66. The favouring of the concept of 'jurisdiction' over the more classical concept of 'territoriality' has extremely important and interesting consequences. Thus, without being exhaustive on the matter, it may be noted that maritime areas not under the sovereignty of a State party to a treaty may nonetheless, under certain conditions, fall within the scope of a treaty that has retained 'jurisdiction' as an applicable criterion. For example, the former European Commission on Human Rights held that a trilateral treaty on the protection of a shipwreck located outside the territorial sea of the respondent State could be deemed to be placed under the 'jurisdiction' thereof.[106] Conversely, other maritime areas, even though subject to the sovereignty of a State party to a treaty, could not fall under a treaty based on the 'jurisdiction' criterion rather than on the 'territoriality' one. For example, a State party to a treaty could not be liable because it failed to apply that treaty's provisions to a foreign ship passing through its territorial sea in innocent passage, first, because it should not, under normal circumstances, exercise its criminal or civil jurisdiction on board such a ship[107] and, secondly, because the right of innocent passage should be seen as an inherent condition of the sovereignty of the coastal State over its territorial sea. It may also be noted that the failure of a State party to a treaty to exercise an effective control over a portion of its territory will result in the non-applicability of the treaty to this part of the territory, except of course if the State that actually exercises control over this area is itself a party to the treaty.[108]

2, para. 1: 'Each State party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant'), ended up being interpreted by the Human Rights Committee in a way similar to that of the European Convention on Human Rights (see on the question M. Nowak, *United Nations Covenant on Civil and Political Rights* (Kehl, Strasbourg, Arlington: Engel Verlag, 1993), pp 42–3). It is also characteristic that the second optional Protocol to the Covenant aiming at the abolition of the death penalty, adopted on 15 December 1989, states that 'no one within the jurisdiction of a State party to the present Protocol shall be executed' (Art. 1, para. 1; 1642 UNTS 414), without any other qualification of a 'territorialist' type. Let us note finally that in its Advisory Opinion of 9 July 2004 on the *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, the International Court of Justice concluded that the Covenant on Civil and Political Rights is applicable to the acts of a State acting in the exercise of its jurisdiction outside its own territory (p 180, para. 111).

[106] *Bendréus et al v Sweden*, decision of the European Commission on Human Rights of 8 September 1997 (not reported). See also for a similar approach by the Commission its decision in *Berglund et al v Sweden* of 16 April 1998 (not reported).

[107] See Arts 27 (criminal jurisdiction) and 28 (civil jurisdiction) UNCLOS, two provisions that reproduce Arts 19 and 20 of the 1958 Geneva Convention on the Territorial Sea and the Contiguous Zone.

[108] This assumption has often been seen in the context of the implementation of the European Convention on Human Rights. Thus, according to a European Commission on Human Rights decision of 18 January 1989 (*George Vearncombe et al v United Kingdom and Federal Republic of Germany*) in a case relating to the occupation of Berlin (West), 'acts performed by organs of an occupying State (including members of its army) are generally attributable to this State and not to the occupied State' (DR 59, p 186). The assumption in question has found its clearest expression in many cases concerning the Turkish army's occupation of northern Cyprus (see esp. the judgments of the European Court of Human Rights: *Loizidou v Turkey*, 23 March 1995, Series A, no. 310 and *Cyprus v Turkey*, 10 May 2001, Reports, 2001-IV). Another example, albeit slightly more controversial, is the *Ilaşcu et al v Moldova and Russia* case (judgment of 8 July 2004, Reports, 2004-VII, p 1) relating to the involvement of Russian troops in the secessionist republic of Transnistria. One may also note the decision of 12 March 2002 of the Inter-American Commission on Human Rights in the case of Guantanamo detainees (*ILM*, 2002, p 532). The Commission considered that the measures requested in this petition were justified and necessary having regard, inter alia, to the fact that the detainees at Guantanamo 'remain wholly within the authority and control of the United States government' despite the fact that the military base at Guantanamo is not strictly speaking US territory but is the subject of a long-term lease from Washington.

67. It is clear, however, that placing too much weight on the concept of 'jurisdiction' risks marginalizing the concept of 'territoriality', since the concept of 'jurisdiction' is often very appealing. Ultimately the question of the true significance of Article 29 of the Vienna Convention would arise, as well as its capacity to reflect both treaty practice and international custom. In addition, the commitments of States would increase to an extent difficult to sustain. States have thus tended to favour 'territoriality', a concept that seems much safer to them. Nothing is more disturbing than activities that are outside their territorial control but still likely to engage their responsibility: such is the case, for example, of many activities relating to the Internet. As Professor Prosper Weil stated: 'one of the major concerns has been for international law (and still is) the creation of principles and rules capable of preserving the territorial base of the States'.[109]

68. In this regard, it is interesting to note a recent refocusing of the European Court of Human Rights in the interpretation of the concept of 'jurisdiction', which largely determines obligations assumed by States under the European Convention on Human Rights. In its decision on an application involving 17 States all parties to the Convention and NATO members and regarding the aerial bombing of the city of Belgrade in the spring of 1999, the Court held that:

> Article 1 of the Convention must be considered to reflect this ordinary and essentially territorial notion of jurisdiction, other bases of jurisdiction being exceptional and requiring special justification in the particular circumstances of each case.[110]

69. Be that as it may, the ILC (and, it should be remembered, without providing any clear understanding of what it meant by 'extraterritorial application') came to the following conclusion on this question in its commentary on the future Article 29 in its 1966 draft:

> [This] Article was intended by the Commission to deal only with the limited topic of the application of a treaty to the territory of the respective parties;...the preferable solution was to modify the title and the text of the Article so as to make precise the limited nature of the rule. In its view, the law regarding the extra-territorial application of treaties could not be stated simply in terms of the intention of the parties or of a presumption as to their intention; and it considered that to attempt to deal with all the delicate problems of extra-territorial competence in the present Article would be inappropriate and inadvisable.[111]

70. This point was also raised during the Commission's debates as to whether the territorial scope of a treaty might be affected by questions of State succession. However, the Commission admitted quite frankly that it 'decided not to deal with this question' under the provision of Article 29.[112] It decided instead to reserve this question for a 'general

[109] 'L'une des préoccupations majeures du droit international a été, et reste, de forger des principes et règles susceptibles de préserver l'assise territoriale des Etats' in 'Le droit international en quête de son identité. Cours général de droit international public', *RCADI*, 1992-VI, vol. 237, pp 9–369, esp. p 35.

[110] *Banković et al* (Reports, 2001-XII), decision of 12 December 2001 (para. 61). Moreover, the Court held that:

> its recognition of the exercise of extra-territorial jurisdiction by a Contracting State is exceptional: it has done so when the respondent State, through the effective control of the relevant territory and its inhabitants abroad as a consequence of military occupation or through the consent, invitation or acquiescence of the Government of that territory, exercises all or some of the public powers normally to be exercised by that Government. (ibid, para. 71)

[111] *YILC*, 1966, vol. II, pp 213–14, para. 5.

[112] Ibid, p 214, para. 6.

provision' which finally became Article 73 of the 1969 Vienna Convention. Moreover, another Vienna Convention, also based on an ILC draft, was adopted on 22 August 1978. It aims at clarifying several rather complex questions regarding a treaty's status after a State succession.[113]

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[113] 1946 UNTS 3.

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ANNEX 14

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Vienna Convention on the Law of Treaties

A Commentary

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Article 29
Territorial scope of treaties

Unless a different intention appears from the treaty or is otherwise established, a treaty is binding upon each party in respect of its entire territory.

Contents

A. Purpose and Function

Art 29 deals with the territorial scope of treaties. The personal, material and temporal scope is regulated by other provisions (→ Art 28). In spite of its apparently comprehensive heading, Art 29 **does not intend to cover the entire issue** regarding the application of treaties to territory.[1] It is limited to providing for the binding force of a treaty with respect to the territory of its parties. **1**

Even though questions of State succession are not covered by Art 29 but by Art 73,[2] State succession may be one of many possible reasons for territorial changes. Each **alteration of State boundaries** influences treaty borders. Therefore, insofar as State succession, like other forms of addition or loss of territory, leads to territorial changes, the 'moving treaty frontiers' rule (→ MN 26), implicitly embodied in Art 29,[3] applies. All other aspects of State succession, especially those affecting the identity of a State, are not governed by the law of treaties but by special rules (→ Art 73). **2**

[1] Final Draft, Commentary to Art 25, 213 para 5.

[2] *Ibid* 214 para 6.

[3] See *E Klein* Treaties, Effect of Territorial Changes (2000) 4 EPIL 941, 942.

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B. Historical Background and Negotiating History

3 Art 29 is regarded as setting out a **rule of customary international law**. Both State practice[4] and scholarly literature[5] agree on this fact. The discussions of the Final Draft in the General Assembly mirror the same consensus.[6] The congruity went so far that some members of the ILC and delegations of States even proposed to delete the provision since it was deemed to be unnecessary.[7]

4 In spite of its acceptance as a customary rule, the wording of the provision underwent **some important changes** during the negotiation process. The draft presented by SR *Fitzmaurice* in 1959 consisted of four articles (Draft Arts 25–28), each with at least three paragraphs, dealing with the territorial application of treaties.[8] The length and complexity of the provisions were due to the fact that they concentrated on special questions regarding metropolitan territory and dependent territories. It was SR *Waldock* who proposed in 1964 to deal with the territorial application of treaties in one single article (Draft Art 58)[9] by leaving aside all references to special types of territory. The provision stated in its first part that a treaty applies with respect to all the territory or territories for which the parties are internationally responsible. In its second part, it mentioned three cases in which a contrary intention may be established. The ILC simplified SR *Waldock*'s proposal by drafting Art 57, which stated that the scope of application of a treaty extends to the entire territory of each party, unless the contrary appears from the treaty.[10]

5 SR *Waldock's* proposal of 1964 constituted the basis of the later Art 29. The Final Draft of 1966 only changed its number (Draft Art 57 became Draft Art 25) and the order of its content by placing the exceptions at the beginning.[11] The new proposal stated that unless a different intention appears from the treaty or is otherwise established, the application of a treaty extends to the entire territory of each party. The Drafting Committee changed the wording slightly in 1968 by replacing the notion of "application" by the formula that a treaty is "binding" upon each party in respect of its entire territory. The new wording was considered

[4] 1999 Summary of Practice of the Secretary-General as Depositary of Multilateral Treaties, UN Doc ST/LEG/7/Rev.1, paras 102–103; Final Draft, Commentary to Art 25, 213 para 2.

[5] *K Doehring* The Scope of the Territorial Application of Treaties (1967) 27 ZaöRV 483, 484; *MB Akehurst* Treaties, Territorial Application (2000) 4 EPIL 990; *S Karagiannis* in *Corten/Klein* Art 29 MN 10–13.

[6] [1966-II] YbILC 70–73.

[7] See the commentary of *Tunkin* [1964-I] YbILC 49, or the Finnish and the Greek proposals [1966-II] YbILC 70.

[8] *Fitzmaurice* IV 47–48.

[9] *Waldock* III 12.

[10] [1964-II] YbILC 179.

[11] Final Draft, Art 25, 213.

preferable.[12] Art 25 was adopted by the Vienna Conference by 97 votes to none.[13] The present Art 29 corresponds to the adopted Art 25.

C. Elements of Article 29

I. Unless a Different Intention Appears from the Treaty or Is Otherwise Established

The wording used in Art 29 to define the exceptions to the general rule is the same as in Art 28. The addition "or is otherwise established" was introduced at a **late stage of the negotiating process**. It did not appear anywhere before the Final Draft of 1966. In prior drafts, SR *Waldock* proposed inserting the addition "or the circumstances of its conclusion". This proposal, however, met with opposition.[14] Without further explicit discussion, it was replaced by the formula "or is otherwise established" in 1966.[15] According to the ILC, the wording guarantees the "necessary flexibility to the rule to cover all legitimate requirements in regard to the application of treaties to territory".[16] The phrase did not lead to later controversy either.[17] **6**

The **question on how to interpret the formula** has not yet been decided by an international tribunal; nor did the ILC explain its meaning in the commentaries. In scholarly literature, the first part of the formula "unless a different intention appears from the treaty" is not scrutinized. It seems to be obvious that it covers the wording and the interpretation of treaty provisions. With regard to the interpretation of the second part of the formula "or is otherwise established", however, different views are to be found. One of them stipulates that it refers to further agreements between the parties concluded outside of the treaty in question.[18] Such a broad approach, however, leaves aside the focus on the treaty itself.[19] Another point of view is that the second part of the formula indicates that the judge has to free himself from the **7**

[12] UNCLOT I 429 para 54.

[13] UNCLOT II 55.

[14] [1964-I] YbILC 167–169.

[15] [1966-II] YbILC 64 *et seq*.

[16] Final Draft, Commentary to Art 25, 213 para 4.

