A/CONF.80/16/Add.1

UNITED NATIONS CONFERENCE ON SUCCESSION OF STATES IN RESPECT OF TREATIES

Resumed session
Vienna, 31 July–23 August 1978

OFFICIAL RECORDS
Volume II

Summary records of the plenary meetings
and of the meetings
of the Committee of the Whole

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New York, 1979

INTRODUCTORY NOTE

This volume contains the summary records of the plenary meetings and of the meetings of the Committee of the Whole held during the resumed session of the Conference. The summary records of the 1977 session will be found in a separate volume, and a third volume contains the documents of the Conference.

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The summary records of the plenary meetings were originally circulated in mimeographed form as documents A/CONF.80/SR.9 to SR.15 and those of the Committee of the Whole as documents A/CONF.80/C.1/SR.37 to SR.57. They include the corrections to the provisional summary records that were requested by delegations and such editorial changes as were considered necessary.

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Symbols of United Nations documents are composed of capital letters combined with figures. Mention of such a symbol indicates a reference to a United Nations document.

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Bearing in mind General Assembly resolution 3496 (XXX) of 15 December 1975 by which the General Assembly decided to convene a conference of plenipotentiaries in 1977 to consider the draft articles on succession of States in respect of treaties, adopted by the International Law Commission at its twenty-sixth session, and to embody the results of its work in an international convention and such other instruments as it might deem appropriate.

Having met in Vienna from 4 April to 6 May 1977, in accordance with General Assembly resolution 31/18 of 24 November 1976,

Expressing its deep appreciation and gratitude to the Government of Austria for making possible the holding of the Conference in the capital of Austria,

Noting that due to the intrinsic complexity of the subject-matter it has not been possible for the Conference in the time available to conclude its work and to adopt an international convention and other appropriate instruments, as requested by the General Assembly in the above-mentioned resolution,

Taking note of the statement of the representative of Austria that the invitation of the Government of Austria referred to in General Assembly resolution 31/18 would extend to a resumed session of the Conference, which would make it possible for the Conference to continue its work in Vienna in 1978,

Convinced that one more session would enable it to conclude its work as envisaged by the General Assembly,

1. *Adopts* the report on its work for the period 4 April to 6 May 1977;

2. *Requests* the Secretary-General to transmit that report to the General Assembly at its thirty-second session;

3. *Recommends* that the General Assembly decide to reconvene the Conference in the first half of 1978, preferably in April in Vienna, for a final session of four weeks.

7th plenary meeting
6 May 1977

Resolution 32/47, 8 December 1977

UNITED NATIONS CONFERENCE ON SUCCESSION OF STATES IN RESPECT OF TREATIES

The General Assembly,

Recalling its resolution 3496 (XXX) of 15 December 1975, by which it decided to convene a conference of plenipotentiaries in 1977 to consider the draft articles on succession of States in respect of treaties, adopted by the International Law Commission at its twenty-sixth session,* and to embody the results of its work in an international convention and such other instruments as it might deem appropriate,

Recalling further its resolution 31/18 of 24 November 1976, by which, after noting that an invitation had been extended by the Government of Austria to hold the United Nations Conference on Succession of States in Respect of Treaties at Vienna, it had decided that the Conference would be held in that city,

Noting that the Conference met at Vienna from 4 April to 6 May 1977, in accordance with the above-mentioned resolutions, but that it was not possible in the time available for the Conference to conclude its work and to adopt an international convention and other appropriate instruments, as requested by the General Assembly,

Noting further the view of the Conference that one more session would enable it to conclude its work as envisaged by the General Assembly,

Bearing in mind the recommendation unanimously adopted by the Conference that it should be reconvened at Vienna for a final session of four weeks,

Taking into account the invitation of the Government of Austria, accepted by the General Assembly in resolution 31/18, which extends also to a resumed session of the Conference,**

1. *Takes note* of the report of the United Nations Conference on Succession of States in Respect of Treaties;***

2. *Approves* the convening of a resumed session of the United Nations Conference on Succession of States in Respect of Treaties at Vienna for a period of three weeks, from 31 July to 18 August 1978, with a possible extension

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

** See A/32/141/Add.1.

*** A/CONF.80/15.

of up to one further week should this prove necessary in the view of the Conference;

3. *Requests* the Secretary-General to make the necessary arrangements, as provided under General Assembly resolution 31/18, for the efficient servicing of the Conference;

4. *Expresses its firm conviction* that the Conference will thus conclude its work and adopt an international convention and other appropriate instruments as requested by the General Assembly.

97th plenary meeting
8 December 1977

OFFICERS OF THE CONFERENCE AND ITS COMMITTEES

President of the Conference

Mr. Karl Zemanek (Austria).

Vice-Presidents of the Conference

The representatives of the following States: Argentina, Barbados (1977 session), Bulgaria, Cuba, Ethiopia, France, India, Indonesia, Ireland, Italy, Ivory Coast, Malaysia, Mexico, Morocco, Pakistan, Romania, Sudan, Trinidad and Tobago (resumed session), Turkey, Union of Soviet Socialist Republics, United Kingdom of Great Britain and Northern Ireland, United States of America and Zaire.

General Committee

Chairman: The President of the Conference

Members: The President and Vice-Presidents of the Conference, the Chairman of the Committee of the Whole and the Chairman of the Drafting Committee.

Committee of the Whole

Chairman: Mr. Fuad Riad (Egypt)

Vice-Chairman: Mr. Jean-Pierre Ritter (Switzerland)

Rapporteur: Mr. Abdul Hakim Tabibi (Afghanistan) (1977 session) Mrs. Kuljit Thakore (India) (resumed session).

Drafting Committee

Chairman: Mr Mustafa Kamil Yasseen (United Arab Emirates)

Members: The Chairman of the Drafting Committee, Australia, Cuba, Democratic Yemen, France, Guyana, Ivory Coast, Japan, Kenya, Spain, Swaziland, Union of Soviet Socialist Republics, United Kingdom of Great Britain and Northern Ireland, United States of America and Yugoslavia.

The Rapporteur of the Committee of the Whole participated *ex officio* during the 1977 session and at the resumed session in the work of the Drafting Committee in accordance with rule 47 of the rules of procedure of the Conference.

Credentials Committee

Chairman: Mr. José Sette Câmara (Brazil)

Members: Brazil; Chile; Germany, Federal Republic of; Nigeria; Philippines; Qatar; Sudan; Sweden and Union of Soviet Socialist Republics.

Expert Consultant

Sir Francis Vallat, Special Rapporteur on succession of States in respect of treaties, International Law Commission.

SECRETARIAT OF THE CONFERENCE AT THE RESUMED SESSION*

Mr. Erik Suy, Under-Secretary-General, Legal Counsel of the United Nations *(Representative of the Secretary-General of the United Nations).*

Mr. Valentin A. Romanov, Director, Codification Division, Office of Legal Affairs *(Executive Secretary of the Conference).*

Mr. Santiago Torres-Bernárdez, Deputy Director, Codification Division, Office of Legal Affairs *(Deputy Executive Secretary of the Conference; Secretary of the Committee of the Whole).*

Mr. Eduardo Valencia Ospina, Office of Legal Affairs *(Assistant Secretary of the Conference; Secretary of the Drafting Committee).*

Mr. Moritaka Hayashi, Office of Legal Affairs *(Assistant Secretary of the Drafting Committee).*

Mr. Roberto Lavalle, Office of Legal Affairs *(Assistant Secretary of the Drafting Committee).*

Mr. Raymond Sommereyns, Office of Legal Affairs *(Secretary of the Credentials Committee; Assistant Secretary of the Committee of the Whole).*

Mr. Alexander Borg Olivier, Office of Legal Affairs *(Assistant Secretary of the Committee of the Whole).*

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* For the secretariat of the Conference at the 1977 session, see *Official Records of the United Nations Conference on Succession of States in Respect of Treaties*, vol. I, *Summary records of the plenary meetings and of the meetings of the Committee of the Whole* (United Nations publication, Sales No. E.78.V.8), p. xii.

AGENDA

The agenda adopted by the Conference at its 1977 session applied to the proceedings of the resumed session.*

RULES OF PROCEDURE

The rules of procedure adopted by the Conference at its 1977 session applied to the proceedings of the resumed session.**

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* For the text, see *Official Records of the United Nations Conference on Succession of States in Respect of Treaties,* vol. I, *Summary records of the plenary meetings and of the meetings of the Committee of the Whole* (United Nations publication, Sales No. E.78.V.8), p. xiii.

** For the text, *see Official Records of the United Nations Conference on Succession of States in Respect of Treaties*... (*op. cit.*), pp. xiv-xviii.

9th PLENARY MEETING[1]

Monday, 31 July 1978, at 11.25 a.m.

President: Mr. ZEMANEK (Austria)

Opening of the resumed session by the President of the Conference

1. The PRESIDENT, after welcoming the participants, reminded the Conference that when it had begun its work in 1977, not all of those present had been optimistic about the outcome. The subject under consideration had given rise to too many, mostly opposing, theoretical concepts, and the apparently conflicting military, political and economic interests of States had not augured well for an expeditious and widely acceptable result. Yet the achievements told a different story: 25 of the International Law Commission's 39 draft articles had been adopted by the plenary Conference, including nearly all the articles relating to newly independent States; key provisions, such as articles 16, 17 and 23, had been approved without a vote, both in the Committee of the Whole and in the plenary Conference. Only seven articles had been voted on, in whole or in part, in the Committee of the Whole, and three in plenary meetings. Only two amendments, both largely of a clarifying nature, had been adopted, one relating to paragraph 1 of article 20 and the other to paragraph 1 (*b*) of article 28. Even the drafting changes which the Drafting Committee had considered necessary had been few and of minor importance.

2. Those accomplishments had been made possible by the untiring efforts and spirit of co-operation of the members of the Committee of the Whole and the Drafting Committee, with the valuable assistance of the Secretariat. But they were also proof of the exceptional quality of the International Law Commission's draft, for which credit was due, in particular, to the two Special Rapporteurs who had been successively entrusted with the topic: Sir Humphrey Waldock and Sir Francis Vallat.

3. But in spite of those impressive results, a tremendous amount of work remained to be done, especially as the General Assembly, in resolution 32/47, had expressed its firm conviction that the Conference should conclude its work and adopt an international convention and other appropriate instruments at the present session. The Conference still had to examine 10 articles of the International Law Commission's draft, as well as proposals for three new articles. It had to conclude consideration of article 2, which had been postponed until the substantive articles had been adopted. Furthermore, it had to formulate and adopt the texts of a preamble and final clauses, whose preparation had been entrusted to the Drafting Committee. Finally, there also remained what had been left over from the 1977 session: article 22 *bis*, on which the Drafting Committee would be reporting, and articles 6, 7 and 12, which were under consideration by the Informal Consultations Group under the chairmanship of the Vice-President of the Committee of the Whole. Both the Drafting Committee and the Informal Consultations Group should resume work on those articles as soon as possible.

4. During the resumed session, the Conference would thus have to deal with 18 articles, a preamble and the final clauses. Since the Conference had adopted 25 articles during the first part of the session, it was obvious that it had no time to lose if it was to finish its work in three weeks. Fortunately, some of the articles not yet discussed, which, except for three, related to the uniting and separation of States, did not appear to be very controversial, at least if judged by the absence of amendments to them. Others, however, judged by the same criterion, were more delicate. It might perhaps be advisable to begin informal consultations as soon as possible on the best way to deal with those articles, particularly article 39 *bis*.

5. After expressing the hope that a convention would be adopted within the allotted time, he declared open the resumed session of the United Nations Conference on Succession of States in Respect of Treaties.

6. He then drew the attention of members of delegations to the list of items proposed for consideration at the opening plenary meeting of the resumed session.[2] Those items had to be disposed of before the Committee of the Whole could begin its work. If there was no objection, he would take it that the Conference agreed to that list.

It was so agreed.

[1] For the summary records of the 1st to 8th plenary meetings held in 1977, see *Official Records of the United Nations Conference on Succession of States in Respect of Treaties*, vol. I, *Summary records of the plenary meetings and of the meetings of the Committee of the Whole*, (United Nations publication, Sales No. E.78.V.8), pp. 1-19.

[2] The list contained the following items: Opening of the resumed session by the President of the Conference; 2. Address by the Representative of the Secretary-General; 3. Election of one Vice-President (to fill a vacancy owing to the non-participation of a State in the resumed session); 4. Organization of the work of the Conference at its resumed session.

Address by the Representative of the Secretary-General

7. Mr. SUY (Legal Counsel of the United Nations, representing the Secretary-General), welcomed participants and said that, to stress the importance of the Conference, he would echo the words spoken the previous year by the Federal President of the Republic of Austria, H.E. Dr. Rudolph Kirchschlaeger: "The success of the Conference will be a success for all States and for the United Nations."[3]

8. As was clear from the decision taken by the General Assembly in regard to the resumed session, the Conference enjoyed the support of the community of nations. In its resolution 32/47 of 8 December 1977, which had been adopted unanimously, the General Assembly had endorsed the recommendation of the Conference that the present session should be the final one, and had expressed its firm conviction "that the Conference will thus conclude its work and adopt an international convention and other appropriate instruments as requested by the General Assembly."

9. The participants in the resumed session might find themselves in a situation of succession, as it were, in regard to the decisions taken the previous year and also to the organizational and procedural arrangements made to ensure the efficiency and smoothness of their work. In that connexion, he drew attention to the Memorandum by the Secretary-General entitled "Methods of work and procedures adopted by the Conference as may be applicable to its resumed session" (A/CONF.80/17).

10. As to the time available to the Conference for its resumed session, it did not have at its disposal the five weeks for which its 1977 session had lasted. As specified in General Assembly resolution 32/47, the Conference was convened "for a period of three weeks, from 31 July to 18 August 1978, with a possible extension of up to one further week should this prove necessary in the view of the Conference". In making that decision, the General Assembly had been fully aware of the stage reached in the work of the Conference, since it had taken note of the report of the Conference (A/CONF.80/15) which contained the necessary information on the matter. During the three-week resumed session, the Committee of the Whole could hold 17-18 meetings, the Drafting Committee could hold almost the same number, and an appropriate number of meetings could be arranged for the plenary Conference. In reality, an estimate of the time needed for international negotiations and treaty-making would call for more complicated calculations, but a certain time-limit would have to be set in any case. In estimating the number of meetings which various organs of the Conference might have, the Secretariat had not failed to take into account that a certain amount of time would be needed for preparing the texts of the new convention, the final act of the Conference and other instruments for signature, once they had been adopted, as well as for the official signing ceremony.

11. In a world in motion, as was the world of today, where relationships between States were governed by a steadily increasing number of treaties in the political, economic, cultural and other spheres, the orderly and smooth succession of States in respect of treaties was important for the maintenance of the international legal order, its stability and its dynamism and, ultimately, for the realization and consolidation of peaceful and friendly relations between States. Succession entailed an element of continuity, and continuity of treaties meant continuity of relations between States regulated by treaties, in other words, continuity of their co-operation. The primary purpose to be achieved by the conclusion of the new convention was to ensure the maximum attainable continuity in treaty relations in the event of a succession of States. As stated by the General Assembly in resolution 31/18, "the successful codification and progressive development of the rules of international law governing succession of States in respect of treaties would contribute to the development of friendly relations and co-operation among States, irrespective of their constitutional and social systems, and would assist in promoting and implementing the purposes and principles set forth in Articles 1 and 2 of the Charter". The future convention would be one more instrument enhancing the role of treaties in the community of nations. The States parties to the Vienna Convention on the Law of Treaties,[4] which embodied all the basic rules of international law governing treaties, had reaffirmed "the fundamental role of treaties in the history of international relations".[5] Recent efforts at the national level seemed also to be aimed at emphasizing the paramount importance of treaties in the furtherance of friendly relations and co-operation among States. In 1977, the General Assembly had decided to scrutinize the treaty-making process, which opened up a new prospect for improvements in that process. The future convention was thus coming into being as an integral part of an over-all development in the law of treaties, aimed at adding a new dimension to mankind's quest for peace through the rule of law in international relations. That development had its origins in the United Nations Charter in which the peoples of the United Nations had proclaimed their determination "to establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained". He hoped that that determination of the peoples of the United Nations would be a source of inspiration to the Conference and would guide it in its work.

Election of one Vice-President

12. The PRESIDENT explained that the need to elect a Vice-President arose from the fact that Barbados had announced that it would not be able to take part in the resumed session. The Group of Latin American States was therefore required to nominate a candidate.

[3] *Official Records of the United Nations Conference on Succession of States in Respect of Treaties... (op. cit.)*, p. 2, 1st plenary meeting, para. 13.

[4] See the text of the Convention in *Official Records of the United Nations Conference on the Law of Treaties, Documents of the Conference* (United Nations publication, Sales No. E.70.V.5), p. 288.

[5] *Ibid.*, p. 289, Introductory paragraph to the preamble.

Organization of the work of the Conference at its resumed session (A/CONF.80/17)

13. The PRESIDENT said he assumed that participants would wish to discuss the contents of the document "Methods of work and procedures adopted by the Conference as may be applicable to its resumed session" (A/CONF.80/17) in their respective regional groups. He suggested that a chairman or, at least a provisional speaker should be nominated for each group.

The meeting rose at 11.55 a.m.

10th PLENARY MEETING

Monday, 31 July 1978, at 3.25 p.m.

President: Mr. ZEMANEK (Austria)

Election of one Vice-President *(continued)*

1. The PRESIDENT said that, if there were no objection, he would take it that the Conference approved the proposal by the Chairman of the Group of Latin American States that the representative of Trinidad and Tobago be elected a Vice-President of the Conference in place of the representative of Barbados.

It was so agreed.

Organization of work

[Agenda item 10]

2. The PRESIDENT drew attention to the memorandum by the Secretary-General "Methods of work and procedures adopted by the Conference as may be applicable to its resumed session" (A/CONF.80/17). He had been informed by the chairmen of four regional groups that it was their hope that the utmost effort would be made to complete the work of the Conference in three weeks. He had replied that the secretariat and the Bureau certainly shared that hope, but that control over the duration of the Conference was entirely in the hands of delegations.

3. Mr. RYBAKOV (Union of Soviet Socialist Republics) said that, in principle, his delegation approved the ideas concerning the methods of work of the Conference that were set out in the memorandum by the Secretary-General. It would indeed be the most rational course for the Drafting Committee of the Committee of the Whole to commence work forthwith on the remaining articles of the draft, particularly articles 30 to 39. His delegation strongly favoured the suggestion made by the President at the 9th plenary meeting that delegations should hold consultations in advance of official meetings on the questions that were still outstanding. He hoped that all delegations would continue to adhere to the trend of the overwhelming majority of participants in the 1977 session to retain as far as possible the text of the draft articles prepared by the International Law Commission (see A/CONF.80/4). If that were done, the Conference should have no difficulty in completing successfully the task entrusted to it by the General Assembly. To assist in the achievement of that aim, his delegation would not insist on the amendments to the draft articles which it had proposed during the 1977 session. While it was no secret that the success of the Conference depended on the solution of certain difficult problems that were still under discussion, his delegation believed that the main lines of the future Convention had already been laid down, in particular through the adoption of the "clean slate" principle in relation to newly independent States that emerged as a result of the process of decolonization. His delegation had serious doubts as to the advisability of encumbering the International Law Commission's draft with references to matters that had more to do with the law of treaties or questions that had long been the subject of unsuccessful debate at other international conferences, than with succession of States.

4. The PRESIDENT said that, if there was no objection, he would take it that the Conference wished to take note of the memorandum submitted by the Secretary-General in document A/CONF.80/17.

It was so agreed.

The meeting rose at 3.35 p.m.

11th PLENARY MEETING

Monday, 7th August 1978, at 3.45 p.m.

President : Mr. ZEMANEK (Austria)

Tribute to the memory of His Holiness, the late Pope Paul VI

1. The PRESIDENT said that delegations had come together to pay a tribute to the memory of His Holiness, the late Pope Paul VI. The outstanding feature of the papacy of Paul VI was his concern for peace and social justice in the world, in which he was following a long tradition which had culminated in his predecessor's remarkable encyclical *Pacem in terris.* The early years of his papacy had been dedicated to the conclusion of Vatican Council II and the implementation of its decisions, but as early as 1967 he had manifested his concern for the necessity of peaceful development in his encyclical *Populorum progressio.* In that year he had established the observance of the first of January as a "day of peace" for which he issued a yearly message dealing with subjects such as the promotion of human rights and reconciliation. His last message, in 1978, had been "No! to force and violence! Yes! to peace! ". He had called upon all human beings of good will, regardless of their faith, to establish

true peace founded on justice, human dignity and brotherly love. Peace was in his view a dynamic process for which man required education. His messages for the day of peace were supplemented by unprecedented journeys round the world, including a visit to United Nations Headquarters in New York. He had deemed it both his privilege and his duty as a spiritual authority to appeal to the individual, and not merely to deplore the shortcomings of others but to ask himself what he personally was doing for the cause of peace and social justice.

On the proposal of the President, members of the Conference observed one minute's silence in tribute to the memory of His Holiness, the late Pope Paul VI.

2. Monsignor CAGNA (Holy See) said he wished to thank the President and participants in the Conference for their tribute to Pope Paul VI, who throughout the 15 years of his difficult pontificate had worked untiringly and prayed for peace and understanding among all the nations of the world and for their integral development and welfare.

The meeting rose at 3.55 p.m.

12th PLENARY MEETING

Thursday, 17 August 1978, at 3.30 p.m.

President: Mr. ZEMANEK (Austria)

Credentials of representatives to the resumed session of the Conference: Report of the Credentials Committee (A/CONF.80/18/Rev.1)

1. Mr. SETTE CÂMARA (Brazil), Chairman of the Credentials Committee, introduced the report of the Credentials Committee (A/CONF.80/18/Rev.1). The nine members of the Committee, which had been established by the Conference at its 2nd plenary meeting,[1] on 29 April 1977, in accordance with rule 4 of the rules of procedure (A/CONF.80/8), had met again on 16 August 1978 to examine the credentials of the representatives at the resumed session of the Conference. The Committee had had before it a memorandum by the Executive Secretary of the Conference dated 15 August 1978, concerning the status of the credentials of the representatives of the 94 States participating in the resumed session.

2. Paragraph 3 (*a*) of the report listed 74 States which had communicated formal credentials to the Executive Secretary, in accordance with rule 3 of the rules of procedure; those credentials had been issued either by the head of State or Government or by the Minister for Foreign Affairs. Paragraph 3 (*b*) listed six States the designation of whose representatives had been communicated to the Executive Secretary of the Conference by a cable from the Foreign Minister concerned. Paragraph 3 (*c*) listed 10 States the designation of whose representatives had been communicated to the Executive Secretary of the Conference by note verbale or letter from the Embassy or Permanent Mission of the State concerned. Paragraph 3 (*d*) listed four States from which no communications had been received, but whose representatives had assured the Executive Secretary of the Conference that communications would be forthcoming.

3. Since the preparation of the report, Switzerland, which was one of the States listed in paragraph 3 (*d*), and Saudi Arabia, which was one of the States listed in paragraph 3 (*c*), had submitted credentials to the Executive Secretary.

4. The Credentials Committee had decided to accept the credentials of the representatives referred to in paragraph 3 (*a*). On the proposal of its Chairman, it had decided, in the light of past practice and as an exceptional measure, to accept the communications received or to be received with regard to the delegations referred to in paragraph 3 (*b*), (*c*) and (*d*) in lieu of formal credentials, it being understood that such credentials would be submitted as soon as possible.

5. The representatives of three States participating in the work of the Credentials Committee had made statements which were recorded in paragraphs 5 and 6 of its report.

6. Mr. NATHAN (Israel) said that the Credentials Committee had accepted his delegation's credentials after confirming that they were formal credentials in accordance with rule 3 of the rules of procedure. His delegation therefore objected to the reservations made by the representative of Qatar, as recorded in paragraph 5 of the report under consideration. Such reservations were inadmissible; they were irrelevant and were designed solely to introduce politics into the work of the Conference.

7. Under rule 4 of the rules of procedure, the Credentials Committee had to examine the credentials of representatives and report to the Conference. That examination consisted of verifying that the credentials in question met the procedural requirements set forth in rule 3 of the rules of procedure. Reservations of a political nature, such as those which appeared in paragraph 5 of the report under consideration, were therefore altogether extraneous to the terms of reference of the Credentials Committee and had no place in its report.

8. His delegation was fully entitled to participate in the Conference by virtue of the invitation extended to the State of Israel by the Secretary-General of the United Nations in accordance with General Assembly resolution 31/18, in which the Secretary-General had been requested

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[1] *Official Records of the United Nations Conference on Succession of States in Respect of Treaties*, vol. I *Summary records of the plenary meetings and of the meetings of the Committee of the Whole* (United Nations publication, Sales No. E.78.V.8), p. 4, 2nd plenary meeting, paras. 8-9.

to invite all States to participate in the Conference. His delegation's right to participate in the work of the Conference could not therefore be questioned.

9. With regard to the details of the reservations made by the representative of Qatar, his delegation did not claim to represent "Palestine". It represented the State of Israel and the inhabitants of that State, whether Jews, Arabs or others. His delegation also rejected all the other allegations made in the reservations expressed in the Credentials Committee. The Government of Israel had already stated its views on those questions in the General Assembly, the Security Council and other bodies. In any case, the Conference was not competent to discuss those matters.

10. His delegation would not ask for paragraph 5 of the report under consideration to be put to the vote, but it categorically rejected the reservations recorded in it.

11. Mr. ZAKI (Sudan) said he endorsed the reservations made by the representative of Qatar in the Credentials Committee. His delegation's views concerning the credentials of the Israeli delegation had been recorded in the Committee's previous report (A/CONF.80/12, para. 5). The participation of Israel in the Conference should not be considered as implying recognition on the part of the Sudan.

12. Mr. DOGAN (Turkey) said that the leader of the Turkish community in Cyprus had sent a letter to the President of the Conference dealing with certain aspects of the question of the representation of Cyprus. It would be desirable for copies of that letter to be made available to interested delegations.

13. Mr. ROVINE (United States of America) said that his delegation deeply regretted that political considerations concerning Israel and Cyprus had been introduced into the debate. As his delegation had already stated, the Credentials Committee should confine itself to ascertaining whether the credentials which it examined were in order; it was not empowered to discuss questions such as those dealt with in paragraph 5 of the report. It was to be hoped that in the future, such questions would not be raised in credentials committees.

14. Mr. AL-ROUME (Saudi Arabia) said he shared the views expressed by the representative of Qatar in the Credentials Committee. Israel could not represent the Arab population of the occupied territories.

15. The PRESIDENT said that, if there was no objection, he would take it that the Conference agreed to adopt the report of the Credentials Committee (A/CONF.80/18/Rev.1).

It was so decided.

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

[Agenda item 11] (*continued*)[2]

DRAFT RESOLUTION A/CONF.80/L.1

16. The PRESIDENT said that, since the issue of document A/CONF.80/L.1, a number of States had joined the sponsors of the draft resolution which it contained.

17. Mr. SIDDIQUI (United Nations Council for Namibia), introducing draft resolution A/CONF.80/L.1 on behalf of the sponsors, noted that at the 1977 session of the Conference, the delegation of the United Nations Council for Namibia had expressed doubts about certain articles and had submitted a proposal (A/CONF.80/DC.13) for the inclusion in the preamble to the convention of a paragraph stating that the Conference took into account General Assembly resolution 2145 (XXI), by which the Assembly had terminated the Mandate of South Africa over Namibia and had assumed direct responsibility for the Territory until its independence.

18. At the 38th meeting of the Committee of the Whole, on 1 August 1978, the delegation of the United Nations Council for Namibia had pressed its proposal; it had referred to recent events related to Namibia and had adduced further reasons why the Conference, together with other organs of the international community, should help to protect the legitimate interests of the international Territory of Namibia and of its people.[3]

19. A number of delegations had subsequently assured the delegation of the United Nations Council for Namibia of their full support, but had suggested that a resolution having the same objectives as the Council's proposal would better serve the interests of Namibia and of the Conference. It had also been pointed out that if Namibia became an independent State in the near future, the preamble to the convention would be anachronistic. After consulting several other delegations from various regional groups, the Council's delegation had realized that they shared that view and had therefore decided to withdraw its proposal concerning the preamble to the convention (A/CONF.80/DC.13) and to replace it by draft resolution A/CONF.80/L.1.

20. In the preamble to that draft resolution, reference was made to resolutions of the General Assembly and the Security Council concerning the question of Namibia and to the advisory opinion of the International Court of Justice, in order to stress the illegal nature of the occupation of the territory of Namibia by the racist régime

[2] For the discussion of agenda item 11 by the Conference at the 1977 session, see *Official Records of the United Nations Conference on Succession of States in Respect of Treaties*, vol. I (*op. cit.*), pp. 8-12, 5th plenary meeting, paras. 6-38 and 6th plenary meeting, paras. 1-2.

[3] See 38th meeting, paras. 62-70.

of South Africa, its universal rejection and its consequences. The draft resolution made no attempt to introduce any new elements, but merely reaffirmed the will of the international community, as expressed in various General Assembly and Security Council resolutions. That reaffirmation was particularly necessary at the present time, in order to show that the entire international community supported the people of Namibia and was in sympathy with its struggle against the maintenance of the illegal occupation of its territory by South Africa.

21. It would be seen from the operative part of the draft resolution that, in view of the illegal character of the occupation of the Territory of Namibia by South Africa, South Africa was not the predecessor State of the future independent State of Namibia in respect of the treaty obligations assumed by South Africa after 27 October 1966 and that all the relevant articles of the future convention must be interpreted in conformity with United Nations resolutions on the question of Namibia.

22. That point of view had also been upheld by the world's supreme judicial organ, the International Court of Justice, which had stated categorically in its advisory opinion of 21 June 1971[4] that member States were under obligation to abstain from entering into treaty relations with South Africa in all cases in which the Government of South Africa purported to act on behalf of or concerning Namibia. With respect to existing bilateral treaties, member States must abstain from invoking or applying those treaties or provisions of treaties concluded by South Africa on behalf of or concerning Namibia which involved active intergovernmental co-operation. Member States were under obligation to abstain from sending diplomatic or special missions to South Africa including in their jurisdiction the Territory of Namibia, to abstain from sending consular agents to Namibia, and to withdraw any such agents already there. They should also make it clear to the South African authorities that the maintenance of diplomatic or consular relations with South Africa did not imply any recognition of its authority with regard to Namibia. Finally, member States were under obligation to abstain from entering into economic and other forms of relationship or dealings with South Africa on behalf of or concerning Namibia which might entrench its authority over the Territory.

23. It followed from those statements of the International Court of Justice that the termination of the Mandate and the declaration of the illegality of South Africa's presence in Namibia were opposable to all States in the sense of barring *erga omnes* the legality of a situation which was maintained in violation of international law. Not only were all member States under obligation to abstain from all treaty relations with South Africa concerning the territory of Namibia, but no treaty or provision of that kind could have force of law or could be invoked or applied by any party. That was precisely the aim of the proposal of the United Nations Council for Namibia that the Conference should declare South Africa not to be the predecessor State in the case of Namibia. The draft resolution therefore confirmed the position taken by the States Members of the United Nations, as supported by its supreme judicial organ.

24. Mr. OSMAN (Somalia) emphasized the importance of the draft resolution, not only to his own delegation, but to all the delegations of non-aligned and other freedom-loving countries. The draft was intended to assist the people of Namibia in its legitimate struggle against the racist régime of South Africa by reaffirming the territorial integrity and unity of Namibia in accordance with the relevant United Nations resolutions.

25. His delegation shared the concern of the United Nations Council for Namibia with regard to the exceptions to the application of the "clean slate" principle, in view of the difficulties that such exceptions would entail for the people of that Territory, who were victims of dismemberment and illegal colonial occupation. His delegation wished to express its continued sense of solidarity with the Namibian people.

26. The draft resolution constituted a reaffirmation of various resolutions and decisions whereby the General Assembly had demanded the total and unconditional withdrawal of South Africa from the Territory of Namibia and had declared that Walvis Bay formed an integral part of Namibia. The draft resolution should enable the future independent State of Namibia to benefit from the "clean slate" principle and preclude exceptions to that principle which might be prejudicial to Namibia in view of the current controversy about Walvis Bay, an area which historically and legally formed an integral part of Namibia and must continue to do so. Once Namibia became independent, it could not succeed to obligations arising out of territorial arrangements made by a colonial régime and designed to serve and safeguard the interests of South Africa to the detriment of those of the people of Namibia.

27. Sir Ian SINCLAIR (United Kingdom) pointed out that, under General Assembly resolution 3496 (XXX), the task of the Conference was to "consider the draft articles on succession of States in respect of treaties and to embody the results of its work in an international convention and such other instruments as it may deem appropriate". It was important to bear in mind the terms of reference of the Conference at a time when its work was coming to an end and when it had before it draft resolution A/CONF.80/L.1.

28. His delegation was aware that the future of Namibia was a matter of concern to all delegations, especially those of African countries. In the Security Council, the United Kingdom had joined with other States in trying to find a solution to that problem, which was one of the most difficult currently facing the international community. The Security Council had recently adopted two resolutions which held out hope of a rapid and internationally acceptable solution to the problem. In that connexion, the United Kingdom Secretary of State for Foreign and Commonwealth Affairs had expressed before the Security

[4] Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970), Advisory Opinion, *I.C.J. Reports 1971*, p. 16.

Council his gratification at the fact that his Government, together with those of Canada, France, the Federal Republic of Germany and the United States of America, had succeeded in helping Africa to solve one of its most difficult problems; it had been due to the goodwill of all the parties and to the wisdom of the front-line States that a peaceful and internationally acceptable solution had been found. The Security Council was still considering the question of Namibia.

29. In those circumstances, his delegation considered that the resolution under consideration fell outside the terms of reference of the Conference, whose task was to prepare a convention on succession of States in respect of treaties, not to adopt resolutions on individual cases of succession. His delegation's objection was therefore one of principle: it did not contest the right of the Conference to examine such a draft resolution, but its right to adopt it. That was why the United Kingdom delegation could not and would not participate in a vote or in any other procedure for the adoption of resolution A/CONF.80/L.1. Moreover, even if it had considered that the Conference was competent to adopt the draft resolution, the wording of that text, especially of the first operative paragraph and, even more so, of the second operative paragraph, would have caused it some difficulty.

30. Like the African delegations, the United Kingdom delegation hoped that Namibia, on attaining independence, would be allowed to benefit from the application of the "clean slate" principle. As a newly independent State, Namibia would doubtless have to resolve problems of succession in respect of treaty obligations, but it did not seem right to prejudge the position of the independent state of Namibia on that subject.

31. Mr. ROVINE (United States of America) said that the United States Government had been endeavouring for some time to facilitate Namibia's accession to independence. Thus, together with Canada, France, the Federal Republic of Germany and the United Kingdom, the United States was negotiating with South Africa on the question of Namibia. His delegation naturally understood the underlying motives for the draft resolution under discussion and, indeed, only the last sentence of that text presented it with any difficulty. As he saw it, the terms of reference of the Conference were to consider the draft articles prepared by the International Law Commission and to adopt a convention on succession of States in respect of treaties. It had surely not been the intention of the General Assembly, in convening the Conference, to authorize it to take decisions on individual cases. The fact that Namibia was a special case did not mean that the Conference could exceed its terms of reference. Moreover, the adoption of the draft resolution might be prejudicial to the efforts of the Security Council, which was considering the question. His delegation therefore regretted that it could not take part in a vote or any other decision on the draft resolution.

32. Mr. TREVIRANUS (Federal Republic of Germany) said it was self-evident that all delegations without exception were anxious to see a sovereign and independent Namibia entering the international arena in the near future. His country was contributing to the efforts being made to that end by the Security Council, of which it was currently a member. He did not believe, however, that a codification conference to which the General Assembly had entrusted a specific task was the appropriate forum in which to consider a question with which several United Nations organs were already dealing. The Conference should not take decisions on questions which did not fall within its competence or seek solutions to specific problems, however serious they might be. His delegation did not question the right of the majority to make a declaration on the subject of Namibia or to adopt the draft resolution in question, but for its part it was unfortunately unable to participate in the vote on the text or in its adoption by any other means.

33. Mr. DOGAN (Turkey) said he was in favour of draft resolution A/CONF.80/L.1.

34. Mr. RYBAKOV (Union of Soviet Socialist Republics) said he unreservedly supported the text under consideration. The Conference was competent to examine and adopt the draft before it. There could be no doubt that the presence of South Africa in Namibia was illegal. That illegal occupation must therefore be brought to an end and respect for the territorial integrity of Namibia must be ensured. His delegation would vote for the draft resolution if it was put to the vote.

35. Mr. DUCULESCU (Romania) said he endorsed the draft resolution, being convinced that the international community should support the struggle of the Namibian people by affording it legal, moral and political assistance. His delegation did not agree with the view taken by the delegations of the United Kingdom, the United States and the Federal Republic of Germany, since although the international community was rightly making efforts at the political level to facilitate Namibia's accession to independence, it should not neglect the legal means available. Thus, the representative of the United Nations Council for Namibia had demonstrated in his statement that certain articles of the convention could not apply to Namibia, whose situation exhibited special characteristics and called for a separate solution. There was no predecessor State in the case of Namibia; South Africa merely exercised *de facto* power over the Territory, and that against the will of the international community. South Africa's attempts to seize Walvis Bay threatened the territorial integrity of Namibia. That was why the sponsors of the draft resolution were proposing that South Africa should not be recognized as the predecessor State of the future independent State of Namibia. His delegation considered that the draft resolution was well-founded, in view of the legal characteristics of the case and would therefore vote for the draft, which contributed to the development of international law and to the solution of the particular problems of Namibia.

36. Mr. KOROMA (Sierra Leone) said that, in the opinion of his delegation, which was one of the sponsors of draft resolution A/CONF.80/L.1, the Conference should work together with other United Nations organs and the

international community to protect and maintain the legitimate interests of the international Territory of Namibia and of the Namibian people. In the draft resolution, the sponsors cited important resolutions of the General Assembly, namely resolutions 2145 (XXI) and 2248 (S-V), as well as the advisory opinion handed down in 1971 by the International Court of Justice, which showed that Member States should put an end to the illegal situation obtaining in Namibia. Moreover, in its resolution 276 (1970), the Security Council had reaffirmed the General Assembly's decision to terminate the Mandate of South Africa over the territory of Namibia and to assume direct responsibility for the Territory until its independence. When taking that decision, the Security Council had also declared that the presence of the South African authorities in Namibia was illegal and that all acts taken by the Government of South Africa concerning Namibia were illegal and invalid. In its resolution 282 (1970), the Security Council had called upon all States to take the necessary measures. In its advisory opinion of 1971, the International Court of Justice had declared that States Members of the United Nations should recognize the illegality of the presence of South Africa in Namibia. The Court had confined itself to giving advice on those dealings with the Government of South Africa which, under the Charter of the United Nations and general international law, should be considered as inconsistent with the declaration of the Security Council. That applied in particular to treaty relations in all cases in which the Government of South Africa purported to act on behalf of or concerning Namibia.

37. The draft convention was intended to govern the transfer of rights and obligations arising from treaties in the case of the emergence of a newly independent State or of the uniting or separation of States. The necessity of giving newly independent States the option of choosing from among the treaties of the predecessor State those which they would maintain in force lay at the root of the draft convention, since no country could be expected to accept commitments entered into by another State without first being able to express its own will. As the representative of Brazil had stated at the 1977 session, a newly independent State should be born free, should be able to benefit from the "clean slate" principle and should not be bound by unjust agreements.[5] That held true of Namibia, which could not be deprived of its only port, Walvis Bay, an integral part of its territory.

38. In the light of these considerations, it was only natural, for legal reasons and in a spirit of justice, to provide that in the case of Namibia the relevant articles of the convention should be interpreted in conformity with the relevant United Nations resolutions, under which South Africa could not be regarded as the predecessor State of Namibia after 1966.

39. Mr. MUSEUX (France) said that he fully shared the views expressed by the representatives of the United Kingdom, the United States of America and the Federal Republic of Germany, which seemed eminently sensible. His Government, too, was participating in the negotiations on the question of Namibia with a view to reaching a speedy solution so that Namibia could achieve independence as soon as possible. However, his delegation felt that it would be unfair to prejudge decisions of a future Namibian Government, and that the Conference should not take a decision on the draft resolution. In order to ensure the proper functioning of the Conference and respect for the credentials given by Governments to their representatives, it was important that those representatives should not exceed their terms of reference and encroach on the work of the political bodies that were dealing with the question, in particular the Security Council.

40. For those reasons, his delegation would be unable to participate in the decision on the draft resolution.

41. Mr. de BLOIS (Canada) said that the draft resolution under discussion raised a number of problems: it sought to interpret a convention that the Conference had not yet adopted and the terms of reference of the Canadian delegation to the Conference did not cover consideration of the draft resolution. Furthermore, his country was playing a part in other bodies that were dealing with the question of Namibia. For those reasons, his delegation would not participate in any decision by the Conference concerning the draft resolution.

42. Mr. MAHUNDA (United Republic of Tanzania) said that his delegation fully supported the draft resolution before the Conference, being one of its sponsors. As a front-line State, his country had always regarded the Namibian people's struggle as its own struggle and it would continue to make sacrifices until Namibia had attained its independence. Since the draft resolution merely put forward the international community's view of the Namibian question, his delegation could not understand why certain delegations which, in other bodies, were endeavouring to solve the Namibian problem, should find the draft resolution difficult to accept.

43. As far as his delegation was concerned, Namibia was a United Nations Territory, because the United Nations had terminated South Africa's Mandate over that Territory. The last operative paragraph was a logical consequence of the status of Namibia and should not cause any difficulty.

44. Mr. VREEDZAAM (Suriname) said that since the Conference was competent to define what was understood by "predecessor State" and "successor State", it was also competent to declare that South Africa was not the predecessor State of the future independent State of Namibia, because it was occupying the territory of Namibia illegally. His delegation was a sponsor of the draft resolution under discussion.

45. Mr. MAKAREVICH (Ukrainian Soviet Socialist Republic) said that South Africa's illegal occupation of the Territory of Namibia was one of the major preoccupations of the United Nations and it was therefore essential for the

[5] *Official Records of the United Nations Conference on Succession of States in Respect of Treaties . . . (op. cit.)*, p. 32, 3rd meeting, para. 46.

Conference to give its opinion on that vital problem. He supported draft resolution A/CONF.80/L.1, which would help the Namibian people in its fight for independence.

46. Mr. PAPADOPOULOS (Cyprus) said he wished to reserve the right to reply at a later stage to the statement made by the representative of Turkey concerning the report of the Credentials Committee (A/CONF.80/18/Rev.1) which contained no reservation relating to the credentials of the delegation of Cyprus.

47. His delegation wholeheartedly supported draft resolution A/CONF.80/L.1, because it considered that South Africa should end its illegal occupation of Namibia and it attached great importance to the implementation of the relevant resolutions of the United Nations, in particular Security Council resolutions 385 (1976), which had reaffirmed the territorial integrity and unity of Namibia, and 432 (1978) in which the Security Council had taken note of paragraph 7 of General Assembly resolution 32/9 D, declaring Walvis Bay to be an integral part of Namibia. His delegation hoped that the statements which had been made in support of those resolutions were not empty words, but demonstrated a sincere desire to apply the principles of international law which were involved. His delegation firmly supported those principles and would therefore vote in favour of the draft resolution on Namibia.

48. Mr. JOMARD (Iraq) said he supported draft resolution A/CONF.80/L.1, for the reasons given by the representatives of Somalia and Sierra Leone.

49. Mr. STUTTERHEIM (Netherlands) said that the position of his country on Namibia was well known and there was no need for it to be repeated at the time. For the reasons given by the United Kingdom representative, his delegation would not participate in the vote on draft resolution A/CONF.80/L.1. He was sure, however, that Namibia would have the benefit of the "clean slate" principle.

50. Mr. BENDIFALLAH (Algeria) said that his country had always supported the cause of peoples struggling for self-determination and had declared itself in favour of the territorial integrity of Namibia and the freeing of its people from the racist yoke. In his opinion, the Conference was competent to deal with the Namibian problem and Namibia ought to benefit from the "clean slate" principle. He wholeheartedly supported draft resolution A/CONF.80/L.1 and appealed to members of the Conference to adopt it by an overwhelming majority.

51. Mr. de OLIVEIRA (Angola) said that his country, which was one of the front-line States, had always supported the Namibian people and would continue to give it unqualified support in face of the acts of aggression perpetrated against it by South Africa. Since the international community recognized that South Africa's presence on Namibian territory was illegal, he found it hard to understand why certain delegations could not support draft resolution A/CONF.80/L.1. He, too, appealed for the draft resolution to be adopted by a very large majority.

52. Mr. YACOUBA (Niger) said that, while the task of the Conference was to prepare an international convention on succession of States in respect of treaties, it had a duty to examine all aspects of the question. The situation of Namibia might pose a difficult problem when the Territory became independent. The sponsors of draft resolution A/CONF.80/L.1 had decided, in a spirit of conciliation, not to insist on the inclusion of an article on Namibia in the draft convention. He was surprised, therefore, that their initiative had not met with a response from certain delegations. He requested a roll-call vote on draft resolution A/CONF.80/L.1.

53. Mr. MASUD (Pakistan) said that the view that the Conference was not competent to examine or adopt draft resolution A/CONF.80/L.1 was based on a very narrow interpretation of the Conference's terms of reference. In his opinion, the draft resolution was relevant to the subject being dealt with by the Conference and was consistent with the advisory opinion of the International Court of Justice in the case of Namibia. The Conference was therefore perfectly competent to consider the draft resolution and should adopt it.

54. Mr. RITTER (Switzerland) said that his delegation would abstain in the vote on draft resolution A/CONF.80/L.1 because his country was not a Member of the United Nations and did not, therefore, feel able to pronounce on a question deriving from resolutions in the adoption of which it had not participated. That position was consistent with the position which his delegation had taken at the 1977 session concerning the request of the United Nations Council for Namibia for active participation in the Conference. That position in no way affected his country's sympathetic attitude towards the aspirations of the Namibian people.

55. Mr. ABOU-ALI (Egypt) expressed his unqualified support for the terms and content of draft resolution A/CONF.80/L.1. He believed that the Conference was competent to consider and adopt the draft resolution, since the resolution concerned the interpretation to be given to the provisions of the convention in the case of an independent Namibia, in the light of the relevant resolutions of the United Nations and the advisory opinion of the International Court of Justice. In his opinion, a Conference which had been given the task of preparing a convention on succession of States in respect of treaties was competent to express its opinion on the application of that convention in a specific case which was of great importance at the international level and more especially in the African context.

56. Mr. MAIGA (Mali) said there could be no doubt that draft resolution A/CONF.80/L.1, of which his delegation was a sponsor, fell within the terms of reference assigned to the Conference by the General Assembly. He pointed out that it was the very countries which had advocated resort to the International Court of Justice for the settlement of disputes concerning the interpretation of the convention that were now refusing to abide by the advisory opinion of the Court in the case of Namibia.

57. Mr. RANJEVA (Madagascar) expressed the view that, contrary to the assertions of certain delegations, draft resolution A/CONF.80/L.1 fell within the terms of reference of the Conference, since the Conference had to study all aspects of the problem of succession of States, of which the question of Namibia was a specific manifestation. The Conference could not, therefore, evade that problem without failing in its responsibilities. The sponsors of the draft resolution had wished to include an article on Namibia in the body of the draft convention, but, in a spirit of compromise, had agreed merely to submit a draft resolution.

58. Since, according to the text of article 6 adopted by the Committee of the Whole,[6] the future convention 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", he did not see how South Africa could possibly be regarded as the predecessor State of Namibia.

59. Mr. KONADU-YIADOM (Ghana) said he considered that the Conference was competent to examine and adopt draft resolution A/CONF.80/L.1.

60. Mr. FARAHAT (Qatar) said that he, too, considered the Conference to be competent to adopt a draft resolution on Namibia, since all nations should co-operate in putting an end to the illegal occupation of Namibia by South Africa. He unreservedly supported draft resolution A/CONF.80/L.1, for it seemed obvious to him that South Africa could not be the predecessor State in the case of Namibia.

61. Mr. DIENG (Senegal) thanked the representative of the United Nations Council for Namibia for his clear and comprehensive analysis of the situation. He was surprised that some delegations could still doubt the competence of the Conference to consider draft resolution A/CONF.80/L.1. In his view, the legal arguments adduced by those delegations in fact concealed certain specific interests, since the draft resolution clearly fell within the competence of the Conference, and the fact that the Security Council was dealing with the question of Namibia did not preclude the Conference from taking a decision on it. He therefore appealed to delegations to adopt the draft resolution by an overwhelming majority.

62. Mr. AHIPEAUD (Ivory Coast) said he supported draft resolution A/CONF.80/L.1, of which his delegation was a sponsor.

63. Mr. MADINGA (Swaziland) said that he, too, supported draft resolution A/CONF.80/L.1, which reaffirmed the territorial integrity of Namibia. In his opinion, the draft resolution clearly fell within the terms of reference of the Conference.

64. The PRESIDENT announced that the United Arab Emirates, Indonesia, Iraq and Tunisia had asked to be included among the sponsors of draft resolution A/CONF.80/L.1.

65. The PRESIDENT put draft resolution A/CONF.80/L.1 to the vote.

At the request of the representative of the Niger, the vote was taken by roll-call.

Mali, having been drawn by lot by the President, was called upon to vote first.

In favour: Algeria, Angola, Argentina, Australia, Austria, Brazil, Bulgaria, Burundi, Byelorussian SSR, Chile, Cuba, Cyprus, Czechoslovakia, Democratic Yemen, Denmark, Egypt, Ethiopia, Finland, German Democratic Republic, Ghana, Guyana, Hungary, India, Indonesia, Iraq, Ivory Coast, Jordan, Kenya, Kuwait, Lebanon, Liberia, Libyan Arab Jamahiriya, Madagascar, Malaysia, Mali, Mauritania, New Zealand, Niger, Nigeria, Norway, Oman, Pakistan, Panama, Papua New Guinea, Peru, Philippines, Poland, Qatar, Republic of Korea, Romania, Saudi Arabia, Senegal, Sierra Leone, Singapore, Somalia, Spain, Sudan, Suriname, Swaziland, Sweden, Thailand, Trinidad and Tobago, Tunisia, Turkey, Uganda, Ukrainian SSR, Union of Soviet Socialist Republics, United Arab Emirates, United Republic of Tanzania, Venezuela, Yemen, Yugoslavia, Zaire.

Against: None.

Abstaining: Belgium, Ireland, Italy, Japan, Portugal, Switzerland.

Draft resolution A/CONF.80/L.1 was adopted by 73 votes to none, with 6 abstentions.

66. Mr. GIL MASSA (Mexico) said that his delegation had unfortunately been called away urgently by the Conference secretariat and had thus been momentarily absent when the draft resolution had been put to the vote. If it had been present, it would have voted in favour of the draft resolution; it asked that its statement on Mexico's position should be reflected in the summary record.

67. Mr. NAKAGAWA (Japan) said that his delegation had abstained in the vote, despite its sympathy for Namibia, because it was not convinced that it was for the Conference to take a decision on a specific case of succession of States.

68. Mr. HERNDL (Austria) said that his delegation had voted in favour of the draft resolution to mark its approval of the operative part of the text, although it had some doubts concerning the competence of the Conference to deal with the question and concerning the advisability of adopting such a resolution, which in a way prejudged the decision that Namibia would take when it became independent. Austria hoped that Namibia would become an independent and sovereign State in the very near future.

69. He wished to point out that the position taken by Austria in the General Assembly on paragraph 7 of resolution 32/9 D, cited in the last preambular paragraph of the resolution just adopted, remained unchanged.

[6] See 53rd meeting, para. 35.

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

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

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

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

Organization of work

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

That suggestion was adopted.

The meeting rose at 5.50 p.m.

13th PLENARY MEETING

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

President: Mr. ZEMANEK (Austria)

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

[Agenda item 11] (*continued*)

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

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

Article 30 was adopted without a vote.

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

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

Article 31 was adopted without a vote.

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

Article 32 was adopted without a vote.

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

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

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

Article 33 was adopted by 68 votes to 5.

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

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

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

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

Article 34 was adopted without a vote.

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

Article 35 was adopted without a vote.

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

Article 36 was adopted without a vote.

Article 37 (Notifications)

Article 37 was adopted without a vote.

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

Article 38 was adopted without a vote.

Article 39 (Cases of military occupation)

Article 39 was adopted without a vote.

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

Article [I] (Signature)

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

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

Article [I] was adopted without a vote.

Article [II] (Ratification)

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

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

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

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

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

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

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

[5] General Assembly resolution 2530 (XXIV).

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

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

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

Article [II] was adopted without a vote.

Article [III] (Accession)

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

Article [III] was adopted without a vote.

Article [IV] (Entry into force)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

It was so decided.

Article [V] (Authentic texts)

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

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

It was so decided.

Testimonium

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

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

It was so decided.

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

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

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

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

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

[10] See foot-note 2 above.

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

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

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

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

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

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

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

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

It was so decided.

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

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

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

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

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

TITLE OF THE FUTURE CONVENTION

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

It was so decided.

The meeting rose at 6.55 p.m.

14th PLENARY MEETING

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

President: Mr. ZEMANEK (Austria)

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

[Agenda item 11] (*continued*)

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

Article [IV] – Entry into force

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

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

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

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

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

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

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

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

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

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

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

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

Articles 6 and 7

Articles 6 and 7 were adopted without a vote.

Article 2

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

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[1] For the consideration of these articles by the Committee of the Whole, see the summary records of the following meetings: article 6: 6th, 8th, 9th, 34th, 50th, 51st and 53rd meetings; article 7; 9th; 10th; 11th; 12th; 34th; 50th; 51st, 53rd and 56th meetings; article 2: 2nd, 3rd, 5th, 52nd and 56th; article 11: 17th, 18th, 19th, 33rd and 56th; article 12: 19th, 20th, 21st, 34th, 54th, 55th and 56th meetings; article 12 *bis*: 54th, 55th and 56th. [The summary records of the 1st to 36th meetings of the Committee of the Whole, for the 1977 session, appear in *Official Records of the United Nations Conference on Succession of States in Respect of Treaties*, vol. I, *Summary records of the plenary meetings and of the meetings of the Committee of the Whole* (United Nations publication, Sales No. E.78.V.8), pp. 21 *et seq.*]

independent State as defined in paragraph 1 (*f*) of article 2 was applicable to a case like that of Singapore.

Article 2 was adopted without a vote.

Title of article 11

10. Mr. RANJEVA (Madagascar), noting that the word "régime" was used in the plural in the title of article 11, said it was his delegation's understanding that the title referred to boundaries established by treaty between the predecessor State and neighbouring States and that consequently neither the title nor the text of article 11 affected the principle of the territorial integrity of the successor State, based on the constant area of territory it had occupied for many years.

The title of article 11 was adopted without a vote.

Article 12

11. Mr. NAKAGAWA (Japan) said that, as his delegation had stated at the 20th meeting of the Committee of the Whole,[2] it considered that the rules embodied in article 12, as in article 11, were rules of customary international law, which had been recognized both in the writings of jurists and in State practice. There were, however, legal situations created by treaty which, although having a dispositive effect, did not have the character of a boundary régime, for instance, treaties relating to the settlement of claims. It was one of the established rules of international law that legal situations created by such treaties were not affected by a succession of States as such.

Article 12 was adopted without a vote.

Article 12 bis

12. Mr. AHIPEAUD (Ivory Coast) said that, while his delegation was not opposed to the adoption of article 12 *bis*, it interpreted its terms to mean that nothing in the convention should affect the permanent sovereignty—as opposed to the principles of international law affirming that concept—of every people and every State over its natural wealth and resources.

13. Mr. ROVINE (United States of America) said his Government considered article 12 *bis* to be ambiguous in two respects. In the first place, the type of treaties that would be covered by its provisions was not clear, although his delegation's impression was that it would be limited to those relating to the consumption of natural resources and consequently that transit and access rights would not be affected. Secondly, while his Government had no difficulty in accepting the principle of permanent sovereignty over natural wealth and resources, it had serious doubts as to the meaning to be attached to that principle.

14. His delegation's willingness, in the Committee of the Whole, to abstain in the vote on the article had been based on its understanding that the United Nations Declaration on Permanent Sovereignty over Natural Resources, as set forth in General Assembly resolution 1803 (XVII), would give a more precise meaning to the principle. In the light of the further debate and consideration of the matter, however, his Government now doubted whether that resolution in fact constituted the only basis for interpreting a principle that had been accepted by many delegations, and took the view that there was substantial ambiguity both in the drafting and in the meaning of article 12 *bis*.

15. As his delegation had already stated in the Committee of the Whole, it could have accepted the phrase "in accordance with international law", which appeared at the end of article 12 *bis*[3] as originally formulated, and also the statement that nothing in the Convention should affect the relevant rights and obligations of States under international law and other treaties. It attached considerable importance to the preamble, which provided that the rules of customary international law would continue to govern questions not regulated by the Convention; that clause would be extremely useful in giving greater precision to article 12 *bis*. Since the Conference had not made its intent clear on the issues he had mentioned, however, his delegation was unable to accept the article and would vote against it. He requested that the vote be taken by roll-call.

16. Mr. MONCAYO (Argentina) said that one of the characteristics of an independent State was its freedom to dispose of its own natural resources. That did not mean that a successor State had to withhold such resources from the process of creation and change and from that exchange of goods and wealth which was one of the dynamic elements of modern international relations. Nor did it mean adopting an inward-looking nationalism that could only lead to stagnation. That had been the thinking behind his delegation's initial proposal (A/CONF.80/C.1/L.27), submitted in 1977, and it was the reason for its support of article 12 *bis*.

17. Many examples were to be found in developing countries of the mutual benefits which accrued from the pooling of their resources with other States as well as with international financial and technical organizations, foreign State-owned enterprises and private companies. Through co-operation in a variety of forms, it had proved possible to mobilize extensive resources, to undertake imaginative projects and to promote progress in general.

18. Article 12 *bis*, however, merely sought to ensure that a successor State would have a hand in controlling its own wealth and would have the power to decide, of its own free will, when and how the natural resources of its territory should be employed. For countries which lacked capital and technological know-how and which, in certain cases, were faced with increasing poverty, it was imperative that the attributes of political independence should be recognized and that those countries should be guaranteed the

[2] *Official Records of the United Nations Conference on Succession of States in Respect of Treaties...* (*op. cit.*), pp. 139-140, 20th meeting, para. 32.

[3] See 55th meeting, para. 36.

possibility of exercising sovereignty over their own natural resources. The transfer of political power to a State without an accompanying power to control and exploit those resources was but a nominal transfer of power that would not permit it to engage in any effective international co-operation.

19. Mr. ALVAREZ VITA (Peru) said he endorsed the views expressed by the representative of Argentina.

20. Mr. MARESCA (Italy) said that, while his delegation would cast its vote in favour of article 12 *bis*, it would reiterate that it interpreted its terms as involving a total *renvoi* to international law. Thus, wherever the economic sovereignty of the State was to be respected, so were its obligations in respect of any investments of which it was the recipient.

In accordance with the request of the United States representative, a vote on article 12 bis *was then taken by roll-call.*

Uruguay, having been drawn by lot by the President, was called upon to vote first. The result of the voting was as follows:

In favour: Angola; Argentina; Australia; Austria; Brazil; Bulgaria; Byelorussian Soviet Socialist Republic; Chile; Cuba; Cyprus; Czechoslovakia; Democratic Yemen; Denmark; Egypt; Ethiopia; Finland; German Democratic Republic; Ghana; Greece; Guyana; Holy See; Hungary; India; Indonesia; Iraq; Ireland; Italy; Ivory Coast; Kenya; Kuwait; Libyan Arab Jamahiriya; Madagascar; Malaysia; Mali; Mexico; New Zealand; Niger; Norway; Oman; Pakistan; Panama; Papua New Guinea; Peru; Philippines; Poland; Portugal; Qatar; Republic of Korea; Romania; Saudi Arabia; Senegal; Sierra Leone; Singapore; Spain; Sri Lanka; Sudan; Suriname; Swaziland; Sweden; Switzerland; Thailand; Tunisia; Turkey; Uganda; Ukrainian Soviet Socialist Republic; Union of Soviet Socialist Republics; United Arab Emirates; United Republic of Tanzania; Uruguay; Venezuela; Yemen; Yugoslavia and Zaire.

Against: United States of America.

Abstentions: Belgium; Canada; France; Federal Republic of Germany; Israel; Japan; Netherlands and the United Kingdom of Great Britain and Northern Ireland.

Article 12 bis *was adopted by 73 votes to 1, with 8 abstentions.*

21. Mr. FLEISCHHAUER (Federal Republic of Germany), speaking in explanation of vote, said his delegation had abstained in the vote on article 12 *bis* for the reasons which it had already stated in the Committee of the Whole,[4] and principally because of the inherent ambiguity of its terms. The respect in which the Federal Republic of Germany held the permanent sovereignty of States over their natural wealth and resources had been demonstrated on many occasions. It considered that such sovereignty should always be exercised in accordance with international law and with due respect for the rights of other States, territories and peoples protected by international law. On that understanding, it felt itself to be in harmony with General Assembly resolution 1803 (XVII) which, in reference to the exercise of sovereignty over natural resources, spoke of "the mutual respect of States based on their sovereign equality".

22. Sir Ian SINCLAIR (United Kingdom), speaking in explanation of vote, said that his delegation had abstained in the vote on article 12 *bis* because, notwithstanding the efforts made in the Informal Consultations Group, it considered that the language of its provisions was still ambiguous. It would have preferred the reference to international law to come at the end of the sentence and considered that the provision would have been far clearer had it read: "Nothing in the present Convention shall affect the permanent sovereignty of every people and every State over its natural wealth and resources in accordance with international law".

23. His Government's basic position on the concept of permanent sovereignty over natural resources had been made clear on many occasions in the United Nations General Assembly and other United Nations bodies. It acknowledged that such a concept existed but maintained that its exercise was regulated by principles of international law which, in the final analysis, must be capable of resolving any conflict or potential conflict between the concept of permanent sovereignty and other concepts, such as that of acquired rights. That was the sense in which it interpreted the phrase "the principles of international law affirming the permanent sovereignty of every people and every State over its natural wealth and resources". Within that context, account would naturally have to be taken of General Assembly resolution 1803 (XVII) which, in the view of his delegation—a view affirmed by the sole arbitrator in the Texaco Arbitration—constituted the most recent and generally accepted formulation of the concept of permanent sovereignty over natural resources and its relationship to international law.

24. He wished to reaffirm the remarks he had made in the Committee of the Whole regarding his understanding of the relationship between article 12 *bis* and the rest of the Convention, and to indicate that his delegation did not interpret article 12 *bis* as undermining or in any way affecting the principle of *ipso jure* continuity embodied in the rules set forth in Part IV of the Convention.

TITLE AND TEXT OF THE RESOLUTION CONCERNING ARTICLE 30[5] (A/CONF.80/25)

25. Mr. GIL MASSA (Mexico) referring to the roll-call vote taken on the draft resolution on Namibia[6] (A/CONF.80/L.1), said he wished to call attention, in the

[4] See 55th meeting, para. 28.

[5] For the discussion of the draft resolution by the Committee of the Whole, see the summary records of the 54th, 55th and 56th meetings.

[6] See 12th plenary meeting, paras. 16-73.

strongest terms, to the fact that, although he had indicated before the result of the vote was announced that he wished to cast his vote, that request had not been granted. His delegation had further requested that the secretariat include in the summary record a statement to the effect that Mexico would have cast its vote in favour of the draft resolution. That request had also not been granted. He would therefore point out that, in accordance with the practice followed throughout the United Nations family of organizations, any delegation could cast or amend its vote before the result of the vote was announced. Only if a delegation endeavoured to do so after the result had been announced would it be out of order.

26. The PRESIDENT said that due note would be taken of the Mexican representative's remarks.

27. Mr. DIENG (Senegal) asked that a vote be taken on the draft resolution concerning article 30 (A/CONF.80/25).

The title and text of the resolution concerning article 30 were adopted by 49 votes to 5, with 24 abstentions.

PEACEFUL SETTLEMENT OF DISPUTES[7] (Articles A, B, C, D and E, and annex) (A/CONF.80/C.1/L.60)

28. Mr. DUCULESCU (Romania) said his delegation considered that direct consultation and negotiation between the parties concerned, on the basis of equality of States and mutual respect, was to be regarded as the main means for resolving disputes in the sphere of succession of States to treaties as in any other sphere of international relations.

Articles A, B, C, D and E, and the annex thereto, relating to the peaceful settlement of disputes, were adopted without a vote.

29. Mr. TORRES BERNÁRDEZ (Deputy Executive Secretary of the Conference) said that he had been asked by the representative of the Secretary-General at the Conference, Mr. Suy, the Legal Counsel of the United Nations, to make the following statement:

In adopting the articles on the peaceful settlement of disputes and the annex relating to conciliation procedure, the Conference has decided, *inter alia*, that the expenses of the Conciliation Commission shall be borne by the United Nations. The relevant text is similar to that adopted at the United Nations Conference on the Law of Treaties. Since this decision may have financial implications and entail expenses for the Organization, the General Assembly is clearly required to pronounce on its effects. The Conference might therefore decide, as was done in 1969, to request the United Nations General Assembly to consider paragraph 7 of the annex to the Convention and take the appropriate measures.

30. The PRESIDENT said that in the light of the statement just made by the Deputy Executive Secretary, if there were no objections he would take it that the Conference decided to request the General Assembly of the United Nations to consider the provisions of paragraph 7 of the annex to the Vienna Convention on Succession of States in respect of Treaties and take the appropriate measures.

It was so agreed.

DIVISION OF THE CONVENTION INTO PARTS AND SECTIONS AND TITLES THEREOF[8] (A/CONF.80/C.1/10)

The division of the convention into parts and sections and titles thereof was adopted without a vote.

REPORT OF THE COMMITTEE OF THE WHOLE ON ITS WORK AT THE RESUMED SESSION OF THE CONFERENCE (A/CONF.80/30)

The Report of the Committee of the Whole on its work at the resumed session of the Conference was adopted without a vote.

TITLE OF THE CONVENTION[9] (A/CONF.80/27)

31. Mr. YASSEEN (Chairman of the Drafting Committee) said the Drafting Committee proposed that the future convention be entitled "Vienna Convention on Succession of States in Respect of Treaties". That was also the title proposed by the International Law Commission, and it was in keeping with the wording of article 1, which determined the scope of the convention. The inclusion of the name of the town where the Conference had taken place was a tribute to the tradition which linked Vienna with the work for the progressive development and codification of international law.

32. Mr. LUKABU-K'HABOUJI (Zaire) said his delegation considered that the English term "in respect of" was preferable to the French rendering *"en matière de"* and that it would like the Conference to note that it considered it would have been better if the title in French had corresponded exactly to the English title.

The title of the convention was adopted without a vote.

Adoption of a convention and other instruments deemed appropriate and of the Final Act of the Conference (A/CONF.80/31)

[Agenda item 12]

33. The PRESIDENT invited the Conference to vote on the text of the draft convention as a whole as contained in document A/CONF.80/31.

The Convention was adopted by 76 votes to none, with 4 abstentions.[10]

[7] For the discussion by the Committee of the Whole, see the summary records of the 45th, 46th, 51st, 52nd and 57th meetings.

[8] For the discussion by the Committee of the Whole, see the summary records of the 53rd and 57th meetings.

[9] See the 13th plenary meeting, para. 69.

[10] For the information provided subsequently by the delegations of Spain and Turkey concerning their approval of the Convention, see the note at the end of the summary record of the 15th plenary meeting.

34. Mr. RYBAKOV (Union of Soviet Socialist Republics) said that among the considerations that had led his delegation to vote for the Convention was the fact that that instrument constituted a further contribution to the codification and progressive development of international law. It reflected a progressive conception of succession of States in respect of treaties, according to which there was a clear division between cases of succession connected with the process of decolonization on the one hand, and cases of succession connected with all other methods of the formation of new States on the other.

35. The consecration in the Convention of the application of the "clean slate" principle in the event of decolonization was, as the Chairman of the Committee of the Whole had remarked, of truly historic significance. Under that principle, States which gained their independence as the result of decolonization were freed from all the treaties concluded with respect to them by the former metropolitan Power. The statement of that principle gave undeniable legal force to a rule that derived from the Declaration on the Granting of Independence to Colonial Countries and Peoples that the General Assembly had adopted, on the suggestion of the socialist countries, in its resolution 1514 (XV). The inclusion of that principle in the Convention was of not only political but also great practical importance.

36. Despite the great changes that had occurred with the collapse of empires in Africa and other continents in recent decades colonialism had not been entirely eliminated. It clung tenaciously to life and continued to manifest itself as neo-colonialism in ever more varied and refined forms. It was therefore premature to say that there was no need for the "clean slate" principle. Imperialist circles already had on their conscience numerous coups d'etat and anti-government plots, infamous secret operations, and the physical torture of such valiant sons of Africa as Lumumba, Ngouabé, Mondlane and Cabral. In their continuing efforts to preserve, and indeed to consolidate, their position in emerging countries and to direct the development of such States into forms of "partnership" acceptable to themselves, they sought to exert direct pressure on the patriotic forces of Zimbabwe and Namibia and to bring about a neo-colonialist solution of the Rhodesian and Namibian questions. In addition, they recruited accomplices from among the members of puppet and anti-popular régimes, promoted neo-colonialist relations based on exploitation and plunder, and attempted to undermine progressive régimes and to weaken and, if possible, destroy the unity of African nations. They had even gone so far as to take direct military action against young States in Africa and elsewhere, using their own armed forces, a move that called to mind the worst days of colonial banditry. The forces of imperialism and reactionism were unable to reconcile themselves to the profound political, social and economic changes and the steady growth in strength that were occurring in young States.

37. The embodiment in the Convention of the "clean slate" principle therefore dealt a severe blow to their aim of maintaining in force, in one form or another, the cabalistic conditions of the bilateral treaties of the colonial era on which the plunder and exploitation of dependent peoples had been based, while there was further cause for gratification in the fact that the Conference had decided against the inclusion in the Convention of provisions that would have provided encouragement for separatist movements in progressive developing countries and have opened the door to imperialist interference in their affairs.

38. It was of the very greatest significance that the Conference had reaffirmed in the Convention the principle of the inalienable sovereignty of peoples over their natural wealth and resources, which now stood confirmed as a peremptory rule of contemporary international law that was of universal import. It was no secret that the principal reason why the forces of imperialism, racism and reaction could not accept the changes that were occurring in Africa and elsewhere was that they wished to continue to exploit, and to maintain the control of their monopolies over, the natural riches of formerly dependent peoples. That was why they had girdled the earth with military bases designed to protect their access to foreign resources. The presence in the Convention of a provision emphasizing the illegality of the establishment of military bases on foreign soil was also therefore of great political and legal value.

39. The Soviet Union sought no advantages for itself on foreign territory; it did not go hunting for concessions, seek to attain political domination, or solicit permission to set up military bases. It remained firmly on the side of the peoples that were struggling against the preservation of any form of colonialism or neo-colonialism and for national independence, social progress and democracy. It firmly condemned the military and political intervention of imperialism in the affairs of independent States and all encroachments upon their sovereignty and territorial integrity.

