty as retroactively in operation between that State and the other parties.

The Belgian Government can therefore accept the wording of article 22.

CZECHOSLOVAKIA

Oral comments 1974

The representative of Czechoslovakia stated:

Another important question which needed to be settled was that of notification. Notification should be retroactive to the actual date of succession of States. In article 22, paragraph 2, of the draft, the Commission had proposed as a solution the temporary suspension of a treaty as between the newly independent State and the other parties to the treaty until the date of making of the notification of succession. The effects of such a suspension would be mitigated if provision was made for the possibility of temporary application, as was done in article 26 in respect of multilateral treaties. Such a solution would be fully in keeping with the underlying spirit of the draft as a whole.

1488th meeting, para. 11.

DENMARK

Oral comments 1974

The representative of Denmark stated:

The solution at which the Commission had arrived in article 22, on the problem of retroactivity, seemed to be a reasonable compromise. The Danish delegation appreciated the complications, which were mainly of a practical nature, that the implementation of the continuity principle would cause, and it supported the solution reached by the Commission.

1491st meeting, para. 36.

FINLAND

Oral comments 1974

The representative of Finland stated:

The new article 22 concerning the effects of a notification of succession was a significant improvement on the former article 18.

1486th meeting, para. 25.

GHANA

Oral comments 1975

The representative of Ghana stated:

The purpose of article 22, paragraph 1, was not clear. The provisions of that paragraph apparently were intended to resolve the conflicts that might arise from retroactivity and the likelihood of a hiatus between the time of succession of States and notification. However, the establishment of a legal nexus in paragraph 1 between the newly independent State and the treaty was unnecessary, first, because under the "clean-slate" principle the newly independent State was not obligated to participate in the treaty and, secondly, because pursuant to the provisions of paragraph 2 the treaty remained inoperative until the date of notification, which was the more important date for the States parties. Whether the newly independent State became party to a treaty as from the date of succession or from the entry into force of the treaty was largely irrelevant, since what it thus became party to was a treaty which was considered suspended vis-à-vis other States parties.

1526th meeting, para. 46.

INDONESIA

Oral comments 1974

The representative of Indonesia stated:

Article 22 concerning the effects of notification of succession had been considerably improved. The retroactive effect of notification was maintained until the date of succession but further provisions had been included to ensure that operation of the treaty was considered as suspended between the newly independent State and the other parties to the treaty until the date of notification of succession, unless the newly independent State and the other States parties agreed otherwise. Such a solution had the advantage of establishing legal certainty in the relations between the newly independent State and the other States parties during that interim period.

1495th meeting, para. 38.

IRAQ

Oral comments 1974

The representative of Iraq stated:

Under article 22, unless a treaty otherwise provided or unless it was otherwise agreed, a newly independent State which made a notification of succession was to 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 was the later date. The representative of Italy in his statement at the preceding meeting had shown great talent in his comments on that article. The phrase "from the date of the succession of States" meant that the article had, in fact, retroactive effect. Since that might be prejudicial to the other parties to the treaty, the Commission had provided for suspension of the application of the treaty where appropriate. That might appear artificial, but it might also be regarded as acceptable in the light of practical considerations.

1485th meeting, para. 12.

ITALY

Oral comments 1974

The representative of Italy stated:

Broadly speaking, the draft articles on succession of States in respect of treaties met the need for certainty and clarity in international relations. The Commission was to be commended for abandoning the system of retroactive application of the substantive provisions of treaties, which it had adopted in article 18 of its previous draft, since that system would have raised many problems. The more satisfactory system of retroactive suspension had finally been adopted by the Commission in article 22, paragraph 2, of the latest draft which left no doubt that prior to the notification of succession, neither the newly independent State nor other States would be bound by the substantive provisions of treaties. The practical advantage of the solution chosen by the Commission outweighed the drawbacks, which derived from a twofold fiction: firstly, that treaties were considered in force from the date of succession and secondly that treaties were at the same time regarded as suspended in their operation.

1484th meeting, para. 52.

JAPAN

Oral comments 1974

The representative of Japan stated:

With regard to the effects of a notification of succession as provided in article 22, there had been a constructive development on the question of the retroactivity of multilateral treaties. However, his delegation considered that more study was necessary before taking the legal position that the treaty was considered suspended unless or until it was applied provisionally by agreement; the method of provisional application and its termination required careful study. In that connexion, he noted in article 23 that, unlike multilateral treaties, bilateral treaties applied in the relations between the newly independent State and the other State party as from the date of the succession of States unless a different intention appeared from their agreement or was otherwise established.

1487th meeting, para. 21.

LESOTHO

Oral comments 1974

The representative of Lesotho stated:

His delegation welcomed the articles on the retroactive effect of notification of succession to treaties. The present draft represented a delicate balance which should not be disturbed.

1493rd meeting, para. 52.

MADAGASCAR

Oral comments 1975

The representative of Madagascar stated:

The provisions of article 22 might give rise to some concern, since they seemed to impart a retroactive effect to a notification of succession. However, his delegation considered that a country might invoke, on the one hand, article 26, which provided for the possibility of suspension and provisional application of treaties, and on the other, the phrase in article 22 "or it is otherwise agreed", which made it possible to avoid the retroactive effect.

1537th meeting, para. 23.

NETHERLANDS

Written comments 1975

This new provision contains a logical consequence of the "clean slate" rule, thereby clarifying the legal situation between the date of succession and the date of notification of succession.

POLAND

Written comments 1975

The Government of the Polish People's Republic noted with interest that in article 22 of the draft articles the International Law Commission accepted the concept of suspension of the application of a treaty between newly independent States and other States in the period between the date of a State's succession and the date of notification in respect of the treaty. In this way, a serious gap which existed in the preliminary draft was filled.

SWAZILAND

See in the subsection on article 15 supra the statement by Swaziland reproduced under Oral comments 1975.

THAILAND

Oral comments 1974

The representative of Thailand stated:

As the representative of Italy had pointed out (1484th meeting) article 22 seemed to rest on a legal fiction. The purpose of that article was to avoid giving a retroactive effect to a notification of succession by a newly independent State while making provision for continuity. The final result was to bring about a situation where a treaty would be in force although its operation would be suspended. The Commission had admitted that that might not be in strict compliance with all the provisions of the Vienna Convention on the Law of Treaties. Indeed, in his delegation's view, article 22 was not consistent with articles 57 and 58 of the Vienna Convention, which required prior consent of the parties concerned in order to suspend the operation of a treaty.

Unless otherwise agreed by the parties, or in the absence of any legal justification to the contrary, a valid treaty was performable. Even in the extreme case of a fundamental change of circumstances--if succession of States might conceivably be so considered--article 62 of the Vienna Convention did not seem to be applicable. Although it was possible that a party might provisionally suspend performance in accordance with the doctrine of *rebus sic stantibus*, there was no automaticity. Continuity for its own sake should not prevail over the alternative of accession by the successor State in accordance with the provisions of article 2.

1496th meeting, para. 2.

UNITED STATES OF AMERICA

Written comments 1975

The United States, in its comments on the 1972 draft articles, expressed concern that the retroactive effect of a notification of succession to a multilateral treaty could give rise to severe practical problems. Consequently it supports the addition of paragraph 2 in article 22, which provides that the operation of a multilateral treaty shall be considered as suspended between the date of succession and the date of notification of succession. This is a solution which preserves the theoretical basis of the nature of succession to treaties, but avoids the adverse consequences of carrying application of the theory to an extreme.

Article 23

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

INDONESIA

Oral comments 1974

The representative of Indonesia stated:

His delegation also endorsed article 23 which provided for the application of the "clean slate" principle to succession to bilateral treaties.

1495th meeting, para. 35.

JAPAN

Oral comments 1974

The representative of Japan stated:

Careful study should also be given to the difference between multilateral and bilateral treaties. In paragraph (8) of the commentary to article 23, the comment was made that the Commission was aware that State practice showed a tendency towards continuity in the case of certain categories of bilateral treaties, although it was also pointed out in paragraph (2) of that commentary that "If in the case of many multilateral treaties [the] legal nexus appears to generate an actual right for the newly independent State to establish itself as a party or a contracting State, this does not appear to be so in the case of bilateral treaties."

1487th meeting, para. 19.

See also in the subsection on article 22 supra the statement by Japan reproduced under Oral comments 1974.

KENYA

Oral comments 1975

The representative of Kenya stated:

His delegation also failed to understand the distinction which had been made with regard to bilateral treaties in articles 23 and 27
1545th meeting, para. 3.

LESOTHO

Oral comments 1974

The representative of Lesotho stated:

His delegation welcomed the articles on the retroactive effect of notification of succession to treaties. The present draft represented a delicate balance which should not be disturbed.
1493rd meeting, para. 52.

MADAGASCAR

Oral comments 1974

The representative of Madagascar stated:

The Commission's draft articles contained provisions concerning the right of option of a State to establish itself as a party to a bilateral treaty concluded by the predecessor State. That right of option, embodied in article 23, was readily understandable since in the case of bilateral treaties, the identity of the party was important.
1495th meeting, para. 47.

Article 24

The position as between the predecessor State
and the newly independent State

SWAZILAND

Oral comments 1975

The representative of Swaziland stated:

In his delegation's view, article 24 spelled out
the obvious and was therefore unnecessary.
1549th meeting, para. 21.

Article 25

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

IRAQ

Oral comments 1974

The representative of Iraq stated:

Article 25 specified the actual moment when the treaty became the concern solely of the newly independent State and the other State party and ceased to have any relationship with the predecessor State. In other words, no action taken by the predecessor State in respect of the treaty could affect the treaty insofar as the successor State was concerned; with the successor State the treaty began a new life.

1485th meeting, para. 13.

Article 26Multilateral treaties

CZECHOSLOVAKIA

See in the subsection on article 22 supra the statement by Czechoslovakia reproduced under Oral comments 1974.

FINLAND

Oral comments 1974

The representative of Finland stated:

... the three articles 26-28 concerning provisional application were a successful development of their counterparts in the 1972 draft.

1486th meeting, para. 25.

GHANA

Oral comments 1975

The representative of Ghana stated:

In article 26 there appeared to be a distinction between the provisional application of treaties already in force in respect of a territory and that of treaties not yet in force. In the former case, dealt with in paragraph 1, the newly independent State might notify its intention to have the treaty provisionally applied in respect of its territory. In the latter case, dealt with in paragraph 2, such notification might be made only if at the date of succession the treaty was being provisionally applied to the territory. That could mean that a State which became a party to a treaty under article 17 could not provisionally apply such a treaty unless it was already being so applied to its territory. The intention behind article 17 was to make it possible for newly independent States to participate in treaties not yet in force with respect to them at the date of succession.

It might have been expected that under article 26 a newly independent State would be able to seek to have such a treaty apply to it provisionally pending its notification of succession to the treaty under article 17. The effect of article 26, however, seemed to be that a State wishing to apply provisionally a treaty not yet in force would first have to notify its succession either as a contracting State or as a party, unless the predecessor had provisionally applied the treaty before. His delegation saw no need for that distinction and feared that in the case of paragraph 2 it might result in forcing the hand of a newly independent State which would have liked a provisional application pending its decision whether or not to participate fully in the treaty. It ought to be possible to drop paragraph 2 without objection, since under article 28 the provisional application of a treaty terminated on the notification of an intention not to become party to the treaty.

1526th meeting, paras. 47 and 48.

MADAGASCAR

See in the subsection on article 22 supra the statement by Madagascar reproduced under Oral comments 1975.

SWAZILAND

See in the subsection on article 15 supra the statement by Swaziland under Oral comments 1975.

Article 27

Bilateral treaties

FINLAND

See in the subsection on article 26 supra the statement by Finland reproduced under Oral comments 1974.

KENYA

See in the subsection on article 23 supra the statement by Kenya reproduced under Oral comments 1975.

Article 28

Termination of provisional application

FINLAND

See in the subsection on article 26 supra the statement by Finland reproduced under Oral comments 1974.

MADAGASCAR

Oral comments 1975

The representative of Madagascar stated:

The 12 months' notice provided for in article 28, paragraph 3, seemed to be too short for a newly independent State, which frequently had to deal with difficulties of all kinds after its accession to independence. Although the paragraph also stated "unless . . . it is otherwise agreed", his delegation thought that it would be preferable, in order to avoid difficulties, for the text explicitly to provide for a longer period of notice.

1537th meeting, para. 24.

Article 29

Newly independent States formed from two or
more territories

FINLAND

Oral comments 1974

The representative of Finland stated:

The text of the new article 29 had become too long, but it was also more precise and more complete. It might be appropriate to insert in paragraph 1 of the article an explicit reservation taking into account the many exceptions contained in paragraphs 2 and 3 to the rule established in paragraph 1.

1486th meeting, para. 26.

GERMANY, FEDERAL REPUBLIC OF

Written comments 1975

Articles 29 and 30 have not yet attained, in the view of the Government of the Federal Republic of Germany, the degree of maturity desirable for codification and should be reconsidered for the following reasons: In either case, differing treaty régimes (i.e., different treaties or alternatives within the context of a single treaty, differing reservations to a treaty) could be valid simultaneously within the territory of the new State, i.e., in respect of those areas where they were in force at the date of succession. This juxtaposition of incongruent treaties (differing régimes) may well lead to difficulties, even conflicts, for many bilateral and multilateral treaties cannot be applied partially (regionally) at all because they are bound up with the unity of the State (e.g. conventions on diplomatic and consular relations, the Convention on the Law of Treaties). Other treaties cannot continue in operation partially (regionally) without impairing - or being impaired by - different treaty régimes in force within another part of the State's territory. Uncertainty and confusion could therefore easily arise from the application of articles 29 and 30 by newly emerging States whose component parts are affected by a variety of intensive treaty relations. Successor States would not be obliged, acting in conformity with articles 29 and 30, to avoid or eliminate the partial application of treaties with its ensuing difficulties or even conflicts. Under the terms of article 30, the juxtaposition of treaties would be the rule, until the successor State exercised the right of option to extend a single treaty (differing régime) to the entire territory (para. 2 (a)), while in the case of article 29 the successor State would be free to restrict the application of continuing treaties (differing régimes) to that part of its territory where the treaty was in force on the date of succession (para. 2 (b)).