[17] See the positive reactions of the delegations of Australia and the Netherlands, UNCLOT I 163 paras 54 *et seq*. Only the delegation of the Philippines had some doubts and pointed out that the phrase might seem to open the door to a party evading its obligations, see UNCLOT I 164 para 2. The new wording was adopted by the Drafting Committee without any discussion, see UNCLOT I 428 para 53. The same occurred when the provision was adopted by the Vienna Conference, see UNCLOT II 55.

[18] *Doehring* (n 5) 485–486.

[19] Furthermore, the author misinterprets an opinion of SR *Waldock*. The opinion cited by the author in n 9 does not refer to the formula "or is otherwise established" but to the formula "unless a different intention appears from the treaty", see [1964-I] YbILC 235.

classical forms of interpretation recognized by the VCLT[20] by taking into account, *inter alia*, the preparatory work of a treaty. The approach is narrower, but mainly refers to the supplementary means of interpretation as set forth in Art 32.

8 A systematically coherent approach requires a different view. In order to achieve coherent application of the Vienna Convention the formula used in Art 29 is to be **interpreted in the same way as the identical formula in Art 28**. Therefore, States are free to determine the territorial scope of a treaty. They may decide not to apply the general rule that a treaty is binding upon each party in respect of its entire territory. Such an intention may be either expressly stated in a treaty provision or result from the interpretation of a treaty provision ("unless a different intention appears from the treaty") or emanate from the nature of the treaty ("or is otherwise established") (→ Art 28). This view is confirmed by the practice of the Secretary-General as depositary of multilateral agreements. When deciding on the territorial application of a treaty he not only analyses the treaty provisions and their interpretation, but also the nature of the treaty.[21]

9 There are different types of **treaty provisions regulating the territorial scope** of a treaty (territorial clauses). Some of them are formulated in a rather neutral way by determining that any party may, at the time of signature or when depositing its instrument of ratification, acceptance or approval, specify the territory or territories to which the treaty in question shall apply (general territorial clauses).[22] Others contain a detailed list of the territories to which the respective treaty is applicable[23] or not applicable[24] (specified territorial clauses).

10 Some treaties provide for a **possible extension** of their application to territories for whose foreign relations a contracting party is responsible (colonial extension clauses). The territorial extension is accomplished when the party in question has submitted a declaration to the depositary.[25] As the number of colonies and dependent territories has rapidly decreased since 1960, the instances of application of treaties to such territories have become fewer. The heated debates on the lawfulness of colonial clauses as well as the difficulties encountered[26] have lost much of their importance. Modern treaties[27] often contain a different, more neutral type of formula by providing that any party may, by a declaration addressed to the depositary, extend the application of the respective treaty to any other territory specified in

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[20] *S Karagiannis* in *Corten/Klein* Art 28 MN 18.

[21] Summary of Practice (n 4) para 277.

[22] See *eg* Art 5 para 1 of the 1983 Protocol No 6 to the ECHR concerning the Abolition of the Death Penalty ETS 114; Art 2 para 1 of the 2000 Protocol No 12 ECHR ETS 177.

[23] See, *eg*, Art 52 TEU, Art 355 TFEU.

[24] See *eg* Art 23 of the 1983 Australia New Zealand Closer Economic Relations Trade Agreement [1983] ATS 2.

[25] See *eg* Art XII of the 1948 Convention on the Prevention and Punishment of the Crime of Genocide 78 UNTS 277; Art 56 of the 1950 Convention for the Protection of Human Rights and Fundamental Freedoms ETS 5.

[26] *Akehurst* (n 5) 991.

[27] See the explanation of *Aust* 203.

the declaration (general extension clauses).[28] Sometimes, the possibility to extend the application of a treaty is limited to a specific territory (specified extension clauses).[29]

Rarely do treaties provide for the **possible exclusion** of territories from their application. Such territorial clauses may refer to territories for the international relations of which a party is responsible (colonial exclusion clause).[30] In this case, the relevant party can declare that the treaty in question shall not apply to those dependent territories. Treaty provisions providing for the possible exclusion of any territory specified in the declaration (general exclusion clauses) scarcely exist. Sometimes, however, treaties contain a clause allowing the exclusion of a certain territory (specified exclusion clauses).[31] **11**

A special type of territorial clauses is **federal clauses**.[32] They are to be found in treaties whose subject matter falls within the legislative jurisdiction of the territorial units of some of the parties. They usually stipulate that any party may declare at any time that the relevant treaty is to extend to all its territorial units or only to one or more of them.[33] **12**

The question remains whether there are cases where the intention not to apply a treaty to the entire territory of the parties has been "otherwise established". States Practice shows that where a territorial clause is lacking, States often make **unilateral declarations** when signing or ratifying a treaty.[34] In this way, they either extend the application of the treaty in question to certain territories or they exclude them from its scope. The Secretary-General as depositary of multilateral agreements, when deciding on the acceptance of such declarations, focuses on the nature of the treaty in question. If the nature of the treaty or other special circumstances do not mandate the non-acceptance, the Secretary-General usually considers such declarations as reservations[35] (→ Art 19 *et seq*). According to the Secretary-General, unilateral declarations are not inconsistent with Art 29. The constant practice of certain States in respect of territorial application and the general absence **13**

[28] See *eg* Art 5 para 2 Protocol No 6 to the ECHR (n 22); Art 2 para 2 Protocol No 12 to the ECHR (n 22).

[29] Good examples would be the so-called Berlin clauses that were included in most of the treaties signed by the Federal Republic of Germany before the reunification in 1990. Some of them allowed Germany to extend the application of the respective treaty to Berlin, see *eg* Art 18 para 2 of the 1966 Protocol to the European Convention on Establishment of Companies ETS 57.

[30] See *eg* Art 12 of the 1956 Convention on the Recovery Abroad of Maintenance 268 UNTS 3.

[31] Some of the Berlin clauses provided for the possibility to exclude Berlin from the application of a treaty, see *eg* Art 19 of the 1958 Cultural Convention between the United Kingdom of Great Britain and Northern Ireland and the Federal Republic of Germany 343 UNTS 241

[32] See the various examples provided by *Aust* 209 *et seq*.

[33] See *eg* Art 93 para 1 of the 1980 UN Convention on Contracts for the International Sale of Goods 1489 UNTS 3.

[34] See the various examples provided by *Sinclair* 90–91; *Aust* 205–206 and in Summary of Practice (n 4) paras 277 *et seq*.

[35] See Summary of the Practice para 277; *Akehurst* (n 5) 991.

of objections to such practices are in conformity with the second part of the formula of Art 29: the different intention "is otherwise established".[36]

> There are examples where a unilateral declaration of a State Party excluding certain territories from the scope of the treaty in question has not been accepted. In the *Ilascu* case[37] the ECtHR had to decide on a declaration made by Moldavia at the time of ratification of the ECHR. The declaration on territorial exemption concerned Transdniestria and was based on the fact that Moldavia had no control or jurisdiction over that part of its territory since it was under Russian occupation. The Court came to the conclusion that such a declaration was incompatible with Art 1 ECHR which obliges States Parties to secure to everyone within their jurisdiction the rights and freedoms of the Convention. The Court stated that "where a Contracting State is prevented from exercising its authority over the whole of its territory by a constraining *de facto* situation, such as obtains when a separatist regime is set up, whether or not this is accompanied by military occupation by another State, it does not thereby cease to have jurisdiction within the meaning of Article 1 of the Convention over that part of its territory temporarily subject to a local authority sustained by rebel forces or by another State. Nevertheless, such a factual situation reduces the scope of that jurisdiction in that the undertaking given by the State under Article 1 must be considered by the Court only in the light of the Contracting State's positive obligations towards persons within its territory. The State in question must endeavour, with all the legal and diplomatic means available to it *vis-à-vis* foreign States and international organisations, to continue to guarantee the enjoyment of the rights and freedoms defined in the Convention."[38]

II. Treaty

14 In the absence of an explicit territorial clause or a different intention that can be otherwise established, the general rule set forth in Art 29 applies.[39] It only refers, however, to **treaties that have a territorial scope**. Most treaties belong to this category. Conventions on environmental issues, protection of culture, extradition or trade questions, *eg*, are intended to be applied to the territory of the States Parties. Only few treaties do not refer to the State as a territory but as a subject of public international law.[40] Arbitration treaties or treaties establishing a duty to pay compensation are examples of treaties lacking a territorial scope in the ordinary sense.

15 Furthermore, there are specific treaties that **expressly relate to a particular territory or area**. A well-known example is the Antarctic Treaty.[41] Other, even

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[36] See Summary of the Practice para 285.

[37] ECtHR *Ilaşcu et al v Moldavia and Russia* App No 48787/99 [2004-VII] ECHR 318.

[38] *Ibid* para 333. For further information, see *L Lijnzaad* Trouble in Tiraspol: Some Reflections on the Ilascu Case and the Territorial Scope of the European Convention on Human Rights (2002) 15 Hague YIL 17–38; *S Karagiannis* Le territoire d'application de la Convention européenne des droits de l'homme: vaetera et nova (2005) 61 RTDH 33, 69 *et seq*.

[39] Final Draft, Commentary to Art 25, 213 para 2.

[40] *Sinclair* 87.

[41] 1959 Antarctic Treaty 402 UNTS 71.

more striking examples are the Moon Treaty[42] or the Outer Space Treaty.[43] Such cases, in which a territory or an area constitutes the object to which the treaty applies, are **not be confused with the territorial scope as set forth in Art 29**.[44] SR *Waldock* made a clear distinction by pointing out that:

> "in that event the territory or area in question is undoubtedly the object to which the treaty applies. But this is not what the territorial application of a treaty really signifies, nor in such a case is the application of the treaty confined to the particular territory or area. The 'territorial application' of a treaty signifies the territories which the parties have purported to bind by the treaty and which, therefore, are the territories affected by the rights and obligations set up by the treaty. Thus, although the enjoyment of the rights and the performance of the obligations contained in a treaty may be localized in a particular territory or area, as in the case of Antarctica, it is the territories with respect to which each party contracted in entering into the treaty which determine its territorial scope."[45]

Therefore, a distinction has to be made between the territory in which the treaty is applied and the territory upon which the treaty is binding. Only the latter question is governed by Art 29.

Another necessary distinction refers to **treaties and their protocols**. They have to be regarded as two different documents. Each of them might have a different territorial application depending on the existence of territorial clauses and on their wording.[46] Still, the question remains as to which rule is to be applied if a treaty contains a territorial clause whereas its protocol does not. The question is of special importance if the protocol in question amends the treaty. According to the practice of the Secretary-General as depositary of multilateral agreements: **16**

> "when a State becomes a party to such a protocol it becomes a party to the convention as amended as soon as the amendments have entered into force. If the State had extended the application of the original convention to certain of its non-metropolitan Territories, the amended convention, once in force, applies only to those same Territories."[47]

III. Bind

The formula that a treaty "is binding" upon each party was added by the Drafting Committee in 1968 (→ MN 5). The Final Draft still proposed – like all other previous drafts – using the formula that "the application" of a treaty extends to **17**

[42] 1979 Agreement Governing the Activities of States on the Moon and Other Celestial Bodies 18 ILM 1434.

[43] 1967 Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, Including the Moon and Other Celestial Bodies 610 UNTS 205.

[44] *S Karagiannis* in *Corten/Klein* Art 29 MN 7.

[45] *Waldock* III 12. SR *Waldock* emphasized this point again during the discussions, see [1964-II] YbILC 49.

[46] All protocols to the ECHR, *eg*, have their own territorial clauses. However, they correspond to the territorial clause of the Convention itself.

[47] Summary of the Practice para 271.

the entire territory of each party. The reason for this **change of wording** was the higher precision and clarity achieved with the new formula. Many Committee members had agreed during the discussions that some of the objections made to the provision could be overcome by the new formula.[48]

18 The **difference between being 'applied' and being 'binding'** is strongly connected with the object to which the treaty refers. It is necessary to distinguish between the object to which the treaty applies and the territory with regard to which the treaty is binding. If the object of a treaty consists in a **particular territory or area**, like in the case of the Antarctic or the Moon Treaty (→ MN 15), the difference between being 'applied' and being 'binding' is obvious. The geographical application of the relevant treaty and the geographical reach of its binding force[49] differ.

> The corresponding treaties are applied in Antarctica or on the Moon respectively. However, they bind the States Parties and all institutions/persons on their territory.

19 If the object is not a particular territory but **an item situated within the territory of a State Party** the geographical application of the treaty and the geographical extension of its binding force correspond with each other, so that the difference between being 'applied' and being 'binding' is more difficult to conceive.

> The European Convention on Architectural Heritage,[50] *eg*, refers to monuments, groups of buildings and sites as defined in Art 1 which are to be found on the territory of the States Parties. The objects to which the treaty applies are monuments, groups of buildings and sites. Its binding force covers the entire territory of the States Parties – subject to the provisions of the territorial clause contained in Art 24.