40. A further great merit of the Convention was that it reaffirmed the applicability in cases of succession, other than those which arose from decolonization, of the rule of continuity in treaty relations. It thereby underscored the generally recognized rule embodied in the Charter of the United Nations that *pacta sunt servanda.* That rule was of great importance in contemporary international relations. The USSR believed that, in the modern world, the unwavering observance of treaty obligations was in the interests of peace and security and of equitable and mutual beneficial co-operation among States. It strove consistently to ensure that aggression and imperialist arbitrariness were replaced in international relations by law and justice. It was a party to almost 10,000 valid international agreements and had proved itself in its 60 years of relations with foreign countries to be a bona fide partner of irreproachable honesty in the fulfilment of its obligations. The conscientious discharge of obligations deriving from generally recognized principles of international law was, indeed, a requirement of the Constitution of the USSR and of a recent law concerning the conclusion, implementation and denunciation of international agreements.

41. It was to be regretted that there were forces in the modern world that were not interested in the loyal

discharge of agreements designed to promote peace and security and that opposed detente and sought to stir up hatred among peoples. Those forces included the most reactionary and inveterate circles of imperialism bound to the military-industrial complex. Among them were megalomaniac, petty bourgeois nationalists who sought to satisfy their great-Power, chauvinistic and hegemonistic ambitions by compacting with imperialism and militarism and recklessly drove their own peoples—and, with them, the peoples of their partners—along the road to disaster.

42. That being so, the provisions of the Convention which confirmed the inviolability of existing frontiers were most welcome, for they would serve as a powerful warning to those who harboured aggressive intentions against the territory of neighbouring countries and who based their foreign policy on the doctrine of racism and that of "living space". Incidentally, it was noteworthy that the Convention had been adopted in the very building from which Hitler had proclaimed his infamous philosophy of *Lebensraum* and before which the forces that had destroyed Hitlerism and trampled underfoot the swastika as a symbol of aggression and encroachment on the territory of others had paraded each month. It was also noteworthy that neither the Axis nor triple alliances had saved Hitler and those who had shared his views from condemnation by the peoples of the world or from their well-merited fate.

43. The Convention was, commendably, imbued with the spirit of peaceful co-existence and co-operation among States. Its Preamble stressed the special importance for the strengthening of peace and international security of consistent observance of general multilateral treaties which dealt with the codification and progressive development of international law and those whose object and purpose were of interest to the international community as a whole. It thereby gave further emphasis to the basic principles of international law concerning the prohibition of the use of force and all forms of infringement of the inalienable rights of all peoples set forth in the Charter of the United Nations. A further important point was that the Convention was based on a general understanding that succession of States in respect of treaties did not affect demilitarization of certain territories, freedom of navigation on international rivers and canals and in international straits, or various other international régimes.

44. His delegation was satisfied with the results of the work of the Conference and considered the Convention to represent a solid and substantial contribution to the cause of worldwide peace and justice. It was grateful to the President and the other officers of the Conference, the members of other delegations and the secretariat for their co-operation and zeal in bringing the Conference to such a successful conclusion.

45. Mr. JOMARD (Iraq), speaking on behalf of the Group of Asian States, said that the adoption of the Convention marked a decisive phase in the codification of international law and the legal history of mankind. By its work, the Conference had ensured that international law, which had often served in the past as a cover for exploitation and crimes committed in its name, would henceforth protect States at the various stages in their history, particularly that of accession to independence.

46. The States for which he spoke wished to express their thanks to the Austrian Government and people for their hospitality and to the International Law Commission, the officers of the Conference, and all the other persons who had contributed to the successful outcome of the proceedings.

Tribute to the memory of Mr. Jomo Kenyatta, President of Kenya

47. Mr. YACOUBA (Niger), speaking as the Chairman of the Group of African States, said that it was with the deepest regret that he had to inform the Conference of the death of Mr. Jomo Kenyatta, President of Kenya. He would be grateful if arrangements could be made for the payment by the Conference of an appropriate tribute to that great leader of Africa.

48. Mr. MAHUNDA (United Republic of Tanzania) said he supported the request by the representative of Niger.

49. Sir Ian SINCLAIR (United Kingdom) said that he spoke for the Group of Western European and Other States and for the United Kingdom as a member of the Commonwealth in mourning the passing of a most noble son of Africa who had struggled for years in defence of the interests of Kenya and of Africa as a whole. His delegation wished to express its condolences to the delegation of Kenya.

50. Mr. JOMARD (Iraq), speaking on behalf of the Group of Asian States, said that he had been deeply moved by the announcement made by the Chairman of the Group of African States and wished to express his condolences to the members of that Group and to the delegation of Kenya in particular. Mr. Kenyatta had been a great leader of Africa and it was he who had laid the foundations of the struggle for independence in that continent.

On the proposal of the President, the Conference observed a minute's silence in tribute to the memory of Mr. Jomo Kenyatta, President of Kenya.

The meeting rose at 1.10 p.m.

15th PLENARY MEETING

Tuesday, 22 August 1978, at 3.30 p.m.

President: Mr. ZEMANEK (Austria)

Tribute to the memory of Mr. Jomo Kenyatta, President of Kenya (*concluded*)

1. The PRESIDENT invited the Chairmen of the various regional groups to pay a tribute to the memory of Mr. Jomo Kenyatta, President of Kenya.

2. Mr. YACOUBA (Niger), speaking on behalf of the African Group, expressed the condolences of the African Group to the delegation of Kenya and, through it, to the Government and people of Kenya on the occasion of the death of the great African leader, Jomo Kenyatta. For the African States, he had been the symbol of the struggle for independence, since he had been one of the first sons of Africa to dare to tackle a situation inimical to the interests of the African States. He had also been a symbol because, as a result of his effective and dynamic leadership, Kenya had the privilege of being one of the most stable countries in Africa. All those who belonged to the African Group had been deeply affected by his death, for he had been a great man with whom they would like to identify.

3. Mr. GUTIÉRREZ EVIA (Mexico), speaking on behalf of the Latin American Group, expressed the deep sense of sorrow felt by the Latin American Group on the announcement of the death of President Kenyatta, who had been an eminent head of State, a great African leader and a man of world stature. With his patriotism, extensive knowledge, determination, understanding and good nature, he had worked untiringly for the well-being and development not only of his own people, but also of all those aspiring to freedom and independence. The maintenance of peace had been his main objective throughout his fruitful life.

4. Mrs. SLAMOVA (Czechoslovakia), speaking on behalf of the Group of Eastern European States, associated herself with the condolences presented to the delegation of Kenya on the occasion of the death of the great politician, President Kenyatta. Through the President of the Conference, she requested the delegation of Kenya to convey the condolences of the Group of Eastern European States to the people and Government of Kenya. In Eastern Europe, President Kenyatta would be remembered as one who had fought hard for the people of his country and for the peoples of the other African countries as well.

5. Sir Ian SINCLAIR (United Kingdom), speaking on behalf of the Group of Western European and Other States, said that, with the death of Mr. Jomo Kenyatta, Africa and, indeed, the entire world, had lost a great statesman whose influence had extended far beyond Kenya and Africa. It could be said that, by his courage, firmness, understanding and wisdom, he had forged a nation. For his own people, he had been a patriarch and, for other peoples, he had symbolized Africa. The Group of Western European and Other States expressed its deepest sympathy to the Kenyan delegation and, through it, to the people and Government of Kenya and to all the other African delegations.

6. Mr. BRECKENRIDGE (Sri Lanka), speaking on behalf of the Group of Non-Aligned Countries, said it had been with great sorrow that those countries had learned of the death of President Kenyatta. They would remember with pride the way in which he had led his people and the place which he had occupied in the community of nations. The Group of Non-Aligned Countries expressed its condolences to the delegation of Kenya, and, through it, to the Government and people of Kenya.

7. The PRESIDENT requested the delegation of Kenya to convey to the people and Government of Kenya the condolences expressed during the proceedings.

8. Mr. MUDHO (Kenya) thanked the Conference for the moving tribute it had paid to the memory of the first President and founder of the Republic of Kenya. He would convey the condolences of the various regional groups to Mr. Kenyatta's family and to the people and Government of Kenya.

9. All Kenyans were now mourning the sudden passing away of a man who had spent his entire adult life in the service of his people, his country and all mankind, who were the beneficiaries of his great vision and spirit of sacrifice. Despite everything he had done for Kenya and everything he had given to it, all he had asked of his countrymen in return was that they should love one another and learn to cherish peace, progress and stability. He had exhorted every Kenyan to be proud of his country and to forgive, but not forget, the past, an appeal to which there had been a broad response. He had enjoyed the admiration, affection and respect of every Kenyan. He (Mr. Mudho) expressed the hope that what President Kenyatta had always wanted for his country—namely, continued peace, prosperity and stability in a strong and united State from which discrimination was absent, in the true spirit of the motto which President Kenyatta had given his country: "Harambee"—would be realized.

The meeting was suspended at 3.45 p.m. and resumed at 3.55 p.m.

Adoption of a convention and other instruments deemed appropriate and of the Final Act of the Conference

[Agenda item 12] (*concluded*)

Adoption of the Convention as a whole

10. The PRESIDENT invited representatives who wished to do so to make general statements on the Convention adopted at the 14th plenary meeting or to explain their votes.

11. Mr. PÉREZ CHIRIBOGA (Venezuela) said that his delegation had voted in favour of the Convention as a whole, for it marked an important stage in the development of public international law. His Government would still have to decide, at the appropriate time, whether it could sign the Convention.

12. His delegation had been able to vote in favour of the Convention because of the existence of draft article 13, entitled "Questions relating to the validity of a treaty", and because of the International Law Commission's interpretation of article 11, relating to boundary régimes. In paragraph 20 of the commentary to that article, the International Law Commission had stated, with regard to its formulation, that: "In accepting this formulation the Commission underlined the purely negative character of the rule, which goes no further than to deny that any succession of States simply by reason of its occurrence

affects a boundary established by a treaty or a boundary régime so established. As already pointed out [in paragraph 17 of the commentary] it leaves untouched any legal ground that may exist for challenging the boundary, such as self-determination or the invalidity of the treaty, just as it also leaves untouched any legal ground of defence to such a challenge. The Commission was also agreed that this negative rule must apply equally to any boundary régime established by a treaty, whether the same treaty as established the boundary or a separate treaty" (A/CONF.80/4, p. 42).

13. Without article 13 and that interpretation of article 11, which left aside any such legal grounds that might exist for challenging a boundary, such as the invalidity of the treaty or of an arbitral award, his delegation would not have been able to vote in favour of the Convention.

14. Mr. HERNDL (Austria) welcomed the fact that the Conference had adopted, virtually unanimously, another Convention with which Vienna's name would be associated. Apart from some minor amendments, the text adopted was basically the same as the draft of the International Law Commission; that was proof of the high quality of the Commission's work. It was now time to look to the future, to try to forget the questions of colonialism and imperialism raised during the discussions and to seek to apply the Convention effectively.

15. The International Law Commission had rightly given priority to recent practice, which was particularly abundant on the subject and which tended towards the reversal of older practice. The Convention clearly showed the relationship between the "clean slate" rule and the principle of continuity. The application of that rule was justified in the case of newly independent States because of the often difficult circumstances in which they had attained independence. Now that the process of decolonization was nearing its end, it was the principle of continuity, as embodied in the Convention, that would henceforth apply to States, in accordance with the two basic principles underlying the Convention and general international law, namely, the principle of *pacta sunt servanda* and the principle of good faith.

16. Although it had voted in favour of the Convention, his delegation was not entirely satisfied with all its provisions and, in particular, those to which it had submitted amendments. For example, it would have preferred account to be taken, in article 19, of the amendment it had submitted concerning the further reservations which a newly independent State could formulate to a multilateral treaty.

17. His delegation welcomed the outcome of the discussion of the issue of the settlement of disputes, despite the fact that the ideal solution–the compulsory judicial settlement of disputes–had not been adopted. The Convention nevertheless contained a mechanism for the settlement of disputes that was stricter than that of other Conventions; there was thus reason to hope that the international community was moving towards the compulsory judicial settlement of disputes.

18. His delegation had declared its support for the principle of permanent sovereignty over natural resources and had therefore voted in favour of article 12 *bis*, for it was convinced that States must have full sovereignty over their natural resources. At one point in its history, Austria had had to pay dearly to recover its sovereignty over its natural resources. Article 12 *bis* had the merit of treating the principle of permanent sovereignty over natural resources as an element of international law.

19. Mr. FONT BLÁZQUEZ (Spain) welcomed the fact that, owing to its perseverence, the Conference had succeeded in adopting the text of the Convention on Succession of States in respect of Treaties. The difficulties experienced by his delegation related solely to articles 30 and 33. Article 30 would probably create more difficulties than it would solve. The position of his delegation with regard to article 33 was reflected in the summary records of the relevant meetings. Without prejudice to the position of the Spanish Government with respect to the signature and ratification of the Convention, his delegation could have voted without hesitation in favour of the Convention, while explaining its objections to articles 30 and 33; in the event, however, it had finally received instructions to vote for its adoption.

20. Mr. RITTER (Switzerland) said that, although his delegation had been obliged to abstain in the vote on the Convention as a whole, no dramatic significance should be attached to its decision to do so. The value of the work done by the International Law Commission and the Conference should not be underestimated. In that respect, he referred to a constructive provision, namely, article 7, which allowed for greater flexibility in the application of the Convention. Articles 12 and 12 *bis* made the Convention acceptable to a large number of delegations. For his own delegation, the main problem, which had compelled it to abstain in the vote, lay in article 33. The International Law Commission, in its commentary to article 33, had shown that the "clean slate" rule dominated the practice of public international law, but had proposed a deviation from that rule in the case of new States other than newly independent States. The Conference had followed the Commission's suggestion in that regard, but, in doing so, it had introduced a twofold duality into contemporary international law: on the one hand, newly independent States were distinguished from other new States and on the other hand, in the case of a new State, general international law was distinguished from the law laid down in the Convention.

21. It was normal for a codification conference to adopt rules that departed from public international law, but the present Convention departed from precedent: although, in earlier codification conventions, States had adopted new rules which they then applied to themselves, the present Conference had taken decisions which would affect the future of States that did not yet exist. His delegation entertained doubts concerning the possibilities of applying article 33 in practice. Either the new State would not ratify the Convention and would apply general international law,

and hence solutions that ran counter to those envisaged in the Convention, or it would ratify the Convention and style itself a newly independent State. As there were no criteria for distinguishing newly independent States from other new States, there would be nothing to prevent new States from acting in that manner, even though the Conference had deleted from the draft the virtually explicit invitation to States, made in paragraph 3 of article 33, to take such action.

22. It might also happen that a new State which had ratified the Convention subsequently realized that it would prefer not to apply the rule of continuity in certain cases. It could then plead that, during the period which had elapsed between its attainment of independence and ratification of the Convention, it had applied general international law terminating the application of the treaties of the predecessor State, and that the Convention could not re-establish the rule of continuity with retroactive effect. In other words, the sole foundation for the principle of continuity was the consent of States, and it would have been preferable for the Convention to have made that clear instead of imposing the principle of continuity as a general rule. His comments were not intended as a criticism of the Convention, but the legal implications of the solution adopted in the Convention were so far-reaching that the Swiss Government would have to study them very thoroughly before it could sign and ratify the Convention.

23. He noted that Switzerland did not have the status of either predecessor or successor State; by virtue of its links with the outside world, its position was typically that of a third State and it consequently attached more importance than many other States to continuity in treaty relations. It hoped, therefore, that the rule of continuity would continue to be the solution of the future, but that it would be based on consent, in keeping with the policy which the Swiss Government had followed to its own satisfaction and to that of third countries during the period of decolonization, and which had been reflected in the acceptance of declarations of continuity by new States or the negotiation of continuity agreements.

24. He concluded by stating that the Swiss delegation had striven for juridical exactitude during the work of drafting the Convention and that the positions it had espoused in submitting proposals itself or in supporting proposals put forward by other delegations had been motivated entirely, to the exclusion of all other considerations, by its concern to ensure such exactitude.

25. Mr. MAKAREVICH (Ukrainian Soviet Socialist Republic) said that the unflagging efforts of the International Law Commission had now been crowned by the adoption of a Convention which represented a resounding success both for the Commission and for all States Members of the United Nations which strove for the progressive development of international law and contributed to the struggle against colonialism and imperialism. His delegation congratulated the Commission on the fact that its draft, after thorough consideration, had been adopted with very few changes. The Conference had codified the basic elements of existing international law and had contributed to the progressive development of international law. International treaties, which were the instruments of peaceful relations between States, should enable States to work for peace on the basis of justice and equality. Those were in fact the two criteria underpinning the Convention, which was associated with the principles of self-determination, of the permanent sovereignty of States over their natural resources and of the right of States freely to choose their policies and to conduct their relations, particularly treaty relations, with other States.

26. The Convention would enable States to use multilateral treaties to better advantage in the interests of the development of international law and of world peace and security. The Convention contained a number of provisions based on recognized rules of international law, such as the inviolability of frontiers, and the rule of continuity, which reflected contemporary reality so far as succession of States was concerned. The reinforcement of those principles by codification would make it possible for States to strive for world peace and security and to improve international relations on the basis of respect for third States and for the freedom of all peoples.

27. His delegation welcomed the provisions on the settlement of disputes, which showed that most States had not been in favour of adopting a compulsory procedure, and considered that the article adopted on the question went as far as it was possible to go at the present stage.

28. Mr. MARESCA (Italy) said that his delegation had voted in favour of the Convention, since it met a need within the legal order. The process of decolonization had given new life to the legal régime of the succession of States and had thus made it necessary to vest that régime with the legal certainty of written rules. The Vienna Convention on Succession of States in respect of Treaties was the natural and necessary sequel to the Vienna Convention on the Law of Treaties, which had left a gap. The two Conventions combined in defining the law of treaties. The main feature of the Convention just adopted by the Conference was the equitable balance which it struck between two different and even contradictory principles, that of the "clean slate" and that of continuity. The former principle concerned newly independent States, while the latter applied to everything that was still rooted in past realities. His delegation fully appreciated the reference in the preamble to customary law, which filled unavoidable gaps and clarified points that might otherwise remain obscure.

29. It was naturally impossible for the Convention to satisfy all the delegations which had had to make sacrifices. His delegation, for instance, would have liked the Conference to adopt more far-reaching rules, but had had to agree to a compromise; it would have welcomed the establishment of a comprehensive procedure for the settlement of disputes, in other words, one which made provision for recourse to the International Court of Justice. Nevertheless, the provisions which had been adopted on that subject and included in the body of the Convention were preferable to the protocols adopted in the past.

30. He was glad to see that the Convention would bear the name of Vienna, thus continuing a long-standing tradition dating back to the Congress of Vienna of 1815, which had laid down rules that were still in force. He concluded by expressing the hope that other Conventions would also see the light of day in Vienna, the capital of international law.

31. Mr. NAKAGAWA (Japan) said that, despite the reservations which his delegation had expressed in regard to certain provisions, it considered that the Convention as a whole contributed to the progressive development and codification of international law and had therefore voted in favour of its adoption.

32. Mr. DOGAN (Turkey) said he regretted that he had been unable to associate his delegation with the great majority of delegations which had voted in favour of the text of the Convention as a whole. He hoped, however, that the Turkish Government would eventually be able to overcome the legal and administrative difficulties created for it by certain provisions, particularly those of article 33 and article 2.

33. Mr. ABOU-ALI (Egypt) said that he had voted in favour of the Convention because, in his opinion, it marked further progress in the codification and progressive development of international law and it struck a proper balance between the two principles on which international relations were founded–the "clean slate" principle and the principle of continuity.

34. Mr. ARIFF (Malaysia) said that, he too, had voted in favour of the Convention, because he considered it very useful. He thanked the Austrian Government for its welcome and, in addition, all those who had enabled the Conference to achieve its purpose.

35. Mr. PÉRÉ (France) thanked all those who had contributed to the success of the Conference and expressed his gratitude for the welcome extended to the participants by the people of Austria and the city of Vienna.

36. His delegation had, with great regret, abstained during the vote on the Convention. From the outset his Government had questioned the advisability and feasibility of codifying in the form of a convention such a delicate matter as succession of States in respect of treaties. Nevertheless, heeding the legitimate concerns of the developing and the newly independent countries, it had agreed to contribute to the Conference and to provide it with its juridical and practical experience. Unfortunately, his delegation had, for purely juridical reasons, been unable to agree to certain provisions of the text of the Convention, particularly articles 2, 12 *bis*, 33 and 34 and some of the final clauses, and it had therefore been unable to vote in favour of the Convention.

37. However, its attitude towards the Convention would not of course prevent his Government from considering with an open mind and with understanding any cases of succession of States in which it might be involved.

DRAFT RESOLUTIONS SUBMITTED DIRECTLY TO THE PLENARY CONFERENCE

Tribute to the Special Rapporteurs and the Expert Consultant (A/CONF.80/L.2)

The draft resolution was adopted by acclamation.

Tribute to the International Law Commission (A/CONF.80/L.3)

The draft resolution was adopted by acclamation.

Tribute to the people and to the Federal Government of Austria (A/CONF.80/L.4)

The draft resolution was adopted by acclamation.

38. Mr. HERNDL (Austria) thanked the sponsors of draft resolution A/CONF.80/L.4 and the States that they represented. The Austrian Government was proud to have acted as host to the Conference in Vienna and took pleasure in the climate of understanding which had marked its work throughout. He expressed his gratitude to delegations and to the Secretariat for contributing so much to the success of the Conference.

Adoption of the Final Act of the Conference (A/CONF.80/26)

39. Mr. YASSEEN (Chairman of the Drafting Committee) said that in paragraph 25 of the document on methods of work and procedures adopted by the Conference that might be applicable to its resumed session (A/CONF.80/17), of which the Conference had taken note at its 10th plenary meeting,[1] it had been suggested that the preparation of the Final Act of the Conference could be left to the Drafting Committee. At its 24th meeting, on 21 August 1978, the Drafting Committee had adopted the draft Final Act, which was now before the Conference in document A/CONF.80/26.

40. The document described in chronological fashion, the background to and work of the Conference, with a brief indication of its structure and methods of work and a list of the States which had participated in the Conference and of those which had been represented by observers. It also mentioned the United Nations Council for Namibia and the international organizations and other bodies represented at the Conference. Lastly, it indicated the membership and the titles of the subsidiary organs established by the Conference and the names of the officers of the Conference and of its organs. Naturally, it emphasized the outcome of the endeavours of the Conference, in other words, the adoption of the Vienna Convention on Succession of States in respect of Treaties.

41. The Final Act, to which the resolutions adopted by the Conference were annexed, could be signed by the representatives of the States participating in the Conference

[1] See 10th plenary meeting, para. 4.

at the same time as the Convention, on the day on which the latter was opened for signature.

The Final Act of the Conference was adopted.

42. Sir Ian SINCLAIR (United Kingdom), speaking on behalf of the Group of Western European and Other States, expressed gratitude to the President of the Conference, to the Chairman of the Committee of the Whole and also its Vice-Chairman, who had presided over the Informal Consultations Group, and to the Rapporteur and the members of the secretariat. He paid a tribute to the International Law Commission, which could claim to have fathered the Convention, and thanked the Austrian Government for its generous hospitality.

43. Mr. GIL MASSA (Mexico), speaking on behalf of the Latin American Group, said that he had voted in favour of the Convention, which he considered to be a useful instrument in the codification and progressive development of international law. He congratulated the President of the Conference, who had enabled the Conference to bring to a successful conclusion work that had often proved difficult, and also thanked the Chairman of the Committee of the Whole, the other officers and the Expert Consultant and the secretariat. He also paid a tribute to the International Law Commission and thanked the Austrian Government for its welcome.

44. Mrs. SLAMOVA (Czechoslovakia), speaking on behalf of the Group of Eastern European States, said that she, too, wished to congratulate the President of the Conference and the officers of the Committee of the Whole. The Conference could not have been successful in its work without the excellent draft prepared by the International Law Commission; she thanked all members of the Commission, especially those who had participated in the Conference. Owing to the endeavours of the Drafting Committee and of the Informal Consultations Group, and to the spirit of co-operation which had prevailed, the Conference had been able to carry out an extremely complex task and to adopt an excellent Convention which she hoped would be acceptable to all States.

45. Mr. YACOUBA (Niger), speaking on behalf of the African Group, associated himself with the tributes voiced by the representatives of the other regional groups. He took pleasure in the success of the Conference, to which the African Group had contributed by the positive attitude which it had displayed throughout what had sometimes been difficult discussions. The Convention marked an important stage in the efforts to achieve a more equitable and more humane codification of international law, since it enabled the newly independent States to free themselves from any liability deriving from commitments into which they had not themselves entered. He wished to commend the International Law Commission and to express his gratitude to the people and the Government of Austria for their hospitality.

46. Mr. SETTE CÂMARA (Brazil), speaking as Chairman of the International Law Commission, thanked the Conference for having adopted a resolution that paid a tribute to the Commission. He expressed appreciation to Sir Humphrey Waldock, the previous Special Rapporteur, and went on to point out that once again the International Law Commission had demonstrated the excellence of its methods of work, since the Conference had adopted most of the proposals in the basic text and had departed from it simply to add provisions that the Commission had not had the opportunity to consider, such as the provisions on the settlement of disputes.

47. The PRESIDENT thanked delegations for their kind words in his regard. He expressed his gratitude to the participants in the Conference and to the officials of the Secretariat, who had been the architects of the success of the Conference.

The meeting rose at 5.30 p.m.

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Note: On 23 August 1978, before the signature of the Final Act, the delegations of Spain and Turkey informed the secretariat that they were now authorized to approve the Convention.

37th MEETING[1]

Monday, 31 July 1978, at 4 p.m.

Chairman: Mr. RIAD (Egypt)

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

[Agenda item 11] (*continued*)

ARTICLE 30 (Effects of a uniting of States in respect of treaties in force at the date of the succession of States)[2]

1. The CHAIRMAN invited the Committee to resume its consideration of the draft articles submitted by the International Law Commission[3] by examining article 30. He drew attention to the amendments to that article proposed by the Federal Republic of Germany (A/CONF.80/C.1/L.45/Rev.1), Switzerland (A/CONF.80/C.1/L.44) and Japan (A/CONF.80/C.1/L.49).

2. Mr. TREVIRANUS (Federal Republic of Germany), introducing the amendment submitted by his delegation, said that article 30 marked the entry to a new field, for Part IV of the draft clearly contained rules of progressive development and the article was the first, with the exception of articles 11 and 12, to introduce the principle of continuity. His delegation was generally in favour of the International Law Commission's decision that there should be continuity of treaty régimes in the event of the uniting of States. That was, indeed, necessary in order to preserve stability in treaty relations.

3. There was, however, a marked contrast between the "clean slate" formula and the other provisions which the Conference had adopted in relation to newly independent States, taken together, and the principle of continuity that was now proposed. His delegation had no fear that the "clean slate" formula would lead to difficulties, since newly independent States had historically shown a tendency to maintain the treaty links of their predecessors. The *pacta sunt servanda* rule as laid down in the draft articles was mitigated only by a limited number of escape clauses. It was, however, his delegation's impression that the escape clauses contained in article 30 left too much scope for differing interpretations. It was in order to render those clauses less ambiguous and, at the same time, to ensure that the article took into account the elements qualifying the *ipso jure* continuity to which the International Law Commission had referred in paragraph 28 of its commentary on articles 30, 31 and 32 (A/CONF.80/4, p. 98) that his delegation proposed its amendment.

4. The situation that would obtain after the uniting of States required special treatment. In a State composed of several previously independent entities, there would be different treaty régimes, with different rules applying in individual areas of the new State, or even within the same area. Conflicts were therefore inevitable. Some treaties might even become inoperable due to the application of another instrument in the same or another part of the new State. Such situations were particularly likely to arise in connexion with agreements in the field of trade, tariffs, most-favoured-nation treatment, or extradition. The escape clauses currently provided in article 30 were inadequate to provide a just and equitable solution to such conflicts, since they concerned one treaty only and did not take account of the possibility that other treaties might be in force in the territory concerned.

5. The first part of his delegation's amendment illustrated its belief that, where treaties were wholly or partly incompatible, automatic continuity of an existing treaty régime would be impossible. Contrary to what had been proposed in the first version of the amendment (A/CONF.80/C.1/L.45), the second part of the proposal no longer provided for the extinction of both the incompatible treaties, but left it to the new State to choose between the conflicting provisions. That would enable the new State to suit its domestic needs and would, at the same time, ensure

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[1] The records of the 1st to 36th meetings of the Committee of the Whole, held in 1977, are contained in the *Official Records of the United Nations Conference on Succession of States in Respect of Treaties*, vol. I, *Summary records of the plenary meetings and of the meetings of the Committee of the Whole* (United Nations publication, Sales No. E.78.V.8), pp. 21 *et seq.*

[2] The following amendments were submitted: Switzerland, A/CONF.80/C.1/L.44 (1977 session); Federal Republic of Germany, A/CONF.80/C.1/L.45 (1977 session), the revised version of which (A/CONF.80/C.1/L.45/Rev.1) was submitted at the resumed session; Japan, A/CONF.80/C.1/L.49 (resumed session).

[3] *Official Records of the General Assembly, Twenty-ninth Session, Supplement No. 10* (A/9610/Rev.1), chap. II. (The report of the International Law Commission on the work of its twenty-sixth session also appears in the *Yearbook of the International Law Commission, 1974*, vol. II, part one, pp. 157 *et seq.*) The Conference had before it a reprint of chapter II of that report (A/CONF.80/4) and a working paper (A/CONF.80/WP.1) containing the draft articles adopted by the International Law Commission in English, French, Spanish and Russian; separate texts in Arabic and Chinese were also issued under the same symbol. In this volume, for practical reasons, Conference document A/CONF.80/4 is used as the reference for the draft articles adopted by the International Law Commission and for the commentaries on them.

at least a measure of stability in treaty relations. The objection that a State having freedom of choice would inevitably select the régime that was most favourable to itself and might in so doing neglect its partners' interests could also be raised against the possibility of the extension of the territorial scope of a treaty offered by the International Law Commission in paragraph 2, sub-paragraph (*a*), of its version of article 30. The International Law Commission's provision, however, said nothing about what would happen if a treaty that was extended to the entire territory of a successor State was incompatible with other obligations of that State or of one of its parts.

6. His delegation was well aware that its proposal might not represent the only solution to the problem, and it therefore remained open to other suggestions. It also appreciated that some delegations might wish to put the second part of its amendment to a separate vote. It was, however, convinced that the first part of the amendment was essential in order to remedy a genuine omission from the current text of article 30.

7. Mr. RITTER (Switzerland) said that the amendment proposed by his delegation took account of the possibility that the boundaries of a State which became part of a federal successor State might be subject to modification after the date of the succession. That such a situation might arise in practice could be seen from reference to, for example, the case of the Canton of Geneva. Following its accession to the Swiss Federation in 1848, the Canton of Geneva had maintained a certain capacity to conclude international treaties, as permitted by the Swiss Constitution, and its boundaries had changed. If paragraph 2 of the International Law Commission's draft article were applied without modification to an entity like the Canton of Geneva, the effect would be to institute a double régime, under which treaties concluded by the entity prior to its accession to the Federation would apply within the boundaries that had existed prior to that accession, whereas the territorial scope of treaties concluded after that date would vary as the boundaries of the entity changed. To avoid that problem, his delegation proposed that the Conference adopt the principle of the mutability of treaties, in keeping with the variations in the boundaries of the States which concluded them. The effect of its amendment would be, in essence, to ensure that the constituent parts of a federal successor State were subject to the same régime as the federation as a whole. That would meet a practical need and ensure security of the law for individuals.

8. Mr. NAKAGAWA (Japan), introducing the amendment submitted by his delegation, said that his delegation shared the view that the uniting of States would probably become a more frequent method of the formation of successor States in the future. It was, therefore, all the more important that the Conference should formulate a reasonable and equitable rule governing the effects of the uniting of States in respect of treaties. Basically, his delegation had no difficulty in endorsing the principle of continuity as proposed by the International Law Commission in its draft article 30. It nevertheless felt that the number of exceptions to that rule for which the article currently provided must be increased. That was because there might be situations in which it would be practically impossible, or inequitable, to limit the territorial scope of a treaty, since such limitation might, for example, enable a criminal to evade the application of an extradition treaty by moving to a part of the territory of the successor State to which that treaty did not apply. That shortcoming could not be completely remedied by the extension of a treaty to the entire territory of the successor State through notification by the successor State or agreement between the States parties concerned in accordance with paragraph 2 of article 30. It could, however, be rectified by reversing the general rule laid down in article 30 and by providing that a treaty would apply to the entire territory of the successor State if the two conditions set forth in his delegation's proposed amendment were fulfilled.

9. Mrs. THAKORE (India) said that, in article 30, the International Law Commission had adopted the principle of *ipso jure* continuity of treaty obligations with respect to treaties in force at the date of the succession of States, on the basis of State practice, the opinion of the majority of writers, and above all the need to preserve the stability of treaty relations. Her delegation, however, had some doubts about the advisability of rigidly pursuing the principle of continuity in the case of succession of States arising from a uniting of States, and could not understand why the principle of self-determination should not be applied in that case, as in the case of a newly independent State. In the view of her delegation, it should be left to the new State created by the uniting or separation of States to decide whether or not it wished to accept the obligations contracted by its predecessor State.

10. As the international community was likely to be confronted in the near future with more cases of succession of States arising from a uniting of States, because of the increasing tendency of States to group themselves into new forms of associations, the importance of that category of succession of States hardly needed to be emphasized. It might therefore be questioned whether considerations of stability of treaty relations in that case were so paramount as to require the sacrifice of the principle of self-determination. Stability would not necessarily result from the indiscriminate application of the principle of continuity, without regard to the wishes of the State in question. The principle of consent was the basic principle of the law of treaties, and adherence to that cardinal principle was more likely than anything else to contribute to the stability of treaty relations and the promotion of international co-operation.

11. As to the amendments to article 30, the Indian delegation viewed with sympathy the idea underlying the amendment proposed by the Federal Republic of Germany and was of the opinion that the principle underlying that amendment would also apply to articles 33, 34, 35 and 36. The amendment proposed by Switzerland might perhaps be considered by the Drafting Committee with a view to bringing out its intention more clearly. She would comment

on the Japanese proposal, which had just been circulated, later on.

12. Mr. ROVINE (United States of America) said that his delegation viewed with favour article 30 as drafted by the International Law Commission. The continuity rule was the proper approach for both bilateral and multilateral treaties in the case of a uniting of States, and was not inconsistent with the right of self-determination. The problem with article 30, however, was that it omitted to address itself to the serious problem of conflicting treaty obligations, a problem which had not been focussed on by the International Law Commission either in its articles or in the commentary; the Conference should therefore examine the question of conflicting treaty régimes, which could easily be envisaged as arising in such matters as trade agreements, for example.

13. One possible solution had been suggested by the Federal Republic of Germany, (A/CONF.80/C.1/L.45/Rev.1) namely, that the successor State would make a choice, but such a solution might not protect all the treaty interests involved and might result in one State being unhappy with an approach sanctioned by a rule of the convention. A second possibility, that originally proposed by the Federal Republic of Germany (A/CONF.80/C.1/L.45) was to negate such conflicting treaty provisions, a harsh but nevertheless possible solution. A third approach, which was to be proposed by the United States as article 30 *bis* (A/CONF.80/C.1/L.50), would require nations which had succeeded to conflicting treaty régimes to try to end conflicts by consultation and negotiation with the other treaty party or parties; if after a reasonable period it proved impossible to resolve the conflicts, then the conflicting treaty provision would come to an end. Any questions of separability could be resolved by reference to article 44 of the Vienna Convention on the Law of Treaties[4] A fourth possible solution was negotiation alone, by imposing a requirement on States to negotiate with the parties in question where there were conflicting treaty provisions to which they had succeeded. Such a solution might take the form either of an article or of a simple conference resolution to indicate awareness of the problem but the absence of a precise rule. The Conference had a duty to consider all four approaches in greater depth.

14. Mr. STUTTERHEIM (Netherlands) said that his delegation favoured the continuity principle with regard to treaties, unless there were major reasons for admitting an exception as in the case of newly independent States. The settlement of disputes should be expressly provided for.

15. His delegation had some difficulty with the amendments proposed by the Federal Republic of Germany in that a successor State in the sense of the article, was different from a decolonized State. It therefore preferred the inclusion of a provision such as the article 30 *bis*, proposed by the United States, or a resolution recognizing the problem. It could support the amendment proposed by Switzerland. It had not had time to consider the Japanese proposal.

16. Mr. YASSEEN (United Arab Emirates) said that the provisions of article 30 as drafted by the International Law Commission invoked the principle of *pacta sunt servanda* and that it was not possible for any State, in the case of a uniting of States, to forgo such contractual obligations. His delegation could support an article invoking that fundamental principle.

17. Of the amendments before the Committee, that of the Federal Republic of Germany was not acceptable, since it offered a new State the possibility of choosing between one obligation or another; it would clearly not have the freedom to choose if international law were invoked.

18. His delegation approved the spirit of the Japanese proposal but saw technical difficulties in that the territory of the new State was not bound to apply the treaty, yet was bound by the treaty itself; such a situation ran counter to the principle of *pacta sunt servanda* and was therefore unacceptable. Account had to be taken of States joined by a convention but not parties to original treaties in force in other territories.

19. The Swiss proposal raised the question of the application of the moving frontiers theory. His delegation had no technical objection to the amendment but was not certain whether it was in fact necessary. It did, however, deserve further consideration.

20. With regard to the point made by the United States, he did not consider it part of the task of the Conference to consider the question of conflicting treaty obligations, which was a vast question and in his opinion was already settled by the Vienna Convention on the Law of Treaties.

21. Mr. MARESCA (Italy) said that article 30, which marked the dividing line between the two main sections of the draft articles, reflected that same spirit of dynamism which had always animated the international community in the matter of succession of States. It seemed to him, however, that paragraph 1 was lacking in one important element, since subparagraph (*b*), which provided for an exception to the rule laid down in the opening clause in cases where the application of the treaty "would be incompatible with its object and purpose or would radically change the conditions" for its operation, did not extend to cases of possible conflict with previously existing rules. Paragraph 2 likewise gave him some cause for concern for, as he read it, its terms would apply irrespective of the form of union adopted by the new State. Taking the case of Italy, for example, had all the treaties existing prior to its unification remained in force, there would have been utter chaos: happily, that had not been the case. He therefore considered that some provision should be added to paragraph 2 to avoid what he would term a "patchwork" effect on the whole of the new territory.

22. On those grounds, he welcomed the amendment proposed by the Federal Republic of Germany which laid

[4] See the text of the Convention in *Official Records of the United Nations Conference on the Law of Treaties, Documents of the Conference* (United Nations publication, Sales No. E.70.V.5), pp. 287 *et seq.*

down in clear terms that incompatibility with any existing obligations would also be a reason for avoiding the automatic application of a treaty. Paragraph 2 of the article could perhaps be accepted on the understanding that the successor State must have opened negotiations with the predecessor States and that only in the event of the failure of such negotiations would the successor State be the sole judge in the matter. Alternatively, paragraph 2 could be deleted, although personally he would prefer it to be retained.

23. He likewise welcomed the amendment proposed by Switzerland, since it defined the scope of paragraph 2 as it applied to the case of a federal, as opposed to a unitary, State. Its inclusion in the draft article would reflect the principle of the mutability of frontiers.

24. Lastly, he endorsed the amendment proposed by Japan which, by providing for the application of a treaty throughout the whole of a federated State, would introduce an element of balance in regard to paragraph 2.

25. Mrs. BOKOR-SZEGÖ (Hungary) said that the Swiss amendment seemed to differ from the terms of article 30 in that it dealt not with a succession of States in the strict sense but rather with a change occurring in the territory of a subject of international law following unification. To assist her in the comprehension of that amendment, she would ask the Swiss representative to elaborate on his proposal.

26. Mr. RITTER (Switzerland) said he agreed that any change in the frontiers between the States members of a union, whether federal or other, was not a succession of States within the terms of the convention. The purpose of his delegation's proposal, however, was not to assimilate that question to a succession of States as such but rather to deal with the effect of paragraph 2 in the event of a change of frontiers. In such a case, there were two possibilities: if the members of the federal State did not have capacity to conclude treaties, as was the case under the constitutions of many such States, there would be no objection to applying the terms of paragraph 2 as drafted, for even if the frontiers were changed subsequently, the former frontiers would be maintained for the purposes of the treaty. On the other hand, if the members of the federal State did retain some capacity to conclude treaties, as was the case under certain other constitutions, paragraph 2 would give rise to a dual situation in the case of treaties concluded prior to the creation of a federal state, the internal frontiers would be frozen at the time of the creation of that State, but in the case of treaties concluded subsequent to its creation, the principle of mutability would apply. To avoid that situation, his delegation therefore proposed that, where the members of a federated State retained their capacity to conclude treaties, the principle of the mutability of frontiers should be re-established.

27. The representative of the United Arab Emirates, if he had understood him aright, was not opposed to the spirit of the Swiss amendment but asked whether it would in fact add anything to the draft article. In his own view, the answer was clearly in the affirmative. The opening clause of paragraph 2 made it quite clear that the intention was to do away with the principle of mutability of frontiers within a federated State. If, however, that principle were accepted, then the draft article would have to be amended.

The meeting rose at 5.25 p.m.

38th MEETING

Tuesday, 1 August 1978, at 10.20 a.m.

Chairman: Mr. RIAD (Egypt)

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

[Agenda item 11] (*continued*)

COMMUNICATION CONCERNING ARTICLE 7[1]

1. Mrs. VALDÉS PÉREZ (Cuba) announced that her delegation was withdrawing its amendment to article 7 (A/CONF.80/C.1/L.10/Rev.2), which had been referred to the Informal Consultations Group for consideration.

ARTICLE 30 Effects of a uniting of States in respect of treaties in force at the date of the succession of States[2] (*continued*)

2. Sir Ian SINCLAIR (United Kingdom), noting that article 30 was based on the principle of *ipso jure* continuity, said he agreed with the International Law Commission that that principle must be considered as the basic one to be applied in the case of a uniting of two already independent States. Article 30 did not deal with the case of the formation of a newly independent State, in which the application of the "clean slate" principle was justified by the fact that, at least in some instances, a treaty might have been applied to a territory by the metropolitan Power without the consent of the people of the territory in question. Although the logic of the principle of self-determination required that the "clean slate" rule should be applied in the latter case, the same was not true in the case of a uniting of two already independent States, in which the principle of *ipso jure* continuity seemed to apply. However, the principle of *ipso jure* continuity could not be

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[1] For the discussion of article 7 at the 1977 session, see *Official Records of the United Nations Conference on Succession of States in Respect of Treaties*, vol. I, *Summary records of the plenary meetings and of the meetings of the Committee of the Whole* (United Nations publication, Sales No. E.78.V.8), pp. 64-88, and 233.

[2] For the amendments submitted, see 37th meeting, foot-note 2.

applied indiscriminately, for account had to be taken of two basic problems: first, what would be the territorial scope of a treaty which, at the date of the uniting of State A and State B, applied to the territory of State A; and, secondly, what would happen, in the case of the uniting of State A and State B, if a treaty provision which applied to the territory of State A conflicted with another treaty provision which applied to the territory of State B.

3. According to article 30, paragraph 2, any treaty continuing in force in the case of a uniting of States applied only in respect of the part of the territory of the successor State in respect of which the treaty had been in force at the date of the succession of States, unless the successor State and the other States concerned otherwise agreed or, in the case of a general multilateral treaty, the successor State made a notification that the treaty applied in respect of its entire territory. While acknowledging that that rule was based on State practice, he was not sure that it could provide a solution in all the cases that were likely to arise. For example, if State A, which had concluded a commercial treaty with State X, united with State B, would it, in practice, be possible to continue to apply that treaty only to the territory of State A and to the persons who belonged to that State? His opinion was that, in such a case, the treaty must apply to the entire territory of the successor State. He was therefore in favour of the Japanese amendment (A/CONF.80/C.1/L.49), which made the text of article 30 somewhat more flexible.

4. His delegation was grateful to the delegation of the Federal Republic of Germany for having raised the question of the incompatibility of treaty obligations in the amendment it had proposed (A/CONF.80/C.1/L.45/Rev.1). It agreed that an exception should be made to the principle of *ipso jure* continuity when the application of the rules of the convention entailed incompatibility between treaty obligations, either for the successor State or for any other State. Indeed, the problem could arise not only in the context of article 30, but also in that of article 29, as the result of the emergence of a newly independent State formed from two or more territories.

5. His delegation was therefore in a position to support the first part of the amendment proposed by the Federal Republic of Germany, but it could not support the second part of that amendment, for the solution of allowing the successor State to choose which of the two treaties was to apply was too radical. In his delegation's opinion, that solution, which allowed the successor State to settle the matter as it pleased, was not the best way of reconciling the interests of the parties to the treaty. He therefore proposed that the first part of the amendment by the Federal Republic of Germany should be put to a separate vote.

6. He endorsed subparagraph (*a*) of the new article 30 *bis* proposed by the United States of America (A/CONF.80/C.1/L.50), which required the successor State and the other parties to the treaties in question to hold consultations and negotiations in order to eliminate any conflicts that might arise. However, he had some doubts about the rule set forth in subparagraph (*b*), which would provide ammunition to those parties to the treaty which had an interest in the treaty's ceasing to be in force.

7. In general, his delegation considered that the solution to the problem of conflicting treaty régimes was to be found in the first part of the proposal by the Federal Republic of Germany and in a Conference resolution inviting the successor State and the other parties to the treaty to make every effort to resolve any incompatiblity resulting from the application of the rules laid down in the Convention through consultation and negotiation. It would therefore be prepared to support the proposed Conference resolution which the United States had submitted in document A/CONF.80/C.1/L.51. It supported the principle of the amendment by Switzerland (A/CONF.80/C.1/L.44), but thought that it was for the Drafting Committee to decide whether that admendment should be incorporated in article 30 or in article 14.

8. Mr. MUSEUX (France) said he considered article 30 to be a key provision and one of the most important in the Convention. If, despite its importance, that article had been the subject of few comments by Governments, that was probably because it was a well-drafted and balanced article, the basis for which was not questioned by the international community. In his opinion, the principle of continuity enunciated in that article was fully justified, not only because the article related to already independent States—and not to former colonial territories—but also because there was a fundamental difference between cases of scission and cases of union. In all cases of scission, there was conflict between the component parts of a legal entity; that was why the International Law Commission had opted for the "clean slate" principle. Article 30, on the other hand, referred to the case of entities which united because they were compatible: it was therefore logical for the system of obligations and rights which had bound them to continue in force.

9. The International Law Commission had placed certain limits on the principle of continuity. It had, in particular, limited the territorial scope of the treaty, for, under article 30, paragraph 2, the treaty continued to have the same area of application as before the uniting of States. He agreed with that rule, even though it might give rise to some practical difficulties, for he considered that, in the situation referred to in article 30, such difficulties would be inevitable. In his opinion, the adoption of a more radical solution, such as the one of extending the territorial scope of the treaty, might lead to even more serious difficulties. He was therefore in favour of maintaining the same territorial scope as before the uniting of States.

10. The Japanese amendment had the effect, in certain cases, of extending the territorial scope of the treaty. It was obvious that, in the case of an extradition treaty, to which the representative of Japan had referred at the preceding meeting, the application of such a treaty to only part of the territory of the successor State might give rise to practical difficulties. He did not, however, think that the Japanese amendment would enable those difficulties to be overcome, for, if each of the predecessor States had concluded an extradition treaty with a third State, it would not be clear

which of those treaties would apply to the entire territory of the successor State. He considered that the International Law Commission's text, paragraph 2 (*a*) of which provided that the successor State could make a notification that the treaty would apply in respect of its entire territory, was flexible enough and that it was not necessary to provide for a binding obligation, as was done in the Japanese amendment. In his opinion, it would, moreover, be difficult to determine the cases in which the territorial scope of the treaty was to be extended in that way.

11. He was grateful to the Federal Republic of Germany for having drawn the Committee's attention to the particular difficulties which might result from the incompatibility of treaty provisions. He was, however, of the opinion that such incompatibility was limited, for every treaty had its own territorial scope and there was not usually any overlapping between the scopes of various treaties. There could, of course, be borderline cases. It therefore had to be decided how far it was possible to go in resolving the problem of the incompatibility of treaty provisions. The representative of the United Kingdom thought that the Committee should not go too far, that it was sufficient to adopt the first part of the subparagraph (*c*) proposed by the Federal Republic of Germany and to seek a solution through negotiation, as provided for in subparagraph (*a*) of the article 30 *bis* proposed by the United States.

12. In his opinion, the amendment proposed by Switzerland was not, strictly speaking, an amendment of substance, but, rather, a rule of interpretation concerning the scope of paragraph 2 of the text proposed by the international Law Commission. Like the representative of the United Arab Emirates,[3] he thought that the problem which that amendment was designed to solve was a matter to be considered by the Drafting Committee. He did not think that the International Law Commission had wanted to rule out the solution proposed by the Swiss amendment or to disregard the problem raised by variations in the frontiers of the territorial entities composing the successor State. In his opinion, the problem was one of a drafting nature, for article 30, paragraph 2, appeared to come down on the side of a crystallization of territorial limits. He was therefore in favour of the principle of the Swiss amendment, it being understood that the Drafting Committee would decide on the final wording of that amendment and its position in the Convention. In his opinion, the best place for that amendment might be in article 30, paragraph 2, since it related to the interpretation of that paragraph.

13. Mr. MAKAREVICH (Ukrainian Soviet Socialist Republic) said that he was satisfied with the contents of article 30 as submitted by the International Law Commission, which in his view required only a few minor drafting changes. He considered that the principle which should apply in the case of a uniting of States was that of *ipso jure* continuity, which was consistent with the principle *pacta sunt servanda* and ensured the stability of treaty relations.

14. He shared the views of the representative of the United Arab Emirates[4] concerning the amendment submitted by the Federal Republic of Germany. That amendment conflicted with certain principles of international law, particulary the principle *pacta sunt servanda,* and jeopardized the rights of other States parties to the treaty. Under the amendment, the successor State could settle unilaterally the problem posed by the incompatibility of the treaties to which it had succeeded, without basing itself on the objective criteria set forth in article 30, paragraphs 1 (*b*) and 3, namely, the object and purpose of the treaty. The extremely complicated problem of the separability or non-separability of treaty provisions had not been solved by the Vienna Convention on the Law of Treaties,[5] and no attempt should be made to solve it in the present convention. He could not, therefore, support the amendment of the Federal Republic of Germany.

15. The case referred to in the Swiss amendment was not assimilable to the case of the uniting of States referred to in article 30, in which the predecessor States ceased to exist in order to form a new State. In his opinion, it was the principle of *de jure* continuity and not the moving frontiers principle that should apply in the case referred to in article 30, whereas in the case referred to in the Swiss amendment article 14 was applicable. The amendment therefore seemed to him to be superfluous.

16. The Japanese amendment was at variance with the provisions of article 30 and might have undesirable consequences. According to that amendment, if a small State which had concluded a customs tariff agreement for the import of goods united with a much larger State, which had not concluded an agreement of that kind, the customs preferences provided for by the agreement in question would be extended to the entire territory of the new State, in other words, to a much larger territory than that to which they had applied originally. Thus, the Japanese amendment might place the successor State in a very difficult position. He could not, therefore, support it. If a general multilateral treaty was to be applicable to the entire territory of the successor State, the successor State must make a notification, as stipulated in article 30, paragraph 2 (*a*).

17. His delegation reserved the right to state its position on the article 30 *bis* proposed by the United States, at a later stage.

18. Mr. SCOTLAND (Guyana) said that article 30 dealt with two aspects of the question of treaty succession. In paragraph 1 it considered the existence or subsistence of the treaty relationship when two or more States united to form a new State. In paragraph 2 it considered the territorial scope or object of the treaty. He stressed that paragraph 1 of article 30 contained a presumption in favour of the continuity of treaty relations; since at least one of the

[3] See 37th meeting, para. 19.

[4] *Ibid.*, para. 17.

[5] See the text of the Convention in *Official Records of the United Nations Conference on the Law of Treaties, Documents of the Conference* (United Nations publication, Sales No. E.70.V.5), pp. 287 *et seq.*

entities forming part of the new State was a party to the treaty in question, it should not be deprived of its status as a party only because it had united with another State to form a new State. In addition, the principle *pacta sunt servanda* ensured that the treaty obligation continued to be enforceable in respect of the territory of the former State which had been a party to the treaty. He pointed out, with regard to the wording of the article, that the effect of subparagraph 1 (*a*), when read with the *"chapeau"* of the paragraph, served to maintain treaty relations for the successor State even if that State did not intend to maintain them. It could, of course, be argued that recourse could be had to the procedure for terminating such relations established in the treaty, but such a procedure was open only to the parties to the treaty in question, and the contention of the successor State would be that, as a new entity, its only obligations were those it expressly assumed when it came into being, in accordance with the "clean slate" principle. In the opinion of his delegation, however, such an argument would seriously impair the stability and security of treaty relations. In fact, article 30 was not an appropriate instance for the application of the "clean slate" principle. All States uniting to form a new entity would have existing treaty obligations at the moment of their union, unlike newly independent States. For those States, the fact of entering into treaty relationships as sovereign States, followed by the fact of participating voluntarily in a union of States, constituted an affirmation of their sovereignty and an unmistakable expression of their right to self-determination. That was why his delegation considered that the presumption of continuity set forth in paragraph 1 was justified and that an act of the new State was necessary to terminate treaty relations contracted previously by an entity now forming part of its territory.

19. In paragraph 2, which related to the territorial scope of the treaty relations, the presumption of continuity was limited to the part of the territory of the successor State to which the treaty obligation in question had applied. If the two States or all the States forming the new entity had been parties to the same treaty, each of them would enter the union with the obligations it had previously assumed with respect to its territory. The presumption in paragraph 2 was properly made since it was later on provided that decisions to the contrary could be reached by agreement.

20. It appeared to his delegation that it could further examine the article from the point of view of the effective date of entry into force of the treaty for the successor State. If, as was established in the *"chapeau"* of paragraph 2, the treaty obligations rested upon only a part of the territory of the new entity, those treaty obligations would apply only in respect of the part of the territory of the successor State in respect of which the treaty had been in force but fell to be discharged by the successor State in its capacity as sovereign. For the successor State, therefore, the date of entry into force of the treaty would be the date on which the part of the new territory to which the obligation had applied assumed that obligation as an independent entity. When the successor State and the other States were parties to a multilateral treaty under which the consent of all parties was required for another State to become party to that treaty, or when the successor State and the other State party to a bilateral treaty reached agreement to the contrary, the effective date of entry into force, with respect to the successor State, could be fixed by agreement. When as in paragraph 2 (*a*) the successor State had to make a notification, the date of notification would appear to be the effective date.

21. It was not clear from a reading of the *"chapeau"* of paragraph 2 and subparagraph (*a*) of that paragraph whether the continuity of the obligation with respect to part of the territory of the successor State was maintained in the face of a notification as envisaged in subparagraph 2 (*a*) or was overridden by it—in the sense that the notification represented the only new obligation to be assumed by the new State in respect to the treaty—or whether the notification was regarded as being only another obligation assumed by the new sovereign State in addition to the obligations which were contracted before the date of succession by an independent State that had subsequently become a part of the new State, which obligation the new State had to fulfil.

22. Those questions notwithstanding, the fact remained that the *"chapeau"* of paragraph 1 provided for the continuity of obligations existing at the date of succession, except in certain circumstances. The problem dealt with in article 30 could assume various forms, and the text put forward by the International Law Commission was perhaps the best that could be proposed at the moment.

23. The amendment proposed by Switzerland related to a particular problem but did not appear to his delegation to be required to meet a genuine juridical need. Nevertheless, his delegation was not opposed to it; the Drafting Committee might be able to find some other way of settling the matter in the draft.

24. The amendment proposed by the Federal Republic of Germany was likely to create more difficulties than it would resolve. The effect of the amendment was to leave the successor State free, not only to decide whether it would continue to be bound by a treaty but also to determine, in the event of incompatibility between treaty obligations, which obligations it would accept. The latter option would, of course, leave all the other parties to the treaties in question in a state of uncertainty until the successor State had reached a decision. In the opinion of his delegation, the question of incompatibility was covered by paragraph 1 (*b*); it should be settled by the successor State and the other States parties to the treaties in question.

25. As to the second part of that amendment, it seemed that the successor State, as a sovereign State, could resort to reservations to indicate the provisions of the particular treaty by which it did not wish to be bound. His delegation could not, therefore, support the amendment of the Federal Republic of Germany.

26. The Japanese amendment seemed to reverse the scheme of things. According to paragraph 2 of article 30, the treaty obligation applied only to the part of the territory of the successor State in respect of which the

treaty had been in force at the date of the succession of States, unless the States concerned otherwise agreed or the successor State made a notification. Under the Japanese amendment, the obligation would in certain circumstances be applicable to the entire territory of the successor State. It seemed that the particular circumstances referred to in that amendment should lead the other States parties to a treaty to request the successor State to apply the treaty to its entire territory or to repudiate the treaty altogether. The possibility of choice, which was explicitly provided for by the International Law Commission, should not be limited in any way. Subparagraphs (*a*), (*b*) and (*c*) of paragraph 2 allowed the successor State to determine the course it intended to follow in the light of the circumstances.

27. In introducing his delegation's amendment[6], the representative of Japan had said that article 30 might be prejudicial to extradition treaties and to the Non-Proliferation Treaty. It was not conceivable, however, that a State would conclude a treaty in good faith while at the same time admitting exceptions or limitations, whether territorial or other, which would defeat, or conflict with, the very object and purpose of that treaty, or that the other States parties to the treaty would suffer in silence the continued existence of such a treaty relationship. For that reason, his delegation could not support the Japanese amendment.

28. The new article 30 *bis* proposed by the United States seemed to satisfy some of the concerns expressed at the 37th meeting, but he could not take a position on that amendment until he had had time to study it.

29. Mr. PÉREZ CHIRIBOGA (Venezuela) stressed the importance that article 30 would have in the future and the difficulties involved in drafting such a provision, which had to cover a great variety of cases. It was in an attempt to fill certain gaps that several delegations had submitted amendments to the article.

30. His delegation could support the amendment of the Federal Republic of Germany. In view, however, of the comments made in the course of the discussion, it would be preferable for the first part of that amendment to be voted upon separately, as proposed by the representative of the United Kingdom.

31. The Japanese amendment introduced a very interesting element, and his delegation could support that amendment as well. Many problems might arise if provision was not made for the case covered by that amendment. The application of a treaty to only part of the territory of the successor State could, in many cases, be highly prejudicial to one or more parties to the treaty, which was contrary to the purpose of uniting. So far as form was concerned, the Japanese amendment might perhaps be reworded to take account of the comments made during the debate.

32. The Swiss amendment covered the particular case of a federal State. The International Law Commission had referred to that case in its commentary when it had noted that the degree of separate identity retained by the original States after their uniting, within the constitution of the successor State, was irrelevant for the operation of the provisions of article 30. He failed to see how the Swiss amendment would apply. If two States united to form a new State, thus occasioning a succession of States, and if the territory of one of the parts of the successor State was subsequently modified, such modification was purely internal in character and was totally unrelated to article 30. The case referred to by the Swiss amendment was an altogether different one, which was perhaps covered by article 14. It seemed, however, that there was no need to provide for it in the convention. If the Committee were nevertheless to consider that the amendment should be incorporated in the convention, it ought perhaps to be introduced elsewhere than in article 30.

33. As to the wording of the Swiss amendment, in the Spanish version, the word *"cuando"* should be replaced by the words *"en el caso"* in order to show clearly that no subsequent modification occurred.

34. Mr. MEISSNER (German Democratic Republic) observed that article 30 was the first article in part IV of the draft, which related to the uniting and separation of States, in other words, to those cases of succession of States which would doubtless be the most common in the future. His delegation endorsed article 30 as drafted by the International Law Commission. Since, under article 6, a uniting of States must be effected in conformity with "the principles of international law", it was natural that the principle of continuity should be the basic principle in the case of article 30. Nevertheless, exceptions were provided for in order to avoid legal consequences which would render a uniting more difficult, if not impossible, or which would annul the obligation to succeed should that obligation be incompatible with the object and purpose of the treaty or necessitate the consent of all the contracting parties.

35. Consequently, his delegation saw no reason to modify the substance of article 30, as was proposed in the amendment of the Federal Republic of Germany. In the final analysis, that amendment considerably weakened the principle of continuity. The objections which had already been raised when article 29 had been considered were not convincing, since that provision covered a qualitatively different situation, arising from decolonization, and, in that case, the "clean slate" principle was fully justified. Article 30, on the other hand, covered the case in which previously existing sovereign States, having of their own volition previously established treaty relations, wished to unite. In that case, it was the principle of continuity that should apply. Since article 30 allowed sufficient latitude to contracting States, it was difficult to understand why such major changes were being proposed to that article.

36. His delegation shared the misgivings expressed by the Hungarian delegation[7] with regard to the Swiss amendment.

37. His delegation failed to see the justification for the Japanese amendment.

[6] See 37th meeting, para. 8.

[7] *Ibid.*, para. 25.

38. Mr. SETTE CÂMARA (Brazil) said that his delegation fully supported article 30 as proposed by the International Law Commission. The amendments to that article were designed to clarify it and to remove any uncertainties to which its interpretation might give rise, but none of them seemed really necessary.

39. With regard to the Swiss amendment, he observed that, the article, as it stood, covered the case in which the component parts of the successor State retained the capacity to bind themselves by treaty. The commentary of the International Law Commission left no room for doubt on that point. The possibility of applying article 14 and the moving frontiers rule would be assured in all cases. Furthermore, he doubted whether it was appropriate to use an expression as vague and imprecise as *"mutatis mutandis"* in a legislative text.

40. The amendment submitted by the Federal Republic of Germany related to incompatible successive treaty obligations, a problem dealt with very fully in article 30 of the Vienna Convention on the Law of Treaties. Paragraph 3 of that article stated that the earlier treaty would apply only to the extent that its provisions were compatible with those of the later treaty. It might be worthwhile recommending that the successor State should indicate the treaty whose provisions were to continue to apply, although he, like the representative of the United Kingdom, found it difficult to see on what legal basis that could be done.

41. He considered that subparagraphs (*a*), (*b*) and (*c*) of article 30, paragraph 2, should adequately cover the case envisaged by the Japanese amendment.

42. At first sight, the new article 30 *bis* proposed by the United States of America seemed to relate to the settlement of disputes, and it should therefore be considered at a later stage. He had no objection to the proposed Conference resolution submitted by the United States of America in document A/CONF.80/C.1/L.51.

43. Mr. CASTRÉN (Finland) said he considered the text for article 30 proposed by the International Law Commission to be well-balanced; the present text was a marked improvement on the text adopted in first reading by the Commission, and was more broadly acceptable. The Commission had made the necessary exceptions to the principle of continuity.

44. The amendment of the Federal Republic of Germany concerned the application, in respect of the successor State, of treaties whose provisions were incompatible. In his view, the successor State should not be entitled to free itself of obligations of that sort, as that amendment, which he considered unacceptable, envisaged.

45. The Japanese amendment did not take into account the rights of all the States involved. It tended to expand the principle of continuity beyond reasonable limits.

46. The Swiss amendment would be acceptable as far as substance was concerned, but its content was already covered by article 14, which applied to States in general, of any kind. The International Law Commission had not considered it necessary to define the term "State", and that term probably, therefore, applied also to the States members of a federal State which enjoyed a limited capacity to bind themselves by treaty. Nevertheless, his delegation would have no objection to referring the Swiss amendment, which might possibly supplement article 14, to the Drafting Committee.

47. Finally, his delegation was prepared to vote in favour of the proposed Conference resolution submitted by the United States of America in document A/CONF.80/C.1/L.51.

48. Mr. PASZKOWSKI (Poland) said he considered the principle of *ipso jure* continuity to be highly relevant to cases of uniting of States. In fact, it seemed to be the only acceptable principle, in the light of contemporary international law and State practice. The International Law Commission had always sought to maintain stability in treaty relations; the "clean slate" doctrine was merely an important exception to the application of that principle, made for the benefit of newly independent States. The characteristics of successions of States occurring when newly independent States came into being called for special rules consistent with the principle of self-determination, since those States had not expressed their will before their independence. It was an entirely different matter when independent States united, bringing with them all the treaty commitments to which they had freely consented. As the International Law Commission had concluded in paragraph 27 of its commentary on articles 30-32, they ought not to be able at will to terminate those treaties by uniting in a single State (A/CONF.80/4, p. 98).

49. His delegation believed that the present wording of article 30 reconciled the dynamic development of international life and the stability indispensable to any legal order. Article 30 was flexible enough to enable any problems which a uniting of States might pose to be resolved. His delegation did not, therefore, find the text of article 30 to be in need of improvement. Some of the amendments proposed might hold out dangers. A uniting of States should not serve as a pretext for terminating treaties, and his delegation could not agree to an amendment which would give the successor State that power. The discussion on article 30 had confirmed his delegation in its belief: article 30 as drafted took into account all the points which had been raised.

50. Mr. TORNARITIS (Cyprus) said he fully subscribed to the United Kingdom representative's views on draft article 30. His delegation found the International Law Commission's text acceptable and considered that care should be taken not to alter its balance. He shared the views of the representative of the Ukrainian SSR regarding the Japanese amendment, and those of the representative of France on the Swiss amendment. The amendment of the Federal Republic of Germany, which sought to resolve the problem of possible incompatibility between several treaty obligations, did not propose an acceptable solution, because it ran counter to certain principles of international law and principles which had served as a basis for formulating the

draft article. However, the Drafting Committee might consider inserting a sentence in the draft article, specifying that, in the event of a conflict between treaty obligations, the Vienna Convention on the Law of Treaties should apply. Finally, his delegation reserved its position on the article 30 *bis* proposed by the United States, which it had not yet had time to study.

51. Mr. RYBAKOV (Union of Soviet Socialist Republics) said that his delegation supported the International Law Commission's text, the provisions of which clearly reflected the principle of succession. In preparing the draft Convention, the Commission had taken as its starting-point the idea that the "clean slate" principle would be applicable only to cases of succession of States occurring as a result of decolonization. A uniting of States bore no relation to the exercise of the right to self-determination.

52. As analysed by the members of the Committee, the amendment of the Federal Republic of Germany modified the substance of the International Law Commission's draft. It ran counter to the rule of *pacta sunt servanda*, it was prejudicial to the stability of international relations and it might serve to undermine the "clean slate" principle. As the representative of the United Arab Emirates[8] had noted, that amendment would affect the rights of the other States parties to treaties. For that reason, the Soviet delegation shared the misgivings expressed by the representatives of Guyana and France. However, it did not agree with the view of the United Kingdom representative that the first part of the amendment would be acceptable because, in point of fact, both parts of the amendment would have the same practical and juridical consequences. The arguments adduced in support of the amendment carried little conviction, since the Vienna Convention on the Law of Treaties met the concerns of the proposal's sponsor. Furthermore, should the Committee wish to deal with the problem of conflicting treaty obligations, its task would be complicated considerably. It stood to reason that the only way for the States concerned to resolve a conflict of treaty obligations was by mutual consultation. His delegation, like many others, therefore found the amendment unacceptable, for it failed to take account of the right to self-determination and affected the vital interests of third States.

53. His delegation also shared the misgivings expressed concerning the usefulness of the other amendments. In particular, it had the same problems as the Hungarian delegation with respect to the Swiss amendment. It had not had time thoroughly to study the article 30 *bis* proposed by the United States, but, at first sight, it seemed contrary to the ideas set forth in the original text. However, his delegation was ready to discuss the proposal contained in document A/CONF.80/C.1/L.51 at a later stage.

54. In conclusion, he welcomed the trend which had emerged in favour of retaining the text proposed by the International Law Commission, which met the major concerns of the members of the Committee.

55. Mr. DIENG (Senegal) said he believed that the draft article in its present wording was sufficiently balanced to command the support of the members of the Committee. The International Law Commission had drafted the text in the light of the need to preserve the stability of international relations, the only limitations being the wishes of the States concerned, the compatibility of the treaties in force before the uniting of States with the new situation, the effects of the change on the application of the treaties and the territorial scope of the treaties. For that reason, his delegation would be able to agree to an amendment only if it filled a gap or provided a useful clarification.

56. The amendment proposed by the Federal Republic of Germany dealt with a case on which there was no point in dwelling, since it was provided for by the Vienna Convention on the Law of Treaties. While acknowledging the possibility of a conflict between treaty obligations, his delegation was of the opinion that it would be less serious to have to solve such a problem than systematically to call treaties in question on the grounds of incompatibility with other obligations. Since, moreover, that amendment would entitle the successor State to choose which treaties would remain in force and which would not, his delegation found it unacceptable.

57. His delegation had no objection to the substance of the Swiss amendment. It did, however, doubt whether that amendment should be included as paragraph 4 of the draft article. Since the amendment added little to the draft article, it might be referred to the Drafting Committee. Lastly, his delegation considered that the Japanese amendment, by reversing the normal order, might be contrary to the spirit of the draft article and therefore found it unacceptable. It reserved the right to comment at a later stage on the article 30 *bis* proposed by the United States, which it had not yet received in French.

58. Mr. NATHAN (Israel) said that, whereas the "clean slate" principle was the basis for the provisions of part III of the draft convention, draft article 30 rested on the principle of the continuity of treaty relations in the event of a uniting of States. The distinction drawn between the case of newly independent States and other States derived from the fact that the former had had treaty obligations imposed on them, whereas the constituent parts of a unified State had entered into such obligations of their own free will. The amendments submitted by the delegation of the Federal Republic of Germany and the delegation of Japan concerned situations which were mainly likely to occur in cases of uniting of States.

59. After weighing up the arguments adduced in support of the amendment of the Federal Republic of Germany, he doubted whether that amendment solved the difficult problem of the incompatibility of treaty régimes, a question which was not in fact dealt with directly in the draft article. It was very likely that, if the successor State were to make a choice between the treaties which would remain in force in respect of its territory, it would be guided by subjective criteria and would opt for those treaties which were most likely to satisfy its interest. That choice would necessarily prejudice the interests of the third States with

[8] *Ibid.*, para. 17.

which treaty relations would be severed. For that reason, before it was able to take a unilateral decision on any treaty, the successor State should be required to negotiate with the third States in order to reach a satisfactory solution. If the negotiations failed, the successor State would have two possibilities: either to terminate all the conflicting treaty obligations, or to choose from among those obligations the ones which it wished to maintain in force. His delegation preferred the latter solution, despite the various disadvantages which it entailed. The three interested parties, namely, the successor State and the two groups of third States between which a conflict existed in regard to treaty relations, would suffer from a severance of treaty relations; thus, that solution, although the most logical in the strictest sense, would serve no useful purpose. On the other hand, if the successor State was entitled to make a choice between the treaties, the only parties affected would be the group of States in respect of which the treaties would cease to apply. However, in the event of failure in the negotiations with the two groups of States, the successor State should not be empowered to exercise its right of selection unconditionally. It should be possible to work out objective criteria on which the successor State would base itself in exercising that right. Lastly he observed that article 44 of the Vienna Convention on the Law of Treaties might also, *mutatis mutandis*, apply in certain cases.

60. Turning to the Japanese amendment, he said it could indeed happen that, at the time of a succession of States, a treaty was applicable to only part of the territory concerned; in addition to the examples given at the preceding meeting, he would cite that of double taxation agreements. The International Law Commission's text provided that, in such a case, the treaty would cease to apply, subject to the right of the successor State to apply the treaty to its entire territory. The Japanese amendment seemed to contribute more to the progressive development of international law than to its codification, since the amendment was not based on State practice. However, the automatic extension of treaty obligations to the entire territory of the successor State could give rise to considerable difficulties and in some cases affect the interests of third States, which were entitled to raise objections. Consequently, he wondered whether, there again, it would not be advisable to provide for negotiations such as those envisaged in the case of a conflict between treaty régimes.