As regards Article 29 in particular, the new State may continue to be bound by an inherited treaty - partially or entirely - either prolonging its validity within the part of the territory where the treaty was valid prior to succession or extending the treaty to its entire territory. While conflicts between differing treaty régimes, by wise exercise of the right of option, can be avoided or eliminated, there is no guarantee of an objective distribution of rights and duties according to the legitimate interests of all States concerned. A well-balanced solution will not automatically arise from the exercise of those rather subjective rights of option attributed to the new States.

Article 29, paragraph 2, might be supplemented from a technical point of view in that the new State should be required to give notification of continuation (extension of treaties to the entire territory) to all parties concerned, including the parties to multilateral treaties in force in component parts of the new State which, as a result of the extension, are overlapped or may have to be discontinued. All such States should at least be informed that treaties concluded with them are not to be continued by the successor State.

Oral comments 1975

The representative of the Federal Republic of Germany stated:

His Government doubted whether draft articles 29 and 30 had been sufficiently clarified to be ready for codification. They should be given further consideration so as to avoid any confusion and misunderstanding in the event of their implementation.

1526th meeting, para. 17.

JAPAN

See in the subsection on article 22 supra the statement by Japan reproduced under Oral comments 1974.

NETHERLANDS

Written comments 1975

The Netherlands Government recalls its earlier comments in which it stated that, in case of a merger of formerly separate territories into one State, a situation of conflicting treaties might arise. Such treaties cannot at the same time be applied in the entire territory of the new component State. In such cases, the component State will have to either indicate its preference for one of the treaties by issuing a notification of succession with regard to only that treaty, or let both of them lapse. It is therefore deemed desirable that article 29 be redrafted to cover this contingency as well.

UNITED STATES OF AMERICA

See in subsection D of this section infra the statement by the United States reproduced under Written comments 1975.

Article 30

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

FINLAND

Oral comments 1974

The representative of Finland stated:

He supported the modifications made in the text of article 26 of the 1972 draft, now article 30, including the distinction made between articles 14 and 30 and the deletion of former article 26, paragraph 3.

1486th meeting, para. 26.

GERMANY, FEDERAL REPUBLIC OF

See in the subsection on article 29 supra the statements by the Federal Republic of Germany reproduced under Written comments 1975 and Oral comments 1975.

Written comments 1975

The Government of the Federal Republic of Germany doubts the advisability of rigidly pursuing the principle of continuity introduced for the cases of union (merger) of one or more States, and welcomes the more flexible approach in the provisions of paragraph 2 (a). Unions of States will probably become the most important and frequent cases of State succession in future. The draft article, which does not have the backing of consistent State practice, will hardly enhance the security, clarity, and stability of treaty relations by the rule laid down in paragraph 1 where a large number of differing treaties has been concluded on behalf of several component parts. No solution based upon schematic rules without introducing elements of consent will make allowance for the complexity of legal problems likely to arise as a consequence of fusions effected by States with manifold and differing treaty régimes. Consequently, article 30 should be redrafted to stress the idea reflected in subparagraph 2 (a) that the new State must be free to choose from several possibilities the solution best suited to its needs. The new State should, as a matter of principle, be obliged to continue the predecessor's treaties, but the circumstances of the fusion

must be taken into consideration. Those special circumstances may include, besides the cumulation of differing treaty régimes and other external factors complicating the issue, inter alia, the internal structure of the new State (it will be recalled that the first Special Rapporteur, by his fifth report, expressly introduced this notion in alternative A of his draft article 19 "Formation of Union of States").

In view of the intricate problems to be solved, the Government of the Federal Republic of Germany reserves the right to submit further comments on article 30 at a later date.

UNITED STATES OF AMERICA

See in subsection D of this section infra the statement by the United States reproduced under Written comments 1975.

Article 31

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

FINLAND

Oral comments 1974

The representative of Finland stated:

The
Committee had developed the rules governing the effects of
a uniting of States in respect of treaties by adding two new
articles, 31 and 32, both of which he supported. The
Commission had been right to limit the application of those
provisions to multilateral treaties by contrast with article
30, which also concerned bilateral treaties.

1486th meeting, para. 26.

POLAND

Written comments 1975

In the opinion of the Government of the Polish People's Republic,
the draft articles (version of 1974) have been considerably improved in
comparison with the preliminary draft (version of 1972). Especially
the problems of a uniting of States and separation of parts of a State were
treated in much greater detail (new arts. 31, 32, 35, 36 and 37).

Oral comments 1975

The representative of Poland stated:

His
delegation considered that the new articles 31, 32, 35, 36
and 37 derived from the practice of States, which could
facilitate their application.

1526th meeting, para. 3.

UNITED STATES OF AMERICA

See in subsection D of this section infra the statement by the United States reproduced under Written comments 1975.

Article 32

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

FINLAND

See in the subsection on article 31 supra the statement by Finland reproduced under Oral comments 1974.

POLAND

See in the subsection on article 31 supra the statements by Poland reproduced under Written comments 1975 and Oral comments 1975.

SWAZILAND

See in the subsection on article 18 supra the statement by Swaziland reproduced under Oral comments 1975.

UNITED STATES OF AMERICA

See in subsection D of this section infra the statement by the United States reproduced under Written comments 1975.

Article 33

Succession of States in cases of separation of
parts of a State

Article 34

Position if a State continues after separation
of part of its territory

AUSTRALIA

Oral comments 1974

The representative of Australia stated:

The Commission had been right to include in article 33 a paragraph—paragraph 3—which departed from the principle of continuity laid down in paragraph 1 and which covered cases that could be assimilated to that of a newly independent State. However, his delegation wondered whether a similar exception might not cover the case where the emergence of a newly independent State took place in circumstances closely similar to those envisaged in article 33, paragraph 1. Certain countries, like Australia, had obtained sovereignty and independence after being dependent territories of Great Britain. Australia had decided to consider treaties concluded by Britain and applying to its territory before independence as continuing to apply. The decision had been based on an interpretation of law. It had also been influenced by practical and political reasons. Australia had felt that the assumption of continuing application of imperial British treaties to its territory had been in its interest. Treaties such as those concerning extradition and the enforcement of judgements would otherwise have lapsed and required renegotiation. The straightforward inheritance of treaties had greatly assisted Australia in the early days of its independence, particularly in routine administrative matters concerning legal documents, evidence and extradition.

1494th meeting, para. 12.

See also in the subsection on article 15 supra the statement by Australia reproduced under Written comments 1975.

BANGLADESH

Oral comments 1974

The representative of Bangladesh stated:

Article 33, paragraph 3, stated that "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". His delegation felt that that provision was not only vague and ambiguous but set impracticable criteria for entitlement to its benefits. Thus far, the cases of States which had been formed by secession had always been determined by State practice and not by any hard and fast rule. But, if the draft articles were adopted, to be entitled to act on the "clean slate" principle, a State formed by secession must be a newly independent State within the meaning of article 2, paragraph 1 (f), or must fulfil the criteria set out in article 33, paragraph 3.

1494th meeting, para. 35.

Oral comments 1975

The representative of Bangladesh stated:

His delegation was likewise unhappy with article 33, paragraph 3, which was not only vague but also introduced a subjective element that would give rise to contradictions. There was no possible justification for making a distinction between a "newly independent State" and a State emerging from the separation of part of an existing State. It followed from the draft article that if a State formed by secession wished to claim the benefits of the "clean-slate" principle it must fit the definition of a "newly independent State" in article 2, paragraph 1 (f) or fulfil the undefined criteria set out in article 33, paragraph 3. The latter paragraph was vague and constant disputes as to its interpretation would render it ineffective. Those provisions of the draft articles should be reformulated to include all cases.

1547th meeting, para. 14.

CZECHOSLOVAKIA

See in the subsection on article 15 supra the statements by Czechoslovakia reproduced under Oral comments 1974 and Oral comments 1975.

FINLAND

Oral comments 1974**The representative of Finland stated:**

Article 27 of the 1972 draft had been criticized by his delegation (1320th meeting) when it had been examined in the Sixth Committee on the grounds that in State practice the principle of continuity with regard to succession to treaties was only valid in the case of the dissolution of a union of States whose members had possessed a certain degree of international personality, whereas in other cases of dissolution, where it was a question of the disappearance of a unitary State, it would be better to apply the "clean slate" principle. He was therefore pleased to note that the Commission had somewhat altered its position by deleting former article 27 altogether and replacing that and article 28 by two new articles, 33 and 34. However, the principle of continuity was still the point of departure in the new text, although there were many exceptions which could easily alter the presumption in State practice in favour of the "clean slate" principle. Article 33, paragraph 3, in particular, by its rather vague wording, allowed many possible interpretations in one way or another. It was probable that States would prefer freedom of action if it suited them. As in the case of the uniting of States, the Commission had rightly added two new articles, 35 and 36, to the provisions concerning separation of parts of a State. 1486th meeting, para. 27.

FRANCE

Oral comments 1974**The representative of France stated:**

Moreover, his delegation noted that according to draft article 33 it seemed that the maintenance or disappearance of a treaty obligation would depend on subjective assessments. The rule in question was therefore difficult to accept. Above all, it illustrated the difficulties the Commission had encountered as a result of introducing into the draft the distinction between "newly independent States" and States emerging from the separation of parts of a State. By so doing, it had introduced a political concept which had no place in the draft articles and had led it to adopt solutions which might give rise to contradictions.

1492nd meeting, para. 86.

GERMANY, FEDERAL REPUBLIC OF

Oral comments 1974

The representative of the Federal Republic of Germany stated:

Subject to a more thorough examination, his delegation believed that the amendments to the draft submitted to the Sixth Committee were a considerable improvement on the 1972 text. In rewording articles 33 and 34—articles 27 and 28 of the 1972 text—and eliminating the question of the dissolution of States the Commission had rightly been guided by State practice rather than by theoretical concepts. On the other hand, certain terms that were not, strictly speaking, legal terms had been used in the provisions; they might not adequately cover the variety and complexity of future cases.

Several delegations had indicated, in connexion with article 33, paragraph 3, that the rules regarding newly independent States would also have to apply in cases where one part of a State had achieved independence in the course of a social revolution. His delegation did not feel that the analogy could be drawn in such general terms. It was an accepted principle of international law that no State could plead even revolutionary changes in its constitution or domestic structure as an excuse for evading treaty obligations.

1490th meeting, paras. 31 and 32.

Written comments 1975

According to subparagraph 1 (b), seceding States must honour treaty obligations assumed by their predecessors, whereas this rule is reversed in the case of a seceding territory becoming 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" (para. 3). In this case, the successor State would be regarded in all respects as a newly independent State. To justify the reversal of the rule, the former dependency of the territory in question is taken into consideration as providing the key to the meaning of the term "newly independent State" defined in article 2, subparagraph 1 (f). As the underlying motivation of the exception contained in paragraph 3 is consistent with the general trend of the present draft, the Government of the Federal Republic of Germany does not call it in question but, like several other States already, wishes to point out that the definition chosen to describe the exceptional case (para. 3) contains neither objective nor legal criteria. The formula might lend itself, therefore, to misuse as a sort of carte blanche for States emerging from secession, enabling them to back out of unwanted treaty obligations to the detriment of other parties to the treaty even where the circumstances do not warrant such an evasion. In order to ensure the unequivocal character of treaty relations, the seceding State should be placed under obligation bindingly to declare whether it intends to invoke either paragraph 1 or paragraph 3.

GHANA

Oral comments 1975

The representative of Ghana stated:

Article 33, paragraph 3, created an exception to the general rule that where a State separates from another State, treaties applicable to the whole territory of the latter State remain in force with regard to the former. In that paragraph the "clean-slate" principle was applied under circumstances presenting essentially the same characteristics

as those which existed in the case of the formation of the newly independent State. That provision, although acceptable, would inevitably give rise to problems unless there was a more precise definition of the circumstances under which that paragraph was applicable.

1526th meeting, para. 49.

MEXICO

Written comments 1975

In ... [the case of separation of parts of a State] the "clear slate" principle should also apply. As several representatives stated in the Sixth Committee of the General Assembly, the right to self-determination is applicable to all peoples and, therefore, all new States deserve equal treatment, regardless of whether they have been colonial dependencies or not.

NETHERLANDS

Written comments 1975

... a growing appreciation of the controversial advantages of a too strict application of the "clean slate" formula appears from the different wording of article 33, paragraph 3, as compared with the corresponding article of the first draft (art. 28, para. 2). A State emerging as a result of separation of territory is no longer automatically put in the position of a newly independent State. In the present wording, this legal position is provided for only under the condition that such a territory "... 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 ...". However preferable the tenor of this paragraph in its present drafting may be, the present wording is likely to give rise to differences of opinion with regard to its interpretation, especially on the question which "circumstances" warrant a position similar to that of a newly independent State.

SWAZILAND

Oral comments 1975

The representative of Swaziland stated:

... ILC had recognized in article 33, paragraph 3, that the "clean-slate" principle could apply to cases where the separation occurred in circumstances which were essentially of the same character as those existing in the case of the formation of a newly independent State. However, the application of that provision might entail difficulties and since both the unification and separation of States could result in the creation of radically different personalities, it would have been preferable to have the "clean-slate" principle apply.
1549th meeting, para. 23.

SWEDEN

See in subsection C of section I supra the statement by Sweden reproduced under Oral comments 1974.

THAILAND

See in the subsection on article 15 supra the statement by Thailand reproduced under Oral comments 1974.

UNITED STATES OF AMERICA

See in subsection D of this section infra the statement by the United States reproduced under Written comments 1975.

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

FINLAND

See in the subsection on articles 33 and 34 supra the statement by Finland reproduced under Oral comments 1974.