20 Therefore, the **heading of Art 29** "Territorial scope of treaties" is more precise than the headings used in the Final Draft of 1966 or in all other previous drafts. All of them opted for the misleading concept of 'application' of a treaty to a territory. The heading adopted by the Vienna Conference in 1969,[51] however, is well chosen and takes into account the two geographical aspects of treaties.

IV. Entire Territory of Each State Party

21 It seems that in the view of the ILC, the expression "entire territory" was self-explanatory. There were no debates on its content, and the commentary of the Final

[48] See the opinions of *Lachs* and SR *Waldock* [1964-I] YbILC 168.

[49] The existence of two geographical aspects of treaties is pointed out by *S Karagiannis* in *Corten/Klein* Art 29 MN 4.

[50] 1985 Convention for the Protection of the Architectural Heritage of Europe ETS 121.

[51] The final title of Art 29 appeared for the first time in the document distributed and adopted by the Vienna Conference in 1969, see UNCLOT II 55. Even the Drafting Committee still employed the term "application" in 1968, see UNCLOT I 428 para 53.

Draft was quite short. According to the ILC, the term refers to all "**the land, the appurtenant territorial waters and the air space which constitute the territory of the State**".[52] This explanation, however, lacks clarity. Two questions arise: the first concerns the distinction between metropolitan and non-metropolitan territories of a State. The second refers to the exact meaning of the words employed. The answers to both questions depend on the importance attributed to the notion of sovereignty in this context. According to the understanding of the UK delegate in the discussions in 1968, "the expression 'its entire territory' applied solely to the territory over which a party to the treaty in question exercised its sovereignty".[53] This understanding was not challenged by any other delegate.

22 The question of whether the expression "entire territory" comprises **metropolitan and non-metropolitan territories** of a State was not explicitly decided upon by the ILC. The negotiating history, however, shows that it was the intention of SR *Waldock* to establish a general rule stating that a treaty applies to all territories over which a State exercises sovereignty, including non-metropolitan territories, *ie* colonies that fall within the scope of the sovereignty of the mother country. According to his commentary, States practice showed that in the absence of a territorial clause, treaties were applied to all metropolitan and non-metropolitan territories of a State.[54] Therefore, he proposed to use the formula that "a treaty applies with respect to all the territory or territories for which the parties are internationally responsible". The ILC preferred the expression "its entire territory". However, this new wording was only chosen to avoid the association of the first term with the colonial clauses.[55] The contents of both expressions were considered equivalent. The Secretary-General as depositary of multilateral agreements confirmed the States practice described by SR *Waldock*.[56] Therefore, as a general rule, a treaty is binding in respect of all territories over which a State exercises sovereignty.

23 This result helps to answer the second question. While the words "land" and "air space" do not raise any problems, the term "**appurtenant territorial waters**" does not exist in contemporary public international law. The law of the sea as set forth in UNCLOS distinguishes between 'internal waters', the 'territorial sea', the 'contiguous zone', the 'exclusive economic zone' and the 'continental shelf'. According to Art 2 para 1 UNCLOS the sovereignty of the coastal State extends beyond its land territory and internal waters to the territorial sea. Therefore, the term "appurtenant territorial waters", established long before the comprehensive codification of the law of the sea, is to be interpreted as referring to the internal waters and the territorial sea of a coastal State.[57]

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[52] Final Draft, Commentary to Art 25, 213 para 3.

[53] UNCLOT I 429.

[54] *Waldock* III 13 *et seq*.

[55] [1964-II] YbILC 179; Final Draft, Commentary to Art 25, 213 para 3.

[56] See Summary of the Practice para 276.

[57] This is also the result of the analysis of *S Karagiannis* in *Corten*/*Klein* Art 29 MN 57; *Aust* 201.

24 Both questions, however, have **not led to significant problems in States practice**. In general, treaties in which one or both of the questions become relevant contain specific clauses regulating the territorial scope. They are adapted to the nature and the content of the respective treaty.

> A good example is Art 2 Chicago Convention on Civil Aviation.[58] It reads: "For the purposes of this Convention the territory of a State shall be deemed to be the land areas and territorial waters adjacent thereto under the sovereignty, suzerainty, protection or mandate of such State." Another example is the Basel Convention on the Transboundary Movement of Wastes.[59] According to its Art 2 para 3 "transboundary movement" means "any movement of [wastes] from an area under the national jurisdiction of one State to or through an area under the national jurisdiction of another State". "Area under the national jurisdiction of a State" is defined in Art 2 para 9 as "any land, marine area or airspace within which a State exercises administrative and regulatory responsibility in accordance with international law in regard to the protection of human health or the environment".

25 **Aircraft and ships** do not constitute a part of the "entire territory" of a State, even though they consist of a space/an area. They have the nationality of the State in which they are registered,[60] whose flag they are entitled to fly.[61] The State exercises its jurisdiction and control over aircraft and ships having its nationality. Therefore, aircraft and ships are not regarded as "territories"; they fall under the nationality principle. [62]

V. 'Moving Treaty Frontiers' Rule

26 The 'moving treaty frontiers' rule constitutes a **generally recognized principle of international customary law**.[63] Aspects of the rule are to be found both implicitly in Art 29 and explicitly in the Vienna Convention on State Succession in Treaties[64] (Art 15, Art 31 para 2, Art 35). Although the rule has been explicitly included in the convention on State succession, it is not a rule of State succession. As SR *Waldock* clearly stated in his second report on succession in respect of treaties in 1969:

> "the rule provides that, on a territory's undergoing a change of sovereignty, it passes automatically out of the treaty regime of the predecessor sovereign into the treaty regime of the successor sovereign. It thus has two aspects, one positive and the other negative. The positive aspect is that the treaties of the successor State begin automatically to apply in

[58] 1944 Convention on International Civil Aviation 15 UNTS 295.

[59] 1989 Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal 1673 UNTS 125.

[60] Art 17 Convention on International Civil Aviation (n 58).

[61] Art 91 UNCLOS.

[62] See *S Karagiannis* in *Corten/Klein* Art 29 MN 64.

[63] *Klein* (n 3) 941; *Doehring* (n 5) 485; SR *Waldock* [1972-I] YbILC 43.

[64] 1978 Vienna Convention on Succession of States in Respect of Treaties 1946 UNTS 3.

respect of the territory as from the date of the succession. The negative aspect is that the treaties of the predecessor State, in turn, cease automatically to apply in respect of the territory. The rule thus assumes a simple substitution of one treaty regime for another, and denies altogether any succession in respect of treaties."[65]

27 The reason for nevertheless **including the 'moving treaty frontiers' rule in the Vienna Convention on State Succession in Treaties** was the fact that the law of State succession is mainly concerned with the exceptions to the rule. Therefore, it was considered necessary to include the 'moving treaty frontiers' rule as a basic provision of the law of State succession in the special convention.[66]

28 The introduction of the rule in the Vienna Convention on State Succession in Treaties, however, does not mean that the rule is not **implicitly included in Art 29** as well. The wording of Art 29 does not mention the rule explicitly, but it does not exclude it either. In fact, if the 'moving treaty frontiers' rule was not included in Art 29, a treaty would only be binding upon each States Parties in respect of its territory at the time of the conclusion of the treaty.[67] The intention of Art 29, however, is not to 'freeze' the territorial scope of a treaty at the time of its entry into force, but to provide for the application of the relevant treaty on the "entire" territory of each States Parties. This is only possible if geographical changes affecting the States Parties are taken into account.[68] Therefore, the formula "its entire territory" is **to be read as 'its entire territory at any given time'**.[69]

29 Whereas the law on State succession invokes the 'moving treaty frontiers' rule from the State's perspective (→ MN 26), the law of treaties looks at the rule from the treaty's perspective. Therefore, even though its content does not change, the circumscription of the rule is necessarily a different one. The rule as embodied in Art 29 states that **any territorial change affecting a States Parties after the entry into force of a treaty alters the treaty frontiers**.[70] Neither the treaty regime itself nor the number or identity of the States Parties is affected. Only the territorial scope of the treaty changes, since it depends on the geographical expansion of the States Parties.

30 **Territorial changes may have many reasons**. Usually, five different modes of, acquisition and loss of territory are distinguished: occupation of *terra nullius*, subjugation, accretion, prescription and cession.[71] Sometimes, especially in the latter case, the territorial change is regulated by a treaty. Such a treaty may either clarify uncertain boundaries or provide for a cession of territory. Another event that

[65] SR *Waldock* Second Report on Succession in Respect of Treaties [1969-II] YbILC 52.

[66] *Ibid*.

[67] *Doehring* (n 5) 489.

[68] See the contribution of *Camara* on the draft of the Convention on the Succession of States in Respect of Treaties, [1972-I] YbILC 44: "Since that article stated that a treaty was binding upon each party 'in respect of its entire territory', it followed that, if the territory of a party to a treaty was extended, the treaty would apply to the extended territory."

[69] Similarly *Klein* (n 3) 942.

[70] *Doehring* (n 5) 489; *Klein* (n 3) 942; *Akehurst* (n 5) 991.

[71] *MN Shaw* International Law (2003) 417.

entails territorial changes is State succession.[72] Jurisprudence of international courts regarding the 'moving treaty frontier' rule to be applied in these cases does not exist. However, there are many examples of States practice.

> One example is the case of Newfoundland, a British dominion which became a province of Canada in 1949. Concerning the territorial scope of the treaties concluded by Canada the Canadian government, it was stated that "Newfoundland became part of Canada by a form of cession and that, consequently, in accordance with the appropriate rules of international law [. . .] Newfoundland became bound by treaty obligations of general application to Canada".[73]

31 The 'moving treaty frontiers' rule, however, also has **certain limits**. Depending on the object or the purpose of the treaty, a territorial change may render its execution impossible. In this case, the rule does not apply.

> Art 26 Harvard Draft took into account these limits. It read: "A change in the territorial domain of a State, whether by addition or loss of territory, does not, in general, deprive the State of rights or relieve it of obligations under a treaty, unless the execution of the treaty becomes impossible as a result of the change."[74]

Treaties providing for an objective territorial regime, such as demilitarization treaties, may serve as an example. If a States Parties loses the territory in question, it no longer has the capacity to apply the treaty. In such a case, the provision on the impossibility of performance (→ Art 61) may be invoked. The State concerned may terminate or withdraw from the treaty. The obligations which it had to fulfil cease to exist and may only be transferred to another State according to the law of State succession.[75]

32 In **States practice**, especially when a territorial change is carefully planned, the territorial scopes of each of the treaties concluded by the States involved in a territorial change are determined in detail.[76] When Hong Kong became a Special Administrative Region of China with effect of 1 July 1997, the governments of China and the United Kingdom sent a note to the Secretary-General determining the application of treaties to the territory of Hong Kong. In 1984, China and the United Kingdom had agreed that Hong Kong would enjoy a high degree of autonomy, except in foreign and defence affairs, which would be the responsibility of China. Furthermore, international agreements to which China was not a party but which

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[72] One of the few authors to point out the close relationship between territorial changes and State succession is *RY Jennings* General Course on Principles of International Law (1967) 121 RdC 440–441.

[73] (1968) 6 CanYIL 276.

[74] See Harvard Draft 657 *et seq*.

[75] See *Klein* (n 3) 943.

[76] For further examples of States practice in the case of a transfer of territory, see *AMJ Heijmans* The Netherlands and State Succession with Regard to Treaties in *HF van Panhuys* (ed) International Law in the Netherlands (1978) 405, 410 *et seq*.

were implemented in Hong Kong would continue to be implemented in Hong Kong.[77] Therefore, the note read as follows:

> "I. The treaties listed in Annex I to this Note, to which the People's Republic of China is a party, will be applied to the Hong Kong Special Administrative Region with effect from 1 July 1997 as they:
> (i) are applied to Hong Kong before 1 July 1997; or
> (ii) fall within the category of foreign affairs or defence or, owing to their nature and provisions, must apply to the entire territory of a State; or
> (iii) are not applied to Hong Kong before 1 July 1997 but with respect to which it has been decided to apply them to the Hong Kong Special Administrative Region with effect from that date (denoted by an asterisk in Annex I).
>
> II. The treaties listed in Annex II to this Note, to which the People's Republic of China is not yet a party and which apply to Hong Kong before 1 July 1997, will continue to apply to the Hong Kong Special Administrative Region with effect from 1 July 1997.
>
> The provisions of the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights as applied to Hong Kong shall remain in force beginning from 1 July 1997."[78]

33 In **cases of State succession,** the 'moving treaty frontiers' rule and the law on State succession are usually applied simultaneously. A good example is the reunification of Germany. The German Democratic Republic (GDR) ceased to exist as a sovereign State, and its territory was integrated into the Federal Republic of Germany (FRG).[79] From the point of view of the FRG an enlargement of its territory took place. At the same time, the FRG became the successor State of the GDR.