61. Mr. DUCULESCU (Romania) said it was only after a lengthy examination of State practice and the writings of experts in international law that the International Law Commission had decided to adopt the principle of the continuity of treaty relations. For that reason, his delegation supported the text proposed by the Commission. While appreciating the concerns of the sponsors of the amendments, he considered that the draft article itself, other draft articles and the Vienna Convention on the Law of Treaties provided a solution to the problems addressed by those amendments. The issues dealt with by the amendment of the Federal Republic of Germany should be resolved in the light of the need to ensure the maintenance of international relations and to solve outstanding problems through negotiations. His delegation supported the idea enunciated by the United States delegation in its proposed resolution (A/CONF.80/C.1/L.51), but reserved the right to speak at a later stage on the proposed article 30 *bis*.

Statement by the chairman of the delegation of the United Nations Council for Namibia

62. Mr. JAIPAL (United Nations Council for Namibia) said that his delegation was pleased to be participating in the resumed session of the Conference at a time when the Security Council had just adopted measures to ensure Namibia's rapid accession to independence, by means of free elections held under the supervision and control of the United Nations, and thus to put an end to the illegal occupation of the international territory by South Africa. As the lawful Administering Authority of Namibia, the Council would continue to represent and protect the interests of the Namibian people until they were able freely to exercise their inalienable right to self-determination and independence, and to the territorial integrity of a united Namibia, including Walvis Bay, which had been forcibly seized by South Africa.

63. The Council's delegation would continue to play an active part in the deliberations of the Conference and in the adoption of the remaining articles. In that connexion, it congratulated the International Law Commission on its work, which represented a further step in the progressive development and codification of international law.

64. His delegation endorsed the essential ideas which were embodied in the draft articles and were in general based on the Vienna Convention on the Law of Treaties, the general principles of international law, State practice and the Charter of the United Nations. It noted with satisfaction that the International Law Commission had adopted the "clean slate" principle in accordance with which the newly independent State had the right to decide whether or not it wished to remain a party to a treaty concluded by the predecessor State. That principle safeguarded the legitimate interests of newly independent States and enabled them to reject colonial heritages which might prejudice their economy and the well-being of their inhabitants. It thus helped to safeguard the interests and natural resources of Namibia. In that connexion, he drew attention to General Assembly resolution 2145 (XXI), in which the Assembly had terminated South Africa's Mandate over Namibia and had decided that the Territory would be the direct responsibility of the United Nations until its independence.

65. The Council regretted that exceptions had been made to the "clean slate" principle which might create misunderstandings in countries such as Namibia, that had been subjected to dismemberment and illegal military occupation. In resolution 385 (1976), the Security Council had affirmed the right of Namibia to territorial integrity and national unity. In resolution 32/9 D the General Assembly had declared that Walvis Bay was an integral part of Namibia. In resolution 432 (1978), the Security Council

had stated that Walvis Bay should be returned to Namibia. There was thus no doubt than when Namibia attained independence, Walvis Bay should also be decolonized.

66. For that reason his delegation had requested, at the first session of the Conference, that the relevant draft articles should be amended so as to take account of historical reality and, in particular, the fact that South Africa was not the predecessor State in the case of Namibia. It had also endeavoured to amend draft article 2 in order to take account of the fact that the United Nations was responsible for Namibia's international relations.[9]

67. The Council considered that, in the case of Namibia, failure to apply the "clean slate" principle would impose an intolerable burden on the Territory once it had become independent.

68. The Council could not refrain from referring to the question of exceptions to that principle, because it might be inferred from its silence on that point that it approved of the attempts made by South Africa to dismember Namibia, in defiance to the inalienable right of the Namibian people to self-determination and to the preservation of the territorial integrity of their country, and of General Assembly resolution 1514 (XV) on the granting of independence to colonial countries and peoples.

69. The Conference should not legalize arbitrary acquisitions of territory by a racist, colonialist State whose claims were based on leonine treaties. The dismemberment of Namibia and the detachment of Walvis Bay were attributable solely to economic and strategic considerations and to a deliberate desire to keep Namibia in a situation of economic subordination in relation to South Africa and other colonialist countries whose objective was to derive benefit from the natural resources of Namibia. Namibia's claims to Walvis Bay could not be challenged, given the historical, geographical, cultural and ethnic context. Before the arrival of the first European settlers in South Africa, Walvis Bay had formed an integral part of Namibia and had been inhabited by the indigenous race, the Namas. In 1870, the captain of a British warship had taken possession of the Bay in the name of the Queen of England. In 1884, the rest of Namibia, then known as South-West Africa, had been occupied by the Germans. But unlike the other adjoining regions, Walvis Bay had not been incorporated into the Cape Colony. In 1915, the South African forces had occupied Namibia, and at the time of the establishment of the Union of South Africa, Walvis Bay too had been occupied by the South Africans. Subsequently South Africa had extended to Walvis Bay the legislation applicable to the whole of the territory of South-West Africa. In 1922, it had incorporated Walvis Bay into Namibia by adopting a series of laws under which Walvis Bay had finally been placed under the territorial jurisdiction of Namibia.

70. Despite the measures adopted by the General Assembly of the United Nations in 1966 and 1967, and despite the advisory opinion of the International Court of Justice confirming that South Africa's Mandate over Namibia[10] had come to an end, South Africa had continued to defy the United Nations by refusing to withdraw from Namibia. Recently, South Africa had taken legislative and administrative measures with a view to detaching Walvis Bay from Namibia. It was those acts of defiance of the United Nations which obliged the Council to insist that the future convention should take account of the status of international territory under the responsibility of the United Nations with which Namibia was endowed. For that reason, at the first session of the Conference, the Council had proposed that an amendment should be added to the proposed preamble for the convention (A/CONF.80/DC.13), with a view to ensuring that South Africa would not be the predecessor State in the case of Namibia.

The meeting rose at 12.55 p.m.

[9] *Official Records of the United Nations Conference on Succession of States in Respect of Treaties... op. cit.*, 5th meeting, para. 55.

[10] Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970), Advisory Opinion, *I.C.J. Reports 1971*, p. 16.

39th MEETING

Tuesday, 1 August 1978, at 3.25 p.m.

Chairman: Mr. RIAD (Egypt)

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

[Agenda item 11] (*continued*)

ARTICLE 30 (Effects of a uniting of States in respect of treaties in force at the date of the succession of States)[1] (*concluded*) *and*

PROPOSED NEW ARTICLE 30 *bis* (Conflicting treaty régimes)[2]

1. Mr. KOROMA (Sierra Leone) said that the existing draft of article 30 laid undue stress on the principle of *pacta sunt servanda* at the expense of the principle of consent. That was a matter of the utmost importance to African States, many of which realized that harsh present-day realities compelled them to unite.

2. He shared the view of the representative of the Federal Republic of Germany that the existing draft of the

[1] For the amendments submitted, see 37th meeting, foot-note 2.

[2] Proposed by the United States of America in document A/CONF.80/C.1/L.50. Statements were also made on the proposed article 30 *bis*, submitted at the 38th meeting, during the discussion of article 30.

article would not be conducive to the observance of treaties by successor States[3] and indeed, it appeared from the International Law Commission's commentary to the article that it did not conform with the current practice of newly independent States when they united. He therefore supported the United States proposed article 30 *bis*, (A/CONF.80/C.1/L.50), advocating negotiation in the event of conflicting treaty régimes, although he agreed with the United Kingdom representative that paragraph (*b*) of that proposal required further consideration.[4]

3. The Japanese amendment (A/CONF.80/C.1/L.49) might be acceptable if extradition were the only problem to be considered, but many aspects of trade relations were also involved and the Japanese formulation would merely serve to increase the rigidity of the existing text.

4. He appreciated the force of the argument behind the Swiss amendment (A/CONF.80/C.1/L.44) but once again he felt that recourse should be had to negotiation so that the circumstances of a particular merger of States might be taken into account.

5. Mr. BRECKENRIDGE (Sri Lanka) requested that the statement made by the representative of the Council of Namibia at the Committee's thirty-eighth meeting should be reproduced *in extenso* in the summary record.

6. It was common ground that in article 30 of its draft articles the International Law Commission had given precedence to continuity over the "clean slate" principle. He had been impressed by the remarks by the Indian representative on the subject:[5] the historical reasons given in the commentary for dismissing the claims of self-determination were inadequate. He also agreed with the representative of Sierra Leone as to the need to have due regard to what the normal practice of successor States was likely to be. He could accept the general thrust of the original draft if it took that aspect, as well as the need for negotiation, into account.

7. With regard to the various amendments, the Japanese proposal effectively reversed the intention of the International Law Commission and the practical problem of extradition did not justify such a substantive amendment. The proposal of the Federal Republic of Germany addressed itself to a pertinent issue, but the problem of conflicting treaty provisions was not to be solved as simply as the amendment suggested. Moreover, the text was not improved by the omission of the last part of the sentence after the word "obligation", as had been suggested by the United Kingdom representative:[6] it was rendered still more contentious.

8. In its proposed article 30 *bis*, the United States had endeavoured to come to grips with the issue raised by the Federal Republic of Germany, while taking into account considerations like those voiced by the representative of Sierra Leone. However, the text of the proposed new article opened the door to discussions on matters which were irrelevant for the purposes of the present convention. The other United States proposal, the adoption of a mere Conference resolution, (A/CONF.80/C.1/L.51) was begging the question since, however much the original text of article 30 stressed continuity, the need for negotiation was obvious from State practice. Furthermore, it was not clear why the draft Conference resolution referred to article 29 as well as to article 30. It should be confined to the latter. If there was indeed a link between articles 20 and 30, that added additional force to the argument put forward by the representative of Sierra Leone.

9. With regard to the Swiss amendment, the interpretation which that delegation wished to place on article 30 should be examined by the Drafting Committee in order to clarify the situation: it should not take the form of a substantive amendment to the article.

10. Mr. ROVINE (United States of America) said that his delegation had submitted its proposals because it supported the principle of continuity of treaties while recognizing the validity of the problem raised by the representative of the Federal Republic of Germany about conflicting treaty régimes.[7] On reflection, however, it seemed difficult to find a better solution than acceptance of the original text of article 30, in conjunction with a resolution outside the framework of the Convention. His delegation therefore withdrew its proposal for a new article 30 *bis* but maintained its proposal for a Conference resolution on incompatible treaty obligations.

11. The method of leaving the successor State to make a choice of existing treaties failed to protect the rights of third parties and could lead to invidious distinctions. It might work under special circumstances, as, for example, when predecessor States A and B were both parties to a multilateral treaty on human rights but one of them had entered a reservation on the settlement of disputes. In such a case, the successor State could exercise a choice in the matter without affecting the position of other States parties. But such cases were too limited to support a general rule. On the other hand, the solution of terminating treaties with conflicting provisions was too harsh and also failed to protect third parties. The approach adopted by his delegation in their proposed article 30 *bis*, of termination or selection after negotiation, had the disadvantage that it might constitute an incentive for negotiations to fail. The amendment submitted by the Federal Republic of Germany was modelled on the lines of paragraph 1 (*b*) of the original text. In both cases, the problem of conflict would be resolved by the treaty not continuing in force but that would again be a solution at the expense of third parties. The Japanese amendment, by carrying the continuity principle too far, was likely to be the source of additional conflict. It also reversed the thrust of articles 31 and 32. Although his delegation's draft resolution had primarily been intended to solve the problem raised by the Federal Republic of Germany, it could also be used to cover the

[3] See 37th meeting, para. 5.

[4] See 38th meeting, para. 6.

[5] See 37th meeting, paras. 9-11.

[6] See 38th meeting, para. 5.

[7] See 37th meeting, paras. 2-6.

Japanese amendment by extending the application to the whole territory of a successor State of an existing treaty applicable to only part of it. He hoped there would be sufficient support for the draft Conference resolution to send it to the Drafting Committee.

12. The Swiss amendment did not deal with a real issue of succession of States within the purview of article 30 and should be dealt with outside the convention.

13. Mr. DOGAN (Turkey) said that the International Law Commission had endeavoured to accommodate in its text of article 30 two principles which were not easy to reconcile: the dynamism of international relations, as expressed in the will of States to unite, and the stability of international legal relations which required continuity of treaty obligations. The formulation adopted by the Commission did not meet completely the increasing desire of new States to unite; indeed, in one sense, it might be said to discourage such unions by maintaining the validity of treaties entered into by the predecessor States. Turkey completely supported the Commission in opting for stability in international legal relations but the inescapable fact remained that the union of two States would raise problems of incompatible treaty régimes which the provisions of article 30 would not solve and which would render the article unworkable. The stability of legal obligations and the interests of third States would be adversely affected if such States entertained doubts about the successor State's willingness fully to discharge its obligations because the latter took the view that its responsibilities under different treaties were incompatible. Insistence on the principle of continuity would under those circumstances give rise to dissatisfaction on the part both of third States and of successor States. The solutions proposed of paragraphs 2 and 3 of article 30 did not adequately solve the difficulties.

14. The same was true of the various amendments proposed to article 30 and consequently, his delegation, while reserving its position on the suggested article 30 *bis*, hoped that the Drafting Committee would maintain the principle, in the event of failure to solve a case of conflicting treaty régimes, on continuity for a limited period of up to two years from the date of the succession of States.

15. Mr. FERREIRA (Chile) said that, in the opinion of his delegation, the article 30 proposed by the International Law Commission was comprehensive and well balanced, since it was adapted to meet the principle of continuity *de jure* of treaties while countenancing rules of exception to provide remedies for the difficulties which might arise in its implementation.

16. With reference to the amendments submitted, he said that the case of incompatibility dealt with in the amendment of the Federal Republic of Germany was not a common one, and inasmuch as paragraph 2 of that article stated that any treaty continuing in force in conformity with paragraph 1 should apply only in respect of the part of the territory of the successor State in respect of which the treaty was in force at the date of succession, it was therefore rather unlikely that such a situation would arise, and the incorporation of a provision which ran counter to the principles upheld by the article, particularly the principle *pacta sunt servanda* could not be justified. His delegation therefore could not support the amendment of the Federal Republic of Germany.

17. As regards the Japanese amendment, his delegation considered it unnecessary since article 30, paragraph 2, subparagraph (*c*) proposed by the International Law Commission provided the solution for the cases raised, for the successor State and the other State party could agree that the treaty should apply to the entire territory, failing which resort could be had to the procedure for settlement or to the rules of the Vienna Convention on the Law of Treaties on the termination of international treaties. His delegation could not therefore support the Japanese amendment.

18. His delegation considered the Swiss amendment adequate only as a means of clarifying the text of the article under consideration, and endorsed the comments made by other delegations to the effect that the text should be referred to the Drafting Committee for use in improving the wording of the article.

19. Mr. ABOU-ALI (Egypt) said that the International Law Commission's text kept the necessary balance between the continuity of legal obligations, and dynamism resulting in the uniting of two or more States. As the representative of the United Arab Emirates[8] had remarked, *pacta sunt servanda* was the more important principle. Paragraph 1 (*b*) in fact met the concern which had been voiced by the representative of the Federal Republic of Germany about conflicting treaty provisions and, as other speakers had already said, the Japanese amendment would lead to confusion. He therefore supported the original text of article 30.

20. Although he appreciated the reasons for the Swiss amendment, a general international convention should not include details applicable to a single State and the matter should be referred to the Drafting Committee.

21. Mr. TREVIRANUS (Federal Republic of Germany) said that it had become clear from the discussion of the amendments that the original text of article 30 would not suffice in itself. No satisfactory solution could be achieved without introducing the element of consent, thus making allowance for the complexity and variety of problems which might arise when a new successor State, essentially heterogeneous in nature, sought, as it must, to achieve consistency in its international relations as soon as possible. Indeed, in the case of a unitary State, such an approach was a precondition of the merger. The question had also arisen in the case of article 29, as could be seen from the summary record of the discussion at the 33rd meeting of the Committee.[9] In that case, the difficulty could be overcome

[8] See 37th meeting, para. 16.

[9] See *Official Records of the United Nations Conference on Succession of States in Respect of Treaties*, vol. I, *Summary records of the plenary meetings and of the meetings of the Committee of the Whole* (United Nations publication, Sales No. E.78.V.8), pp. 229 *et seq.*

by a wise exercise of the right of option with regard to the extension of the applicability of the treaty to the entire territory of the successor State. Under those circumstances, the successor State would clearly seek to harmonize its treaty relationships by judicious selection. But the application of article 30 entailed further difficulties, as appeared from paragraph 26 of the International Law Commission's commentary (A/CONF.80/4, pp. 104-105) and from the note quoted at the beginning of paragraph 19 (*ibid.*, pp. 102-103) addressed to the Secretary-General by the new United Republic of Tanganyika and Zanzibar, to the effect that it would be bound by the provisions of international treaties and agreements in force between the predecessor States and other States to the extent only that their implementation was consistent with the constitutional régime established by the Articles of the Union. That statement propounded an inescapable truth: a new State recognized by the international community could legitimately assume that other States would respect the resultant situation. That did not imply any intention to evade the treaty obligations entered into by the predecessor States, but it was clear that the people of the new State had the same right to self-determination, regardless of whether or not the predecessor States had been newly independent.

22. Many delegations had thought that the escape clauses in the original text of article 30 would suffice to meet the difficulties. He wondered whether, in order to do so, they would not need to be given a wider interpretation than was customary. However, in view of the fact that the last phrase of his delegation's amendment had not commanded support, he preferred not to press the first part and would withdraw the entire text. He expected that the idea it expressed would be followed up along the lines suggested by the United States.

23. Mr. NAKAGAWA (Japan) said he withdrew his delegation's amendment and would support the United States' proposed Conference resolution on incompatible treaty obligations.

24. Mr. RITTER (Switzerland) said that it appeared from the discussion on his delegation's amendment that no speaker opposed the idea of the mutability of frontiers in a composite State and there had been no suggestion that such an idea was not consonant with the intention underlying the International Law Commission's text of article 30. Some delegations had considered the Swiss amendment redundant on the grounds that the issue was already covered in the original text but others had considered that the current wording of paragraph 2 froze the situation at the time of the creation of the successor State against subsequent changes. It appeared that it was largely a matter of legal technique and that a slight modification in the wording of paragraph 2 was all that was required. If that view was generally acceptable, he had no objection to the matter being entrusted to the Drafting Committee to find an appropriate solution.

25. Mr. KRISHNADASAN (Swaziland) said that his delegation was in favour of article 30 as it stood. It was also in favour of referring the Swiss amendment to the Drafting Committee for the idea it contained to be incorporated somewhere in the Convention.

26. Mr. MAIGA (Mali) said it was clear from the Commission's commentary (A/CONF.80/4) that articles 30, 31 and 32 were closely linked. It was also clear that the merging of one State with another was covered by article 30, whereas the transfer of a territory to an existing State was covered by the moving treaty-frontiers rule set out in article 14. Since the Swiss amendment was clearly in conflict with the International Law Commission's approach, he wondered whether it could be retained. The Drafting Committee could do little in the circumstances. Perhaps the representative of Switzerland could clarify his approach in the light of that comment and the position in international law.

27. Mr. RITTER (Switzerland) said that if he had understood the representative of Mali correctly, he had referred to the fact that, if a number of States became one, only the newly emerging State had an international personality. While he agreed that that might be illogical, federalism was an empirical phenomenon and not always logical. Member countries of federal States often retained a certain international competence, as was the case of his country, and it was in fact that legal reality which had inspired its proposal.

28. Mr. MAIGA (Mali) said that that explanation had been included in the comments by Governments and States accompanying the 1972 Draft as a result of which the International Commission's draft had been amended, resulting in the drafting of article 30. If the Swiss delegation insisted that article 14 covered the case under consideration, then its view conflicted with the position in international law.

29. The CHAIRMAN suggested that in view of the opposition expressed by the delegation of Mali, a vote should be taken on the position of the reference of the Swiss amendment to the Drafting Committee.

30. Mr. RYBAKOV (Union of Soviet Socialist Republics) said that in his opinion a vote was not necessary. The amendment could be submitted to the Drafting Committee without a vote and the latter would then be free to take the amendment into account or not, as it wished: it was not, however, empowered to consider the substance of the amendment.

31. The CHAIRMAN said that the representative of Switzerland had agreed that his amendment should go to the Drafting Committee as a drafting amendment. If there was no objection, he would take it that the Committee of the Whole approved that arrangement.

32. Mr. PÉREZ CHIRIBOGA (Venezuela) said his delegation would like to know whether the Drafting Committee was to be requested to seek a formula to incorporate the Swiss amendment somewhere in the convention, or whether it was to seek several formulae that would be

referred back to the Committee of the Whole, which would then decide on the placing of the amendment in the convention. While he did not object to the Drafting Committee studying the amendment, he did not know what its terms of reference were. He did feel, however, that the reference of the amendment to the Drafting Committee implied that the Committee of the Whole had agreed in principle that it should be incorporated somewhere in the text, or that it had been approved *a priori* by the Committee, which, as his delegation understood it, was not the case.

33. Mr. SILVA (Peru) said he shared the doubts of the representative of Venezuela. He wondered whether, by leaving its amendment to the Drafting Committee, the Swiss delegation was not in fact supporting another amendment to article 30.

34. Mr. ROVINE (United States of America) said that, while there appeared to be no objection in the Committee to the substance of the Swiss amendment, there was a division of opinion as to its place in the Convention. He was in favour of referring it to the Drafting Committee not as an amendment to article 30 but on the understanding that the Drafting Committee would advise the Committee of the Whole on its appropriate placing, whether somewhere in the Convention or whether perhaps in the form of a resolution.

35. Mr. RITTER (Switzerland) said that, in suggesting that the amendment be submitted to the Drafting Committee, his delegation had simply been trying to interpret the trend of the discussion and to see whether the wording could be improved or whether the idea occurred elsewhere in the convention. If it did not, the Drafting Committee might advise the Committee of the Whole whether it should go into article 30 or elsewhere. His delegation in no way assumed its acceptance by the Committee or that it would be in any way binding.

36. Mrs. BOKOR-SZEGÖ (Hungary) said that from the procedural point of view, she felt that the mandate intended for the Drafting Committee went beyond its actual competence. If the amendment were to be referred anywhere, it would be more appropriately referred to the informal consultation group.

37. Sir Ian SINCLAIR (United Kingdom) said that in his opinion the Drafting Committee had a mandate in relation to the text of the Convention as a whole. If, without expressing a view on the substance of the Swiss amendment, the Committee of the Whole referred it to the Drafting Committee, it would be open to the latter to look at it as an amendment either to article 30 or article 14, and make its recommendations to the Committee on the appropriateness or otherwise of its incorporation into the Convention as a whole as a purely drafting matter. If, on the other hand, the Drafting Committee said that in its view nothing needed to be added, since the idea was already covered by the Convention as a whole and particularly by article 14, that in itself would be a contribution to a solution to the problem facing the Committee of the Whole as a result of the Swiss amendment. It would be in the interests of the Committee of the Whole to accept the procedure suggested by the representative of Switzerland and await the recommendations of the Drafting Committee before taking a final decision.

38. Mr. MAKAREVICH (Ukrainian Soviet Socialist Republic) said that, at the previous session, amendments which were not matters of substance had not been referred to the Drafting Committee unless that had been the wish of the Committee of the Whole. The Swiss amendment was not simply a drafting amendment. The precedent set at the 1977 session was that amendments by delegations could, at the request of those delegations, be submitted to the Drafting Committee if they contained amendments of interest to the latter. The Committee of the Whole would have to express its support for the amendment first, however.

39. Mr. MAIGA (Mali) said that the question of legal techniques referred to by the representative of Switzerland did not arise. It was perfectly clear from paragraph 28 of the commentary to articles 30, 31 and 32 (*ibid.*, p. 98) that the Swiss amendment was one of substance and could not be sent to the Drafting Committee as a drafting amendment.

40. The CHAIRMAN suggested that the Committee might vote on the amendment accordingly.

41. Mr. MUSEUX (France) said that he fully agreed with the Chairman's original proposal to send the Swiss amendment to the Drafting Committee with the interpretation given by the representative of Switzerland, namely, in order that the Drafting Committee might consider whether the idea it contained should be taken into account in article 30 or elsewhere. A vote on the substance of the amendment would only confuse the issue, judging from the discussion and the impression that it was intended simply to clarify a point in paragraph 2. The Swiss delegation did not want a vote. He urged the Committee to support the Chairman's original suggestion and allow the Drafting Committee to provide the answer which the Swiss delegation sought. The Committee of the Whole could vote later on. At the present stage the amendment was not ready or clear enough to vote on.

42. Mr. RYBAKOV (Union of Soviet Socialist Republics) said that his delegation had no objection at all to referring the Swiss amendment to the Drafting Committee as an auxiliary paper, but in the meantime the Committee of the Whole had to take a decision on article 30. In the absence of other amendments, he took it that the Committee was ready to adopt article 30 as drafted by the International Law Commission and to submit it to the Drafting Committee, which could consider it together with the Swiss amendment; that procedure would be in line with the wishes of almost all the delegations.

43. Mr. TODOROV (Bulgaria) said that he agreed with that view. Since the representative of Switzerland had not

insisted on a vote, a vote was not necessary. The Drafting Committee could consider only the drafting elements in the amendment if any. The Committee of the Whole could not expect to see the Swiss amendment before it again, should the Drafting Committee decide that it was not one of a drafting nature.

44. Mr. RITTER (Switzerland) said that there appeared to be a certain amount of misunderstanding about his proposed amendment. He had not withdrawn it, but had said that to simplify matters it would be better to know whether or not the idea called for a textual amendment or whether the point was already covered. He had thought that the Drafting Committee should decide whether or not it was needed and, if so, where it should be placed.

45. Mr. RYBAKOV (Union of Soviet Socialist Republics) said that if the Swiss amendment was transferred to the Drafting Committee before the Committee of the Whole had taken a decision on it, that would be an unprecedented move.

46. Mr. TORNARITIS (Cyprus) said that the question of procedure and that of principle were being confused. The question of principle fell within the competence of the Committee of the Whole and not that of the Drafting Committee. The Drafting Committee had to give an appropriate form to any resolution taken by the Committee of the Whole, so the latter could not refer anything to it which had not been decided. By referring the Swiss amendment to the Drafting Committee without a decision, the Committee of the Whole would be asking the Drafting Committee to function as its legal adviser. If that was what the Committee of the Whole intended, then it must give the Drafting Committee clear directions.

47. Mr. MUDHO (Kenya) suggested that, in accordance with paragraph 3 of rule 34 of the rules of procedure (A/CONF.80/8), the Chairman be asked to give a ruling on the matter.

48. Sir Ian SINCLAIR (United Kingdom) said that, whereas the representatives of the USSR and Cyprus seemed to feel that the Drafting Committee had a remit that was basically confined to the preparation of draft articles, it seemed clear from rule 47, paragraph 2, of the rules of procedure that it would be perfectly proper for the Committee of the Whole to request the Drafting Committee to advise it on those elements of the Swiss amendment which were essentially drafting matters. . Since what the delegation of Switzerland was seeking was simply an opinion as to whether or not the current text of the draft Convention covered the concern it had sought to express in its draft amendment, he believed that the Committee of the Whole could ask the Drafting Committee to look into the matter.

49. Mr. MASUD (Pakistan) said that it appeared to him that other delegations, and the Swiss delegation itself, were uncertain whether the Swiss amendment was purely a drafting suggestion, or whether it also touched on matters of substance. Perhaps it would be best to allow time for delegations to seek advice on that point before any decision was taken concerning the amendment. If the amendment was referred to the Drafting Committee, that body would naturally be able to consider only the drafting aspects of the proposal.

50. Mr. MARESCA (Italy) said that the Committee should not allow itself to be bemused by titles. Drafting committees had historically had differing functions, and one of the roles which it was now customary for them to play was that of adviser to the larger bodies of which they were organs in matters such as that which was now before the Committee of the Whole. It should be noted that the Drafting Committee would be asked to do no more than to say whether, in the light of the present text of the draft articles and the concern expressed by the representative of Switzerland, an amendment such as the one proposed was necessary. The decision whether to accept the substance of such an amendment would, of course, lie with the Committee of the Whole.

51. Mr. PÉREZ CHIRIBOGA (Venezuela) said that, when his delegation had first spoken, it had been under the impression that the Drafting Committee would be asked to consider the Swiss amendment only after the Committee of the Whole had approved the substance thereof. It now understood, however, that no decision was to be taken on the substance of the provision, and that the Drafting Committee was to be asked to make suggestions concerning the wording of the proposal. Although his delegation considered that such a procedure would constitute a liberal interpretation of rule 47, paragraph 2, of the rules of procedure, it would have no objection to its adoption, providing the Drafting Committee refrained from commenting on the substance of the proposal. Alternatively, the Swiss amendment might, as suggested by the representative of Hungary, be submitted to the informal consultation group, if that would not unduly delay the work of the Conference.

52. Mr. MUDHO (Kenya) said that he did not feel that the statement by the United Kingdom delegation on the competence of the Drafting Committee had settled the question whether the Swiss proposal was a substantive or a drafting amendment. His delegation would, in principle, have no objection to the submission of the amendment to the Drafting Committee or the informal consultation group, but, before taking its final decision on that matter, it would welcome a ruling from the Chairman concerning the precise nature of the amendment.

53. Mr. TORNARITIS (Cyprus) said that he would not object to the Drafting Committee's being asked whether the present text of the draft Convention covered the concern of the Swiss delegation, since the problem of the Swiss amendment would be finally settled in the Drafting Committee if it replied in the affirmative, but would be returned to the Committee of the Whole if the Drafting Committee replied in the negative.

54. Mr. ECONOMIDES (Greece) said he supported the view that the Committee of the Whole could ask the Drafting Committee for advice concerning the Swiss amendment. If the Drafting Committee answered "Yes" to the question whether the amendment was already covered by the present text of the draft articles, the matter need go no further. If, on the other hand, the Drafting Committee replied "No", it should be asked whether the Swiss amendment merely served to make the draft articles clearer, and if so, where it could best be incorporated in them. But if the Drafting Committee felt, like the representative of Mali, that the amendment added a new element to the draft articles, it would naturally have to refer the matter back to the Committee of the Whole for further consideration.

55. Mr. RASSOLKO (Byelorussian Soviet Socialist Republic) said that, to his mind, there was no need for the procedural discussion in which the Committee was currently engaged, since many delegations besides that of Switzerland were clearly of the opinion that the Swiss proposal was a substantive amendment. It was, indeed, difficult to see how a proposal to add an entire paragraph to a text could be considered as anything else. In those circumstances, the Committee of the Whole must decide whether it wished to retain or to reject the amendment. Perhaps, however, the Chairman of the Drafting Committee could throw some light on the matter.

56. Mr. YASSEEN (Chairman of the Drafting Committee) said that, when he had spoken on the matter at the 37th meeting, he had expressed some doubt concerning the nature of the Swiss proposal. He had said that the proposal might be sent to the Drafting Committee for the latter to determine whether it was already covered in the draft articles or whether, if the Drafting Committee felt it to be purely a drafting suggestion, it required any modification. He had also said, however, that if the Drafting Committee felt the proposal was substantive, the decision on how to treat it would be for the Committee of the Whole. As an organ of the Conference, the Drafting Committee could study only such matters as were referred to it by the Conference itself or by the Committee of the Whole. It was, in particular, bound to follow the instructions of the Conference or the Committee of the Whole in relation to matters of substance. In view of the interest that had been aroused by the Swiss proposal, it seemed advisable that the Committee of the Whole should take a decision on the disposition of the Swiss amendment.

57. The CHAIRMAN said that opinions were divided on the nature of the Swiss amendment and he accordingly invited the Committee of the Whole to vote on that proposal as contained in document A/CONF.80/C.1/L.44.

The Swiss amendment was rejected by 31 votes to 15, with 32 abstentions.

58. The CHAIRMAN said that, if there was no objection, he would take it that the Committee provisionally adopted the text of article 30 as proposed by the International Law Commission and referred it to the Drafting Committee for consideration.

It was so agreed.[10]

59. Mr. SILVA (Peru) suggested that a repetition of the difficulties that the Committee had just encountered, and the attendant loss of time, could be avoided in future if recourse were had to the good offices of the informal contact group.

60. The CHAIRMAN said he agreed that the Conference should utilize the services of any of its organs that might facilitate its task or save its time.

PROPOSED RESOLUTION OF THE CONFERENCE ON INCOMPATIBLE TREATY OBLIGATIONS[11]

61. The CHAIRMAN invited the Committee to consider the proposal for the resolution of the Conference on Incompatible Treaty Obligations submitted by the United States of America in document A/CONF.80/C.1/L.51.

62. Mr. PÉREZ CHIRIBOGA (Venezuela) said that his delegation supported the proposed resolution, but hoped that the Drafting Committee would bring the Spanish version of that proposal into line with the English text by changing the expression *"obligaciones convencionales"*.

63. Mr. RYBAKOV (Union of Soviet Socialist Republics), on a point of order, said it was his understanding that draft resolutions such as that now proposed were normally considered only after work on the entire text of the draft convention to which they related had been completed. He would therefore be grateful for a ruling by the Chairman whether the Committee should abandon that practice in order to examine the United States draft resolution forthwith.

64. The CHAIRMAN said that he would be willing to postpone discussion of the draft resolution if such was the will of the Committee.

65. Mr. KRISHNADASAN (Swaziland) said that his delegation would have no objection to the postponement of discussion of the United States or any other draft resolutions until the text of the draft convention had been completed. His delegation's attitude to the substance of the United States proposal would be contingent upon the restriction of the scope of the proposal to article 30.

66. Sir Ian SINCLAIR (United Kingdom) said he agreed with the representative of the Union of Soviet Socialist Republics that formal resolutions were normally considered after the discussion of substantive draft articles had been

[10] For resumption of the discussion of article 30, see 53rd meeting, paras. 7 and 8.

[11] Submitted by the United States of America (A/CONF.80/C.1/L.51).

completed. However the Vienna Conference on the Law of Treaties had established a precedent by deciding, in the context of the debate on what subsequently became article 52 of the Vienna Convention on the Law of Treaties,[12] that a particular amendment could be disposed of by transforming certain substantive elements of the proposal into a resolution of the Conference. It would, therefore, seem justified to examine the United States draft resolution at the present time, particularly as it clearly related to problems which had been raised during the Committee's discussion of article 30. It might be inappropriate to take a final decision on the draft resolution immediately, but the Committee should be able to decide whether it felt a resolution of the type proposed was required and then entrust the preparation of a draft text to the informal contact group or some other body.

67. Mr. ROVINE (United States of America) said he supported the reasoning of the United Kingdom representative. Since his delegation's proposal was very directly related to problems which it and other delegations saw in article 30 and perhaps also article 29, its final thinking on those articles would depend on the Committee's decision concerning the draft resolution.

68. Mr. SILVA (Peru) said that, in general his delegation had no objection to the substance of the draft resolution. It did, however, share the objection that had been raised by the delegation of Venezuela to the Spanish version of the proposal.

69. The CHAIRMAN invited the delegations of Venezuela and Peru to submit any suggestions they might have for the improvement of the Spanish version of the draft resolution to the Secretariat.

70. Mr. RYBAKOV (Union of Soviet Socialist Republics) said that, while he continued to believe that the general practice was to consider draft resolutions when the work on all draft articles had been completed, he appreciated that there was a special link between the United States draft resolution and the articles that the Committee was in the process of examining. His delegation would therefore be willing for discussion of the United States draft resolution to begin forthwith, on the understanding that the final decision concerning the disposition of that provision would be taken in the light of the opinions which came to light during that discussion.

71. Mr. BRECKENRIDGE (Sri Lanka) said he wished to repeat the strong objection which his delegation had expressed during the discussion of article 30 to the reference in the United States draft resolution to article 29. It felt that reference raised anew the entire question of the counter-position of the "clean slate" principle and that of continuity, a matter which the Committee had already settled. It also felt that the resolution, which at present had almost the form of a draft article, should be preceded by a preamble setting out the reason why it had been proposed.

[12] Article 49 of the draft articles.

72. Mr. KRISHNADASAN (Swaziland) asked whether the sponsor of the draft resolution felt that it could be limited to article 30 alone.

73. Mr. ROVINE (United States of America) said that the draft resolution could be confined to article 30, but that his delegation would prefer to retain the reference to article 29 as well, since it felt that the application of that article might also result in conflict between treaty régimes.

The meeting rose at 5.55 p.m.

40th MEETING

Wednesday, 2 August 1978, at 10.25 a.m.

Chairman: Mr. RAID (Egypt)

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

[Agenda item 11] (*continued*)

PROPOSED RESOLUTION OF THE CONFERENCE ON INCOMPATIBLE TREATY OBLIGATIONS[1] (*concluded*)

1. Mr. ROVINE (United States of America) said that his delegation had deleted from its proposal (A/CONF.80/C.1/L.51/Rev.1) the reference to article 29 which appeared in document A/CONF.80/C.1/L.51 in order to make it more easily acceptable to other members of the Committee, and had also made some other drafting changes. He would not press for a vote on the proposal at that meeting, as delegations might wish to obtain instructions from their Governments on the matter; in the meantime the proposal might perhaps be referred to an informal consultations group.

2. Mr. SCOTLAND (Guyana) suggested that it might be appropriate to add to the text a preamble stating the reasons for the proposal and in the operative part, a phrase starting with the words "The Conference recommends."

3. Mr. SANYAOLU (Nigeria) said that while he approved the principle stated in the United States proposal, his delegation shared the view expressed by the representative of Brazil[2], that it might be preferable to deal with that question in the final clauses relating to the settlement of disputes or in the preamble to the Final Act of the Conference. Moreover, as the proposal referred only to article 30 he wondered whether that was the only article

[1] United States of America, A/CONF.80/C.1/L.51/Rev.1. For the initial proposal, see 39th meeting, foot-note 11.

[2] See 38th meeting.

which concerned incompatible treaty obligations. It was quite certain, however, that the proposal could not apply to article 29, which had not been conceived from the same viewpoint as article 30.

4. Mr. HAMZA (United Arab Emirates) said that his delegation, believing that the problem of incompatible obligations did not belong to the topic of succession of States, considered that the United States proposal appertained rather to the Convention on the Law of Treaties and the question of the peaceful settlement of disputes. Hence the Committee should therefore either reject the proposal or study it thoroughly in connexion with the question of settlement of disputes.

5. Mr. DIENG (Senegal) welcomed the effort made by the United States delegation to find a solution to all the questions raised by article 30. He wondered, however, whether the problem had not already been solved by the Vienna Convention on the Law of Treaties and the United Nations Charter; he saw no advantage in providing expressly that possible conflicts should be solved by consultation and negotiation. In his opinion, the proposal had nothing to do with succession of States in respect of treaties, and was superfluous.

6. Mr. NAKAGAWA (Japan) supported the United States proposal, but pointed out that conflicting treaty obligations could also arise under articles 31 and 32. Hence those two articles should perhaps be mentioned in the text of the proposal.

7. Mr. TREVIRANUS (Federal Republic of Germany) said he did not think that the question of incompatible treaty obligations raised by articles 29 and 30 had no connexion with succession of States. Indeed, he wondered how the question could be settled by the general rules of the law of treaties or the Vienna Convention, since in the present case there was not only one predecessor State, but two or more. Moreover, everything possible should be done to make the text adopted by the Conference acceptable to the greatest possible number of States, since the codification of international law did not depend solely on the work accomplished by the Conference, but also on the subsequent conduct of States.

8. Mr. MARESCA (Italy) said he was grateful to the United States delegation for having tried to allay the doubts raised by article 30, all the more so because common sense called for an effort to prevent conflicts. The United States proposal rightly referred to article 30, but to mention one article might mean excluding another from the application of the provision. Disputes might arise in connexion with any rule. The United States proposal was therefore useful, but should apply to the draft as a whole. It was in the best interests of States to insert provisions on the peaceful settlement of disputes in the body of the draft Convention.

9. Mr. PERÉZ CHIRIBOGA (Venezuela) said he supported the idea expressed in the United States proposal but shared the view of the representative of Guyana that, as it stood, the proposal was more like a draft article that a draft resolution. A preamble should therefore be added and an operative part drafted. As he had pointed out during the discussion on draft article 30,[3] in the present state of world affairs that article might prove to be the most important article in the Convention in the not too distant future. As it could give rise to controversy, the Conference should emphasize the need for direct negotiations between the parties to the treaties in question, which was the sovereign formula for the settlement of disputes. Moreover, the fact that the United States proposal emphasized article 30, could not be interpreted as preventing the parties to disputes arising under other articles from also resorting to consultations. The comments and doubts of some delegations regarding the United States proposal might perhaps be justified if it was in the form of a draft article, but as a Conference resolution, which was not an integral part of the Convention, it could not harm anyone and would rather reflect the feeling of the Conference that disputes should be settled, first and foremost, by direct negotiations between the parties.

10. Mr. KOROMA (Sierra Leone) said he subscribed to the view of the representative of Italy on the United States proposal, but feared that the suggestion that it be placed in a section dealing with the settlement of disputes might open Pandora's box. At present, the United States proposal referred to draft article 30, but as the Japanese delegation had said, it could also refer to draft articles 31 and 32. In principle, he approved of the proposal.

11. Mr. LANG (Austria) said he welcomed the United States proposal, which embodied some useful ideas. He was also glad to note that the United States delegation was prepared to seek wide support for its text by informal contacts. The proposal reflected the idea that a balance should be established between the principle of continuity and that of the consent of States to be bound by treaty obligations. It also took into account the need to avoid uncertainty of the Law, which would not serve the interests of any member of the international community. The right of peoples to self-determination and the need for States to maintain friendly relations with one another supported the idea behind the proposal, namely, that the parties to treaties should, as far as possible, settle their disputes by consultation and negotiation. He hoped that the informal contacts would make it possible to place that idea in its proper setting.

12. Mr. KRISHNADASAN (Swaziland) unreservedly supported the view of the representative of Sierra Leone. It would be logical to relate the United States proposal to draft articles 31 and 32. On the other hand, he was glad the United States delegation had deleted the reference to draft article 29.

13. Mr. KASASA-MUTATI (Zaire) observed that the United States proposal was based on the idea that draft article 30, as it stood, might give rise to conflicting

[3] See 38th meeting, para. 29.

interpretations by States parties to certain treaties. But the same applied to articles 31, 32 and 33. His delegation even believed that some of the provisions already adopted by the Committee could also give rise to conflicts. He thought the proposal should be placed in a section dealing with the settlement of disputes; as there were no provisions on that question, the proposal offered a means of remedying situations involving conflict. It should, however, be presented as a draft resolution comprising a preamble and an operative part.

14. Mr. GHADAMSI (Libyan Arab Jamahiriya) said he endorsed the statement made by the representative of the United Arab Emirates, for the question dealt with in the United States proposal had nothing to do with succession of States in respect of treaties. It would therefore be difficult for his delegation to support the proposal.

15. Mr. GILCHRIST (Australia) supported the United States proposal and said that whatever the outcome of the discussions on the procedure to be followed in regard to the settlement of disputes, that proposal would be of great practical value. He also approved of the suggestion by the representative of Guyana that a preamble could be drafted during informal consultations, before the Committee voted on the proposal.

16. Mr. ROVINE (United States of America) said that his delegation had no objection to the drafting of a preamble to make its proposal into a Conference resolution, rather than an article in the proper sense of the term. It did not object, either, to extending the scope of the proposal to draft articles 31 and 32, but doubted whether it was advisable to place it in a section of the draft dealing with the settlement of disputes, since that would amount to assuming that draft article 30 would necessarily give rise to disputes. In most cases, conflicts between treaty obligations resulting from a succession of States were settled by consultation. Finally, as he had already intimated, his delegation saw no reason why its proposal should not be referred to an informal consultations group.

17. Mr. BOUBACAR (Mali) said he wondered whether the Conference was concerned with succession of States in respect of treaties or with succession of States in respect of matters other than treaties, since it followed from the United States proposal that the draft Convention would impose incompatible obligations on successor States—a matter which would pertain more to the draft Convention on succession of States in respect of matters other than treaties, which was under study by the International Law Commission. Furthermore, a convention was prepared on the basis of the principle that it would be applied in good faith: could a resolution, which was ultimately no more than a recommendation, solve the problem of conflicting treaty obligations? The informal consultations group which was to consider the United States proposal should bear in mind the recommendations made by his delegation when the General Assembly had examined the question of the definition of aggression and, in particular, the role of the International Court of Justice.

18. The CHAIRMAN said that, if there was no objection, he would take it that the United States proposal (A/CONF.80/C.1/L.51/Rev.1) was to be referred to the Informal Consultations Group.

It was so agreed.[4]

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

19. The CHAIRMAN said that, if there was no objection, he would take it that the Committee decided to refer article 31 to the Drafting Committee.

It was so agreed.[5]

ARTICLE 32 (Effects of a uniting of States in respect of treaties signed by a predecessor State subject to ratification, acceptance or approval)[6]

20. Mr. KRISHNADASAN (Swaziland) said that with regard to articles 32 and 36, the objections of his delegation and the Swedish delegation were the same as their objections to article 18 and to article 29, paragraph 3. He would merely draw the Committee's attention to the International Law Commission's commentary to article 18 (A/CONF.80/4, pp. 60-62), which confirmed the validity of those objections, and to the statement on that article made by the representative of Swaziland on behalf of his delegation and that of Sweden[7] at the 27th Meeting of the Committee.

21. He was more than ever convinced that article 32 was undesirable and was not a good example of the progressive development of international law, for there was no legal nexus by virtue of which the mere signature of a treaty by a predecessor State enabled the successor State to ratify the treaty. When that question had been considered in connexion with article 18, the amendment to that article submitted by Swaziland and Sweden (A/CONF.80/C.1/L.23) had been rejected by 36 votes to 25, with 17 abstentions, and paragraph 2 of article 18 had then been adopted by 43 votes to 3, with 29 abstentions. It was because that article now appeared in the draft, as also did article 29, paragraph 3, and for that reason only, that the delegations of Swaziland and Sweden had decided to withdraw their amendments to articles 32 and 36 (A/CONF.80/C.1/L.23). They requested, however, that article 32 should be put to the vote.

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[4] For the resumption of the discussion of the proposal, see 54th meeting.

[5] For the resumption of the discussion of article 31, see 53rd meeting paras. 9-10.

[6] The following amendment was submitted at the 1977 session: Swaziland and Sweden, A/CONF.80/C.1/L.23.

[7] *Official Records of the United Nations Conference on Succession of States in Respect of Treaties*, vol. I, *Summary records of the plenary meetings and of the meetings of the Committee of the Whole* (United Nations publication Sales No. E.78.V.8) p. 187 27th meeting, para. 27.

22. Mrs. THAKORE (India) said she was opposed to deleting article 32, as proposed by Swaziland and Sweden, since that article contained a rule that was similar, *mutatis mutandis*, to the rule in article 18 relating to newly independent States. Under that rule, a successor State formed by a uniting of States could become a party or a contracting State to a treaty signed by one of its predecessor States. It could thereby complete the process initiated by the predecessor State.

23. In the opinion of the Indian delegation, that solution was the best for the effectiveness of multilateral treaties, the progressive development of international law and international co-operation. It did not interfere with the option of the successor State to become a party to the treaty in question or not to do so, since ratification, acceptance or approval were also sovereign acts, equivalent to accession by the successor State. Hence, the Indian delegation did not share the misgivings expressed by the sponsors of the amendment to article 32, that a signature subject to ratification, acceptance or approval did not create a legal nexus between the treaty and the territory concerned, on the basis of which a successor State could participate in a treaty under the law of succession. In that connexion, she drew attention to the statement she had made on article 18 at the 27th meeting of the Committee of the Whole.[8]

24. The Indian delegation fully supported the view expressed by the International Law Commission in paragraph 32 of its commentary to articles 30, 31 and 32, (A/CONF.80/4, p. 99) that there was no valid reason for a difference in treatment between two categories of successor States, namely, newly independent States and those formed by a uniting of States. The amendment submitted by Swaziland and Sweden, calling for the deletion of article 18, had been rejected by the Committee of the Whole by 36 votes to 25, with 17 abstentions, and article 18 had been adopted without a vote. She urged the Committee to follow a similar course in regard to article 32 and adopt it by consensus.

Article 32, as proposed by the International Law Commission, was provisionally adopted by 52 votes to 4, with 22 abstentions, and referred to the Drafting Committee.[9]

ARTICLE 33 (Succession of States in cases of separation of parts of a State)[10]

25. The CHAIRMAN invited the representatives of Switzerland and France to introduce their amendment to article 33.

26. Mr. RITTER (Switzerland) said that the amendments to articles 33 and 34 submitted by his delegation and that of France (A/CONF.80/C.1/L.41/Rev.1) touched on what was probably the central problem of the draft, namely the difference between the régime prescribed in article 15 for newly independent States and the régime prescribed in articles 33 and 34 for the case of separation of parts of a State. That duality of régimes was, in his opinion, the most characteristic feature of the draft. On that point, the International Law Commission, making a bold and deliberate choice, had departed from existing international law to propose an innovative solution involving progressive development. The Commission having thus performed its task, it was now incumbent on States to say whether they wished to confirm the new solution proposed to them and make it a part of positive international law, or whether they preferred to confirm the existing law.

27. In his view, the innovative element of the draft articles did not lie in the solution proposed in article 15 for newly independent States. The appearance of those States was, of course, one of the most notable phenomena of contemporary international life, but the rules of classical international law on succession of States had proved perfectly well adapted to the new situation and the draft articles had confirmed that point by retaining the traditional régime for newly independent States. For the "clean slate" rule, which was the basic principle of classical international law concerning succession of States in respect of treaties, had been generally applied in international relations long before decolonization. The International Law Commission had pointed that out in paragraph 3 of its commentary to article 15 of the draft (A/CONF.80/4, p. 52), citing the cases of accession to independence of the United States of America, the Spanish American Republics, Belgium, Panama, Ireland, Poland, Czechoslovakia and Finland.

28. The application of the "clean-slate" rule was not a choice of legal policy, but a logical consequence of the principle *res inter alios acta*, according to which a treaty was not binding on a State which was not a party to it, and no legal rule adopted without the participation of a State, for instance at a universal codification conference, could bind that State by a treaty without its consent.

29. The principle of *pacta sunt servanda* was sometimes set against that of *tabula rasa* as though they were two complementary rules, between which codification had to choose according to whether the legitimate interests of the international community were on one side or the other. It was obvious, however, that the rule *pacta sunt servanda*, which meant respect for treaties, applied only to a State which was bound by a treaty. A State which was no longer bound by a treaty was naturally not required to respect it. Thus the *pacta sunt servanda* rule was applicable only in so far as the situation was not one of *res inter alios acta*.

30. That was why, in the debates during the first part of the session, the Swiss delegation had reminded the Conference, whenever the occasion arose, that it associated the "clean slate" rule with the principle of *res inter alios acta* and not with the principle of self-determination. The

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[8] *Ibid.*, p. 187, 27th meeting, paras. 28-30.

[9] For resumption of the discussion of article 32, see 53rd meeting, paras. 11-12.

[10] At the resumed session the following amendments were submitted: France and Switzerland, A/CONF.80/C.1/L.41/Rev.1 (this amendment to article 33 was the same as that submitted by both countries at the 1977 session in document A/CONF.80/C.1/L.41); Federal Republic of Germany, A/CONF.80/C.1/L.52; Pakistan, A/CONF.80/C.1/L.54.

principle of self-determination was, indeed, a political maxim, and one that was now universally recognized, but to attach the "clean slate" rule to such a maxim, however much respected it might be, was to give that rule a political tinge which it did not have. There would thus be some danger of losing sight of the fact that a State could not be bound by a treaty it had not accepted, that that rule was absolute and that it applied to all States, and hence to all new States. Moreover even if the principle of self-determination was taken as the basis, the solution arrived at would be the same. For as the Government of Mexico had pointed out in its written comments of 1975 "the right to self-determination if applicable to all peoples and, therefore, all new States deserve equal treatment, regardless of whether they have been colonial dependencies or not" (A/CONF.80/5, p. 258).

31. When it passed from the case of newly independent States to that of other new States, that was to say, according to draft article 33, to the case in which "a part or parts of the territory of a State separate to form one or more States", the International Law Commission abandoned the "clean slate" principle and introduced, on the contrary, a rule of continuity. It was quite clear that in doing so it had been aware of the fact that it was not simply reflecting the present state of the law, but was proposing progressive development. The Commission had also pointed out in paragraph 26 of its commentary to article 33 and 34 that "In cases of secession the practice prior to the United Nations era, while there may be one or two inconsistencies, provides support for the clean slate rule in the form in which it is expressed in article 15 of the present draft: i.e., that a seceding State, as a newly independent State, is not bound to maintain in force, or become a party to, its predecessor's treaties" (A/CONF.80/4, p. 105). Since there was no doubt that the International Law Commission had wished to make a change, it was first necessary to make sure that the rule proposed would have the desired effect. He had most serious doubts on that point. For "clean slate" rule was part of general international law and would continue to be so, whatever solution was adopted in the Convention. It would therefore apply to new States which, at the time of their accession to independence, would obviously not be parties to the Convention. The "clean slate" rule would therefore take full effect and the treaties concluded by the predecessor State would not remain in force for the successor State at the time when it acceded to independence. Could those treaties by brought back into force by virtue of the ratification of the codification Convention by the new State? That was no doubt the intention of the parties, but even so, the formula "any treaty in force at the date of the succession of States ... continues in force ...", which appeared in paragraph 1 (*a*) of article 33, did not correspond to reality and hence was not applicable, since the treaty would not have continued in force, but would have entered into force for the successor State at the moment when it acceded to the codification Convention.

32. The debates of the International Law Commission showed that the solution it proposed had first been conceived for the case of dissolution of a union of States. But the Commission had noted that it was difficult to cover the different cases of unions of States in a single legal formula, and it had finally proposed continuity as the sole solution for all cases of dissolution. The assimilation of one case to another was not without difficulties, however, since a union of States, as its name implied, was a plurality of entities, each of which possessed separate international personality. It was therefore logical that in the case of dissolution of a union, each of these entities should remain bound by the treaties which applied to it. In the case of a unitary State, on the contrary, the parties did not have international personality and consequently were not the subjects of obligations which they could retain after they seceded. If the State from which a territory had separated remained in existence, it naturally retained its obligations; if it disappeared because all its parts had separated, the subject of the obligations no longer existed and the obligations were extinguished.

33. Several States had pointed out in their written comments that it was difficult to distinguish between a newly independent State and a State resulting from a separation. Of course everyone was familiar with what the draft designated by the expression "newly independent State", for that was a matter of political and historical fact. But no one had ever proposed an objective legal criterion for distinguishing the newly independent State, in that particular sense, from other new States. The International Law Commission had been aware of that point, since in paragraph 3 of article 33 it had introduced a provision designed to make the system more flexible by taking account of the case in which "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". But if the International Law Commission itself had noted the absence of objective legal criteria for distinguishing between those two situations, it might be asked how those called upon to apply the Convention would be able to establish that distinction. Consequently, paragraph 3 of article 33 might raise insurmountable interpretation difficulties. It was for all those reasons that France and Switzerland proposed that the "clean slate" rule be made generally valid.

34. It might be asked, however, whether there would not be practical disadvantages in adopting that course and whether the proposed amendment would not have the effect of creating a vacuum in international relations by causing the extinction of treaties whose maintenance would be in the interests of the new State and of third States. He believed that in reality there was no such danger and that where there was a common interest, the two States would not fail to reach agreement in order to ensure the continuity of the treaty.

35. Indeed, the practice of decolonization showed that in spite of the "clean slate" principle, most of the treaties concluded by the colonial Powers with third States had been maintained in force by agreement between those third States and the newly independent State. That, at least, had been the experience of Switzerland in its relations with

newly independent States. It was therefore reasonable to rely on agreement between the States concerned, whereas it would be dangerous to impose on them treaties which, having been concluded by another State, might not be in the interests of either of the parties.

36. The main concern of the co-sponsors of the amendments to articles 2, 33 and 34, issued as document A/CONF.80/C.1/L.41/Rev.1, had been to adopt an economical solution which would make it possible to isolate the problem and limit the reflex effects, in other words to ensure that the proposed amendment did not have repercussions on the other parts of the draft, particularly provisions already adopted.

37. The essential part of the proposal by the French and Swiss delegations was the deletion of subparagraph (*a*) of article 33, paragraph 1, which imposed on the successor State the continuity of treaties concluded by the predecessor State, and of article 33, paragraph 3, which made it possible to assimilate certain cases of separation to the case of formation of a newly independent State—a provision which would be pointless once a single régime had been established.

38. The co-sponsors proposed, on the other hand, that subparagraph (*b*) of paragraph 1, relating to treaties in force "in respect only of that part of the territory of the predecessor State which has become a successor State", should be retained, since the local character of those treaties showed that they were of a territorial nature, or that the territory which had separated had already enjoyed some form of international personality under the previous régime.

39. They also proposed the retention of article 34, relating to the position if a State continued after separation of part of its territory, but that provision would become a compliment to the "clean slate" rule formulated in article 15, since the latter rule would have general validity and be applicable to all cases of new States. Article 34 would therefore be renumbered 15 *bis*.

40. With regard to the consequences of the proposed amendment to the definitions in article 2, the essential purpose was to remodel the definition of a "newly independent State" so as to cover all cases of new States. The co-sponsors therefore proposed that in subparagraph (*f*) of article 2, paragraph 1, the notion of a "dependent territory", which clearly referred to a colonial situation, should be dropped, so that the definition would cover any territory, whether it was an integral part of the national territory, a dependent or associated territory, or a member State of a union or federation, etc. In the new definition, they had adopted the notion of a territory "in respect of which competence for international relations was exercised either by a single predecessor State or by two or more predecessor States which have not been entirely absorbed by the successor State".

41. In the case of a single predecessor State, that form of words covered either the separation of a territory which became an independent State, whereas the former State subsisted with a smaller territory, or the dissolution of the predecessor State, which disappeared.

42. In the case of two or more predecessor States, the wording covered the situation of which the classic example was the re-establishment of the sovereignty of Poland in 1918, with territories detached from Germany, Austria and Russia. In contrast, the proposed amendment had to exclude the case of uniting of States covered by article 30: the co-sponsors had avoided that difficulty by inserting the words "which have not been entirely absorbed by the successor State".

43. Lastly, it was necessary to harmonize the definition of "succession of States" itself, which appeared in subparagraph (*b*) of article 2, paragraph 1, with the new definition of a "newly independent State". The co-sponsors had done so by reverting to the notion of "competence for international relations in respect of a particular territory", instead of that of "responsibility for the international relations of territory". That proposal was of some value in itself and might possibly be adopted independently of the rest of the amendment. The co-sponsors had in fact considered that the notion of "responsibility for the international relations of the territory" was not fecilitous, since it could only apply to a composite State, not to a unitary State. It could be said, for instance, that Switzerland exercised responsibility for the international relations of Geneva, because Geneva, as a member State of a Federal State, had international competence in certain matters, which was exercised for it by the Swiss Confederation. But it could not be said that France assumed responsibility for international relations of Bordeaux, since Bordeaux, as a mere part of French territory, had no international relations. The expression "competence for international relations in respect of a particular territory" properly covered both situations.

44. Mr. MUSEUX (France) explained that his delegation had reached the same conclusions as the delegation of Switzerland, and that any slight differences in their positions related only to the place of the "clean slate" principle in classical international law. The French delegation considered that in customary international law, the "clean slate" principle co-existed with the principle of continuity and that both were found in practice. France had opted for a mixed system, applying the "clean slate" principle to treaties concluded *intuitu personae* and the principle of continuity to other treaties.

45. The system proposed by the International Law Commission was clearly innovative, since it applied the "clean slate" principle to newly independent States and the principle of continuity to other cases of succession of States. Generally speaking, the French delegation approved of that system, since the rules proposed had a unifying and simplifying effect, which met a need in the satisfactory conduct of international relations. Any separation of part of the territory of a State implied some incompatibility between that part and the territory from which it separated; it was therefore logical that the part thus separated should not be bound by the obligations applicable to the territory from which it had separated. In the case of a uniting of States, which, on the contrary, implied a desire

to come together, it was logical to presume the application of the principle of continuity. Although innovative, the system proposed by the International Law Commission was therefore logical. What the authors of the amendment in document A/CONF.80/C.1/L.41/Rev.1 had against it, was that it treated differently two identical legal situations, which were referred to, respectively, in article 15 and article 33, paragraph 1. Why should a State which seceded not be considered as a newly independent State? Perhaps the International Law Commission and some delegations participating in the Conference were influenced by the existence of two opposing principles embodied in the Charter of the United Nations: the principle of self-determination and the principle of the territorial integrity of States. Perhaps it was desired to give preference to the principle of self-determination by providing for application of the "clean slate" rule to cases of decolonization, and it was considered that cases of secession impaired the principle of territorial integrity. In his opinion, that position was untenable. The two principles were of equal value and must both be fully respected. According to article 6, which had already been adopted, the future Convention would only apply to the effects of a succession of States occurring in conformity with international law. Consequently, all the cases of succession covered by the Convention, whether or not they occurred in the context of decolonization, would be in conformity with the Charter and would constitute an application of the right to self-determination. Moreover, the difference between cases of accession to independence and cases of secesssion was tenuous, as could be seen from article 33, paragraph 3, under which secession occurring in circumstances essentially of the same character as those existing in the case of the formation of a newly independent State was assimilated to the latter case. To overcome the difficulties of application which that paragraph was bound to raise, some delegations proposed that it should be mentioned in the provision on the settlement of disputes. The French delegation believed that that would be a very bad method. It would be better to treat identical legal situations in the same way and thus eliminate such unnecessary difficulties.

46. The amendment submitted by Switzerland and France had the merits of simplifying the draft, of establishing objective criteria and of applying a simple legal régime. It should be noted that the "clean slate" rule adopted in the draft was not an absolute rule: it conferred a right to succeed and did not have the disadvantages of an absolute rule, which would create a legal vacuum. In submitting their proposal the delegations of Switzerland and France associated themselves with those States which had made comments on article 33 from both the theoretical and the practical points of view, in particular, Bangladesh and Swaziland (A/CONF.80/5, pp. 255 and 259).

47. Since the amendment in document A/CONF.80/C.1/L.41/Rev.1 departed from the system proposed by the International Law Commission, it might be feasible before taking up drafting problems, to discuss and take a decision on the preliminary question whether all cases of separation should be placed on the same footing.

48. Mr. TREVIRANUS (Federal Republic of Germany) introducing his delegation's amendment (A/CONF.80/C.1/L.52), said that it had a more limited scope than the amendment in document A/CONF.80/C.1./L.47, in which his country had proposed a new article 36 *bis*, and which had been withdrawn on 31 July 1978. In its new amendment, the Federal Republic of Germany had endeavoured to tackle the question by a different approach from that adopted by France and Switzerland. Moreover, it was only if the amendment proposed by the delegations of those two countries was not adopted that the amendment of the Federal Republic of Germany should be considered.

49. That amendment was intended to establish a distinction between multilateral and bilateral treaties and to introduce into article 33 the notion of consent which appeared in article 23. As proposed in the amendment by France and Switzerland, the exception referred to in article 33, paragraph 1 (*b*) would be retained; it could, indeed, be assumed that treaties applicable only to that part of the territory of the predecessor State which had become a successor State had been concluded in the interests of the population of that part of the territory, and that they should be kept in force.

50. If special treatment was not prescribed for bilateral treaties, there would have to be general recourse to saving clauses. In drafting, article 30, paragraph 2 (*c*), the International Law Commission had recognized that a bilateral treaty could be extended to the whole of the territory of a successor State only with the consent of the other State party to the treaty. The reason why his delegation now proposed to differentiate, by analogy to article 23, between bilateral and multilateral treaties was that in the case of bilateral treaties it was necessary to take account of the legitimate interest of the contracting parties in deciding whether such treaties should continue in force. The identity of the parties to a bilateral treaty was a very important factor. Generally, a bilateral treaty was intended to regulate the rights and obligations of the parties in their mutual relations. Hence it could not be assumed that States which had agreed that a bilateral treaty should apply to a certain territory would subsequently be willing to keep it in force with respect to that territory when it had become an integral part of the territory of a new sovereign. That was where the idea of protecting the co-contractors came in. For them, it mattered little whether they had to deal with a newly independent State, or with a new State which had emerged under the conditions set out in Part IV of the draft. In any case, they would wish their consent to be required. If a State broke up in the circumstances set out in article 33, any party to a treaty concluded with the predecessor State would be dealing with several States, and if it could not invoke a saving clause, it could not take a decision concerning the maintenance in force of the treaty. Since saving clauses did not provide a solution in every case, that procedure could not be relied on exclusively. In his delegation's view, the system would only be workable if it was supplemented by some mechanism of the kind proposed by the United States of America.

51. The amendment submitted by his delegation was intended to make article 33 more widely acceptable by providing a more balanced solution and ensuring, as far as possible, the stability of treaty relations.

52. Mr. NATHAN (Israel), speaking on a point of order, said that the amendment of the Federal Republic of Germany should be considered only after the amendment of France and Switzerland, as Mr. Treviranus himself had suggested.

53. Sir Ian SINCLAIR (United Kingdom), supported by Mr. RIBAKOV (Union of Soviet Socialist Republics), said that it would be an advantage for the Committee of the Whole to consider the two amendments together. It was only when it came to voting that the amendment of France and Switzerland should be taken first, because it was the furthest removed from the original proposal.

54. Mr. GÖRÖG (Hungary) said that in drafting article 33, the International Law Commission had adopted the principle of *ipso jure* continuity of all treaties, both bilateral and multilateral, in the event of the dissolution or separation of States. He referred the Committee to paragraph 25 of the Commission's commentary to articles 33 and 34 A/CONF.80/4, p. 105). The amendment proposed by the Federal Republic of Germany, on the other hand, provided that the principle of *ipso jure* continuity should apply only to multialteral treaties, bilateral treaties remaining in force only if the successor State and the other State party expressly so agreed, or by reason of their conduct were to be considered as having so agreed. He thought that distinction was unnecessary, because article 33, paragraph 2, already provided for exceptions to the principle of *ipso jure* continuity. That principle was in conformity with the interests of the States concerned, as well as those of the international community. He reminded the Committee of the case of his own country which, on the termination of the Austro-Hungarian Empire in 1918, had continued to consider itself bound by the treaties of the Dual Monarchy. He was therefore in favour of article 33 as proposed by the International Law Commission and he could accept neither the amendment of the Federal Republic of Germany nor the part of the amendment of France and Switzerland which called for the deletion of paragraph 1 (*a*).

55. Mrs. THAKORE (India) noted that article 33, paragraph 1, stated the principle of *ipso jure* continuity of treaty obligations in the event of separation of parts of a State, whether or not the predecessor State continued to exist. In her view, a distinction should be made between cases in which the predecessor State continued to exist, that was to say cases of separation, and cases in which it ceased to exist, namely, cases of dissolution. That was the course which had been followed in the draft on the succession of States in respect of matters other than treaties. In cases of dissolution, the "clean-slate" rule should be applied more widely than in other cases.

56. Subject to those remarks, she approved of the present text of article 33 and of that part of the amendment proposed by France and Switzerland which would permit wider application of the "clean-slate" principle in cases of dissolution. She would speak later on the amendment proposed by the Federal Republic of Germany.

57. Mr. RYBAKOV (Union of Soviet Socialist Republics) said he was not sure how to interpret the amendment proposed by France and Switzerland. The draft was based on the "clean-slate" principle which was set out in detail in articles 15 to 29 already adopted by the conference, and by virtue of which newly independent States were not bound, at the time of succession of States, to maintain in force or become parties to treaties, but had the right to do so if they wished. The amendment submitted by France and Switzerland seemed calculated to deprive the successor State, in the event of separation or dissolution, of the possibility of establishing, by a notification of succession, its status as a party to treaties in force, with the exception of the treaties mentioned in paragraph 1 (*b*), which was of limited scope. He could not believe that France and Switzerland really intended to re-open discussion on the "clean-slate" principle and he would like some clarification on that point.

58. Mr. GUTIÉRREZ EVIA (Mexico) referred to the position taken by Mexico in 1975 in its written comments, namely, that the right to self-determination was applicable to all peoples and that all new States deserved equal treatment, regardless of whether they had been colonial dependencies or not (A/CONF.80/5, p. 258). Paragraph 3 of article 33, as drafted by the International Law Commission, raised very great difficulties, because it was open to question who would decide that the circumstances in which a part of the territory of a State separated from it and became a State were "essentially of the same character as those existing in the case of the formation of a newly independent State", and that it was therefore appropriate to apply the "clean-slate" principle. He thought it would be better to apply the principle of self-determination in all cases. He supported the amendment submitted by France and Switzerland.

COMMUNICATION BY THE CHAIRMAN ON ARTICLES 22 *bis* AND 7.

59. The CHAIRMAN announced that the amendment to article 22 *bis* appearing in document A/CONF.80/C.1/L.28/Rev.1 had been withdrawn. Document A/CONF.80/C.1/L.10/Rev.2, which contained an amendment to article 7, withdrawn at the 38th meeting, had been withdrawn from circulation.

The meeting rose at 12.55 p.m.

41st MEETING

Wednesday, 2 August 1978, at 3.25 p.m.

Chairman: Mr. RIAD (Egypt)

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

[Agenda item 11] (*continued*)

ARTICLE 33 (Succession of States in cases of separation of parts of a State)[1] (*continued*)

1. The CHAIRMAN drew attention to a further amendment to article 33, submitted by Pakistan (A/CONF.80/C.1/L.54), and to the revised version of the Franco-Swiss amendment (A/CONF.80/C.1/L.41/Rev.1).

2. Mr. POEGGEL (German Democratic Republic) said that, while in general his delegation supported article 33 as drafted, it would like the Drafting Committee also to take into account the problems of the dissolution of a State.

3. Paragraph 23 of the International Law Commission's commentary to articles 33 and 34 read "From a purely theoretical point of view, there may be a distinction between dissolution and separation of part of a State" (A/CONF.80/4, p. 104). Such distinctions were not only theoretical however. In the case of separation, the predecessor State continued to exist and usually retained its identity, although there might be a significant reduction in terms of its population and its territory. The question of succession in respect of treaties therefore arose only to a very limited extent since, in principle, a State would remain a party to the treaty in question. In the case of dissolution, on the other hand, the predecessor State disappeared completely and, consequently, so did the party to the treaty too. As a result, different legal consequences ensued. Furthermore, dissolution was not to be regarded simply as the sum of several separations.

4. To meet that point, his delegation wished to suggest that a reference to dissolution be included in the titles of Part IV and of article 33, and also in the body of paragraph 1 of the article. That would make it clear that article 33 dealt with two different but generally recognized types of succession, namely, separation of part of a State and dissolution of a State. A further reason for including such a reference was that articles 16 and 25 of the draft on succession of States in respect of matters other than treaties dealt explicitly with the dissolution of a State. He trusted that his delegation's suggestion would be favourably considered particularly bearing in mind the general agreement within the International Law Commission and at the Conference that the questions of separation and dissolution were closely interrelated and that it was necessary to be as consistent as possible in the use of terms.

5. His delegation was unable to accept the amendment submitted by the Federal Republic of Germany (A/CONF.80/C.1/L.52) for the reasons it had already stated in reference to the amendment submitted by that delegation to article 30 (A/CONF.80/C.1/L.45).