POLAND

See in the subsection on article 31 supra the statements by Poland reproduced under Written comments 1975 and Oral comments 1975.

UNITED STATES OF AMERICA

See in subsection D of this section infra the statement by the United States reproduced under Written comments 1975.

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

FINLAND

See in the subsection on articles 33 and 34 supra the statement by Finland reproduced under Oral comments 1974.

POLAND

See in the subsection on article 31 supra the statements by Poland reproduced under Written comments 1975 and Oral comments 1975.

SWAZILAND

See in the subsection on article 18 supra the statement by Swaziland reproduced under Oral comments 1975.

UNITED STATES OF AMERICA

See in subsection D of this section infra the statement by the United States reproduced under Written comments 1975.

Article 37

Notification

FINLAND

Oral comments 1974

The representative of Finland stated:

A new draft article 37 governed notification under articles 30, 31 and 35. Since the provisions of that article were essentially the same as those contained in article 21 concerning notification of succession, the two articles could easily be amalgamated.

1486th meeting, para. 28.

POLAND

See in the subsection on article 31 the statements reproduced under Oral comments 1975 and Written comments 1975.

ROMANIA

Oral comments 1974

The representative of Romania stated:

It might be preferable to put all the provisions concerning notification, which were somewhat scattered, in a single article--perhaps after article 37.

1486th meeting, para. 38.

Article 38

Cases of State responsibility and outbreak
of hostilities

Article 39

Cases of military occupation

ARGENTINA

Oral comments 1975

The representative of Argentina stated:

His delegation felt that articles 38 and 39 could be deleted since that kind of situation should be governed by the general principles applicable to each case.

1526th meeting, para. 39.

ECUADOR

Oral comments 1974

The representative of Ecuador stated:

The tenor of article 39 was difficult to understand within the context of the draft. Military occupation was contrary to the Charter, unless it was the result of a decision taken by the competent United Nations bodies. In all other cases, military occupation of a territory could not give rise to a legal situation which would have any effect on treaties.

... his delegation was in favour of deleting any reference to military occupation from the draft articles.

1494th meeting, para. 40.

Oral comments 1975

The representative of Ecuador stated:

His delegation favoured the deletion of articles 38 and 39 of the draft.

1530th meeting, para. 25.

FINLAND

Oral comments 1974

The representative of Finland stated:

Article 31 of the 1972 draft had been split in the new draft into two articles, 38 and 39. While an express reservation might be called for concerning the international responsibility of a State, the other two reservations in those two articles were not necessary, since military occupation and the outbreak of hostilities between States could never give rise to succession in respect of treaties. The analogy with article 73 of the Vienna Convention on the Law of Treaties did not apply, as was stated in the commentary on those articles, since the situations governed by that Convention and the present draft were not the same.

1486th meeting, para. 28.

MEXICO

Written comments 1975

These articles should be omitted because they refer to matters outside the scope of the succession of States, as the International Law Commission itself recognizes. Moreover, both military occupation and the outbreak of hostilities are entirely abnormal conditions and the rules governing their legal consequences should not be regarded as forming part of the general rules of international law applicable in the normal relations between States, as the Commission affirms in paragraph 4 of its commentary on draft article 39. Finally, the cases of the responsibility of a State have already been covered by article 73 of the Vienna Convention to which the necessary reference should be made, as is proposed in the first paragraph of these observations.

MOROCCO

Oral comments 1975

The representative of Morocco stated:

With reference
to articles 38 and 39 concerning cases of State responsibility and the outbreak of hostilities and of military occupation, he said they should be deleted because they concerned questions which did not relate to the succession of States.

1545th meeting, para. 33.

A. Multilateral treaties of universal character

AUSTRALIA

Oral comments 1974

The representative of Australia stated:

In the view of the Commission it could not be claimed that a newly independent State was automatically subject to the obligations of multilateral treaties of a law-making character concluded by the predecessor State. Nevertheless, the "clean slate" principle should not be invoked in such a way as to cast doubt upon the law-making character of such treaties. The Commission had added, moreover, that the law contained in a treaty of that nature, in so far as it reflected customary rules would affect the newly independent State by its character as accepted customary law. In that connexion, his delegation welcomed the commentary of the Commission on article 15 concerning the Geneva Red Cross Conventions. Those Conventions concerned rules of customary law and should therefore be applied to all belligerents irrespective of whether they were States or not and whether they were signatories to the Conventions. It sufficed for the application of the relevant provisions that an armed conflict within the purview of those instruments should exist, whether the existence of such a conflict was recognized by the parties to the conflict or not.

1404th meeting, para. 10.

Written comments 1975

Finally the Australian Government would like to express its concern that the "clean slate" principle should not be invoked in such a way as to cast doubt on the general or customary law-making character of certain multilateral treaties. In this regard, the Australian Government welcomes the observation of the Commission in its commentary on draft article 15 that the law contained in a treaty, in so far as it reflects customary rules, will affect the newly independent State (and, it may be added, third States) by its character as accepted customary law.

For the reason given in the preceding paragraph, the Australian Government considers that an article on "multilateral treaties of universal character" would be desirable. Such an article would make clear and explicit the status of provisions of a treaty which had become part of customary international law.

AUSTRIA

Oral comments 1974

The representative of Austria stated:

At the twenty-sixth session of the Commission (see the report, foot-notes 57 and 58), two proposals had been made which had not been incorporated in the draft. One of them was the addition of article 12 *bis* concerning multilateral treaties of universal character. His delegation considered that that proposal seemed to derive from a misconception of the nature of a notification of succession: in fact, the latter was always retroactive to the date of independence. There was therefore no hiatus and article 12 *bis* was not necessary.

1490th meeting, para. 12.

Written comments 1975

... the Austrian Federal Government does not consider essential the proposed draft article 12 *bis* which, according to paragraph 75 of the report of the International Law Commission, could not be dealt with by the International Law Commission because of insufficient time. This for the reason that in the proposed draft article, at least if one judges by the arguments set forth in the explanatory note concerning it, the nature of the notification of succession seems to be misunderstood, inasmuch as the latter is always retroactive to the date of independence. Thus the alleged hiatus which the proposed draft article 12 *bis* seeks to eliminate in respect of "multilateral treaties of universal character" does not exist in respect of any multilateral treaty.

BELGIUM

Written comments 1975

The Belgian Government cannot, at this stage, agree to the proposal to insert an article 12 *bis* under which a multilateral treaty of universal character would remain in force between the newly independent State and the other States parties to the treaty until such time as the newly independent State gives notification of termination of the said treaty for that State.

While agreeing that it is of the utmost importance that all States should be party to certain treaties, sometimes referred to as multilateral treaties of

universal character, such as the Geneva Conventions of 1949, the Belgian Government feels that to insert an article 12 bis as currently worded would only complicate and distort the general structure of the draft. In addition, there is no agreement among jurists on the meaning or exact scope of the term "multilateral treaty of universal character".

The Belgian Government, however, is prepared to review its opinion in the event that the problem of assigning a specific meaning to the term "multilateral treaty of Universal character" might be satisfactorily resolved.

Oral comments 1975

The representative of Belgium stated:

Under current circumstances, his delegation could not agree with the proposal to include an article 12 *bis* as formulated in foot-note 57 of the report of ILC on the work of its twenty-sixth session. However, that position of principle, which had been explained in his Government's reply to the Secretary-General, in no way lessened the concern, which his Government shared with some members of ILC, that the application of certain multilateral conventions, and in particular those of a humanitarian nature, might be interrupted. Nevertheless, if it came to a choice between the provisional application of a treaty or having a text which was as clear as possible and which presented the minimum latitude for differing interpretations, his delegation would have no hesitation in choosing the latter course.

1536th meeting, para. 17.

BOLIVIA

Oral comments 1975

The representative of Bolivia stated:

The application of the "clean-slate" principle as an unrestricted attribution of a new State should be studied more carefully by ILC, since the principle could not apply in all cases. The so-called universal conventions, such as the Geneva Conventions of 1949 for the protection of war victims, should remain outside the scope of the "clean-slate" principle, as they represented the most cherished and permanent aspirations of the international community. It should be possible to establish a body of rules which would permit the gradual acceptance of existing conventions by new States without detriment to the "clean-slate" principle.

1530th meeting, para. 21.

BOTSWANA

Oral comments 1975

The representative of Botswana stated:

His delegation was not quite convinced of the need for a further exception to the "clean-slate" principle such as that embodied in the proposed article 12 *bis*. Self-determination required the minimum of interference with the decisions of emergent States and an unnecessary exception such as the one in the proposed article would only give rise to future disputes. Moreover, the proposed article was very vague, since the meaning of "multilateral treaty of universal character" was unclear.

1547th meeting, para. 33.

BRAZIL

Oral comments 1974

The representative of Brazil stated:

Late in the Commission's session, two proposals had been submitted by its members which, for lack of time, had not been discussed. The first proposal, concerning multilateral treaties of universal character, could be found in foot-note 57 of the report. That proposal was in some ways similar to the suggestion for the exceptional treatment of "law-making treaties", which the Commission had rejected. The concept of a "treaty of universal character", like that of a "law-making treaty", would be very difficult to define. In his delegation's view, every member of the international community had the right to choose whether or not to be a party to a convention of any kind whatsoever. Automatic participation could not be imposed on certain States, and exceptions based on categorization of treaties were invalid.

1487th meeting, para. 5.

Oral comments 1975

The representative of Brazil stated:

In fact, there were two questions relating to the draft articles which remained unresolved. For lack of time, ILC had not been able to discuss the proposals put forward on those questions. The first dealt with multilateral treaties of universal character, and ILC favoured their continuity *ipso jure*. That proposal was in line with the problems raised by the so-called law-making treaties, which several Governments considered as possible exceptions to the "clean-slate" rule. The difficulties with that proposal would be the same as those which had prompted ILC to reject the suggestions of Governments for the exceptional treatment of the

"law-making treaties", on the ground that problems might arise with regard to the definition of that expression. The concept of a "multilateral treaty of universal character", like the concept of a "law-making treaty", was rather vague. Moreover, if States other than newly-independent States were not regarded as automatically bound by "law-making treaties" or by "treaties of universal character", why should the newly-independent States be limited in their right to opt in? Should such a proposal be adopted, the newly-independent States would emerge into international life with a huge load of treaty commitments imposed upon them without their having been consulted in the matter. No member of the international community should be forced automatically to be party to any Convention, unless it had freely expressed its will to do so.

1526th meeting, para. 25.

Written comments 1976

The Brazilian Government examined the proposal put forward by some members of the International Law Commission, relating to the multilateral treaties of universal character, which, according to them, should preserve their continuity ipso jure with regard to newly independent States. The view of the Government of Brazil is that there is no reason for excluding the multilateral treaties of universal character from the "clean slate" rule. The difficulties in reaching an agreement on their characterization as universal would lead to endless debate, which could jeopardize the results of the whole work of the Commission on succession of States in respect of treaties. Furthermore, if States other than newly independent States are free to become or not a party to treaties of this kind, however universal they may be, why should newly independent States be regarded as automatically bound by them?

BULGARIA

Oral comments 1974

The representative of Bulgaria stated:

At its twenty-sixth session the Commission, owing to the lack of time, had been unable to discuss the two proposals to which it drew attention in paragraph 75 of its report. His delegation believed that the proposal for an article 12 *bis* deserved special attention. It might be preferable to limit the "contracting out" system to those multilateral treaties which were of universal character. One could hardly assume that the "contracting out" system would be inconsistent with the principle of self-determination or the strengthening of the role of international law in the interest of the international community as a

whole. It was then merely a matter of juridical technique in finding the most appropriate formula to establish the "contracting out" system for the multilateral conventions of universal character.

1495th meeting, para. 22.

Oral comments 1975

The representative of Bulgaria stated:

It would be worth while to consider again whether it would not be preferable to introduce the contracting-out system solely for multilateral treaties of universal character. The contracting-out system would strengthen the role of international law in the interest of the international community as a whole. If there were no political disagreements on the question, then it should be a matter of mere juridical technique to find the most appropriate formula for establishing the contracting-out system for such treaties.

1535th meeting, para. 43.

BYELORUSSIAN SOVIET SOCIALIST REPUBLIC

See in the subsection on article 5 supra the statements of the Byelorussian SSR reproduced under Written comments 1975 and Oral comments 1975.

CANADA

Oral comments 1975

The representative of Canada stated:

With respect to the question of multilateral treaties of a universal character, he reminded the Committee that the United Nations Conference on the Law of Treaties had abandoned its attempt to introduce the distinction between general and restricted multilateral treaties into the Vienna Convention, because of its inability to agree on the necessary definitions of those two kinds of treaties, which would be both exhaustive and mutually exclusive. It was therefore doubtful whether ... agreement

[could be reached]

on a definition of multilateral treaties of a universal character and whether such a definition could be

maintained in the deliberations of whatever diplomatic body might subsequently be called on to discuss and formally adopt the draft articles. His delegation believed that the practice under the existing articles was likely substantially to meet the concerns of those who had proposed article 12 *bis* and that an attempt to introduce the concept of multilateral treaties of a universal character might, in the end, create more problems than it solved.

1535th meeting, para. 5.

CHILE

Oral comments 1974

The representative of Chile stated:

The President of the Commission had drawn to the attention of the members of the Sixth Committee the problem of multilateral treaties of universal character, for which a different solution had been proposed, aimed at ensuring continuity of accession unless otherwise decided by the State concerned. But there remained a need to define exactly what was meant by multilateral treaties of universal character, since the lack of a definition could give rise to interpretations inconsistent with the "clean slate" principle.

1491st meeting, para. 23.

CZECHOSLOVAKIA

Oral comments 1975

The representative of Czechoslovakia stated:

... it would be appropriate to evaluate the possibility that that principle might be used by a successor State as a pretext for the non-fulfilment of the generally accepted norms of international law contained in certain multilateral treaties of universal character which had been concluded by the predecessor State and related, for example, to the defence of fundamental human rights.