> Consequently, the Unification Treaty[80] provided for two different rules. Art 11 applied the 'moving treaty frontiers' rule by stating that treaties concluded by the FRG, except for some agreements listed in an annex, became binding upon the territory of the former GDR ('moving treaty frontiers' rule). Art 12 dealt with the treaties concluded by the former GDR. It stated that the FRG would enter into consultation with each one of the States Parties in order to decide together on the continuation, amendment or extinction of the treaty in question (special rules on State succession).[81]

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[77] For further information, see *R Mushkat* The International Legal Status of Hong Kong under Post-Transitional Rule (1987) 10 Houston JIL 1, 14 *et seq*.

[78] Letter of Notification of Treaties Applicable to Hong Kong after 1 July 1997, Deposited by the Government of the People's Republic of China with the Secretary-General of the United Nations on 20 June 1997, 36 ILM 1675**.**

[79] For further details, see *K Hailbronner* Legal Aspects of the Unification of the Two German States (1991) 2 EJIL 18–41.

[80] 1990 Treaty between the Federal Republic of Germany and the German Democratic Republic on the Establishment of German Unity 30 ILM 457.

[81] For further details concerning the application of Art 12, see *D Papenfuß* The Fate of the International Treaties of the GDR Within the Framework of German Unification (1998) 92 AJIL 469–488.

VI. Extra-Territorial Application of Treaties

34 Art 29 only concerns the binding force of a treaty upon the territory of the States Parties. It **neither regulates nor excludes the extra-territorial scope** of treaties. Even though many members of the ILC suggested including a provision on this topic, the ILC decided to leave such questions aside. It stated that:

> "[i]n its view, the law regarding the extra-territorial application of treaties could not be stated simply in terms of the intention of the parties or of a presumption as to their intention; and it considered that to attempt to deal with all the delicate problems of extra-territorial competence in the present article would be inappropriate and inadvisable."[82]

Therefore, strictly speaking, the matter of extra-territorial application of treaties does not fall under the scope of Art 29.

35 Nevertheless, since the extra-territorial application of a treaty constitutes, in a way, the opposite or the counterpart of its territorial scope, it has to be mentioned in this connection. The best examples of treaties that were drafted to apply extra-territorially are the **four Geneva Conventions**.[83] According to their common Art 2, the conventions shall apply to all international armed conflicts. Their common Art 3, which provides for basic rules in case of an internal armed conflict, constitutes an "almost unintended extension" of their common Art 2.[84] Therefore, the conventions are intended to be applied primarily to the territory of other States.

36 Another frequent but more difficult constellation concerns **human rights treaties**. The reason for their extra-territorial application lies in the formulation of their general legal obligation. Besides territorial clauses, the most important human rights treaties contain a provision obliging the States Parties to secure to everyone within their jurisdiction the rights and freedoms set forth in the respective treaty.[85] 'Jurisdiction' is a wider concept than 'territory'. A State does not only have jurisdiction within its own territory; it may also have jurisdiction outside of it. It has

[82] Final Draft, Commentary to Art 25, 214 para 5.

[83] 1949 Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field 75 UNTS 31; 1949 Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea 75 UNTS 85; 1949 Geneva Convention Relative to the Treatment of Prisoners of War 75 UNTS 135; 1949 Geneva Convention Relative to the Protection of Civilian Persons in Time of War 75 UNTS 287.

[84] *JS Pictet* The Geneva Conventions of 12 August 1949 Vol I (1952) 38.

[85] See *eg* Art 1 ECHR; Art 2 para 1 of the 1969 American Convention on Human Rights 1144 UNTS 123; Art 2 para 1 ICCPR. The ICESCR does not contain such a clause, but its territorial application is rather vague due to the formulation in Art 2 para 2 that each States Parties undertakes to take steps, "through international assistance and co-operation" to achieve the full realization of the Covenant rights. Other human rights treaties, like the 1981 African Charter on Human and Peoples' Rights 21 ILM 58 do not contain references to jurisdiction.

scarcely been questioned whether the human rights treaties containing such a clause have an extra-territorial application. The scope of its extent, however, remains controversial.[86]

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[86] See *V Mantouvalou* Extending Judicial Control in International Law: Human Rights Treaties and Extraterritoriality (2005) 9 IJHR 147–163; *M Gondek* Extraterritorial Application of the European Convention on Human Rights: Territorial Focus in the Age of Globalization? (2005) NILR 347–387; *MJ Dennis* Application of Human Rights Treaties Extraterritorially in Times of Armed Conflict and Military Occupation (2005) 99 AJIL 119–141.

ANNEX 15

UNITED NATIONS CONFERENCE ON SUCCESSION OF STATES IN RESPECT OF TREATIES

First session
Vienna, 4 April-6 May 1977

OFFICIAL RECORDS
Volume I

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

UNITED NATIONS

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UNITED NATIONS

New York, 1978

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 first session of the Conference. The summary records of the second session and the documents of the Conference will be printed after the closure of the second session.

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The summary records of the plenary meetings were originally circulated in mimeographed form as documents A/CONF.80/SR.1 to SR.8 and those of the Committee of the Whole as documents A/CONF.80/C.1/SR.1 to SR.36. 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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Convention on the Law of Treaties. In article 73, the Vienna Convention stated that its provisions did not prejudge any question that might arise in regard to a treaty from, *inter alia,* a succession of States. Although a succession, considered as a juridical fact, was not governed by the Vienna Convention on the Law of Treaties, the latter nevertheless applied to any question relating to the validity of a treaty. From a purely legal point of view, therefore, the article under discussion was unnecessary, but it provided a useful clarification.

10. The juridical technique used in drawing up article 73 of the Vienna Convention on the Law of Treaties and the article under discussion was not new. The participants at the United Nations Conference on Diplomatic Intercourse and Immunities (Vienna, 1961) had debated whether a diplomatic mission could exercise consular functions. While some delegations had held that the matter fell within the competence of another conference, the majority had subscribed to a Spanish proposal that the Convention on Diplomatic Relations should include a provision to the effect that the Convention did not prevent the exercise of consular functions by a diplomatic mission.[1] The United Nations Conference on Consular Relations (Vienna, 1963) had subsequently been able to rely on that provision.

11. Mr. SATTAR (Pakistan) said that it was apparent from the explanations provided by the Expert Consultant that the article under discussion was not really necessary, since it enunciated a self-evident rule. Besides, no provision of the draft could be construed as in any way prejudicing any question in regard to the validity of a treaty. Still his delegation had no objection to the inclusion of article 13 in the draft. He would like to make two points, however.

12. Firstly, the subject of the validity of treaties was dealt with extensively in articles 46 to 53 of the Vienna Convention on the Law of Treaties; those articles codified the rules concerning factors which might invalidate a treaty under that Convention. The factors in question related to objective criteria which did not by any means confer upon a State the right to declare unilaterally that a treaty was invalid. Secondly, a succession of States did not provide occasion for questioning the validity of a treaty. It was not possible to invoke the *rebus sic stantibus* rule as embodied in article 62, paragraph 2, subparagraph (*a*) of the Vienna Convention on the Law of Treaties in order to terminate a pre-existing treaty establishing a boundary. Just as a succession did not legalize a boundary established by an invalid treaty, so it could not invalidate a boundary established by a valid treaty.

13. The CHAIRMAN noted that no other representative wished to express any views on article 13 and said that, unless there was any objection, he would take it that the Committee decided to adopt article 13 provisionally and refer it to the Drafting Committee.

It was so decided.[2]

ARTICLE 14 (Succession in respect of part of territory)

14. Mr. KOECK (Holy See) said that, in principle, he approved article 14 since the rules it expressed appeared to be firmly established in customary international law.

15. During the discussion on article 3, concerning cases not within the scope of the proposed convention, the delegation of the Holy See had expressed reservations regarding the wholesale application of articles of the draft to all treaties of whatever character.[3] In its view, article 3 could not bring about the unconditional application of any rule of the draft convention to international treaties which the Holy See concluded with States on religious matters i.e., without their special character being taken into account. The Holy See reserved for itself the right to examine individually each case that concerned a concordat. Consequently, the rules laid down in article 14 could not, through the door opened by article 3, apply to a concordatory régime. Concordats were closely related to the ecclesiastical structure of a particular region and that structure could not be modified by the simple fact that part of the territory of a State became part of the territory of another State. It was because of that territorial aspect that the moving treaty-frontiers rule could not apply to concordats. The concordatory régime applicable in part of a territory before the transfer of that territory could not cease to apply to it, just as the concordatory régime existing in the successor State could not be extended to the transferred part of territory.

16. The position of the Holy See was supported by international practice. Thus in 1871, when the territories of Alsace and Lorraine had been ceded by France to the German Empire, the concordatory régime instituted in the concordat between the Holy See and France in 1801 had continued in force in those territories. When Alsace and Lorraine had been returned to France after the First World War, the same concordatory régime had remained applicable even though in the meantime the concordat of 1801 had ceased to constitute the ground for the relationship between Church and State in France. Other examples could be adduced to show that the rules contained in article 14 were not applicable to concordats.

17. In conclusion, he said that the delegation of the Holy See did not object to article 14 provided it was

[1] See article 3, paragraph 2 of the Vienna Convention on Diplomatic Relations, in United Nations, *Treaty Series,* vol. 500, p. 98.

[2] For resumption of the discussion of article 13, see 34th meeting, paras. 1-2.

[3] See above, 4th meeting, paras. 1-2.

understood that the article could not be applicable to concordats through the operation of article 3.

18. Mr. TABIBI (Afghanistan) said that the rule contained in article 14 was again closely connected with article 6, which restricted the scope of the proposed convention to lawful situations, and with the saving clauses contained in articles 38 and 39 concerning the outbreak of hostilities and military occupation. In accordance with State practice, article 14 should only apply to lawful transfers of territory from one State to another, and it was subject to the principle of self-determination of the people residing in the territory where the change of sovereignty occurred. As the transfer of territory must be lawful, article 14 was also linked to article 13, relating to the validity of treaties.

19. In his view, it would be better if article 14 were included among the general provisions, i.e. in part I of the draft convention, so that it would be covered by articles 6 and 13. He would be interested to hear the comments of the Expert Consultant and of other delegations on that suggestion. His delegation would then concur with the view of the majority.

20. Mr. STEEL (United Kingdom) said that the substance of article 14 was acceptable but he had reservations about the wording of the clause in subparagraph (*b*) concerning the incompatibility of the application of a treaty with its object and purpose. An analogous clause was to be found in a dozen or so provisions elsewhere in the draft. The clause had resulted from the combining of two provisions of the Vienna Convention on the Law of Treaties, to be found in article 19, on formulation of reservations, and article 62, on fundamental change of circumstances, respectively. Such a combination gave rise to some technical difficulties. He wondered whether the proposed convention should use, in a somewhat different context, wording which concerned the formulation of reservations to a treaty and whether it might not be better to have recourse to other criteria. Referring to that part of the article which dealt with fundamental change of circumstances, he pointed out that the criterion appearing in article 62 of the Convention of 1969 differed slightly from the criterion which appeared in the corresponding wording of article 14. That might give rise to confusion especially in circumstances when both provisions might apply to the same treaty. It might be that no better formulation was possible, but an effort should nevertheless be made to devise an improved text.

21. In any event, whether the wording of article 14, subparagraph (*b*) could be improved or not, the idea underlying it appeared to depend on criteria that were too vague, and therefore disputes might arise. That was a further reason for including in due course a provision on the settlement of disputes.

22. Mr. BEDJAOUI (Algeria) said that he had no difficulty in accepting the rule stated in article 14, but he was worried by a problem which concerned the different kinds of succession. Part II of the draft, in which article 14 had been included, dealt with a particular type of succession, i.e. succession in respect of part of a territory. The case envisaged was that of a State ceding part of its territory to a neighbouring State. But article 14 covered not only that case but also an entirely different one, namely the case where "any territory, not being part of the territory of a State, for the international relations of which that State is responsible, becomes part of the territory of another State". That was the case where a dependent territory achieved decolonization not by becoming independent, but by being incorporated into a State that already existed. From the standpoint of purely juridical logic, those two hypotheses had nothing in common.

23. For a predecessor State to be able to cede part of its territory to a successor State, it must of necessity own that part. However, the territory of a dependent country was not the property of the administering Power, except perhaps according to the nineteenth century fiction of a colonial law, which was now completely out of date. The unfortunate assimilation of the two hypotheses in article 14 appeared to revive that fiction. As it appeared from contemporary international law and particularly from the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations (General Assembly resolution 2625 (XXV), the territory of a dependent country remained separate and distinct from that of the administering Power.