6. Mr. SHEIKH (Pakistan), introducing his delegation's amendment (A/CONF.80/C.1/L.54), said that it dealt with a situation which his own country had known and which concerned the problems that might arise in regard to the rights and liabilities accruing under agreements entered into by the unitary State. The International Law Commission had rightly applied the "clean slate" principle in Part III of the draft convention, and the rule of "continuity" in Part IV. Yet paragraph 3 of article 33 gave rise to an anomaly for, under its terms, a successor State formed in circumstances similar to those existing in the case of the formation of a newly independent State would be treated on the same basis as the latter. Such a successor State was not a newly independent State, however, since it had not been a dependent territory so far as the conduct of its international relations was concerned. Furthermore, the legal philosophy behind the "clean slate" principle, as it applied to a newly independent State, was that the people of such a State had never exercised their inalienable right to self-determination, and their will had not been ascertained when treaty obligations had been entered into. That did not apply to the people of a State who had exercised such a right; nor could it be said of separation of part of the territory of a State, even in circumstances similar to those existing in the case of the formation of a newly independent State, that the will of the people had never been involved when entering into treaty obligations.

7. Consequently, his delegation considered that, in cases of separation covered by paragraph 3, the principle of continuity should apply only to the extent that, if the successor State had derived any benefits under a treaty, it would have the corresponding obligations, consistent with the maxims *aequum et bonum* and *res cum onere transit.*

8. Mr. RITTER (Switzerland), referring to the question raised by the Soviet representative at the 40th meeting, said he would like to explain that the main purpose of the Franco-Swiss amendment was to ensure that a single régime, namely that laid down in articles 15-19 for newly independent States, would apply not only to those States but also to new States other than newly independent States arising as a result of succession in the case of separation.

9. Mr. RASSOLKO (Byelorussian Soviet Socialist Republic) said that his delegation supported the general rule laid down in article 33, which would also cover localized treaties.

10. It did not favour the Franco-Swiss proposal to delete paragraph 1 (*a*), for attention would then be concentrated on the narrower situation dealt with in paragraph 1 (*b*). Nor was it able to support the amendment submitted by the Federal Republic of Germany, the effect of which would be

[1] For the amendments submitted, see 40th meeting, foot-note 9.

to accord a special status to bilateral treaties. The substance of that amendment was in any event very similar to that submitted by the Federal Republic of Germany to article 30. The latter had, however, been withdrawn, many delegations being of the view that its terms were in conflict with the general principles of international law and, in particular, with the *pacta sunt servanda* rule. His delegation regarded it as absolutely essential to reflect clearly in the draft convention the principle of the continuity of treaties and therefore to retain article 33 as drafted. Paragraph 2 of the article provided for exceptions to that principle, and would thus cover the point raised in the amendment submitted by the Federal Republic of Germany.

11. Lastly, his delegation saw no reason to oppose the Franco-Swiss amendment to delete paragraph 3 of the article.

12. Mr. DOGAN (Turkey) said that, in his view, the drafting of article 33 was obscure, and it was necessary to refer to the commentary to learn that it dealt with cases of succession arising in the event of the separation or dissolution of a State. That point could perhaps be referred to the Drafting Committee.

13. As to the substance of the article, in his delegation's view, a distinction had to be drawn between cases of succession arising, on the one hand, in the event of the dissolution or separation of a State and, on the other, in the event of the separation of part of the territory of a State. With regard to the former, the draft convention made it clear that, so far as cases of voluntary succession were concerned, stability of legal relationships was of paramount importance and the principle of continuity should prevail. States which united voluntarily should not evade their obligations under treaties entered into by the predecessor State. That applied equally to cases of separation and dissolution, as was borne out by international practice, for example, by the case of the union and separation of Syria and Egypt.

14. The same argument could not, however, be adduced when considering the separation of a part of the territory of a State, and the reasoning which had led to the adoption of the "clean slate" principle was self-evident. International practice in the matter and particularly that of the Ottoman Empire, was abundant, but it sufficed to call to mind the separation of Montenegro, Greece, Bulgaria, and Moldavia and Wallachia. The territories which had separated from the Ottoman Empire, having energetically resisted the notion of continuity, had ultimately managed to put an end to their commitments–commitments which had, in any event, been imposed for reasons of a political rather than a legal nature. In those circumstances, his delegation failed to see why cases of succession which differed in character, and even in origin, should be made subject to the rule of continuity. It saw no valid reason for not applying the "clean slate" principle to the separated part of a State. Indeed, as international practice showed, the reasons which applied under article 15 were equally applicable in that case.

15. His delegation fully supported the Franco-Swiss amendment.

16. Mr. ROVINE (United States of America) said that, in his delegation's view, article 33 accorded with the bulk of international practice. Attention had been focused on the obligations arising out of treaty relationships, and rightly so, but it was important not to overlook the rights which arose out of those same relationships. States which had entered into such relationships were entitled to rely on those rights and the continuation of the treaty. That did not apply, of course, where the other party or parties to the treaty had had its terms imposed upon them, irrespective of their will. Consequently, the "clean slate" principle, which would apply to newly independent States under articles 15-29, was entirely just and necessary. By the same token, however, rights freely accorded under a treaty should not be cut off because one State united with another, under article 30, or separated into two or more parts, under article 33. The central question for the Conference's consideration, therefore, was why the right of reliance should disappear.

17. There was the further question of the equities involved. If State A entered into treaty relationships with, say, 95 other nations, a rule that would cut off the rights of all those nations when State A divided into two parts would certainly not promote stability. Reference had been made to the undeniable right to self-determination of States in the case of separation and secession, but the large majority of the nations of the world, which had entered into treaty relationships, likewise had a right in the matter of those relationships to self-determination. It had also been suggested that the "clean slate" principle should apply at least to bilateral treaties because those treaties were more sensitive and were in a special category. But it was for those very reasons that the rights arising under such treaties should be maintained.

18. The presumptions provided for in paragraph 2 of article 33, whereby in certain circumstances the rule laid down in paragraph 1 would not apply, were entirely fair, if the rights of the vast majority of nations were compared with those of a single State which separated–a far more unusual occurrence. The representative of the Federal Republic of Germany had asked why the successor State should be compelled, under article 33, to continue bilateral treaty arrangements. He in turn, would ask why, under the terms of that same article, the vast bulk of nations should forgo their rights under such treaties.

19. It was true that paragraph 3 of the article gave rise to some difficulties but it nonetheless afforded the most reasonable approach in the circumstances and highlighted the need for a dispute settlement procedure. The question had been raised as to who would decide whether the separation was essentially of the same character as that existing in the case of the formation of a newly independent State. The answer was the parties themselves, in the first instance, although, if they failed to agree, they would perhaps have to resort to assistance from a third party.

20. Lastly, there was little difference in principle, in his view, between article 30, which had already been adopted, and article 33. Both were concerned with the application of the rule of continuity as a means of preserving the stab-

of treaty relationships and the international legal order. For all those reasons, his delegation supported article 33 as drafted by the International Law Commission, and was opposed to the amendments submitted by France and Switzerland and by the Federal Republic of Germany.

21. Mr. RYBAKOV (Union of Soviet Socialist Republics) said that his delegation supported in principle the International Law Commission's text of paragraphs 1 and 2 of article 33, although it agreed with the representatives of the German Democratic Republic and Turkey that the language required polishing by the Drafting Committee.

22. With regard to the amendment proposed by the Federal Republic of Germany, he endorsed the views of those other speakers who had found it unacceptable. It was an attempt to apply the "clean slate" principle to States other than newly independent States emerging from the process of decolonization, that is, to violate the idea underlying the International Law Commission text. His delegation was also opposed to the Franco/Swiss amendment since the deletion of paragraph 1, subparagraph (*a*) of article 33, which it proposed, would destroy the whole point of the article. A situation could then arise in which, if States A and B united, the continuity rule would apply in respect of existing treaties in conformity with article 30, but if they separated, they would enjoy complete freedom.

23. With regard to paragraph 3 of article 33, the problem, as the Mexican representative[2] had pointed out, was uncertainty about the meaning of the phrase "in circumstances which are essentially of the same character as those existing in the case for the formation of a newly independent State". It appeared to constitute a deviation from the general idea underlying the International Law Commission's text which was otherwise well balanced. It was superfluous and might indeed prove dangerous if retained. It was in effect establishing a second category of States, other than newly independent States as defined in article 2, paragraph 1 (*f*), to which the "clean slate" principle was to be applied. It was clear from the International Law Commission's commentary to the article that paragraph 3 might come to be applied to a predecessor State continuing to exist after a separation of some of its parts to which there would be no wish to extend the "clean slate" principle. The entire draft convention had been based on the premise that there were only two alternatives: either a State was a newly independent State or it was not. Any other approach weakened the basic concept of the draft and opened the door to misinterpretations which no international court could rectify.

24. He would suggest that further consideration be given to paragraph 3, perhaps by regional groups.

25. Mr. FONT BLÁZQUEZ (Spain) said that, while it was more logical to apply the rule of continuity to the case of dissolution of a union of States, that should not be extended to the very different case of separation of parts of a State. Where the emergence of a new State following separation was concerned, clearly only the "clean slate" principle should apply.

26. Paragraph 3 of article 33, provided for the application of that principle as an exception to the rule laid down in paragraph 1, but, in his view, it was deficient in three respects. In the first place, it did not accord with State practice, whereby the principle of continuity was applied to the dissolution of unions of States and the "clean slate" principle to that of typical cases of separation. Secondly, it was not realistic, since a State which came into being as a result of separation would not accept the rule of continuity but would insist on the "clean slate" principle. Thirdly, it could lead to serious problems of interpretation, for an international court would have difficulty in determining, on the basis of strictly legal criteria, whether the circumstances in which a part of a State separated were the same as those existing in the case of the formation of a newly independent State. He would only remind the Conference of the *Customs Union between Austria and Germany*[3] case which, in effect, had put an end to the advisory activities of the Permanent Court of International Justice. In that case, the Court had had to consider whether the customs unions between those two countries would "endanger the independence" of Austria—an expression which had been the subject of much political, economic and legal debate. He would not like the International Court of Justice, or indeed any other court, to have to solve the problems that would result from the language used in paragraph 3 of article 33.

27. The United States representative, if he had understood him correctly, had argued that the rights acquired by third States under treaties with the predecessor State should be protected. In effect, that would mean dispensing entirely with the "clean slate" principle in the draft convention and imposing on newly independent States the rule of continuity. He was unable to agree on that point. In general, however, he shared the views expressed by the Turkish representative.

28. Sir Ian SINCLAIR (United Kingdom) said that State practice in cases of separation of parts of a State was largely inconclusive, owing to the variety of circumstances under which such a separation might take place. The International Law Commission's commentary to articles 33 and 34 drew attention to the classical instances of dissolution of unions where the guiding principle had been that of continuity. On the other hand, in the case of the separation of parts of a State, with the predecessor State continuing to exist, there was a tendency to adopt the "clean slate" rule. It had been said that a clearer distinction should be drawn between the two categories, but it was difficult to see how that might be done and his delegation agreed with the observation in paragraph 25 of the International Law Commission's commentary on articles 33 and 34 that the infinite variety of constituted relationships and kinds of "union" rendered it inappropriate to make that element the basic test for determining whether treaties continued in force upon the

[2] See 40th meeting, para. 58.

[3] Customs Régime between Germany and Austria (Protocol of March 19, 1931), P.C.I.J., Series A/B No. 41, p. 34.

dissolution of a State (A/CONF.80/4, p. 104). Indeed, it appeared that State practice was not a wholly reliable guide and the international community must have regard to progressive development rather than codification in determining the basic rule.

29. Neither the International Law Commission's draft of article 33 nor the Franco/Swiss proposal constituted a departure from existing law, but if accepted, the latter would, as had been generally acknowledged, produce a radical change in the economy of the draft Convention as a whole. The obvious objection to the Franco/Swiss proposal was that it equated two situations which were dissimilar both with regard to terminology and to substance. In the draft Convention, the newly independent State was defined in terms of the historical process of decolonization and a legal régime based on the "clean slate" rule had been applied to it. To extend that régime to cases of separation of parts of a State would result in further destabilizing international treaty relations. He would remind the proponents of the amendment of the observation of a former Supreme Court Justice of the United States that the life of law was not logic but experience. In that light, a further breach of the continuity rule was not required. If a federation broke up in the future, it would not be inappropriate for any resultant successor State, which had had a voice in the formulation of the foreign policy of the federation, to continue to be bound by treaty relations.

30. Indeed, the Franco/Swiss amendment might be deemed to encourage secessionist movements. The application of the "clean slate" rule should be reserved for special circumstances essentially the same as those existing in the case of the formation of a newly independent State. Like the Soviet representative, he had considerable doubts about the way in which the provisions of paragraph 3 might be applied. The concept was not in itself too difficult and experience showed that circumstances similar to those attending the emergence of newly independent States might occur. However, the precise scope of the paragraph was not clear and if it was retained, a procedure for the settlement of disputes would be required.

31. Although there might be an objection to the amendment proposed by the Federal Republic of Germany on the grounds that it qualified the principle of continuity, his delegation could support it, in recognition of the fact that circumstances might occur under which application of the continuity rule to bilateral treaties could create difficulties and also as a compromise between the original text of article 33 and the Franco/Swiss amendment.

32. His delegation had not had sufficient time to study the Pakistan amendment to paragraph 3 and it therefore reserved the right to speak again.

33. Mr. TORNARITIS (Cyprus) said that his delegation supported both the principle and the substance of article 33 as it stood, but the wording was not always clear and should be referred to the Drafting Committee. Part III of the draft dealt with newly independent States, as defined in article 2, to which the "clean slate" principle applied: Part IV dealt with the union or separation of other States to which the continuity principle applied. When there was a separation of territory to form a new State, other than a newly independent State, article 33 applied; all other cases were covered by Part III of the draft. The difference was obvious, although the language might need improvement. The Conference should be careful not to disturb the wise structure of the draft by inserting amendments which, purporting to clarify it, might render it more obscure.

34. Mr. STUTTERHEIM (Netherlands) said that his delegation supported the International Law Commission's text of paragraphs 1 and 2. As he had already stated in the discussions on articles 16 and 30, his delegation was in favour of the continuity principle unless there were compelling reasons to the contrary, such as in the case of decolonization.

35. Paragraph 3 was superfluous since, as the Soviet representative had said, it established an undesirable third category of States which fell outside the definitions established in article 2 and its application would give rise to difficulties. He therefore thought it should be deleted but, if it were retained, he shared the view of the United Kingdom representative that a procedure for the settlement of disputes was required.

36. His first reaction to the Pakistan amendment to paragraph 3 was that it would be difficult to define the word "benefits", and that he was therefore not disposed to support it.

37. Mr. ECONOMIDES (Greece) said that the draft convention was treating as dissimilar two situations which were essentially the same: a State formed by the separation of parts of a State was to all extents and purposes newly independent and the discrimination whereby a newly independent State under article 15 was given more rights than a separated State under article 33 ran counter to the principle of the equality of States guaranteed by the Charter of the United Nations. The provisions of article 33 could rightly be applied to the dissolution of a union of composite States but were ill adapted to the case of separation. He supported the Franco-Swiss amendment.

38. Mr. NAKAGAWA (Japan) said he agreed with previous speakers that the framework of the draft convention had been well structured and that its delicate balance should not be destroyed. The continuity rule, for which many precedents were cited in the International Law Commission's commentary to articles 33 and 34 should therefore be retained in paragraph 1. Accordingly, his delegation was unable to support either the Franco-Swiss amendment or the amendment of the Federal Republic of Germany which would change the structure and harmony of the convention, and might create new problems. However, paragraph 3 in its present form was not satisfactory and therefore some drafting improvement might be necessary.

39. Mr. ROVINE (United States of America), replying to the Spanish representative's comment that the United States approach to article 33 was calculated to eliminate the "clean

slate" principle altogether, said that the right of nations to rely on treaty relationships assumed that they had been freely entered into by the other parties. In the case of non-self-governing territories and colonies on which treaty relationships had been imposed, that was clearly not the case and the "clean slate" rule was only equitable and just. So far from detracting from the "clean slate" principle, the United States attitude emphasized the reasons for accepting it.

40. The United Kingdom representative was probably right in saying in support of the amendment proposed by the Federal Republic of Germany that the maintenance of the continuity rule in respect of bilateral treaties might cause difficulties. However, the non-maintenance of such treaties was even more likely to cause difficulty. It was impossible to have a uniformly satisfactory rule, but since all States entered into bilateral treaties under which they acquired rights as well as obligations, he thought that the continuity rule should stand.

41. Mr. MARESCA (Italy) said that the arguments put forward by the proponents of the Franco-Swiss amendment had been impeccable in their logic: it was undeniable that a State emerging from an internal struggle was just as much a new State as a State born from decolonization. But international law was based not only on logic but on history, political realities and the requirements of international life. It was impossible to claim that when two States separated which, like many of the examples quoted in the International Law Commission's commentary to the article, had been joined for centuries and had formed links with other States, they were beginning a completely new existence just like those emerging from decolonization.

42. The amendment submitted by the Federal Republic of Germany had the merit of distinguishing, in accordance with international law, between bilateral and multilateral treaties. Paragraph 2 of the International Law Commission's text was both clear and logical but the same could not be said of paragraph 3 which suddenly abandoned the continuity principle and freed certain new States of any legal ties. It should be deleted.

43. Mr. DIENG (Senegal) said he could not accept the view expressed by one speaker at the 40th meeting, that the right to self-determination was a mere political maxim. If any principle fell into the category defined by article 53 of the Vienna Convention on the Law of Treaties, it was that of self-determination. The Commission had faithfully observed the principle of the progressive development of international law by including two separate criteria in the matter.

44. What put newly independent States into a category of their own was that they had emerged as a result of the decolonization process; States having separated themselves from larger territories were entirely different, and it would be totally illogical to deny that difference. However, because the Convention provided for two different legal régimes for basically different matters, it was difficult for the Senegalese delegation to support the amendment proposed by France and Switzerland. The part of a State which separated itself had to some extent participated in the formulation of international relations, which a newly independent State had not. The difference between a new and a newly independent State could not be denied, although the terminology was perhaps not ideal. The Franco-Swiss amendment in fact challenged the spirit of the draft Convention and, if accepted, would mean that many accepted elements would have to be revised.

45. The amendment proposed by the Federal Republic of Germany would undoubtedly upset the balance of the Convention and was therefore inappropriate. He reserved the right to comment later on, on the amendment proposed by Pakistan.

46. Paragraph 3 of article 33 raised serious problems and the International Law Commission's wording would certainly have to be improved. The Commission had undoubtedly been attempting to cover the marginal case of a part of a territory which had never accepted its position as a part of another, but had always demanded to be made separate, as a result of which it had always been treated as a colony. Unfortunately, as a result of its attempt, the Commission had lapsed into obscurity and it would now be better either to delete paragraph 3 entirely, or to replace it by something less confused.

47. Mrs. BOKOR-SZEGÖ (Hungary) said that from the start of its work of codifying the succession of States, the Commission had maintained the theory of different treatment for newly independent States, and it was clear from the commentary that it had had in mind only those which had resulted from the disintegration of colonial systems, hence the reference to the principle of self-determination. She fully agreed that that principle was no longer a political one but an imperative of international law, which was why a clear distinction was made between the provisions of Parts 3 and 4 of the draft as a result.

48. The reasons for making a distinction between categories of newly independent States was that those born of the colonial system had not been able to participate in the formulation of traditional international law, but had had it imposed on them. The Conference now had a duty to think of the future, and in considering the possible dissolution of States, the continuity of inter-State relations had to be safe-guarded and the stability of treaty relations maintained in the interests of the community of States. If the Committee pursued its present line of discussion, it might end by questioning the work of the International Law Commission. It should therefore maintain that clear distinction between the provisions of Parts 3 and 4 of the draft, and instruct the Drafting Committee to make the wording of paragraph 3 of article 33 clearer.

49. Mrs. PÉREZ VENERO (Panama) said she agreed with the representative of Mexico that paragraph 3 of article 33 as it stood raised difficulties of interpretation. Her delegation's position on it would naturally have to be compatible with its foreign policy position of total support for the principle of self-determination of peoples, whether of newly-formed or old-established States. That did not mean that Panama did not appreciate the serious conse-

quences of the problems which might arise from the separation of part of the territory of a State; nor did it mean that Panama would encourage the separation of part of a State in order to enable it to avoid negotiations to clarify what treaty obligations had existed for it prior to the separation; nor, finally, did it mean that Panama did not respect the principle of continuity or not believe that States should respect their treaty obligations when there was no dispute as to what they were.

50. On the contrary, Panama had shown by its co-operation with such international organizations as the United Nations and the Organization of American States, its respect for treaty obligations, patience, integrity and desire for the peaceful settlement of disputes. But where cases of incompatibility of treaty obligations caused by the separation of part of the territory of a State, as in the case referred to in subparagraph 2 (*b*) could not be settled by negotiation, Panama supported the "clean slate" principle and self-determination, which was endangered by paragraph 3 of article 33 as it stood.

51. Mr. BOUBACAR (Mali) said that as far as he was concerned there was no duality in article 33. The legal arguments put forward had carefully omitted to refer to the principles of self-determination as set forth in the United Nations Charter. Professor Virally, member of the Institute of International Law, had shown that those principles were rules of *jus cogens*. If the sponsors of the amendments believed that the former colonial power was still part of a colonized territory, then there was duality, but if that power was no longer part of the decolonized territory there could be no question of duality. He could not support the authors of the amendments, in their efforts to weaken the "clean slate" principle. As the law was being changed at a time of new ideas and newly independent States, States in other words which were no longer dependent, paragraphs 1 and 3 had to be retained. The fears of some delegations regarding paragraph 3 were not justified. It could not be denied that there were different forms of decolonization. The text as drafted by the International Law Commission should therefore be supported.

52. Mr. LANG (Austria) said that his delegation understood the priority given by the International Law Commission to the "clean slate" principle with respect to newly independent States; it was justified by the particular historical situation in which those countries had been created. Once a universal international community had been established, however, in conformity with the principles of the United Nations Charter, particularly that of the sovereign equality of States, some measure of stability was necessary for the maintenance of an international order beneficial to all its members, whence the need to give a proper place to the principle of continuity.

53. His delegation was in favour of deleting paragraph 3 of article 33 since as it stood, it could only give rise to difficulties which would not easily be resolved by any of the recognized methods for the settlement of disputes. The Conference should try to lay down rules that would not complicate matters but facilitate the process of State succession and clarify the position of treaties affected by successions. The Austrian delegation could not support any of the other amendments, although it fully appreciated their merits.

54. Mr. DUCULESCU (Romania) said that in principle his delegation favoured the legal solutions contained in article 33 as it stood. The text could doubtless be improved, particularly to bring out the distinction between the separation of unions of States and the secession of unitary States where objective criteria were necessary to an appreciation of the legality of the situation.

55. The amendments proposed by France and Switzerland and by the Federal Republic of Germany conflicted with the principles of continuity and the stability of international relations. Self-determination and secession were quite different situations in international law and should not be put into the same category.

56. As far as paragraph 3 was concerned, he was of the opinion that its scope needed to be defined more clearly. The Conference had a duty to seek legal solutions guaranteeing both the principle of self-determination and the territorial integrity of States.

57. Mr. FERREIRA (Chile) said that paragraph 3 was somewhat obscure as it stood and his delegation was still analysing it.

58. The amendment proposed by the Federal Republic of Germany was positive only in that it made the necessary distinction between bilateral and multilateral treaties in the case of part of a State separating from a larger territory, when the predecessor State continued to exist, because the application of the principle of continuity to those cases meant non-recognition of the principle of self-determination since, with the text as it stood, neither of the two States—the successor State nor the other State party—could object unilaterally to the continuity of the bilateral treaty in question.

59. The CHAIRMAN suggested that the Committee postpone its decision on article 33 until the following day, and begin its consideration of article 34.

60. Mr. KASASA-MUTATI (Zaire), on a point of order, said that further clarification of paragraph 3 of article 33 was obviously needed. He suggested that some recognized authority in the matter be asked to give further explanation so as to avoid the necessity for more statements the following day.

61. The CHAIRMAN invited the Chairman of the International Law Commission to make a statement at a time of his choosing.

62. Mr. SETTE CÂMARA (Brazil), Chairman of the International Law Commission said that he would make a statement the following day on article 33 as a whole. The Expert Consultant was better qualified to speak specifically on paragraph 3.

ARTICLE 34 (Position if a State continues after separation of part of its territory)[4]

63. Mrs. THAKORE (India) said that article 34 embodied the *ipso jure* continuity rule, subject to the usual exceptions in respect of a State which continued to exist after separation of a part of its territory. Since it dealt with treaties applicable to the predecessor State and not to the successor State or States, article 34 was acceptable to the Indian delegation as it stood.

64. The amendment proposed by France and Switzerland (A/CONF.80/C.1/L.41/Rev.1) appeared to be consequential to their amendment to article 33, and could only be considered by the Drafting Committee, if the amendment proposed by France and Switzerland to article 33 were adopted.

The meeting rose at 5.50 p.m.

[4] The following amendment was submitted: France and Switzerland, A/CONF.80/C.1/L.41/Rev.1.

42nd MEETING

Thursday, 3 August 1978, at 10.25 a.m.

Chairman: Mr. RIAD (Egypt)

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

[Agenda item 11] (*continued*)

ARTICLE 33 (Succession of States in cases of separation of parts of a State)[1] (*continued*)

1. Mrs. DAHLERUP (Denmark) said that her delegation supported paragraphs 1 and 2 of article 33, which guaranteed continuity and stability in treaty relations between States which had negotiated and accepted rights and obligations of their own free will. The amendment proposed by France and Switzerland (A/CONF.80/C.1/L.41/Rev.1) would have the advantage of establishing a single rule, but in cases of separation, that rule might lead to an unnecessary legal vacuum, when a whole system of freely negotiated treaties already existed. After the adoption of article 30, the amendment proposed by France and Switzerland would lead to strange results. In the case of a union of two States, their treaty régimes would be maintained, but if the new State thus formed subsequently broke up, the same treaties which had been maintained in force would no longer be applicable, which would create a legal vaccum.

2. The Danish delegation approved of the idea underlying paragraph 3, since the situation to which it applied might arise in the future. Nevertheless, the Drafting Committee should try to improve the wording, in order to prevent the abuses to which it might give rise. In any case, provision should be made for some means of settling the disputes which might result from the not very precise description of the situations covered by paragraph 3.

3. Mr. MASUD (Pakistan), introducing his delegation's amendment (A/CONF.80/C.1/L.54), said that article 33, paragraph 3, had raised doubts as to the true nature of the situations it dealt with. As a matter of fact, such situations fell within the twilight zone between part III of the draft, which dealt with newly independent States and called for application of the "clean slate" principle and part IV, which dealt with the uniting and separation of States and called for application of the continuity principle. Some delegations considered that there was no difference between the situations dealt with in article 33, paragraph 3, and those covered by article 15. It was nevertheless clear that article 33, paragraph 3, did not deal with cases of formation of a newly independent State, but with cases in which part of the territory of a State separated from it and became a State in circumstances which were essentially of the same character. In the former situation, the right to self-determination was exercised, and the will of the people of the territory which had become independent had not been consulted in the treaty-making process. Other delegations considered that it was not necessary to make provision for the situation referred to in article 33, paragraph 3, since all such situations were covered by paragraphs 1 and 2 of the article. But the reason why the International Law Commission had drafted paragraph 3 was, precisely, to cover the category of situations which were similar to cases of formation of newly independent States, but nevertheless distinct from those cases. That was why it had provided for application of the "clean slate" principle to those situations.

4. Nevertheless, the wording of paragraph 3 was not entirely satisfactory. First, the idea of "circumstances which are essentially of the same character" was not precise; secondly, according to that paragraph, situations which were not absolutely identical would have to be treated in the same way. What the Commission had intended was, precisely, to give situations in the special category referred to an intermediate position between cases falling under part III of the draft and those falling under part IV. And it was in order to give a separate status to the cases dealt with in paragraph 3 that Pakistan had submitted its amendment, which proposed restricting the application of the continuity principle to cases in which the successor State had "derived any benefits, directly or indirectly, under a treaty". That was the case when a State had received loans from another State and the part of its territory which had benefited from the loans separated from it; it was then natural that the successor State should assume the corresponding obligations.

[1] For the amendments submitted, see the 40th meeting, footnote 9.

5. Mr. SETTE CÂMARA (Brazil) said that in spite of the stimulating debate to which the amendments to article 33 had given rise, his delegation still favoured the International Law Commission's draft of that article. The amendment by France and Switzerland would alter the structure of the draft and the respective spheres of application of the "clean slate" and continuity principles. It would extend the application of the "clean-slate" rule to new States emerging from a uniting or a separation of States. In support of that amendment, the Swiss representative had tried to base the "clean slate" rule on the exception of *res inter alios acta*, thus disregarding the importance of self-determination. As the new State had not participated in the conclusion of the treaty, it would constitute a *res inter alios acta*, which could not bind the successor State. But the authors of the amendment appeared to forget the sovereign presence, in the treaty-making process, of the predecessor State, whose legacy of rights and obligations the successor State could not simply brush aside. The situation was completely different when a newly independent State was formed, because the will of the dependent people had been completely ignored in the conclusion of treaties by the predecessor State. That was why newly independent States should not inherit any treaty concluded by the predecessor State. Such treaties were much more of a *res inter alios acta* than those contemplated in the amendment proposed by France and Switzerland.

6. Furthermore, their amendment assimilated cases of uniting and separation of States to cases of formation of newly independent States, which would be possible only if colonial territories were regarded as part of the metropolitan territory, in accordance with the obsolete doctrine of overseas territories. In paragraphs 12 and 26 of its commentary on articles 33 and 34 (A/CONF.80/4, pages 102 and 105), the International Law Commission had emphasized the evolution of trends of thought on that question, observing that before the era of the United Nations, colonies were considered as being in the fullest sense territories of the colonial Power. Hence, the amendment proposed by France and Switzerland would be a regression.

7. It was easier to follow the International Law Commission, which based the "clean slate" rule on the principle of self-determination—a principle that was undoubtedly a peremptory norm of contemporary international law. It was one thing to protect newly independent States from the burden of treaties to which they had not given their consent, but it was another to use that rule to brush aside all commitments of predecessor States in normal cases of uniting or separation of States.

8. He could not support the amendment submitted by the Federal Republic of Germany (A/CONF.80/C.1/L.52), either, because he did not see why bilateral treaties should be excepted from the general rule of continuity unless the parties so agreed, either expressly or implicitly.

9. It was obvious that paragraph 3 of article 33 was a saving clause designed to cover all kinds of accession to independence through decolonization. It purported to do away with any possible obstacles to the application of the "clean slate" principle where the formation of newly independent States had not strictly followed the pattern of the decolonization process. It was true, however, that the drafting of the provision was somewhat obscure and could be improved by the Drafting Committee.

10. The amendment submitted by Pakistan was inspired by highly commendable considerations. If the successor State had derived any benefit, directly or indirectly, under a treaty, it was only equitable that it should discharge the corresponding obligations. Nevertheless, the text of paragraph 3 was already so heavy and obscure that the amendment proposed by Pakistan could hardly be added to it. Consequently, the Brazilian delegation could not support that amendment.

11. Mr. HAFNER (Austria), noting that the majority of delegations had difficulty in determining what situations were covered by article 33, proposed that, at the appropriate time, the proposals to delete paragraph 1 (*a*) and paragraph 3, contained in the amendment submitted by France and Switzerland, should be put to the vote separately.

12. Mr. NATHAN (Israel) said that the considerations which called for application of the continuity principle in cases of uniting of States also called for its application in cases of separation of parts of the territory of a State: the "clean slate" rule was no more applicable in one case than in the other. If that rule was excluded from article 30 on the uniting of States, there was no reason for its special application to bilateral treaties under article 33. The reasons advanced by the International Law Commission in support of the special régime established in article 23 for newly independent States were not valid in the case of separation of parts of a State. Why should not the continuity principle also apply in the case of article 33 and of article 30?

13. It was necessary to maintain paragraph 3 of article 33, because it dealt with situations which were not covered by part III of the draft, relating to newly independent States. In fact, part III dealt only with newly independent States as defined in article 2, paragraph 1 (*f*). A newly independent State meant a successor State the territory of which immediately before the date of succession of States was a dependent territory for the international relations of which the predecessor State was responsible. But paragraph 3 of article 33 applied to the case in which part of the territory of a State separated from it, not to the case in which a whole territory acceded to independence.

14. It seemed that paragraph 3 of article 33 provided for cases of "revolutionary" separation of part of the territory of a State, involving a clean break, whereas paragraph 1 covered cases of "evolutionary" separation. In both cases, new States were formed, but it was only in the former case that a newly independent State within the meaning of the draft was born. It might be that the two cases called for different solutions: it would be interesting to have the opinion of the Expert Consultant on that point.

15. Mr. BJÖRK (Sweden) said that his delegation supported the International Law Commission's draft of article 33. It could hardly be changed without upsetting the balance of the future Convention. Of course, the application of the article and other related articles might give rise to difficulties, particularly article 33, paragraph 3, which introduced an intermediate category on which there might be conflicting views. That emphasized the need to supplement the International Law Commission's draft by appropriate rules on the settlement of disputes. In those circumstances, his delegation was unable to support any of the amendments to article 33.

16. Mr. FLATLA (Norway) supported paragraphs 1 and 2 of article 33, as drafted by the International Law Commission. On the other hand, he thought it would be preferable to delete paragraph 3, which raised certain difficulties. Like other delegations, his delegation doubted whether it was desirable to introduce a new category of States, having regard to the element of subjectivity involved. But before taking a final position on the question, he would be interested to hear the opinion of the Afro-Asian group. If the Committee adopted paragraph 3, it would be essential to lay down a procedure for the settlement of disputes.

17. With regard to the amendment submitted by France and Switzerland, he was reluctant to embark on a debate on a proposal which introduced such important changes in the draft article. The extension of the "clean slate" principle would not contribute in any way to the stability of treaty relations in general. The amendment submitted by the Federal Republic of Germany might disturb the balance of the draft and consequently his delegation had difficulty in supporting it. Finally, it could not support the Pakistan amendment, because it believed that it would be preferable to delete paragraph 3 entirely.

18. Mr. PÉREZ CHIRIBOGA (Venezuela) said that to the logical arguments and examples drawn from State practice which had been advanced for or against the amendment by France and Switzerland, his delegation wished to add arguments based on justice, legal consistency and equity, which militated against that amendment. Stressing that the comments made by his delegation during the discussion on the part of the draft now under consideration were intended to facilitate the integration of States, not to encourage their disintegration, he observed that the International Law Commission had decided to make a distinction between the case of newly independent States and that of States emerging from a separation to which different rules applied. But it was difficult to define all the cases which had occurred or might occur in the future and to consider all the possible situations in a sphere which was evolving as fast as succession of States. Perhaps the International Law Commission's commentary (A/CONF.80/4, articles 33 and 34, p. 101, para. 8), explained the doubts of certain delegations about the advisability of retaining paragraph 3, which seemed to them not to fit into the structure of the draft. But in his delegation's opinion, the Committee should follow the principle of applying the same rule to the same situation. The principles of justice and equity justified the adoption of an exception clause applicable to cases of separation in circumstances which were essentially of the same character as those existing in the case of the formation of a newly independent State. Indeed, it would be unjust to apply to a State emerging in such circumstances different rules from those applicable to newly independent States. The fact remained, however, that the wording of paragraph 3 required improvement to make it clearer.

19. There remained the question who would determine the character of the circumstances in which a State acceded to independence. His delegation believed that the Committee should rely first on common sense, then on the methods of settling disputes established by international law, first and foremost through direct negotiation between the parties, which should produce good results in most cases.

20. Finally, for the reasons already given by other delegations, his delegation could not support the amendment submitted by the Federal Republic of Germany. On the other hand, the Pakistan amendment set out very interesting principles, which should be applied in one way or another in the draft.

21. Mr. KOH (Singapore), describing the particular situation of his country, reminded the Committee that at the time of decolonization in 1963, Singapore had united with Malaysia, from which it had separated two years later. Up to 1965, when it became an independent State, Singapore had never been empowered to conclude treaties. As indicated in paragraph 18 of the International Law Commission's commentary to draft articles 33 and 34 (A/CONF.80/4, pp. 103 and 104), Singapore had applied the "clean slate" principle on becoming an independent State. His delegation understood the wording of paragraph 3 of draft article 33 where it referred to "circumstances which are essentially of the same character as those existing in the case of the formation of a newly independent State", to be sufficiently flexible to cover the case of Singapore. Hence it considered that the deletion of that paragraph would leave a serious gap in the draft.

22. Mr. GAWLEY (Ireland) supported paragraphs 1 and 2 of article 33 as drafted by the International Law Commission. Paragraph 1 rightly applied the rule of continuity in treaty relations to successor States which, before separating from the predecessor State, had participated fully in negotiating and concluding its treaties. His delegation was unable to support the amendment submitted by France and Switzerland, as it would make for uncertainty in treaty relations and would release from their treaty obligations States which had been able to express their will before the conclusion of the treaties binding the predecessor State. The Drafting Committee should revise the wording of paragraph 3 of the article.

23. Mr. MUDHO (Kenya) supported the text drafted by the International Law Commission, but shared the concern expressed by some delegations about the wording of paragraph 3. He could not support the amendment submitted by France and Switzerland, which eliminated the

distinction made by the International Law Commission between the general case covered by paragraph 1 and a separation of States taking place in circumstances similar to those existing in the case of formation of a newly independent State. The amendment proposed by the Federal Republic of Germany was also unacceptable to his delegation, which saw no reason to make a distinction between bilateral and multilateral treaties. Lastly, his delegation considered that the Pakistan amendment could be regarded as a drafting suggestion.

24. Mr. DOGAN (Turkey), recounting Turkey's experience in the matter of the separation of States, said he would take first of all the case of Serbia, which had been granted independence in 1878. Serbia was to have emerged into the international community by the application of the "clean slate" principle, except for the capitulary obligations contracted by the Ottoman empire towards European States. In practice, however, Serbia had rendered the performance of those obligations completely inoperative. At the Congress of Berlin, Chancellor Bismarck, the President of the Congress, had made it clear that, in his view, in case of secession, one of the principles of public international law was that a part of a territory could not evade the obligations of the predecessor State in the event of its accession to independence. The Turkish delegation, however, did not share that view and believed in the existence of a new international society.

25. The case of Ireland and Turkey also reflected the consensus of the international community with regard to the consequences which might ensue from the accession to independence of a new State. Indeed, just as Ireland had done with the United Kingdom, Turkey had categorically refused to be cound by the treaties of the Ottoman Empire and the Treaty of Lausanne[2] contained provisions to that effect.

26. It was that spirit which had inspired and even accelerated the decolonization process. How then could States which had achieved independence after many years of struggle be refused the benefit of the "clean slate" rule? Whether a State achieved independence as a result of decolonization or by any other means, it was guided by the wish to live in independence.

27. Furthermore the Turkish delegation could not support the arguments put forward by the representative of Hungary, for whom the distinction between decolonization and the other means of achieving independence lay in the fact that the decolonized countries had not participated in the preparation of the treaties of the predecessor State. But the Greeks had not participated in the preparation of the treaties concluded by the Ottoman Empire, any more than Serbia, Ireland, Romania, Montenegro, and Bulgaria had participated in the preparation of the treaties concluded by their predecessor States. The Turkish delegation did not see why a State which became independent by separating from another State should not be subject to the same legal régime as a State which emerged as a result of decolonization.

28. The Turkish delegation therefore considered that paragraphs 1 and 2 of the draft article under consideration should be retained as they stood, and that paragraph 3 should be reconsidered in the light of the amendment by France and Switzerland.

29. He supported the proposal by the representative of Austria to put the article to the vote paragraph by paragraph.

30. Mr. FARAHAT (Qatar) said that the basic formulation of article 33 by the International Law Commission was reasonable and well balanced and could be retained. It established the rule of *ipso jure* continuity, thereby contributing to the stability of international treaty relations, and made a distinction between the "clean slate" principle applicable to newly independent States and the principle of continuity applicable to successor States emerging as a result of separation. He could not support the amendment by France and Switzerland which put newly independent States into the same category as those which had become independent as a result of separation. Nor could he support the amendment by the Federal Republic of Germany for, in his opinion, multilateral treaties were as important as bilateral treaties. The Pakistan amendment embodied a very useful idea but it was already covered in the International Law Commission's formulation. However, his delegation had no objection to its being considered by the Drafting Committee.

31. Mr. CASTRÉN (Finland) said that his delegation was prepared to support article 33 as drafted by the International Law Commission, although it was not completely satisfactory, since it dealt with the dissolution of a State and the separation of parts of the territory of a State in the same way; paragraphs 2 and 3 fortunately contained several reservations which slightly modified the tone of the draft article. His delegation could not, therefore, agree to the deletion of paragraph 3, nor could it accept the other amendments, which though they had some merit, also had a number of drawbacks.

32. Mr. SCOTLAND (Guyana) said that in article 33 the International Law Commission had had two cases in mind, which were different from the cases covered by article 14; namely, the case of succession resulting from the separation of one or more parts of the territory of a State, where the predecessor State continued to exist, and succession resulting from the dissolution or disappearance of a State. The International Law Commission had rightly provided in paragraph 1 (*a*) that new States emerging as a result of a separation of territory should assume the obligations contracted by the predecessor State and applicable to their respective territory before the separation. On the other hand, it was assumed, *ex contrario*, in paragraph 1 (*b*) that the parts of the territory of a State which separated from it to form one or more independent States might be free of certain treaty obligations contracted by that State if they were applicable solely to the part of the territory which had

[2] Treaty of Peace signed at Lausanne July 24, 1923 *League of Nations. Treaty Series, vol. XXVIII*, p. 11.

not separated. It would seem logical for the predecessor State, which continued to exist after separation of part of its territory, to continue to discharge its treaty obligations, in so far as they were not rendered impossible of performance, as provided for in articles 61 and 62 of the Vienna Convention on the Law of Treaties. It was not only the existence of treaty obligations between the predecessor State and third States which determined the obligations to be inherited by the successor State, but also the fact that the obligations under that treaty fell to be discharged by the predecessor State in respect of the particular part of its territory which had acceded to independence. The delegation of Guyana considered that the way in which the principle *pacta sunt servanda* was expressed in paragraph 1 of the International Law Commission's text was satisfactory.

33. As to paragraph 2, his delegation endorsed the principle of consent stated in subparagraph (*a*), which offered an alternative to the rule in paragraph 1; on the other hand it was not altogether certain of the validity of subparagraph (*b*). That provision was similar to that employed in the case of newly independent States. But, given the diversity of political evolution, social outlook and oft-times the absence of geographical contiguity of many former colonies to the predecessor State, the provision appeared justifiable in that instance. In the case of the separation of a part of a territory, which from the examples given in the International Law Commission's commentary referred largely to separation of a part physically united to the whole territory of the predecessor State, the situation was different. His delegation had sought without success to find an example which would show that subparagraph (*a*) would not meet a new situation resulting from the emergence as a new State of the part of the territory to which a treaty had sole application. That subparagraph had the advantage of placing both categories of States—the successor State or States and third States parties to the treaty—on an equal footing. While he did not wish to submit a formal amendment, he wondered whether subparagraph (*a*) would not be sufficient to cover all the cases that might arise and whether the point should not be given further consideration.

34. Paragraph 3 of article 33 referred to the case in which a part of the territory of a State separated from it and became a new State in circumstances different from those covered by paragraph 1, and having essentially the same characteristics as those contemplated in part III of the draft. Those circumstances had not been described or defined in the draft, and the International Law Commission merely said that the provisions of part III would apply in such a case. It was, in fact, impossible to define such circumstances, for there were territories which were still in a classical colonial situation and did not have the faculty to make treaties or to participate in the treaty-making process; and there were others which were not colonies and had no separate international personality, but which nevertheless had the faculty to participate in the treaty-making process and to which a treaty could not be applied without their consent. The circumstances in which those territories acceded to independence were purely hypothetical, and in the absence of objective legal criteria for determining the existence of circumstances which could place a successor State in the category covered by part III of the draft, he did not see how the possibility of recourse to procedures for the settlement of disputes, other than the procedure of negotiation employed by States in the exercise of their sovereignty, could be of any assistance in the case covered by paragraph 3. The answer to the question whether a State had been formed "in circumstances which are essentially of the same character as those existing in the case of the formation of a newly independent State" might well be decisive for the future existence of that State, and his delegation did not think that any new State would voluntarily submit such a question to arbitration by third parties. Whereas all States would assert the right to declare their own status, the procedure for settlement of disputes suggested by some delegations in connexion with article 33, paragraph 3, appeared to presume different conduct on the part of the new State. The circumstances in which States coming under part III of the draft emerged were very diverse, and it could not have been the intention of the authors of paragraph 3 that only some of those circumstances should be taken into account in deciding whether a successor State fell into the category of newly independent States or not. His delegation therefore considered that the apparent ambiguity of article 33, paragraph 3, was the best formula that the Commission could devise, given the variety of circumstances in which a part of the territory of a State could become a new State.

35. The effect of the amendment proposed by France and Switzerland was to disregard the situation of the territory before its accession to independence and to accord the same treatment, at the international level, to territories which had had different faculties with regard to treaty-making. His delegation favoured equal treatment for true equals, but where as in the present case there existed inequality among the territories in question, that inequality militated against the granting of equal treatment. It considered, moreover, that the principle of consent was the central point of the treatment accorded to newly independent States in part III of the draft, and that the introduction of a different principle, such as that contained in the amendment proposed by France and Switzerland, would weaken that part of the draft and diminish its coherence. His delegation was willing, however, to consider the definition of the expression "newly independent State" proposed by France and Switzerland to see whether the notion of replacement "in the exercise of competence for international relations" could not improve the text of article 2, paragraph 1 (*f*). In that connexion he reminded the Committee that in the statement made by his delegation on article 2, at the 1977 session, his delegation had said that it might be more appropriate to refer to "a replacement in the exercise of competence for the international relations of the territory concerned".[3]

[3] *Official Records of the United Nations Conference on Succession of States in Respect of Treaties*, vol. I. *Summary records of the plenary meetings and of the meetings of the Committee of the Whole* (United Nations publication, Sales No. E.78.V.8) p. 43, 5th meeting, para. 35.

36. He shared the view of the Federal Republic of Germany that bilateral treaties were important and should be maintained, but he thought the same applied to all treaties and that the same importance should be attached to all of them, as was done in part IV of the draft. He considered that paragraph 2 (*a*) of article 33 already took account of the principle of consent, on which the maintenance of a bilateral treaty was based, and that paragraph 2 (*b*) took account of all contingencies. Hence he was not convinced of the need for the amendment proposed by the Federal Republic of Germany and was not prepared to support it.

37. The amendment submitted by Pakistan emphasized in his delegation's view the difference between the case of separation of parts of a State, referred to in article 33, and the case of newly independent States dealt with in part III of the draft. But he did not think that it could ensure that the successor State would respect treaty obligations more strictly than in the context of normal treaty practice. Consequently, he would not support that amendment either.

38. Mr. ABOU-ALI (Egypt) supported paragraphs 1 and 2 of article 33 as submitted by the International Law Commission, which emphasized the principle of continuity. Paragraph 1 stressed the continuity of treaty relations in regard to the territory to which the treaty applied. He did not understand the reason for the amendment by France and Switzerland which deleted subparagraph (*a*) of paragraph 1 while retaining subparagraph (*b*), since the purpose of those two subparagraphs was, precisely, to establish a link between the principle of continuity and the territorial scope of a treaty. In his opinion it was essential to retain paragraph 1 (*a*), which took account of the idea expressed in the Pakistan amendment.

39. Paragraph 3 departed from the principle of continuity by introducing a more flexible but ambiguous provision, which could give rise to different interpretations and cause conflicts. He was therefore in favour of deleting it, as proposed by the representatives of France and Switzerland. He could not support the amendment submitted by the Federal Republic of Germany, because the Vienna Convention on the Law of Treaties made no distinction between bilateral and multilateral treaties, and he saw no reason to do so in the present Convention.

40. Mr. KOROMA (Sierra Leone) said that the newly independent African States were in favour of maintaining an equitable international legal order, but they found unacceptable the continuation of treaties which had been imposed on them and were incompatible with their national interests. They were also determined to maintain their unity and their territorial integrity.

41. In his opinion, the process of decolonization could not be equated to the process of separation of States which were already independent. Those were two quite different processes and to equate them would be to deny the success of decolonization. His delegation therefore supported article 33.

42. The amendment proposed by France and Switzerland was, in his opinion, an attempt to resuscitate the theory of competence for international relations, which had recently been rejected by the International Court of Justice. But the colonial situation could not be reduced to a mere exercise of competence. Consequently, he could not accept the definition of the expression "newly independent State" proposed by France and Switzerland in their amendment to article 2, paragraph 1 (*f*).

43. With regard to article 33, paragraph 3, he could not agree that the circumstances referred to in that paragraph could be assimilated to those existing in the case of formation of a newly independent State, for to support that thesis would be to degrade the process of decolonization. He therefore considered that paragraph 3 required further consideration.

44. Mr. RITTER (Switzerland) observed that, while recognizing the undeniable logic of the proposal put forward by France and Switzerland, several of the delegations which had opposed it had emphasized the essential difference which existed, in their opinion, between newly independent States, as defined in the draft, and other new States. They had criticized the amendment submitted by France and Switzerland on the ground that it reduced the scope of the important historical event of decolonization by placing the situation of a decolonized State on the same legal footing as that of any other new State. He was well aware of the considerable importance of the process of decolonization, but the future Convention would not apply to existing newly independent States, only to States which became independent in the future. The object of the Conference was not, indeed, to codify completed decolonization. While some decolonization remained to be accomplished, there was no denying that the greater part of it was done, and that the cases of separation which would occur in future would follow a pattern which was at present impossible to foresee. It was therefore necessary to seek a legal criterion by which to distinguish one situation from the other, since the historical fact of decolonization was not a criterion in itself, and reference to the past could not constitute a criterion for the future.

45. The criterion which had been proposed for distinguishing between the two categories of new States was that of participation in the management of affairs, in particular foreign policy, which was supposed to have been permitted to peoples which separated from a State, but not to colonial populations. He himself was surprised that it could be maintained that non-colonial peoples which separated from a State had participated in the conduct of that State's foreign policy. As the representative of Turkey had very rightly observed, citing examples from the history of his own country, it was impossible to claim, for example, that the Greeks had participated in the conduct of the foreign policy of the Ottoman Empire. It was equally impossible to claim that the Poles, up to 1918, had taken part in the deciding of foreign policy of the Russian Empire. In any case, he thought it was impossible to reply for those people and even more difficult to answer for the future. For how could it be known whether peoples which

separated from a State in the future under conditions impossible to foresee, would have had the right to participate in conducting the foreign affairs of that State? In any event, one thing was certain: whatever their real situation had been, those peoples would claim, rightly or wrongly, that they had not had the right of participation, in order to justify their separatist movement. To base the convention on such a criterion would thus certainly give rise to disputes, for if two categories of new States were distinguished, it could be foreseen that the States which fell into the second category would claim to be in the first.

46. Some delegations had criticized the co-sponsors of the amendment, submitted by France and Switzerland, for down-grading the principle of decolonization by making it into a political maxim. There was nothing pejorative about the expression "political maxim" however, since political principles were the motive force of history. Those principles, which had been unknown a century ago, had subsequently been supported by an advanced minority and finally accepted by everyone. The principle of self-determination had changed the face of the world in 30 years, whereas legal principles, such as *pacta sunt servanda* and *res inter alios acta*, had changed absolutely nothing.

47. The delegations of France and Switzerland had sought to remedy a paradoxical situation which consisted in attaching the "clean slate" principle to the principle of self-determination and then confining its exercise to a single category of new States. It was because they wished the "clean slate" rule to be applied without discrimination that the authors of the amendment had looked for a legal, rather than a political basis. There was indeed another principle which was no less respected than that of self-determination; the principle of equality of States; and it was that principle which should govern the codification of succession of States in respect of treaties.

48. It was true that a political principle became a legal principle when it was no longer contested by anyone, and that was what had happened to the principle of self-determination. But the best means of proving that it had become a real legal principle, was to apply it to all States without discrimination, whereas those who opposed the amendment submitted by France and Switzerland, both proclaimed the legal nature of the principle and restricted its application to only one class of new States.

49. There was one point on which the delegations of France and Switzerland appreciated the criticisms addressed to them, because those criticisms coincided with the doubts they had felt themselves when formulating their proposal: that point related to unions of States. They would have preferred, indeed, to distinguish between the case of dissolution of a union of States and other cases of separation. But they had been unable to do better than the International Law Commission itself, which, as indicated in its commentary, had found it impossible to deal with cases of unions of States because of their diversity. If it was nevertheless possible to complete their amendment with a proposal which gave satisfaction on that point, the co-authors would be the first to rejoice. There was, however, one point which should give satisfaction to those who shared their concern, namely, that article 33 applied to the separation of parts of a single State. Consequently, as soon as an examination of the political or constitutional situation showed that the dissolved entity had been in fact made up of a number of States, the article would not apply and each State which separated would retain the treaties it had concluded. That situation corresponded to the one noted by the International Law Commission in paragraph 3 of its commentary to articles 33 and 34 (A/CONF.80/4, p. 100), in the case of the separation of Norway and Sweden, which appeared to have been recognized as having separate international personalities during their union. It was indeed obvious that, if two or more States separated, each one retained the commitments into which it had entered.

50. Apart from a minority of States, most of the States of the international community—whether European, Latin American or African—had at one time or another separated from another State and benefited from the "clean slate" rule. But the international community, nearly all the members of which had enjoyed the faculty, now wished to deny it to new States in the future. In the statement he had made at the 41st meeting, the representative of the United States had tried to justify that position by invoking the stability of international relations. But those who supported that position seemed to be attempting to bind certain new States against their will and against their interests. For the stability of treaty relations was already sufficiently safeguarded by the free play of the consent of States. The proof of that could be seen in the fact that all the international treaties, without exception, which Switzerland had concluded with France and the United Kingdom, and which those two Powers had applied to colonial territories, had been maintained in force after decolonization by free agreement between the newly independent States and Switzerland, because there was a common interest. In his view, that example clearly showed that the Conference could rely on the wisdom of States, which knew where their interests lay. If it was not satisfied with the consent of States and was trying to impose on them a solution prescribed in advance, that was because there was a desire in some quarters to bind States against their interests and against their will. Moreover, that procedure was doubly ineffective; it was legally ineffective because new States, not being parties to the Convention, would not be bound by such a provision; and it was politically ineffective because even if some means were found to bind States against their will, they would rebel against any such attempt.

51. The cause defended by France and Switzerland was that of the independence, sovereignty and equality of States. They were in favour of international obligations based on the consent of States, but against international obligations imposed on States from outside by international instruments in which they did not participate.

52. Mr. KASASA-MUTATI (Zaire) said he wished to make a few comments on article 33 while awaiting a reply from the Expert Consultant to the question he had put at the 41st meeting. In his opinion, the reason why the

International Law Commission had proposed paragraph 3 of article 33 was that it had wished to provide for every possible situation that might arise out of a separation of States, in order to prevent the occurrence of what the representative of Brazil had called a "legal vaccum". As the plenipotentiary representatives of Governments, participants in the Conference were reluctant to endorse a principle that might be taken to mean that any population group could separate from a State, which would create a difficult situation, particularly in the case of newly independent States. He therefore proposed that the Committee of the Whole should refer article 33 to the Drafting Committee and defer a decision on paragraph 3 of that article until the meaning of the words "circumstances which are essentially of the same character as those existing in the case of the formation of a newly independent State" had been clarified and a definition of the expression "newly independent State" had been adopted in article 2, paragraph 1 (*f*). He asked that if the Commission decided to vote on article 33 each paragraph should be put to the vote separately.

53. Mr. BRECKENRIDGE (Sri Lanka) said that although, in paragraph 25 of its commentary to articles 33 and 34 (A/CONF.80/4, p. 105) cited by the United Kingdom representative at the 41st meeting, the International Law Commission had concluded that the principle of continuity should be applied equally to cases of separation and cases of dissolution, it was clear from the analysis of State practice in paragraphs 26 and 27 of the commentary (*ibid.*, p. 105) that there was a fundamental difference between the two cases, and that in the case of separation the successor State generally tried to secure application of the "clean slate" principle. Moreover, that was what had led the International Law Commission to propose paragraph 3 of article 33. Although its intention had been good, that paragraph nevertheless raised difficulties, as the representative of Brazil, himself a member of the International Law Commission, had acknowledged.

54. The representative of Switzerland wished to place on the same footing the formation of a newly independent State, which was connected with the process of decolonization, and the emergence of a new State as a result of a separation. The delegation of Sri Lanka considered that those two situations were fundamentally different and could not be assimilated to one another. But it was not by revising the definition of a newly independent State, as proposed by France and Switzerland, that the problem could be solved. Although it was true that the Conference had to carry out codification and progressive development of international law, as the representative of Switzerland had said, it would nevertheless have been logical to examine and regulate the problem of States which seceded by virtue of the principle of self-determination in the context of part III of the draft, which dealt with newly independent States. It was not in the context of article 33, which dealt with quite other matters, that self-determination and territorial integrity should be discussed. The Committee had not enough time left to go into the substance of the question; but it had to take a decision. To refer the article to the Drafting Committee, as the representative of Zaire had suggested, would only add to the confusion. Besides, the amendment submitted by Pakistan could not be treated as a mere drafting amendment. The best course would be for the Committee to suspend consideration of article 33 for the time being, since a vote at that stage would be pointless. He therefore formally proposed that a decision on article 33 should be deferred.

55. Mr. SCOTLAND (Guyana) referring to the statement by the representative of Switzerland that the Convention would not apply to already independent States, said that that question was not yet settled: article 7 (Non-retroactivity of the present articles) was still under consideration.

56. Mr. DIENG (Senegal) said he wished to reply to the Swiss representative, who had stated that a political principle became a legal principle when it was no longer contested. In his view the principle of self-determination which was no longer contested had become a legal principle, and even a peremptory norm of general international law within the meaning of article 53 of the Vienna Convention on the Law of Treaties.

57. Sir Ian SINCLAIR (United Kingdom) said he would be grateful if the representative of Sri Lanka would clarify the proposal he had just made: was he proposing that the Committee should defer its decision on article 33 and on the various amendments proposed or that it should vote on the amendments, while reserving its decision on article 33?

58. Mr. BRECKENRIDGE (Sri Lanka) said he saw no objection to voting on the amendments at once, if the Committee so desired.

59. Mr. RYBAKOV (Union of Soviet Socialist Republics) said he thought it would be logical and in conformity with established practice if the Committee deferred its decision not only on article 33, but also on the proposed amendments thereto. He proposed that the Committee should suspend consideration of article 33 and take up article 34.

60. Mr. YANGO (Philippines) supported that proposal.

61. Mr. KRISHNADASAN (Swaziland) said that since the expert consultant was due to arrive shortly, it would be preferable for the Committee to wait for him before continuing its examination of article 33.

62. The CHAIRMAN proposed that the Committee should suspend consideration of article 33 and take up article 34.

It was so agreed.[4]

[4] For resumption of the discussion of article 33, see 47th meeting, paras. 32 *et seq.*

ARTICLE 34 (Position if a State continues after separation of part of its territory)[5] (*concluded*)

63. Mr. RYBAKOV (Union of Soviet Socialist Republics) observed that France and Switzerland had proposed, in paragraph 3 of their amendment to articles 2, 33 and 34 (A/CONF.80/C.1/L.41/Rev.1) that the article should be renumbered, which meant placing it in part III of the draft. That proposal was based on the idea that a colony was part of the metropolitan territory—an idea which was not accepted by all countries and was contested by the socialist countries, in particular.

64. That idea also appeared in paragraph 3 of article 33, which was one of the reasons why his delegation doubted the utility of that paragraph.

65. Consequently, the delegation of the Soviet Union could not support the amendment proposed by France and Switzerland.

66. Sir Ian SINCLAIR (United Kingdom) suggested that the Committee should refer article 34 to the Drafting Committee with the amendment submitted by France and Switzerland. The Drafting Committee should examine, in particular, the words "unless: (*a*) it is otherwise agreed" (subparagraph (*a*) of article 34), the meaning of which was clear in the case of bilateral treaties, but not so clear in the case of multilateral treaties.

67. Mr. RYBAKOV (Union of Soviet Socialist Republics) said he had no objection to the Committee of the Whole approving article 34 and referring it to the Drafting Committee, provided it was understood that the amendment submitted by France and Switzerland was attached only for reference.

68. The CHAIRMAN proposed that article 34 should be referred to the Drafting Committee and that consideration of the proposed amendment to that article should be deferred until a decision had been taken on article 33.

It was so agreed.[6]

The meeting rose at 12.55 p.m.

[5] The following amendment was submitted: France and Switzerland, A/CONF.80/C.1/L.41/Rev.1.

[6] For resumption of the discussion of article 34, see 53rd meeting, paras. 20-21.

43rd MEETING

Thursday, 3 August 1978, at 3.30 p.m.

Chairman: Mr. RIAD (Egypt)

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

[Agenda item 11] (*continued*)

ARTICLE 35 (Participation in treaties not in force at the date of the succession of States in cases of separation of parts of a State)[1]

1. The CHAIRMAN invited the Committee to examine article 35 and the amendment to that article which had been submitted by the delegation of Finland in document A/CONF.80/C.1/L.39.

2. Mr. HALTTUNEN (Finland) said that the amendment proposed by his delegation was to be seen as a drafting suggestion. It was aimed essentially at simplifying the text of article 35 as proposed by the International Law Commission, by replacing the first three paragraphs of that text by a reference to the corresponding paragraphs of article 17, which contained similar provisions.

3. The CHAIRMAN said that, if there was no objection, he would take it that the Committee agreed that the Finnish proposal should be referred to the Drafting Committee as a drafting amendment.

It was so agreed.

4. The CHAIRMAN said that, if there was no objection, he would take it that the Committee provisionally adopted the text of article 35 as proposed by the International Law Commission and referred it to the Drafting Committee for consideration.

It was so agreed.[2]

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)[3]

5. The CHAIRMAN reminded the Committee that the amendment which had been proposed to the article by the delegations of Swaziland and Sweden in document A/CONF.80/C.1/L.23 had been withdrawn.

6. Mr. KRISHNADASAN (Swaziland), speaking on behalf of his own delegation and that of Sweden, requested that the text of article 36 as proposed by the International Law Commission be put to the vote.

Article 36, as proposed by the International Law Commission, was provisionally adopted by 60 votes to 3, with 12 abstentions, and referred to the Drafting Committee.[4]

7. Mr. JOMARD (Iraq) asked whether the Drafting Committee would be able to take into consideration the

[1] The following amendment was submitted: Finland, A/CONF.80/C.1/L.39.

[2] For resumption of the discussion of article 35, see 53rd meeting, paras. 22-23.

[3] The following amendment was submitted: Swaziland and Sweden, A/CONF.80/C.1/L.23. Withdrawn; see 40th meeting, para. 21.

[4] For resumption of the discussion of article 36, see 53rd meeting, paras. 24-25.

reference in article 36, paragraph 1, to article 33, paragraph 1, a provision concerning which the Committee had so far taken no formal decision.

8. The CHAIRMAN said that when any article has referred to the Drafting Committee, it was subject to the understanding that that body could not take up any references in the article to other provisions of the draft until those provisions had themselves been approved by the Committee of the Whole.

PROPOSED NEW ARTICLE 36 *bis*[5]

9. Mr. TREVIRANUS (Federal Republic of Germany), introducing his delegation's proposal for a new article 36 *bis* (A/CONF.80/C.1/L.53) said that the purpose of the amendment was to incorporate in Part IV of the draft the ideas contained in articles 19 and 20 thereof. Article 19 contained a presumption that a newly independent State maintained the reservations of its predecessor State. His delegation proposed that, in order clearly to illustrate what was the existing law, the same presumption should be included in Part IV of the draft. It also proposed that a new State formed through either of the processes contemplated in Part IV should enjoy the right extended to newly independent States by article 19, paragraph 2, to shape its own treaty profile through the modification of existing reservations or declarations or through the expression of consent to be bound by, or the choice of, particular provisions of a treaty.

10. During the debate on article 19[6] in the light of the amendments submitted to that article by his own delegation and that of Austria in documents A/CONF.80/C.1/L.36 and A/CONF.80/C.1/L.25 respectively, there had been general acceptance of the idea that a newly independent State, stepped into the shoes so to speak, of its predecessor State. That idea had been confirmed by the vote on article 19. The legal nexus constituting succession meant the taking over by the successor State of treaty obligations as they existed at the date of the succession, together with the reservations which attached thereto, and the possibility for that State subsequently to adjust its inherited treaty régime by withdrawing reservations—something that was always possible under general international law—or by modifying them in accordance with its domestic needs.

11. While his delegation fully understood why some participants in the Conference had wished emphasis to be placed on the special nature of the conditions of the formation of a newly independent State, it believed that the situation with respect to succession, as distinct from accession, was identical for the States to which Parts III and IV of the draft referred. There could be no doubt, for the situation was one which flowed logically from the legal character of succession as such, that the contractual position of new States of the kind with which Part IV was concerned was the same as that of their predecessor States. That assumption could be found in article 19, paragraph 1, article 20, paragraphs 1 and 2, articles 23, 29, 30 and 33, and even in the borderline cases of articles 18 and 32. The successor State was bound *ipso jure* by the individual treaty relationship created by the predecessor State, including the reservations and other declarations made by that State and the objections thereto entered by its treaty partners. Paragraph 1 of his delegation's amendment was merely a formal expression of that situation. The contents of the paragraph would still hold true, as part and parcel of the philosophy of the draft as a whole, even if the paragraph itself was rejected.

12. While paragraph 2 of the amendment could not be considered as clarifying an existing legal situation, since there had been very little State practice in the area to which it referred, the introduction of the faculty mentioned in that paragraph was both necessary and appropriate. If new States were able to alter the reservations and declarations they inherited from their predecessors, they would be able to harmonize the various treaties to which they succeeded and so continue them with a minimum of difficulty. If they did not have that faculty, they might be compelled to invoke the escape clauses in the treaties or to terminate them sooner than was appropriate for the preservation of a sound international legal order. Paragraph 2 of the amendment was, therefore, a necessary corollary to the rule proposed in paragraph 1 and, however paradoxical that might seem at first sight, enhanced rather than weakened the principle of continuity. The amendment as a whole was, indeed, designed to preserve the stability of existing treaty relations as far as possible.

13. Mrs. SZAFARZ (Poland) said her delegation felt that paragraph 1 of the proposal by the Federal Republic of Germany merely stated explicitly provisions that were already implicit in articles 30, 31, 33 and 35. It was clear, under the principle of *ipso jure* continuity, that a successor State inherited the treaties of a predecessor State, together with any reservations or expressions of consent or preference relating thereto. Consequently, her delegation concurred with the view of the Expert Consultant that a provision such as the proposed paragraph was not entirely indispensable.

14. It disagreed profoundly with paragraph 2 of the proposed amendment, since the general aim of that provision was to introduce the "clean slate" principle, albeit on a limited scale, in Part IV of the draft. The modification of a reservation or the formulation of a new reservation, which would be acceptable in the case of a newly independent State, were inadmissible in instances of the uniting or separation of States, which were covered by the

[5] The following amendment was submitted: Federal Republic of Germany, A/CONF.80/C.1/L.53. [At the 1977 session, the Federal Republic of Germany had submitted A/CONF.80/C.1/L.47 for insertion as a new article 36 *bis*. It was withdrawn at the resumed session and the amendment A/CONF.80/C.1/L.53 was submitted in its place].

[6] See *Official Records of the United Nations Conference on Succession of States in Respect of Treaties* vol. I, *Summary records of the plenary meetings and of the meetings of the Committee of the Whole* (United Nations publication, Sales No. E.78.V.8), pp. 191 *et seq.*

rule of *ipso jure* continuity of treaty régimes. The same was true of expressions of consent to be bound by parts of a treaty, or of preference for certain provisions of such an instrument. In view of those considerations, her delegation was unable to support the proposal by the Federal Republic of Germany.

15. Mr. ROVINE (United States of America) said he associated himself with the comments made by the representative of Poland.

16. Mr. MUSEUX (France) said that his views on the proposal were less absolute than those of previous speakers. Paragraph 1 restated a rule which seemed logical in the light of the principle of continuity that the Committee had already approved. Such a restatement might, indeed, not be indispensable, but it could be considered useful for purposes of clarification. Paragraph 2 of the proposed amendment raised a special problem, inasmuch as it sought to reintroduce, to a certain degree, the "clean slate" rule. There was thus a link between that paragraph and the amendment which his own delegation and that of Switzerland had proposed to article 33 in document A/CONF.80/C.1/L.41/Rev.1. If that later amendment was adopted, paragraph 2 of the proposal by the Federal Republic of Germany would be applicable in theory, but pointless in practice, since the question at issue would be covered, at least with regard to newly independent States by articles 19 and 20. In that respect, therefore, the paragraph would seem to have no place in the draft.

17. His delegation was, however, prepared to accept the amendment in so far as it could be considered to relate to the cases covered in articles 31 and 32, in which the treaty of a predecessor State was not necessarily in force for the successor State.

18. Mr. SANYAOLU (Nigeria) said he agreed with previous speakers that the proposed amendment was unacceptable. The rules which had been set out in article 19 had been drafted solely for the benefit of newly independent States and were inconsistent with the *ipso jure* rule that was proclaimed in Part IV of the draft.

19. Mr. BOUBACAR (Mali) said he endorsed the criticisms of the proposed amendment that had been expressed by other speakers.

20. Mr. TORNARITIS (Cyprus) said it was a fundamental rule of construction that what was clear needed no interpretation; the first paragraph of the proposed amendment merely stated the obvious. He agreed with other speakers that the second paragraph of the amendment was entirely inconsistent with Part IV of the draft.

21. Mr. TAPAVAC (Yugoslavia) said he associated himself with the views expressed by the representatives of Poland, the United States of America and Cyprus.

22. Mr. GILCHRIST (Australia) said that, while he appreciated the intention behind the proposed amendment, he agreed with those speakers who had taken the view that paragraph 1 of the proposal was already covered by the principle of *ipso jure* continuity laid down in Part IV of the draft as prepared by the International Law Commission. With regard to the attempt made in paragraph 2 of the amendment to replace the continuity principle by the "clean slate" principle, of which the International Law Commission had limited the application to newly independent States, his delegation supported the continuity principle as it had been advocated by the International Law Commission.

23. Mr. TREVIRANUS (Federal Republic of Germany) said that he was gratified to see that so many members of the Committee felt that what was said in paragraph 1 of his delegation's amendment was obvious and need not be stated in the draft Convention. In view of the comments which had been made, there was no point in requesting that paragraph 2 of the amendment be put to the vote, but his delegation did wish to state that it believed there had been at least one case of State practice which was relevant to that paragraph. That had occurred when the Socialist Republic of Viet Nam had informed the depositaries of the multilateral treaties of the entities it considered to be its predecessors that it wished to maintain those treaties and its predecessors' reservations to them. Since the Socialist Republic of Viet Nam had restated those reservations in language differing from that which had been employed when they had first been made, his delegation considered that new reservations had been entered to the treaty. It formally withdrew its amendment.

24. Mr. KRISHNADASAN (Swaziland) said that the proposal of the Federal Republic of Germany endeavoured to deal with a very real problem. As he saw it, if a successor State succeeded to a treaty with existing reservations, its only course would perhaps be to terminate its participation in that treaty. However, a State wishing to remain a party to a treaty might, after having given notice of termination, re-apply to become a party to the same treaty and enter its own reservations thereto. That in turn gave rise to the question what the position would be in the case of treaties that did not contain a termination clause. Consequently, he sympathized with the proposal of the Federal Republic of Germany although he would have had difficulty in supporting it, since it was contrary to the principle of continuity embodied in Part IV of the draft convention.