1537th meeting, para. 32.

DENMARK

Oral comments 1974

The representative of Denmark stated:

His delegation had studied with interest the proposal, in foot-note 57 of the report, of a presumed continuity of multilateral treaties of a universal character, but it doubted whether the international instruments which would come into question could be defined with sufficient precision.

1491st meeting, para. 37.

Written comments 1975

The Danish Government has studied with interest the proposed draft article 12 *bis* concerning multilateral treaties of a universal character. The Government considers it important that the multilateral treaties in question be defined with sufficient precision and that the definition include humanitarian conventions, for example, the Geneva Conventions of 1949 for the protection of war victims (cf. also the principle underlying article 60, paragraph 5, of the Vienna Convention on the Law of Treaties).

EGYPT

Oral comments 1975

The representative of Egypt stated:

With regard to proposed article 12 *bis* (... foot-note 57), his delegation viewed the creation of multilateral treaties of universal character as being without adequate legal foundation. The Vienna Convention did not treat such treaties as a distinct class, and ILC had been unable to arrive at an acceptable definition of them. The definition in paragraph 76 of the report was not entirely convincing, even though it might be true that some of those treaties were of a humanitarian character. Without an adequate definition, distinguishing such a class of treaties would seriously endanger the "clean-slate" principle. Newly independent States were fully aware that if such treaties were advantageous to them they could act accordingly. Thus, no time at all might elapse between the succession of a State and the announcement by the State concerned of its succession to such treaties, since in practice the State, after independence, might voluntarily accept the obligations arising out of the treaties. In that case, the "clean-slate" principle would be maintained.

1537th meeting, para. 9.

FRANCE

Written comments 1975

The French Government has considered the draft article concerning "multilateral treaties of universal character" that the International Law Commission has not been able to study through lack of time. While understanding that the concerns which motivated this proposal at least partly coincide with those which have been expressed above, it does not consider that the proposed criterion is objectively satisfactory.

GERMAN DEMOCRATIC REPUBLIC

Oral comments 1974

The representative of the German Democratic Republic stated:

His delegation regretted that in the final version of the draft articles the Commission had not included article 12 *bis* on multilateral treaties of universal character, contained in foot-note 57 of the Commission's report. His delegation held the view that it was in the interest both of the successor State and of the community of States as a whole that any multilateral treaty of a universal character which at the date of the succession of a State was in force in respect of the territory to which the succession related should remain in force until such time as the successor State might declare the said treaty terminated for that State. In the interest of peaceful international co-operation, it was indispensable that a future convention on the succession of States in respect of treaties should contain a provision which met the purpose set forth in article 12 *bis*.

1486th meeting, para. 52.

Oral comments 1975

The representative of the German Democratic Republic stated:

To maintain world peace and foster international co-operation, the principle of continuity must apply to all multilateral treaties of a universal character, irrespective of the type of succession involved. Examples of such treaties, which were open to all States and were of world-wide interest, were the Treaty on the Non-Proliferation of Nuclear Weapons, the Human Rights Covenants and the

Red Cross Conventions. His delegation therefore strongly endorsed article 12 *bis* proposed by Mr. Ushakov. Some delegations had pointed out that it was difficult to differentiate between what were called law-making treaties and non-law-making treaties. But such a distinction was not required for that purpose. The universal character of a treaty sufficed as a criterion to judge the applicability of the principle of continuity. Similarly, his delegation could not endorse the view expressed in the commentary on article 15 that the continuity of multilateral treaties of universal character was not necessary because the rules they contained also formed part of customary law. Since at present treaties, especially those of universal character, were the main source of international law, it appeared useful to proceed from that solid foundation. The very purpose of the codification of international law was to eliminate the ambiguities inherent in customary law. His delegation felt that the time would not be ripe for convening a conference on the codification of that subject at least until the above-mentioned problems and others still outstanding had been solved by ILC.

1526th meeting, para. 43.

GERMANY, FEDERAL REPUBLIC OF

Oral comments 1974

The representative of the Federal Republic of Germany stated:

Regarding the two new articles proposed by Mr. Ushakov and by Mr. Kearney which the Commission had been unable to consider for lack of time and which were in foot-notes 57 and 58 of the report, respectively, he reminded the Committee of Mr. Ushakov's suggestion in the Commission that certain multilateral treaties of a universal character should remain binding on newly independent States, as an exception to the "clean slate" principle applicable in all other cases. The treaties involved would be certain categories of treaties of a humanitarian nature and treaties concluded for the purposes of maintaining international peace and security. His delegation could not support that suggestion, because it felt that the criteria proposed by Mr. Ushakov did not permit a clear delimitation of the categories of treaties contemplated and would be a source

of uncertainty. Moreover, the proposed text did not contain any clause ensuring the continuation of the treaties in question: it was intended that new States should be free to terminate at short notice any treaty to which they had not originally acceded. There would be certain risks involved in that, because some of the agreements in question were by their nature not subject to denunciation and contained elements of customary international law.

1490th meeting, para. 34.

Written comments 1975

The Government of the Federal Republic of Germany agrees with the decision of the International Law Commission not to distinguish between categories of treaties other than bilateral treaties, multilateral treaties according to article 16, paragraph 3, and other multilateral treaties. No further differentiation should be made between multilateral treaties sub specie of succession because it is hardly possible to distinguish clearly between, for instance, treaties of a universal nature and those with a claim to indefinite validity and other treaties. The draft clearly favours the clean-slate principle, which is incompatible with a special guarantee of continuation for certain treaties. With a view to the Vienna Convention on the Law of Treaties and the objective of establishing uniform rules of law in this field, it follows in particular that the notion of general multilateral treaties, which was definitely rejected by the Vienna Convention, cannot be introduced in a convention on the succession of States in respect of treaties.

...

The inclusion of an additional provision of this kind is deemed unnecessary since the practice of States and depositaries does not suggest any different treatment - or even clear delimitation - of treaties of universal character or general multilateral treaties. A differentiation along these lines does not appear advisable; it will hardly be possible to define in a satisfactory manner distinct categories of multilateral treaties that deserve a certain guarantee of survival in case of State succession without resorting to enumerative lists or even setting up bodies ad hoc to determine such categories of treaties.

The definition contained in the proposal cited above - draft of an additional paragraph (x) to article 2: "an international agreement which is, by object and purpose of world-wide scale, open to participation by all States" - does not suffice if only because, though it refers to the scope of participation, it disregards the substantive elements of a given treaty that justify a guarantee of duration.

Moreover, continuation of the treaties in question will not be ensured if new States are allowed to "opt out" at will. This would seem objectionable in the case of treaties that are by their very nature not subject to denunciation or contain elements of customary international law.

Oral comments 1975

The representative of the Federal Republic of Germany stated:

With regard to Mr. Ushakov's proposal on article 12 *bis* (... foot-note 57), his Government considered it inadvisable to accord a different treatment to multilateral treaties of a universal character. It did not appear possible to make a satisfactory differentiation between such multilateral treaties as deserved a guarantee of survival and other treaties. The concept of general multilateral treaties had been clearly rejected during the elaboration of the Vienna Convention and should not therefore be incorporated in a convention on the succession of States.
1526th meeting, para. 16.

GHANA

Oral comments 1975

The representative of Ghana stated:

The free choice inherent in the "clean-slate" principle enunciated in article 15 should be maintained, even in respect of "law-making treaties"
1526th meeting, para. 45.

GREECE

Oral comments 1975

The representative of Greece stated:

His delegation feared that the application of the proposed article 12 *bis* might give rise to difficulties, since the article was not worded in sufficiently clear terms and it was difficult to envisage multilateral treaties of universal character.
1537th meeting, para. 17.

GUATEMALA

Oral comments 1975

The representative of Guatemala stated:

Multilateral treaties could be divided into two categories, according to whether or not they codified rules of international law in force. The rules contained in treaties in the first category were binding on new States, irrespective of their consent, whereas those in treaties in the second

category were based on the consent of the contracting States and thus of the successor State also.

1548th meeting, para. 26.

HUNGARY

Written comments 1976

It would be desirable for the "clean slate" rule to be complemented by additional provisions in respect of treaties of a universal character affecting the universal interests of States. This idea is reflected in the proposal referred to in paragraph 76 of the report of the International Law Commission. According to their subject-matter, the treaties of universal character include, first of all, treaties serving the maintenance of international peace and security, treaties concerning the protection of human rights, and treaties serving the codification and progressive development of international law. The continuance in force of such treaties is in the interest both of the community of States as a whole and of the newly independent States. It would therefore be advisable to modify article 16 to provide that if, within a fixed time-limit from succession, a newly independent State fails to notify the depositary of its intention to the contrary, treaties of a universal character shall remain in force also in respect of that State. In this case, draft article 2 should similarly be complemented to provide a corresponding definition of the concept of multilateral treaties of universal character.

The above-mentioned modifications would be in conformity with the interests of both the community of States and the newly independent States, and would not weaken the "clean slate" principle, since a newly independent State will have the possibility (although within a fixed time-limit) to declare its intention, if its interests so dictate, not to establish its status as a party to such a treaty or treaties.

INDIA

Oral comments 1975

The representative of India stated:

The proposal concerning multilateral treaties of universal character was a complex one. In addition to the difficulties described in paragraphs 76 and 77 of the report of ILC on its twenty-sixth session, there was also the problem of reaching a clear and precise definition of the term "multilateral treaty of universal character". His delegation understood, however, the concern of delegations which held a different view.

1536th meeting, para. 3.

INDONESIA

Oral comments 1974

The representative of Indonesia stated:

The exception of such dispositive treaties from the "clean slate" principle was necessary to guarantee certainty and stability in international relations. As indicated in article 13, such derogation was not however prejudicial to the question of a treaty's validity. Some delegations had proposed that that exception should be extended to include law-making, multilateral treaties or treaties of universal character. His delegation was opposed to that suggestion, not only because it would create uncertainty and ambiguities, but also because it was difficult to identify law-making treaties or universal treaties.

1495th meeting, para. 36.

Oral comments 1975

The representative of Indonesia stated:

Referring to the proposed article 12 *bis*, he said that it did not take sufficient account of the interests of newly independent States in that it deprived such States of the right to determine whether treaties concluded by the predecessor State were consistent with its national interests. Some of the conventions categorized as treaties of universal character in the explanatory note concerning the proposed article 12 *bis* in fact had limited participation, although their object and purpose were of world-wide scale and thus were open to participation by all States. States generally had legitimate reasons for refraining from becoming parties to such conventions. It was therefore unreasonable to expect a successor State with such a legitimate reason to be bound by the proposed article 12 *bis*. That was simply one illustration of the difficulties which might arise from such a provision. His delegation considered therefore that the proposed article 12 *bis* was unnecessary.

1537th meeting, para. 44.

IRAN

Oral comments 1974

The representative of Iran stated:

Owing to the special interest it had in certain conventions of universal character, among others postal conventions and humanitarian conventions, his delegation hoped that the Commission's draft would in some way ensure that such instruments took precedence over other types of treaties.

1494th meeting, para. 50.

Oral comments 1975

The representative of Iran stated:

With regard to the proposed article 12 (*bis*) concerning multilateral treaties of a universal character (see A/9610/Rev.1, foot-note 57), his delegation appreciated the concern expressed by certain ILC members regarding such treaties, particularly those of a humanitarian nature. It considered, however, that there was no need to abandon the "clean-slate" principle and give special treatment to such treaties.

1548th meeting, para. 12.

IRAQ

Oral comments 1974

The representative of Iraq stated:

A further question dealt with by the Commission was a principle which seemed incompatible with the "clean slate" principle, namely, the continuity of international treaties which were universal or general in nature. One member of the Commission had made a proposal that in such cases there should be a presumption of continuity until such time as the newly independent State gave notice of terminating the relevant treaty in respect of that State. He felt that the Commission should not venture onto such slippery ground; it was extremely difficult to define precisely which treaties came within that category. It would be preferable to show confidence in newly independent States and to say that treaties of a universal or general nature should continue to apply only if the newly independent State expressed a wish

to that effect. Moreover, in many cases the essential rules laid down in such treaties were already rules of law by virtue of another source of international law, namely, international custom. An analogous situation arose also with regard to law-making treaties. He felt that the proposed exception should not be permitted because it might be incompatible with the right of newly independent States to self-determination and the management of their own affairs.

1485th meeting, para. 9.

Oral comments 1975

The representative of Iraq stated:

His delegation could not, however, support the proposed article 12 (*bis*) on multilateral treaties of universal character, which was incompatible with the right of newly independent States to self-determination and the administration of their own affairs. It was difficult to define such treaties precisely and to distinguish between multilateral treaties which were desirable and should continue and other treaties. The draft article was, furthermore, incompatible with the principle of equality of States, since it discriminated between newly independent States and other States. Newly independent States should have the right to select the treaties by which they would be bound.

1547th meeting, para. 60.

ISRAEL

Oral comments 1975

The representative of Israel stated:

With reference to paragraph 75 of the report of ILC, his delegation believed that it would be almost impossible to reach agreement on a list of multilateral conventions having special status in relation to the "clean-slate" principle.

1546th meeting, para. 8.

ITALY

Oral comments 1974

The representative of Italy stated:

His delegation regretted that the Commission had not had time to discuss the proposals submitted by two of its members concerning multilateral treaties of universal character and the settlement of disputes, reproduced in foot-notes 57 and 58 of the report. The first proposal, in foot-note 57, concerning multilateral treaties, was designed to remedy the lack of a greater number of provisions attenuating the wide scope that the "clean slate" principle was given in the draft articles concerning newly independent States. Of course, those draft articles had been tempered by the provisions of articles 11, 12, 26 and 27, yet the general interest of the international community in preventing successions of States from disturbing existing treaty relations required that stability be more firmly ensured when certain overriding community interests were at stake. To be acceptable, the wording of the proposal should be made more precise, but in any case the principle whereby the successor State continued to be bound by the treaties concluded by the predecessor State unless it decided to terminate them could apply at least to universal treaties relative to human rights and fundamental freedoms and to the Geneva Conventions of 1949 for the protection of war victims.