24. In his opinion, cases of succession in which a territory achieved decolonization by free and orderly incorporation into a neighbouring State should be dealt with in a different part of the proposed convention. It should be remembered that, at its last session, the International Law Commission had reverted to its earlier decisions in regard to the classification of types of succession in its study on succession of States in respect of matters other than treaties.

25. Mr. KEARNEY (United States of America) said that the draft convention contained a whole series of articles in which the application of a treaty depended on whether such application "would be incompatible with its object and purpose or would radically change the conditions for the operation of the treaty". Those conditions applied to both bilateral and multilateral treaties. The application of provisions of such a nature raised problems, because in many cases it was difficult to determine the object and purpose of a treaty. Some treaties had multiple objects and purposes and the application of the treaty under certain circumstances might be in accord with some of those objects and purposes but not with others. Friendship, commerce and navigation treaties, for example, generally had the object and purpose of improving relations between the parties, particularly in the field of commerce and trade. Many such treaties contained

provisions whose object and purpose was to place citizens of State A residing in State B in the same position as citizens of State B in regard to a number of commercial activities. If State B acquired a territory that had a different economic structure or level of development, the application of the national treatment might not be compatible with the general object and purpose of a friendship, commerce and navigation treaty. It was probable, however, that other activities provided for in the agreement, such as the establishment of consular activities in the new territory, would be compatible with the object and purpose of the treaty. State B, of course, might claim that the application of the treaty to the newly acquired territory would be contrary to its object and purpose or radically change the conditions for its application, while State A asserted the contrary.

26. Although the draft articles contained conditions for the application of treaties already in force to new situations resulting from a succession of States, they did not make any provision for what was to be done when a difference of that kind arose. Even if that purely procedural matter could be settled, and his delegation would be introducing an article to that effect in due course, serious insoluble problems would nevertheless remain. Those problems arose not only with regard to acquisition of territory, under article 14, but were also raised by articles 16, 17, 18, 26, 29, 30, 31, 32, 33, 34, 35 and 36. As those articles were among the most important provisions of the draft convention, the complete absence of any procedure for dealing with possible objections to the application of a treaty in the case of a succession was a serious weakness. At best, the Conference could only add articles to solve some of those problems, otherwise it would have to embark on a task that would prevent it from completing its work.

27. The questions concerning the procedure for raising objections were relatively simple in comparison with the questions raised by the substantive effects of an objection. Some articles raised even more problems than article 14 in that respect. In the case of a uniting of States under article 30, for example, if predecessor State A was party to a copyright convention to which predecessor State B was not a party, the unified State AB would, under article 30, maintain the copyright convention in force in the territory of former State A but not in that of former State B. If publishing houses in territory A then transferred much of their activity to territory B and State X objected that, as a result, the application of the copyright convention in territory A of State AB was incompatible with the object and purpose of the convention and radically changed the conditions for the operation of the treaty, what would be the effect of the objection? Should the copyright convention be suspended in its entirety throughout State AB? That hypothetical situation, along with many others, illustrated how difficult it was to determine the consequences of objecting to the application of the treaty and to work out the relevant rules.

28. The value of the proposed convention on succession of States in respect of treaties would be considerably diminished if no provision was made for solving the problems of objection to the application of a treaty. In his view, the best remedy would be to provide a workable and efficient system for settling disputes. Without such a system, newly independent States, successor States and States that had made territorial adjustments could find themselves in situations where it was completely unclear to them whether treaties did or did not apply in whole or in part to a part or the whole of their territories.

29. As the problem of objections to the application of treaties could give rise to serious differences among States concerning the interpretation and application of the Convention, a method of settling disputes should be adopted which was equitable, easily workable and broadly acceptable to States. The major difficulty was that of acceptability, since States' views differed widely with regard to what system of settling disputes should be selected. Some States favoured recourse to the International Court of Justice; others preferred arbitration or conciliation procedures, or leaving the entire subject to diplomatic negotiations. It was obviously impossible to satisfy all States, but it should be possible to devise a body of acceptable rules by turning to methods adopted by recent conferences in which a great many States had participated.

30. Mr. TREVIRANUS (Federal Republic of Germany) said that he fully endorsed the substance of article 14, which codified the moving treaty-frontiers rule, since that rule was applied in international practice and could be regarded as belonging to customary international law. Article 14 corresponded to article 29 of the Vienna Convention on the Law of Treaties, which dealt with the territorial scope of treaties and stipulated that "a treaty is binding upon each party in respect of its entire territory"—including newly acquired parts of its territory. The International Law Commission had been right to include that generally recognized rule in the draft articles. In his view, the question whether the case covered by article 14 was a genuine case of succession of States or simply a transfer of territory was a secondary one, which the International Law Commission had answered in paragraph (3) of its commentary to the article (A/CONF.80/4, p. 49).

31. The words "becomes part of the territory of another State" in the opening portion of article 14 described the transfer of a territory factually, in keeping with the definition in article 2, paragraph 1, subparagraph (*b*) to the effect that "'succession of States' means the replacement of one State by another in the responsibility for the international relations of territory". It was quite obvious that the answer to the question of the legality of a transfer of territory should not be sought in the draft convention. It was likely that, in most future cases involving article 14, the transfer of a territory would be the result of an

agreement between the States concerned and would therefore be of a contractual nature.

32. It might be asked then why article 14 did not contain one of the usual clauses providing for derogation from the established rules in cases where the parties agreed on different rules or where the treaty provided otherwise. Such clauses made it possible, in the case of general or individual consent or even tacit agreement, to derogate from the residuary rules of a convention. It was conceivable in the case of article 14 that, owing to agreements concluded between the predecessor State and the successor State, the predecessor State would continue to have financial obligations in respect of the ceded territory. Article 14 did not exclude that possibility and, in general, the draft articles did not set out to establish peremptory rules from which there could be no derogation by the freely expressed consent on the parties concerned. Nevertheless, the Drafting Committee should, wherever necessary, add clauses allowing derogation from the rules of the Convention if the parties so agreed, or else systematically eliminate such clauses from the entire draft in order to avoid any misunderstanding.

33. The exception proviso in subparagraph (*b*) of article 14 had been formulated in the same manner in 11 other articles of the draft convention. By such a formula, the International Law Commission had intended, as stated in paragraph (14) of its commentary to article 14, "to lay down an *international objective legal test of compatibility* which, if applied in good faith, should provide a reasonable, flexible and practical rule", and which would make it possible to "take account of the interests of all the States concerned and to cover all possible situations and all kinds of treaties" (*ibid.*, p. 51). Obviously, however, as the interests of States were not always identical, such provisos would inevitably give rise to divergent interpretations.

34. Provision should therefore be made for a procedure for the application of those provisos in the event of a dispute. There would undoubtedly be disputes about the criteria to be employed in determining whether the application of a treaty to a territory would be incompatible with its object and purpose or would radically change the conditions for the operation of the treaty. Settlement of disputes was consequently the indispensable corollary to the saving clauses appearing in the draft convention. The compatibility criterion had first been applied by the International Court of Justice in a genocide case; also, articles 62 and 66 of the Vienna Convention on the Law of Treaties should be seen in conjunction with each other.

35. Concerning the second part of the proviso, he noted that the formula used in subparagraph (*b*) of article 14—"would radically change the conditions for the operation of the treaty"—differed from that in article 62, paragraph 1, subparagraph (*b*) of the Vienna Convention on the Law of Treaties, from which only the word "radically" had been taken. He wondered whether the new formula should be interpreted differently from the old one and whether it would be feasible, in the event of a serious difference of opinion, to rely on one interpretation rather than the other. It would be best, he thought, to define—both in general and in this particular respect—the relationship that existed between the draft convention under consideration and the Vienna Convention on the Law of Treaties.

36. In conclusion, he said that the practical applicability of the proposed convention under considerations would depend to a large extent on how the problem of the provisos was solved. He felt they were indispensable, as the draft articles did not provide specific rules for the various types of treaty, apart from articles 14, 11 and 12, and relied on individual interpretation of the provisos to introduce a certain amount of flexibility into hard and fast rules. It was consequently the interpretation of the provisos that should ensure an equitable solution in doubtful and controversial cases of succession of States. His delegation felt that the formula proposed by the International Law Commission for cases of succession involving part of a territory was acceptable.

37. Mr. HASSAN (Egypt) said that he could accept article 14 as proposed by the International Law Commission, on the understanding that the article related only to lawful transfers of territory and excluded all illegal situations, as the International Law Commission had clearly indicated in its commentary.

38. Mr. KRISHNADASAN (Swaziland) said that he agreed with the representatives of the United Kingdom, the United States and the Federal Republic of Germany that the words "incompatible with its object and purpose" in subparagraph (*b*) of article 14 posed certain problems. At the Vienna Conference on the Law of Treaties, some delegations had opposed the inclusion of the words in question in subparagraph (*c*) of article 19 of the Vienna Convention on the Law of Treaties on the ground that the subjective nature of the clause could give rise to divergent interpretations. Furthermore, article 19 concerned the formulation of reservations—a limited aspect of treaties—whereas the scope of article 14 was much wider. He therefore proposed the deletion of the words "would be incompatible with its object and purpose or", which could give rise to controversy. He did not think that would harm article 14, as the second part of the proviso—"would radically change the conditions for the operation of the treaty"—took account of the first part. He also proposed that the words in question should be deleted from all the other articles in which they appeared.

The meeting rose at 1 p.m.

23rd MEETING

Thursday, 21 April 1977, 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)*

ARTICLE 14 (Succession in respect of part of territory) *(continued)*

1. Mr. ESTRADA-OYUELA (Argentina) said that his delegation fully agreed with the representative of Egypt that article 14 could not refer to an illegal situation.[1] He was also concerned about the point raised by the representative of Algeria concerning the situation of territories which were not really an integral part of the State responsible for their international relations[2] but he thought the present wording of the article made adequate provision for such cases.

2. Referring to the possible inclusion in the convention of a procedure for the settlement of disputes, he drew attention to the statement made by his delegation during the debate on article 2.[3]

3. Mr. EUSTATHIADES (Greece) said he foresaw no very serious objections to article 14, which repeated, albeit in innovative terms, the classical notion that the sovereignty of a State increased or diminished with the changes in its territory and that a treaty to which it was a party could therefore no longer apply in an area which it had ceded to another State. However, article 14 also dealt with the very special case of territory which became part of a State other than that which had formerly been responsible for its international relations. The principles to be applied in regard to the validity, for that territory, of the treaties of the State which had formerly represented it, would naturally be the same as in the first case mentioned in the article; but he agreed with the representative of Algeria that it would be preferable if, in keeping with the decision adopted by the International Law Commission in connexion with its study of succession of States in respect of matters other than treaties, the two questions were dealt with in separate parts of the draft convention.[4]

4. With regard to the wording of the article, a matter of secondary concern was the absence of any criteria for determining what was the "date of the succession of States", a phrase which appeared for the first time in article 14. The definition of that expression given in article 2, paragraph 1, subparagraph (*e*) did not explain how the precise moment at which responsibility passed from the predecessor to the successor State was to be identified.

5. Of primary importance was the question of the derogation from article 14 permitted by the second part of subparagraph (*b*) of the article. As the representative of the United Kingdom had said,[5] it would be better to word that provision differently, for it was not only incompatibility with the object and purpose of the treaty or a radical change in the conditions for its operation which could constitute grounds for an exception, but also a fundamental obstacle to its implementation extraneous to the circumstances obtaining at the time of its conclusion. He himself, however, could find no better wording than that proposed by the International Law Commission. Moreover, the problem was perhaps partly solved by virtue of the fact that the same clause appeared in other articles of the draft convention.

6. The real difficulty was that the criteria which States, and particularly third States, would apply in invoking an exception to article 14 would inevitably be subjective, whereas they should be objective. In view of that fact, and of the importance of article 14 for the entire convention, he fully supported the appeal made by the representative of the United States for the inclusion of provisions relating to the settlement of disputes.[6]

7. Mr. MIRCEA (Romania) said that his delegation had no great objections to the substance of article 14, but it had at first been surprised to see that part II of the draft convention consisted solely of that article, the provisions of which were closely linked with those of other articles. He was still not quite clear why article 14 departed from the question of succession of States in respect of treaties to deal with that of the succession of territories, which, as other delegations had objected, were not subjects of international law.

8. He thought it would be both politically and legally more appropriate to deal with the two very different situations covered by the article in separate parts of the draft convention. In his view, article 14 should be read in conjunction with articles 32 and 33 to give a full picture of the rights and obligations of all the States involved in a succession: as it stood, the article simply gave a "clean slate" to the predecessor State and, in subparagraph (*b*), offered an escape clause to the other parties to the treaties concerned.

9. He thought that better wording could be found for the phrase "for the international relations of which that State is responsible".

[1] See above, 22nd meeting, para. 42.

[2] See above, 22nd meeting, paras. 27-29.

[3] See above, 5th meeting, para. 48.