ARTICLE 37 (Notification)[7]

25. The CHAIRMAN drew attention to an amendment to article 37 submitted by Finland in document A/CONF.80/C.1/L.40.

26. Mr. HALTTUNEN (Finland), introducing his delegation's amendment, said that it was for the replacement of article 37 by a single provision to the effect that the terms of article 21 should apply to any notification under articles 30, 31 or 35.

[7] The following amendment was submitted at the 1977 session: Finland, A/CONF.80/C.1/L.40.

27. Mrs. THAKORE (India) said that article 37 laid down the procedure whereby a successor State might exercise its rights under articles 30, 31 and 35 of Part IV of the draft convention to establish its status as a party or contracting State to a multilateral treaty, and the term "notification" had been used in those three articles to draw a clear distinction between newly independent States, dealt with in Part III, and other successor States, dealt with in Part IV. In article 37 the International Law Commission had adapted the provisions of article 21, which laid down the procedure whereby a newly independent State might make a notification of succession. The purpose of the Finnish amendment, which was similar to a suggestion made during the discussion on article 37 in the Sixth Committee of the United Nations General Assembly, was apparently to avoid repetition of the terms of article 21 in article 37. Her delegation, however, considered that article 37 should be retained as drafted by the International Law Commission since it was more in keeping with its approach, which was to apply the "clean slate" principle to newly independent States and the principle of *ipso jure* continuity to the uniting and separation of States. The Commission's text of article 37 was therefore more logical.

28. Mr. DUCULESCU (Romania) said that, while he supported the provisions of article 37, he proposed that the words "notification of succession" be used instead of "notification" in both the title and body of the text in keeping with the practice followed in drafting article 21.

29. In his delegation's opinion, thought could be given to the possibility of dealing with all the issues relating to the notification of succession in the same part of the convention, while retaining, of course, the features specific to each case.

30. Mr. MARESCA (Italy) suggested that the Drafting Committee be asked to check the final phase in paragraph 2 of article 37 against the corresponding formulation in the Vienna Convention on the Law of Treaties. The wording "may be called upon" seemed somewhat indefinite: the representative of the State would either be called upon to produce full powers or he would not.

31. The CHAIRMAN said that, if there was no objection, he would take it that the Committee agreed to refer article 37, together with the amendment thereto proposed by Finland, to the Drafting Committee.

It was so agreed[8]

PROPOSED NEW ARTICLE 37 *bis* (Objections to succession) [9]

32. The CHAIRMAN then drew attention to a new article 37 *bis*, dealing with objections to succession, proposed by the United States (A/CONF.80/C.1/L.37/Rev.1).

33. Mr. ROVINE (United States of America), introducing his delegation's amendment (A/CONF.80/C.1/L.37/Rev.1); said that it had been presented by the United States Government, in a slightly different form, in 1977–A/CONF.80/C.1/L.37–on the basis that some procedure was required for dealing with objections to succession by successor States and parties to treaties. Under paragraph 1 of the proposed new article, any such objection would be limited to those submitted "on the ground of incompatibility with the object and purpose of the treaty or on the ground that the succession of the State to the treaty would radically change the conditions of its operation". It was for the Conference to decide whether the proposed article would unduly weaken the continuity rule embodied in Part IV of the draft convention, or whether it would make for a workable approach. His delegation would welcome the guidance and comments of the Conference in that connexion.

34. Mrs. THAKORE (India) said that the proposed new article had been submitted to meet the United States Government's concern, as expressed in its written comments in 1972 and 1975 (A/CONF.80/5, p. 323), at the lack of any provision in the draft articles on the effect of an objection to a notification of succession made on either of the two grounds referred to in paragraph 1 of the proposed article. In her delegation's view, the proposed article, by institutionalizing the procedures for making such objections would only complicate matters. It was also her delegation's view that the law of succession should deal with substantive matters only. She would remind the Conference that the International Law Commission had rejected the proposal since it felt that it would be difficult to evolve rules to deal with objections to notifications of succession, given the multitude of treaty relationships that might be affected. That the United States Government was itself aware of the practical difficulties involved was clear from the fact that it had suggested, as an alternative course, that a system for the settlement of disputes should be instituted under which any objection to a notification of succession could be handled.

35. Mr. MEISSNER (German Democratic Republic) said that his delegation was opposed to the proposed new article, which would impair the character of the draft convention and create new obstacles to the exercise of the right of succession. A general right of objection of the type envisaged would introduce further subjective elements into the régime of succession and could result in arbitrary discrimination against a successor State. Moreover, since the proposed new article was not confined to any particular type of multilateral treaty, objection by one State only could hinder the successor State's succession to the more important multilateral treaties. Objections, to the extent that they were justifiable, were already covered by paragraph 3 of article 16 and other provisions of the draft convention, which appeared to be entirely satisfactory. The only other permissible course was to apply by analogy the provisions of Part III relating to notification. In the event

[8] For resumption of the discussion, see 53rd meeting, paras. 26-29.

[9] At the 1977 session, the United States of America had submitted A/CONF.80/C.1/L.37 for insertion as a new article 37 *bis*. At the resumed session, the United States of America submitted a revised version of the amendment A/CONF.80/C.1/L.37/Rev.1. Subsequently, it submitted a second revised version of its amendment A/CONF.80/C.1/L.37/Rev.2.

of any problem or dispute, the existing draft articles and the procedure envisaged for conciliation would be adequate for the purpose of settlement.

36. Mr. TORNARITIS (Cyprus) said that before the procedure governing objections to succession to a treaty could be regulated, which was the purpose of the proposed new article, there had to be a substantive provision on objections. Part IV, contained no such provision, the only substantive provisions of that nature being to the effect that the draft articles would not become operative if certain eventualities, as provided for, occurred. For that reason, his delegation was unable to accept the proposed new article, which was contrary to the principle underlying Part IV of the draft convention.

37. Mr. MARESCA (Italy) said that all those attending the Conference were undoubtedly only too well acquainted with the complexities of reality and with the frequency with which problems arose. In the course of his own long experience in the service of the Italian Foreign Ministry, he had known several cases where notification of succession to a treaty had been challenged by other States which had questioned the right of a country to proclaim itself a successor State. Such difficulties were a fact of life and the Conference should face up to them squarely. The proposed new article provided a very necessary procedure for that purpose and one which could be regarded as an element of diplomatic law—the law of international procedure—as it applied to the phenomenon of succession of States. He therefore differed entirely from those who considered that the proposal was without point.

38. Mr. TREVIRANUS (Federal Republic of Germany) said that, in his view, a procedural link between escape clauses and machinery for the settlement of disputes was a prerequisite for the successful outcome of the Conference.

39. The International Law Commission had been wise to refrain from laying down general rules governing the continuance in force of treaties on the emergence of a new State, bearing in mind that the position would vary according to the type of treaty concerned. It had instead paved the way for an acceptable solution to the matter by means of the device which he had dubbed "escape clauses". In fact, they were far more than that, being in the nature of a general formula which could, and must, be interpreted according to the requirements of special situations. That, in turn, presupposed the existence of a means for settling any disputes as to the interpretation of those clauses, with the aim of ensuring that the process of succession was harmonious and smooth. In the circumstances, the United States proposal was to be regarded as a very important addition to the International Law Commission's draft.

40. Mr. STUTTERHEIM (Netherlands) said that his delegation supported the proposed new article, which provided for a very necessary procedure and, if a vote were taken, it would vote in favour of it. Provision should however perhaps be included for notification to be made to the depositary, where there was one, so that the State concerned would not have to notify the parties directly.

41. Sir Ian SINCLAIR (United Kingdom), also supporting the proposed new article, said that he had noted seventeen separate instances of escape, or exception, clauses throughout the draft articles, all in identical wording. His delegation had no undue difficulty with that wording but considered that such clauses should be complemented by a procedural mechanism in order to introduce a degree of legal security both for the successor State and for other States parties to the treaties in question. In the absence of such a procedure, it would be possible, in theory, for a successor State or any other State party to the treaty to lodge an objection to the application of the treaty at any time—even years after succession had occurred—on the ground that it would be incompatible with its object and purpose or with the conditions for its operation.

42. Mr. USHAKOV (Union of Soviet Socialist Republics) said that, in his delegation's view, the proposed new article would cause more problems than it would solve. For instance, the opening words of the article "An objection to the succession" immediately prompted the question who would lodge such an objection. In principle, under the terms of article 30 and its related articles, which the Conference had already adopted, only the parties to the treaty could decide, on the basis of objective as opposed to subjective criteria, whether it would continue in force. Those objective criteria were that a treaty would not remain in force if it appeared from the treaty or was otherwise established that its application would be incompatible with the objects and purpose of the treaty or would radically change the conditions for its operation. It would be contrary to the provisions of article 30 and its related articles for a State to decide unilaterally to notify its objection to succession to a treaty, as provided under the proposed new article. That was particularly true in the case of multilateral treaties. In the circumstances, his delegation would have great difficulty in accepting the United States proposal.

43. Mr. DOGAN (Turkey) said that, while it was true that the proposed new article would meet certain needs that might arise in international practice, the question of the application of the treaty being incompatible with its object and purpose fell more properly within the law of treaties. For that reason, his delegation would not be in a position to vote in favour of the proposal.

44. Mr. FERREIRA (Chile) said that the proposed new article would provide a sound basis for dealing with a problem that had already been raised by a number of delegations, including his own, namely, who would decide whether the application of a treaty was incompatible with its object and purpose.

45. Mr. RANJEVA (Madagascar) said that the proposed article 37 *bis* was dangerous. He had nothing to add on the general problem regarding competence to determine the compatibility or otherwise of succession to a treaty with its object and purpose, but the wording of the article lent itself to subjective and arbitrary interpretations which might themselves be incompatible with the fundamental prin-

ciples of international law and the law of treaties. In effect, the succession of States constitutes an accession *sui generis* to a treaty and it was therefore somewhat contradictory to introduce the possibility of objection to succession. Since *tabula rasa* had now been established as a fundamental principle, it was to be hoped that the succession of States would not involve a violent disruption in the legal relationships between parties to treaties; the *tabula rasa* principle must take account of the needs of international life. To accord to States parties to treaties the possibility of opposing succession by an objection procedure was likely to destroy the delicate balance of the draft convention for which all delegations had striven at the 1977 session. His delegation would therefore have difficulty in accepting article 37 *bis* as drafted.

46. Mr. BUBEN (Byelorussian Soviet Socialist Republic) said that article 37 *bis* was an attempt to introduce unnecessarily detailed provisions for the application of the draft convention: the original text sufficed for that purpose, provided all States showed goodwill. Article 37 *bis* increased the possibility of creating a legal vacuum for successor States, since if one such State lodged an objection, it would be possible to question the whole succession. That would not promote stability in contractual relations, for it would create problems soluble only by the extremely complex procedure envisaged in the proposed new article 39 *bis* (A/CONF.80/C.1/L.38/Rev.1). In fact it might be imagined that article 37 *bis* had been proposed in order to ensure the inclusion in the draft convention of article 39 *bis*. It was unrealistic and his delegation would not support it.

47. Mr. PÉREZ CHIRIBOGA (Venezuela) said that, as a result of the convention on the succession of States, standards would be established for the determination of the existence or otherwise of incompatibility of succession to a treaty with its object and purpose or the emergence of a radical change in the conditions of its operation. Some procedure was required for the notification of objections and his delegation therefore supported article 37 *bis*. However, many speakers had expressed dissatisfaction with the proposed text and it might be possible to find a more acceptable working.

48. Paragraph 4 was certainly misplaced, since the resolution of disputes ought to apply to the whole draft convention and not merely to a particular article. If article 37 *bis* was put to the vote, he would ask for a separate vote on paragraph 4.

49. Mr. KOROMA (Sierra Leone) said that at first sight article 37 *bis* appeared commendable but closer inspection revealed its dangers. No delegation would be opposed to institutionalizing the procedure for objections. However it had rightly been said that the text of article 37 *bis* raised more problems than it solved. It confused the issue by referring to incompatibility with the object and purpose of the treaty and radical change in the conditions of its operation: his delegation had yet to be convinced that the use of those two formulations was appropriate. The article did not indicate any method of determining incompatibility and, if it were accepted as it stood, it would tend to undermine all treaty régimes.

50. Finally, paragraph 3 deprived newly independent States of their right under the "clean slate" principle to accept an existing treaty if they so desired. His delegation could not therefore support article 37 *bis*.

51. Mr. CHUCHOM (Thailand) said that article 37 *bis* provided a useful method of determining whether succession to a treaty was compatible with its object and purpose. His delegation would vote in favour of it.

52. Mr. SILVA (Peru) said that if article 37 *bis* was put to the vote, he would ask for each paragraph to be voted upon separately, since his delegation thought that the proposed procedure of notification was useful but could not accept other elements of the article.

53. Mr. FONT BLÁZQUEZ (Spain) said that the proposed new article 37 *bis* contained two doubtful points. The first was the fact that paragraph 4 appeared to be misplaced, since it did not relate to the title of the article. The second and more important point was that he assumed from paragraph 1 that the treaty would apply if the successor State did not lodge an objection within 12 months. That imposed a considerable limitation on the freedom of a successor State to accept or reject a treaty under the provisions of previous articles and a consequent extension of the principle of continuity.

54. Mr. SCOTLAND (Guyana) asked that a vote on article 37 *bis* should be deferred until the following meeting in order to allow delegations more time for reflexion.

55. Mr. YANGO (Philippines) and Mr. ABOU-ALI (Egypt) supported the Guyanese representative's request.

56. Mr. MUDHO (Kenya) asked that not only the vote but further discussion on article 37 *bis* be deferred until the following meeting.

It was so agreed.

ARTICLE 38 (Cases of State responsibility and outbreak of minorities)

ARTICLE 39 (Cases of military occupation)[10]

57. Mr. GUTIÉRREZ EVIA (Mexico), introducing his amendment for the deletion of articles 38 and 39 (A/CONF.80/C.1/L.55), said that the inclusion of those articles in the draft convention had already been the subject of written comments by a number of Governments (A/CONF.80/5, p. 263 *et seq.*). His delegation proposed that the articles should be omitted because they referred to matters outside the scope of the succession of States, as the International Law Commission itself recognized. Moreover, both military occupation and the outbreak of hostilities

[10] The following amendment was submitted to articles 38 and 39: Mexico, A/CONF.80/C.1/L.55.

were 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 affirmed in paragraph 4 of its commentary to draft articles 38 and 39 (A/CONF.80/4, p. 108). Finally, cases of State responsibility had already been covered by article 73 of the Vienna Convention on the Law of Treaties, to which the necessary reference should be made.

58. Mrs. THAKORE (India) said that articles 38 and 39 made a general reservation concerning any question that might arise in regard to a treaty from the international responsibility of a State, or from the outbreak of hostilities between States or the military occupation of a territory. Questions arising from the international responsibility of a State or from the outbreak of hostilities between States were excluded from the Vienna Convention on the Law of Treaties by article 73. Both those matters might have an impact on the law of succession of States in respect of treaties and had therefore been excluded from the scope of the draft articles so as to prevent any misunderstanding as to the inter-relationship between the rules governing those matters and the law of treaties. Military occupation of a territory did not constitute a succession of States.

59. Her delegation was in favour of maintaining articles 38 and 39 in order to remove any misunderstanding on the subject and was not therefore in a position to support the Mexican amendment.

60. Mr. ABOU-ALI (Egypt) said that to delete the articles would be tantamount to ignoring the problem of hostilities in the succession of States. Their maintenance would remove any doubt that armed aggression, which was contrary to the Charter of the United Nations and international law, did not provide a legal basis for any decision relating to the succession of States. His delegation therefore supported the Indian representative.

61. Mr. TORNARITIS (Cyprus) said his delegation also supported the retention of the articles.

62. Mr. LUKABU-K'HABOUJI (Zaire) said that deletion of the articles might give rise to disputes. If the Mexican amendment was put to the vote, he would vote against it.

63. Mr. GUTIÉRREZ EVIA (Mexico) said that all representatives who had spoken so far appeared to be aware that the articles were unnecessary and that their contents were not in keeping with the nature of the draft convention. However, in a spirit of conciliation, he was prepared to withdraw his amendment.

64. The CHAIRMAN said if there were no objections, he would take it that the Committee wished to refer the original text of draft articles 38 and 39 to the Drafting Committee.

It was so decided.[11]

[11] For resumption of the discussion of articles 38 and 39, see 53rd meeting, paras. 30-33.

65. Mr. PÉREZ CHIRIBOGA (Venezuela), seconded by Sir Ian SINCLAIR (United Kingdom) and Mr. TORNARITIS (Cyprus), moved that the meeting adjourn.

It was so decided.

The meeting rose at 5.50 p.m.

44th MEETING

Friday, 4 August 1978, at 10.25 a.m.

Chairman: Mr. RIAD (Egypt)

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

[Agenda item 11] (*continued*)

PROPOSED NEW ARTICLE 37 *bis* (Objections to succession)[1] (*continued*)

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

1. Mr. ROVINE (United States of America) said that, following the discussion at the 43rd meeting concerning the new article 37 *bis* proposed by his country (A/CONF.80/C.1/L.37/Rev.1) and after consulting other delegations, his delegation had prepared a revised version of the text of that provision. No change had been made to article 37 *bis*, paragraph 1, but paragraphs 2, 3, and 4 had been replaced by new paragraphs 2 and 3. The new version of article 37 *bis* would appear in document A/CONF.80/C.1/L.37/Rev.2, which had not yet been circulated. It would be noted that paragraphs 2 and 3 were similar to articles 65 and 66 of the Vienna Convention on the Law of Treaties.

2. Replying to questions raised at the 43rd meeting, he said that article 37 *bis* related to objections to succession to a treaty, not to objections to a succession of States. Paragraph 1 of that article should perhaps be clearer on that point. It should also be noted that the question of objections was entirely different from that of the settlement of disputes. An objection did not necessarily lead to a dispute. Article 37 *bis* was intended to provide a regular procedure for the objections which certain States would undoubtedly make in connexion with succession to treaties on the grounds that such succession would be incompatible with the object and purpose of those treaties or that it would radically change the conditions of their operation. Such objections could be made by the successor State or by a party of the treaty.

[1] For the list of amendments submitted, see 43rd meeting, foot-note 9.

3. After a brief procedural discussion in which Mr. NATHAN (Israel), Mr. FONT BLAZQUEZ (Spain) and Mr. LUKABU-K'HABOUJI (Zaire) took part, the CHAIRMAN suggested that the discussion on article 37 *bis* should be postponed until document A/CONF.80/C.1/L.37/Rev.2 had been circulated.

It was so decided.[2]

PROPOSED NEW ARTICLE 39 *bis* (Settlement of disputes)[3]

4. Mr. ROVINE (United States of America), introducing the new article 39 *bis* proposed by his delegation (A/CONF.80/C.1/L.38/Rev.1), said that that article was essential in order to protect newly independent States in the choice they could make in accordance with the "clean-slate" principle and to protect the treaty rights of States in general in the application of the principle of continuity. As the United Kingdom representative had pointed out,[4] the draft convention contained 17 references to the concepts of incompatibility with the object and purpose of a treaty and of a radical change in the conditions for the opreration of a treaty. There was no doubt that the provisions containing those references would give rise to differences of opinion concerning their interpretation and application. Other provisions were vague, but they were of lesser importance to the draft. The references to incompatibility with the object and purpose of a treaty and to a radical change in the conditions for the operation of a treaty were to be found not only in articles requiring the application of the "clean slate" principle such as articles 16, 17, 18, 26 and 29, but also in articles requiring the application of the principle of continuity, such as articles 30 to 37. For both kinds of articles, it was essential to have a provision on the settlement of disputes.

5. According to article 16, paragraph 1, for example, a newly independent State could establish its status as a party to any multilateral treaty which at the date of the succession of States had been in force in respect of the territory to which the succession of States related. If no such option existed, the "clean slate" rule would be largely meaningless. According to article 16, paragraph 2, however, paragraph 1 did not apply if it appeared from the treaty or was otherwise established that the application of the treaty in respect of the newly independent State would be incompatible with its object and purpose or would radically change the conditions for the operation of the treaty. That limitation, while fully justified, was nevertheless very vague. There was no doubt that its interpretation would give rise to difficulties and that a system for the settlement of disputes was needed. Indeed, without a system for the settlement of disputes, it would, in practice, be difficult to establish whether or not a newly independent State was a party to a particular treaty.

6. The application of the principle of continuity also required a system for the settlement of disputes. With regard to article 30 on the effects of a uniting of States in respect of treaties in force at the date of the succession of States, he referred to the hypothetical case in which a State that was bound by treaties to 100 States united with another State that was also bound by treaties to 100 States. If the newly formed State claimed that it had not succeeded to most of those treaties because their application would be incompatible with their object and purpose or would radically change the conditions for their operation, and if no provision had been made for a procedure for the settlement of disputes, the other States parties to those treaties would probably not be prepared simply to relinquish their rights under those treaties, for if they did, they would be allowing the successor State to reintroduce the "clean slate" principle in the provisions of Part IV of the draft. In the case of the future convention, a procedure for the settlement of disputes was therefore more than an abstract ideal. The purpose of such a procedure was not to reduce the chances of negotiation; rather, it was based on the idea that, in such disputes, negotiations might break down. Nor was it designed to weaken the sovereignty of States or to establish better international judicial or arbitration mechanisms for their own sake. Draft article 39 *bis* was designed only to protect newly independent States in the context of the application of the "clean slate" rule and States in general in the context of the application of the principle of continuity.

7. The mechanism proposed in the new article 39 *bis* enabled States to choose between the submission of disputes to arbitration, to the International Court of Justice or even to the conciliation procedure. The article established a presumption in favour of arbitration and the submission of disputes to the International Court of Justice, but any State could, by means of a reservation, declare that it did not consider itself bound by that presumption, which was nevertheless the best means of protecting States in the application both of the "clean slate" rule and of the principle of continuity. It was evident that binding decisions provided better protection than did non-binding decisions, which could nevertheless be of some use. The proposed article 39 *bis* did not go as far as article 66 of the Vienna Convention on the Law of Treaties, which concerned the interpretation of the concept of a peremptory norm of general international law. The question which the Committee must now decide was whether it really desired to protect States in the application of the future convention. If it did, a procedure for the settlement of disputes was essential.

8. Mr. STUTTERHEIM (Netherlands), introducing his delegation's amendment (A/CONF.80/C.1/L.56) to the new article 39 *bis* proposed by the United States of America, said that his country had long been of the opinion that international disputes ought to be submitted to inter-

[2] For resumption of the discussion, see 46th meeting, paras. 27 *et seq.*

[3] At the 1977 session, the United States of America proposed the insertion of a new article 39 *bis* (A/CONF.80/C.1/L.38). At the resumed session, the United States of America submitted a revised version of the amendment (A/CONF.80/C.1/L.38/Rev.1); the Netherlands submitted an amendment (A/CONF.80/C.1/L.56) to the proposed new article 39 *bis*.

[4] See 43rd meeting, para. 41.

national authorities and that provisions on the settlement of disputes should be included in treaties which might give rise to disputes. That attitude was not dictated by the fact that the International Court of Justice had its seat at The Hague. Rather, it was because the Netherlands was in favour of the international judicial settlement of disputes that the Court had its seat in that country.

9. The United Nations General Assembly was also in favour of provisions on the peaceful settlement of disputes, as could be seen from its resolution 3232 (XXIX), in which it had drawn the attention of States to the advantage of inserting in treaties clauses providing for the submission to the International Court of Justice of disputes which might arise from the interpretation or application of such treaties. His Government had, moreover, already stressed the need for an article on the settlement of disputes in the comments in had made, in 1975, on the International Law Commission's provisional draft articles (A/CONF.80/5, pp. 313-314). The differences of opinion which had emerged in the Committee of the Whole in connexion with some provisions had only confirmed him in that view. In so far as possible, disputes relating to the application or interpretation of the future convention should therefore be submitted to the International Court of Justice. The United States amendment provided for recourse to the International Court of Justice only when the parties failed to agree on an arbitration procedure. In his delegation's opinion, that arrangement should be reversed in the case of disputes concerning article 6 and article 33, paragraph 3; such disputes should be submitted to the Court unless the parties decided to settle them by means of an arbitration procedure. In the case of other disputes, the procedure provided for in paragraph 1 of the United States proposal would be acceptable. His delegation could not, however, accept paragraph 2 of that proposal, and that was why it had submitted its own draft article 39 *bis*. He was not unaware of the fact that a member of delegations would not welcome a provision which imposed on States an obligation to submit their disputes to the International Court of Justice, or even compulsory arbitration. He nevertheless hoped that the discussion which would take place would prompt those delegations to reconsider their position. Limits must be placed on the sovereignty of States when the interests of the international community were at stake or, in other words, when it was in the interest of good relations among States to find the most effective means of settling disputes.

10. Mrs. THAKORE (India), referring to article 39 *bis*, paragraph 4, as proposed by the United States of America, said that her delegation would have no difficulty in agreeing to a compulsory conciliation procedure along the lines of that provided for in article 66 of the Vienna Convention on the Law of Treaties, since the future convention would complement the Vienna Convention. Her delegation was pleased to note that the revised version of article 39 *bis* did not provide for the compulsory submission of disputes to the International Court of Justice. The question whether a State was a newly independent State or had been formed in circumstances which were essentially of the same character as those existing in the case of the formation of a newly independent State was not of such fundamental importance as the question of the existence and content of a peremptory norm of general international law; it did not, therefore, warrant a decision by the supreme judicial organ of the international community. Moreover, disputes concerning the first of those two questions were more political than legal in nature. At the eighteenth session of the Asian-African Legal Consultative Committee, some of its members had rightly reached that same conclusion and had stated that disputes regarding the future convention should be settled through diplomatic negotiations.

11. According to article 39 *bis*, paragraph 1, any dispute regarding the interpretation or application of the future convention should be submitted to compulsory arbitration or to compulsory judicial settlement. Since the international community was not yet ready to accept those two forms of settlement of disputes, her delegation welcomed the fact that article 39 *bis* paragraph 2, enabled States to declare that they did not consider themselves bound by paragraph 1, in which case the other States parties would not be bound by paragraph 1 with respect to States which had made such a declaration. Paragraph 2 of article 39 *bis* was similar to article 13, paragraph 2 of the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, 1973.[5]

12. Paragraph 3, which provided that any State which had made a declaration in accordance with paragraph 2 could at any time withdraw that declaration by notification to the Secretary-General, was similar to article 13, paragraph 3, of the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents. Paragraphs 2 and 3 of article 39 *bis* made the article more flexible and might make it more acceptable.

13. In view of the position which her delegation had adopted on article 39 *bis*, as proposed by the United States of America, it could not accept article 39 *bis*, subparagraph (*a*), as proposed by the Netherlands, for that subparagraph reintroduced the concept of the compulsory judicial settlement of disputes concerning the interpretation or application of article 6 or article 33, paragraph 3. Her delegation was also unable to support subparagraph (*b*), since it provided for compulsory arbitration or judicial settlement in the case of disputes concerning the interpretation or application of all the other provisions of the future convention; States were not entitled to declare that they did not consider themselves bound by subparagraph (*b*). Consequently, the whole of article 39 *bis* as proposed by the Netherlands was unacceptable to her delegation.

14. Mr. PÉREZ CHIRIBOGA (Venezuela) said that the Conference must deal with the question of the settlement of disputes in one way or another. The procedures proposed so far were interesting, but his delegation could

[5] General Assembly resolution 3166 (XXVIII).

not support them. Venezuela had always been peace-loving and had tried to find peaceful solutions to disputes. It could pride itself on never having had any international disputes since its accession to independence. Generally speaking, direct negotiations seemed to be the best means of settling disputes; moreover, there was an obligation on States to negotiate. It should be noted, in that connexion, that the notion of the peaceful settlement of disputes did not necessarily entail compulsory judicial settlement. In itself, compulsory judicial settlement was a good means of settling disputes, but it must not be imposed on a State which had not expressly accepted it for a particular category of dispute. Whereas other delegations regarded compulsory jurisdiction as a sure, prompt and definitive guarantee of the settlement of disputes, his delegation believed experience showed that it was better to allow the parties concerned to choose the means they considered most appropriate.

15. As a lawyer, he hoped that the future convention would be supplemented by a procedure for the settlement of disputes. As a Government representative, however, he had to take account of the fact that it was useless to draw up international instruments that had little chance of entering into force. The Vienna Convention on Diplomatic Relations (1961), for instance, had been ratified by 92 States, but only 31 States had signed its Optional Protocol concerning the Compulsory Settlement of Disputes.[6] If the provisions of the Protocol had been introduced into the Convention, the latter would not have obtained the same number of ratifications and it would not render the services it was currently rendering to the international community. Clearly, States were not yet prepared to accept a system of compulsory jurisdiction. No one was unaware of the difficulties encountered by the United Nations Conference on the Law of the Sea in devising a procedure for the settlement of disputes concerning matters relating to State sovereignty.

16. Far from facilitating the speedy and effective settlement of disputes, the conciliation procedure which the United States delegation proposed should be annexed to the convention represented the most roundabout way of tackling the problem. He could not accept the provision in the second sentence of paragraph 5 of the annex proposed by the United States, because that provision in fact again gave a role to the International Court of Justice, given the considerable moral effect of an advisory opinion of the Court. The power granted to the chairman of the conciliation commission in paragraph 4 seemed to be contrary to the very nature of a commission. Lastly, the provision in the final sentence of paragraph 6 contained an element of coercion that was contrary to the very essence of genuine conciliation. He was not, therefore, in a position to support the proposal of the United States or the proposal of the Netherlands.

17. He was in favour of omitting from the convention any reference to a system for the settlement of disputes, so as to leave the parties the greatest possible freedom in choosing the method of settlement they deemed appropriate, bearing in mind the provisions of Article 33 of the Charter of the United Nations. He could, however, agree to a compromise solution under which the provisions on the settlement of disputes contained in the annex to the 1969 Vienna Convention on the Law of Treaties would be reproduced in an optional protocol.

18. Sir Ian SINCLAIR (United Kingdom) said that, as the representative of the United States had pointed out, the draft convention contained a number of provisions the interpretation and application of which might give rise to difficulties in certain cases of succession of States in respect of treaties. The discussion on article 37 *bis* proposed by the United States (A/CONF.80/C.1/L.37/Rev.1) had highlighted the problems posed by a saving clause that appeared no fewer than 17 times in the draft articles. That saving clause was based on two criteria: succession to a treaty could be objected to either on the ground that the application of the treaty in respect of the successor State would be incompatible with its object and purpose or on the ground that it would radically change the conditions for its operation. The first of those two criteria was similar to the criterion that had been adopted in subparagraph (*c*) of article 19 of the Vienna Convention on the Law of Treaties with a view to determining the validity of a reservation in the case of a treaty containing no provisions on reservations. The second was taken from article 62 of the Vienna Convention on the Law of Treaties, which related to a fundamental change of circumstances. Those were intended to be objective criteria which would be invoked in good faith in certain cases, but there would doubtless be cases in which a successor State or another State party to a treaty would invoke one of the two criteria to establish, to its own advantage, the non-applicability of the treaty. A mechanism must therefore be found to prevent improper use of that saving clause.

19. Clearly, however, the problem was not limited to the interpretation or application of saving clauses. The discussion on article 6 of the draft had brought out the difficulties raised by that article, which would undoubtedly be a source of disputes if maintained in the convention. The discussion on article 33, paragraph 3, had also shown the need to provide for machinery for the settlement of disputes if a provision of that kind was to appear in the Convention.

20. An effective system for the settlement of disputes must, therefore, be established if the convention was to be of any use. That view had been shared by some members of the International Law Commission and it was only lack of time that had prevented the Commission from adopting a draft article on the settlement of disputes, as was stated in paragraph 80 of its commentary to the general features of the draft articles (A/CONF.80/4, p. 15).

21. It might be argued that the Conference's sole task was to codify substantive rules and that it need not concern itself with the manner in which the convention would be applied in practice. However, the whole object of the exercise was to prepare a convention which would make it

[6] United Nations, *Treaty Series*, vol. 500, pp. 95 and 241.

possible to resolve the practical problems raised by cases of succession of States in respect of treaties. The Conference must not, therefore, adopt a convention which, it knew in advance, would be difficult to interpret and apply without making provision for the settlement of disputes.

22. There were constructive elements in both the proposals before the Committee. The proposal of the Netherlands was more radical in that it provided for disputes concerning the interpretation or application of article 6 or article 33, paragraph 3, to be submitted directly to the International Court of Justice. It was of course based on the assumption that those two provisions would be maintained in the convention in their existing form. The Committee would therefore have to wait until it had taken a decision on those two provisions before pronouncing on that aspect of the Netherlands proposal. That proposal also envisaged the solution of arbitration, with the possibility of submitting the dispute to the International Court of Justice if the arrangements necessary to permit the arbitration to proceed had not been completed within one year.

23. The proposal of the United States was more qualified. It also envisaged arbitration as the basic solution with the possibility of submitting the dispute to the International Court of Justice for decision if the arrangements necessary to permit the arbitration to proceed had not been completed within a prescribed period of time. Paragraph 2 took account of the objections of those who had difficulty in accepting automatic recourse to arbitration or to the International Court of Justice: under it, each State party could declare that it did not consider itself bound by that system. In any case, provision was made for a conciliation procedure in the case of disputes between States which accepted the basic system and those which did not.

24. His delegation supported the United States proposal and would even be prepared to support that part of the Netherlands proposal providing for the direct submission to the International Court of Justice of disputes concerning article 6 or article 33, paragraph 3, if those provisions were included in the convention. It was, however, aware that that element of the Netherlands proposal might lead to controversy. In conclusion, his delegation suggested that a special *ad hoc* working group might be established to prepare a proposal on machinery for the settlement of disputes which would command general agreement. The group should be representative of all trends of opinion in the Committee.

25. Mr. KRISHNADASAN (Swaziland) noted that the proposals of the United States and the Netherlands represented an attempt to fill a gap in the draft convention and were based on a draft article on the settlement of disputes that had been submitted to the International Law Commission by one of its members (A/CONF.80/4, p. 14). He experienced the same difficulties with those two proposals as did the representatives of India and Venezuela. Like them, he considered that the procedure for the settlement of disputes should be as flexible as possible and that since disputes concerning the interpretation of the Convention might be political in nature, the best means of settling them would be through the normal diplomatic negotiations procedure. He also considered that the international community was not yet ready to accept a compulsory settlement procedure such as that which existed in internal law.

26. Turning to the conciliation procedure which the United States proposed to annex to the convention, he said that, for the reasons given by the representative of Venezuela, he could not accept the provision in paragraph 5 to the effect that the conciliation commission "may recommend to the United Nations that an advisory opinion be requested from the International Court of Justice regarding the application or interpretation of the Present Convention". He pointed out that the annex to the 1969 Vienna Convention on the Law of Treaties contained no provision of that kind; in his view, that provision went far too far, given the considerable importance attached to the advisory opinions of the International Court of Justice.

27. He also had difficulty in accepting the provision in the last sentence of paragraph 6 to the effect that "any party to the dispute may declare unilaterally that it will abide by the recommendations in the report [of the conciliation commission] so far as it is concerned". He wondered what would happen if, the conciliation commission having made recommendations favourable to one of the parties, that party declared unilaterally that it would abide by those recommendations.

28. The best solution might be to set out a conciliation procedure in an annex to the convention, as proposed by the United States, but on condition that that conciliation procedure conformed to the procedure contained in the annex to the Vienna Convention on the Law of Treaties. He could not, therefore, support the proposal of the Netherlands.

29. Mr. KOECK (Holy See) said that he unreservedly supported any procedure likely to lead to a pacific settlement of disputes to which the interpretation or the application of the convention gave rise. He considered that the parties should, in the first instance, be free to select, the procedure they preferred, but was ready, in conformity with the position taken by all the Popes, to support any proposal providing for compulsory arbitration. While recognizing the merits of the negotiation procedure, he considered that provision should be made for a more effective procedure for the settlement of disputes to which parties might have recourse if negotiations failed. He was therefore grateful to the sponsors of the proposals submitted in documents A/CONF.80/C.1/L.38/Rev.1 and A/CONF.80/C.1/L.56. In his opinion, it was high time that the international community renounced the use of force and sought more peaceful methods of settling disputes. The Holy See would, consequently, support any initiative to make provision for such a solution in the convention.

30. Mr. MARESCA (Italy) said that it was not enough merely to prescribe rules; efforts should also be made to ensure that they were applied. Although all codification conventions were capable of giving rise to disputes, few of them contained provisions relating to the settlement of such disputes.

31. The method adopted in the case of the 1961 Vienna Convention on Diplomatic Relations and the 1963 Vienna Convention on Consular Relations,[7] whereby provisions relating to the settlement of disputes were presented in the form of an optional protocol, offered certain advantages, as the representative of Venezuela had commented, but it did not guarantee the application of legal rules and, without such a guarantee, a rule had no more force than a mere declaration. A method other than that of the optional protocol must therefore be found, and provisions relating to the settlement of disputes must be incorporated into the body of the convention.

32. The proposals of the United States and the Netherlands had the merit of offering genuine solutions and of being based on major international institutions such as the International Court of Justice and the arbitration procedure, which enjoyed the respect and confidence of the entire international community. However, their fault was that they failed to follow the hierarchical order of the various procedures. Those procedures could be divided into two categories: procedures such as good offices, mediation or conciliation, which produced a purely optional solution; and procedures such as arbitration and recourse to the International Court of Justice, which produced a mandatory solution. The logical practice was therefore to begin with the former procedures and have recourse to the latter only when the former had failed.

33. He thought that recourse should first be had to negotiation, which was the most natural method, then to conciliation, when negotiation had failed. In his view, it was not the solution provided by conciliation, but the recourse to conciliation which should be compulsory if diplomacy had not succeeded. The United States deserved great credit for setting forth that conciliation procedure in detail, but it had been in error in presenting it as an alternative to arbitration, when it ought to precede arbitration. He thought that stress should be laid on the conciliation procedure, since it could be accepted by all States, and that recourse to arbitration or to the International Court of Justice should be contemplated only if conciliation had failed.

34. He shared the view of the United Kingdom representative that a working group should be set up to consider the proposals by the United States and the Netherlands and to try to find a solution acceptable to all. In his opinion, a sequence should be established in the methods used to settle disputes: the first step that should be envisaged was mandatory recourse to conciliation, followed in case of failure, by recourse to arbitration. During the conciliation procedure, it might be preferable not to request an advisory opinion from the International Court of Justice so as not to influence the conciliation commission.

35. Mr. NAKAGAWA (Japan) observed that, during the general debate which had taken place at the beginning of the Conference in 1977, his delegation had stressed the need–subsequently recognized by a good number of other delegations–to include in the body of the convention a system for the settlement of disputes,[8] since some rules might lead to complications in application or interpretation. In the context of the draft convention, his delegation had always favoured a clear and, if possible, compulsory settlement procedure. Moreover, the United Nations Conference on the Law of Treaties had partly incorporated in article 66 of the Vienna Convention the idea, which had its origins in a Japanese proposal submitted at that Conference, of referring to the International Court of Justice, at the request of one of the parties to the dispute, any disputes arising from claims under the articles concerning *jus cogens*, and, in any other cases concerning the interpretation or application of the articles of Part V of that Convention, of referring the dispute to arbitration, if no solution had been found after a specified period. In general, his delegation favoured the establishment of a system envisaging, in the first instance, negotiations and subsequently, if negotiations failed, *compulsory* recourse to the International Court of Justice or to arbitration. However, it would be prepared to accept a conciliation procedure as long as reference to that procedure was compulsory.

36. In its proposal, the United States delegation had visualized two kinds of disputes and had embraced the procedure embodied in Article 33 of the Charter of the United Nations and by the International Court of Justice, on the one hand, and the conciliation procedure, on the other. His delegation could support the Netherlands proposal, which envisaged a compulsory procedure, since it was in line with the position it had taken at the Conference on the Law of Treaties. If, however, the international community considered that it was still too early to accept a compulsory procedure for the settlement of disputes, provision would then have to be made at least for conciliation procedures based on the Vienna Convention on the Law of Treaties. His delegation could, accordingly, accept the United States proposal, but reserved the right to revert to the question, if need be.

Mr. Riad (Egypt) took the Chair.

37. Mr. FONT BLÁZQUEZ (Spain) said that the draft convention unquestionably contained a number of ambiguous formulations which would have to be clarified by political negotiations. While, at the national level, a judge could interpret provisions which gave rise to misunderstanding, at the international level the situation was more complicated, since State sovereignty had to be taken into account and the rights, not of individuals, but of States had to be dealt with. That was why negotiations were the only method which gave satisfaction to the parties without arousing their resentment.

38. Citing Articles 62 and 63 of the Statute of the International Court of Justice, he commented that not only those States which ratified the convention on succession of

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

[8] *Official Records of the United Nations Conference on Succession of States in Respect of Treaties*, vol. I, *Summary records of the plenary meetings and of the meetings of the Committee of the Whole* (United Nations publication, Sales No. E.78.V.8), p. 30, 3rd meeting, para. 21.

States in respect of treaties but even those which merely signed it would be affected by problems of interpretation or application raised by the convention. He drew attention to article 18 of the Vienna Convention on the Law of Treaties concerning the obligation not to defeat the object and purpose of a treaty prior to its entry into force, under which a State which signed a treaty was required to assume a number of obligations. If, however, that State had obligations to fulfil, it could expect to have a number of rights. Consequently, a State which had signed the convention without ratifying it would be entitled to make representations to the tribunal to which the dispute arising from the interpretation or application of the convention had been submitted. That meant that many or virtually all the States present would appear before the Tribunal in an attempt to clarify what they had not made clear when preparing the convention.

39. The United States proposal envisaged two circumstances in which recourse might be had to the International Court of Justice–submission of the dispute for decision or a request for an advisory opinion. Everyone was aware that the moral and legal force of the Court's advisory opinions was comparable to that of its judgments, or, to put it another way, that its judgments were hardly more effective than its opinions. In any event, however, one might wonder what the reaction of the International Court of Justice would be if confronted with a whole series of ambiguous expressions. It might deplore the fact that the participants in the Conference had not drawn up a clearer text. For that reason, his delegation was opposed to the United States proposal and was even more strongly opposed to the Netherlands proposal.

40. Mr. SANYAOLU (Nigeria) said he was of the opinion that consultations and negotiations offered the best prospects for settling disputes, most of which were political in nature. The United States proposal might be considered to be superfluous if the Conference later decided to adopt a resolution based on the United States draft (A/CONF.80/C.1/L.51/Rev.2) concerning incompatible obligations and rights under treaties. His delegation also had reservations on the Netherlands proposal since it would find it difficult to accept the idea of compulsory methods for the settlement of disputes.

41. Mr. TORNARITIS (Cyprus) said that his delegation had always subscribed to the principle that the parties to a dispute should spare no effort to arrive at a peaceful settlement of their differences, a principle which underlay the Charter of the United Nations and formed the subject-matter of Article 33. Similarly, article 66 of the Vienna Convention on the Law of Treaties provided machinery to ensure observance of that principle. His delegation therefore welcomed the United States proposal concerning a new article 39 *bis*, which envisaged methods of settlement to which the parties to a dispute might resort.

42. Mr. YASSEEN (United Arab Emirates) said that, although the problem of the settlement of disputes was a general one, it was preferable to resolve it separately in the context of each treaty, particularly if the treaty was a general multilateral one. Recent practice showed, moreover, that most codification conventions prescribed particular methods of settlement; the future convention on succession of States should be no exception to the rule, for there was no doubt that it raised a number of problems which would engender disputes.

43. It would be an easy matter to make provision for the compulsory jurisdiction of the International Court of Justice, as the Netherlands delegation proposed, but there was no certainty that the international community would accept such a solution in the present case. It was therefore necessary that provisions specifying a flexible method of settlement should be incorporated into the text of the convention, as the United States delegation proposed. He, however, recognized that it was incumbent upon States to strengthen the authority of the International Court of Justice; recourse to arbitration should not therefore be the first resort as the United States amendment suggested. The United States amendment had the advantage that it allowed States the choice of withdrawing by declaration from the obligation to have recourse to the International Court of Justice. As there was no doubt that a number of States would refuse to be bound by compulsory methods of settlement, some alternative would have to be found. The Vienna Convention on the Law of Treaties provided for compulsory recourse to conciliation, but the Conciliation Commission's report was not binding on the parties to the dispute. The United States amendment proposed certain conciliation procedure which was not quite the same as that provided for in the Vienna Convention on the Law of Treaties. Since there was a close relationship between that Convention and the convention to be adopted by the Conference, it would be most practical to adopt the same procedure as that adopted by the Vienna Convention on the Law of Treaties. That would facilitate the implementation of the convention on succession of States in respect of treaties, for it would be possible to have a single list of conciliators.

44. In conclusion, he expressed the hope that the United States and Netherlands delegations would hold consultations with a view to achieving the desired objective, without losing sight of the realities of international life.

45. Mr. LUKABU-K'HABOUJI (Zaire) said that his delegation, which had been among the first to stress the absence from the convention of provisions relating to the settlement of disputes, welcomed the efforts of the United States and Netherlands delegations to make good that deficiency.

46. The text proposed by the United States was very attractive at first sight, but it raised some problems: for instance, paragraph 2 provided that each State party could at the time of signature or ratification of the convention or accession thereto declare that it did not consider itself bound by paragraph 1. However, in introducing his proposal, the United States representative had said that it was designed basically to settle disputes which might arise in connexion with article 30. The Zairian delegation wondered at what point a State which came into being in the circumstances mentioned in article 30 and consequently

inherited the duties of the predecessor State, would be able to make the declaration provided for in paragraph 2 of the United States text.

47. He was also concerned to note from paragraph 4 of the annex to the convention proposed by the United States that the conciliation commission was to function as soon as the chairman had been appointed, even if its composition was incomplete. That meant that, even though a party to the dispute might not be represented in the commission, it would nevertheless be considered to be bound by its conclusions. Paragraph 5, under which the commission could recommend to the United Nations that an advisory opinion be requested from the International Court of Justice without the agreement of the parties, also seemed to him difficult to accept. Moreover, for reasons already stated by other speakers, he was also unable to accept the last sentence of paragraph 6.

48. The text proposed by the Netherlands provided for the compulsory submission of disputes to the International Court of Justice, a procedure which was quite unacceptable to the Zairian delegation. He agreed with the representative of India that disputes arising from the interpretation or application of the convention would be more political than legal in character and should therefore be settled by arbitration. In that connexion, it was pertinent to mention the example of the Charter of the Organization of African Unity, which did not provide for the compulsory submission of disputes to a court but laid down a conciliation procedure, whose excellent results were known to all.

49. His delegation drew the Committee's attention to the fact that draft resolution A/CONF.80/C.1/L.51/Rev.2, submitted by the United States, also dealt with the settlement of disputes; it wondered what the position would be if the Conference adopted both that draft and one of the texts proposed by the United States and the Netherlands.

50. It was essential to find a method of settling disputes which was acceptable to all. His delegation supported the proposal of the United Kingdom representative to set up a small working group on the question.

51. Mr. ECONOMIDES (Greece) said he supported the text proposed by the United States, because it served to promote international justice, the advancement of which determined the progress of the international community in general. It was true, as had been emphasized, that negotiation was the basic means of settling disputes. When, however, negotiations produced no results, only two remained open: arbitration or war; there could be no hesitating between them.

52. Moreover, all major codification conventions which, like that being elaborated by the Conference, aimed at universality and were intended to endure ought to contain rules that were as affective and as detailed as possible concerning the settlement of disputes which might arise out of their application or interpretation. The United States proposal, which at first sight seemed complicated, envisaged a procedure that was both comprehensive, since it covered all disputes, and flexible, since States could choose between various courses. His delegation therefore supported it.

53. It could also support the text proposed by the Netherlands although it was perhaps more inflexible than the United States proposal.

54. Lastly, it supported the United Kingdom representative's proposal to set up a working group to find a solution acceptable to all.

55. Mr. SETTE CÂMARA (Brazil) said that there was no scope for innovation in the matter of the settlement of disputes: there were a limited number of solutions, and the problem was to combine them according to a particular order of priorities. If the precedents in that field were studied, it would be found, for example, that the optional protocols to the Vienna Conventions on Diplomatic Relations, on Consular Relations and the Convention on Special Mission[9] placed recourse to the compulsory jurisdiction of the International Court of Justice before arbitration, and arbitration before the conciliation procedure. The Vienna Convention on the Law of Treaties, on the other hand, provided for the establishment of conciliation machinery, and the Vienna Convention on the Representation of States in Their Relations with International Organizations of a Universal Character[10] provided for the settlement of disputes through consultations (article 84) or a conciliation procedure (article 85). In his view, the Committee should, as suggested by the United Kingdom representative, set up a small working group, of which the United States and Netherlands representatives, in particular, should be members, to study how to bring together the components of the existing machinery so as to find a solution acceptable to all.

56. As to the United States proposal, he thought that a reference should be made in paragraph 1 not only to diplomatic channels but also to direct consultations, which were of fundamental importance. In its draft annex, the United States delegation had, however, proposed a sound conciliation system, closely modelled on the one set out in the annex to the Vienna Convention on the Law of Treaties, but with some slight differences. For instance, under the Vienna Convention on the Law of Treaties, the States parties each nominated two conciliators for a specified period, which was perhaps preferable to the United States proposal of a single conciliator for an indefinite period. Again, the annex to the Vienna Convention on the Law of Treaties provided that the Chairman of the Conciliation Commission should be appointed within 60 days, whereas the United States proposal specified a period of one month, which was not perhaps altogether adequate. His delegation had no objection to the last sentence of paragraph 6 of the annex proposed by the United States, which introduced a clause that had not appeared in the Vienna Convention on the Law of Treaties, since it imposed no obligation on the parties: only States wishing to do so would make the unilateral declaration in question.

[9] General Assembly resolution 2530 (XXIV).

[10] *Official Records of the United Nations Conference on the Representation of States in Their Relations with International Organizations*, vol. II, *Documents of the Conference* (United Nations publication, Sales No. E.75.V.12), p. 207.

57. The Netherlands proposal seemed a little too inflexible. He also had doubts about the advisability of establishing special machinery to settle disputes concerning the interpretation or application of particular articles.

58. Mr. KAKOOZA (Uganda) remarked that one of the weaknesses of international law was that it lacked the means of enforcing its provisions. The Conference must, therefore, take care to adopt a method for the settlement of disputes which could be freely accepted by States with no likelihood of their regarding it as a limitation upon their sovereignty. As pointed out by the representative of Zaire, the only procedure for the settlement of disputes under the Charter of the Organization of African Unity was conciliation. The Ugandan delegation considered that any other method would be contrary to the ideology of the newly independent countries. In his view, it was essential that the Conference should adopt a procedure for the settlement of disputes which took account of individual preferences, allowing States parties to choose the methods of settlement, and which was swift.

59. He supported the United Kingdom delegation's proposal to set up a working group on the matter. The procedure for the settlement of disputes worked out by the group should have the features he had mentioned; they were not sufficiently prominent in the United States and Netherlands proposals, which were unacceptable to his delegation.

60. Mr. GÜNÜGÜR (Turkey) said that, however interesting they might be, the drafts of article 39 *bis* submitted by the United States and the Netherlands were scarcely acceptable in their present form. The two proposals provided that disputes concerning the application or interpretation of the convention that were not settled through the diplomatic channel should be referred to arbitration or to the International Court of Justice. In practice, that procedure would amount to submitting the dispute directly to arbitration or to the jurisdiction of the Court, as it would be an easy matter for States parties to say that they had not succeeded in making a settlement through the diplomatic channel. It had surely not been the intention of the sponsors of the two drafts thus to minimize in practice the importance of negotiation.

61. Turkey was not opposed in principle to the submission of disputes to the jurisdiction of the International Court of Justice. However, it considered that the disputes to which the provisions of the convention might give rise would probably be political in character, whereas the competence of the Court was strictly juridical. It therefore seemed much more logical to adopt a procedure by which the parties to a dispute first agreed on the content of the dispute before submitting it, by mutual consent, to arbitration, or, if necessary, to the International Court of Justice. His delegation could not, therefore, accept the United States and Netherlands proposals in their present form. It reserved its right to speak on other proposals, if the need arose.

The meeting rose at 1.05 p.m.

45th MEETING

Friday, 4 August 1978, at 3.50 p.m.

Chairman: Mr. RIAD (Egypt)

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

[Agenda item 11] (*continued*)

PROPOSED NEW ARTICLE 39 *bis* (Settlement of disputes)[1] (*continued*)

1. Mr. TREVIRANUS (Federal Republic of Germany) said that his delegation was strongly in favour of the inclusion in the convention, of an article on the settlement of disputes, since the draft articles contained many provisions which could give rise to different interpretations, in particular the escape clauses, formulae by which the Commission had intended to lay down an international objective legal test of compatibility which, if applied in good faith, should provide a reasonable, flexible and practical rule.

2. According to paragraph 14 of the International Law Commission's commentary to article 14, "incompatibility with the object and purpose of the treaty" and a "radical change in the conditions for the operation of the treaty" were "the appropriate criteria... to take account of the interests of all the States concerned and to cover all possible situations and all kinds of treaties" (A/CONF.80/4, p. 51). That view appeared to be shared by the great majority of delegations. The *bona fide* clause occurred frequently in domestic law, and provided the possibility of a settlement by a third party if the parties concerned could not agree on how a general clause should be interpreted or applied. The International Law Commission had been compelled to a large extent to take refuge in general clauses. That did not imply a criticism of the Commission's work, only that it had recognized the difficulty of laying down special rules for all possible cases arising out of the succession of States. The infinity of cases and the fact that the interests of States were not always identical meant that some body had to be responsible for the settlement of disputes as a way of providing an impartial settlement where no legal rules existed. The very nature of the draft convention meant that some compulsory procedure was indispensable. With no recourse to customary international law, some way had to be found of bringing disputes to a conclusion. The relationship between the draft Convention on the succession of States in respect of treaties and the Vienna Convention on the Law of Treaties was a complex one; and thus should ideally be considered as constituting a *corpus juris* in the sense that in the procedural field there was no possibility for different solutions. As far as the

[1] For the list of amendments submitted, see 44th meeting, foot-note 3.

practical operation of the Convention was concerned, it would have to include means of control in the form of sanctions that would prevent abuse or misuse of the rather wide general clauses.

3. His delegation welcomed the suggestion to form a small *ad hoc* group to consider possible solutions, preferably headed by the President of the Conference and with the participation of the Chairman of the Drafting Committee and the sponsors of the amendments.

4. As regards the criteria to be adopted, a place should be given to compulsory rules so that it was not possible by means of reservations to avoid the need to submit disputes to impartial settlement as a last resort.

5. Mr. RYBAKOV (Union of Soviet Socialist Republics) said that he had been impressed by the statements of many of the Asian, African and Latin American delegations at the 44th meeting, and even of some Western European delegations, which had expressed their views on the peaceful settlement of disputes as applicable to the convention under consideration. Some representatives, notably those of the United States of America, the United Kingdom and the Federal Republic of Germany, had not agreed with what had been said by the representatives of India, Nigeria, Spain, Swaziland, Uganda and Venezuela, for example, whose statements his delegation did indeed endorse, particularly in their reference to Article 33 of the United Nations Charter as a fundamental provision to be included in the convention. Had not the representative of Swaziland been right in saying[2] that the international community, at its present stage of development, was not yet ready for a binding legal procedure, that the time was not yet ripe for compulsory jurisdiction by the International Court of Justice and compulsory arbitration and in emphasizing the need to observe maximum flexibility in settling disputes? Had the representative of Nigeria not been right in saying[3] that the overwhelming majority of disputes, particularly in matters covered by the convention, could not avoid taking on a certain political flavour? Had not all those delegations been right in stressing that contemporary machinery should take into account existing realities and the free choice by States as to the means of settling disputes rather than the imposition of some compulsory procedure? He fully understood the representative of Swaziland's objections to the United States proposal (A/CONF.80/C.1/L.38/Rev.1), and particularly to its first three paragraphs, and his objections to the entire arbitration machinery and the intervention of the International Court of Justice. He also fully appreciated that developing countries preferred the "opting in" system as a basis for the "clean slate" approach, rather than the "opting out" system.

6. He was not prepared to support the view of the representative of the Federal Republic of Germany. The matter was not one of practical implications but of the entire conception underlying the peaceful settlement of disputes. A clear legal philosophy required consistency in the matter of disputes; the arguments put forward by delegations which had doubted the advisability of the procedure involving the International Court of Justice had indeed been valid.

7. His delegation fully understood the reference by the representative of Nigeria to the link between the two United States proposals, one on the settlement of disputes (A/CONF.80/C.1/L.38/Rev.1) and the other on objections to succession (A/CONF.80/C.1/L.37/Rev.2). In trying to respond to questions concerning developing countries, the United States had said its proposal did not deal with objections to succession as such but to succession with respect to treaties;[4] the Soviet delegation doubted whether that changed anything. The representative of Nigeria had also been correct in stating that if the United States proposal on incompatible treaty obligations (A/CONF.80/C.1/L.51/Rev.2) were adopted, then it was essential that all disputes should be covered by that document. His argument had been extremely clear.

8. The statements made by representatives of the Asian, African and Latin American countries had in fact contained useful and constructive ideas for a solution to the problem of the settlement of disputes under the convention. His delegation was particularly interested in the ideas advanced by the represenative of Venezuela,[5] in his reference to Article 33 of the United Nations Charter, and in the suggestion by the representative of Swaziland[6] that disputes should be settled by means of negotiation and consultation, but that the Committee should not discount the possibility of laying down a procedure in a special document in the form of an annex or an optional protocol, based on the "opting in" system in conformity with the United Nations Charter and on the sovereign equality of States.

9. His delegation was able to agree with the United Kingdom[7] proposal to set up an *ad hoc* working group to consider the problem, but could not agree with its other views. Any document prepared by the Conference should take into account the feelings of the majority, and it was important for all representatives of regional groups to take part in the consultations on a balanced basis. His delegation was fully prepared to participate. Some delegations had referred to certain articles of the Vienna Convention on the Law of Treaties being used as possible models for the Conference document, but account had to be taken of the fact that not all States were parties to that Convention, and that the nature of the convention under consideration was such that the Vienna Convention on the Law of Treaties did not offer any real possibility of solving their present problems.

10. Mr. MONCAYO (Argentina) said his delegation felt that the States parties had two courses of action open to

[2] See 44th meeting, para. 25.

[3] *Ibid.*, para. 40.

[4] *Ibid.*, para. 2

[5] *Ibid.*, paras. 14-17.

[6] *Ibid.*, para. 25.

[7] *Ibid.*, para. 24.

them in connexion with the United States proposal (A/CONF.80/C.1/L.38/Rev.1), namely either to recognize the settlement of disputes through arbitration or by recourse to the International Court of Justice in accordance with paragraph 1 of the proposed article, or to exclude compulsory jurisdiction by making the declaration provided for in paragraph 2.

11. For those States which were reluctant to agree to compulsory jurisdiction, adherence to the principle of free choice, which the draft admitted and apparently endorsed, would only be fully achieved by recognizing the need for making recourse to the conciliation procedure imposed by the draft voluntary.

12. In that connexion, it could be stipulated that if negotiation or any other procedure proved unsuccessful, the parties should attempt to settle the dispute by submitting it to conciliation. They should not, however, have a procedure imposed on them whereby certain compulsory elements were introduced, such as the intervention of the International Court of Justice, even in an advisory capacity, particularly since it was open to either party to the dispute to declare unilaterally that it would abide by the recommendations of the report of the conciliation commission.

13. In principle, his delegation agreed with the United States proposal, but considered that for it to gain general acceptance, paragraph 4 would have to make recourse to the conciliation procedure—the detailed rules for which were set out in the annex to the proposed article—subject to the joint wish of the parties. In any event, in order to produce a text which harmonised divergent views, his delegation fully supported the proposal to refer the matter to an *ad hoc* working group as suggested by the representative of the United Kingdom.

14. Nevertheless, having studied the conciliation procedure as proposed, his delegation wished to make a few comments on paragraph 5 of the annex to the United States draft. It conferred on the conciliation commission the power to recommend to the United Nations that an advisory opinion be requested from the International Court of Justice. His delegation felt that it was wrong to confer on a conciliation commission the power to make recommendations to organs of the United Nations. It should be accorded the power "to request" instead of "to recommend".

15. His delegation had several doubts, some as to the practical value of such a faculty in itself, and others of a more serious nature. A request to the International Court of Justice by the General Assembly or the Security Council for an advisory opinion should be a matter for discussion and should be subject to a vote. The decision to request an advisory opinion necessarily implied that such an opinion would be based on the merits of the case in respect of an ongoing dispute between two or more States. And although the Court's opinion might not be binding, the circumstances in which it would be given would weaken the force and nature of its advisory role. In the case of specific dispute, such an opinion would in effect amount to a non-executory judgment.

16. In addition, the opinion handed down would be addressed not to the conciliation commission, but to the United Nations body which had requested it. That gave rise to two questions. Was the United Nations body requesting that opinion to pronounce on it, or was its role to be confined to that of a mere intermediary, conveying the Court's decision to the commission?

17. Moreover, when the commission received the opinion, was it to abide by its terms or would it have the power to depart from them and establish some other basis for conciliation?

18. The possibility of recourse to the International Court of Justice had not been included in the annex to the Vienna Convention on the Law of Treaties and the Argentine delegation felt that the Conference should seek a solution which excluded from the procedure provided for any advisory opinion which in itself was alien to the conciliation method.

19. Mr. AL-OTHMAN (Kuwait) said the United States and Netherlands delegations were to be congratulated on their efforts to provide a possible solution to the problem facing the Conference.

20. The draft convention should form a complete unit, but at present it lacked one element, and that was an article on the settlement of disputes. Paragraph 1 of the United States proposal provided for all possible solutions at world level. Paragraph 2 contained no novel idea, because many international conventions already made the same provision. But it was nevertheless useful, as was the provision in paragraph 3. His delegation could not support paragraph 4, however, and considered that the Conference should adopt the same measures as provided for in the Vienna Convention on the Law of Treaties.

21. The amendment proposed by the Netherlands was similar to article 66 of the Vienna Convention on the Law of Treaties, but it could not be adopted until article 6 and paragraph 3 of article 33 were adopted. He fully supported the proposal by the United Kingdom representative that a text acceptable to all delegations should be worked out by an *ad hoc* working group.

22. Mr. DIENG (Senegal) said that his delegation would be willing to accept the inclusion of provisions or the settlement of disputes in all international conventions, on the express condition that the procedure laid down was pragmatic and took account of the fact that the international community could not, by its very nature, be as rigidly structured as an individual State. It would be a particularly serious omission not to incorporate provisions for the settlement of disputes in the articles under discussion, since most of those articles represented a fragile compromise reached after laborious efforts and were, therefore, likely to give rise to differences of opinion.

23. In view of the requirement for flexibility and pragmatism, his delegation was unable to accept the Netherlands amendment, for it provided for automatic recourse to the International Court of Justice, whereas the States members of the international community were

reluctant to accept the dominion of any organ. Futhermore, since the amendment was limited to articles 6 and 33 of the draft convention, it offered only a partial solution to what was a general problem.

24. The United States amendment represented an ingenious attempt to preserve both the principle of self-determination and that of continuity. He subscribed, however, to the comments of the representative of Italy[8] and of the United Arab Emirates[9] concerning the internal cohesion of the proposal. On the other hand, he did not subscribe to the presumption favourable to the International Court of Justice that the proposal contained. States parties to the future convention should have not only the possibility accorded to them by paragraph 3 of the proposal, but also the possibility of declaring at any time that they did not consider themselves bound by paragraph 1. His delegation was favourably disposed to the principle of recourse to conciliation, providing the parties concerned were able to retain full freedom in the choice of their representatives, the establishment of their mandates, and the schedule for the proceedings.

25. The suggestions concerning conciliation procedure contained in the United States amendment seemed to him, however, to depart too widely from the corresponding provisions of article 65 of the Vienna Convention on the Law of Treaties and of the annex to that instrument. He was not sure that, by the innovations it proposed, the United States delegation had found the best way of simplifying the problem or of obtaining the approval of the Committee. Paragraph 5 of the annex to the United States amendment seemed to provide, albeit in a veiled manner, for automatic recourse to the International Court of Justice, which was something his delegation could not accept. It was also to be noted that the paragraph said nothing specific about the weight which a conciliation commission should accord to an advisory opinion of the Court: was it not likely that the expression of a point of view by such an august body would considerably influence a commission's deliberations? Again the second sentence of paragraph 6 of the annex to the United States proposal represented an innovation, which he was not sure was appropriate, by comparison with the corresponding provision of the Vienna Convention on the Law of Treaties. Subject to those considerations, his delegation considered that the United States proposal could serve as a basis for discussion within an *ad hoc* working group to draft a compromise text.

26. Mr. AL-KHASAWNEH (Jordan) said it was his delegation's belief that international agreements ought to contain provisions for the settlement of disputes and that belief seemed to be shared by a large number of States, as could be seen from document A/CONF.80/5. The need for such provisions in the present draft convention had been felt by at least some of the members of the International Law Commission (A/CONF.80/4,pp. 14-15) and the question at issue within the Committee seemed to be not so much whether the provisions were required, as what their specific nature should be. His delegation agreed with much of what had already been said concerning the particular provisions of the draft articles that were most likely to give rise to disputes.

27. The Netherlands proposal was that which his delegation would ideally like to see in the draft convention. It was reasonable to expect States to show their good faith by accepting that their conduct under agreements that they ratified should be open to third party arbitration and adjudication. But, while its adoption would undoubtedly enhance the effectiveness of international law, the proposal must also be viewed in the light of the requirement to secure the widest possible participation in the future convention, and of the legitimate reservations of States with regard to compulsory jurisdiction, especially in relation to claims of an essentially political nature. He did not agree with the representative of India[10] that disputes relating to the application and interpretation of article 6 and article 33, paragraph 3, could be considered any more political than disputes in fields in which the authority of the International Court of Justice had already been recognized.

28. The United States proposal was worthy of special attention as being the more likely of the two draft articles before the Committee to gain general approval. Paragraph 1 of that proposal presumed that States parties accepted the principle of arbitration and the authority of the International Court of Justice, while paragraph 2 permitted them to refute that presumption at any time. That procedure represented an improvement on the provisions of article 66 of the Vienna Convention on the Law of Treaties. The United States proposal was also quite flexible, in that it made provision not only for arbitration, but also for negotiations and conciliation. He would leave discussion of the details of conciliation procedure to the *ad hoc* working-group which the United Kingdom representative had suggested should be established. He did, however, wish to state his agreement with the view of the representative of the United Arab Emirates that the final version of the article should give preference to recourse to the International Court of Justice over compulsory arbitration unless the parties otherwise agreed.

29. Mr. DUCULESCU (Romania) said that in the view of his delegation, it was very important that the provisions of the convention concerning the settlement of disputes in relation to State succession should be as flexible as possible, so as to take account of the reality of the modern world, which called for co-operation between sovereign States. What was required was a flexible procedure in which States could participate on the basis of their sovereign equality. That requirement could be met by insistence on negotiation as the first of the measures designed to bring about the settlement of any dispute.

30. It was the firm conviction of his delegation that even the most complex problems of international life, whether

[8] *Ibid.*, paras. 30-34.

[9] *Ibid.*, paras. 42-44.

[10] *Ibid.*, para. 10.

economic, political or juridical could and must be settled through negotiation. It was for that reason that his delegation wished direct negotiation between the parties concerned to remain the essential means of settling the differences of opinion relating to State succession.

31. In view of the advantages it offered over other means available to States for the settlement of pending issues, increasing recourse was being had to negotiation. It was therefore with justification that writers on international law referred to a true "principle of the precedence of negotiation". Negotiation—the first of the peaceful means envisaged by Article 33 of the Charter of the United Nations for the settlement of disputes—rightly applied both the concepts of sovereignty and equality of States and those of international co-operation and mutual advantage.

32. In the view of his delegation, the provisions for the settlement of disputes should be drafted so that they reflected the primacy of negotiations and the consensus of the parties to have recourse to every means of settlement.

33. In the light of those considerations, his delegation could not subscribe to the United States amendment. The very interesting draft resolution submitted by the United States in document A/CONF.80/C.1/L.51/Rev.2 had led his delegation to think that its latest amendment would begin by stressing that negotiations were the rule as regards the settlement of disputes. That, at any rate, was what must be done in the draft convention; the primacy of negotiations should be stressed in the body of the instrument while reference to conciliation should be made only, as the representative of Venezuela had suggested, in an optional protocol or annex.[11] If the possibility of recourse to conciliation was specifically mentioned in an article, it would then be necessary to give States parties to the convention the right to enter reservations to the article.

34. While appreciating the efforts of the Netherlands delegation to ensure the settlement of disputes, his delegation realized that it could not accept the proposed text, particularly since it made no provision for the primacy of negotiation and agreement by the parties. For those reasons, he found it unacceptable.

35. He supported the proposal that an *ad hoc* working group should be established to seek generally acceptable wording for a provision on the settlement of disputes.

36. Mr. GILCHRIST (Australia) said he would remind the Committee that his Government had acceded to the Vienna Convention on the Law of Treaties and had accepted its provisions for the settlement of disputes. There was clearly a great need to include in the draft articles under discussion some generally acceptable means of resolving disputes, for, as the representative of the United Kingdom had pointed out, there were at least 17 potential sources of uncertainty and conflict in the present text. Since it must be accepted as a fact of present day diplomatic life that some States had strong reservations about automatic reference to compulsory arbitration, his delegation agreed with that of Brazil that the Netherlands amendment was too rigid to gain general acceptance.[12]

37. The United States proposal, however, allowed for considerable flexibility in its operation, particularly by virtue of paragraphs 2 and 3. His delegation regarded as of great relevance and importance the comments by the United Kingdom representative that the mere existence of machinery for the adjudication of disputes, as an alternative to negotiation, would constitute a powerful incentive for parties to settle their disagreements between themselves by negotiation through the diplomatic channels. With regard to paragraph 2 of the United States proposal, his delegation also agreed with that of the United Kingdom,[13] that it was preferable to create a presumption that States would wish to be bound by paragraph 1 of the proposal unless they declared the contrary. His delegation hoped that the essential parts of the United States proposal would receive widespread support.

38. Such provisions for the settlement of disputes as the Conference might adopt should be an integral part of the future convention, rather than an optional protocol or annex. The representative of the United Arab Emirates had mentioned some valuable precedents in that respect. It should, naturally, be made clear that those provisions would apply equally to all States, whatever the category in which they could be considered to fall under the terms of the Convention.

39. His delegation would be willing to consider improvements to the United States proposal and saw merit in the establishment of a small group for a detailed study of those and any other relevant suggestions. It was convinced that generally acceptable provisions on the settlement of disputes were vital to the effective operation of the future convention.

40. Mr. RANJEVA (Madagascar) said that the question of the settlement of disputes was one of the main questions which arose in relation to the succession of States. It seemed to him that the "clean slate" principle constituted an obstacle to the institution of a mandatory procedure for such settlement, since the imposition of an obligatory course of action would limit the discretion of new States to accede or not to the treaties of their predecessors. That being so, and the necessary principle of the continuity of treaties notwithstanding, the Netherlands proposal must be ruled out as being too rigid. What his delegation would like to see was a very flexible procedure which would take into account both the "clean slate" and the continuity principles, but give priority to the former.