1484th meeting, para. 53.

JAMAICA

Oral comments 1974

The representative of Jamaica stated:

Referring to the problem of multilateral treaties of a universal character and to the question of whether

... [they should be excluded]

from the scope of application of the "clean slate" principle, he said that one delegation had proposed that a treaty of that kind, in force at the date of succession, should continue in force between the newly independent State and the other States parties until the newly independent State had given notice of the termination of the treaty. The purpose of that proposal had been to ensure that certain multilateral treaties of a universal

character would remain in force after the date of succession, in the interests of both the international community and new States. It could, however, be observed that, if those treaties corresponded to a general practice accepted as law, they would in any event be binding upon the newly independent State by way of custom. The proposed article 12 *bis* in foot-note 57 of the report also raised the fundamental problem of defining a "multilateral treaty of universal character". The attempt made by the Commission in paragraphs 76-78 of its report still left that term vague. Moreover, if the application of the principle of consent was ruled out, the only other source of international obligation for a State was custom, but all multilateral treaties of a universal character did not necessarily embody customary rules. Even if they did reflect international custom in certain respects, they could nevertheless also contain purely contractual provisions, for example, on the settlement of disputes. It would therefore be necessary to examine each treaty individually to determine whether its provisions could be assimilated to custom. Although it was aware of the generous intentions which had prompted that proposal, his delegation nevertheless considered that there was some danger in departing from the principles of consent and self-determination.

1495th meeting, para. 14.

JAPAN

Oral comments 1974

The representative of Japan stated:

Concerning the question of multilateral treaties of universal character, his delegation was of the opinion that the application of the principle of continuity to such treaties should be studied carefully in the light of the fact that the distinction between "law-making" and other treaties might not be easy to make.

1487th meeting, para. 22.

Oral comments 1975

The representative of Japan stated:

With regard to the draft article on succession of States in respect of treaties, he noted that there were certain difficult questions involved in the two proposals set out in foot-notes 57 and 58 of the report of ILC on its twenty-sixth session. His delegation was not entirely satisfied with the formulation of the term "multilateral treaties of universal character" as proposed in the report and considered that the application of the principle of continuity to such treaties should be studied with particular care because of the vagueness of the scope of the term. If those treaties already had the character of customary international law, there was no need to talk about succession.

1546th meeting, para. 27.

JORDAN

Oral comments 1974

The representative of Jordan stated:

His delegation also supported an additional exception to the "clean slate" rule, since a distinction could be made between multilateral universal conventions on the one hand, and bilateral or limited multilateral treaties on the other. While conventions in the first category were obviously in accordance with the Charter of the United Nations, treaties in the latter category could be concluded in accordance with power politics or might be colonial in nature, and could therefore be prejudicial to the dependent State. His delegation therefore favoured the "contracting out" principle for newly independent States in respect of multilateral universal conventions.

1492nd meeting, para. 75.

KENYA

Oral comments 1974

The representative of Kenya stated:

Apart from the lack of clear definition of what were law-making treaties, no State was obliged to become a party to them irrespective of their content, and there was no reason why a newly independent State should be treated differently.

1493rd meeting, para. 31.

Oral comments 1975

The representative of Kenya stated:

His delegation was of the opinion that any other exception to the "clean-slate" principle would have the effect of weakening that principle. That was why it would have some difficulty in accepting the proposed article 12 *bis* (... foot-note 57), which provided that multilateral treaties of universal character would not be affected by the rule enunciated in article 15, which defined the position of the newly independent State in respect of treaties of the predecessor State.

1545th meeting, para. 3.

LESOTHO

Oral comments 1974

The representative of Lesotho stated:

His delegation had listened attentively to arguments that the "clean slate" theory should not apply to the so-called multilateral universal treaties. Those who advocated that stand, however, represented countries which either had participated in the formulation of those treaties or had had an opportunity to decline to participate in them. The newly independent States should not be penalized because of their former dependent status. In his delegation's opinion, the "clean slate" principle should apply to all treaties without exception.

1493rd meeting, para. 51.

LIBERIA

Oral comments 1975**The representative of Liberia stated:**

In his view, there should be no exception to that freedom of choice. He therefore did not subscribe to the concept that newly independent States should be automatically bound by multilateral treaties of a so-called universal character. The meaning of that expression was unclear and provided no worth-while grounds for making an exception to the generally accepted and fair principles of sovereign equality of States and self-determination.

1536th meeting, para. 21.

MADAGASCAR

Oral comments 1975**The representative of Madagascar stated:**

The question had been raised whether the draft articles should contain a special provision concerning multilateral treaties of universal character. While it was theoretically possible to identify certain aspects of multilateral treaties of universal character in order to distinguish them from treaties of a restricted character, it was not always easy to arrive at a practical distinction. Multilateral treaties which were apparently of a restricted character could be open to participation by all States and would, therefore, by virtue of the proposed article 12 *bis*, be subject to the principle of continuity. The fact that that paragraph of that article provided that a multilateral treaty of universal character would remain in force between the newly independent State and the other States parties to the treaty until such time as the newly independent State gave notice of termination of the said treaty meant that it ran counter to the "clean-slate" principle. Furthermore, the depositaries of treaties had been unable to make a distinction between the two categories of treaties. They had never regarded a newly independent State as being bound by a convention unless that State had made known its intention to remain or to become a party to it.

With respect to general multilateral conventions concluded by the administering Power before its independence, Madagascar had on various occasions opted in favour of continuity subject to confirmation, of the "theory of reflection", of the system of acceptance as a new State, or of a statement of continuity pure and simple subject to denunciation. His country's position was essentially pragmatic. It might be said that Madagascar had accepted

multilateral conventions, even those which might be regarded as having a universal character, only under certain conditions. His delegation considered that it would be inappropriate to include the proposed article 12 *bis* in the draft articles.

1537th meeting, paras. 26-27.

MALI

Oral comments 1975

The representative of Mali stated:

... his delegation was opposed to the proposed article 12 *bis*, whereby multilateral treaties of universal character would remain in force for the new State until such time as it gave notice of the termination of the said treaties for that State. Treaties of that type often enshrined legal rules established by custom. It was maintained by some that, because of their customary nature, those rules should be imposed on all States, whatever form they took, and that a newly independent Territory should be bound by all the international treaties concluded on its behalf by the former administering Power. That idea was contrary to current international law, which was based on the consent of the parties. That consensual basis was the very foundation of the Vienna Convention on the Law of Treaties. It was to be found in Article 38 of the Statute of the International Court of Justice which acknowledged the importance and the necessity of consent, because it provided that the Court could not only apply the normal rules of international law but could also decide a case *ex aequo et bono*.

The principle that a State was only bound to the extent that it accepted the binding force of a rule of law had been established by jurisprudence and in particular by the Permanent Court of International Justice in the *Lotus* case. Consequently, international treaties of a universal nature should not be automatically imposed on new States. Many such treaties contained no denunciation clause and, if they did contain one, the procedure for denunciation was often lengthy and complicated or the denunciation was simply rejected.

1549th meeting, paras. 60-61.

Written comments 1976

Some Governments have expressed the view that multilateral treaties should be covered by a different régime and have suggested that a newly independent State should be considered a party to a treaty unless it denounces the treaty. The Government of Mali feels that this position is incompatible with international law, whose main foundation is consent of the parties. A State cannot be bound by obligations arising out of a treaty concluded in its behalf at a time when it was not in a position to express its wishes.

Besides, most multilateral treaties do not include a denunciation clause, or if they do, the procedures provided for that purpose are very lengthy and complex.

It must be added that a newly independent State may, through ignorance or for want of the necessary expertise, let the time-limit prescribed for denunciation expire.

For all these reasons, Mali cannot agree that a State should be automatically bound by a treaty until it denounces that treaty.

MEXICO

Written comments 1975

Although the motives for the concern of some members of the Commission concerning treaties of a general or universal character, particularly those of a humanitarian character, are understandable, given the difficulty of finding a formula which would allay this concern without endangering the "clean slate" principle, it is considered that no exception should be made for such treaties, since, moreover, its provisional application is not excluded in the draft articles (article 26).

MOROCCO

Oral comments 1975

The representative of Morocco stated:

It was not in favour of inserting an article 12 *bis* relating to multilateral treaties of universal character, since in its opinion that concept lacked precision

1545th meeting, para. 33.

NETHERLANDS

Oral comments 1974

The representative of the Netherlands stated:

... his delegation felt that further consideration must be given to ways of ensuring better continuity of treaty relations under universal treaties. The rationale for the application of the "clean slate" principle to newly independent States was that those countries could have good reason to fear that treaties in respect of their territories had been concluded to serve foreign interests. That argument could not apply to treaties open to universal participation, such as those currently adopted under the auspices of the United Nations. The reason why the pure and simple continuity of treaty relations created by that type of treaty had been rejected, had been the difficulty that appeared to exist of identifying or defining precisely the relevant category of treaties. Following the exchanges of views which had taken place on the subject, his delegation tended to believe that it was possible to solve that problem by a purely technical device, namely the test of the number of parties to a multilateral treaty open to universal participation, with universality being understood to mean "all States recognized as such by the practice of the United Nations at any given time". His delegation hoped that the members of the Commission and the Member States of the United Nations which would comment in writing on the draft articles would study that topic again with great care. It was to be understood that in such a system the new State would have the right to "opt out". Draft article 12 *bis*, the text of which was in foot-note 57, and the commentary accompanying it seemed to be a good starting point in that direction.

1494th meeting, para. 17.

Written comments 1975

The Netherlands Government maintains its earlier suggestion that the "clean slate" principle ought to be mitigated in respect of certain general multilateral conventions of world-wide applicability, embodying fundamental rules of international law. Such conventions should, in view of the desirability of their continuing applicability, escape the application of the "clean slate" rule; instead, the successor-State could opt out of such a convention, should it so decide. In this way, the undesirable effects of a "legal vacuum" as a result of a too strict application of the "clean slate rule" would be avoided. The main argument which led to rejection of this solution by the International Law Commission is the difficulty of clearly identifying or defining the relevant category of treaties. The endeavour undertaken to this end by one member of the International Law Commission, which resulted in draft article 12 bis and the annexed proposal for a "new paragraph for inclusion in article 2", is therefore highly commendable. The proposed definition of the term "multilateral treaty of universal character" in paragraph X has the advantage of laying down a formal criterion. However, actual State practice shows that almost all multilateral conventions which are, by object and purpose, of world-wide scale, are not "open to participation by all States". To maintain these last-mentioned words in the definition would therefore deprive article 12 bis of the greater part of its intended usefulness.

Oral comments 1975

The representative of the Netherlands stated:

Referring to the proposed draft article 12 *bis*, he emphasized that his Government's positive stand towards such a provision was prompted only by its desire to avoid, in the case of multilateral conventions of a universal character, the legal vacuum which would result from too strict an application of the "clean-slate" rule. Although continued application of such treaties would seem to be an exception to the already established "clean-slate" principle, it should be emphasized that the principle of self-determination itself remained untouched, since article 12 *bis* provided for the right of the newly independent State to opt out. His delegation agreed that the definition proposed by one member of ILC of the term "multilateral treaty of universal character" was open to criticism. The qualification "open to participation by all States" resulted in the scope of the proposed article being too strictly defined, since it would exclude from that category most of the conventions which, by their very nature and object, qualified for continued operation between the newly independent State and the other State parties to the conventions in question. The proposed definition certainly deserved further study, which could perhaps be undertaken by ILC.

1535th meeting, para. 18.

NEW ZEALAND

Oral comments 1975

The representative of New Zealand stated:

In its report the previous year ILC had noted that two proposals had been made by members which ILC as a whole had not had time to discuss fully (see A/9610/Rev.1, para. 75). His delegation had some serious reservations on the first of those proposals, concerning multilateral treaties of a universal character. In its view, there must continue to be the greatest difficulty in defining what was or what was not a treaty of universal or law-making character, so that the inclusion of an article such as that proposed could lead to a large area of uncertainty about the rules applying to multilateral treaties in general. Moreover, in the case of a multilateral treaty which was indisputably of a universal or law-making character, it would be received into the body of customary law so that the question of whether or not a successor State was bound by the treaty became irrelevant.

1535th meeting, para. 23.

PARAGUAY

See in the subsection on article 5 supra the statement of Paraguay reproduced under Oral comments 1975.

PHILIPPINES

Oral comments 1975

The representative of the Philippines stated:

With regard to the proposed article 12 *bis*, it was bound to detract from the delicate structure of the draft for as long as the expression "multilateral treaties of universal character" was not defined.

1549th meeting, para. 66.

POLAND

Written comments 1975

... the Government of the Polish People's Republic sees, in essence, a possibility of accepting the principle of "continuity" in respect of multilateral treaties of universal character provided that this principle is acceptable to the newly established States concerned.

ROMANIA

Oral comments 1975

The representative of Romania stated:

The matter of multilateral treaties of universal character was particularly important and timely and should be studied more deeply than provided for in paragraph 76 of the report of ILC. The presumption of continuity and the juridical qualification of express consent as accession and not as succession should not be based on the normative character of such treaties but rather on their general interest to all States.

1530th meeting, para. 36.

SOMALIA

Oral comments 1975

The representative of Somalia stated:

... article 12 *bis* (see A/9610/Rev.1, footnote 57) should be deleted or formulated with greater accuracy and precision.

1540th meeting, para. 7.

SRI LANKA

Oral comments 1975

The representative of Sri Lanka stated:

... he felt that proposed article 12 *bis* (see A/9610/Rev.1, foot-note 57) might create more difficulties than it was intended to resolve. The definition of multilateral treaties of universal character could encompass many treaties to which many countries, particularly the newly independent ones, might find it difficult to become parties, for a number of reasons. His delegation did not see sufficient reason for a provision of that kind which would place newly independent States in a difficult position, since while considering whether or not they should continue to be parties to such treaties, they would continue to be bound by their provisions.