[4] See above, 22nd meeting, para. 29.

[5] See above, 22nd meeting, para. 25.

[6] See above, 22nd meeting, paras. 33-34.

10. Mr. SETTE CÂMARA (Brazil) said that article 14 represented an expression, in its simplest form, of the principle of "moving treaty frontiers", which, together with the "clean slate" principle, precluded the inheritance of treaties of a predecessor by a successor State. The rule provided that a territory undergoing a change of sovereignty, or in other words, a territory responsibility for the international relations of which was transferred from one State to another, passed automatically from the treaty régime of the predecessor State to that of the successor State. In fact, the article could be seen as a corollary of article 29 of the Vienna Convention on the Law of Treaties, in the sense that treaties were intended to apply to the whole of the territory of a State, and that treaties in force in the territory of one State were not binding in that of another.

11. There were two sides to the rule set out in article 14: a positive statement to the effect that treaties of the successor State automatically began to apply to the territory, as changed, from the date of the succession; and a negative statement to the effect that treaties of the predecessor State automatically ceased to apply to that territory at the same time. It had been contended that the problem lay outside the field of succession of States because there was succession only to part of a territory. But paragraph (3) of the commentary to the article (A/CONF.80/4, p. 49) made it clear that what was involved was a "succession of States" in the sense in which that concept was used in the draft articles, namely, a replacement of one State by another in the responsibility for the international relations of territory.

12. Article 14 was, of course, closely linked to article 6, which limited the application of the draft convention to lawful situations. Similarly, it should be read together with the saving clauses in articles 38 and 39, which dealt with cases of hostilities and military occupation.

13. O'Connell had contended, in his classic work *State Succession in Municipal Law and International Law,* that "The formulae of the 'clean slate' and 'moving treaty boundaries' tend to transform an interpretative guide into an inflexible criterion, and hence to prejudge the question both of emancipation of territory from the predecessor's treaties and of subjection of it to those of the successor. A rigidly negative rule with respect to treaty succession will tend to exaggerate the negative element in State practice."[7] The International Law Commission had drafted article 14 so as to avoid that rigidity, by including in the last part of subparagraph (*b*) a very elaborate saving clause based on the principles of articles 29, 61 and 62 of the Vienna Convention on the Law of Treaties. That saving clause naturally applied only to the situation described in the subparagraph in which it appeared, since there was no question, in the circumstances dealt with in subparagraph (*a*) of the article, of the application of treaties to the separated territory.

14. His delegation considered article 14 to be one of the major elements of the draft and had no difficulty in supporting it in the version proposed by the International Law Commission.

15. Sir Francis VALLAT (Expert Consultant), explaining the formulation of draft article 14, which dealt with the first case of State succession coming within the meaning of the draft articles, said that it had been placed separately in part II because it dealt with a case which was different from the other cases of succession of States dealt with in parts III and IV. That explanation was necessary in view of the suggestion by certain delegations that article 14 should have been included in the general provisions of part I of the draft.

16. Referring to the very difficult subject of the safeguard clause in subparagraph (*b*), he said that, as delegations were aware, the International Law Commission had tried to draft articles which were sound in principle and workable in practice. If it had adopted only the criterion of the "moving treaty frontiers" principle, the result in some cases would have been quite unworkable because, on the transfer of part of a territory from one State to another, the treaty might have been wholly inapplicable. The International Law Commission had been faced with the problem of trying to draft a safeguard clause which would make the "moving treaty frontiers" principle workable in all cases. In its 1972 draft, the safeguard clause had referred only to the case where the application of the treaty in the new circumstances would be incompatible with its object and purpose. In 1974, the International Law Commission had examined government comments on that clause with great care. The matter had been of very great importance to certain of its members, who had considered various ways of making the wording of the safeguard clause clearer. They had found, however, that whenever they tried to elaborate the detail of the clause, the draft became, if anything, even more difficult and more obscure. The International Law Commission had therefore fallen back on the present wording of draft article 14, which reflected the language of the Vienna Convention on the Law of Treaties.

17. The last part of the safeguard clause in subparagraph (*b*) had been inspired by article 62, paragraph 1, of the Vienna Convention, though the words "would radically change the conditions for the operation of the treaty" reflected only part of the provisions of that paragraph, some of which were clearly not applicable to the case of a succession of States dealt with in draft article 14, because they dealt with a fundamental change of circumstances following the conclusion of a treaty. Thus, there was a real difference between the circumstances dealt with in article 62, para-

[7] D. P. O'Connell, *State Succession in Municipal Law and International Law,* Cambridge, Cambridge University Press, 1967, vol. II, p. 25.

graph 1, of the Vienna Convention and the circumstances dealt with in draft article 14. That difference justified the wording used in draft article 14, which looked to the future in the light of the succession of States that was taking place, while article 62, paragraph 1, of the Vienna Convention related to circumstances which were fundamentally different from those existing at the date of the conclusion of the treaty.

18. Mr. HELLNERS (Sweden) said that, at the 22nd meeting, the representative of the Federal Republic of Germany had suggested that some phrase, such as "unless the parties otherwise agree", should be added to the text of draft article 14.[8] His delegation could not agree that such wording should be included, because it would change the meaning of the rule laid down in draft article 14. Thus the suggestion made by the representative of the Federal Republic of Germany was not merely a matter of a drafting nature and should not be referred to the Drafting Committee.

19. The safeguard clause now contained in draft article 14, subparagraph (*b*), had two parts which seemed to be intended to cover two types of exception. He agreed with the view expressed by the representative of Swaziland[9] that there was not a great deal of difference between those two types of exception and that the commentary did not provide an adequate explanation of why they were both needed.

20. He therefore proposed that the words "would be incompatible with its object and purpose or" should be deleted in order to make the text of the future convention clearer. That amendment was not intended to change the substance of, or to give a new meaning to, draft article 14, subparagraph (*b*).

21. Mr. MARESCA (Italy) said that the explanations provided by the Expert Consultant had helped to dispel some of his delegation's doubts about draft article 14. Those explanations would, however, be reflected only in the records of the Conference and would not directly benefit those who would subsequently have to apply the provisions of the future convention.

22. He therefore considered that the wording of draft article 14 should be improved and made clearer. It was, as the representative of Greece had pointed out, one of the most traditional articles in the draft. Nevertheless, it contained some new elements and it reflected confusion about the legal meaning of terms. The introductory part of the article combined two very different ideas, namely, the idea that part of the territory of a State became part of the territory of another State and the idea that one State ceased to be responsible for the international relations of the territory in question. He did not think that those two ideas should be combined in the same phrase because, historically and legally, they were two quite different things. Moreover, too much concision could lead to obscurity, which was the worst enemy of the law. His delegation was therefore of the opinion that the Drafting Committee should consider the possibility of separating those two ideas.

23. He drew attention to the fact that, in the French version of the introductory part of draft article 14, a comma should be added after the word "*responsable*", so as to correspond to the English, Spanish and Russian texts.

24. Referring to subparagraph (*b*), he said he was grateful for the Expert Consultant's explanations, but he still found the present wording unclear and thought it likely to give rise to confusion and possible misunderstandings.

25. The CHAIRMAN said that the drafting suggestions made by the representative of Italy would be taken into acount by the Drafting Committee.

26. Mr. ARIFF (Malaysia) said his delegation believed that every treaty had an object and purpose, without which it might never have been concluded in the first place. Thus, if a situation arose in which it was impossible to apply a particular treaty to a territory, or in which its application would defeat the purpose for which it had been concluded, it was only right that the treaty should be written off for good.

27. Consequently, his delegation could not support the Swedish proposal that the words "would be incompatible with its object and purpose" should be deleted from subparagraph (*b*) of article 14. It believed that those words were necessary and vital to the meaning of the article and that the words "would radically change the conditions for the operation of the treaty" had an entirely different meaning and purpose. The two phrases should both be retained.

28. Mr. AMLIE (Norway) said he agreed with the representative of Malaysia that the words "would be incompatible with its object and purpose" should be retained. Since those words appeared in many other places in the draft, if the Committee decided to delete them from article 14, it would also have to delete them from other articles.

29. His delegation considered that draft article 14 should be adopted as it stood, subject to consideration, during the discussion of subsequent draft articles, of the amendment proposed orally by the representative of Sweden.

30. Mr. MIRCEA (Romania) supported the amendment proposed by the representative of Sweden, because it provided a good means of shortening the text of several articles. His delegation would have no difficulty in accepting the safeguard clause in

[8] See above, 22nd meeting, para. 37.

[9] See above, 22nd meeting, para. 43.

subparagraph (*b*) if it contained only the phrase "would radically change the conditions for the operation of the treaty", which would adequately cover a large number of cases, in particular, those involving newly independent States.

31. Mr. SIEV (Ireland) said that in his delegation's view the deletion of the words "would be incompatible with its object and purpose" would create a lacuna. His delegation endorsed the Malaysian and Norwegian representatives' remarks.

32. Perhaps, however, article 14 might be easier to understand if the words "it appears from the treaty or is otherwise established that" were deleted from subparagraph (*b*); the Drafting Committee might consider that possibility.

33. The CHAIRMAN said that, in the absence of any objection, the Drafting Committee would be invited to consider the amendment to subparagraph (*b*) proposed by the representative of Ireland.

34. He invited the Committee to vote on the oral amendment proposed by the representative of Sweden to delete the words "would be incompatible with its object and purpose or" from subparagraph (*b*) of article 14.

The oral amendment proposed by the representative of Sweden was rejected by 43 votes to 4, with 27 abstentions.

35. The CHAIRMAN said that, if there was no objection, he would take it that the Committee of the Whole decided to adopt provisionally the text of article 14 as it stood and to refer it to the Drafting Committee.

It was so decided.[10]

ARTICLE 15 (Position in respect of the treaties of the predecessor State)

36. Mr. RANJEVA (Madagascar) said that his delegation agreed with the substance of article 15, which was a fundamental provision of the draft convention by reason of its statement of the "clean slate" principle.

37. The Drafting Committee's attention should perhaps be drawn to the article's wording. The International Law Commission had used a negative form, which might suggest that it was recommending the formulation of a new rule to facilitate the progressive development of international law. His delegation would applaud such an approach, but it was not wholly satisfied with the negative form of words, which suggested hesitancy and meant that the article stated no self-contained principle, but must be examined in the light of principles to be found elsewhere.

38. That the "clean slate" principle was universally and unconditionally accepted was shown not only by paragraph (3) of the commentary to article 15 (A/CONF.80/4, p. 52), which referred to that principle's traditional character, but also by the numerous and concordant instances of the practice in most States, which seemed also to indicate that the so-called continuity rule had hardly withstood the tests of time and practice.

39. Consequently, his delegation, while congratulating the International Law Commission on its work, would be pleased if the Drafting Committee could consider whether a less tentative form of words could be used to affirm the principle which, as practice had constantly revealed, was accepted as the fundamental guideline.

40. Mr. MBACKÉ (Senegal) said that his delegation did not question the substance of article 15, which proclaimed the "clean slate" principle. It was uneasy, however, about the allusion in the text to the principle of continuity, which entailed a lack of precision and gave the article an ambivalent character which ought to be avoided. His delegation would like the Drafting Committee to seek a form of words to make it clearer that a newly independent State was not obliged to maintain a treaty in force.

Mr. Ritter (Switzerland), Vice Chairman, took the Chair.

41. Mr. SETTE CAMÂRA (Brazil) said that article 15 was a cornerstone of the whole draft convention, on account of the "clean slate" principle it enunciated. During the Committee's deliberations on article 2, his delegation had stated its views on the meaning and substance of article 15, as well as on newly independent States, which in its view were "born free".[11]

42. The "clean slate" doctrine derived from two sources: the principle of self-determination and the underlying tenor of the Vienna Convention on the Law of Treaties, within the framework of which the set of draft articles under consideration had been prepared by the International Law Commission.

43. As noted in paragraph (3) of the commentary (*ibid.*), the "clean slate" rule had been long established in practice; and among the comments of governments, the United States representative, noting with satisfaction that the Commission had adopted the "clean slate" principle, had pointed out that "the United States was probably the first country to have enunciated that doctrine when it attained independence almost 200 years ago" (A/CONF.80/5, p. 213).

44. The principle became paramount, however, only on the emergence of a new State; such a State could not automatically take up the rights and obligations of the predecessor State. The text of article 15, how-

[10] For resumption of the discussion of article 14, see 34th meeting, paras. 3-4.

[11] See above, 3rd meeting, paras. 45-50.

A/CONF.80/16/Add.2

UNITED NATIONS CONFERENCE ON SUCCESSION OF STATES IN RESPECT OF TREATIES

1977 session and resumed session 1978

Vienna, 4 April–6 May 1977
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INTRODUCTORY NOTE

The *Official Records of the United Nations Conference on Succession of States in Respect of Treaties* consist of three volumes.