41. Having studied the United States proposal in the light of draft article 6, his delegation considered that it required the international community to make at least an indirect pronouncement on the acceptability under international law of the existence of a new State. It was not clear from the proposal, however, who was supposed to decide on the lawfulness of the succession. The proposal seemed to refer the matter to the International Court of Justice, but he

[11] *Ibid.*, para. 17.

[12] *Ibid.*, para. 57.

[13] *Ibid.*, paras. 18-24.

wondered whether the degree of political acceptance of that body was as yet such that its decisions would be effective. His delegation would have preferred the question of the settlement of disputes to be entrusted not to an institution which had not yet gained universal recognition, but to the international community as a whole, through the mechanism of negotiations, good offices and mediation, and, in the final instance, conciliation.

42. Paragraph 2 of the United States proposal seemed to make of arbitration a residual means of settling disputes and was therefore unacceptable for the same reasons as militated against the reference of disputes to the International Court of Justice.

43. In general, his delegation would prefer the mechanism for the settlement of disputes concerning succession with respect to treaties to be linked directly to the corresponding mechanism in the Vienna Convention on the Law of Treaties. It could see no justification for establishing any special mechanism for the immediate purpose, although it did not exclude the possibility that special provisions might be required when dealing with matters other than treaties. It fully supported the proposal that a special group should be established to see whether a solution might be found to the problem now before the Committee.

44. Mr. BJÖRK (Sweden) said his Government had repeatedly stressed the need to include rules for the settlement of disputes in the draft Convention. The reasons were self-evident but he would mention in particular that there were a number of concepts in the draft Convention which would undoubtedly give rise to disputes and that the Vienna Convention on the Law of Treaties contained similar rules. His Government would therefore have had no difficulty in accepting a mechanism for compulsory jurisdiction when consultation and negotiation failed. The Conference could not close its eyes to reality, however, and in principle, therefore, his delegation supported the United States proposal, which was flexible and was based on the corresponding provisions of the Vienna Convention on the Law of Treaties. It also supported the United Kingdom proposal that an *ad hoc* working group be appointed to draft a text that would meet with general acceptance.

45. Mr. RITTER (Switzerland) said that his Government, which regarded the settlement of disputes as an indispensable complement to respect for the rule of law, favoured a compulsory system of settlement–compulsory both in the sense that a State would be required to accept the institution of proceedings against it by another State, and in the sense that the award or judgment would of necessity be binding. On that basis, he would have had authority to state that his Government supported the proposal which provided for the system that came closest to absolute compulsion. There were, however, certain limits which could not be exceeded and he therefore preferred to say that his Government was prepared to go as far as the international community, as represented at the Conference, could agree to go.

46. The principle of free choice in the matter of settlement of disputes, though eminently worthy, should always remain at the service of an effective settlement and should never be allowed to become an obstacle to it. That meant that, while the parties should be free to choose the means of settlement best suited to a given situation, one party should not be allowed to persist in its preference for a method of settlement that had been tried but had failed. Once that happened, there was an obligation on the parties to seek another method. Moreover, a party should not be allowed to place an obstacle in the way of proceedings by denying the existence of a dispute.

47. Both the United States and the Netherlands proposals were equally acceptable to his delegation, although the former seemed better to reflect the requirements of the existing international community. He noted that the Netherlands proposal provided for a dual régime in respect of disputes, under both paragraphs (*a*) and (*b*), but wondered whether it would not be preferable to provide for a single régime.

48. As to the United States proposal, he shared the view that it was a little unusual in that it offered a choice between conciliation, on the one hand, and arbitration combined with a reference to the International Court of Justice, on the other. Experience had shown that, even where recourse was ultimately had to arbitration or some judicial procedure, conciliation could have great practical value as a first step. The United States proposal might therefore be improved if it were amended to provide that all parties should begin by embarking on a conciliation procedure.

49. The annex to the United States proposal was similar to article 85 of the 1975 Vienna Convention on the Representation of States in their Relations with International Organizations of a Universal Character,[14] an article which incorporated certain amendments introduced by the Swiss delegation with a view to strengthening the text prepared by the International Law Commission and to providing for simple and speedy methods of settling disputes. The question was whether those methods could be transposed beyond the confines of diplomatic law. The achievements of the 1975 United Nations Conference on the Representation of States in Their Relations with International Organizations, and the adoption of article 85 without opposition, nonetheless augured well for the outcome of the present Conference, since they showed that a solution could be reached by both the proponents and the adversaries of compulsory settlement.

50. Paragraph 5 of the annex to the United States proposal had caused some surprise among certain delegations and he too wondered whether such a provision had been included in any other international instrument, prior to the Vienna Convention on the Representation of States in Their Relations with International Organizations of a

[14] For the text of the Convention, see *Official Records of the United Nations Conference on the Representation of States in Their Relations with International Organizations*, vol. II, *Documents of the Conference* (United Nations publication, Sales No. E.75.V.12), p. 207.

Universal Character Convention. The underlying principle had first been introduced in the International Law Commission's draft of the Convention on the Representation of States in Their Relations with International Organizations of a Universal Character. It might therefore be advisable, in the continuing work on the peaceful settlement of disputes, to refer to the International Law Commission's preparatory work in that connexion, with a view to ascertaining its reasoning in the matter and to determining the significance which it had attached to the question.

51. Responsibility for the provisions of the final sentence of paragraph 6 of the annex to the United States proposal, which were also somewhat unusual, rested with the Swiss delegation, on whose initiative special machinery had been devised at the United Nations Conference on the Representation of States in Their Relations with International Organizations for the settlement of disputes in diplomatic law, with particular reference to conciliation procedures as they applied to disputes arising out of the representation of the sending State to an international organization situated in the host State. He would, however, hesitate to say whether such machinery could usefully be extended beyond that particular case.

52. He realized that the United States had not included in its proposal provisions similar to those of paragraph 8 of article 85 of the Vienna Convention on the Representation of States in Their Relations with International Organizations of a Universal Character, providing for any other appropriate procedure agreed by the parties, because the choice between conciliation and arbitration meant that there was now a guaranteed procedure for the settlement of disputes. He none the less considered, particularly where recourse was not had to compulsory conciliation as a preliminary step, that it would be useful to open the way for parties to disputes to adopt the means which seemed most appropriate to them in the circumstances.

53. Lastly, he agreed that the matter should be referred to a special *ad hoc* working group which, he would suggest should be presided over by the Chairman of the Committee.

54. Mrs. DAHLERUP (Denmark) said that, in her Government's view, the draft convention might well give rise to disputes that could not be solved by negotiation. It therefore endorsed the suggestion already made by certain members of the International Law Commission that provision should be included for the settlement of disputes.

55. Since Denmark recognized the compulsory jurisdiction of the International Court of Justice, her delegation would have had no difficulty in supporting the Netherlands proposal. At the same time, it appreciated the pragmatic approach of the United States proposal, which had aroused general interest. It trusted that, on that basis, the proposed *ad hoc* working group would be able to arrive at a satisfactory solution.

56. Mr. YACOUBA (Niger) said that any procedure for the settlement of disputes which embodied elements of coercion would obviously be self-defeating, and he knew of no international convention that made settlement by arbitration or legal proceedings compulsory in the case of a dispute arising out of the interpretation or application of its terms. The United States and Netherlands proposals were therefore a clear exception to the accepted rule that contracting States should be free to choose the procedure which appeared to them to be most suitable. Notwithstanding the saving clause in paragraph 2, the United States proposal would constitute a dangerous precedent and could disrupt the international legal order. It was his delegation's firm view that the future convention should not go beyond the terms of the Vienna Convention on the Law of Treaties so far as the settlement of disputes was concerned. That Convention provided for a faculty—and not an obligation—to choose among several possibilities available to States parties.

57. The conciliation procedure proposed by the United States would have had his delegation's sympathy but for the unduly restrictive character of its terms, in particular paragraph 4 and the second sentence of paragraph 5. However, while his delegation was unable to give its support to either of the two proposals, it was not opposed in principle to the inclusion in the draft convention of provisions for the settlement of disputes and it trusted that the proposed *ad hoc* working group would succeed in drafting a text which took account of the views expressed.

58. Mr. CASTRÉN (Finland) said his delegation agreed that the draft convention contained many vague terms which could give rise to differing interpretations, and that it should therefore be complemented by an adequate mechanism for the settlement of disputes arising out of its application. Negotiation and consultation, though very useful as a preliminary step, were not always successful and it would have been best to provide for compulsory arbitration or legal proceedings. Several States were not ready to adopt that method, however, and it was therefore necessary to think in terms of the less rigid procedure of conciliation.

59. Of the two proposals before the Committee, his delegation preferred that submitted by the United States, which was at once more realistic and more flexible. He noted, however, that paragraphs 4 and 5, and the last sentence of paragraph 6, of the annex to that proposal, relating to a proposed conciliation procedure, had been the subject of some criticism by certain delegations. As those provisions were not particularly important, they could perhaps be deleted. Alternatively, annex A could be replaced by the corresponding provisions of the annex to the Vienna Convention on the Law of Treaties.

60. Lastly, he endorsed the proposal that a small *ad hoc* working group be appointed.

61. Mr. DE VIDTS (Belgium) said his delegation considered it essential, in a convention that sought to codify the law on succession of States in the matter of treaties, to provide for a procedure for the settlement of disputes based on, or similar to, that laid down in the Vienna Convention on the Law of Treaties. It was therefore very much in favour of the proposal to appoint an *ad hoc* working group, which would certainly be able to arrive at an acceptable

solution on the basis of the proposals submitted by the Netherlands and the United States.

62. Mr. AL-NASHERI (Yemen) said he endorsed the remarks of the representative of the United Arab Emirates, and would have great difficulty in accepting either of the proposals submitted by the Netherlands and the United States. He agreed, however, that an *ad hoc* working group should be appointed with a view to finding an acceptable solution.

63. Mr. SMALLWOOD (Liberia) said his country, which had always favoured the settlement of disputes through negotiation, would welcome the inclusion in the draft convention of some mechanism for settlement along those lines. The Netherlands proposal, however, was wholly unacceptable to his delegation for the reasons already stated by other delegations, particularly in regard to paragraph (*a*), which provided for the automatic referral of disputes to the International Court of Justice when settlement through the normal diplomatic channels failed. His delegation, while more sympathetic to the United States proposal, would also have difficulty in accepting paragraphs 2 and 4 of the Annex to that proposal, which set forth a proposed conciliation procedure. It supported the proposal that the question be referred to an *ad hoc* working group and would suggest that the African group be represented by its Chairman, the representative of Niger, or by a person to be appointed by him.

64. Miss GRAINGER (New Zealand), supporting the proposal for the appointment of an *ad hoc* working group, said her delegation considered it vital to include in the draft convention some provision for a dispute settlement procedure. It had no difficulty with the Netherlands proposal but appreciated that that proposal went somewhat further than many delegations could accept. In the circumstances, it considered that the United States proposal offered a reasonable compromise.

65. Mr. NATHAN (Israel) said the inclusion of a dispute settlement clause in the draft convention was an obvious necessity and it sufficed to refer to article 6, article 33 (3) and to the many exception clauses to appreciate only some of the difficulties that were likely to arise.

66. The procedure adopted for the settlement of disputes should be realistic, to take account of the realities of the present-day international community and of its sensitivities, yet at the same time should be as effective as possible. In general, the United States proposal met those requirements.

67. So far as the proposed conciliation procedure was concerned, however, he would have preferred to follow, in whole or in part, the corresponding provisions of the annex to the Vienna Convention on the Law of Treaties, for the following reasons. In the first place, paragraph 1 of the annex to the United States proposal did not provide for the case where a State party to a dispute failed to designate a person to serve as a member of the conciliation commission. That omission could cause the entire conciliation procedure to be abortive; paragraph 4 had been included to fill the lacuna but it too might lead to very unsatisfactory results. Secondly, the last sentence of paragraph 5 which provided for an advisory opinion to be requested of the International Court of Justice, would make the conciliation procedure unduly cumbersome, subject it to consideration by political organs such as the United Nations General Assembly, and introduce certain elements of compulsory third party procedure into the conciliation process by the back door as it were. He did not think that was the intention of the draftsmen. Thirdly, he failed to understand the meaning of the last sentence of paragraph 6. If the conciliation commission decided in favour of one party, that party would undoubtedly abide by its recommendations–but without legal effect, if the losing party did not do likewise. In his view, the corresponding provisions of the Vienna Convention on the Law of Treaties were of a far more forceful character. Furthermore, the annex to that Convention provided for interim measures to be indicated by the conciliation commission and also for third parties to a treaty to be invited to express their opinion before such a commission. Both those provisions were extremely useful and should certainly be included in the draft convention.

68. Lastly, while the Netherlands proposal was deserving of every praise for its idealistic approach, it had to be recognized that the international community was not as yet ready for such far-reaching provisions.

69. Mr. MARESCA (Italy) said he agreed entirely that machinery for the settlement of disputes was, in a sense, a guarantee of the rule of law.

70. The conciliation procedure envisaged differed somewhat from the traditional understanding of that concept, in that it was at once compulsory, in the sense that the parties would be required to bring their dispute before a conciliation commission, and also optional, in the sense that the findings of the commission would not be binding on the parties although they would have considerable moral force.

71. The CHAIRMAN said that, if there was no objection, he would take it that the Committee agreed in principle to the appointment of an *ad hoc* working group to consider the inclusion in the draft convention of a provision on the settlement of disputes. The exact composition of the *ad hoc* working group could be decided at the beginning of the following week.

It was so agreed.

The meeting rose at 6.10 p.m.

46th MEETING

Monday, 7 August 1978, at 10.40 a.m.

Chairman: Mr. RIAD (Egypt)

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

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

[Agenda item 11] (*continued*)

PROPOSED NEW ARTILCLE 39 *bis* (Settlement of disputes)[1] (*continued*)

1. Mr. POEGGEL (German Democratic Republic) said that, in principle, his delegation supported the idea that States should be under an obligation to settle any disputes regarding the application or interpretation of the Convention by peaceful means. In the light of the fundamental principles of international law, in particular the sovereign equality of States and their obligation to co-operate with one another in peace and settle their disputes by peaceful means, it would be helpful to include in the Convention provisions imposing on the parties to a dispute an obligation to hold consultations and resort to a conciliation procedure. Provisions of that kind were to be found in other conventions, either as an integral part of the instrument itself or as an optional protocol, and the relevant articles of the Vienna Convention on the Representation of States in their Relations with International Organizations of a Universal Character[2] could provide a useful basis for discussion.

2. His delegation was not in a position to support the Netherlands proposal (A/CONF.80/C.1/L.56), because it doubted whether it was proper to authorize only one party to a dispute concerning the interpretation or application of the Convention to seek a binding decision from the International Court of Justice. Moreover, the number of States which accepted the compulsory jurisdiction of the International Court of Justice had fallen to 45, or less than a third of all States. The United States proposal (A/CONF.80/C.1/L.38/Rev.1), on the other hand, was more flexible and deserved further discussion, though his delegation would prefer a procedure that was already more or less accepted internationally. That was one reason why it was in favour of following the model of the Vienna Convention on the Representation of States in their Relations with International Organizations of a Universal Character.

3. Lastly, his delegation supported the idea of setting up a small working group to examine the various proposals and draft a new article.

4. Mr. SCOTLAND (Guyana) said he thought delegations were bound to have different views on the subject under consideration; for while some States were reluctant to be confined within a system that would govern the settlement of future disputes without knowing what the future held in store for them, others argued for a régime to which they could have recourse and which offered some certainty as to the course for settling any dispute arising under the Convention. It was also clear that no delegation wished to exclude the possibility of recourse to the diplomatic channel. His own delegation considered that any system for the settlement of disputes adopted within the framework of the Convention should take account of the following elements. The principle of the consent of States should be applied at all stages of the procedure and it should be stressed that the best way of settling disputes was through the diplomatic channel. Account should also be taken of the situation in which one party to a dispute was in a weaker position than the other, so one of the parties should not be allowed to accept the recommendations of a conciliation commission and apply them unilaterally. If the party in the weaker position continued to reject the recommendations of the conciliation commission, a return to direct negotiations might be the best method of settling the dispute once and for all. But it was obvious that, in any situation, the absence of any dispute-settlement faculty would be prejudicial to the weaker party. The same was also true where the dispute-settlement faculty provided neither for automatic and compulsory recourse to judicial proceeedings nor for compulsory implementation of the decisions given by the body to which the disputes was referred. However, it was obvious that the international community had not reached a degreee of maturity which would lead it to adopt provisions to that effect as a matter of course in treaties such as the draft under consideration.

5. The delegation of Guyana was in favour of a system for the settlement of disputes by third parties, but considered that not all disputes lent themselves to that treatment; since international legal procedure was such that it precluded consideration of non-legal factors having a bearing on the case, it should be made clear in article 39 *bis* that the dispute in question was a legal one before referring it to a judicial body, even though the body might always give a preliminary ruling on the legal or non-legal character of the dispute. The machinery for settlement of disputes provided for in the convention should therefore take account of the fact that the diplomatic channel was the principle means of settlement and must remain open to the parties if other means of settlement failed. It must also reflect the need for the consent of the parties to the procedure envisaged and take account of the possibility that three categories of disputes might arise: legal, political and mixed i.e., legal and political, nothwithstanding the fact that a legal dispute might be influenced by political considerations. Lastly, a party should not be entitled to apply unilaterally a recommendation which was not binding on the parties and had not been accepted by the other party.

6. Examining the United States proposal paragraph by paragraph, he said that paragraph 1 was not entirely satisfactory, because it made no distinction between disputes which might be settled by arbitration and those which might not. He also doubted whether notification of one party by the other was really sufficient for the submission of a dispute to arbitration; if it was, he was not sure that the arbitration procedure would yield successful results. He felt that the same weakness was inherent in

[1] For the amendments submitted, see 44th meeting, foot-note 3.

[2] See 45th meeting, foot-note 14.

authorizing one party to refer a dispute unilaterally to the International Court of Justice. Paragraphs 2 and 3, on the other hand, raised no difficulties. The conciliation procedure provided for in paragraph 4 could lead to a settlement only if all parties to the dispute agreed to have recourse to it. Paragraph 1 of the annex to the Convention, proposed by the United States delegation raised no problem for the delegation of Guyana, and paragraphs 2 and 3 called for no comment. With regard to paragraph 4, however, he could remember several cases in which the decisions taken by a conciliation commission under those conditions had not had the expected effect, and he must once again stress the principle of the consent of the parties. Paragraph 5 posed several questions for his delegation: What would be the relationship between the conciliation commission and the United Nations? To which organ of the United Nations would the conciliation commission apply for transmission of its request for an advisory opinion to the International Court of Justice? In what form would it submit its request? Would the request be submitted on behalf of the parties? And what would be the role of the conciliation commission after the International Court of Justice had delivered its advisory opinion? Would the Commission accept that opinion, disregard it or deviate from it? His delegation could not agree to disputes being referred to the International Court of Justice in that way. Paragraph 6 contained some positive elements: the six-month time-limit, in particular, would make for quick settlement. While it was wise to provide that the recommendations of the conciliation commission would not be binding on the parties, it was totally unacceptable to his delegation to provide that one of the parties could unilaterally accept and implement the commission's decisions.

7. Those comments also applied to the Netherlands proposal. He was not sure that subparagraph (*a*) dealt correctly with the problems which might be raised by article 33, paragraph 3, regarding the reference of disputes to the International Court of Justice. Could the Court rule on the circumstances in which a new State had entered international life? The lack of any objective criterion for determining whether a State had attained independence under the same conditions as a newly independent State would give rise to serious difficulties.

8. Lastly, he thought it would be useful to set up a small working group to consider the elements which should be included in the system for the settlement of disputes and reach a compromise.

9. Mr. MUDHO (Kenya) said that the problem of the settlement of disputes was not peculiar to the draft Convention: both the Charter of the United Nations and that of the Organization of African Unity contained explicit provisions on the matter, as also did the Vienna Convention on the Law of Treaties. But the authors of the proposals under consideration had pointed out that those provisions could not be reproduced in the draft convention, because it contained certain concepts, such as incompatibility with the object and purpose of the treaty, which were so formulated that differences in interpretation would be inevitable. For that reason, the attitude of certain delegations to the draft convention eventually adopted, including that of the Kenyan delegation, would depend largely on the system adopted for the settlement of disputes.

10. His delegation recognized that there was a problem which it was the duty of all delegations to solve in a satisfactory manner. Consequently, in a spirit of compromise, it lent its full support to the United Kingdom representative's suggestion, that an *ad hoc* working group be set up to study the problem and submit recommendations to the Committee. His delegation was willing to contribute to the efforts made to find a satisfactory solution; but if they were to commend themselves to as many delegations as possible, any recommendations made to the Committee must take account of the legitimate concerns of all States and the facts of the modern world. The solution would probably be similar to the proposal made by the United States delegation, which, although unacceptable to his delegation its present form, nevertheless provided a better basis for discussion than the Netherlands proposal, which was too idealistic to merit serious study. Lastly, he fully endorsed the views expressed by the representative of Guyana on the various aspects of the two proposals submitted.

11. Mr. LUBIS (Indonesia) said that, like the United States and Netherlands delegations, he considered it necessary to include a system for the peaceful settlement of disputes in the future convention, as in any other convention, and he commended the efforts made by those two delegations in that direction.

12. Having carefully studied the United States proposal and the Netherlands proposal, he had come to the conclusion that, if it were necessary to choose between them, he would favour the former, because the Netherlands proposal was more rigid and tended to neglect political realities, whereas the United States proposal allowed the States parties to a dispute concerning the interpretation or application of the convention more room to manœuvre. Paragraph 1 of the United States proposal dealt with the various stages of the procedure to be followed in the peaceful settlement of disputes before having recourse to the International Court of Justice. Paragraph 2 contained a reservation clause which, in his delegation's opinion, was very important and should be included in the future convention and in every other convention.

13. His delegation's basic objection to the United States proposal was that it led eventually to the compulsory jurisdiction of the International Court of Justice, which his Government was not yet able to accept, save in very special circumstances. His Government's position was that, for any dispute to be submitted to international arbitration, the consent of both parties thereto must be secured first, as provided for in the peaceful settlement clauses of the Treaty of Amity and Co-operation in South East Asia, signed in Bali in February 1976.

14. It was because the United States proposal would allow a dispute to be submitted to arbitration without the prior consent of both parties that his delegation was unable

to support it. Nevertheless, it supported the United Kingdom representative's suggestion that a working group be set up to examine the question. Whatever new draft was proposed by that group, his delegation hoped that it would include the reservation clause contained in paragraph 2 of the United States proposal.

15. Mr. MAIGA (Mali) said he believed that a procedure for the settlement of disputes should be provided for in the future convention, as some members of the International Law Commission had already suggested. But he did not think disputes should be submitted to compulsory arbitration by the International Court of Justice, since the Court's arbitration rules were based on the legislation of the advanced countries and were not suitable for newly independent countries. In his opinion, priority should be given to conciliation, as the Italian representative had very rightly said, and a solution should be sought which took account of the various legal systems in force in the international community, for it was only thus that international law would be able to serve the interests of the different members of that community.

16. Mr. YANGO (Philippines) said he considered it necessary to provide for a procedure for the settlement of any disputes that might arise out of the interpretation or application of the convention. The Philippines, which had been one of the first States to sign the Charter of the United Nations and had accepted the compulsory jurisdiction of the International Court of Justice, had always adopted, in the various organs of the United Nations, a position resolutely in favour of the peaceful settlement of disputes. The question of the peaceful settlement of disputes was one of the most important items now under consideration by the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization, and his delegation trusted that the General Assembly would hold a special session on that question. It was accordingly grateful to the delegations of the United States and the Netherlands for having submitted proposals concerning a procedure for the peaceful settlement of disputes. It hoped that the working group set up to examine those proposals would arrive at a positive solution in keeping with the Vienna Convention on the Law of Treaties and acceptable to all States.

17. Mr. KOROMA (Sierra Leone) said that, as the International Law Commission had observed in paragraph 52 of its introduction to the draft articles, "The task of codifying the law relating to succession of States in respect of treaties appears, in the light of State practice, to be rather one of determining within the law of treaties the impact of the occurrence of a 'succession of States' than *vice versa*", and consequently, "in approaching questions of succession of States in respect of treaties, the implications of the general law of treaties have constantly to be borne in mind." The International Law Commission had further stated that "As today the most authoritative statement of the general law of treaties is that contained in the Vienna Convention on the Law of Treaties (1969), the Commission felt bound to take the provisions of that Convention as an essential framework of the law relating to succession of States in respect of treaties" (A/CONF.80/4, p. 9).

18. He believed that articles 65 and 66 of the Vienna Convention on the Law of Treaties provided a sufficient *modus operandi* for the settlement of disputes that might arise out of the application of the future convention. Although the Vienna Convention had not yet been ratified by all States, no delegation had been opposed, in principle, to article 65 of that Convention. He would suggest that the emphasis should be on conciliation—even on compulsory conciliation—which was the emerging trend in regard to settlement of disputes in the various United Nations fora.

19. The different methods of settling disputes all had their advantages and disadvantages, and in choosing between them it was necessary to consider what States were prepared to accept at the present stage of international relations. The method of compulsory conciliation was in itself an important development in settlement procedure, and that would seem to be what the majority of States were prepared to accept at the present time. It therefore seemed preferable to keep to the provisions of the Vienna Convention on the Law of Treaties.

20. The delegation of Sierra Leone supported the proposal that a working group should be set up to study the question of settlement of disputes and find a generally acceptable solution.

21. Mr. ROVINE (United States of America) thanked members of the Committee for their comments and suggestions, and assured them that his delegation would take account of all the views expressed. He was sure that the working group would reach a solution acceptable to the great majority of delegations.

22. With regard to direct negotiation, his delegation fully endorsed all that had been said on the value of that method, which was the one most frequently used and preferred by the great majority of States. It was to that method that recourse should be had in the first instance, and his delegation would have no objection to stressing that point in paragraph 1 of article 39 *bis*. It did seem necessary, however, to provide for another procedure, in case the negotiations failed.

23. Some delegations thought it necessary to establish a hierarchy in the methods of settlement of disputes by providing, first, for negotiation; secondly, for conciliation; thirdly, for arbitration; and, lastly, for reference to the International Court of Justice. In his view, however, such a classification would give rise to difficulties, since it would imply, in the last resort, compulsory reference to the International Court of Justice, which most delegations were unable to accept. He pointed out that the United States proposal did not provide for compulsory arbitration or for compulsory reference to the International Court of Justice and that, under paragraph 2 of article 39 *bis*, a dispute could only be submitted to arbitration or referred to the International Court of Justice for a decision with the consent of the parties. He recognized that the international community was not yet ready to accept compulsory

arbitration, but thought it was necessary to move in that direction.

24. Referring to the question raised by the representative of Zaire, concerning the application of paragraph 2 of article 39 *bis* in the case of a uniting of States covered by article 30,[3] he said that if State A united with State B, there would be no problem if both States had made a declaration under paragraph 2 or if neither of them had done so. A problem would arise only if State A had made a declaration, but State B had not. But in that case the successor State A-B was free to choose, and could negotiate a settlement with the other parties to the Convention.

25. In conclusion, the United States delegation was willing to seek a compromise solution within the working group the Committee had decided to set up.

26. The CHAIRMAN proposed that consideration of article 39 *bis* should be suspended until the *Ad Hoc* Group on Peaceful Settlement of Disputes set up to study that article had completed its task, and that the Committee of the Whole should resume consideration of aricle 37 *bis*.

It was so agreed.

PROPOSED NEW ARTICLE 37 *bis* (Objections to succession)[4] (*concluded*)*

27. Mr. NATHAN (Israel) said that the new version of article 37 *bis* would make a valuable contribution to the provision of machinery for the application of the convention in regard to one of its most complex subjects, namely, objections to succession to a treaty. Unlike those delegations which considered that such a provision would be unnecessary if there was an article on the settlement of disputes, his delegation believed that article 37 *bis* was useful, since it was intended to settle specific questions. In the absence of a procedure under which States would be obliged to give notification of their objection, it would be difficult to know whether a particular treaty was in force or not. It should be noted that all objections did not necessarily give rise to disputes. One example was the objection raised in regard to the participation of Malawi in the European Convention for the Protection of Human Rights and Fundamental Freedoms, which was referred to in paragraph 11 of the International Law Commission's commentary to article 16 (A/CONF.80/4, p. 57).

28. It seemed to him that in so far as the article referred to an objection made by the successor State, it concerned the case of succession to a treaty within the context of part IV of the draft; under part III, a newly independent State became party to a treaty only by notification of succession. If that were indeed so, it should be made clear in the text of article 37 *bis*.

29. Articles 31 and 37 provided for a procedure whereby notification had to be made to the depository, if there was one, and he saw no reason for departing from that principle in article 37 *bis*.

30. Since not all objections would necessarily impose an obligation to engage in negotiations or consultations, or even to have recourse to traditional methods of the settlement of disputes, the other States parties should first of all set a time-limit for rejection of the objection. If it was not rejected, the treaty should cease to apply as between the objecting State and the State or States which had not rejected that objection. It was only in the event of rejection of the objection that the procedure of negotiation or consultation should be initiated.

31. Mrs. SLAMOVA (Czechoslovakia) said she thought article 37 *bis* raised difficulties, even in its new version (A/CONF.80/C.1/L.37/Rev.2). The article was linked with the provisions of part IV and constituted an exception to the application of the principle of continuity, but, its wording suggested that it also applied to part III. If that were so, it would impair the "clean slate" principle and the freedom of every newly independent State to decide for itself whether or not it wished to participate in the treaties of the predecessor State.

32. Article 37 *bis* also raised difficulties in regard to procedure. In short, it created more problems than it solved, so her delegation could not support it.

33. Mr. CHUCHOM (Thailand) pointed out that a State could be required to co-operate in the performance of a treaty to which it was not a party, and that that treaty could be the subject of a succession between two other States. It followed that it should be possible for an objection to succession to a treaty to be made not only by a State party, but also by a third State. Consequently, the words "party or parties", in paragraph 2 of draft article 37 *bis*, should be deleted.

34. Mr. NAKAGAWA (Japan) said his delegation would support the proposed new article 37 *bis*, which would improve the draft Convention.

35. Mr. BRECKENRIDGE (Sri Lanka) said that, in his view, article 37 *bis* upset the balance between the "clean slate" rule and the principle of continuity. That article, like the article on the settlement of disputes, concerned the right to challenge a succession. Both were important, especially from the political point of view, but they had already been discussed at length and should perhaps be put to the vote. It would be helpful if the Expert Consultant could explain why the International Law Commission had not proposed an article on objections to succession.

36. Mrs. SAHOOLY (Democratic Yemen) said she was convinced that article 37 *bis* would raise more problems than it would solve, because it introduced subjective criteria. It would allow any State which was a party to treaties to decide individually whether succession of a State to those treaties was incompatible with their object and purpose and whether such succession would radically change the conditions of their operation. Article 37 *bis* was therefore unacceptable.

[3] See 44th meeting, para. 46.

[4] For the amendments submitted, see 43rd meeting, foot-note 9.

* Resumed from the 44th meeting.

37. Mr. MAIGA (Mali) said that the future Convention should confirm the process of decolonization. Article 37 *bis* not only upset the balance of the draft, but dealt with a question which the International Law Commission had left aside. Since the article could be invoked at any time, it constituted a further element of instability in relations between States. Consequently, it was unacceptable.

38. Mr. SCOTLAND (Guyana) drew the attention of representatives to the three examples of application of the principle of incompatibility which the International Law Commission had cited in its commentary to article 16 (A/CONF.80/4, pp. 57-58). No doubt that enumeration was not exhaustive, but any other examples that might be given must at least be of a similar nature. None of the cases which the International Law Commission had had in mind seemed susceptible of judicial settlement, but his delegation believed they could be settled peacefully by other means. If succession to a treaty gave rise to objections, it would be the States parties to that treaty which would exclusively assert the right to arrive at a settlement. He did not believe that States parties to a treaty-régime as sensitive as one which contemplated an exclusive membership would permit the question of membership in that régime to be the subject of judicial scrutiny and binding judicial decision.

39. An analysis of paragraph 1 of the proposed new article revealed the following: notification of an objection must be given in writing; that such notification could be given by the successor State or any other State party to the treaty; and that an objection or the rejection of an objection must be made within twelve months from the date of the succession.

40. It was normal practice for a State wishing to give such notification to ensure that all the other parties to the treaty were informed of its intention, either directly or through the depository, and to give its notification in writing. The procedure to be followed was laid down in article 77, paragraph 1 (*c*), and article 78, subparagraph (*a*), of the Vienna Convention on the Law of Treaties. Articles 21 and 37 of the draft gave further particulars concerning the notification of succession. He felt confident that the same procedure would be followed by States in notifying an objection.

41. According to paragraph 1 of article 37 *bis*, an objection to succession to a treaty could be notified by the successor State or by the other States parties. That provision was dangerously ambiguous. Why would a successor State object to a notification of succession? It could do so, of course, only if it had been informed that it had succeeded to a treaty and did not agree. That situation might arise for a State which came into being by separation from another State, but his delegation did not see how it could arise for a newly independent State. Among the articles of parts III and IV of the draft that contained saving clauses on incompatibility or radical changes, in all but two, the initiative lay with the successor State, either to become a party to a treaty or ratify it, or to give notification of succession. In all the articles of part III, the successor State was seen as expressing its consent to become a party to treaties without any assistance from the States that were already parties. An exception was to be found in part IV, in articles 30 and 34, which concerned the uniting and the separation of States respectively. There was a presumption that treaties continued to be applied. It was only in the cases covered by those two articles that the other States parties could notify the new State, or a State which continued to exist after separation of part of its territory, that the application of a particular treaty would be incompatible with its object and purpose or would radically change the conditions of its operation. Paragraph 1 of the article 37 *bis* was unacceptable since it treated the cases coming under parts III and IV of the draft in the same way, and his delegation remained opposed to any attempt to merge the ideas contained in those two parts.

42. Finally, paragraph 1 of article 37 *bis* set a time-limit of twelve months from the date of the succession of States for notification of an objection by the successor State and, it would appear too, a time-limit for the rejection of an objection. Except in article 28, concerning the termination of provisional application, paragraph 3 of which provided that reasonable notice for such termination was twelve months, the International Law Commission had carefully avoided specifying time-limits. During the Conference only the two amendments relating to article 16 had given rise to a discussion on time-limits, but those amendments had been withdrawn, for it had been acknowledged that fixed time-limits would cause hardship. It could take a State, particularly a newly independent State, a very long time to review all of the predecessor's treaties that applied to its own territory, in order to determine which of them it wished to maintain in force. For those reasons, his delegation considered that the time-limit specified in paragraph 1 of article 37 *bis* was unacceptable.

43. Paragraph 2, which concerned recourse to consultation and negotiation, presented no difficulty, but his delegation reserved its position on paragraph 3 pending the outcome of the discussion on article 39 *bis*.

44. Mr. RANJEVA (Madagascar) said that the new version of article 37 *bis* was an improvement, in so far as an objection to succession to a treaty did not put an end to relations between the successor State and the other States parties, but obliged them to negotiate. But that improvement was not enough, for the notion of an obligation to negotiate implied that the decision of a successor State to become a party to a particular treaty was open to discussion. If article 37 *bis* was finally adopted, its application should be made subject to rigorous conditions.

45. Mrs. BOKOR-SZEGÖ (Hungary) endorsed the opinion of the delegation of Czechoslovakia. It was not clear whether the United States proposal was intended to apply only to part IV of the draft, or to part III as well, in which case it was unacceptable. In view of the links between the proposed articles37 *bis* and 39 *bis*, it might be advisable to suspend consideration of article 37 *bis* until the *ad hoc* group set up to study article 39 *bis* had completed its work.

46. Sir Francis VALLAT (Expert Consultant), replying to the delegation of Mali, said that the International Law Commission had not considered the question of objections to succession. As could be seen from paragraphs 80 and 81 of its introduction to the draft articles (A/CONF.80/4, p. 15), the International Law Commission had been willing to consider the question of the settlement of disputes at its 27th session and would no doubt have examined the question of objections at the same time, but the General Assembly had decided not to wait any longer before convening the Conference.

47. Mr. PÉREZ CHIRIBOGA (Venezuela) said that, when the United States delegation had submitted its draft article 37 *bis*, the Venezuelan delegation had supported it, because it had considered that the proposal did not introduce any new principle or call accepted principles in question. It still believed that the idea contained in the proposed article was good and should be embodied in the convention. In view of the difficulties raised by paragraph 1, however, the Committee would certainly not be able to approve the article as it stood, and it should perhaps be redrafted by its sponsor. His delegation reserved its position on paragraphs 2 and 3 until a decision had been taken on paragraph 1.

48. It might perhaps be easier to find a solution if the title of the draft article were amended so that it no longer referred to objections, but, for example, to participation in a treaty signed by the predecessor State, when a State considered that there would be incompatibility with the object and purpose of the treaty.

49. Mr. VREEDZAAM (Suriname) said he believed that an objection to succession to a treaty could be made only if the treaty itself so provided. Adoption of the United States proposal would only add to the existing difficulties in matters of succession. His delegation could not support the proposal and suggested that it should be referred to the *ad hoc* group set up to study draft article 39 *bis*.[5]

50. Mr. MARESCA (Italy) said he did not share the doubts expressed by many delegations concerning the proposed article 37 *bis*. It was a procedural article that was quite appropriate in the draft.

51. As to the question whether the proposed article applied to all cases of succession, its position in the draft clearly showed that it would not apply to cases in which the successor State was a newly independent State and that it in no way affected the application of the fundamental "clean slate" principle to such States.

52. Paragraph 2 of the draft article was not superfluous, for as the representative of Madagascar had pointed out, it stated a new obligation: when an objection had been made, a State party could not simply reject it, but must enter into consultations and negotiations.

53. Some speakers had held that the successor State had no reason to make an objection to succession. On the contrary, in the cases covered by articles 30, 31 and 35, where the principle of *ipso jure* continuity applied, the successor State must be able to raise an objection when it considered that succession was incompatible with the object and purpose of the treaty or would change the conditions of its operation.

54. Paragraph 3 was not superfluous either, for an objection was not a dispute, even though it might give rise to a dispute. Paragraph 3, which provided that the general procedure for the settlement of disputes should be applied if no solution was reached within a period of twelve months, was entirely logical.

55. Mr. KOROMA (Sierra Leone) said that his delegation was still opposed in principle to article 37 *bis*, which would have the effect of depriving newly independent States of the benefit of application of the "clean slate" rule. Even admitting, for the sake of argument, that the article was useful, it still raised difficulties. Part IV of the draft convention, particularly the provisions relating to the uniting of States, was predicated on the principle of the continuity of treaty relations. What would happen if, after two States had agreed to unite, one of them, which had not been a party to a particular treaty, found a reason for objection to succession to that treaty which was not one of th two reasons specified in article 37 *bis*, but fell under part II, section 2, of the Vienna Convention on the Law of Treaties? Might not the proposed new article have a restrictive effect in that case? Would not the other parties to the treaty be able to invoke the principle that the mention of one or two texts implied the exclusion of the other? If so, why should only two grounds for objection to a succession be specified in article 37 *bis*? And if the grounds stated in part II, section 2, of the Vienna Convention on the Law of Treaties were considered valid in that context, what was the use of adopting article 37 *bis*?

56. Mr. AL-KHASAWNEH (Jordan) said he had been glad to hear the Expert Consultant confirm his delegation's impression that there was a link between draft articles 37 *bis* and 39 *bis*. He therefore supported the proposal by the representative of Hungary that consideration of article 37 *bis* should be suspended until the *ad hoc* group had completed its examination of article 39 *bis*.

57. Mr. DOGAN (Turkey) said that while he appreciated the efforts made by the United States delegation, he thought it would be preferable to adopt a settlement procedure that was applicable to all disputes, rather than try to find a specific solution for each individual case. The objections which his delegation had raised concerning 39 *bis* also applied to article 37 *bis*.

58. Mr. ECONOMIDES (Greece) supported the proposal that article 37 *bis* should be referred to the *ad hoc* group set up to study article 39 *bis*.

59. Mr. ROVINE (United States of America) thanked those delegations which had taken part in the discussion on the proposed new article 37 *bis*. As the proposal (A/CONF.80/C.1/L.37/Rev.2) had not received sufficient

[5] See 45th meeting, para. 71.

support, his delegation withdrew it, while expressing hope that when objections to succession to a treaty were actually made, the States concerned would settle the matter by negotiation and that, if the negotiations failed, they would apply the procedure for settlement of disputes which his delegation hoped the Conference would adopt.

60. The CHAIRMAN asked the delegations concerned whether they wished to maintain their proposal that article 37 *bis* should be referred to the *ad hoc* group set up to study article 39 *bis*.

61. Mr. GÖRÖG (Hungary) and Mr. VREEDZAAM (Suriname) replied that, since the United States delegation had withdrawn draft article 37 *bis*, they withdrew their proposal.

The meeting rose at 1 p.m.

47th MEETING

Monday, 7 August 1978, at 4.05 p.m.

Chairman: Mr. RIAD (Egypt)

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

[Agenda item 11] (*continued*)

PROPOSED NEW ARTICLE 40[1]

1. Mr. STUTTERHEIM (Netherlands), introducing his delegation's proposed new article 40 (A/CONF.80/C.1/L.57), said that several articles of the draft convention laid down the same rules as the Vienna Convention on the Law of Treaties, 1969. But in the course of its discussions, there had been cases where the Committee had not deemed it necessary to restate the rules but had, as in article 19, cited the specific rules of the Vienna Convention which were applicable. He would remind the Committee, that, during the discussion on that article, he had proposed that the Drafting Committee be asked to add a rule about objections to objections.[2] The Drafting Committee had discussed the matter but had not deemed it necessary to change the wording of article 19. It had stated in its report that general international law, and particularly the rules set out in the Vienna Convention,[3] were applicable.

2. Article 73 of the Vienna Convention on the Law of Treaties (1969) could be interpreted as excluding the application of that Convention to a succession of States. That was why his delegation had submitted its amendment. The text merely set out the idea and if the Committee approved it, the Drafting Committee could improve the wording. It might, for example, be preferable to say that the rules of the 1969 Vienna Convention would be applicable, since it was not impossible that a State which was not a party to the 1969 Vienna Convention might become party to the convention under consideration.

3. Mrs. BOKOR-SZEGÖ (Hungary) said that the essential point of the Netherlands amendment was that it filled the gaps in the draft convention in cases where a problem arose which was linked with the law of treaties and was not covered by the provisions of the present draft. Nevertheless, for purely legal reasons, her delegation could not support the proposal.

4. It might be anticipated that in the future there would be many cases of application of the present draft convention affecting States which were parties to it but were not bound by the Vienna Convention on the Law of Treaties. In the interests of legal clarity, it would therefore be a mistake to refer in general terms in a special article of the present draft convention to another convention when the parties to the two conventions were not identical. Certain provisions of the present draft convention already mentioned specific articles of the Vienna Convention. However, the idea underlying the Netherlands amendment could be inserted into the preamble of the draft convention. Thus, the preamble might refer on the one hand to customary international law relating to the law of treaties, and on the other hand, it might mention the existence of the Vienna Convention. Both concepts must appear in view of the fact that the Vienna Convention did more than merely codify the existing customary rules on the subject. She therefore hoped that the Netherlands and other delegations would consider her suggestion, particularly bearing in mind paragraphs 52 and 54 of the International Law Commission's introduction to the draft articles (A/CONF.80/4, pp. 9-10).

5. Mr. MONCAYO (Argentina) said that in preparing the present draft convention, the International Law Commission had filled a gap in the codification of international law which had been explicitly left by article 73 of the Vienna Convention of the Law of Treaties. In his delegation's view, there was no reason why the Conference, having settled individual rules, should not decide that the Vienna Convention would govern any matters which were not otherwise provided for. The Netherlands amendment merely generalized the criterion embodied in article 19, paragraph 3, in its reference to articles 20 to 23 of the Vienna Convention. In general terms, therefore he could support the Netherlands amendment. There was, however, one point which required clarification. The reference to the Vienna Convention on the Law of Treaties implied that the general rule of interpretation for the present draft convention would be that embodied in articles 31 to 33 of the Vienna Convention. The basic rule was that contained in

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[1] The Netherlands submitted an amendment proposing the insertion of a new article 40, A/CONF.80/C.1/L.57.

[2] *Official Records of the United Nations Conference on Succession of States in Respect of Treaties*, vol. I, *Summary records of the plenary meetings and of the meetings of the Committee of the Whole*, p. 198, 28th meeting, para. 32.

[3] *Ibid.*, pp. 236-237, 35th meeting, paras. 16-23.

paragraph 1 of article 31, namely, that a treaty should be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose. That criterion made it possible, notwithstanding the ancillary applicability of the Vienna Convention, for the solution of situations not provided for in the present draft convention to be sought first in accordance with its own rules before being referred to the Vienna Convention.

6. The draft convention did not consist of a series of exceptions to the rules laid down in the Vienna Convention on the Law of Treaties: on the contrary it was a coherent set of rules to be applied in conformity with its own terms and in the light of its own object and purpose. The fact that the Vienna Convention specifically excluded succession of States from its purview indicated that it was a special subject where principles such as self-determination and equality of States should be taken into account as well as the principle of continuity. Any automatic reference to the Vienna Convention would detract from the independence of the present draft and might prevent a solution in harmony with the latter's own rules–a result which would be contrary to the correct interpretation of article 31 of the Vienna Convention itself. Therefore, while supporting the Netherlands amendment, he would suggest for the consideration of the Drafting Committee that the word "specific", which appeared in that amendment, be deleted and that language be inserted to the effect that the solution of any problem in connexion with a treaty arising out of a succession of States should, in the absence of a relevant provision in the present convention, be referred to the Vienna Convention only after it had proved incapable of solution when the treaty concerned was interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the convention in the light of its object and purpose.

7. Mr. YASSEEN (United Arab Emirates) said that in his view the Netherlands amendment was unnecessary in respect of the rules of customary international law embodied in the Vienna Convention on the Law of Treaties. What was more important, however, was that it misrepresented the position with regard to the new rules established by that Convention.

8. It was true that rules of customary international law continued to govern those matters for which there were no specific provisions. Several codification conventions made reference to that practice in a paragraph of their preambles. That example should perhaps be followed, and a paragraph set aside for that purpose at the end of the preamble.

9. However, what was more important was that the amendment misrepresented the position as regards the new rules established by the Vienna Convention on the Law of Treaties. Those rules had the force of conventional rules only. Moreover, the Vienna Convention on the Law of Treaties was not yet in force and, even if it were, the principle *res inter alios acta* implied that such rules would apply only to States parties to the Convention, and it was possible that the States which might become parties to the Convention being prepared by the Conference might not be the same as those that were parties to the Vienna Convention on the Law of Treaties.

10. Mr. ECONOMIDES (Greece) said that the comprehensive reference to the Vienna Convention on the Law of Treaties proposed by the Netherlands was tantamount to incorporating it in the draft convention to the extent that it supplemented the latter. Such a step caused no difficulties to his delegation since Greece was already a party to the Vienna Convention, but it might well do so for States which were not bound by that Convention and which therefore might not wish to see the incorporation of those of its provisions that were binding only on States parties to it; articles embodying customary international law were of course binding on all. He therefore appreciated the arguments which had been put forward by the representatives of Hungary and the United Arab Emirates. However, it might be possible in the present draft convention to supplement the general reference to customary international law which was usual in codification conventions by the statement that those rules of customary law relating to treaties codified in the Vienna Convention would govern any matters not covered in the present convention. He hoped that such a provision would meet the point raised by the Netherlands representative.

11. Mr. PÉREZ CHIRIBOGA (Venezuela) said that, in his delegation's view, the proposed new article would be either unnecessary or unduly restrictive, paradoxical though that might seem. If it was unnecessary, then, as pointed out in particular by the representative of the United Arab Emirates, there was obviously no point in including it in the draft convention.

12. He was, however, more concerned that the proposal perhaps went too far and could thus give rise to difficulties for those countries, such as Venezuela, which had not signed and ratified the Vienna Convention on the Law of Treaties. As his delegation had repeatedly stressed, it was essential when seeking to legislate to have constantly in mind that the aim was a viable international instrument, capable of commanding a wide measure of support among Governments with a view to its ultimate signature and ratification. Consequently, while not denying the importance of the Vienna Convention or of its relationship with the draft convention, his delegation considered it extremely important to ensure, so far as possible, that the fact that a country had difficulty in becoming, or did not wish to become, a party to the Vienna Convention should not debar it from becoming a party to the convention being prepared by the Conference. In that connexion, the Hungarian representative's suggestion that a reference be included in the preamble rather than in the body of the articles seemed to offer an acceptable middle-of-the-road solution.

13. Mr. TREVIRANUS (Federal Republic of Germany) said that the general considerations involved in the complex topic of the relationship between the Vienna Convention

on the Law of Treaties and the draft convention were set forth in paragraphs 53-56 of the International Law Commission's introduction to the draft articles (A/CONF.80/4, pp. 9-10). Under article 73 of the Vienna Convention, which had purposely been drafted in very general terms, the provisions of that Convention did not apply to questions relating to succession of States as such. In other words, the rules laid down in the draft convention would be *lex specialis*. That distinction, however, though sound in itself, would not suffice to resolve all the doubts that would arise from the simultaneous application of both conventions.

14. A list compiled by his delegation of articles in the draft convention bearing some relationship to the provisions of the Vienna Convention—which list included articles 1-5, 7, 8, 10 (paragraph 2), 11, 13 and 14, and the escape clauses scattered throughout the draft—showed that, despite a number of cross-references, the nature of the relationship was not always clear, and he doubted whether it would be possible, in a simple formula, to define the relationship between the two conventions. Indeed, it would seem inadvisable to seek to do so in a draft convention which, in his view, should be seen as an instrument embodying rules that were *lex specialis* vis-à-vis the Vienna Convention rather than an all-embracing work of codification. The International Law Commission had wisely refrained from such a concept and had been supported in that approach by delegations. On that basis, he would suggest that a provision along the following lines might be included in the preamble to the draft convention:

> Noting that under article 73 of the Vienna Convention on the Law of Treaties the provisions of that Convention shall not prejudge any question that may arise in regard to a treaty from succession of States, and that accordingly questions that may arise in regard to a treaty from a succession of States and covered by specific provisions of the present Convention are not governed by the Vienna Convention on the Law of Treaties.

15. Mr. RANJEVA (Madagascar) said that, so far as the substance of the Netherlands proposal was concerned, he feared that a general reference to the Vienna Convention on the Law of Treaties might discourage those States which did not wish to participate in the Vienna Convention from acceding to the present draft convention. He noted that the last paragraph of the preamble to the Vienna Convention provided that the rules of customary law would continue to govern questions not regulated by its provisions. In other words, the rules on succession of States prevailing at the date on which the Vienna Convention was adopted would continue to be governed by customary law. Once those rules had been codified, however, the question could arise whether they derogated from the Vienna Convention.

16. Fot that reason, while he was grateful to the Netherlands delegation for seeking to fill a possible legal lacuna, he considered that it would be preferable to couch any such provision in more general terms, and to provide that any question that might arise in regard to a treaty from a succession of States for which the draft convention did not lay down any specific provisions should be referred not to the Vienna Convention on the Law of Treaties but to the relevant provisions of the law of treaties. That would encompass both customary law and the provisions of the Vienna Convention.

17. He would also suggest that the Netherlands and Hungarian representatives be requested to study the best way of resolving the problem, from the technical point of view, and that the question then be referred either to the Committee, for a brief discussion, or to the Drafting Committee.

18. Mr. PAPADOPOULOS (Cyprus) said that hitherto States, in their arguments for or against State succession, had referred to rules of customary international law and in some cases, including that of his own country, even to general principles of international law. Consequently, since the Vienna Convention on the Law of Treaties codified the rules of customary international law, his delegation believed that a general reference to its terms was desirable. It could therefore support the idea contained in the proposed new article, provided that some suitable wording was worked out in the Drafting Committee. As to the placing of such a reference in the present convention, his delegation was prepared to abide by any consensus that might emerge from a discussion on that point.

19. Mr. MARESCA (Italy) said that the Netherlands proposal was to be welcomed on two grounds. First, it had the noble aim of filling a lacuna—noble because, in terms of international law, any lacuna was a mortal sin. Secondly, it constituted an act of faith in the Vienna Convention on the Law of Treaties. It had been said that the Vienna Convention had still not come into force and that many States would never become parties to it in any event. But the Vienna Convention was not the isolated treatise of some jurist, divorced from reality. It existed; and, even had his country not ratified that Convention long since, it could never have ignored it. The Vienna Convention, like all other conventions agreed by the United Nations, was a legal reality; it formed an integral part of existing international law and constituted an authority of the highest moral order. The draft convention could therefore not be considered apart from the Vienna Convention.

20. The proposed new article was, however, defective on a technical point. Although it provided for a purely formal *renvoi*, as opposed to a material *renvoi*, the complexities of that doctrine as it applied in the field of conflict of laws were only too well known. One of the dangers was *renvoi* into the void. That, unfortunately, was the case with the proposed new article, for article 73 of the Vienna Convention on the Law of Treaties meant in effect that that Convention abdicated all responsibility in the matter. It was doubtful whether *renvoi* was possible in those circumstances. It had been suggested that a suitable reference to customary law should instead be included in the preamble. That was a tried and trusted method but there was more to the modern law of treaties than customary law, and to confine a reference in the preamble to customary law alone would be to meet the problem only half way. Consequently, he would agree that the Netherlands proposal should be recast, omitting any mention of the Vienna Convention, to refer in general terms to the law of treaties,

or alternatively, that a wider reference to the law of treaties, taking account of modern realities, should be included in the preamble.

21. Mr. KOROMA (Sierra Leone) said that, while his delegation sympathized with the spirit of the Netherlands proposal, it had certain doubts as to its necessity and validity. Assuming that States A and B were parties both to the Vienna Convention on the Law of Treaties and to the convention being prepared by the Conference, and that the dispute in question could not be resolved under the terms of the latter, the parties would naturally turn to the Vienna Convention. If that did not provide the answer, then presumably they would have recourse to the rules of customary international law, as provided for in the preamble to the Vienna Convention. If that thinking were correct, would it not be simpler to provide that disputes which could not be resolved under the treaty would continue to be governed by the rules of customary international law? That point was further strengthened in the case where States A and B were parties to the convention being prepared by the Conference but not to the Vienna Convention, or where only one was a party. Obviously, in such cases, the rule embodied in article 34 of the Vienna Convention would apply.

22. His delegation considered that, instead of including a separate article in the draft convention to cover the point, it would be preferable to follow the approach adopted in the Vienna Convention and refer to the matter in the preamble.

23. Sir Francis VALLAT (Expert Consultant) said that, while he hesitated to intervene in such an important discussion, the occasion was perhaps one which required the veil of the formal report of the International Law Commission to be drawn aside so that delegations could have some insight into the thinking behind it.

24. The question raised in the Netherlands proposal had not been considered formally by the Commission but, as would be seen from Section 4 of the introduction to the draft articles (A/CONF.80/4, pp. 9-10), members had given very serious thought to the matter, and much discussion of the topic had taken place privately and also informally in the Drafting Committee. He himself had been very much in favour of an article along the lines of that proposed by the Netherlands but the more he had discussed the concept with his colleagues the more he had become convinced that it would be virtually impossible to draft such an article without tearing the delicate fabric of the relationship between the draft convention and the general law of treaties. It was not without relevance that Section 4 of the Commission's introduction to the draft articles was entitled "Relationship between succession in respect of treaties and the general law of treaties", for the question involved the draft convention's relationship not only to the Vienna Convention but also to customary law and possibly to other treaties to which parties to the draft convention would likewise be parties. Consequently, it was the majority view in the Commission that some extremely complicated drafting would be required to deal with that relationship satisfactorily by way of a normative rule that could be included in the draft convention. Many members did consider, however, that the idea might be expressed in the preamble, but it was not the Commission's practice to undertake the task of drafting preambles for future conventions.

25. Lastly, as an indication of the lines along which members of the Commission had been thinking, he would refer the Committee to paragraphs 52-56 of section 4 of the introduction to the draft articles and, in particular, to the first sentence of paragraph 54, the second, third and last sentences of paragraph 55 and to the last sentence of paragraph 56 (*ibid.*).

26. Mr. MAKAREVICH (Ukrainian Soviet Socialist Republic) said his delegation agreed that the proposed new article was not altogether necessary. It also considered that it would bind States that were not parties to the Vienna Convention on the Law of Treaties. Moreover, its terms were already covered by article 5 of the draft convention, which referred parties to the convention to general rules of international law. That article was entirely acceptable to his delegation which was therefore unable to support the Netherland's proposal.

27. Mr. ARIFF (Malaysia) said that the Netherlands proposal apparently sought to link the draft convention to the Vienna Convention on the Law of Treaties, and had the laudable aim of filling a lacuna. None the less, he had to agree with the representative of the United Arab Emirates that it would serve no useful purpose, particularly in view of the terms of article 3 of the Vienna Convention.

28. Sir Ian SINCLAIR (United Kingdom) said that the Netherlands proposal had given rise to a very interesting debate, from which two main points had emerged. First, it would clearly be difficult, as a matter of treaty law, to state in the body of the draft convention that any situation arising in relation to a treaty from a succession of States for which the draft convention did not specifically provide would be governed by the Vienna Convention on the Law of Treaties. That was so because the States which agreed to be bound by the draft convention might not be the same as those which had accepted the Vienna Convention on the Law of treaties. Secondly, considerable thought must be given, in connexion with the formulation of the preamble to the draft convention, to the rather delicate question of the relationship between customary and treaty law. The Committee would have to bear in mind in that respect the principle laid down by the International Court of Justice, in the *North Sea Continental Shelf Cases*,[4] that, in certain circumstances, and in certain very closely defined conditions, particular types of multilateral treaties could generate rules of customary international law. It must also bear in mind that the Court, in its advisory opinion in the

[4] North Sea Continental Shelf, Judgment. *I.C.J. Reports 1969*, p. 3.

Namibia case[5] and in its judgments in the *Fisheries Jurisdiction* cases[6] had said that certain provisions of the Vienna Convention on the Law of Treaties were generally to be regarded as declaratory of general international law. The preamble must indicate the precise relationship between customary international law, those rules of general international law that were embodied in the Vienna Convention on the Law of Treaties, and the rules in the draft convention itself. In other words, it would be desirable and, indeed, necessary to state in the preamble that any question arising from a succession of States in respect of treaties that was not specifically governed by the draft convention should be considered as subject to the rules of customary international law, including any relevant provisions of the Vienna Convention.

29. Mr. MIKULKA (Czechoslovakia) said that his delegation saw no need for an article such as that which was now proposed. In view of the provisions of article 73 of the Vienna Convention on the Law of Treaties, the proposed article 40 could only be a source of uncertainty. Furthermore, if the Vienna Convention became in general a subsidiary text to the draft convention, which would be the case if the Netherlands proposal were adopted, the necessary division between the field of succession in respect of treaties and the field of treaty law would be lost. The Vienna Convention on the Law of Treaties could be applied only to questions concerning that law, and not to matters connected with the law of succession, the rules of which were often different from those in the Vienna Convention.

30. Mr. STUTTERHEIM (Netherlands) said that his delegation would not have made its proposal had it been aware of the difficulties which the International Law Commission had encountered in trying to draft a similar article. The basic reason why the proposal had been made was his delegation's fear that it might one day be claimed that a rule in the Vienna Convention could not be applied to State succession. In view of the apparent general agreement that the Drafting Committee should discuss that point in connexion with the preamble to the draft convention, his delegation formally withdrew its proposal.

31. The CHAIRMAN said that, if there was no objection, he would take it that the Committee agreed that the Drafting Committee should attempt to cover the point raised by the Netherlands proposal in the preamble to the draft convention.

It was so agreed.

ARTICLE 33 (Succession of States in cases of separation of parts of a State)[7] *(continued)**

32. The CHAIRMAN invited the Committee to resume its consideration of article 33, with the assistance of the Expert Consultant.

33. Sir Francis VALLAT (Expert Consultant), referring to the clarifications concerning paragraph 3, which the representative of Zaire had requested[8] of the Committee, said that the problem posed by the paragraph was not one of deciphering its wording as such, but rather of prophesying in what cases the provision would apply. As with any treaty provision, the paragraph must be interpreted in the context of the treaty as a whole and, in particular, of the article in which it appeared. Article 33 concerned the treaty relations of the successor State or States formed when part or parts of a State separated from it. Paragraphs 1 and 2 of the article had to do with the continuity principle and exceptions to it, while paragraph 3 set aside that principle in favour of the "clean slate" principle. The essential balance in the draft convention was between those two principles, and the International Law Commission had considered it desirable to adhere to one or other of them in particular cases, and not to try to innovate.

34. While that was clear, problems arose with paragraph 3 when it came to the test for cases in which the "clean slate" principle would apply, for that test was not clearly defined: since the draft convention in general held that the "clean slate" principle would apply to newly independent States, paragraph 3 not unnaturally stated that it would also apply "in circumstances which are essentially of the same character as those existing in the case of the formation of a newly independent State".

35. The key to how the International Law Commission had come to adopt that position lay in what, in 1972, had been articles 27 and 28,[9] and in the reservations which some members of the Commission had expressed to the then article 28, paragraph 2. The former article 27 had concerned the dissolution of a State and had applied the continuity principle in the event of such dissolution. The former article 28 had concerned the separation of part of a State and had, in its second paragraph, applied the "clean slate" principle to a new State emerging from such a separation, which had been considered as being in the same position as a newly independent State. However, some members of the Commission had questioned whether paragraph 2 should apply automatically and in all cases to the separated State and had reserved their position on that point until the Commission had received the views of Governments.[10] Some Governments had indeed raised

[5] Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970), Advisory Opinion. *I.C.J. Reports 1971*, p. 16.

[6] Fisheries Jurisdiction (United Kingdom v. Iceland), Jurisdiction of the Court, Judgement. *I.C.J. Reports 1973*, p. 3, and Fisheries Jurisdiction (Federal Republic of Germany v. Iceland), Jurisdiction of the Court, Judgment. *I.C.J. Reports 1973*, p. 49.

[7] For the list of amendments submitted, see 40th meeting, foot-note 9.

* Resumed from the 42nd meeting.

[8] See 41st meeting, para. 60.

[9] *Yearbook of the International Law Commission, 1972*, vol. II, pp. 230 *et seq.*, Document A/8710/Rev.1, chap. II, sect. C.

[10] *Ibid.*, p. 298, article 28, para. 12 of the Commentary.

doubts concerning the soundness of the concept contained in the former article 27 and of the distinction between cases made in the former articles 27 and 28. Of those articles, article 27 had been largely based on old precedents in relation to the union of States, while the Commission had found little State practice in the United Nations period to serve as a basis for article 28.

36. In those circumstances, the International Law Commission had concluded, at its 26th session (A/CONF.80/4, pp. 104-106), that there was no distinction of principle between dissolution and separation of part or parts of a State and that the distinction which had been considered to exist in that respect had been based on out-moded terminology and was not in accordance with either the modern constitutional structure of States or current doctrine. The Commission had, therefore, rearranged the subject-matter of the former articles 27 and 28 in the present articles 33 and 34, which laid down uniform rules for all cases of separation. It had decided that, in instances of separation, there was, in principle, always a continuation of the legal nexus between the new State and the territory which had existed prior to the succession, and that it would therefore be contrary to the doctrine of the sanctity of treaties to apply the "clean slate" principle except in special circumstances. Such circumstances would arise if a territory which was not technically dependent secured its independence from the rule of the imposing Government in circumstances comparable to those of the formation of a newly independent State.

37. The commentary to article 33 and 34 (*ibid.*, pp. 99-106) showed that most of the examples of separation prior to the United Nations era concerned States which had emerged from a colonial or quasi-colonial situation, and that most cases of separation in the United Nations period concerned States which had emerged from a colonial, trusteeship or protected status through the gateways of Chapters XI and XII of the Charter of the United Nations. He submitted that, in the body of practice and law which had developed in the field, at least some guidance could be found for rules to be applied to States formed in the circumstances to which article 33, paragraph 3, referred. It would be invidious to give specific examples, but it should be clear that there might be cases, such as that in which a State emerged after a long struggle for independence, in which it would be contrary to nature to apply the principle of continuity.

38. He was conscious of the imperfections in the drafting of article 33, paragraph 3, as proposed by the International Law Commission and would welcome suggestions for its improvement. He would, however, regret any reversion to the doctrine which the International Law Commission had adopted in 1972, and in particular any return to the universal application of the "clean slate" principle that had been advocated in the former article 28, paragraph 2.

39. Mr. PÉREZ CHIRIBOGA (Venezuela) asked the Expert Consultant whether there was any particular reason why the first of the similar exceptions mentioned in article 30, paragraph 1 (*a*), and article 33, paragraph 2 (*a*), would apply if "the other State party or States parties" so agreed, whereas the second of those exceptions would apply if "the States concerned" so wished. Did the term "the States concerned" include States which, for some reason or other, had an interest in the treaty in question, but which were not parties to it?

40. Mr. KASASA-MUTATI (Zaire) said that, following the Expert Consultant's explanation of the reasons behind the proposal made in article 33, paragraph 3, his delegation felt that its fears that the inclusion of that provision in the draft convention would be tantamount to incitement to secession within even a unitary State were at least partly justified. He therefore wished to know what would be the effect on the draft convention if that provision were deleted.

41. Sir Francis VALLAT (Expert Consultant) said that he could not recall any particular reason for the difference in working mentioned by the representative of Venezuela, although a similar difference had existed between the former articles 27 and 28. He suggested that the matter be investigated by the Drafting Committee and that that body refer the question to the Committee of the Whole if it considered the discrepancy to be based in any way on grounds of substance.

42. As to the question put by the representative of Zaire, his personal view was that, if the principle of continuity was to apply in all cases of separation, there would be some cases in which article 33 would be unworkable. The exception provided in paragraph 3 of that article was necessary to cater for cases similar to that in which a territory broke away from a parent State or cases in which it would, as he had already said, be contrary to nature to apply the continuity doctrine.

43. Mr. KOH (Singapore) said he would remind the Committee that, as he had pointed out,[11] Singapore was a practical example of the application of the exception provided for in article 33, paragraph 3.

44. Mr. USHAKOV (Union of Soviet Socialist Republics), observing that paragraph 1 of article 33 stated that the article would apply "whether or not the predecessor State continues to exist", asked the Expert Consultant for his personal opinion concerning the need for paragraph 3 of the article in the event of the complete dissolution of a State. Would not the retention of that provision have the effect of extending the "clean slate" principle to all parts of the predecessor State?

The meeting rose at 6.05 p.m.

[11] See 42nd meeting, para. 21.

48th MEETING

Tuesday, 8 August 1978, at 11 a.m.

Chairman: Mr. RIAD (Egypt)

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

[Agenda item 11] (*continued*)

ARTICLE 33 (Succession of States in cases of separation of parts of a State)[1] (*continued*)

1. Sir Francis VALLAT (Expert Consultant), replying to a question put by the representative of the Soviet Union,[2] said that from the wording of article 33 and the commentary to it, it was clear that paragraph 3 was not intended to apply to the case where a predecessor State ceased to exist. Consequently it would not apply to the case of dissolution of a State. In paragraph 32 of its commentary to article 33, the International Law Commission had stated: "By contrast with cases under paragraph 1 where the predecessor State may or may not survive the succession of States, in cases to which paragraph 3 applies, the predecessor State would always continue to exist." (A/CONF.80/4, p. 105).

2. Mr. ROVINE (United States of America) said that his delegation had fully supported paragraphs 1 and 2 of article 33 but had expressed doubts about paragraph 3. Those doubts had been confirmed by the discussion on the article. Paragraph 3 presented difficulties from the theoretical viewpoint, from the political viewpoint and from the viewpoint of secession generally.

3. From the theoretical viewpoint, the "clean slate" principle, as conceived by the International Law Commission, seemed to be based essentially on the concept of consent. Since a colonial territory had not necessarily given its consent to be bound by the treaties applicable to it, other States could not, once that territory had acceded to independence, insist on their treaty rights. In that case, the application of the "clean slate" principle was only just. Logically, the circumstances in which the treaties had been concluded should have been taken into account but that would have constituted interference in the domestic affairs of States. For that reason, the International Law Commission had found itself obliged to shift the emphasis to another question, that of the circumstances in which a part of a State separated and became a State. That was an easier question, but it was perhaps not the right one. In his delegation's view, paragraph 3 did not really square with the "clean slate" concept as it appeared in articles 15 to 29. To take his own country as an example, during the period following the creation of the United States of America, it was the South which provided the leadership of the country and negotiated international agreements. Eighty-five years later, the South had separated from the Union in circumstances which, it could be argued, were essentially of the same character as those existing in the case of the formation of a newly independent State. Should the rest of the international community then have forgone its rights, although it was in fact the South which had concluded the treaties whose objections it now wished to evade?

4. From the political viewpoint, it might be considered that it was not realistic that a successor State should be bound by the treaty obligations of the predecessor State, as the Expert Consultant[3] had observed at the previous meeting. But neither was it just that a great number of States should lose their treaty rights. Thus a very serious choice had to be made. Perhaps it was better to be unjust to one State than to a very large number of States.

5. From the viewpoint of secession in general, it was obvious that paragraph 3 of article 33 was not intended to encourage the separation of parts of a State. Nevertheless, it had the effect of making secession a little easier for the seceding State in the event of a secession of that kind. Consequently, the question might be asked whether the Conference could adopt a provision which would facilitate secession in the case of separation of parts of a State.

6. For those three reasons, and unless some very convincing arguments were put forward in support of paragraph 3, his delegation would vote against it, if it was put to the vote.

7. Mr. DOGAN (Turkey) said he would like the Expert Consultant to explain the purpose of paragraph 3 of article 33 in the light of the following question: could the States which had emerged after the First or the Second World War invoke that provision? Would States which had become independent through separation of part of the territory of a State enjoy the benefit of the "clean slate" rule, irrespective of the date of their accession to independence and the way in which they had become independent?

8. If article 33 was put to the vote, each of its paragraphs should be voted on separately.

9. Sir Francis VALLAT (Expert Consultant) said that, under the non-retroactivity rule laid down in article 7, paragraph 3 of article 33 would not apply to States which had become independent after the First or the Second World War. On the other hand, it might be that part of the territory of a State which had thus acceded to independence might secede, in which case article 33 would apply.

10. The rule stated in paragraph 3 of article 33 was not based either on established practice or on precedent; it was a matter of the progressive development of international law rather than of codification. Paragraph 3 of article 33 was thus a saving clause for the application of the continuity principle. It was for the Conference to decide whether to retain the provision or not.

[1] For the list of amendments submitted, see 40th meeting, foot-note 9.

[2] See 47th meeting, para. 43.

[3] See 47th meeting, paras. 33-37.

11. Mr. RYBAKOV (Union of Soviet Socialist Republics) said that, with the exception of article 33, paragraph 3, the articles drafted by the International Law Commission had been generally well received by the Committee of the Whole and had not given rise to any lengthy discussions. When the International Law Commission had drafted paragraph 3 of article 33, substantial differences of opinion among its members had become apparent. Some had expressed doubts as to the usefulness of the provision. Those doubts, which he shared, had not been dispelled by the explanations given by the Expert Consultant. He was more than ever convinced that in some cases the paragraph could do harm. Moreover, it was completely at variance with the general trend of the draft with regard to the respective spheres of application of the "clean-slate" rule and the continuity principle. In the case of Singapore, it was to be noted that the "clean slate" rule had been applied to the treaties of the British Empire with the exception of the Malaysian treaties. All the problems which had arisen at Singapore had been settled as provided in article 15 of the draft. It might be considered that paragraph 3 of article 33 was unnecessary.