1538th meeting, para. 61.

SWAZILAND

Oral comments 1975

The representative of Swaziland stated:

His delegation did not favour the inclusion of the proposed article 12 *bis* in the draft articles. On the one hand, the concept of a multilateral treaty of universal character was far too vague, while, on the other, a newly independent State had as much right as any other to exercise its will by deciding whether to become a party to a multilateral treaty. Moreover, certain multilateral conventions, such as the Geneva humanitarian conventions, embodied rules of customary law and were therefore binding on a newly independent State, irrespective of whether or not it was a party to such treaties.

1549th meeting, para. 25.

SWEDEN

Oral comments 1974

The representative of Sweden stated:

The report of the Commission showed, however, that some members had expressed some concern about the effects of the "clean slate" principle in the case of humanitarian conventions and other multilateral treaties of universal character. Some members had even proposed that the Commission should apply to such treaties the system of *de jure* continuity combined with a right of denunciation. His delegation considered that that proposal, which the Commission had not been able to discuss because of the lack of time, should be given further study.

1489th meeting, para. 24.

Written comments 1975

The proposal regarding multilateral treaties of universal character, which the Commission did not have time to consider, aimed at eliminating certain unsatisfactory consequences of the application of the "clean slate" principle to humanitarian conventions and other types of multilateral treaties which are of a "worldwide scale".

Oral comments 1975

The representative of Sweden stated:

The proposal regarding multilateral treaties of universal character was a very interesting one and deserved thorough study

1526th meeting, para. 28.

SYRIAN ARAB REPUBLIC

See in the subsection on articles 11 and 12 supra the statement of the Syrian Arab Republic reproduced under Oral comments 1975.

TURKEY

Oral comments 1974

The representative of Turkey stated:

It was important to examine carefully the differences between multilateral treaties and bilateral treaties within the framework of succession.

1494th meeting, para. 45.

UGANDA

Oral comments 1975

The representative of Uganda stated:

His delegation had doubts about the usefulness of the proposed article 12 *bis*, on multilateral treaties of universal character, which seemed to include treaties to which new States would not like to be parties for various reasons. That provision should either be eliminated or changed so that new States would not be bound by the provisions of such treaties until they had considered whether or not it was in their interest to accept them.

1549th meeting, para. 55.

UKRAINIAN SOVIET SOCIALIST REPUBLIC

Oral comments 1974

The representative of the Ukrainian SSR stated:

In specific cases . . . it was necessary to maintain a distinction between unjust treaties concluded during the period of colonialism and multilateral treaties of universal character which enunciated generally accepted norms of international law. It was in the interest of the international community as a whole, including newly independent States, to maintain stability with regard to such multilateral treaties. The Commission had not yet found a proper balance between the "clean slate" principles and the need to maintain stability with regard to multilateral treaties of universal character.

1492nd meeting, para. 70.

Written comments 1975

... very serious attention must be given to the preservation of the stability of treaty relations and succession of treaty obligations in the light of the sovereign right of new independent States to reject treaties concluded by the former metropolitan countries.

The solution of this problem is linked with the need for a differentiated approach to the various categories of treaties and for account to be taken of the special role, importance and significance of general multilateral treaties of a universal nature in contemporary international law. Since they are a direct result of the development of international co-operation among States with different social and economic systems on the basis of the principles of peaceful coexistence, these treaties embody or reflect the generally accepted principles and rules governing relations among States which should not be disregarded by anyone. There is therefore a real need for further work on the provisions concerning the stability and continuance in force of treaties of this kind.

UNION OF SOVIET SOCIALIST REPUBLICS

Oral comments 1974

The representative of the USSR stated:

... [no account had been taken of] multilateral treaties regarding international peace and security and co-operation on a non-discriminatory basis. The evolution of international law had thus been ignored. Currently, many principles of contemporary international law were of a democratic nature; but the "clean slate" principle, as reflected in the draft, politically and theoretically weakened the role of international law and its influence on international relations. Instead of contributing to the progressive development of international law, the draft strengthened the tendency to limit treaty relations and ran counter to the development of international relations.

1489th meeting, para. 32.

Written comments 1975

The basis for contemporary international legal relations between States, without which it would be inconceivable for them to maintain normal contacts with one another, is constituted by generally accepted principles and rules of international law which are reflected in multilateral international treaties such as the United Nations Charter, the 1949 Geneva Conventions for the protection of war victims and the 1961 Vienna Convention on Diplomatic Relations. The generally accepted rules of international law, which have taken shape in the process of the interaction of States with different social systems as a result of the consistent introduction into international practice of the principle of peaceful coexistence, must not be disregarded by any State, regardless of the historical circumstances in which it came into being. It is therefore necessary to ensure that the application of the clean-slate principle in no way prejudices the generally accepted principles and rules of international law and the obligations of all States deriving from those principles and rules.

UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND

Oral comments 1974

The representative of the United Kingdom stated:

The first point concerned the Commission's conclusions on the so-called "clean slate" principle. The United Kingdom Government doubted whether, in its assessment of the implications of State practice in that field, the Commission had given sufficient weight to those many cases where, without difficulty or controversy, States concerned had continued to apply treaties after a succession of States had taken place. In those few such cases which had given rise to controversy, a solution had not been too hard to find. When the attempt was made to determine where the balance of advantage lay, it should be recognized how great an interest all States had in maintaining the stability of the framework of treaties, particularly multilateral treaties of a law-making nature, which was so important a part of the whole structure of international relations.

1493rd meeting, para. 15.

Written comments 1975

The United Kingdom Government welcome the two new proposals which are referred to in paragraph 75 of the Commission's report on its twenty-sixth session and set out in the foot-notes to paragraphs 76 and 79. In their view, articles of the kind proposed would add to the utility of a convention.

... in particular that relating to multilateral treaties of universal character. It would be appropriate [to] ... take into account, on the one hand, the desirability of avoiding a multiplicity of different categories of treaties and, on the other, the desirability of clearly defining the treaties to which the article might apply. In particular, it would be appropriate to examine the terms of the participation clauses of those multilateral treaties to which the draft article might apply in order to determine whether they are consistent with the proposed definition of multilateral treaties of universal character.

Oral comments 1975

The representative of the United Kingdom stated:

With regard to the two proposed draft articles 12 *bis* and 32 on the questions of multilateral treaties of universal character and settlement of disputes, his delegation maintained the views expressed in its reply to the Secretary-General (see A/10198) that draft articles of the kind proposed would add to the utility of a convention

... In the view of his delegation, there were powerful arguments why, in the interest of both newly independent States and the international community as a whole, multilateral treaties of universal character should not cease to be in force for newly independent States. While understanding the sentiments underlying the "clean-slate" principle, his delegation had repeatedly expressed doubts as to whether sufficient weight had been given to the instances in which the States concerned had favoured continuity, bearing in mind the essential role which treaties, bilateral as well as multilateral, played in the orderly conduct of international relations and the immense tasks which a new State with limited manpower might face in order to regain valuable treaty rights lost in consequence of the automatic application of the "clean-slate" principle. Multilateral treaties of universal character constituted a significant part of those treaty relations and the proposed draft article was therefore worth further examination.

1536th meeting, para. 11.

UNITED REPUBLIC OF CAMEROON

Oral comments 1975

The representative of the United Republic of Cameroon stated:

In its commentary on article 15, ILC rightly pointed out that the practice of States and depositaries confirmed that the "clean-slate" principle applied to general multilateral treaties and to multilateral treaties of a law-making character. Consequently, while agreeing that the newly independent State had the right of option to be a party to certain categories of multilateral treaties in virtue of its character as a successor State, as provided in article 16, his delegation had serious difficulties in accepting the proposed article 12 *bis* in its current form. The question raised by that article had given rise to considerable controversy at the Vienna Conference on the Law of Treaties and postulated principles which were incompatible with the protection of the interests of newly independent countries. As had already been pointed out by one delegation in document A/10198, the adoption of article 12 *bis* could impose a host of obligations on newly independent States, including financial obligations, the scope of which could not be accurately assessed at the time of succession.

1537th meeting, para. 50.

UNITED REPUBLIC OF TANZANIA

Oral comments 1974

The representative of the United Republic of Tanzania stated:

With regard to the question whether multilateral treaties should be excepted from the "clean slate" principle, his delegation held that there were even stronger reasons for not doing so than in the case of boundary treaties. It would be illogical to expect any emerging State to be bound by multilateral treaties entered into by the predecessor State.

1496th meeting, para. 27.

UNITED STATES OF AMERICA

Written comments 1975

The United States has repeatedly expressed its support of the freedom of choice principle embodied in the articles relating to newly-independent States. Because of this belief that the newly-independent States should have the right to determine for itself whether or not to become party to a multilateral treaty applicable in the territory prior to independence, the United States must oppose the proposal regarding multilateral treaties of universal character discussed in paragraphs 76 to 78 inclusive of the report of the International Law Commission on the work of its twenty-sixth session.

The proposal is subject to a variety of objections. An important technical objection is the lack of any consensus as to what is meant by a "multilateral treaty of universal character". The definition suggested is one "... which is by object and purpose of world-wide scale, open to participation by all States ...". Under this definition, a convention open to all Members of the United Nations or of any specialized agency would not appear to qualify as a treaty of universal character. The definition would appear to raise aspects of the lengthy and inconclusive discussions regarding the nature of general multilateral treaties at the Vienna Convention on the Law of Treaties. What treaties have "world-wide scale" is also uncertain. The various commodity agreements, for example, have certain world-wide effects, but are of primary interest to the interested producing and consuming nations. In the aviation field, certainly the Convention for the Unification of Certain Rules Relating to International Carriage by Air, signed at Warsaw on 12 October 1929, and the Convention on International Civil Aviation, signed at Chicago on 7 December 1944 would meet the test, but would the Convention on the International Recognition of Rights in Aircraft done at Geneva on 19 June 1948? The examples of treaties whose status would be uncertain under the definition are too numerous to require further illustration.

A more important problem is that the proposal could impose upon the newly-independent States a host of obligations, including financial ones, that might be unknown or imperfectly known to it. The newly-independent State could well be in a position where it could not undertake the legal research and analysis necessary to determine the nature and extent of its obligations under these treaties of universal character except over a period of several years. Nevertheless it could be held to have breached its obligations under such a treaty, however unknowingly or inadvertently.

The articles that the Commission has proposed avoid problems of the nature described and preserve the principle of freedom of choice by the newly-independent State. This principle should be maintained.

Oral comments 1975

The representative of the United States stated:

With regard to the proposals concerning multilateral treaties of a universal character, he understood the motivation in seeking the widest possible application of the fundamental norms frequently found in such treaties. There were, however, a number of objections to including provisions on that question in the draft. First, there was no consensus as to what was meant by "multilateral treaty of a universal character". The definition that had been suggested, instead of clarifying the problem, seemed rather to reflect the lengthy and inconclusive discussions on the matter at the Vienna Conference on the Law of Treaties. There were so many treaties whose status would be uncertain under the proposed definition that it would be likely to cause more trouble than it was worth. Moreover, it was liable to impose a wide range of obligations on newly independent States, including financial obligations of which they might not be fully aware. The most important aspects of treaties which might be referred to as "multilateral treaties of a universal character" were those aspects which

codified existing law or which were now regarded as norms of international law binding on all, such as for example the provisions of Article 2 of the Charter and virtually all the provisions of the Vienna Conventions on Diplomatic Relations and on Consular Relations and on the Law of Treaties. Those norms would in any event apply to all States, new and old.

1526th meeting, para. 8.

VENEZUELA

Oral comments 1975

The representative of Venezuela stated:

As many previous speakers had observed, the question of multilateral treaties of universal character was a question of principle. Clearly, no member of the international community could be obliged, without an express manifestation of its will, to become automatically a party to any treaty

1538th meeting, para. 2.

B. Settlement of disputes

AFGHANISTAN

Oral comments 1975

The representative of Afghanistan stated:

With regard to the settlement of disputes, his delegation agreed with those who felt it necessary to provide for a satisfactory procedure. In view of the importance of the matter covered by the draft articles, it would be most helpful to have a conciliation procedure for cases where a dispute could not be settled by direct negotiation.

1543rd meeting, para. 8.

AUSTRALIA

Written comments 1975

The Australian Government is also in favour of provisions covering the settlement of disputes in any draft Convention governing the succession of States to treaties.

BANGLADESH

Oral comments 1975

The representative of Bangladesh stated:

His delegation believed that there should be an independent provision in the draft articles covering the settlement of disputes arising out of the interpretation or application of a future convention.

1547th meeting, para. 15.

BELGIUM

Written comments 1975

The Belgian Government regrets that the draft makes no provision for the settlement of disputes that might arise over the application or interpretation of the complex rules governing the succession of States in respect of treaties. It agrees that it would be natural, in a convention designed to complete the codification of the law of treaties, to adopt a procedure for the settlement of disputes based upon or similar to those of the Vienna Convention of the Law of Treaties.

BOLIVIA

Oral comments 1975

The representative of Bolivia stated:

... many Governments, including his own, had requested that the draft include provisions relating to procedures for the settlement of disputes. A valuable precedent could be found in the existing provisions of the Vienna Convention on the Law of Treaties.
1530th meeting, para. 18.

BOTSWANA

Oral comments 1975

The representative of Botswana stated:

His delegation supported those who had stressed the need for the proposed article 32, on settlement of disputes.
1547th meeting, para. 34.

BRAZIL

Oral comments 1975

The representative of Brazil stated:

The other pending question dealt with a machinery for the settlement of disputes.

...

The conciliation procedure provided for in the Annex to the Vienna Convention on the Law of Treaties was one possibility; the one embodied in the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons including Diplomatic Agents was another; other avenues could be explored.

1526th meeting, para. 27.