Volumes I and II contain the summary records of the plenary meetings and of the meetings of the Committee of the Whole, for the 1977 session and the resumed session 1978 respectively. Volume III contains the documents which appear as annexes, the Final Act, the resolutions adopted by the Conference and the Convention; it also contains a complete index of the documents relevant to the proceedings of the Conference.

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The summary records of the plenary meetings and of the meetings of the Commission of the Whole contained in volume I were originally circulated in mimeographed form, as documents A/CONF.80/SR.1 to SR.8 and A/CONF.80/C.1/SR.1 to SR.36 respectively; and those contained in volume II as documents A/CONF.80/SR.9 to SR.15 and A/CONF.80/SR.37 to SR.57 respectively. They include the corrections to the provisional summary records that were requested by the delegations and such drafting and editorial changes as were considered necessary.

A/CONF.80/16/Add.2

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PART II

SUCCESSION IN RESPECT OF PART OF TERRITORY

Article 14.[224] *Succession in respect of part of territory*

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

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

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

Commentary

(1) This article concerns the application of a rule, which is often referred to by writers as the "moving treaty-frontiers" rule, in cases where territory not itself a State undergoes a change of sovereignty and the successor State is an already existing State. The article thus concerns cases which do not involve a union of States or merger of one State with another, and equally do not involve the emergence of a newly independent State. The moving treaty-frontiers principle also operates in varying degrees in certain other contexts. But in these other contexts it functions in conjunction with other rules, while in the cases covered by the present article—the mere addition of a piece of territory to an existing State—the moving treaty-frontiers rule appears in pure form. Although in a sense the rule underlies much of the law regarding succession of States in respect of treaties, the present case constitutes a particular category of succession of States, which the Commission considered should be in a separate part. Having regard to its relevance in other contexts, the Commission decided to place it in part II of the draft, immediately after the general provisions in part 1.

(2) Shortly stated, the moving treaty-frontiers rule means that, on a territory's undergoing a change of sovereignty, it passes automatically out of the treaty régime of the predecessor sovereign into the treaty régime of the successor sovereign. It thus has two aspects, one positive and the other negative. The positive aspect is that the treaties of the successor State begin automatically to apply in respect of the territory in question as from the date of the succession. The negative aspect is that the treaties of the predecessor State, in turn, cease automatically to apply in respect of such territory as from that date.

(3) The rule, since it envisages a simple substitution of one treaty régime for another, may appear *prima facie* not to involve any succession of States in respect of treaties. Nevertheless the cases covered by the rule do involve a "succession of States" in the sense that this concept is used in the present draft articles, namely a replacement of one State by another in the responsibility for the international relations of territory. Moreover, the rule is well established in State practice and is commonly included by writers among the cases of succession of States. As to the rationale of the rule, it is sufficient to refer to the principle embodied in article 29 of the Vienna Convention under which, unless a different intention is established, a treaty is binding upon each party in respect of its entire territory. This means generally that at any given time a State is bound by a treaty in respect of any territory of which it is sovereign, but is equally not bound in respect of territory which it no longer holds.

(4) On the formation of Yugoslavia after the First World War, the former treaties of Serbia were regarded as having become applicable to the whole territory of Yugoslavia. If some have questioned whether it was correct to treat Yugoslavia as an enlarged Serbia rather than as a new State, in State practice the situation was treated as one where the treaties of Serbia should be regarded as applicable *ipso facto* in respect of the whole of Yugoslavia. This seems to have been the implication of article 12 of the Treaty of Saint-Germain-en-Laye so far as concerns all treaties concluded between Serbia and the several Principal Allied and Associated Powers.[225] The United States of America afterwards took the position that Serbian treaties with the United States both continued to be applicable and extended to the whole of Yugoslavia,[226] while a number of neutral Powers, including Denmark, the Netherlands, Spain, Sweden and Switzerland, also appear to have recognized the continued application of Serbian treaties and their extension to Yugoslavia. The United States position was made particularly clear in a memorandum filed by the State Department as *amicus curiae* in the case of *Ivancevic* v. *Artukovic*.[227]

(5) Among more recent examples of the application of this rule may be mentioned the extension of Canadian treaties to Newfoundland upon the latter's becoming part of Canada,[228] the extension of Ethiopian treaties to Eritrea in 1952, when Eritrea became an autonomous unit federated with Ethiopia,[229] the extension of Indian

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224 1972 draft, article 10.

225 United Kingdom, *Treaty Series* (1919), No. 17 [Cmd. 461] (London, H.M. Stationery Office, 1919), p. 94.

226 See G. H. Hackworth, *Digest of International Law* (Washington, D.C., U.S. Government Printing Office, 1940-1944), vol. V, pp. 374-375; *Foreign Relations of the United States (1927)* (Washington, D.C., U.S. Government Printing Office, 1942), vol. III, pp. 842-843.

227 See M. M. Whiteman, *Digest of International Law* (Washington, D.C., U.S. Government Printing Office, 1963), vol. 2, pp. 940-945, and especially at pp. 944-945.

228 See, for example, *Yearbook ... 1971*, vol. II (Part Two), pp. 132-135, document A/CN.4/243, paras. 85-101, and *ibid.*, p. 176, document A/CN.4/243/Add.1, para. 137.

229 See "Summary of the practice of the Secretary-General as depositary of multilateral agreements" (ST/LEG/7), p 63; and *Yearbook ... 1970*, vol. II, p. 87, document A/CN.4/225, paras. 102-103. See also *Yearbook... 1971*, vol. II (Part Two), p. 175, document A/CN.4/243/Add.1, para. 128.

treaties to the former French[230] and Portuguese possessions on their absorption into India, and the extension of Indonesian treaties to West Iran after the transfer of that territory from the Netherlands to Indonesia.[231]

(6) Article 14 sets out the two aspects of the moving treaty-frontiers rule mentioned above. This article, like the draft articles as a whole, has to be read in conjunction with article 6 which limits the present articles to lawful situations and with the saving clause of articles 38 and 39 concerning cases of military occupation, etc. Article 14 is limited to normal changes in the sovereignty or in the responsibility for the international relations of a territory. Article 39 makes it plain that the present article does not cover the case of a military occupant. As to article 6, although the limitation to lawful situations applies throughout the draft articles, some members of the Commission considered it to be of particular importance in the present connexion.

(7) The scope of the article is defined in its *opening phrase* which in the 1972 text read as follows: "When territory under the sovereignty or administration of a State becomes part of another State:". It was however observed by Governments and members of the Commission that, in the first place, such a wording did not make it sufficiently clear that the article did not apply to the case of the incorporation of the entire territory of a State into the territory of an existing State and, in the second place, that the words "territory ... under the administration of a State" should be replaced by an expression based on the definition of "succession of States" given in article 2, paragraph 1 (*b*), for the purposes both of clarity and consistency. The Commission, at its present session, found that there was substance in those observations and decided to reword the opening phrase of the article to read: "When part of the territory of a State, or when any territory, not being part of the territory of a State, for the international relations of which that State is responsible, becomes part of the territory of another State:". The article would thus not include cases of total incorporation, which would be covered as instances of the "uniting of States". The words "or when any territory, not being part of the territory of a State, for the international relations of which that State is responsible" have been used in order to cover cases in which the territory in question was not under the sovereignty of the predecessor State, but only under an administering Power responsible for its international relations.[232] Having reached these conclusions, the Commission decided likewise to modify the *title* of Part II and of the article by replacing the heading "Transfer of territory" by the heading "Succession in respect of part of territory."

(8) The Commission was aware that the words "becomes part of the territory of another State" might exclude the application of the article as such to a case in which a dependent territory was transferred from one administering Power to another. It recognized that such cases might occur, but observed that they were likely to be very rare. During the course of the second reading, other instances of unusual cases were mentioned which might require the application of special rules. In general, the Commission considered that it would be wiser not to complicate the present draft articles by adding detailed provisions to cover such cases. In the instance of a change in the responsibility for the international relations of a territory from one administering Power to another, the Commission considered that the moving treaty-frontiers rule would not necessarily apply. In such a case, regard should be had to the circumstances in which the change occurred and so far as necessary the rules set out in the present articles should be applied by analogy.

(9) Sub-paragraph (*a*) of article 14 states the negative aspect, namely that the treaties of the predecessor State cease to be in force from the date of the succession of States in respect of territory which has become part of another State. From the standpoint of the law of treaties, this aspect of the rule can be explained by reference to certain principles, such as those governing the territorial scope of treaties, supervening impossibility of performance or fundamental change of circumstances (articles 29, 61 and 62 of the Vienna Convention). Accordingly, the rights and obligations under a treaty cease in respect of territory which is no longer within the sovereignty or under the responsibility, for its international relations, of the State party concerned. The only drafting changes made by the Commission in sub-paragraph (a) at the second reading were the substitution of the words "the territory to which the succession of States relates" for the words "that territory", a consequential change also made in sub-paragraph (b), and the replacement of the words "the succession" by the expression "the succession of States" since it is the latter expression—and not the term "succession"—which is defined in article 2.

(10) Sub-paragraph (a) does not, of course, touch the treaties of the predecessor State otherwise than in respect of their application to the territory which passes out of its sovereignty or responsibility for international relations. Apart from the contraction in their territorial scope, its treaties are not normally affected by the loss of the territory. Only if the piece of territory concerned had been the object, or very largely the object, of a particular treaty might the continuance of the treaty in respect of the predecessor's own remaining territory be brought into question on the ground of impossibility of performance or fundamental change of circumstances. In such cases, the question should be settled in accordance with the general rules of treaty law codified by the Vienna Convention and did not seem to require any specific rule in the context of the present draft articles. In this connexion, however, certain members recalled that under sub-paragraph (b) of paragraph 2 of article 62 (fundamental change of circumstances) of the Vienna Convention, a fundamental change of circumstances

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230 See, for example, *Yearbook . . . 1970*, vol. II, p. 93, document A/CN.4/225, paras. 127-128.

231 *Ibid.*, p. 94, paras. 132-133.

232 In this connexion it may be recalled that the principle of equal rights and self-determination of peoples embodied in the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations, approved by resolution 2625 (XXV) of the General Assembly, states:

> "The establishment of a sovereign and independent State, *the free association or integration with an independent State** or the emergence into any other political status freely determined by a people constitute modes of implementing the right of self-determination by that people."

might not be invoked as a ground for terminating or withdrawing from a treaty "if the fundamental change is the result of a breach by the party invoking it either of an obligation under the treaty or of any other international obligation owed to any other party to the treaty".

(11) In the case of some treaties, more especially general multilateral treaties, the treaty itself may still be applicable to the territory after the succession, for the simple reason that the successor State also is a party to the treaty. In such a case there is not, of course, any succession to or continuance of the treaty rights or obligations of the predecessor State. On the contrary, even in these cases the treaty régime of the territory is changed and the territory becomes subject to the treaty exclusively in virtue of the successor State's independent participation in the treaty. For example, any reservation made to the treaty by the predecessor State would cease to be relevant while any reservation made by the successor State would become relevant in regard to the territory.

(12) Sub-paragraph (b) of article 14 provides for the positive aspect of the moving treaty-frontiers rule in its application to cases where territory is added to an already existing State, by stating that treaties of the successor State *are in force in respect of* that territory from the date of the succession of States. Under this sub-paragraph the treaties of the successor State are considered as applicable of their own force in respect of the newly acquired territory. Even if in some cases the application of the treaty régime of the successor State to the newly acquired territory may be said to result from an agreement, tacit or otherwise, between it and the other States parties to the treaties concerned, in most cases the moving of the treaty frontier is an automatic process. The change in the treaty régime applied to the territory is rather the natural consequence of its having become part of the territory of the State now responsible for its international relations.

(13) Exception should be made, however, of certain treaties, for example those having a restricted territorial scope which does not embrace the territory newly acquired by the successor State. Moreover, the Commission considered, at its present session, that the exception should also cover cases in which the application of a treaty of the successor State to the newly acquired territory is radically to change the conditions for the operation of the treaty, as was provided for in other articles of the 1972 draft such as, for instance, in articles 25, 26, 27 and 28. This explains the addition to sub-paragraph (*b*) of the proviso "unless it appears from the treaty or is otherwise established that the application of the treaty to that territory would be incompatible with its object and purpose or would radically change the conditions for the operation of the treaty". The word "particular" which in the 1972 treaty appeared before the word "treaty" was considered unnecessary and therefore deleted at the second reading.