12. There was an internal contradiction in article 33 between paragraphs 1 and 2 on the one hand and paragraph 3 on the other. Paragraphs 1 and 2 provided one and the same régime for cases of separation of a part of the territory of a State or dissolution of a State, whereas paragraph 3 provided a totally different régime for cases of separation of a part of the territory of a State. But the distinction between dissolution and separation was very difficult to draw and was bound to give rise to disputes between States. It was to be feared that the case dealt with in paragraph 3 would cause a great many difficulties in practice. Furthermore, the paragraph did not cover the case where a part of the territory of a State separated from it in order to unite with a newly independent State. In preparing its draft on succession of States in matters other than treaties, the International Law Commission had reconsidered those questions of the various types of succession and discussed them at great length. They were too delicate for the Committee of the Whole to think of settling them at the present stage of its work. In the circumstances, his delegation could only endorse the view of those delegations which thought that paragraph 3 of article 33 raised more problems than it solved and should consequently be deleted.

13. Mr. VREEDZAAM (Suriname) said that before acceding to independence in 1975, in circumstances essentially of the same character as those existing in the case of a formation of a newly independent State, his country had been first a Dutch colony and then a part of the Kingdom of the Netherlands. Paragraph 3 of article 33 would have been applicable to the succession of States caused by the accession of Suriname to independence; furthermore the "clean slate" principle had been applied in that case. Consequently, he fully supported paragraph 3.

14. Mr. SHEIKH (Pakistan) said that the discussion showed that paragraph 3 deserved careful thought. Most delegations already appeared to be in favour of deleting it. In the circumstances, each paragraph of article 33 should be voted on separately. His delegation's amendment to paragraph 3 (A/CONF.80/C.1/L.54) dealt specifically with the case where an independent State separated into two States, like Pakistan and Bangladesh. His delegation would not press its amendment if paragraph 3 were deleted.

15. Mr. SAHOVIĆ (Yugoslavia) said that his delegation found article 33 acceptable, although it appreciated the difficulties paragraph 3 could cause for certain delegations. The reason why the International Law Commission had included article 33 was to take account of the variety of circumstances in which a part of the territory of a State might separate and become a State, for the future convention must deal with all the practical problems that might arise. Not only was paragraph 3 an exception to paragraph 1, it was a genuine saving clause. The International Law Commission had been right to provide, in paragraph 3, for the exceptional application of the "clean slate" rule. Perhaps the wording of the paragraph was not entirely satisfactory and the Drafting Committee could improve it.

16. Mr. DIENG (Senegal) said that his delegation had already expressed its support for paragraphs 1 and 2 of article 33 and its doubts regarding paragraph 3.[4] The conditions in which a part of the territory of a State separated from it to become a State on its own continued to cause problems. Nowhere in either the draft convention or the commentaries of the International Law Commission was any detailed information provided about the circumstances referred to in paragraph 3. In the absence of a clear description of those circumstances, paragraph 3 rather lent itself to varying and conflicting interpretations. Whereas in the third and fourth parts of the draft it was quite clear to what cases the "clean slate" and the *ipso jure* continuity principles applied, the situation appeared to be very confused in paragraph 3, which established a third, hybrid, category of States, quite distinct from that of States emerging as a result of decolonization and that of States born of the separation of a part of the territory of a State. In his opinion, it was impossible to produce a clearer text, because the situation was itself confused. The paragraph should therefore be deleted. He supported the proposal for a separate vote on paragraph 3.

17. Mr. AHIPEAUD (Ivory Coast) said he agreed that paragraph 3 could encourage separation and secession and injure the rights of creditors. He endorsed the arguments put forward against the retention of the paragraph and would vote for its deletion.

18. Mrs. BEMA KUMI (Ghana) said that if paragraph 3 were deleted, it would not harm the convention as a whole in any way. If they tried to cover all possible cases of succession of States, they would create more problems than they could solve. Paragraph 3 did not directly encourage secession, but there was no doubt that it would facilitate matters for separatists once they had achieved their aim.

[4] See 41st meeting, paras. 43-46.

They could easily reject obligations imposed on them by treaties, particularly economic treaties, on the pretext that the part of the territory which had seceded had become a newly independent State, and consequently was not bound by such treaties. It was clear that the problem was more of a political one, but as the case of newly independent States was dealt with in article 15, paragraph 3 could easily be deleted.

19. Mr. YANGO (Philippines) said the argument that paragraph 3 of article 33 could encourage secession was a very powerful one, and very damaging, because it was not the policy of members of the United Nations to encourage secessions. His delegation would therefore vote accordingly. His delegation asked that, when the separate vote was taken on paragraph 3, it should be by roll-call. Also paragraph 3 would have to be voted on before the amendment by Pakistan.

20. Mr. BRECKENRIDGE (Sri Lanka) said he regretted that the International Law Commission had used an analogous description in paragraph 3 of article 33. If, as the Expert Consultant had said, the situation dealt with in that provision had the characteristics of a colonial, trusteeship or protected territory and of a dependency which had had a prolonged struggle for independence, it might be wondered whether it was the analogy or the action itself that was under discussion. Was not the situation of such territories in fact identical with that of the newly independent States to which the "clean slate" principle applied?

21. The General Assembly in its resolution 1541 (XV) had indicated the forms in which the decolonization process could be completed: the emergence of a territory as a sovereign independent State, free association with an independent State, or integration with an independent State. The act of separation was never mentioned and was subsumed in the emergence of the State, no matter what the form or method of the emergence. Separation in that context was dealt with in Part III of the draft convention. It was a pity that the General Assembly had not given any precise guidance in the matter. If the International Law Commission had examined the question in the light of those considerations, it would not have established that unfortunate link between the provisions on the separation of States in section 5 of Part III of the draft articles (Newly independent States formed from two or more territories) and section 3, and the confusion would have been avoided.

22. The International Law Commission had endeavoured to balance the "clean slate" principle against that of continuity, and it had been no part of its task to determine when decolonization had taken place. That, however, was what their analogy in paragraph 3 of article 33 led to, and it did no service at all to the States in that situation, Singapore and Bangladesh, for example.

23. The Expert Consultant had drawn the Committee's attention to the fact that the International Law Commission had not only sought to codify existing practice, but to contribute to the progressive development of international law. But what was the progressive development that resulted? It was clear from the comments by Singapore and Bangladesh that those countries had applied the "clean slate" principle. The analogy drawn in paragraph 3 was not needed therefore and only served to emphasize the danger of secession, which was not the point, so that States hesitated to endorse the paragraph.

24. Resolution 742 (VIII) dealt with the circumstances in which Administering Powers were obliged under article 73 (*e*) of the Charter of the United Nations to provide information on the Territories they administered. In the annex to the same resolution, the General Assembly had also attempted to define the factors to be taken into account in deciding whether a territory was or was not a Territory whose people had not yet attained a full measure of self-government. On the subject of paragraph 3, of article 33, Bangladesh, among other States, had pointed out (A/CONF.80/5, p. 255) that a definition of newly independent State was needed in article 2, which would cover all cases. Resolution 742 (VIII) referred to the independent conduct of international relations as a characteristic of independence. That aspect of the question might have to be looked at at the appropriate time in relation to article 2.

25. Mr. SANYAOLU (Nigeria) said he would like to ask the Expert Consultant whether or not the formulation by the International Law Commission of the rule in paragraph 3 of article 33 took account of the definition of newly independent State given in draft article 2.

26. Mr. MARESCA (Italy) said he recognized that paragraph 3 of article 33 was open to controversy but he did not entirely share the fears expressed by many delegations during the discussion. A legal text could never provoke a revolution or start a civil war. The real weakness of paragraph 3, and the reason why the Italian delegation hesitated to support it, was that it was illogical, as there was an absolute contradiction between the paragraph as it stood and the definition of newly independent State given in paragraph 1 (*f*) of article 2. Take the case of an island which separated from the territory of a State; could that island, which until its independence had participated in the policy-making and diplomacy of the country to which it had belonged, be placed on the same level as a newly independent State? Those were the reasons why, from the very beginning of the discussion on article 33, he had not been able to support paragraph 3.

27. Sir Francis VALLAT (Expert Consultant), replying to the question by the representative of Nigeria, said that the International Law Commission had not endeavoured to put States emerging as a result of the separation of a part of the territory of another State and newly independent States on the same level, and had confined itself to drawing an analogy, clearly recognizing that the situation was not the same. He would draw attention to the last part of paragraph 32 of the International Law Commission's commentary to paragraph 3, where it was stated that "in cases to which paragraph 3 applies, the predecessor State would always continue to exist. That was implicit in the idea of "dependency" which provided the key to the meaning of "newly independent State" as defined in article 2, paragraph 1 (*f*)" (A/CONF.80/4, p. 16). The International Law

Commission had not intended that to cover the dependent nature of the part of the territory of a State which had seceded, but to indicate that, in some circumstances, the part which had seceded could be in a situation comparable to that of a newly independent State. The International Law Commission had therefore suggested including an escape clause in the continuity rule.

28. Mr. FARAHAT (Qatar) said that the discussion had revealed the concern felt by delegations at the exception to the "clean slate" principle in the case of separation of a part of the territory of a State, in paragraph 3 of draft article 33. That paragraph was liable to prejudice the stability of international commitments. Perhaps the Drafting Committee should review the wording and study the cases in which States formed by the separation of a part of the territory of a State were in a similar position to that of newly independent States.

29. Mr. ARIFF (Malaysia) said he thought paragraph 3 of article 33 was superfluous since it was self-evident. He was therefore in favour of deleting it.

30. Mr. MAHUNDA (UnitedRepublic of Tanzania) said he had no difficulty in accepting paragraph 3 of article 33. However, he had noticed that most delegations were against it and he wondered whether it was wise to seek to impose on some States a provision which they found unacceptable. Consequently, he was in favour of deleting paragraph 3.

31. Mr. AL-NASHERI (Yemen) said that he would vote against paragraph 3 of article 33 if it was put to the vote.

32. Mr. KOH (Singapore) said he thought that, if paragraph 3 of article 33 were deleted, some other way would have to be found of providing for the type of situation covered by that paragraph. He was grateful to the representative of the Soviet Union for saying that Singapore could regard itself as a newly independent State and benefit from the provisions of article 15. But he must point out that, according to the definition given in article 2, paragraph 1 (*f*), newly independent State meant "a successor State the territory of which immediately before the date of the succession of States was a dependent territory for the international relations of which the predecessor State was responsible". He would like to ask the Expert Consultant whether, in the light of that definition, the Soviet representative's interpretation held good.

33. Mr. FONT BLÁZQUEZ (Spain) said that the cases to which the International Law Commission referred in its commentary to articles 33 and 34 were very clear cases of separation from a union of States and not of separation of a part of the territory of a unitary State. In the cases quoted, therefore, practice justified the continuity rule set out in subparagraphs (*a*) and (*b*) of paragraph 1 of article 33. But the cases referred to in the title itself of article 33, and in the opening lines of paragraph 1 of the article, were not cases of separation from a union of States, but cases of separation of one or more parts of a State. Consequently, the rule which applied in those cases was the "clean slate" rule. Nevertheless, the International Law Commission had introduced the continuity rule for such cases in paragraph 3. Indeed, it was clear that if the Commission had retained the continuity rule solely for cases of separation from a union of States and the "clean slate" rule solely for cases of separation of parts of a State, paragraph 3 would have been superfluous.

34. Mr. GILCHRIST (Australia) said he understood the viewpoint of the representative of Singapore and saw some value in retaining paragraph 3 of article 33. In his opinion, the International Law Commission had introduced the paragraph into the draft in order to make provision for situations which had already arisen or which would arise in the future. In so doing, it had acted in accordance with its brief which was to codify existing customary law and to formulate rules to deal with all succession problems likely to arise. It had established a logical distinction between the "clean slate" rule, which applied in the Part III of the draft and the *ipso jure* continuity rule, which applied in Part IV. But exceptions to rules were inevitable and in his delegation's opinion, the exception provided for in paragraph 3 of article 33 was acceptable and necessary. Part III of the draft dealt with newly independent States formed as a result of decolonization, whereas Part IV basically dealt with the separation of States which had earlier decided to unite. But what was to be done if there was a secession in a non-colonial situation analogous, but not identical, to the situation provided for in Part III of the draft? His delegation thought that paragraph 3 of article 33 offered a pragmatic solution which seemed acceptable. Like the Expert Consultant, it thought the paragraph tended to strengthen the continuity principle in Part IV of the draft convention by introducing an indispensable saving clause which would in practice constitute the exception which proved the rule.

35. Sir Francis VALLAT (Expert Consultant) said he was unable to reply to the question raised by the representative of Singapore, since in his capacity as Expert Consultant he could not express an opinion of the application of a rule to a particular case.

36. Mr. MAIGA (Mali) said that the explanations given by the Expert Consultant[5] showed that article 33 was a hybrid article in which the International Law Commission had tried to combine two principles—that of continuity and that of the "clean slate". According to those explanations, paragraph 3 would apply to a situation similar to that of countries under trusteeship or mandate. However, in spite of those explanations and the International Law Commission's commentary, paragraph 3 still seemed to him ambiguous and obscure. He therefore asked the Expert Consultant whether, in the light of State practice, paragraph 3 referred only to trusteeship or mandated territories.

37. Sir Francis VALLAT (Expert Consultant) said that paragraph 3 did not apply only to mandated territories, since such territories came under the category of newly

[5] See 47th meeting, paras. 23-25.

independent States for which paragraph 3 would be superfluous. But there might be cases where a part of the territory of a State was kept under the control of the State in the same way as a colony. It was therefore necessary to introduce an exception clause to deal with that type of situation in the future.

38. The CHAIRMAN invited the Committee to vote on the first part of the amendment by France and Switzerland (A/CONF.80/C.1/L.41/Rev.1, para. 2), the proposal to delete paragraph 1, subparagraph (*a*) of article 33.

The amendment was rejected by 69 votes to 7, with 9 abstentions.

39. The CHAIRMAN invited the Committee to vote on the amendment by the Federal Republic of Germany to paragraph 1, subparagraph (*b*) of article 33 (A/CONF.80/C.1/L.52).

The amendment was rejected by 57 votes to 5, with 20 abstentions.

40. The CHAIRMAN put to the vote paragraph 1 of article 33.

Paragraph 1 of article 33 was approved by 77 votes to 3, with 5 abstentions.

41. The CHAIRMAN put to the vote paragraph 2 of article 33.

Paragraph 2 of article 33 was approved by 80 votes to none, with 3 abstentions.

42. The CHAIRMAN suggested that voting on article 33 be suspended and resumed at the next meeting.

It was so agreed.

The meeting rose at 1.05 p.m.

49th MEETING

Tuesday, 8 August 1978, at 5 p.m.

Chairman: Mr. RIAD (Egypt)

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

[Agenda item 11] (*continued*)

ARTICLE 33 (Succession of States in cases of separation of parts of a State)[1] (*concluded*)

1. The CHAIRMAN invited the Committee to continue voting on the amendments to article 33 and to vote first of all on the second part of the amendment by France and Switzerland (A/CONF.80/C.1/L.41/Rev.1, para. 2), the proposal to delete paragraph 3 of the article. At the request of the Philippines delegation a vote would be taken by roll-call on the amendment by France and Switzerland to delete paragraph 3.

2. Mr. KOH (Singapore), said he wondered whether it was appropriate to vote on the amendment by France and Switzerland at the present juncture since, in his view, it was consequential on the amendment of the definition of "newly independent State".

3. Mr. VREEDZAAM (Suriname) said he also questioned the correctness of voting first on the joint amendment.

4. Mr. RITTER (Switzerland) said that in his delegation's view that part of the joint amendment to delete paragraph 3 was not consequential on any other amendment, except perhaps, insofar as the renumbering of article 34 and article 15 *bis* was concerned. His delegation had made it clear, when introducing its amendment, that the amended definition of paragraph 1, subparagraph (*f*) of article 2 could be taken separately.

5. Mr. ABOU-ALI (Egypt) proposed that the Committee vote first of all on paragraph 3 of the article under consideration.

6. Mr. MUSEUX (France) supported that proposal.

7. Mr. RYBAKOV (Union of Soviet Socialist Republics) said that although such a procedure would be logical, it would conflict with the rules of procedure. If paragraph 3 were deleted as a result of the vote on the joint amendment, there would be no question of voting on paragraph 3 at all. From a procedural point of view therefore, the Committee should vote first on the joint amendment.

8. Mr. MASUD (Pakistan) said he could not support the proposal to vote first on paragraph 3. Not only would it be against the rules of procedure as they concerned voting on amendments, but it would affect his own delegation's proposed amendment, which would not be pressed if the Franco-Swiss amendment were adopted.

9. Mr. TODOROV (Bulgaria) said he was in favour of voting on the joint amendment as the proper course of action. If that was rejected, paragraph 3 would stand, and the Committee would then have to vote on Pakistan's amendment (A/CONF.80/C.1/L.54).

10. The CHAIRMAN said that the Committee appeared to be generally in favour of voting first on the second part of the amendment by France and Switzerland (A/CONF.80/C.1/L.41/Rev.1, para. 2), the proposal to delete paragraph 3 of article 33. A vote would therefore be taken by roll-call and, according to the result a vote would then, if necessary, be taken on Pakistan's amendment.

Zaire, having been drawn by lot by the Chairman, was called upon to vote first.

[1] For the list of amendments submitted, see 40th meeting, foot-note 9.

In favour: Angola; Argentina; Austria; Bulgaria; Burundi; Byelorussian SSR; Canada; Cuba; Cyprus; Egypt; Ethiopia; France; German Democratic Republic; Germany, Federal Republic of; Ghana; Greece; Hungary; Indonesia; Iraq; Italy; Ivory Coast; Kenya; Liberia; Libyan Arab Jamahiriya; Madagascar; Malaysia; Mali, Mexico, Netherlands, Niger, Nigeria, Norway, Pakistan; Panama; Peru; Philippines; Poland; Portugal; Romania; Senegal; Sierra Leone; Spain; Switzerland; Tunisia; Uganda; Ukrainian SSR; Union of Soviet Socialist Republics; United Arab Emirates; United Republic of Tanzania; United States of America; Yemen; Zaire.

Against: Australia; Finland; Japan; Papua New Guinea; Singapore; Suriname; Trinidad and Tobago; Venezuela; Yugoslavia.

Abstaining: Belgium; Brazil; Czechoslovakia; Democratic Yemen; Denmark; Guyana; Holy See; India; Ireland; Israel; Jordan; Kuwait; Lebanon; New Zealand; Republic of Korea; Somalia; Sri Lanka; Swaziland; Sweden; Thailand; Turkey; United Kingdom of Great Britain and Northern Ireland.

The amendment was adopted by 52 votes to 9, with 22 abstentions.

11. The CHAIRMAN said that, paragraph 3 having now been deleted, Pakistan's amendment automatically fell. He invited the Committee to vote on article 33, as a whole, as amended.

Article 33 as a whole, as amended, was adopted by 73 votes to 4, with 6 abstentions.

12. Mr. KOH (Singapore), speaking in explanation of vote, said that Singapore had voted against the deletion of paragraph 3 because Singapore had become an independent State in circumstances closely analogous to those existing in the case of the formation of a newly independent State. Its treaty practice accorded with that of a newly independent State and the practice had been recognized by the international community.

13. Mr. ECONOMIDES (Greece), speaking in explanation of vote, said he had abstained in the vote on the joint amendment proposed by France and Switzerland because, although he could accept it in respect of new States legally formed by the separation of parts of a territory of a State, he could not do so in the case of the dissolution of a union of States or other composite States. He had also abstained in the vote on paragraph 1 of the International Law Commission's text for article 33 since that likewise failed to make the necessary distinction. He had voted in favour of the deletion of paragraph 3 of the Commission's text for article 33 because, although it sought to rectify the omission in paragraph 1, it was likely to prove ambiguous in interpretation.

14. Mr. NAKAGAWA (Japan), speaking in explanation of vote, said that he had voted against the deletion of paragraph 3 of article 33 because he considered that it would be better to have a safeguard clause in one form or another in the event of cases analogous to those of newly independent States occurring in the future, despite the fact that the present formulation of paragraph 3 might not be satisfactory. However, he understood the position of the majority and would be ready to accept its decision; he had therefore voted in favour of the article as a whole.

15. Mr. PÉREZ CHIRIBOGA (Venezuela) said he had voted against the deletion of paragraph 3 for reasons which he had already explained at an earlier meeting[2]. He regretted that paragraph 3 had been deleted from article 33 of the draft as it would have constituted a positive rule. He had, however, voted in favour of the article as a whole since it would be a useful provision.

PROPOSED NEW ARTICLE 30 *bis* (Settlement of disputes)[3] (*concluded*)*

16. The CHAIRMAN announced that the composition of the *Ad Hoc* Group on Peaceful Settlement of Disputes,[4] as communicated to him by the President of the Conference, was as follows: Brazil, Bulgaria, Czechoslovakia, Guyana, Iraq, Mali, Malaysia, Netherlands, Niger, Sri Lanka, Swaziland, Union of Soviet Socialist Republics, United Kingdom of Great Britain and Northern Ireland, United States of America and Venezuela, as well as States having a particular interest in the subject.

The meeting rose at 5.50 p.m.

[2] See 42nd meeting, paras. 18-20.

[3] For the list of amendments submitted, see 44th meeting, foot-note 3.

* Resumed from the 46th meeting.

[4] See 45th meeting, para. 71.

50th MEETING

Monday, 14 August 1978, at 5 p.m.

Chairman: Mr. RIAD (Egypt)

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

[Agenda item 11] (*continued*)

FIRST REPORT OF THE INFORMAL CONSULTATIONS GROUP (A/CONF.80/C.1/L.59)[1]

[1] *Official Records of the United Nations Conference on Succession of States in Respect of Treaties*, vol. I, *Summary records of the plenary meetings and of the meetings of the Committee of the Whole* (United Nations publication, Sales No. E.78.V.8), p. 233, 34th meeting, paras. 7-8.

Article 6 (Cases of succession of States covered by the present articles)[2] *and*

Article 7[3]

1. The CHAIRMAN noted that at the 1977 session, the Committee of the Whole had decided to refer articles 6, 7 and 12 of the basic draft prepared by the International Law Commission and the amendments relating thereto to an Informal Consultations Group, established under the chairmanship of the Vice-Chairman of the Committee of the Whole.[4] He invited the Committee to consider the Group's first report, which related to articles 6 and 7 (A/CONF.80/C.1/L.59). That over-all examination should not prevent the Committee, in due course, from pronouncing separately on each of these articles, in accordance with its method of work.

2. Mr. RITTER (Chairman of the Informal Consultations Group) said that the first report of the Informal Consultations Group related to the first two of the four points which the Group had been instructed to examine. As far as article 6 was concerned, the Group recommended the Committee of the Whole to adopt the text proposed by the International Law Commission without change. As to article 7, the Group recommended the Committee of the Whole to adopt the text proposed in variant A. No consensus had been reached on the addition to paragraph 1 proposed in variant B.

3. Mr. YASSEEN (United Arab Emirates) endorsed the recommendation of the Informal Consultations Group that the text of article 6 proposed by the International Law Commission should be adopted without change, since the task of the Conference was to formulate rules which applied only to lawful cases of succession of States.

4. With regard to article 7, he commended the Group and its Chairman on their outstanding work. At the 1977 session, the Conference had been hesitant to adopt a rule involving a general declaration of the non-retroactivity of the future convention, since it had considered that, in view of the many cases of succession of States which had already occurred, such a rule might narrow the scope of the convention by limiting its application to cases of succession which occurred after its entry into force. The United Arab Emirates had advocated a solution which would allow the convention to be applied to certain cases of succession which had not been settled, and the United States had made a proposal along those lines (A/CONF.80/C.1/L.16). He noted with satisfaction that the Group had succeeded in offering an acceptable solution, which was consistent with the fundamental rules of international law governing the principle of non-retroactivity. That, in his view, was an undisputed principle in domestic law which indisputably applied in international law. It was not, however, a principle of *jus cogens* since it bound the judge, but not the legislator. Accordingly, it could be waived by agreement.

5. He could therefore accept the provision appearing in paragraph 2 of the text proposed by the Group in variant A, to the effect that States could agree to apply the provisions of the convention to successions which had occurred before its entry into force. In that connexion, he stressed that it was the provisions of the convention, and not the convention itself, which would be applied retroactively.

6. Paragraph 3 of the text proposed by the Group, under which two or more States could agree to apply the provisions of the convention provisionally, was based on article 25 of the Vienna Convention on the Law of Treaties. The provision breached no peremptory rule of international law and might enable certain problems to be solved.

7. He considered that the addition proposed in variant B was superfluous, since it was already implicit in paragraph 1 of variant A. In his opinion, the solution proposed by the Group was technically acceptable, since it was based on collateral agreements, by which States could decide to apply any provision of a convention in their mutual relations. His delegation was therefore in favour of the text submitted by the Group in variant A.

8. Mr. NAKAGAWA (Japan) said that his delegation had already emphasized, particularly in connexion with article 7, that in view of the diversity of State practice in regard to succession of States, the Conference was engaged more in the progressive development of international law than in the mere codification of existing practice.[5] The Committee should therefore take care that the outcome of its work did not prejudice the treaty relations existing between States. However, it should also take account of the fact, that, as the International Law Commission had observed in paragraph 3 of its commentary to article 7, the adoption of a rule similar to that set forth in article 28 of the Vienna Convention on the Law of Treaties would prevent the application of the present articles to a newly independent State, since the entry into force of the convention for such a State would inevitably occur after the date of its independence (A/CONF.80/4, p. 23). The International Law Commission had proposed a solution to that problem by making provision, in article 7, for "partial retroactivity", in other words, by restricting the application of the convention to cases of succession of States which occurred after the general entry into force of that convention. It had thus taken into consideration the need not to bring into question the effects of a succession of States

[2] The following amendments were submitted at the 1977 session: Australia, A/CONF.80/C.1/L.3 (withdrawn at the 7th meeting); Romania, A/CONF.80/C.1/L.5; Ethiopia, A/CONF.80/C.1/L.6; Union of Soviet Socialist Republics, A/CONF.80/C.1/L.8 (withdrawn at the 9th meeting); Singapore, A/CONF.80/C.1/L.17.

[3] The following amendments were submitted at the 1977 session; Byelorussian SSR, A/CONF.80/C.1/L.1; Malaysia, A/CONF.80/C.1/L.7; Cuba, A/CONF.80/C.1/L.10 and Rev.1 and 2 (the latter also co-sponsored by Somalia); United States of America, A/CONF.80/C.1/L.16. The United Kingdom of Great Britain and Northern Ireland submitted a working paper in connexion with article 7, A/CONF.80/C.1/L.19.

[4] Official Records of the United Nations Conference on Succession of States in Respect of Treaties ... (*op. cit.*) p. 76, 10th meeting, para. 56.

[5] *Ibid.*, p. 75, 10th meeting, para. 48.

which occurred in the past, while taking account of the newly independent States which would attain independence before the general entry into force of the convention. In that connexion, his delegation was ready to support the text proposed by the International Law Commission.

9. As far as the two variants set out in the report of the Informal Consultations Group were concerned, his delegation was unable to support the Argentine proposal, which appeared in variant B, since such extensive retroactivity might create difficulties for many States.

10. Although it preferred the International Law Commission's text, his delegation was prepared, in a spirit of conciliation, to agree to the United Kingdom proposal which appeared in variant A. It considered, however, that the text still contained a number of obscure points which should be clarified. For instance, at the beginnning of paragraph 3, the words "at the time of signing the present Convention" should, in its view, be replaced by the words "at the time of expressing its consent to be bound by the present Convention", which had appeared in the original proposal by the United Kingdom. As the text now stood, a successor State might ultimately not become a party to the convention, although it had applied the convention provisionally up to the time when it had terminated its provisional application by a unilateral notification; that would create unstable treaty relations between the States concerned. His delegation was, however, ready to accept the text now proposed by the Group in variant A, while reserving the right to make further drafting suggestions for the consideration of the Drafting Committee.

11. Mr. STUTTERHEIM (Netherlands) noted that, in its statement on 8 April 1977 at the 6th meeting, his delegation had said that it was concerned by the provisions of draft article 6,[6] since it was not impossible for a new State created under conditions contrary to international law to invoke that article in claiming that the provisions of articles 11 and 12 on boundary régimes and other territorial régimes did not apply to it. The discussions held in the Informal Consultations Group on that article had shown that other delegations had not subscribed to that view, and his delegation hoped that its misgivings would be unfounded.

12. As far as article 7 was concerned, his delegation endorsed the text proposed by the Group in variant A. On the other hand, it had doubts about the application of the provision proposed in variant B, since a new State coming under that provision might have to wait a long time for the convention to enter into force, while being already bound by it. It therefore preferred paragraph 1 of variant A.

13. Mr. LUKABU-K'HABOUJI (Zaire) said that he was in complete agreement with the comments made by the representative of the United Arab Emirates. As far as article 6 was concerned, he had no difficulty in accepting the text of the International Law Commission, as the Informal Consultations Group proposed. With regard to article 7, he could agree to the text proposed by the Group in variant A, on the understanding that paragraph 2 of that text took account of the concerns which had been the basis for variant B.

14. Mr. SAHOVIĆ (Yugoslavia) said he was pleased to note that the Informal Consultations Group recommended the Committee of the Whole to adopt the text of article 6 proposed by the International Law Commission without change, since he considered that that text would help to reinforce international lawfulness.

15. With regard to article 7, he unreservedly supported the text proposed by the Group in variant A, which would help to bring about the speedy application of the convention. He agreed with the representative of the United Arab Emirates that the addition proposed in variant B was not essential, since the solution, in his opinion, lay in the consent of the parties to the convention.

16. Mr. DUCULESCU (Romania) said that his delegation would not press its amendment to article 6 (A/CONF.80/C.1/L.5), the main purpose of which had been to emphasize the need to interpret and to apply the principles of international law enunciated in the Charter of the United Nations in the light of subsequent texts adopted by the General Assembly, more particularly the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations[7] and the Charter of Economic Rights and Duties of States.[8] In view of the stage now reached in the development of international law, such an interpretation was the only one conceivable, even if the present text of article 6 was retained.

17. As to article 7, he unreservedly supported the text proposed by the Informal Consultations Group in variant A, for it met the requirements of progressive development of international law and of unification of practice in matters of State succession. At the first session of the Conference, his delegation had stressed the need to find solutions that applied both to present and to future cases of succession of States, in order to take due account of the interests of newly independent States.[9]

18. Like the representative of Zaire, he considered that the situation dealt with in variant B was already fully covered by paragraph 2 of variant A.

19. Mr. FLEISCHHAUER (Federal Republic of Germany) observed that, at the 1977 session, his delegation had said that draft article 7 as proposed by the International Law Commission was acceptable but did not go quite far enough.[10] A convention of the kind under consideration should have some measure of retroactivity,

[6] *Ibid.*, p. 48, 6th meeting, para. 18.

[7] General Assembly resolution 2625 (XXV).

[8] General Assembly resolution 3281 (XXIX).

[9] *Official Records of the United Nations Conference on Succession of States in Respect of Treaties ... (op cit.)*, p. 83, 12th meeting, para. 19.

[10] *Ibid.*, pp. 68-69, 9th meeting, paras. 42-49.

and the draft article made allowance for that by referring to the original entry into force. However, it did not specify how the convention could be made operable with effect beyond that date, either after or before the original entry into force. The saving clause "except as may be otherwise agreed" did not give sufficient indication of the decisions and complex procedures required for that purpose.

20. The Informal Consultations Group had been successful in its work. On the basis of a proposal originally submitted by the United Kingdom, it had made additions to draft article 7 which related in particular to the *ex tunc* application of the convention beyond its entry into force, both after the entry into force of the convention for the party concerned and on the basis of provisional application. The method chosen for that purpose was the mutual consent of the parties, which implied some measure of split treaty relations that could give rise to difficulties. However, such situations were not new and experience showed that they were not insurmontable.

21. Variant B of paragraph 1 related not to the entry into force of the convention but to the opening of the convention for signature. His delegation preferred the paragraph as proposed by the International Law Commission. It was in fact already uncommon to refer to the date of the original entry into force in an article concerning the applicability in time of a treaty, and a possibly dangerous precedent would be created if reference was made to the much earlier date of the opening of the convention for signature. Some situations might remain uncertain for a long time, and that would run counter to stability in treaty relations. It should be noted, however, that that question was closely related to a problem that had not yet been considered, namely, the number of ratifications required for the future convention to enter into force. His delegation considered that the number should be fairly high and, for that reason, it favoured variant A.

22. Mr. NATHAN (Israel) said that variant B of paragraph 1 would oblige States to apply the convention retroactively from the date of the opening for signature and it would thus lead to uncertainty. Even if the convention was to enter into force shortly after it had been opened for signature, successor States which had not become parties to the convention at the time of its entry into force would be able to accede to it later on. States which were already parties would then be obliged to apply the convention retroactively, which might require some readjustment of rights and obligations. The situation would be even more serious if a lengthy period elapsed between the opening of the convention for signature and its entry into force. In that connexion, he noted that under article 22, entitled "Effects of a notification of succession", a newly independent State was 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, but the operation of the treaty was none the less considered as suspended until the date of making of the notification of succession, unless the treaty might be applied provisionally. In paragraph 8 of the commentary to that article (A/CONF.80/4, p. 75), the International Law Commission had put forward considerations that also applied in respect of article 7. It had emphasized that article 22, in its earlier version would have given retroactive effect to a notification of succession by a newly independent State so that, even if the notification of succession occurred long after the date of the succession of States, a multilateral treaty would as a general rule be regarded as in force between that State and other parties with effect from the date of the succession of States. In that respect, the International Law Commission had added, other parties to the treaty would have had no choice, but the newly independent State would have been able to choose a later date if the retroactive application of the treaty was inconvenient from its point of view. That rule would create an impossible legal position for the States parties to the treaty, which would not know during the interim period whether or not they were obliged to apply the treaty in respect of the newly independent State. The latter might make a notification of succession years after the date of the succession of States and, in those circumstances, a party to the treaty might be held to be responsible retroactively for breach of the treaty. He wished to add that such retroactive application of the convention would hardly be of any practical advantage to the successor State, in view of the terms of article 2, paragraph 2.

23. His delegation approved variant A, which was based on the principle of provisional application of the convention, the parties being allowed the freedom to apply it *inter se* before the date of entry into force. The provision was based on mutual consent and it was not mandatory.

24. Lastly, his delegation favoured article 6 as proposed by the International Law Commission.

25. Mr. MONCAYO (Argentina) said that his delegation unreservedly supported article 6. In its opinion, only territorial changes occurring in conformity with international law were covered by the concept of succession of States, within the meaning of the future convention. The criterion of lawfulness was that territorial change should conform to the general norms of international law and, more particularly, to the principles of international law embodied in the Charter of the United Nations. Territorial changes which occurred as a result of force or of violation of the territorial integrity of a State were therefore excluded from the scope of the future convention.

26. Article 7 posed delicate problems, for it concerned the application of legal rules in time. On several occasions attention had been drawn to the need to supplement that provision by a transitional régime which would permit the application of the future convention to newly independent States or to territorial chances which occurred between the conclusion of the treaty and its entry into force.

27. The general principle of non-retroactivity of juridical norms was not a peremptory norm of international law; it did not bar agreement to the contrary. In its initial form, article 7 had already provided for a certain degree of retroactivity by permitting the application of the convention to any succession of States occurring after its entry into force. It therefore represented an advance in relation

to article 28 of the Vienna Convention on the Law of Treaties. Moreover, article 7 facilitated the agreement of the parties, and the purpose of paragraphs 2 and 3 as proposed by the Informal Consultations Group was precisely to indicate the procedure to be followed to permit the application of the convention to a State whose succession occurred before the convention entered into force. However, in order to ensure such a result, the consent of the other States, whether States parties or signatory States, was still needed.

28. In view of the need for consent, the amendment proposed by the Informal Consultations Group in variant B sought to ensure that the convention could be applied, after its entry into force, to a State which acceded to independence after the signing of the convention, and which declared its willingness that it should so apply, without the need for further consent or agreement. The purpose of the proposal was to fill the gap left in paragraphs 2 and 3 as proposed by the Informal Consultations Group.

29. On the assumption that the convention introduced sound legal rules, there was no reason for excluding those States which acceded to independence after the signing of the treaty, but before its entry into force, from the application of the convention. The automatic application proposed, subject to only the willingness of the successor State, was limited in scope and would permit the effective application of the convention after its entry into force; it would thus invalidate some of the criticisms concerning its belated nature. There was also ample scope for establishing, through agreement by the parties, other forms of retroactive application of the provisions of the convention.

30. Mr. SETTE CÂMARA (Brazil) said that he favoured the retention of article 6 as proposed by the International Law Commission. Since, in article 2, the concept of succession of States was not restricted to that of lawful succession, the International Law Commission had considered that it would be useful to include in the draft a provision of the kind set forth in article 6. In its written comments on article 6, the United Kingdom Government had suggested that a distinction should be made between rights and obligations, and that States should be deemed to be bound by their obligations, even in the event of unlawful succession. The International Law Commission had taken the view that such a distinction would be dangerous and difficult to make (A/CONF.80/4, pp. 22-23). Consequently, he favoured the retention of article 6 as drafted by the International Law Commission.

31. Article 7 as proposed by the Informal Consultations Group took account both of the principle of non-retroactivity and of the need to apply the future Convention to successions of States occurring as a result of the decolonization process. The text proposed covered every conceivable situation and would reassure newly independent States. The exceptions envisaged to the principle of non-retroactivity were so designed as to require an express declaration of willingness on the part of States concerned. For that reason, he fully supported the text recommended by the Informal Group.

32. Variant B of paragraph 1 might mean that the convention would be applicable before it entered into force. It appeared to make provision for automatic retroactive application, independently of the will of the parties, which would be contrary to article 28 of the Vienna Convention on the Law of Treaties.

33. Mr. MARESCA (Italy) said that he could not but support the text proposed by the International Law Commission for article 6, which was a tribute paid to general international law and, in particular, to the important principles elaborated by the Commission. He was, however, uncertain as to the law that would be applicable to the effects of a succession of States which did not occur in conformity with international law. Would the successor State apply customary international law, or would it act according to principles of its own choosing? He had no solution to offer, but thought that the possible consequences of the lack of rules in such an eventuality should be borne in mind.

34. Turning to article 7, he said that the text proposed by the Informal Consultations Group was a great improvement on article 7 as drafted by the International Law Commission. The convention was inherently dangerous, since it settled problems that history had already overcome, and because of that it was necessary to make provision for retroactivity by agreement. Accordingly, he supported paragraph 2 of the text under consideration. Paragraph 3 incorporated the provisions of the Vienna Convention on the Law of Treaties. Paragraph 1 proposed in variant B had been subjected to the harshest criticism, as constituting a regrettable source of uncertainty. While it was inadvisable to adopt rules which might create difficulties, the period of time which might elapse between the opening of the convention for signature and its entry into force should nevertheless be a matter of concern. That long period of uncertainty might well nullify the value of the convention. The legal validity of the convention during that period should be taken into account. His delegation considered that the new idea incorporated into variant B deserved further study.

35. Mr. RYBAKOV (Union of Soviet Socialist Republics) said he supported articles 6 and 7, as drafted by the International Law Commission. Nevertheless, his delegation had no objection to the provisions in variant A, which were clear and which covered all the cases which might arise. However, it shared the doubts expressed by several delegations as to the advisability of adopting the provisions in variant B. Those provisions would have no practical value, since the entry into force of the convention would depend on the clarity of its articles and the number of States that ratified it. Thus, if the Conference decided that ratification of the convention by a small number of States would suffice for it to enter into force, no problem would arise in practice. However, it should not adopt ambiguous formulations such as those in paragraph 1, variant B.

36. Mr. PÉREZ CHIRIBOGA (Venezuela) supported the text for article 6 proposed by the International Law Commission. He would have preferred the Informal Con-

sultations Group to recommend the Committee to retain the original text of article 7, since he believed that it would have been more practical to treat the principle of non-retroactivity as a general rule, with the possibility of making exceptions to it. It seemed to him to be dangerous to attempt to regulate those exceptions, at the risk of leaving gaps that were impossible to fill in a convention. However, the Informal Consultations Group had decided otherwise, and his delegation had joined in the consensus on the question and therefore supported the proposed paragraphs 2, 3 and 4 for article 7. He was surprised that paragraph 1 in variant B was causing such misgivings and concern among delegations, since to his mind it in fact served to fill one of those inevitable gaps by making provision for the case of a State which emerged into international life at a time when the convention had been opened for signature but had not yet entered into force, in other words, when the international community had expressed its views on the succession of States in a convention which had not yet entered into force but which contained rules applicable to that situation. It would not be fair if, during that legal vacuum, a successor State did not have the possibility of availing itself of all the progressive rules contained in the convention. Justice required that those rules should be automatically applicable to the cases of succession to which he had referred. The only difference between paragraph 1 of variant A and paragraph 1 of variant B was the date set for the application of the principle of retroactivity. In both cases, objective criteria were involved. He further stressed that paragraph 1 of variant B would apply to a small number of successions only and that it constituted a transitional provision enabling States which entered the international arena for the first time during the period in question to benefit from the development of international law.

37. Mr. DOGAN (Turkey) said he supported the text of article 6 recommended by the Informal Consultations Group and the text of article 7 proposed in the Group's report, with a preference for variant B of paragraph 1. It was true that no treaty applied until after its entry into force. However, there was no rule of international law to prevent sovereign States from agreeing that a convention should apply with effect from its signature, but after its entry into force. There was no valid reason to deprive a newly independent State of an additional option, if it wished the convention to be applied to it after its entry into force but with effect from its signature. The issue involved legal policy rather than a mandatory requirement under international law in respect of the entry into force of a convention. His delegation favoured a legal policy which would afford the newly independent State an additional option of which it could avail itself.

38. Mrs. BEMA KUMI (Ghana) said that for the reasons adduced by the Italian representative, her delegation was concerned by the use of the word "only" in article 6. What would happen if a State emerged into international life by methods other than those recognized by the international community? In regard to article 7, she supported the text proposed in variant A but could not agree to variant B.

39. Mr. ARIFF (Malaysia) said it appeared that all members of the Committee could accept the proposed article 6. However, the text proposed by the International Law Commission for article 7 was far removed from the new version proposed by the Informal Consultations Group, which addressed itself to the problem of the retroactive effect of the convention and the situation in which the provisions of the convention would apply on a provisional basis. He considered that the provisions of variant A were perfectly clear and that those under variant B were superfluous and would contribute nothing to the text of the convention.

40. Mr. RYBAKOV (Union of Soviet Socialist Republics), supported by Mr. KASASA-MUTATI (Zaire), observed that the Committee had concluded its consideration of articles 6 and 7 and proposed that it should take a decision on them.

41. Mr. YACOUBA (Niger) said that the members of the Committee had not perhaps all had the time to take a final decision on the two articles under consideration and that it might be better to defer a decision on them until the next meeting.

42. After a procedural discussion in which Mr. RYBAKOV (Union of Soviet Socialist Republics), Sir Ian SINCLAIR (United Kingdom), Mr. YACOUBA (Niger), Mr. TORNARITIS (Cyprus) and Mr. RANJEVA (Madagascar) took part, the CHAIRMAN suggested that the discussion on articles 6 and 7 should be closed, that a decision on them should be deferred until the next meeting and that separate decisions should be taken on the two articles in question at that time.

It was so decided.

Organization of work

[Agenda item 10]

43. Mr. SAHOVIĆ (Yugoslavia), speaking on a point of order, noted that the Committee was now in its third week of work and said that it should complete that work during the current week, if necessary, by holding night meetings. He would like to know how the President of the Conference envisaged the final stages of the work.

44. The CHAIRMAN informed the Committee that he would hold consultations with the President of the Conference that evening on the matter raised by the representative of Yugoslavia.

45. Mr. RANJEVA (Madagascar) requested the Chairman to inform those taking part in the consultations of the desire of several delegations that the timetable should be observed and that the Conference should end on Friday, 18 August.

46. Mr. MUDHO (Kenya) said that, without in any way wishing to hold up the work of the Conference, he could not approve of methods of work which would be inef-

ficient. Delegations with few members would have some difficulty in taking part in all the meetings, particularly night meetings, which might be scheduled in order to complete the work during the current week.

47. The CHAIRMAN said he believed that the Committee, which had the bulk of the work to perform, would be able to complete its task by Friday, 18 August.

The meeting rose at 6.50 p.m.

51st MEETING

Tuesday, 15 August 1978, at 5.05 p.m.

Chairman: Mr. RIAD (Egypt)

Election of the Rapporteur

1. The CHAIRMAN announced that Mr. Tabibi (Afghanistan), who had been elected Rapporteur of the Committee of the Whole at the 1977 session of the Conference, had informed the President of the Conference that he was unable to attend the resumed session. He invited members of the Committee to submit nominations for the post of Rapporteur.

2. Mr. JOMARD (Iraq), on behalf of the Asian Group, nominated Mrs. Thakore (India) for the post of Rapporteur.

Mrs. THAKORE (India) was elected Rapporteur of the Committee of the Whole by acclamation.

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

[Agenda item 11] (*continued*)

FIRST REPORT OF THE INFORMAL CONSULTATIONS GROUP (A/CONF.80/C.1/L.59)[1] (*concluded*)

3. The CHAIRMAN said that at its 50th meeting the Committee had closed the discussion on the first report of the Informal Consultations Group (A/CONF.80/C.1/L.59), on articles 6 and 7; it therefore remained only to take a decision on the recommendations of the Group concerning articles 6 and 7.

Article 6 (Cases of succession of States covered by the present articles)[2] and Article 7[3] (concluded)

4. Mr. PAPADOPOULOS (Cyprus) observed that article 6 naturally stated the presumption that the Convention would apply only to the effects of a succession of States occurring in conformity with international law and, in particular, with the principles of international law embodied in the Charter of the United Nations. The delegation of Cyprus, however, would vote for article 6, as drafted by the International Law Commission, in the belief that it would serve as a reminder to those who might believe that they would enjoy the benefits of the future Convention in unlawful situations. Article 6 would thus serve a useful purpose, in so far as it reflected the unequivocal stand of the international community in such cases.

5. Although the delegation of Cyprus had supported the initial text of article 7, it would vote for the text proposed by the Informal Consultations Group and, in particular, for variant A of paragraph 1, as it believed that the new text was largely in the interests of many States which had doubts, among other things, as to whether a notification of succession made under the régime of continuity, after a long silence, could produce its effects.

6. The CHAIRMAN said that if there were no objections he would take it that the Committee provisionally adopted the text of article 6 proposed by the International Law Commission and referred it to the Drafting Committee for consideration.

It was so agreed.[4]

7. The CHAIRMAN observed that no delegation had asked that variant B of paragraph 1 be put to the vote. If there were no objections, he would take it that the Committee provisionally adopted the text of article 7 proposed by the Informal Consultations Group and referred it for consideration to the Drafting Committee, which would also be required to propose a title for that article.

It was so agreed.[5]

8. Mr. MUSEUX (France) said that the attention of the Drafting Committee should be drawn to the phrase "contained in a written notification to the Secretary-General of the United Nations", which appeared in paragraph 4; for as he had already pointed out, the Secretary-General of the United Nations was not there referred to in his capacity as such, but in his capacity as depositary of the Convention. In his opinion the words "Secretary-General of the United Nations" should be replaced by the word "depositary".

9. Mr. OSMAN (Somalia) said he had joined in the consensus on article 7 on the understanding that its

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[1] See 50th meeting, foot-note 1.

[2] For the list of amendments submitted, see 50th meeting, foot-note 2.

[3] For the list of amendments submitted, see 50th meeting, foot-note 3.

[4] For resumption of the discussion, see 53rd meeting, paras. 34-35.

[5] For resumption of the discussion, see 53rd meeting, paras. 36-51.

provisions could not be invoked by a contracting party against another contracting State which had reserved its position on certain provisions of the Convention.

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

10. The CHAIRMAN reminded the Committee that it had decided, at its 45th meeting, during the discussion of the proposed new article 39 *bis*, to set up an *Ad Hoc* Group on peaceful settlement of disputes,[6] and at its 46th meeting, to defer consideration of the question until the *Ad Hoc* Group had completed its work.[7]

11. Mr. NAKAGAWA (Japan) said that his delegation had always been in favour of a mandatory procedure for the settlement of disputes by the International Court of Justice or by arbitration the decision handed down being binding on the parties concerned. With regard to Article C proposed by the *Ad Hoc* Group, in the agreed text (A/CONF.80/C.1/L.60 and Corr.1), his delegation would have preferred the "opting-out" to the "opting-in" system. It was, however, prepared to support the solution proposed, in the hope that some day the international community would consider itself sufficiently advanced to be able to accept the ideal system of judicial settlement of disputes.

12. Mr. RANJEVA (Madagascar) said he wished to draw the Drafting Committee's attention to the last phrase of article A which, by providing for both consultation and negotiation, might result in a dilatory procedure. In his delegation's opinion, the notion of consultation was not very precise in meaning, and article A was intended to refer to diplomatic procedure. It would be better to delete the reference to consultation, which had a legal connotation, and replace it by a reference to diplomatic negotiations.

13. Mr. KASASA-MUTATI (Zaire) said he thought the text proposed by the *Ad Hoc* Group had many advantages over the initial proposals, and as the provisions of articles A to E met the concern of his delegation it would support them.

14. Mr. MARESCA (Italy), expressed his satisfaction with the text prepared by the *Ad Hoc* Group, which, although not perfect, was acceptable to his delegation from every point of view. He was particularly pleased to note the order in which the various procedures were presented, which his delegation had been the first to recommend. With regard to article B, however, he pointed out that while it was normal to submit a "request" to the Secretary-General of the United Nations, it would be preferable to speak of "notification" of the other State party or States parties to the dispute, in other words, to find some formula reflecting the idea of conciliation. For if the other State party or States parties to the dispute took the term "request" literally, they might reply in the negative, which would be absurd. He therefore recommended that the Drafting Committee should add, after the words "of the United Nations and" some words such as "a notification", so that the other State party or States parties to the dispute could not refuse to submit to the conciliation procedure.

15. Mr. PÉREZ CHIRIBOGA (Venezuela) said that, in the *Ad Hoc* Group, delegations had adopted a flexible attitude in order to arrive at a text acceptable to all, so that the Group's proposal was the result of bringing the positions of the various delegations closer together. His delegation was therefore willing to support the proposal; but it wished to stress, with regard to article B, that while it had accepted the idea of the compulsory nature of conciliation in a spirit of compromise, it had done so solely within the framework of the present Convention and without in any way committing the Venezuelan Government in regard to other modes of settlement of disputes under other international instruments, in particular those relating to the law of the sea. It was on that understanding that his delegation joined in the consensus on the text agreed by the *Ad Hoc* Group.

16. Mr. WETLAND (Norway) said that it was not from lack of interest that his delegation had not spoken earlier in the discussion, and that it strongly supported all the efforts by the international community to establish mandatory procedures for the peaceful settlement of disputes. Norway had three times been a party to disputes before the International Court of Justice and was among the States which had made a declaration recognizing the compulsory jurisdiction of the Court in accordance with Article 36 of its Statute. The text prepared by the *Ad Hoc* Group was a very carefully worded compromise which, even if not completely satisfactory to all delegations, should prove to be workable. He would not go into details, but he did not see the need for article D. His delegation had no difficulty in accepting the text as a whole, however, although it would have preferred the Committee to adopt one of the proposals first made by the Netherlands and the United States. In its view, those more ambitious proposals should remain the goal which the international community should some day be able to attain. But his delegation realized that the time was not yet ripe for such solutions, and that a common denominator acceptable to all delegations must be found.

17. To sum up, his delegation was ready to support the agreed text submitted by the *Ad Hoc* Group, which was a step in the right direction and an improvement on the régimes adopted at previous conferences, when the majority had favoured optional protocols.

18. Mr. FLEISCHHAUER (Federal Republic of Germany) welcomed the group of articles on the settlement of disputes prepared by the *Ad Hoc* Group, as a useful and necessary addition to the draft Convention. He regretted, however, that the proposed procedure did not enable the International Court of Justice to play its proper part. He

[6] See 45th meeting, para. 71.

[7] See 46th meeting, para. 26.

had hoped that the members of the *Ad Hoc* Group would be able to reach agreement on a procedure providing for compulsory recourse to the International Court of Justice, if necessary with a provision allowing States to declare that they were not bound by that procedure (opting-out solution). The proposed procedure, which provided, on the contrary, that a dispute could only be referred to the International Court of Justice if the States parties to the dispute had accepted the jurisdiction of the Court (opting-in solution), showed no progress as compared with the procedure adopted in the protocols to the Vienna Conventions on Diplomatic Relations (1961)[8] and on Consular Relations (1963).[9] Nevertheless, since it had not been possible to agree on more forceful means of settlement of disputes, his delegation was willing to accept the agreed text submitted by the *Ad Hoc* Group.

19. Mr. YANGO (Philippines) said he thought the very fact that the International Law Commission had not proposed an article on the settlement of disputes clearly showed that it preferred to leave it to the Conference to work out an appropriate procedure. He therefore welcomed the procedure proposed by the *Ad Hoc* Group in the agreed text. He would have preferred it to place more emphasis on the role of the International Court of Justice, because the Philippines had always been in favour of the compulsory jurisdiction of the Court. But he was prepared to support the proposed text, on the understanding that there was no hierarchy for the procedures proposed in the various articles and that the consent of the parties must prevail in the choice of the procedure to be followed.

20. Sir Ian SINCLAIR said he welcomed, but without enthusiasm, the text proposed by the *Ad Hoc* Group, in whose deliberations his delegation had taken part.

21. With regard to article B, he agreed with the representative of Italy that it was not a request, but simply a notification that should be sent to the other States parties to disputes.

22. He found article C more difficult to accept, because his delegation had always advocated a procedure for the settlement of disputes based on the compulsory jurisdiction of the International Court of Justice and had accordingly been prepared to support the United States proposal (A/CONF.80/C.1/L.38/Rev.1), which had left it open to States to declare that they would not be bound by the procedure in question. The procedure proposed in article C therefore seemed to his delegation to be inadequate, but it could accept the set of articles proposed by the *Ad Hoc* Group as a whole.

23. Mr. KAKOOZA (Uganda) said that, while he was grateful to the *Ad Hoc* Group for its efforts, he considered, like the Italian representative, that the procedure proposed in article B was defective. His delegation had always emphasized the importance of the process of consultation and negotiation, which it considered to be the best means of settling disputes; and while it recognized that that process should not continue indefinitely, it believed that before abandoning it and submitting the dispute to the proposed conciliation procedure, a State party should first notify the other States parties of that intention, so that they would not be taken by surprise, but be encouraged to renew their efforts to settle the dispute through diplomatic channels. If the dispute had not been settled within a period of three months from the date on which the notification had been made and the other States parties to the dispute persisted in their refusal to submit it to the conciliation procedure provided for, the State which had made the notification could submit its request to the Secretary-General of the United Nations. The importance of the process of consultation and negotiation would thus be preserved. Subject to that proposal, his delegation supported the text submitted by the *Ad Hoc* Group.

24. Mr. OSMAN (Somalia) said he wholeheartedly supported the new procedure for the settlement of disputes submitted by the *Ad Hoc* Group, which he found was well balanced and sufficiently flexible. He especially commended the *Ad Hoc* Group for having emphasized the importance of the consent of the parties to the dispute.

25. Mr. GODET (Switzerland) said that his country, which stood for the principle of the primacy of law over force in international relations, could not fail to support any compulsory procedure for the settlement of disputes. His delegation had therefore been in favour of the procedure suggested by the United Kingdom, which struck a balance between the ideal and the possible, and regretted that the *Ad Hoc* Group had not been able to accept it. At the same time, his delegation recognized that the international community was not yet ready to accept a system which was considered too coercive, and it supported the text proposed by the *Ad Hoc* Group as being the minimum that could be expected at the present stage of international relations.

26. Mr. EUSTATHIADES (Greece) said he agreed with the representative of Madagascar that the word "consultation" in article A should be deleted, since consultation and negotiation were two different things, and recourse to consultation might unduly protract the procedure for settlement of disputes. He also considered, like the Italian representative, that article B should refer to a "notification", rather than a "request", made to the other State party or States parties to the dispute.

27. With regard to drafting, he proposed that in the French text of articles A and D the words *"entre deux Etats parties ou plus"* should be replaced by the words *"entre deux ou plusieurs Etats parties"*. He also wondered whether it would not be better to place article D before article C; for in his view there was a gradation in the means to be employed, ranging from negotiation, provided for in article A, through conciliation, provided for in article B, and decision by common consent of the parties to a dispute to submit it to arbitration or to the International Court of Justice, as provided in article D, to an undertaking given in

[8] United Nations, *Treaty Series*, vol. 500, p. 95.

[9] *Ibid.*, vol. 596, p. 261.

advance by States parties to the Convention to submit their disputes regarding interpretation and application of the convention to the International Court of Justice or to arbitration, which was provided for in article C. He believed that a general undertaking, given in advance by a State party to a convention to all the other States parties to that convention, was more important than a simple *ad hoc* agreement between two or more States relating to a particular dispute.

28. He would support the text proposed by the *Ad Hoc* Group but, like the representative of Japan, he regretted that it constituted no more than a bare minimum. In particular, he was surprised to find no mention of the rules that would be applied by the conciliation commission.

29. Moreover, since the conclusions of the conciliation commission would not be binding and, in addition, since arbitration and judicial settlement were contingent on the prior or *ad hoc* agreement of the parties to the dispute, the only compulsory procedure remaining was negotiation. Would that not mean that the convention would leave it to the stronger to force a solution to the dispute, and that the weaker would have to give way?

30. Mr. PAPADOPOULOS (Cyprus) said he was glad that the *Ad Hoc* Group had succeeded in drafting a text that took due account of all the trends which had appeared in the Committee of the Whole. He regretted, however, that automatic recourse to the International Court of Justice had not been provided for, since that would have strengthened the role of the Court. Nevertheless, his delegation would support the compromise text of the *Ad Hoc* Group.

31. Mr. HAMZA (United Arab Emirates) said he had two reasons for welcoming the agreed text of the *Ad Hoc* Group. In the first place, his delegation had always wished the Convention to contain a clause on the settlement of disputes. Secondly, as a small State, the United Arab Emirates wished international relations to be stabilized, which would only be possible if there was a mechanism for the settlement of disputes between States. The text under consideration was an improvement on the previous text, but his delegation would have been prepared to go a step further. It would nevertheless support the proposed text, since it reflected the various trends which had emerged during the discussion. At the most, a reference might be made in article A to the diplomatic channel, as well as to the process of consultation and negotiation.

32. Mr. LANG (Austria) said he was glad the *Ad Hoc* Group had been able to reach agreement on a text which showed that definite progress had been made. Admittedly, it would have been better to give a more important role to compulsory arbitration and the compulsory jurisdiction of the International Court of Justice; but the international community was not ready to accept, internationally, the same machinery for the settlement of disputes as was accepted nationally. It must not be forgotten, however, that significant progress had been made at the regional level where there would probably soon be a further advance.

33. In accordance with that realistic approach, the Austrian delegation could agree to give priority to such non-judicial means of settlement as consultation, negotiation and conciliation. Even though many delegations were unable to accept compulsory judicial settlement of disputes as a provision of the future convention, it was to be hoped that when States became involved in a dispute they would consider it in their interests to submit to that procedure.

34. Mr. KOROMA (Sierra Leone) said that his country was in favour of the text before the Committee, for it had always believed that international disputes should be settled by peaceful means. The process of consultation and negotiation had been referred to in article A because it was the classical means of settling disputes. To meet the concern of those who feared that consultation and negotiation would delay the settlement of disputes, it could be expressly stated that they must be conducted in good faith. Admittedly, good faith was an underlying principle of international law, but if that principle was expressly stated in the case in point, the parties to a dispute would be under an obligation to act in good faith.

35. Mr. MAHUNDA (United Republic of Tanzania) said that his delegation welcomed the agreed text of the *Ad Hoc* Group, because it was not in favour of the compulsory judicial settlement of disputes. Other delegations took a different view, and it was only thanks to the spirit of conciliation which had prevailed in the Group that it had been possible to draft that text.

36. Mr. ROVINE (United States of America) said it was with reluctance that his delegation would give its support to the agreed text of the *Ad Hoc* Group. That text showed some progress as compared with those of conventions concluded in recent years, but it was still not adequate: it did not suffice to protect the rights established in the future Convention. Compared with article 66 of the Vienna Convention of the Law of Treaties[10] which provided for compulsory recourse to the International Court of Justice for the settlement of disputes relating to a peremptory norm of general international law, it was even a significant retreat. For questions of secondary importance, it had not been possible to reach agreement on a provision equivalent to article 66 of the Vienna Convention.

37. During the debate, none of the arguments advanced for not going further in the procedure for settlement of disputes had been convincing. Some speakers had said that the international community was not yet ready to go a step further, but they had not given the reasons for that state of affairs. He believed that the international community should be guided in the right direction. Other representatives feared that States would not abide by the judgments of the International Court of Justice, but in his opinion that was no reason for not going ahead.

[10] *Official Records of the United Nations Conference on the Law of Treaties, Documents of the Conference* (United Nations publication, Sales No. E.70.V.5), p. 298.

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

The meeting rose at 6.25 p.m.

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

52nd MEETING

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

Chairman: Mr. RIAD (Egypt)

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

[Agenda item 11] (*continued*)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

It was so agreed.

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

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

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

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

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

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

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

It was so agreed.[4]

ARTICLE 2 (Use of terms)[5]

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

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

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

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

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

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

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

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

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

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

[6] *Official Records of the United Nations Conference on Succession of States in Respect of Treaties*, vol. I. *Summary records of the plenary meetings and of the meetings of the Committee of the Whole* (United Nations publication, Sales No. E.78.V.8), p. 21, 1st meeting, paras. 9-11.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

53rd MEETING

Thursday, 17 August 1978, at 11.45 a.m.

Chairman: Mr. RIAD (Egypt)

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

[Agenda item 11] (*continued*)

REPORT OF THE DRAFTING COMMITTEE ON THE TITLES AND TEXTS OF ARTICLES 30 TO 39 ADOPTED BY THE DRAFTING COMMITTEE (A/CONF.80/C.1/4)

1. Mr. YASSEEN (Chairman of the Drafting Committee), introducing the Drafting Committee's first report of the resumed session, said that the document in question (A/CONF.80/C.1/4) contained the titles and texts of articles 30 to 39 proposed by the Drafting Committee. It made no mention of the proposal for a new article 22 *bis* (A/CONF.80/C.1/L.28/Rev.1) which had been referred to the Drafting Committee at the 32nd meeting of the Committee of the Whole,[1] since that proposal had been withdrawn at the Committee's 40th meeting.[2]

2. In its work during the resumed session, the Drafting Committee had continued its practice of taking into account not only the titles and texts of articles as they had been referred to it by the Committee of the Whole and the amendments thereto which that body had formally transmitted to it as drafting suggestions, but also, as far as possible, suggestions made orally at meetings of the Committee of the Whole. It had also borne in mind the terminology of existing codification conventions, particularly the Vienna Convention on the Law of Treaties, with which the instrument that the Conference was preparing was closely linked. The Committee of the Whole and the plenary Conference might wish to bear in mind, when considering taking action on the basis of the reports of the Drafting Committee, that, in keeping with the practice of codification conferences, the Drafting Committee would review the entire text of the draft convention prior to its opening for signature, for the purpose of ensuring the greatest possible consistency in the terminology used in the various language versions.

3. Apart from the amendments that had been required by the change in the status of the articles, that had been referred to it, to that of provisions of a draft convention, a good many of the modifications which the Drafting Committee had made to articles 30 to 39 were the consequence of changes that had been approved in other articles during the first part of the Conference in 1977. Thus, since the phrase "with the object and purpose of the treaty or would radically change the conditions for its operation"–in Spanish *"con el objeto y el fin del tratado o cambiaria radicalmente las condiciones de su ejecución"*–had been employed for purposes of clarity in the English and Spanish versions respectively of articles 14, 16 and 17, the Drafting Committee proposed that it should also be used in: article 30, paragraph 1 (*b*), and paragraph 3; article 31, paragraphs 3 and 6; article 32, paragraphs 2 and 5; article 33, paragraph 2 (*b*); article 34, subparagraph (*c*); article 35, paragraph 3; and article 36, paragraph 2.

4. The Committee had also noted that, in the English version of the articles, the expressions "falling within" and "falling under" and variations thereof had been used indiscriminately, whereas, as a general rule, throughout the French and Spanish versions, one or other of only two terms had been used systematically. For the sake of consistency, therefore, the Committee proposed that the English expression "falling under", corresponding to the French expressions, *"relevant de"* and the Spanish expressions, *"al que sea aplicable"*, should be used whenever the reference was to an article or to a paragraph thereof, and that the term "falling within", corresponding to the terms *"appartenant à"* and *"que corresponda a"*, should be used whenever the reference was to a category. Changes to that effect had been made in article 30, paragraph 2 (*a*); article 31, paragraphs 1 and 2; article 32, paragraph 1; article 35, paragraphs 1 and 2; and article 36, paragraph 1, of the English version, and in article 30, paragraph 2, subparagraphs (*a*) and (*b*), and article 32, paragraph 4 (*a*), of the French version.

5. As in the case of article 17 and other articles,[3] conformity with the other language versions had been ensured by the replacement, where appropriate, of the French expression *"à l'égard du traité"* by the words *"au traité"*. That change had been made in article 32, paragraphs 1 and 3–with a consequential amendment to article 32, paragraph 4–and in article 36, paragraphs 1 and 3. In order to ensure that the same tense was used in all languages, the Spanish version of article 30, paragraph 1, subparagraph (*a*), and paragraph 2, subparagraphs (*b*) and (*c*), and of article 34, subparagraph (*a*), had been amended by the substitution for the expression *"haya(n) convenido"* of the expression *"convengan"*.

6. The other changes which the Drafting Committee had made concerned only individual articles, and he would therefore comment on them when introducing the provision concerned, beginning with article 30.

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[1] *Official Records of the United Nations Conference on Succession of States in Respect of Treaties*, vol. I, *Summary records of the plenary meetings and of the Committee of the Whole*, (United Nations publication, Sales No. E.78.V.8), p. 225, 32nd meeting, para. 13.

[2] See 40th meeting, para. 59.

[3] *Official Records of the United Nations Conference on Succession of States in Respect of Treaties...* (*op. cit.*), p. 235, 35th meeting, para. 8.

Article 30 (Effects of a uniting of States in respect of treaties in force at the date of the succession of States)[4]

7. Mr. YASSEEN (Chairman of the Drafting Committee) said that the Drafting Committee had decided to align the text of paragraph 2 (*b*) with that of paragraph 1 (*a*) by replacing the expression "all the parties" by the expression "the other States parties", in all languages. For the sake of consistency with the other language versions, the French version of paragraph 2 had been amended by the replacement of the opening word *"un"* by the word *"tout"*, while the Spanish version of paragraph 2 (*a*) had been amended by the replacement of the expressions *"en relación con"* and *"de notificación"* by the expressions *"respecto de"* and *"haga una notificación"* respectively.

8. The CHAIRMAN said that, if there were no objections, he would take it that the Committee agreed to adopt on second reading the title and text of article 30 as proposed by the Drafting Committee.

It was so agreed.[5]

Article 31 (Effects of a uniting of States in respect of treaties not in force at the date of the succession of States)[6]

9. Mr. YASSEEN (Chairman of the Drafting Committee) said that the Drafting Committee had made no particular changes in either the title or the text of the article.

10. The CHAIRMAN said that, if there were no objection, he would take it that the Committee agreed to adopt on second reading the title and text of article 31 as proposed by the Drafting Committee.

It was so agreed.[7]

Article 32 (Effects of a uniting of States in respect of treaties signed by a predecessor State subject to ratification, acceptance or approval)[8]

11. Mr. YASSEEN (Chairman of the Drafting Committee) said that, in the Spanish version, the words *"con sujeción a"*, which had appeared in the title and the first paragraph of the article, had been replaced, as in the corresponding provisions of article 18, by the words *"a reserva de"*. The Spanish version had been further modified, for the purpose of conformity with the other languages, by the redrafting of the end of the introductory portion of paragraph 4 to read *"... respecto de la cual el tratado fue firmado por uno de los Estados predecesores, a menos:"*, and by the replacement, in paragraph 4 (*a*) of the word *"éste"* by the words *"el tratado"*.

12. The CHAIRMAN said that, if there were no objection, he would take it that the Committee agreed to adopt on second reading the title and text of article 32 as proposed by the Drafting Committee.

It was so agreed.[9]

Article 33 (Succession of States in cases of separation of parts of a State)[10]

13. Mr. YASSEEN (Chairman of the Drafting Committee) said that the Drafting Committee had made no particular changes in either the title or the text of the article.

14. Mr. PÉREZ CHIRIBOGA (Venezuela) said he noted that the Drafting Committee had retained the difference between the wording of article 30, paragraph 1 (*a*), and article 33, paragraph 2 (*a*), to which his delegation[11] had drawn attention. Since the Expert Consultant had stated that he knew of no particular reason for that difference,[12] his delegation would be grateful if the Chairman of the Drafting Committee would explain why it had not been removed.

15. Mr. YASSEEN (Chairman of the Drafting Committee) replied that the Drafting Committee, when studying the text of article 33, had considered the point raised by the representative of Venezuela but had decided to retain the text proposed by the International Law Commission because it had felt that, since article 33 must be interpreted in the light of the general law of treaties, it would be perfectly clear what States were meant by the phrase "the States concerned".

16. Mr. PÉREZ CHIRIBOGA (Venezuela) said that, while his delegation would not press for the amendment of article 33, it did wish to make it perfectly clear that it would have preferred to see a uniform wording of the provisions of articles 30 and 33 which he had mentioned.

17. Mr. FONT BLÁZQUEZ (Spain) said that, since article 33 referred to treaties that were already in force, it would seem logical to speak in paragraph 2 (*a*) of "the States parties". His delegation would not, however, press the point.

18. Mr. YASSEEN (Chairman of the Drafting Committee) said he must make it clear that article 33 was to be

[4] For earlier discussion of article 30, see 37th meeting, 38th meeting, paras. 2-70 and 39th meeting, paras. 1-58.

[5] For the adoption of article 30 by the Conference, see 13th plenary meeting.

[6] For earlier discussion of article 31, see 40th meeting, para. 19.

[7] For the adoption of article 31 by the Conference, see 13th plenary meeting.

[8] For earlier discussion of article 32, see 40th meeting, paras. 20-24.

[9] For the adoption of article 32 by the Conference, see 13th plenary meeting.

[10] For earlier discussion of article 33, see 40th meeting, paras. 25-58, 41st meeting, 42nd meeting, paras. 1-62, 47th meeting, paras. 32-44, 48th meeting and 49th meeting, paras. 1-15.

[11] See 47th meeting, para. 38.

[12] *Ibid.*, para. 40.

interpreted in the context of the law of treaties and that it was that which gave the phrase "the States concerned" its unambiguous meaning.

19. The CHAIRMAN said that, if there were no objection, he would take it that the Committee agreed to adopt on second reading the title and text of article 33 as proposed by the Drafting Committee.