Written comments 1976

The Brazilian Government approves of the decision of /leaving/ the solution of the question dealing with the settlement of disputes, ... to a conference of plenipotentiaries ... Since the formulations already exist, the governments attending the Conference of plenipotentiaries will have only to opt for the alternative they prefer.

CANADA

Oral comments 1974

The representative of Canada stated:

Should the topic be codified as a convention, provision for settlement of disputes would be desirable. Canada favoured procedures which would be compulsory rather than merely optional and would support a conciliation procedure followed, if unsuccessful, by compulsory recourse to either the International Court of Justice or to arbitration, with a decision to be binding on the parties.

1489th meeting, para. 41.

Oral comments 1975

The representative of Canada stated:

With regard to the question of dispute settlement procedures, his delegation believed that, if the draft articles eventually took the form of a convention, that convention must include provisions on that matter. Ideally, those provisions would provide for conciliation to be followed, if necessary, by compulsory and binding third-party adjudication: As an absolute minimum, however, the dispute settlement provisions should correspond to those found in the Vienna Convention, to which any convention on State succession in respect of treaties would be closely related. Any discussion of dispute settlement procedures would, in all probability, turn on whether there was to be provision for compulsory and binding third-party arbitration, which in turn would lead to a discussion of whether and in what circumstances binding arbitration was compatible with the concept of the sovereign equality of States.

1535th meeting, para. 6.

DENMARK

Oral comments 1974

The representative of Denmark stated:

The compatibility test was frequently used in the draft articles... the Danish Government ...

... was in favour of the addition of a provision on the settlement of disputes. The many questions left open by the compatibility test confirmed the need for such a provision.

1491st meeting, para. 38.

Written comments 1975

As to the proposed draft article on a procedure for the settlement of disputes, it is the opinion of the Danish Government, as expressed in its earlier written observations, that the draft ought to be supplemented by provisions on the settlement of disputes stemming from the application or interpretation of the draft rules. The Danish Government supports the view that, in a convention which is supposed to be supplementary to the Vienna Convention on the Law of Treaties, it would be right to adopt procedures for the settlement of disputes based on the provisions of that Convention. Consequently, the Danish Government is in favour of the present wording of the proposed draft article on this subject and of the proposed annex.

ECUADOR

Oral comments 1974

The representative of Ecuador stated he:

... felt that provisions on the settlement of disputes arising from the application of the articles should be included in them.

1494th meeting, para. 40.

Oral comments 1975

The representative of Ecuador stated:

The question of the settlement of disputes depended on whether the final document took the form of a convention or some other form, since only a convention would contain provisions on that question. Moreover, such provisions should be the same as those contained in the Vienna Convention on the Law of Treaties concerning the settlement of disputes.

1530th meeting, para. 26.

EGYPT

Oral comments 1975

The representative of Egypt stated:

His delegation favoured inclusion in the draft articles of a provision on the settlement of disputes which was compatible with the provisions of the Vienna Convention and which, at the same time, did not ignore the possibility of resorting to the International Court of Justice if other means failed. General Assembly resolution 3232 (XXIX) drew attention to the advantage of including in treaties clauses providing for the submission to the Court of disputes which might arise from their interpretation or application, and that tendency should be encouraged. A good example was the fact that Morocco, Mauritania and Spain had had recourse to the Court as a means of resolving their dispute concerning the Spanish Sahara.

1537th meeting, para. 10.

FINLAND

Oral comments 1974

The representative of Finland stated:

With regard to paragraph 81 of the Commission's report, his delegation felt that it would be desirable for a convention on succession of States in respect of treaties to contain provisions governing the settlement of disputes that might arise from the interpretation or the application of its articles; however, he proposed that that question should be left for a decision by the conference of plenipotentiaries.

1486th meeting, para. 22.

FRANCE

Written comments 1975

... with regard to the draft article concerning the settlement of disputes, the French Government considers that the question would only arise if the draft articles finally took the form of a convention.

GERMANY, FEDERAL REPUBLIC OF

Oral comments 1974

The representative of the Federal Republic of Germany stated:

His Government had noted with great interest Mr. Kearney's proposal for a mandatory procedure for the settlement of disputes, modelled on the conciliation procedure in article 66 of the Vienna Convention on the Law of Treaties.

1490th meeting, para. 35.

Written comments 1975

The Government of the Federal Republic of Germany, welcomes the proposal that provisions governing the settlement of disputes should be incorporated in the draft, modelled on article 66 of the Vienna Convention on the Law of Treaties.

It will be recalled that the International Law Commission itself offered to consider the question at its twenty-seventh session in 1975 and to prepare a report thereon. In fact, a supplement of the draft by provisions concerning third-party settlement would be closely related to the subject-matter of the convention's operative part; it cannot, therefore, be treated as a mere formality reserved for the final clauses but must be seen in the proper framework of given obligations and sanctions. It is indispensable that the convention should provide for the settlement of disputes between States parties because the draft contains a number of rather vague and complex terms and rules, the interpretation of which must give rise to doubts and differences; this is especially true of the application of the test formulas for establishing whether the continued operation of a treaty in respect of a successor State would be incompatible with its object and purpose, or whether it would radically change the conditions for the operation of the treaty. But other provisions of the draft as well may give rise to differing interpretations by the parties to a treaty so that it seems imperative to establish procedures for the impartial settlement of disputes.

The (second) proposal by Mr. Kearney amounts to conciliation procedure that ought to be acceptable even to those States who are opposed to the mandatory settlement of disputes. In the view of the Government of the Federal Republic of Germany, it will, however, be necessary to examine whether this mode of settlement will be adequate for coping with all possible disputes, or whether, in certain situations, a more cogent procedure would be preferable where conciliation fails. Provisions might be made for the submission of the issue to an arbitral tribunal or the International Court of Justice.

In any case, legally founded decisions of the arbitration body to be created are to be preferred since the greater authority of such a decision could secure a wider field of application, thus dispensing with the need to prescribe binding force vis-à-vis third States, which is hardly possible within the context of the present convention.

Considering the importance of this matter, it is suggested that reservations with respect to the relevant articles be barred lest parties apply the present convention to a treaty in their interest without at the same time submitting to an impartial arbitration procedure.

Oral comments 1975

The representative of the Federal Republic of Germany stated:

His Government welcomed the suggestion that the draft should include rules governing the settlement of disputes. Such clauses were indispensable in view of the considerable number of complex and insufficiently defined terms and rules which might give rise to differences in interpretation. Mr. Kearney's proposal of a new article 32 (see A/9610/Rev.1, foot-note 58) should meet with the

approval of all States, even those which were opposed to a mandatory settlement of disputes. It would, however, be necessary to examine whether the settlement procedure suggested by him would be adequate in all cases of dispute or whether, under certain conditions, a more cogent procedure might have to be followed. Provision might be made for the issue to be referred to an arbitration tribunal or to the International Court of Justice.

1526th meeting, para. 15.

GHANA

Oral comments 1975

The representative of Ghana stated:

On the question of the settlement of disputes it would appear reasonable to adopt a system analogous to the one provided in the Vienna Convention on the Law of Treaties, which the proposed convention was designed to supplement. However, his delegation had no fixed opinion on that matter as yet.

1526th meeting, para. 50.

GREECE

Oral comments 1974

The representative of Greece stated:

His delegation agreed on the need for some procedure for the settlement of disputes which might arise out of the interpretation and application of a future convention based on the draft articles. The draft article proposed by Mr. Kearney (see foot-note 58 of the report) would meet that need only minimally. In his delegation's view, the proposed conciliation procedure should be supplemented by a clause providing for arbitral or judicial settlement in the event of failure to settle a dispute through conciliation.

1493rd meeting, para. 5.

Oral comments 1975

The representative of Greece stated:

His delegation was in favour of the establishment of a procedure for the settlement of disputes that might arise from the interpretation and application of the draft articles.
1537th meeting, para. 18.

INDONESIA

Oral comments 1975

The representative of Indonesia stated:

Referring to the proposed article 32 (see A/9610/Rev.1, foot-note 58), he said that one important feature of the conciliation procedure set out in that draft article was its non-binding character which, in many cases, was considered more effective--and therefore more attractive--than a compulsory procedure. The proposed article, together with its annex, was a sound proposal worthy of serious consideration.

1537th meeting, para. 45.

IRAN

Oral comments 1974

The representative of Iran stated:

It would ... be appropriate to include provisions relating to the settlement of disputes ...
1494th meeting, para. 50.

ISRAEL

Oral comments 1975

The representative of Israel stated:

As
to the settlement of disputes, his delegation was of the view
that an article on that issue should be included in the draft.
1546th meeting, para. 8.

ITALY

Oral comments 1974

The representative of Italy stated:

With regard to the ... proposal in foot-note 58
many provisions of the final draft made reference to the
"object and purpose" of treaties in order to determine
whether or not such treaties could apply to successor
States, but given the imprecision of the term "object and
purpose" those provisions could be correctly applied only if
there existed a body responsible for interpreting them and
settling any disputes arising out of their application. His
delegation considered the establishment of such a body
essential, and found considerable merit in the proposal set
out in foot-note 58. That proposal referred only to
conciliation and should arouse no misgivings among the
States which were opposed to the judicial settlement of
disputes.

1484th meeting, para. 54.

JAPAN

Oral comments 1974

The representative of Japan stated:

With regard to the
question of the settlement of disputes, his delegation
wished to emphasize the importance of including a provi-
sion which established certain compulsory procedures for
settlement, because the rules on succession of States in
respect of treaties were bound to be complex and diffi-
culties might well arise in applying them.

1487th meeting, para. 22.

Oral comments 1975

The representative of Japan stated:

His delegation had always preferred a clear and, if possible, compulsory procedure for the settlement of disputes and believed that the addition to the draft of such a clause would certainly improve it.

1546th meeting, para. 28.

JORDAN

Oral comments 1974

The representative of Jordan stated:

His delegation supported the position that the draft articles should incorporate satisfactory provisions for the settlement of disputes and in that context noted operative paragraph 2 of draft resolution A/C.6/L.987/Rev.2 just adopted on item 93. *

1492nd meeting, para. 76.

MADAGASCAR

Oral comments 1974

The representative of Madagascar stated:

The distinction with regard to multilateral treaties in general would naturally give rise to difficulties and provisions covering dispute settlement procedures should be incorporated in the draft.

1495th meeting, para. 47.

* This draft resolution became General Assembly resolution 3232 (XXIX) of 12 November 1974.

MEXICO

Written comments 1975

It would be useful if the draft articles included an article on the settlement of disputes following the lines of article 66 of the Vienna Convention.

MOROCCO

Oral comments 1975

The representative of Morocco stated:

With reference
to the proposed article 32 relating to the settlement of
disputes, it should be noted that that question would arise
only if the draft finally took the form of a convention.

1545th meeting, para. 33.

NETHERLANDS

Oral comments 1974

The representative of the Netherlands stated:

The application of article 33, paragraph 3, could cause serious problems in that respect. Those considerations made it all the more necessary to adopt provisions concerning the settlement of disputes and his delegation therefore fully supported draft article 32, the text of which was in foot-note 58.
1494th meeting, para. 18.

Written comments 1975

It certainly needs no argument that any set of rules governing international relations without an effective procedure for the settlement of disputes relating to its interpretation and application is incomplete. The above-mentioned uncertainties as to the correct interpretation of several terms in the draft articles may well illustrate the necessity for adequate provisions in this field. The article on dispute settlement, drafted by one member of the International Law Commission offers a valuable starting-point. In the view of the Netherlands Government, the proposed procedure could gain strength by adding a provision to

the effect that one of the parties to the dispute may request a final judgement from the International Court of Justice, in case the conciliation-procedure would not result in a solution accepted by all parties concerned within a certain period.

A further amelioration could be found by following the lines of the draft procedure on disputes settlement as has been informally proposed for inclusion in a future Convention on the Law of the Sea. Under this system, a Contracting Party, when ratifying or otherwise expressing its consent to be bound by the Convention, may make a declaration that it accepts, in relation to disputes concerning the interpretation or application of the Convention, the jurisdiction of the International Court of Justice or an arbitral tribunal.

Either of these procedures may be resorted to by either party to the dispute, if the dispute is not settled by conciliation, or if a conciliation procedure is already in advance deemed to be fruitless by the parties to the conflict. The question put to the International Court of Justice or the arbitral tribunal for final decision should only concern the question whether a certain treaty is still in force between the parties to the conflict following a State succession.

Oral comments 1975

The representative of the Netherlands stated:

His Government's views regarding the important question of the settlement of disputes had already been made known. A procedure for that purpose was needed, for a realistic assessment of the issues covered by the draft articles easily revealed their potentially explosive character. Several suggestions had been made with regard to an effective procedure, ranging from bilateral negotiations to submission to the International Court of Justice. Governments should therefore consider which of the existing formulas they preferred to be included in a future convention. If, however, Governments preferred the draft article on the settlement of disputes as proposed by one member of ILC, a provision should be inserted to the effect that either party to a dispute relating to interpretation or application of the draft articles could submit it to the International Court of Justice for a decision in cases where a previous conciliation procedure would not produce a final settlement. In that connexion, he recalled the provisions of paragraph 2 of General Assembly resolution 3232 (XXIX).

1535th meeting, para. 19.

NEW ZEALAND

Oral comments 1975

The representative of New Zealand stated:

Regarding the second proposal, his delegation considered the inclusion of a provision on the settlement of disputes to be important. As was pointed out in paragraph 79 of the report of ILC on its twenty-sixth session, in many cases the draft articles laid down tests which could give rise to difficulties in their application. The draft article proposed to ILC set out in foot-note 58 of that report, appeared to his delegation to be a sensible provision which was consistent with the view that the draft articles drawn up by ILC would form the missing chapter of the Vienna Convention on the Law of Treaties.

1535th meeting, para. 24.