It was so agreed.[13]

Article 34 (Position if a State continues after separation of part of its territory)[14]

20. Mr. YASSEEN (Chairman of the Drafting Committee) said that, for the purpose of conformity with article 33, paragraph 2 (*a*), the Drafting Committee proposed that subparagraph (*a*) of article 34 should read, in all language versions "the States concerned otherwise agree". The Spanish version had been harmonized with that in other languages by the insertion, in the introductory portion of the article, of the words *"del resto"* before the words *"de su territorio"*.

21. The CHAIRMAN said that, if there were no objection, he would take it that the Committee agreed to adopt on second reading the title and text of article 34 as proposed by the Drafting Committee.

It was so agreed.[15]

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)[16]

22. Mr. YASSEEN (Chairman of the Drafting Committee) said that, after due consideration, the Drafting Committee had decided that it would be preferable, for reasons of clarity, not to replace the text proposed by the International Law Commission by the Finnish amendment (A/CONF.80/C.1/L.39) that had been submitted to it by the Committee as a drafting suggestion.[17] The Drafting Committee had made no particular change to either the title or the text proposed by the International Law Commission.

23. The CHAIRMAN said that, if there were no objection, he would take it that the Committee agreed to adopt on second reading the title and text of article 35 as proposed by the Drafting Committee.

It was so agreed.[18]

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)[19]

24. Mr. YASSEEN (Chairman of the Drafting Committee) said that the Drafting Committee proposed that, as in the case of article 32, the title and the first paragraph of the Spanish version of the article be amended by the replacement of the words *"con sujeción a"* by the words *"a reserva de"*.

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

It was so agreed.[20]

Article 37 (Notification)[21]

26. Mr. YASSEEN (Chairman of the Drafting Committee) said that the Drafting Committee had preferred the text proposed by the International Law Commission to the Finnish amendment (A/CONF.80/C.1/L.40) that had been submitted to it by the Committee as a drafting suggestion.[22] In addition, it had considered that the suggestion made by the representative of Italy[23] went beyond its terms of reference.

27. Some minor changes had been made to the International Law Commission's text. In paragraph 1 of the English version, the word "must" had been replaced by the word "shall", in keeping with normal legal practice. Various changes had been made in the French and Spanish versions, in order to align them with those of article 21. Thus in the French version, the word *"en"* had been inserted before the word *"fait"* in paragraph 2, while in paragraph 3 (*b*), the words *"aura été"* had been replaced by the word *"est"*. In the Spanish version, paragraph 4 had been amended to read *"... tratado o por otra causa, de informar a las partes o los Estados contratantes de la notificación o de toda comunicación a ella referente que haga el Estado sucesor"*. For reasons of precision and conformity with the texts in other languages, the Spanish

[13] For the adoption of article 33 by the Conference, see 13th plenary meeting.

[14] For earlier discussion of article 34, see 41st meeting, paras. 63-64 and 42nd meeting, paras. 63-68.

[15] For the adoption of article 34 by the Conference, see 13th plenary meeting.

[16] For earlier discussion of article 35, see 43rd meeting, paras. 1-8.

[17] See 43rd meeting, para. 3.

[18] For the adoption of article 35 by the Conference, see 13th plenary meeting.

[19] For earlier discussion of article 36, see 43rd meeting, paras. 5-6.

[20] For the adoption of article 36 by the Conference, see 13th plenary meeting.

[21] For earlier discussion of article 37, see 43rd meeting, paras. 25-31.

[22] See 43rd meeting, para. 31.

[23] *Ibid.*, para. 30.

version had been further amended by the insertion, in paragraph 5, of the word *"sólo"* after the word *"destinada"*.

28. Mr. MARESCA (Italy) said that his delegation appreciated that the suggestion it had made concerning article 37 had gone beyond the terms of reference of the Drafting Committee. In those circumstances, it would not request any change in the text now proposed by the Drafting Committee, but it did wish to state that it interpreted paragraph 2 of that text as in no way precluding the continuation, in cases where the recipient so agreed, of the well-established practice of the issuance by diplomatic missions, without the production of full powers, of notifications of the types in question.

29. The CHAIRMAN said that the Committee took note of the statement by the representative of Italy. If there were no objection he would assume that the Committee agreed to adopt, on second reading, the title and text of article 37 as proposed by the Drafting Committee.

It was so agreed.[24]

Article 38 (Cases of State responsibility and outbreak of hostilities)[25]

30. Mr. YASSEEN (Chairman of the Drafting Committee) said that the Drafting Committee had made no particular changes in either the title or the text of the article.

31. The CHAIRMAN said that, if there were no objection, he would take it that the Committee agreed to adopt on second reading the title and text of article 38 as proposed by the Drafting Committee.

It was so agreed.[26]

Article 39 (Cases of military occupation)[27]

32. Mr. YASSEEN (Chairman of the Drafting Committee) said that, in the English version of the article, the word "do" had been replaced by the word "shall", in order better to reflect the legislative nature of the provision.

33. The CHAIRMAN said that, if there were no objection, he would take it that the Committee agreed to adopt on second reading the title and text of article 39 as proposed by the Drafting Committee.

It was so agreed.[28]

[24] For the adoption of article 37 by the Conference, see 13th plenary meeting.

[25] For earlier discussion of article 38, see 43rd meeting, paras. 57-64.

[26] For the adoption of article 38 by the Conference, see 13th plenary meeting.

[27] For earlier discussion of article 39, see 43rd meeting, paras. 57-64.

[28] For the adoption of article 39 by the Conference, see 13th plenary meeting.

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

Article 6 (Questions of succession covered by the present Convention)[29]

34. Mr. YASSEEN (Chairman of the Drafting Committee) said that the text of article 6 had been provisionally adopted by the Committee of the Whole on the recommendation of the Informal Consultations Group and referred to the Drafting Committee. That text had been the original International Law Commission draft and the Drafting Committee had adopted it without change.

35. The CHAIRMAN said that, if there were no objection, he would take it that the Committee agreed to adopt on second reading the title and text of article 6 as proposed by the Drafting Committee.

It was so agreed.[30]

Article 7 (Temporal application of the present Convention)[31]

36. Mr. YASSEEN (Chairman of the Drafting Committee) said that the text of article 7 had been provisionally adopted by the Committee of the Whole on the recommendation of the Informal Consultations Group and referred to the Drafting Committee.

37. Paragraph 1 was the International Law Commission's text without change. The Drafting Committee had made a number of drafting changes in paragraphs 2, 3 and 4. In paragraph 2, difficulties of interpretation had directly affected the wording: the original text did not impose any time-limit on a declaration by a successor State under that paragraph although, according to the second sentence, the agreement between two States making declarations accepting the retroactive application of the Convention would take effect "upon the entry into force of the Convention" between them. The Committee had reached the conclusion that the first sentence was to be interpreted in a literal sense; it had accordingly eliminated the discrepancy by replacing the words "such States" by the words "the States" and adding the phrase "making the declarations or upon the making of the declaration of acceptance, which-

[29] For earlier discussion of article 6 at the resumed session, see 50th meeting, paras. 1-42 and 51st meeting, paras. 4-9. For discussion of article 6 by the Committee of the Whole at the 1977 session, see *Official Records of the United Nations Conference on Succession of States in Respect of Treaties...* (*op. cit.*), pp. 48-57, 58-64 and 233; 6th meeting, paras. 17-48, 7th meeting, 8th meeting, paras. 19-66, 9th meeting, paras. 1-17 and 34th meeting, paras. 7-8.

[30] For the adoption of article 6 by the Conference, see 14th plenary meeting.

[31] For earlier discussion of article 7 at the resumed session, see 50th meeting, paras. 1-42, and 51st meeting, paras. 4-9. For the discussion of article 7 by the Committee of the Whole at the 1977 session, see *Official Records of the United Nations Conference on Succession of States in Respect of Treaties...* (*op. cit.*), pp. 64-88 and 233, 9th meeting, paras. 18-55, 10th meeting, 11th meeting, 12th meeting, and 34th meeting, paras. 7-8.

ever is later". The remaining changes to paragraph 2 were designed only to clarify the text and bring the wording into line with that used elsewhere. To make the meaning clearer, the phrase "declare that it may apply" at the beginning of the paragraph had been replaced by "make a declaration". To lighten the text and make it legally more correct and precise, the words at the end of the first sentence, "declares its willingness to accept the declaration of a successor State", had been replaced by the phrase "make a declaration accepting the declaration of the successor State". At the end of the paragraph, the words "such succession" had been replaced by "that succession of States" since the term "succession of States" had been defined in article 2 and the word "such" was ambiguous. The word "then" at the end of the paragraph had been deleted as it had been rendered redundant by the other amendments.

38. Paragraph 3 had also raised a problem of interpretation. However, that problem was not related to the textual changes in paragraph 3 which, with one exception, had been designed merely to bring it into line with the preceding paragraph. The exception was the addition at the beginning of the second sentence of the words "upon the making of the declaration of acceptance", with the intention of specifying the date from which the declaration and its acceptance would take legal effect. Other changes to bring the text into line with that of paragraph 3 were the replacement at the beginning of the paragraph of the word "declare" by the phrase "make a declaration", of the phrase "declares its willingness to accept the declaration" by the phrase "declares its acceptance of the declaration" and of the words "such succession" by the words "that succession of States". The word "then" at the end of the paragraph had been deleted.

39. The most important change in paragraph 4 was the replacement of the term "deposit", referring to the notification, by the word "communication", which had been deemed more appropriate. Accordingly, the final phrase "deposit with him that notification and its terms" had been replaced by "communication to him of that notification and its terms". Furthermore, since, as was the invariable practice in the case of multilateral treaties concluded under the auspices of the United Nations, the Secretary-General would be the depositary of the Convention, the phrase "Secretary-General of the United Nations" had been replaced by "the depositary", as suggested by the French delegation.

40. At the request of the Committee of the Whole,[32] the Drafting Committee had provided a title for article 7, namely, "Temporal application of the present Convention".

41. Sir Ian SINCLAIR (United Kingdom) said that the present text of paragraph 3 of article 7 restricted the possibility of making a declaration to the time of signing the Convention. That made paragraph 3 of limited value since the Convention was open for signature for only a limited period. He therefore proposed that the possibility of bringing about the provisional application of the Convention be extended in order to make it possible for a State which became independent after the expiry date for the signature of the Convention to make a declaration under paragraph 3 that it would apply the provisions of the Convention provisionally. That could be done by amending the opening phrase to read "A successor State may at the time of signing or of expressing its consent to be bound by the present Convention ..." and amending the phrase "to any other signatory State" to read "to any other signatory or contracting State".

42. Mr. SCOTLAND (Guyana) said he supported the United Kingdom proposal. He wondered, however, if the reference in that proposal to the time of signing was necessary, though he had no objection to its retention if the Committee found the amendment acceptable. He also wondered whether paragraphs 2 and 3 took account of the situation where a State might sign the Convention and subsequently apply its provisions provisionally, without having made a decision on ratification.

43. Mrs. BOKOR-SZEGÖ (Hungary) said that if the United Kingdom amendment was adopted, there would be a gap in the Convention. The present text offered the possibility of making a provisional declaration of acceptance at the time of signing. If the United Kingdom amendment was adopted, the idea of provisional acceptance would fall. She therefore preferred the text as it stood.

44. Mr. ARIFF (Malaysia) said that, as he understood it, the purpose of paragraph 3 was to cover the situation where a successor State proposed to apply the Convention provisionally as an interim measure, without any intention of applying it permanently. The mere act of signing gave such a State a certain latitude, whereas expression of consent to be bound, in accordance with the United Kingdom formulation, suggested a definitive acceptance of the Convention which might subsequently prove undesirable.

45. Mr. STUTTERHEIM (Netherlands) said he supported the United Kingdom amendment in view of the fact that the Convention would be open for signature for only one year. The Netherlands Antilles was now preparing for independence but would not be ready within that period. It should be given an opportunity of applying the provisions of the Convention provisionally under paragraph 3.

46. Mr. YASSEEN (Chairman of the Drafting Committee) said that the Drafting Committee had given most careful thought to article 7 and was of the opinion that, if the expression "signing the Convention" were retained, paragraph 3, on provisional application, would be nothing more than a provisional paragraph because after a year or so, it could be a dead letter. The Drafting Committee had not wished to examine that matter, however, because such examination was beyond its competence.

47. If a successor State expressed its consent to be bound by the Convention, it thereby became a party to it and the Convention could be applied as it stood. What would be the position of that successor State if it wished its relations

[32] See 51st meeting, para. 7.

with other signatory States which had not ratified the Convention to be subject to its provisions? It appeared from the present text of the article that such a State could not benefit from the provisional application of the Convention.

48. Speaking as the representative of the United Arab Emirates, he said that the Committee of the Whole should examine and clarify the question. It would seem undesirable to formulate the paragraph in such a way that it operated only for one year.

49. Mr. MAIGA (Mali), said that, according to the opening sentence of paragraph 2, a successor State might make a declaration "at the time of expressing its consent to be bound by the present Convention or at any time thereafter". The second sentence began with the phrase "Upon the entry into force of the Convention ..."; he would like to ask the Chairman of the Drafting Committee to explain the scope of the paragraph, which his delegation had difficulty in interpreting. His misgivings about paragraph 3 had been increased by the United Kingdom amendment. In general terms, it was possible to have a separate paragraph regulating the provisional application of the Convention. However, he had difficulty in supporting a paragraph which laid down that provisional application was available for one year but that it could not be applied in respect of another signatory State unless the latter had ratified the Convention. The Drafting Committee had done its best but it was for the Committee of the Whole to state clearly exactly what its wishes were in the matter.

50. The CHAIRMAN suggested that further discussion of article 7 be deferred and that States with a particular interest in the article should consult informally among themselves.

51. The Drafting Committee had not yet taken a decision with regard to the division of the Convention into parts and the titles of those parts. He suggested that the Drafting Committee be requested to submit its recommendations to the Committee of the Whole.

It was so agreed.[33]

The meeting rose at 1.10 p.m.

[33] For resumption of the discussion, see 56th meeting, paras. 1-15.

54th MEETING

Friday, 18 August 1978, at 11.35 a.m.

Chairman: Mr. RIAD (Egypt)

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

[Agenda item 11] (*continued*)

SECOND REPORT OF THE INFORMAL CONSULTATIONS GROUP (A/CONF.80/C.1/L.62)[1]

Articles 12 and 12 bis

Draft resolution concerning article 30

1. Mr. RITTER (Switzerland), Chairman of the Informal Consultations Group, said that the Group's second report (A/CONF.80/C.1/L.62) contained a proposed additional paragraph 3 to article 12 and a proposed new article 12 *bis*. Although those two provisions were submitted in the order in which they should appear in the convention, the Group had in fact approved the text of the proposed new article 12 *bis* before considering the proposed paragraph 3 to article 12. As stated in paragraph 5 of the report, the Group wished to emphasize the link between the proposed new article 12 *bis* and article 12.

2. There was one small drafting point: the Spanish-speaking members of the Group had pointed out that, in the Spanish version of the proposed paragraph 3 of article 12, the words *"obligaciones convencionales"* were not a correct rendering of the term "treaty obligations" and should be replaced by *"obligaciones derivadas de tratados"*.

3. Lastly, the report also contained a proposed draft resolution concerning article 30, for consideration by the Committee.

4. Mr. MONCAYO (Argentina) said that the Informal Consultations Group had rightly emphasized the link between article 12 of the International Law Commission's draft and the proposed new article 12 *bis*, which established the pre-eminence of the "principles of international law affirming the permanent sovereignty of every people and every State over its natural wealth and resources". Only by establishing a direct relationship between the two rules, which together formed a coherent whole, would the new provision acquire its full significance and would the extent of its object and purpose so far as succession of States in respect of treaties was concerned be completely understood.

5. Before analysing the content of the new provision, it was first necessary to consider the nature of article 12 as proposed by the International Law Commission. There was no doubt that it presented the Conference with one of its most complex problems. Indeed, at the 20th meeting of the Committee, held on 20 April 1977, the Expert Consultant had himself pointed out that, from the point of view of drafting and purport, article 12 was the most difficult of all those drafted by the International Law Commission.[2] The Italian representative, for his part, had deemed it to be the most important article in the draft, yet at the same time one of the most ambiguous and had even referred to it as something of a nightmare.[3] Many other delegations had

[1] See 50th meeting, foot-note 1.

[2] *Official Records of the United Nations Conference on Succession of States in Respect of Treaties*, vol. I, *Summary records of the plenary meetings and the meetings of the Committee of the Whole* (United Nations publication, Sales No. E.78.V.8), p. 140, 20th meeting, para. 34.

[3] *Ibid.*, p. 142, 21st meeting, paras. 14-15.

expressed their concern at a text which embodied such vague concepts.

6. In the face of an article of such complexity and importance, it was only right that a conference engaged in the work of codification should first ask itself whether article 12 codified an international custom, or whether it established a new rule for the progressive development of international law. The answer was difficult, and that difficulty stemmed from the broad-ranging nature of the article itself.

7. The International Law Commission, in its commentary to article 11 (A/CONF.80/4, pp. 37 *et seq.*), had not hesitated to affirm that a boundary treaty was not affected by a succession of States. That view was supported by an impressive body of evidence, based on State practice and legal doctrine, and had been further strengthened and confirmed by the decision of the United Nations Conference on the Law of Treaties to exclude boundary treaties from the rule relating to fundamental change of circumstances. Article 11 restated the principle laid down in the Vienna Convention on the Law of Treaties which guaranteed the sanctity of treaties that established a boundary or boundary régime. That was only right and necessary. Article 11 embodied a recognized rule, based on accepted custom, which had been codified in a convention and which had a specific material content.

8. But what was neither right nor necessary was to vest with the same character of sanctity indiscriminately, all the other territorial régimes covered by article 12, where it spoke of the "use of any territory" and "restrictions upon its use", without further qualification. In his delegation's view, there was no customary rule, based on practice and recognized as mandatory, which imposed respect for all obligations and rights arising under a treaty relating to the use or restrictions upon the use of any territory and which was thus so-called embracing in character as to make of article 12 a hermetically-sealed provision allowing for no exception or attenuation whatsoever.

9. The International Law Commission's commentary to article 12 (*ibid.*) only served to confirm his delegation in its view. Nothing therein suggested that any practice existed which extended to all possible uses or restrictions upon the use of a territory for the benefit of a foreign territory or of a group of States established by treaty; nor that the practices described were sufficiently general and constant; nor, again, that they had been uniformly and spontaneously agreed. That the International Law Commission was itself aware of those facts was apparent from the observation in paragraph 35 of its commentary to articles 11 and 12 that: "Some further precedents of one kind or another might be examined, but it is doubtful whether they would throw any clearer light on the difficult question of territorial treaties" (*ibid.*, p. 46). The International Law Commission had further noted that, in the case of territorial treaties, those covered by article 12, "not infrequently other elements enter into the picture, such as an allegation of fundamental change of circumstances or the allegedly limited competence of the predecessor State" (*ibid.*), elements which did not affect boundary treaties.

10. From those facts, therefore, the first conclusion to be drawn was that treaties covered by article 11 were not to be placed on the same footing as treaties covered by article 12. There was thus no justification for the absolute rule laid down in article 12 which sought to regulate in the same manner as article 11 a different type of situation. Article 11, unlike article 12, translated custom into a treaty. There were, of course, certain territorial régimes which did give rise to special situations affecting the successor State. He had in mind, for example, such rights, established by treaty, as rights of passage, rights relating to free zones and rights relating to freedom of communication. The evidence did not however suggest—and he would again refer to the International Law Commission's commentary to article 12—that that "category of treaties should embrace a very wide range of so-called territorial treaties" (*ibid.*).

11. His delegation could see no valid reason for laying down a general rule on the basis of a few limited cases. Indeed, it would resist a rule that was lacking in precision and that introduced assumptions unsupported by a sound body of practice. It was for that reason that it considered it necessary to draw attention to those cases which did not fall strictly within the terms of such a rule and which, as the result of an erroneous interpretation arising out of the unduly general nature of its formulation, might otherwise be deemed so to do. That had been the purpose of the Argentine sub-amendment (A/CONF.80/C.1/L.27) to a Mexican amendment (A/CONF.80/C.1/L.19) to article 12 in providing that that article should not apply to treaties which impeded "the full exercise by the successor State of its sovereignty over the natural wealth and resources of its own territory". There was no doubt that treaties relating to the establishment of military bases in the territory of the successor State, as well as treaties inhibiting the exploitation of its natural resources, fell outside the terms of article 12, since they lacked the truly objective territorial nature of localized treaties which the rule embraced. The United Kingdom representative,[4] and the Expert Consultant,[5] had taken the view that the Mexican amendment and the Argentine sub-amendment thereto served no useful purpose, since, in their opinion, they bore no relationship to article 12. But his delegation none the less considered that the article must set out clearly what was implicit, so as to leave no room for doubt.

12. The aim of his delegation was to ensure that, between the basic "clean slate" principle, as laid down in articles 14 and 15, and the specific exception provided for in article 11, nothing of a general and ambiguous nature was imported which would create uncertainty and open the way for important derogations from the general principle. Any such uncertainty was in large measure dispelled by the terms of the proposed article 12 *bis*.

13. Neither article 12 nor any other article in the draft affected the right of the successor State to permanent sovereignty over its natural wealth and resources. That right

[4] *Ibid.*, p. 137, 20th meeting, para. 17.

[5] *Ibid.*, p. 140, 20th meeting, paras. 36-37.

had been recognized as a principle of international law in many resolutions of the United Nations General Assembly, including resolutions 1803 (XVII) and 3281 (XXIX). They affirmed the right of each State to exercise full and permanent sovereignty over its natural wealth and resources, which embraced the right to possess, use and dispose of such wealth and resources. They reflected the convictions of the whole international community; they answered a need; and they expressed an *opinio juris* which, supported by subsequent practice, had since gained the standing of a positive rule of international law.

14. The restatement in the draft of the principle of the permanent sovereignty of every State over its natural wealth and resources made it clear that the "clean slate" principle laid down in articles 14 and 15 must cover all treaties concluded by the predecessor State which related to the exploitation of the natural resources of the successor State. No treaty which compromised the natural wealth of a successor State could be imposed on that State against its will. The same basic principles applied as those underlying the "clean slate" rule—the right to self-determination and to independence and the need to guarantee that the rule of *res inter alios acta* prevailed—but those principles were further strengthened by the positive affirmation of the principle of the permanent sovereignty of every State over its natural wealth and resources.

15. With the inclusion of the proposed new article 12 *bis*, which would perfect the International Law Commission's draft, the Conference would have gone beyond the confines of the convention itself and taken a positive step forward in the promotion of the progressive development of international law.

16. For those reasons, his delegation supported the proposals submitted by the Informal Consultations Group in its second report.

17. Mr. de OLIVEIRA (Angola) said that his delegation entertained certain doubts about the proposed draft resolution concerning article 30. Those doubts arose not from any objection regarding the competence of the Conference to deal with such a matter; but solely from the view, based on a consideration of the content and purpose of the draft resolution, that it would serve no useful purpose.

18. With regard to article 12, his delegation was unable to agree with the contention that the question of military bases was entirely alien to the economy of the draft. It was therefore gratified to note that the Conference had been able to settle that question in express and unambiguous terms. It took the same view in regard to the provision for safeguarding the principle of international law relating to the permanent sovereignty of every people and every State over its natural wealth and resources.

19. The adoption of the provisions proposed by the Informal Consultations Group would make it quite clear that no undertakings in perpetuity could be given so far as military bases and the exploitation of the natural wealth and resources of peoples were concerned. The importance of those provisions, which derived from the *jus cogens* principle of the right of peoples to self-determination, was self-evident.

20. For those reasons, his delegation wholeheartedly supported both the proposed addition of a new paragraph 3 to article 12 and the proposed new article 12 *bis*, which together marked a step forward in the progressive development of international law.

21. Mr. NAKAGAWA (Japan) said that his delegation would have no difficulty in accepting the proposal relating to article 12, which was an improvement on the original text, and also the proposed draft resolution concerning article 30.

22. With regard to the proposed new article 12 *bis*, while his delegation agreed that the basic principle of the permanent sovereignty of every State over its natural wealth and resources, as laid down in resolution 1803 (XVII) of the United Nations General Assembly, was generally accepted, it considered that there was a lack of unanimity as to the exact scope of application of that principle. It also had some doubts as to its relevance to the question of succession of States in respect of treaties. In the circumstances, therefore, if a vote were taken on that proposal, his delegation would abstain.

23. Mr. PÉREZ CHIRIBOGA (Venezuela) said that, as his delegation had made clear in the Informal Consultations Group, it considered that the right place for the proposed new article 12 *bis* was immediately following article 12, in view of the essential link between the two provisions.

24. His delegation endorsed the views set forth in paragraphs 43-45 of the International Law Commission's commentary to articles 11 and 12 (A/CONF.80/4, pp. 47-48) and in paragraph 1 of its commentary to article 13 (*ibid.*, p. 48). Articles 11 and 12 in particular, and the convention in general, would be unacceptable in his delegation's view if article 13 were not included. It therefore considered that the inclusion of the proposed new article 12 *bis* would not be interpreted as in any way affecting the International Law Commission's very clear purpose in placing article 13 at the place which it now occupied in the draft.

25. Subject to that understanding, his delegation could support in their entirety the proposals submitted by the Informal Consultations Group.

26. Mrs. BEMA KUMI (Ghana) said that it might be preferable to speak in the proposed article 12 *bis* of the "principle", rather than the "principles", of international law concerning sovereignty over natural resources, in order to emphasize that the reference was to General Assembly resolution 1803 (XVII).

27. Mr. RYBAKOV (Union of Soviet Socialist Republics) said his delegation believed that there had been a general understanding within the Informal Consultations Group during the drafting of the Group's proposals concerning articles 12 and 12 *bis*, that no succession of States would affect the demilitarization of certain areas of territory, such

as Spitzbergen and the Åland Islands, the prohibition of the establishment of military bases on foreign territory, the freedom of navigation on international rivers and canals and in international straits, or international régimes such as that which applied in Antarctica. That being so, his delegation fully supported the proposals in question.

28. Mr. DOGAN (Turkey) said that his delegation fully supported the proposed new paragraph 3 of article 12, which was the most important article in the draft convention both by reason of its form and by reason of its content. Its first and second paragraphs referred not only to legal questions related to objective situations but also to political problems which were particularly evident in peace treaties. The Turkish delegation attached the highest importance to the succession by a State to obligations arising out of peace treaties establishing the demilitarized status of parts of a territory. Demilitarization of the parts transferred to the successor State by the predecessor State, by explicit or implicit agreement, was the condition *sine qua non* for the conclusion of such treaties, which created an objective situation in the general interest of the parts of a region. Whatever change occurred in the exercise of international jurisdiction over those parts and whatever their denomination, the successor State was bound by that situation.

29. The Turkish delegation fully supported the new paragraph 3 of article 12 and also article 12 *bis*. Those changes alone would enable the draft Convention to enter into force and, at some future date, to be applied.

30. Mrs. THAKORE (India) said that the additional paragraph proposed by the Informal Consultations Group for article 12 was fully consistent with the fundamental principles of self-determination and sovereignty. It was abundantly clear that the continuation of treaties providing for the establishment of foreign military bases on what subsequently became the territory of a successor State would be incompatible with the independent status of that State. The proposed paragraph was, therefore, valuable and one to which her delegation could give its full support.

31. It also fully supported the proposed article 12 *bis*. The concept of permanent sovereignty over natural wealth and resources had been fully recognized and affirmed in resolutions of the United Nations General Assembly and international instruments. In the interests of peace and of harmony in international relations, her delegation urged the Committee to adopt both proposals, which would contribute to the progressive development of international law.

32. Mr. SAHOVIĆ (Yugoslavia) said that his delegation, which had already stated its position on the establishment of foreign military bases and the principles of sovereignty over natural resources during the first part of the session, considered the Informal Consultations Group's proposals concerning articles 12 and 12 *bis* to represent a compromise, but a compromise that was reasonable in the light of contemporary international law and the balance of forces within the Conference. Approval of those proposals was essential if the future convention was to have any chance of entering into force. While his delegation would have preferred to see the contents of both proposals incorporated in article 12, it would vote for the provisions in the form in which they had been put before the Committee.

33. His delegation recognized that the application of article 30 might give rise to the kind of dispute to which the draft resolution proposed by the Informal Consultations Group referred, but it was not convinced of the need for a separate provision relating to their settlement. Since it seemed, however, that a majority of the members of the Informal Consultations Group and of the Committee of the Whole felt that such a provision was required, his delegation would not oppose the draft resolution.

34. Mr. OKWONGA (Uganda) said that his delegation was not altogether satisfied with the proposals of the Informal Consultations Group concerning articles 12 and 12 *bis*, but would accept them in a spirit of compromise. Article 12 as currently proposed left his delegation with certain doubts which acceptance of the Argentine amendment to that article would have dispelled.

35. Mr. ZAKI (Sudan) said he agreed with the representative of Argentina that the proposed article 12 *bis* must be read in conjunction with article 12 as proposed by the International Law Commission. The proposed new article did much to alleviate the concern which had led his delegation to favour the deletion of the original text of article 12, or, failing that, the amendment of the text as proposed by the delegations of Mexico and Argentina. His delegation would therefore vote for the proposed new article and, since it believed that the general rule laid down in article 12 should not apply either to foreign military bases or to natural resources within the territory of a successor State, for the proposed addition to article 12 itself.

36. Mr. GRIGORIEV (Ukrainian Soviet Socialist Republic) said that the proposals relating to articles 12 and 12 *bis* contained in the report of the Informal Consultations Group showed the seriousness with which the Conference took the matter of treaties that established special territorial régimes. The proposed addition to article 12 was of great importance and answered the requirements of contemporary international life.

37. There was a logical connexion between that proposal and the proposed new article 12 *bis*, which referred, in wording akin to that employed in recent United Nations resolutions, to what were generally recognized principles of international law. The inclusion of those two proposals in the future Convention would constitute an important step towards the completion of the process of decolonization, and was supported by his delegation.

38. Mr. KASASA-MUTATI (Zaire) said he was concerned that the use in the proposed addition to article 12 of the expression "providing for" seemed to render the paragraph applicable only to treaties relating to military bases that were not in existence at the time of succession. His

delegation believed that no successor State should have to take over any of its predecessor's obligations with respect to foreign military bases, whether existing or planned, and that that point had been covered by the amendment proposed by Argentina to the original article 12.

39. It was also concerned that the draft Convention contained no definition of the term "people", which was used for the first time in the proposed new article 12 *bis*.

40. Mr. MAIGA (Mali) said that his delegation's support for the Informal Consultations Group's proposals in relation to articles 12 and 12 *bis* should be seen in the light of its general belief that it was better to have legal rules which, although imperfect, were likely to be applied, than rules which were perfect but were unlikely to be applied. He hoped that the Drafting Committee would give some thought to the possibility of amending the proposed addition to article 12 so that, like the existing paragraphs of that article, it referred to both obligations and rights.

41. With regard to the proposed draft resolution concerning article 30, he wished to make it clear that the Informal Consultations Group had not reached a consensus on the text of the draft resolution, but had merely agreed to bring its existence to the attention of the Committee of the Whole. There had, in fact, been formal expressions of opposition to the draft resolution within the Group, and his own delegation remained convinced that the text as it stood would add nothing to the future convention. The draft resolution referred only to disputes that arose from a uniting of States and did no more than state that it would be "desirable" to settle such disputes through negotiation, whereas his own delegation considered that the procedure for the settlement of disputes which the Committee of the Whole had already adopted should automatically apply whenever any form of succession resulted in the incompatibility of treaty régimes.

42. Mr. GIL MASSA (Mexico) said that his delegation fully supported the new paragraph 3 of article 12 proposed by the Informal Consultations Group and the emphasis laid on the link between article 12 and the proposed new article 12 *bis*. Clearly the successor State should be given the opportunity not to accept obligations contracted by the predecessor State, such as those arising out of the establishment of foreign military bases. There should be no limitation on the permanent sovereignty of every people and every State over its natural wealth and resources. Commitments might be given to other countries, and that was admissible when they were given for normal purposes of trade, development or co-operation, but not when they were for the establishment of military bases or when they involved a limitation of the permanent sovereignty of peoples over their natural wealth and resources. Military bases, whether for the benefit of the predecessor State, or of third States, represented a permanent threat of the use of force and violence and constituted an element of intimidation. It was fundamental that restrictions of that kind of the free use of territory should not be transmitted to the successor State, since they imperilled its stability and the existence of good neighbourly relations, which were essential to the maintenance of the basic principles of the self-determination and independence of peoples.

43. As far as the resolution concerning article 30 was concerned, his delegation fully supported it since it was quite clear that the principle to be upheld in a convention of the kind they were preparing was that, in the event of incompatible situations resulting from treaties, the successor State and the other States parties to the treaty should use their best endeavours to solve the problem by mutual agreement, which in a great many cases would avoid having to have recourse to other more complicated forms of settlement of disputes.

44. Mr. DUCULESCU (Romania) said that his delegation fully supported the proposal to add a third paragraph to article 12, since the establishment of foreign military bases could in no way be considered as an objective situation imposing obligations on the successor State. While the first paragraph of article 12 covered a wide range of situations, requiring a clear legal and political basis for continuity, there was a new category of international agreements relating to disarmament which should be taken into consideration, notably those concerning the creation of international nuclear-weapon-free peace and security zones which, unlike military bases, could be considered as representing an objective situation opposable to all States.

45. As far as article 12 *bis* was concerned, his delegation had already stressed the need to respect the principles of international law, including that of the permanent sovereignty of States over their natural wealth and resources, as the only basis for the succession of States in respect of treaties.

46. While recognizing the usefulness of negotiation in the cases covered by the draft resolution concerning article 30, he wondered whether it was necessary to have such a provision in a special Conference resolution.

47. Mrs. VALDÉS PÉREZ (Cuba) said that her delegation supported the proposal to add a third paragraph, which included the Cuban delegation's proposal concerning military bases, to article 12. The paragraph completed the sense of the article which, in its original form, had been unacceptable. Her delegation also supported article 12 *bis* and would vote in favour of both articles at the appropriate time.

Organization of work

[Agenda item 10]

48. Mr. STUTTERHEIM (Netherlands) said he would like to ask the Chairman whether it would be possible for the work of the Conference to be so organized that the final act could be signed on the morning of Wednesday, 23 August.

49. The CHAIRMAN said that he would consult the President of the Conference and report to the Committee in due course.

The meeting rose at 12.55 p.m.

55th MEETING

Friday, 18 August 1978, at 4.20 p.m.

Chairman : Mr. RIAD (Egypt)

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

[Agenda item 11] (*continued*)

SECOND REPORT OF THE INFORMAL CONSULTATIONS GROUP (A/CONF.80/C.1/L.62)[1] (*concluded*)

Articles 12 and 12 bis

Draft resolution concerning article 30

1. Mr. JOMARD (Iraq) said he supported the third paragraph that the Informal Consultations Group, in its second report (A/CONF.80/C.1/L.62), recommended should be added to the text of article 12 proposed by the International Law Commission, because the new paragraph marked a step forward in the progressive development of international law in that it reduced the international obligations of newly independent States. He also supported the new article 12 *bis* proposed by the Group, which confirmed a rule of law accepted by the international community and afforded newly independent countries an opportunity to assure their future.

2. Mr. VREEDZAAM (Suriname) said that, in his view, newly independent countries must be given the possibility of rejecting any treaty obligation accepted by the predecessor State and concerning the establishment of military bases on the territory to which the succession of States related, as was provided by the new paragraph 3 of article 12 proposed by the Informal Consultations Group. He also supported the principle of the permanent sovereignty of every people and every State over its natural wealth and resources, set forth in the new article 12 *bis*. He would, therefore, vote in favour of those two texts, as well as the draft resolution concerning article 30.

3. Mr. BENDI-FALLAH (Algeria) said that, in a spirit of conciliation, he would support the contents of the two provisions submitted by the Informal Consultations Group in its second report. He would have preferred the draft submitted by the Argentine delegation, because he considered that the two provisions formed a whole and that it would have been better not to separate them so as not to reduce their force and political significance. He would, however, vote in favour of the text proposed by the Group, because that text removed the ambiguities of article 12 as proposed by the International Law Commission and unequivocally affirmed the predominance of the principles of the self-determination of peoples and the independence of States.

4. His delegation considered, however, that the reference to the principles of international law was insufficiently precise, and it was in a spirit of conciliation that it agreed to the omission from article 12 *bis* of a reference to General Assembly resolution 1803 (XVII) concerning the permanent sovereignty of States and peoples over their natural wealth and resources. Out of legal purism, the Informal Consultations Group had not referred to that resolution, but it remained clearly understood that a reference to the principles of international law constituted, in particular, a reference to United Nations resolutions, including General Assembly resolution 1803 (XVII) and the resolution relating to the Charter of Economic Rights and Duties of States. His delegation welcomed the fact that the problem posed by the establishment of foreign military bases and the principle of the permanent sovereignty of every people and every State over its natural wealth and resources had been taken into consideration. It would, therefore, despite their imperfections, support article 12, paragraph 3, and article 12 *bis* in the name of what it considered to be the progressive development of international law.

5. He shared the concern expressed by the representatives of Angola, Mali and Romania,[2] among others, about the draft resolution relating to article 30. In his opinion that draft resolution contributed nothing new and might, rather, reduce the scope of the provisions of the convention relating to the settlement of disputes.

6. Mr. RANJEVA (Madagascar) noted that the *lege ferenda* nature of the codification of certain rules meant that the Conference would inevitably have to take a position on political issues. He was gratified, therefore, that the Informal Consultations Group had reached a compromise solution on the problems dealt with in articles 12 and 12 *bis*, which were essentially political problems.

7. With respect to article 12, paragraph 3, his delegation considered that the expression "military bases" must be taken to mean not only fixed military installations but all installations that could be used for military purposes as well as any ground, sea or air facilities or services. It should be noted that his country had consistently pressed for the Indian Ocean to be made a peace zone.

8. With respect to article 12 *bis*, his delegation considered that the principle of the sovereignty of peoples over their natural resources must be understood as comprising the right to exploit natural resources because, if the right of exploitation was not incontrovertibly acknowledged, the principle set forth in article 12 *bis* would be meaningless.

9. Mr. DIENG (Senegal) congratulated the Informal Consultations Group on having reached a compromise between positions of principle that at the outset had been very far apart, reflecting as they had divergent national interests. Of course, the compromise appeared to him to be

[1] See 50th meeting, foot-note 1.

[2] See 54th meeting, paras. 17, 41 and 46 respectively.

inadequate, and he would have preferred the Argentine proposal–supported by the non-aligned countries–which had preserved the fundamental unity existing between the question of natural resources and that of military bases. Nevertheless, out of a desire for conciliation, he would agree to article 12, paragraph 3, and article 12 *bis*, as proposed by the Informal Consultations Group. In article 12 *bis*, however, it would be preferable, in the phrase "the principles of international law" to put the word "principle" in the singular, because the phrase "the principles of international law" referred to international law in general and thus somewhat restricted the principle of the permanent sovereignty of every people and every State over its natural wealth and resources. He also hoped that that principle would be interpreted as comprising the right of every State to exploit its natural wealth and resources.

10. In his opinion, the draft resolution concerning article 30 served no useful purpose because, when treaty obligations or rights were incompatible there was an objective dispute and the parties must then resort to consultation and negotiation under the normal procedure for the settlement of disputes provided for by the convention.

11. Mr. ASHTAL (Democratic Yemen) said that he unreservedly supported article 12, paragraph 3, and article 12 *bis* as proposed by the Informal Consultations Group. In view of the article on the settlement of disputes recently adopted by the Committee, he considered that the draft resolution concerning article 30 served no useful purpose, but he would have no difficulty in accepting it if the Committee deemed it necessary.

12. Mr. AHIPEAUD (Ivory Coast) said that his country, which respected international or regional servitudes imposed on States, agreed that treaties relating to boundary régimes and treaties establishing an international régime restricting the use of a territory, as in the case of international waterways and the right of innocent passage in the territorial sea, should not be affected by a succession of States. It was not its understanding, however, that the rules of succession of States did not apply to treaties providing for the establishment of foreign military bases, particularly since such bases might have been used to fight against the successor State. Far from correcting the tendentious text of article 12 proposed by the International Law Commission, the new paragraph 3 proposed by the Informal Consultations Group established the rule of continuity for treaties concerning the establishment of foreign military bases; that was unacceptable to his delegation. That rule might be understandable in the case of military bases of world interest, but even in that case the treaty should form the subject of negotiations with the successor State. His delegation therefore reserved its position with respect to article 12.

13. With regard to article 12 *bis*, his delegation saw no objection to affirming the permanent sovereignty of every State over its natural wealth and resources, but it was somewhat apprehensive about the use of the word "people".

14. Mr. KOROMA (Sierra Leone), referring to article 12 *bis*, said that in the Declaration on permanent sovereignty over natural resources (General Assembly resolution 1803 (XVII)), the General Assembly had mentioned the inalienable right of all States freely to dispose of their natural wealth and resources in accordance with their national interests and the need to respect the economic independence of States and had added that "The exploration, development and disposition of such resources, as well as the import of the foreign capital required for these purposes, should be in conformity with the rules and conditions which the peoples and nations freely consider to be necessary or desirable with regard to the authorization, restriction or prohibition of such activities... In cases where authorization is granted, the capital imported and the earnings on that capital shall be governed by the terms thereof, by the national legislation in force, and by international law." Article 12 *bis*, on the other hand, reserved "the principles of international law affirming the permanent sovereignty of every people and every State over its natural wealth and resources". That article referred only to the principles of international law, whereas the Declaration he had mentioned referred to both international and national law. In an instrument subsequent to the Declaration, namely the Charter of Economic Rights and Duties of States, it was not stated that the principles of international law should govern economic relations. In that respect, article 12 *bis* marked no progress. Moreover, supposing that there was justification for mentioning the principles of international law in article 12 *bis*, some further clarification should be given, because the content of those principles was uncertain. Neither the principle of acquired rights nor that of national treatment clarified the question. The Declaration on permanent sovereignty over natural resources militated against prompt, adequate and effective compensation. Moreover, the principles of economic self-determination, independence, sovereignty and equality were all principles of international law. Accordingly, although it appreciated the efforts which the Informal Consultations Group had made in formulating the text of article 12 *bis*, his delegation considered that the article needed to be improved.

15. Mr. ABOU-ALI (Egypt) said that his delegation would vote for each of the texts contained in the second report of the Informal Consultations Group. Article 12, paragraph 3, enunciated a principle that was absolutely self-evident. Article 12 *bis*, although drafted in vague terms, was entirely acceptable to his country, which had always supported resolutions affirming the permanent sovereignty of States over their natural wealth and resources, but, it was the view of his delegation that such ambiguity could not be used to derogate from the well-established rules of international law. The draft resolution concerning article 30 was not really necessary, for it fell within the framework of the peaceful settlement of disputes, but his delegation would join in any consensus on the resolution.

16. Mr. MARESCA (Italy) said he considered that article 12, paragraph 3, was a useful complement to the previous

two paragraphs. Each term in the new paragraph had been carefully weighed and that addition was to be welcomed.

17. His delegation also welcomed the new article 12 *bis*, for it had always felt that the question covered by that provision should be dealt with in a separate article. With regard to the wording, however, it would have been preferable to use expressions that were more in keeping with legal terminology. It would be better to speak of rules, rather than principles, of international law, for rules were obligatory in character. Again, the term "people" was not very satisfactory, since permanent sovereignty over natural wealth and resources did not lie with a people, as an ethnic entity, but with the successor State, as a legal and political entity. In short, article 12 *bis* constituted a referral to the international legal order. It had the advantage of beginning with a forceful formulation, but it was regrettable that that formulation appeared again in article 13, a fact that took away some of its force.

18. In his opinion, the draft resolution concerning article 30 did not duplicate the provisions on the settlement of disputes but had a scope of its own; moreover, it related to the ordinary questions which might arise in the case of a uniting of States and not to real disputes.

19. In order to make it quite clear that the process of consultation was separate from that of negotiation, the word "of" should be inserted before the word "negotiation" in the second preambular paragraph. Consultation was simply an exchange of views, whereas negotiation implied the will to reach agreement.

20. Mr. GILCHRIST (Australia) said that article 12, as drafted by the International Law Commission, had not posed any serious difficulties for his delegation, even though it had contained some ambiguities. However, the paragraph 3 proposed by the Informal Consultations Group did not present any special difficulties either, and his delegation would therefore vote in favour of it.

21. In the Informal Consultations Group, his delegation, out of a desire to facilitate the elaboration of a compromise text, had not raised any objections to the wording of article 12 *bis*. Nevertheless, it was somewhat disturbed by the replacement of the words "relating to" by "affirming". The former expression showed quite clearly that all the principles of international law were applicable, whereas the new term might be interpreted as restricting the application of the general principles of international law as far as the principle of the permanent sovereignty of every people and every State over its natural wealth and resources was concerned.

22. His country recognized the permanent sovereignty of every State over its natural resources but considered that a State was also under an obligation not to prejudice the legitimate interests of neighbouring States and other States dependent on shared natural resources. The principles of international law did not confer on States the right to unrestricted exercise of their permanent sovereignty over their natural resources. The principles of international law beneficial to neighbouring States should be taken into account. His delegation wondered whether the exception set forth in article 12 *bis* was not now so general that it might prejudice riparian rights or rights of access that were essential to the successor State or to another party to the treaty. Although his delegation was somewhat reassured by the interpretation placed by a number of other delegations on article 12 *bis*, it would have preferred the Group to use a formula such as "in accordance with international law". Out of respect for arduously negotiated compromise texts, his delegation would lend its support to the provisions contained in the second report of the Informal Consultations Group, on the understanding that the principles, or rather the rules, of international law would continue to govern situations such as those he had mentioned.

23. Mr. OSMAN (Somalia) reminded the Committee that, at the 1977 session, his delegation had stated its views on article 12[3] at some length. It fully supported the new paragraph 3 that was now being proposed.

24. Article 12 *bis* reaffirmed a principle already embodied in United Nations resolutions, namely, the principle of the exercise of permanent sovereignty over natural resources. Reaffirmation of that general principle of international law was especially justified in a convention on succession of States in respect of treaties. It should be noted that article 12 *bis* was closely linked to article 12.

25. His delegation regarded the draft resolution concerning article 30 as superfluous, in that machinery for the settlement of disputes already existed. However, it was not opposed to the draft resolution if indeed the authors had particular situations in mind.

26. Mr. FLEISCHHAUER (Federal Republic of Germany) said his delegation had always considered that article 12 was closely linked to article 11. Not only boundary treaties and treaties on boundary régimes but also treaties of a territorial character which had been concluded in the interests of other territories and States should remain unaffected by a succession of States. It would be idle to speculate whether article 12 fell under the heading of the codification or of the progressive development of international law. In either event, it was based on the same reasoning as article 11: treaties of a territorial character which concerned other States should follow the territory to which they related. It was with that consideration in mind that his delegation had always supported article 12.

27. With regard to the new paragraph 3 which it was proposed to add to article 12, he observed that the question of treaties on the establishment of military, naval or air bases was altogether outside the scope of the article and that the exception for which it made provision should not be extended. If, however, the Conference wished to add a third paragraph to article 12, his delegation would agree to the provision.

[3] *Official Records of the United Nations Conference on Succession of States in Respect of Treaties*, vol. I, *Summary records of the plenary meetings and of the meetings of the Committee of the Whole* (United Nations publication, Sales No. E.78.V.8), pp. 134-135, 19th meeting, paras. 54-56.

28. Article 12 *bis* was the product of a difficult compromise and was based on principles with an ill-defined content. The article was worded imprecisely in terms that might give rise to varying interpretations. It would have been better to refer simply to international law, as had been suggested in the Informal Consultations Group. Consequently, his delegation would be compelled to abstain if article 12 *bis* was put to the vote.

29. As to the draft resolution concerning article 30, it should be emphasized that there was a gap in that article in respect of incompatible obligations under treaties that were kept in force in accordance with the provisions of those treaties in the former States which had united. The draft resolution covered precisely a situation of that kind, which was not automatically covered by the provisions on the settlement of disputes. His delegation therefore favoured the adoption of the draft resolution.

30. Mr. KAKOOZA (Uganda) said that, to his mind, the draft resolution under consideration served no useful purpose, since an article on the settlement of disputes had already been adopted. Admittedly, the term "dispute" was not defined in article 2, but the disagreements to which the draft resolution related would constitute disputes and would therefore be covered by the article on the settlement of disputes. His delegation could see no justification for the draft resolution and was therefore unable to support it.

31. Mr. LANG (Austria), referring to the statement made by his delegation in connexion with article 12[4] at the 1977 session, said his delegation still took the view that article 12 should be adopted as drafted by the International Law Commission. However, it appreciated the concern which had been expressed regarding the establishment of military bases and the exploitation of natural resources. For that reason, it was ready to agree to the texts proposed for article 12, paragraph 3, and for article 12 *bis*. With regard to article 12, paragraph 3, he reminded the Committee that his country had formally undertaken not to permit the establishment of foreign military bases on its territory. As to article 12 *bis*, he did not think it essential to reaffirm the principle of the permanent sovereignty of every people and every State over its natural wealth and resources, but such a reaffirmation was none the less acceptable, for it placed that principle, or rather those principles, within the general context of international law, so that they were not viewed as isolated political objectives but as interdependent elements of international law. He had noted the fact that one of the authors of the proposal had stated in the Informal Consultations Group that the "clean slate" principle did not apply to treaty obligations concerning shared natural resources; the fact that such resources were common to two or more States meant that they were subject to the rule of continuity. His delegation hoped that article 12, paragraph 3, and article 12 *bis* would be adopted by a large majority.

32. Lastly, he pointed out that his delegation had already had occasion to commend the initiative taken in submitting a draft resolution on incompatible treaty régimes and that it supported that draft.

33. Mr. MUSEUX (France) said that he had preferred the original wording of article 12, despite the element of imprecision which it had contained. He was afraid that any addition to that article would only cause further uncertainty about its actual scope instead of improving its wording. His delegation had no fundamental objection to the inclusion of an express reference to military bases, since paragraph 3 was based on the interpretation given by the International Law Commission. The concept of "military" bases was not, however, a legal one and the Commission's commentary could provide only general guidance in the matter. Admittedly, an agreement on the establishment of a base did not in itself represent an obligation attaching to a territory, but each case still had to be assessed on the basis of its particular characteristics and its true legal nature.

34. With regard to article 12 *bis*, the wording of which was not very felicitous, his delegation was of the opinion that, if it was necessary to say anything at all—and it was not sure that it was—it would have been preferable to refer expressly to conformity with international law. His delegation would therefore be unable to support that provision. It was, however, true that the principles of international law must be interpreted in conformity with international law and that to refer to those principles was therefore to refer to customary international law. In international law, there was, moreover, no principle which could be applied without being limited by the rules of law. Although that was how his delegation interpreted that provision, it could not accept it because its working was too imprecise.

35. Mr. ROVINE (United States of America) said that article 12 was perhaps the one which had caused the International Law Commission the greatest difficulties. The discussions in the Committee of the Whole had also shown how complex its provisions were, but the Informal Consultations Group had been able to find an acceptable solution in the form of the paragraph 3 which it was proposing to add to the text of article 12. As his delegation saw it, that paragraph was in the nature of a clarification concerning military bases.

36. The Informal Consultations Group had, however, been unable to achieve a genuine consensus on article 12 *bis*. Although the idea of adding words such as "in conformity with international law" to that provision had been widely supported, it had unfortunately been decided not to retain such wording in the text to be submitted to the Committee. His delegation could therefore not support that text. It did, however, interpret the principles referred to in article 12 *bis* in the light of General Assembly resolution 1803 (XVII), relating to permanent sovereignty over natural resources. In view of those considerations, it would abstain in the vote on article 12 *bis*. Nevertheless, it appreciated the close link between that provision and article 12 and recognized the value of article 12 *bis* for newly independent States. It was his delegation's understanding that the "clean slate" principle stated in that

[4] *Ibid.*, pp. 132-133, 19th meeting, paras. 34-44.

provision would apply essentially to the consumption or, in other words, the exploitation of natural resources, and would not affect territorial régimes relating to such matters as access to the sea, ports and transit rights on rivers.

37. Referring to the draft resolution concerning article 30, he said that the main purpose of that text was to draw attention to the problem of the incompatibility of treaty obligations raised by article 30. It was intended merely as a statement of fact, not as an implication that the problem dealt with by the Conference would inevitably give rise to disputes.

38. Sir Ian SINCLAIR (United Kingdom) noted that, at the 1977 session, his delegation had stated that, in its opinion, treaties concerning military bases did not come within the scope of article 12, which in no way sanctioned the continuance of such treaties.[5] His delegation had no difficulties with the new paragraph 3 relating to that question, since it should be regarded as embodying the agreed interpretation of article 12, with the object of dispelling any possible doubts. For that reason, his delegation considered it important to retain the words "do not apply", which clearly implied that paragraph 3 could not be interpreted as applying to treaty obligations relating to the demilitarization of a particular region or to other régimes—such as restrictions on military activities—relating to the use of a particular region.

39. The proposed article 12 *bis* caused greater difficulties for his delegation, which would have to abstain if the provision was put to the vote because its wording was ambiguous. His delegation had had occasion to express its point of view on the principle of the permanent sovereignty of States over their natural resources in the General Assembly and other bodies. While recognizing the existence of that principle, it considered that its application was governed by the principles of international law, which, in the final analysis, ought to be able to resolve any possible conflict between the principle of permanent sovereignty and other concepts, such as that of acquired rights. It was in that sense that his delegation would interpret article 12 *bis*. Account should, moreover, be taken of General Assembly resolution 1803 (XVII), which contained the most recent generally recognized description of the concept of the permanent sovereignty of States over their natural resources and of its relationship to international law. He also noted that the International Law Commission had first decided to include article 11 and also article 12, to which article 12 *bis* was related, in part I of the draft on the grounds that those restrictions on the "clean slate" principle should have general application. It had then drafted article 33, paragraph 3, providing for the application of the "clean slate" rule in cases of separation of parts of a State. Since the Committee had decided to delete article 33, paragraph 3, the rules contained in part IV of the draft were now based exclusively on the principle of *ipso jure* continuity. In such circumstances, it appeared that, although articles 11, 12 and 12 *bis* were, in principle, generally applicable, they must be interpreted and applied mainly, if not exclusively, in the light of the provisions of part III of the draft, which related to newly independent States.

40. With regard to the draft resolution concerning article 30, he said that he shared the view expressed by the representative of the United States.

41. Mr. EUSTATHIADES (Greece) said that it might have been thought that the question of military bases did not come within the scope of an article dealing with territorial régimes. In fact, however, the problem had mainly been one of deciding whether or not that question should be dealt with in the draft. In his opinion, the new paragraph 3 of article 12 was a welcome provision and his delegation would vote in favour of it.

42. His delegation also considered that the Informal Consultations Group had been right to state the principle of the permanent sovereignty of States over their natural resources in a separate article, even though that principle was related to the questions dealt with in article 12.

43. The CHAIRMAN invited the members of the Committee to vote first on article 12 *bis* (A/CONF.80/C.1/L.62, para. 3), then on the paragraph 3 which it was proposed to add to article 12 (A/CONF.80/C.1/L.62, para. 2) and on article 12 as a whole and, finally, on the draft resolution concerning article 30 (A/CONF.80/C.1/L.62, para. 6).

Article 12 bis *was adopted by 74 votes to none, with 12 abstentions, and was referred to the Drafting Committee, with the request that it should propose a title for that article.*

Article 12, paragraph 3, was adopted by 84 votes to none, with 1 abstention.

Article 12, as a whole, was adopted by 86 votes to none, with 1 abstention, and was referred to the Drafting Committee, with the request that it should propose a title for that article.

44. The CHAIRMAN observed that, at its 5th plenary meeting, the Conference had adopted the text of article 11, but had deferred a decision on the title of that article until it had completed its consideration of article 12.[6] Consequently, he suggested that the Committee should request the Drafting Committee also to propose a title for article 11.

It was so decided.[7]

45. The CHAIRMAN invited the members of the Committee to take a decision on the draft resolution concerning article 30.

The draft resolution concerning article 30 was adopted by 49 votes to 8, with 30 abstentions, and was referred to the Drafting Committee, with the request that it should propose a title for that text.[8]

[5] *Ibid.*, p. 137, 20th meeting, para. 17.

[6] *Ibid.*, pp. 9-11, 5th plenary meeting, paras. 9-24.

[7] For resumption of the discussion on articles 11, 12 and 12 *bis*, see 56th meeting, paras. 37-43.

[8] For resumption of the discussion, see 56th meeting, paras. 44-45.

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

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

Organization of work

[Agenda item 10]

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

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

The meeting rose at 6.15 p.m.

56th MEETING

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

Chairman : Mr. RIAD (Egypt)

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

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

[Agenda item 11] (*continued*)

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

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

1. The CHAIRMAN invited the Committee, before taking up articles 2, 12 and 12 *bis* and the resolution concerning article 30, to resume its consideration of the title and text of article 7 as adopted by the Drafting Committee (A/CONF.80/C.1/5). At the 53rd meeting of the Committee, further discussion of article 7[1] had been deferred pending informal consultations among States with a particular interest in the article regarding the oral amendment to paragraph 3 proposed in the course of that meeting[2] by the United Kingdom.

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

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

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

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

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

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

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* Resumed from the 53rd meeting.

[1] See 53rd meeting, paras. 50-51.

[2] *Ibid.*, para. 41.

[3] *Ibid.*, para. 45.

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

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

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

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

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

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

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

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

A successor State may at the time of signing or of expressing its consent to be bound by the present Convention make a declaration that it will apply the provisions of the Convention provisionally in respect of its own succession of States which has occurred before the entry into force of the Convention in relation to any other signatory or contracting State ..."

It was so agreed.

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

It was so agreed.[4]

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

Article 2 (Use of terms)[5]

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

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

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

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

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

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

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

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

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

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

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

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

25. Mr. PÉREZ CHIRIBOGA (Venezuela) said that, while his delegation understood the desire of the representative of Zaire for precision in the language of the Convention, it considered it would be inappropriate to include a definition of the word "people" in article 2. That article, in its view, should be confined to definitions that were essential for a full understanding of all the provisions in the Convention, in other words, to definitions of terms that were particularly relevent to succession of States.

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

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

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

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

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

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

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

[6] See 54th meeting, para. 39.

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

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

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

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

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

It was so agreed[7].

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

Article 11 (Boundary régimes)[8]

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

38. The CHAIRMAN said that, if there were no objection, he would take it that the Committee agreed to adopt on second reading the title of article 11 as proposed by the Drafting Committee.

It was so agreed.[9]

Article 12 (Other territorial régimes) (continued)

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

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

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

It was so agreed.[10]

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

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

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

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

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

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

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

It was so agreed.[11]

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

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

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

It was so agreed.[12]

The meeting rose at 1.15 p.m.

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

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

57th MEETING

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

Chairman: Mr RIAD (Egypt)

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

[Agenda item 11] (*concluded*)

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

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

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

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

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

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

Article A (*Consultation and negotiation*)

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

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

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

It was so agreed.

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

operation of the present Convention. It could not fail to see, however, that not all delegations were ready to accept a compulsory judicial procedure at the present stage of development of the international community. The compromise solution reached in the document before the Committee was not an ideal solution but it had its merits, which lay in its compulsory conciliation procedure and that procedure went beyond mere negotiation between the parties to the dispute and was, as such, a small step towards judicial third party settlement procedure. For those reasons, and with the reservation stated, the Holy See was prepared to give its consent to the proposal before the Committee.

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

It was so agreed.[2]

Article B (Conciliation)

10. Mr. YASSEEN (Chairman of the Drafting Committee) said that the Drafting Committee had considered the suggestion made by the representative of Italy concerning the last sentence.[3] It had reached the conclusion that the article as originally drafted gave the impression that the request needed to initiate the conciliation procedure had to be made not only to the Secretary-General of the United Nations but also to the other party or parties to the dispute. However, the procedure envisaged in the present articles was the same as that provided for in other codification conventions, particularly the Vienna Convention on the Law of Treaties, namely, that conciliation was obligatory on request to the Secretary-General of the United Nations. It was not entirely correct to speak of a request to the other party or parties to the dispute, since the latter could not oppose the initiation of the conciliation procedure. The parties were notified of the request to the Secretary-General for information only. The Drafting Committee had therefore decided to re-word the last sentence of article B so as to make it clear that what was required was that the other party or parties to the dispute should be informed of the request. In the English and Spanish versions, the words "specify" and *"indicado"* had been used in connexion with the word "Annex" and *"Anexo"*, respectively.

11. Mr. MARESCA (Italy) said he wished to thank the Drafting Committee for taking account of his delegation's suggestions.

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

It was so agreed.[4]

Article C (Judicial settlement and arbitration)

13. Mr. YASSEEN (Chairman of the Drafting Committee) said that the Drafting Committee had decided to delete the words "party to the present Convention" at the beginning of the article because it considered it incorrect, since the article provided that the time of signature of the Convention was one of the occasions when notification of the declaration regarding submission of the dispute to judicial settlement or arbitration might be made. Furthermore, in the English version, it had replaced the words "set forth" and "such" by the words "referred to" and "that" respectively, for greater precision. The former change had also been made in the Spanish version. In the Spanish version, too, the words *"como otra posibilidad"* had been replaced by *"alternativamente"*, so as to bring it into line with the other versions. Finally, in the French version, the order of the words *"par la suite, à tout moment"* had been inverted so as to bring it into line with the working of paragraph 2 of article 7.

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

It was so agreed.[5]

Article D (Settlement by common consent)

15. Mr. YASSEEN (Chairman of the Drafting Committee) said that the Drafting Committee had decided to replace the opening words of the article "Without prejudice to" by the word "Notwithstanding", which more clearly reflected the relationship between the group of articles and the preceding articles. A similar change had been made in the other languages. In all languages, too, the reference to the International Court of Justice had been placed before the reference to arbitration, and in the French version the phrase *"deux Etats parties ou plus"* had been replaced by *"deux ou plusieurs parties à celle-ci"*.

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

It was so agreed.[6]

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[2] For the adoption of article A by the Conference, see 14th plenary meeting.

[3] See 51st meeting, para. 14.

[4] For the adoption of article B by the Conference, see 14th plenary meeting.

[5] For the adoption of article C by the Conference, see 14th plenary meeting.

[6] For the adoption of article D by the Conference, see 14th plenary meeting.

Article E (Other provisions in force for the settlement of disputes)

17. Mr. YASSEEN (Chairman of the Drafting Committee) said that as the five articles on peaceful settlement of disputes had to be placed in the body of the Convention, his Committee had found it preferable to replace the word "foregoing"—*"qui précèdent"* in the French version—by a specific reference to the four preceding articles. Furthermore, for stylistic reasons, the words "the parties" had been replaced by the word "them" and, in the French version, the words *"ne portent atteinte aux"* had been replaced by *"n'affecte les"*.

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

It was so agreed.[7]

REPORT OF THE DRAFTING COMMITTEE ON THE TEXT OF THE ANNEX TO THE CONVENTION RELATING TO THE PEACEFUL SETTLEMENT OF DISPUTES, ADOPTED BY THE DRAFTING COMMITTEE (A/CONF.80/C.1/9/Add.1)

19. Mr. YASSEEN (Chairman of the Drafting Committee) said that the text of the annex to the Convention, as referred to the Drafting Committee, was identical with that of the annex to the Vienna Convention on the Law of Treaties, but it should be remembered that application of the annex to the present Convention should be *mutatis mutandis* and not to the letter. The attention of some members of the Drafting Committee who had not been consulted through lack of time was drawn to a small change agreed upon with the Secretariat, and approved by other members of the Drafting Committee, concerning paragraph 3 of the annex, in which the expression "any party to the treaty" should be replaced by the expression "any party to the present Convention". The expression "any party to the treaty" was appropriate in the Vienna Convention on the Law of Treaties, particularly bearing in mind the provisions of its articles 65 and 66, but in the present Convention the proposed conciliation procedure concerned only disputes regarding the interpretation or application of the Convention, so that the words "any party to the present Convention" were more suitable. For the sake of clarity, the Drafting Committee had also decided to replace the words in paragraph 2 "within sixty days following the date of the last of their own appointments" by the words "within sixty days following the date of the appointment of the last of them".

20. Mr. PÉREZ CHIRIBOGA (Venezuela) said that, in the *Ad Hoc* Group on Peaceful Settlement of Disputes, his delegation had raised a point concerning the Spanish version, namely, that in the Vienna Convention on the Law of Treaties the annex referred to *"la lista de los amigables componedores"*, (*"conciliateurs"* and "conciliators" in the French and English versions respectively). After the adoption of the Vienna Convention, some Latin American countries had expressed doubts as to whether the expression *"amigables componedores"* was the exact equivalent of "conciliator". Although the Venezuelan delegation itself had no problem over the expression, it had nevertheless suggested that the Drafting Committee examine the point, and said that it would accept its decision. Seeing that the expression had been retained, his delegation was prepared to accept it if the Conference was satisfied that the two expressions were exact equivalents. It had been pointed out that in some Latin American legal systems an *"amigable componedor"* had greater powers than a conciliator.

21. Mr. YASSEEN (Chairman of the Drafting Committee) replied that the point had not been referred to the Drafting Committee, and therefore had not been considered. On behalf of the Drafting Committee, however, he would confirm that the expression used in the Spanish version meant only, and simply, what *"conciliateur"* and "conciliator" meant in French and English respectively.

22. Mr. MONCAYO (Argentina) said that he shared the doubts expressed by the representative of Venezuela. In the municipal law of some Latin American States, particularly commercial law, the expression *"amigable componedor"* could indicate some element in the procedure for the settlement of disputes not strictly concerned with the application of the law, but rather with considerations of equity. If the wording of the Vienna Convention on the Law of Treaties were adopted, it would have to be on the understanding that the term as used in the present Convention meant *"agentes de conciliacion"*.

23. The CHAIRMAN said that the point would be noted. If there were no objection, he would take it that the Committee agreed to adopt the text of the annex to the Convention, relating to the peaceful settlement of disputes, as adopted by the Drafting Committee.

It was so agreed.[8]

REPORT OF THE DRAFTING COMMITTEE ON THE DIVISION OF THE CONVENTION INTO PARTS AND SECTIONS AND TITLES THEREOF ADOPTED BY THE DRAFTING COMMITTEE (A/CONF.80/C.1/10)

24. Mr. YASSEEN (Chairman of the Drafting Committee) said that the Committee of the Whole had asked the Drafting Committee to consider the division of the Convention into parts and sections, and the titles of those parts and sections.[9] Articles 1 to 39, which had been adopted by the Conference, largely corresponded both in form and in substance to articles 1 to 39 of the International Law Commission's draft. The only article of substance added by

[7] For the adoption of article E by the Conference, see 14th plenary meeting.

[8] For the adoption of the annex by the Conference, see 14th plenary meeting.

[9] See 53rd meeting, para. 51.

the Conference was article 12 *bis*, and that fell quite naturally into place in Part One after article 12. The Drafting Committee had also considered that each of the parts and sections of the basic draft accurately reflected the contents of its provisions, and had consequently seen no reason either to change the division of the draft as established by the International Law Commission or to change the titles of the parts and sections. The Drafting Committee had also felt that, because of the importance and the specific character of the five additional articles on the peaceful settlement of disputes, it was appropriate to keep them separate in a part entitled "Settlement of disputes" which had been placed after the articles which corresponded to the basic proposal. The Committee had felt that was only logical, seeing that any dispute would necessarily arise from the application of the article, and that a dispute must, in the nature of things, come before any settlement. In accordance with normal practice, the final provisions had been placed by themselves at the very end of the Convention.

25. The CHAIRMAN said that, if there were no objection, he would take it that the Committee agreed to adopt the division of the Convention into parts and sections and the titles thereof, as adopted by the Drafting Committee.

It was so agreed.[10]

Adoption of the report of the Committee of the Whole (A/CONF.80/C.1/L.61 and Add.1 and 2)

26. The CHAIRMAN invited the Rapporteur to introduce the draft report of the Committee of the Whole (A/CONF.80/C.1/L.61/Add.1 and 2).

27. Mrs. THAKORE (Rapporteur) said that the draft report represented the successful culmination of the Committee's collective endeavours on a subject of great legal and political complexity—a success due in no small measure to the prevailing spirit of co-operation and compromise. It covered the Committee's consideration of item 11 of the Conference agenda (A/CONF.80/7) during the resumed session of the Conference, and was a continuation of the Committee's report on the work of the 1977 session (A/CONF.80/16).

28. The report consisted of an introductory chapter and three other chapters, in addition to an annex. Chapter II described the proceedings of the Committee, article by article, giving first the text of the International Law Commission's draft or the text of the proposed new article as the case might be, then the text of the amendments if any, with a brief indication of the manner in which they were disposed of. The proceedings of the Committee were then described, making a distinction when necessary between the proceedings at the 1977 session and those of the resumed session. That was followed by consideration of the corresponding report of the Drafting Committee, and finally the Drafting Committee's text of the article as approved by the Committee of the Whole and recommended for adoption by the Conference.

29. Chapter II also described the different procedure followed in the case of article 39 *bis* and articles 6, 7 and 12 as well as the draft resolution concerning article 30 which, following initial consideration by the Committee of the Whole, had been referred respectively to the *Ad Hoc* Group on the Peaceful Settlement of Disputes, established at the resumed session, and the Informal Consultations Group, established at the 1977 session. In all those cases, the Committee of the Whole had taken its decision on the basis of a report submitted by the Group concerned before referring the articles to the Drafting Committee.

30. Chapter III of the report contained the text of the proposals for the preamble and final clauses referred to the Drafting Committee on which, in accordance with a decision taken by the Committee of the Whole at its 21st meeting,[11] the Drafting Committee had submitted its report direct to the Plenary. Since those proposals had not been discussed in the Committee of the Whole, the reports of the Drafting Committee thereon did not form part of the former's draft report.

31. Chapter IV dealt with the parts and sections into which the draft articles were divided: at its 53rd meeting, the Committee of the Whole had decided to request the Drafting Committee to examine and report on the question of that division and on the titles for the parts and sections.

32. The annex contained a check list of documents submitted to the Committee of the Whole during the resumed session.

33. The report was to be read in conjunction with the corresponding summary records of the Committee of the Whole. Some blanks would be filled in by the subsequent issue of addenda and the final version of the report would be prepared in New York in consultation with the Rapporteur.

34. The CHAIRMAN said that, if there were no objection, he would take it that the Committee of the Whole agreed to adopt the draft report on its work as contained in documents A/CONF.80/C.1/L.61/Add.1 and 2.

It was so agreed.[12]

Conclusion of the work of the Committee of the Whole

35. The CHAIRMAN said he congratulated members of the Committee on the production of a historic document and thanked all delegations for their contribution to the success of the Conference. He wished to pay a special

[10] For the adoption by the Conference of the division of the Convention into parts and sections and titles thereof, see 14th plenary meeting.

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

[12] For the adoption by the Conference of the report of the Committee of the Whole, see 14th plenary meeting.

tribute to the Austrian delegation as the representatives of a host country which, through previous law conferences held in Vienna, had already contributed much to the solution of many thorny problems. He also wished to commend the efforts of the Chairman and members of the Drafting Committee, the Vice-Chairman who had acted as Chairman of the informal consultations group, the Executive Secretary, the Expert Consultant and the Secretariat who had staffed the Committee.

36. Mr. HERNDL (Austria) thanked the Chairman for his untiring efforts and expressed his delegation's gratification at his complimentary remarks about Austria and Vienna.

37. The CHAIRMAN declared that the Committee of the Whole had concluded its work.

The meeting rose at 10.55.

كيفية الحصول على منشورات الامم المتحدة

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