PARAGUAY

Oral comments 1975

The representative of Paraguay expressed

... regret that no provision was made in the draft for any machinery for the peaceful settlement of disputes arising as a result of the interpretation or application of the rules governing the succession of States in respect of treaties. Such machinery could be provided for in the text of the draft, or an additional protocol drawn up to rectify that deficiency. The procedures involved should be based on the Vienna Convention on the Law of Treaties.

1530th meeting, para. 34.

PHILIPPINES

Oral comments 1975

The representative of the Philippines stated:

With regard to the settlement of disputes referred to in the proposed article 32, he considered that any convention concerning the codification of the law of treaties should provide for a procedure for the settlement of disputes that might arise over its application or interpretation.

1549th meeting, para. 66.

POLAND

Written comments 1975

On the other hand, however, the Government of the Polish People's Republic is not in a position to accept at this stage the second proposal. In the opinion of the Government of the Polish People's Republic, the problem of establishing the right procedure for settling disputes should be solved in accordance with the existing practice at a diplomatic conference of plenipotentiaries.

SOMALIA

Oral comments 1974

The representative of Somalia considered it desirable

... to prepare provisions on the settlement of disputes.
1495th meeting, para. 29.

Oral comments 1975

The representative of Somalia stated:

There was, furthermore, a need to incorporate in the draft articles a separate article providing for adequate arbitration and conciliation procedures.

1540th meeting, para. 7.

SRI LANKA

Oral comments 1975

The representative of Sri Lanka stated:

With regard to proposed article 32 (... foot-note 58), his delegation was of the view that, since the proposed convention on succession of States in respect of treaties was necessarily complementary to the Vienna Convention on the Law of Treaties, provisions similar to those contained in the Vienna Convention might be appropriate for inclusion in the proposed convention.

1538th meeting, para. 62.

SWAZILAND

Oral comments 1975

The representative of Swaziland stated:

On the question of the settlement of disputes, the conciliation procedure provided for in the proposed article 32 merited serious study.

1549th meeting, para. 26.

SWEDEN

Oral comments 1974

The representative of Sweden stated:

It ... seemed highly advisable to establish an effective procedure for the settlement of disputes arising from the application of the articles.

1489th meeting, para. 26.

Written comments 1975

The reasons, referred to in paragraphs 79 and 80 of the Commission's report, why a procedure for the settlement of disputes is needed, are weighty. It is undeniable that the draft articles "in many instances lay down tests which are considered by the Commission to be right in principle, but which may lead to difficulties in their application". It would furthermore seem reasonable and consistent in articles intended to be "supplementary to the Vienna Convention on the Law of Treaties" to provide for "procedures for the settlement of disputes based on the provisions of that Convention".

Oral comments 1975

The representative of Sweden stated:

As to the second proposal, his delegation deemed it essential that provisions on that subject should be included in the draft articles.

1526th meeting, para. 28.

TURKEY

Oral comments 1974

The representative of Turkey stated:

It would ... be desirable to include one or more provisions relating to the settlement of disputes which might arise as a result of the application of the draft.

1494th meeting, para. 45.

UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND

Oral comments 1974

The representative of the United Kingdom stated:

The other point concerned the settlement of disputes. His Government strongly favoured the inclusion of provisions for the settlement of disputes arising out of the application or interpretation of a convention on the topic. Such procedures should be compulsory rather than merely optional. His Government had reached no firm conclusion regarding the particular procedures which might be chosen and thought that the question was one which merited further study: different settlement procedures might indeed prove to be desirable in relation to different kinds of questions which might arise from the draft articles. Not least in view of operative paragraph 2 of draft resolution A/C.6/L.987/Rev.2, which the Committee had adopted at its previous meeting on item 93, his Government would expect that recourse to the International Court of Justice would be among the procedures to be considered.

1493rd meeting, para. 16.

Written comments 1975

The United Kingdom Government welcome the two new proposals on general multilateral treaties and on the settlement of disputes which are referred to in paragraph 75 of the Commission's report on its twenty-sixth session and set out in the foot-notes to paragraphs 76 and 79. In their view, articles of the kind proposed would add to the utility of a convention.

Oral comments 1975

The representative of the United Kingdom stated:

His Government considered it highly desirable that there should be appropriate provisions for the settlement of disputes.

...

The proposal contained in the report of ILC on its twenty-sixth session might not be sufficient in itself to cover the wide variety of disputes which might arise from the provisions of the proposed draft articles, particularly in view of the necessarily broad nature of some of the definitions contained in the draft. It might also be advisable to provide for the submission of certain kinds of disputes to arbitration or to the International Court of Justice.

1536th meeting, para. 12.

UNITED REPUBLIC OF CAMEROON

Oral comments 1975

The representative of the United Republic of Cameroon stated:

Because of the complexity of its provisions and the interests which it attempted to reconcile, the future convention on succession of States in respect of treaties would undoubtedly give rise to different interpretations. Consequently, his delegation supported the idea of including a provision on settlement of disputes and felt that the proposed article 32 was worthy of consideration. The difficulties which might arise in the implementation of the convention could be resolved reasonably by conciliation. Any other system of peaceful settlement might create serious difficulties for his delegation, for reasons which it had already explained in the Committee at the twenty-ninth session (1492nd meeting), in the debate on the item relating to the review of the role of the International Court of Justice.

1537th meeting, para. 53.

UNITED REPUBLIC OF TANZANIA

Oral comments 1974

The representative of the United Republic of Tanzania stated:

The question whether or not to include provisions concerning the settlement of disputes was one of the most vexing issues facing the international community and one to which it should give special attention. The proposal contained in foot-note 58 of the Commission's report was not the best solution, even though it could provide a considerable improvement over the existing situation. The international community had reached the stage where it must not only consider the possibility of elaborating procedures for the settlement of disputes, but must also consider the possible necessity of providing for an element of compulsion. Its main concern, however, should be to devise a procedure that would be effective, whether that involved compulsory measures or not.

1496th meeting, para. 28.

UNITED STATES OF AMERICA

Oral comments 1974

The representative of the United States stated:

He regretted, however, that the Commission had not completed its work on the provisions concerning settlement of disputes. A draft article could at the least have been included along the lines of the Vienna Convention on the Law of Treaties, and perhaps giving a greater role to the International Court of Justice. In that connexion, he drew the Commission's attention to operative paragraph 2 of the draft resolution on agenda item 93, concerning Review of the Role of the International Court of Justice, which the Committee had adopted by consensus, and stated that any draft the Commission produced which did not contain adequate dispute settlement provisions was an incomplete piece of work.

1494th meeting, para. 24.

Written comments 1975

The second course would be to set up a system for settling disputes that arise under the treaty. Any objections to a notification of succession could then be handled under the disputes-settlement system. The Commission's report indicates that it gave some consideration to including provisions on disputes-settlement in the draft articles, but reached no decision owing to lack of time. Instead the Commission offered, if requested, to consider the matter at its next session and to prepare a report thereon. The United States would not consider it necessary for the Commission to reconsider the matter. Inasmuch as the present draft articles should be considered as having a close relationship to the Vienna Convention on the Law of Treaties, it would be appropriate to use the same procedures as are provided in the Vienna Convention for dealing with disputes regarding the validity of treaties.

Article 66 of the Vienna Convention provides for questions regarding jus cogens to be referred to the International Court of Justice and other questions to be decided by a conciliation procedure. As there are no issues in the present articles comparable in fundamental importance to determining the existence and content of a peremptory norm of international law, the conciliation procedure in the annex to the Vienna Convention on the Law of Treaties could be incorporated in the present articles in substantially identical language. However, there are States which do prefer determination by judicial procedure or arbitration rather than by conciliation. There would not appear to be any substantial reason why States that preferred judicial or arbitral determination should not be able, under the convention, to use that system in disputes among themselves, while conciliation would be the procedure applicable in all other cases. To achieve this result, the annex to the Vienna Convention and article 13 of the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents (General Assembly resolution 3166 (XXVIII)), could be combined.

Oral comments 1975**The representative of the United States stated**

With regard to the question of the settlement of disputes, he considered that it was essential that the proposed convention should provide for a procedure in that respect. The convention could stipulate that all questions relating to its interpretation or application be subject to the jurisdiction of the International Court of Justice. Only the Court would be able to ensure equality of treatment for all countries, rich and poor, large and small, and create a body of jurisprudence which could guide the actions of all States. Since the draft had been prepared in the light of the observations of so many Governments and since it was to become an instrument open for the signature of all States, he did not believe that the objections raised by some to the application of a binding procedure for the settlement of disputes would be valid. He believed that, should the international community consider that it was not at a sufficiently advanced stage of development to accept that solution, there would be grounds for adopting, as a bare minimum, the conciliation and arbitration procedure provided for in the Vienna Convention on the Law of Treaties.

1526th meeting, para. 10.

c. The "compatibility test" and the question of
the radical change of the conditions for the
operation of the treaty

GERMANY, FEDERAL REPUBLIC OF

Written comments 1975

the Government of the Federal Republic of Germany
... suggests that where exceptional circumstances are invoked (e.g. the compatibility test) the convention include a general obligation for parties to multilateral treaties to lodge a formal objection to the exercise of rights of option so as to establish clearly that treaty relations between the objecting State and the successor State are not accepted. Accordingly, this should also apply where a newly emerging State, on the ground of exceptions stipulated in the treaty, declines to continue the application of a treaty that has hitherto been in force in respect of its territory. Such declarations would then have to be made within certain time-limits established to this end.

...

Various provisions of the draft contain the formula "or would radically change the conditions for the operation of the treaty" which is an adaptation of the language of article 62, paragraph 1 (b), of the Vienna Convention; that article refers to a "fundamental change of circumstances". Evidently, in many cases the very fact of State succession may in itself affect and even essentially change the balance of mutual rights and obligations, especially where bilateral treaties are concerned. A fundamental change of circumstances within the meaning of article 62 of the Vienna Convention would therefore be invoked by many States concerned with succession so as to evade the continued application of treaties. The question may thus arise whether this clause of the draft is to be considered as lex specialis excluding the application of article 62 of the Vienna Convention. The draft ought to make it more clear if the aim is not to establish an exclusion from the general rules of treaty law. It would seem advisable to outline in a general clause the legal consequences of a radical change of circumstances in connexion with State succession so as to avoid any difficulties of interpretation.

See also in the subsection on article 19 supra the statement by the Federal Republic of Germany reproduced under written comments 1975.

NETHERLANDS

Written comments 1975

In connexion with a major exception to the rule of continuity, to wit the possibility of invoking a "fundamental change of circumstances", the Netherlands Government maintains its preference for formulating this principle in an umbrella-article at the beginning of the draft. In addition, it must be observed, the present phrasing of this exception, as well as the phrasing of its twin, to wit "incompatibility with the object and purpose of a treaty" (for instance, in art. 16, para. 2, art. 17, para. 3 and art. 18, para. 3) does not exclude uncertainty as to their correct interpretation, notably with regard to the question by whom and under which conditions these exceptions may be invoked.

UNITED STATES OF AMERICA

Written comments 1975

On the other hand, the United States wishes to renew its expression of concern that no provision is made in the draft articles regarding the effect of an objection to a notification of succession on the ground that such succession would be incompatible with the object and purpose of the treaty and notes that the problem has become more troublesome with the addition to article 16 of the further qualification if the succession "would radically change the conditions for the operation of the treaty". These same qualifications appear in article 17 on participation in treaties not in force at the date of the succession of States; in article 18 on participation in treaties signed by the predecessor State subject to ratification, acceptance or approval; in article 29 on newly-independent States formed from two or more territories; in articles 30, 31 and 32 on the effects of a uniting of States, in respect of treaties in force at the date of the succession of States, in respect of treaties not in force at the date of the succession of States in respect of treaties signed by a predecessor State subject to ratification, acceptance or approval; in articles 33 and 34 on succession of States in cases of separation of parts of a State and the position if a State continues after separation of part of its territory; and in articles 35 and 36, concerning the effects, as regards succession, of separation of parts of a State on treaties not in force for the predecessor State to which that State had expressed its consent to be bound and on treaties signed by the predecessor State subject to ratification, acceptance or approval.

It would appear likely that objections to notifications of succession will be made on the basis of the qualifications common to the 11 articles mentioned in the preceding paragraph. Common sense would indicate that provision should be made for dealing with such objections. Two methods are available. One would be to write rules regarding the effect of objections into the draft articles. The Commission rejected the first course and possibly with good reason. It would be difficult to work out, in the abstract, rules for disposing of objections to notifications of succession in view of the myriad of differing treaty relationships that might be affected.

...

The second course would be to set up a system for settling disputes that arise under the treaty. Any objections to a notification of succession could then be handled under the disputes settlement system.

Oral comments 1975

The representative of the United States stated:

With regard to the question of notification of succession to multilateral treaties, he regarded the approach taken in the draft as satisfactory. His delegation, however, continued to believe that provisions should be included regarding the effect of objections to a notification of succession on the grounds that that succession would be incompatible with the object and purpose of the treaty. In that respect his delegation maintained the views which its Government had already expressed (see A/10198).

1526th meeting, para. 9.

D. The relationship between the draft articles
and the Vienna Convention on the Law of Treaties

MEXICO

Written comments 1975

As a general comment, it is considered that an express reference should be made in the draft articles to the Vienna Convention on the Law of Treaties in terms similar to those which appear in the International Law Commission's report: "the draft articles should be understood and applied in the light of the rules of international law relating to treaties, and in particular of the rules of law stated in the Vienna Convention ... matters not regulated by the draft articles would be governed by the relevant rules of the law of treaties."

E. Preamble

GERMANY, FEDERAL REPUBLIC OF

Written comments 1975

Preamble: The preamble should embody the basic principles mentioned in section II, paragraph 4 above as guidelines for the application of the convention's provisions to follow. The emphasis should be on ensuring the continuity and stability of the existing fabric of treaty relations, especially on the favor contractus concept.

See also in the subsection on article 15 supra the statement by the Federal Republic of Germany reproduced under Oral comments 1974.