(14) As stated in the 1972 draft, by such a formula the Commission intends to lay down an *international objective legal test of compatibility* which, if applied in good faith, should provide a reasonable, flexible and practical rule. The "incompatibility with the object and purpose of the treaty" and the "radical change in the conditions for the operation of the treaty," used in other contexts by the Vienna Convention on the Law of Treaties,[1] in the Commission's view, are the appropriate criteria in the present case to take account of the interests of all the States concerned and to cover all possible situations and all kinds of treaties.[233]

Although the words "or would radically change the conditions for the operation of the treaty" are an adaptation of the words in paragraph 1 (*b*) of article 62 (Fundamental change of circumstances) of the Vienna Convention, the Commission did not consider that in cases of the succession of States it would be appropriate to incorporate all the conditions for which that article provides. On the other hand, it thought that in most, if not all, cases of succession of States the territorial changes might result in "incompatibility with the object and purpose of the treaty" or "radical change in the conditions for the operation of the treaty". Accordingly, the formula used in article 14 as now drafted has been repeated in a number of other articles where it seemed to be appropriate. The commentaries on those articles do not, however, repeat the explanation of the formula given here.

(15) Lastly, article 14 should be read in conjunction with the specific rules relating to boundary régimes or other territorial régimes established by a treaty set forth in articles 11 and 12.

PART III

NEWLY INDEPENDENT STATES

Section 1. General Rule

Article 15.[234] *Position in respect of the Treaties of the predecessor State*

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

Commentary

(1) This article formulates the general rule concerning the position of a newly independent State in respect of treaties previously applied to its territory by the predecessor State.

(2) The question of a newly independent State's inheritance of the treaties of its predecessor has two aspects: (a) whether that State is under an *obligation* to continue to apply those treaties to its territory after the succession of States, and (b) whether it is *entitled* to consider itself as a party to the treaties in its own name after the succession of States. These two aspects of succession in the matter of treaties cannot in the view of the Commission be treated as if they were the same problem. If a newly independent State were to be considered as automatically bound by the treaty obligations of its predecessor, reciprocity would, it is true, require

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[233] *Official Records of the General Assembly, Twenty-Seventh Session, Supplement No. 10* (A/8710/Rev. 1), p. 71, chap. II, C, para. 29 of the commentary to article 26 (*Yearbook... 1972*, vol. II, p. 292, document A/8710/Rev.1, chap. II, C, para. 29 of the commentary to article 26).

[234] 1972 draft, article 11.

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

Document A/CONF.80/14

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

[*Original: English*]
[*21 June 1977*]

CONTENTS

Chapter I

INTRODUCTION

1. At its 1st plenary meeting, held on 4 April 1977, the Conference, *inter alia*, established a single Committee of the Whole to which it referred item 11 of the agenda (A/CONF.80/7), namely "Consideration of the question of succession of States in respect of treaties in accordance with resolutions 3496 (XXX) and 31/18 adopted by the General Assembly on 15 December 1975 and 24 November 1976". The present document contains the report of the Committee of the Whole to the Conference on its consideration of that item.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

11. The reports of the Drafting Committee took the form of the texts adopted. The reports did not elaborate upon particular points considered or the reasons why certain amendments which had been referred to the Drafting Committee as drafting points had, or had not, been accepted. In most cases, however, the Chairman of the Drafting Committee explained the main considerations which had resulted in the recommendations concerned. These statements by the Chairman of the Drafting Committee are to be found in the summary records of the Committee of the Whole.[4]

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

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

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

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

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

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

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

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

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[2] *Official Records of the United Nations Conference on Succession of States in Respect of Treaties*, vol. I, *Summary records of the plenary meetings and of the meetings of the Committee of the Whole* (United Nations publication, Sales No. E.78.V.8), pp. 22-28, 28-34 and 39-46, 2nd, 3rd and 5th meetings.

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

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

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

Chapter II

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

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

ARTICLE 1

1. International Law Commission text

16. The International Law Commission text provided as follows:

Article 1. Scope of the present articles

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

2. Amendments

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

18. This amendment was to the following effect:

Combine these articles to read as follows:

Article 1. Scope of the Convention

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

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

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

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

3. Proceedings of the Committee of the Whole

(1) *Meetings*

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

(ii) *Initial consideration*

20. At its 2nd meeting, the Committee of the Whole adopted without a vote the text of the International Law Commission for the article and referred it to the Drafting Committee, it being understood that consideration of the amendment by Romania to articles 1, 3 and 4 (A/CONF.80/C.1/L.2) would be left until the discussion on article 4.

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

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

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

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

Article 1. Scope of the present Convention

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

ARTICLES 3 AND 4

1. International Law Commission text

23. The International Law Commission text provided as follows:

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

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

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

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

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

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

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

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

2. Amendments

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

25. This amendment was to the following effect:

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

Article 1. Scope of the Convention

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

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

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

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

3. Proceedings of the Committee of the Whole

(i) *Meetings*

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

(ii) *Initial consideration*

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

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE 5

1. International Law Commission text

30. The International Law Commission text provided as follows:

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

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

2. Amendments

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

32. This amendment was to the following effect:

Amend article 5 to read as follows:

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

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

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

3. Proceedings of the Committee of the Whole

(i) *Meetings*

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

(ii) *Initial consideration*

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

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

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

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

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

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

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

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

ARTICLE 8

1. International Law Commission text

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

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

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

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

2. Amendments

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

39. These amendments were to the following effect:

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

Add the following words at the end of paragraph 2:

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

[Rejected; see para. 41 below.]

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

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

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

[Rejected; see para. 41 below.]

3. Proceedings of the Committee of the Whole

(i) *Meetings*

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

(ii) *Initial consideration*

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

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

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

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

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

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

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

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

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

ARTICLE 9

1. International Law Commission text

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

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

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

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

2. Amendments

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

46. This amendment was to the following effect:

Add the following words at the end of paragraph 2:

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

[Withdrawn; see para. 48 below.]

3. Proceedings of the Committee of the Whole

(i) *Meetings*

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

(ii) *Initial consideration*

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

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

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

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

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

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

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

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

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

PROPOSED NEW ARTICLE 9 *bis*

1. Text of the proposed new article

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

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

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

2. Proceedings of the Committee of the Whole

(i) *Meetings*

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

(ii) *Consideration of the proposed new article*

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

ARTICLE 10

1. International Law Commission text

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

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

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

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

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

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

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

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

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

2. Amendments

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

57. These amendments were to the following effect:

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

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

"(*a*) expressly so agrees: or

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

[Rejected; see para. 59 below.]

(b) *Japan* (oral amendment)

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

[Withdrawn; see para. 59 below.]

3. Proceedings of the Committee of the Whole

(i) *Meetings*

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

(ii) *Initial consideration*

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

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

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

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

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

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

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

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

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

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

ARTICLE 11

1. International Law Commission text

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

Article 11. Boundary régimes

A succession of States does not as such affect:

(*a*) a boundary established by a treaty; or

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

2. Amendments

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

65. This amendment was to the following effect:

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

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

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

"(*a*) expressly so agrees; or

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

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

3. Proceedings of the Committee of the Whole

(i) *Meetings*

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

(ii) *Initial consideration*

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

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

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

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

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

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

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

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

(*a*) a boundary established by a treaty; or

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

ARTICLE 13

1. International Law Commission text

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

Article 13. Questions relating to the validity of a treaty

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

2. Amendments

73. No amendment was submitted to article 13.

3. Proceedings of the Committee of the Whole

(i) *Meetings*

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

(ii) *Initial consideration*

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

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

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

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

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

Article 13. Questions relating to the validity of a treaty

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

ARTICLE 14

1. International Law Commission text

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

Article 14. Succession in respect of part of territory

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

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

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

2. Amendments

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

80. This amendment was to the following effect:

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

[Rejected; see para. 82 below.]

3. Proceedings of the Committee of the Whole

(i) *Meetings*

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

(ii) *Initial consideration*

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

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

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

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

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

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

Article 14. Succession in respect of part of territory

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

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

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

ARTICLE 15

1. International Law Commission text

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

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

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

2. Amendments

87. No amendment was submitted to article 15.

3. Proceedings of the Committee of the Whole

(i) *Meetings*

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

(ii) *Initial consideration*

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

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

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

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

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

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

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

ARTICLE 16 AND PROPOSED NEW ARTICLE 16 *bis*

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

1. International Law Commission text

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

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

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

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

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

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

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

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

95. These amendments were to the following effect:

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

1. Redraft the beginning of paragraph 1 as follows:

"Subject to paragraphs 2, 3 and 4 [...]";

2. Add a new paragraph 4 reading as follows:

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

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

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

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

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

[Withdrawn; see para. 97 below.]

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

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

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

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

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

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

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

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

[Withdrawn; see para. 98 below.]

3. Proceedings of the Committee of the Whole

(i) *Meetings*

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

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

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

"'multilateral treaty open to universal participation' means an international agreement open to participation by at least all States Members of the United Nations."

[10] This amendment was accompanied by the following consequential amendments:

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

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

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

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

4. Head article 21 "Notification and notice".

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

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

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

(b) *Consequential amendment to article 2*

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

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

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

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

(ii) *Initial consideration*

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

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

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

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

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

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

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

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

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

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

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

ARTICLE 17

1. International Law Commission text

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

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

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

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

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

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

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

2. Amendments

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

104. The amendment was to the following effect:

1. Substitute for paragraphs 1 and 2 the following:

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

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

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

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

3. Proceedings of the Committee of the Whole

(i) *Meetings*

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

(ii) *Initial consideration*

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

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

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

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

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

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

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

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

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

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

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

ARTICLE 18

1. International Law Commission text

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

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

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

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

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

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

2. Amendments

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

111. This amendment was to the following effect:

Delete the article.

[Rejected; see para. 113 below.]

3. Proceedings of the Committee of the Whole

(i) *Meetings*

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

(ii) *Initial consideration*

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

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

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

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

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

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

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

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

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

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

ARTICLE 19

1. International Law Commission text

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

Article 19. Reservations

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

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

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

2. Amendments

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

118. These amendments were to the following effect:

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

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

2. Delete *paragraphs 2 and 3.*

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

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

1. Replace paragraph 1 by the following text:[11]

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

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

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

[Withdrawn; see para. 120 below.]

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

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

[Rejected; see para. 121 below.]

3. Proceedings of the Committee of the Whole

(i) *Meetings*

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

[11] The new words to be inserted are in italics.

(ii) *Initial consideration*

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

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

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

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

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

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

Article 19. Reservations

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

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

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

ARTICLE 20

1. International Law Commission text

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

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

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

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

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

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

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

2. Amendments

125. No amendment was submitted to article 20.

3. Proceedings of the Committee of the Whole

(i) *Meetings*

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

(ii) *Initial consideration*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE 21

1. International Law Commission text

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

Article 21. Notification of succession

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

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

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

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

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

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

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

2. Amendments

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

134. This amendment was to the following effect:

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

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

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

3. Proceedings of the Committee of the Whole

(i) *Meetings*

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

(ii) *Initial consideration*

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

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

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

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

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

Article 21. Notification of succession

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

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

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

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

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

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

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

ARTICLE 22

1. International Law Commission text

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

Article 22. Effects of a notification of succession

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

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

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

2. Amendments

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

141. This amendment was to the following effect:

Replace paragraph 2 of the article by the following:

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

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

3. Proceedings of the Committee of the Whole

(i) *Meetings*

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

(ii) *Initial consideration*

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

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

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

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

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

Article 22. Effects of a notification of succession

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

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

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

ARTICLES 23 AND 24

1. International Law Commission text

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

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

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

(*a*) they expressly so agree; or

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

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

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

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

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

2. Amendments

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

148. These amendments were to the following effect:

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

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

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

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

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

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

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

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

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

[Withdrawn; see para. 150 below.]

3. Proceedings of the Committee of the Whole

(i) *Meetings*

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

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

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

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

(ii) *Initial consideration*

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

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

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

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

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

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

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

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

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

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

(*a*) they expressly so agree; or

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

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

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

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

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

ARTICLE 25

1. International Law Commission text

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

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

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

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

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

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

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

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

2. Amendments

157. No amendment was submitted to article 25.

3. Proceedings of the Committee of the Whole

(i) *Meetings*

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

(ii) *Initial consideration*

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLES 26 AND 27

1. International Law Commission text

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

Article 26. Multilateral treaties

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

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

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

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

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

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

Article 27. Bilateral treaties

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

(*a*) they expressly so agree; or

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

2. Amendments

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

164. These amendments were to the following effect:

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

Article 26

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

Article 27

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

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

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

Article 26

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

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

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

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

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

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

5. Add a new paragraph 6 as follows:

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

6. Add a new paragraph 7 as follows:

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

[Rejected; see para. 166 below.]

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

Article 26

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

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

Article 27

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

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

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

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

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

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

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

3. Proceedings of the Committee of the Whole

(i) *Meetings*

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

(ii) *Initial consideration*

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

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

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

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

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

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

Article 26. Multilateral treaties

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

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

3. If, at the date of the succession of States, a multilateral treaty not yet in force was being applied provisionally in respect of the territory to which the succession of States relates and the newly independent State gives notice of its intention that the treaty should continue to be applied provisionally in respect of its territory, that treaty shall apply provisionally between the newly independent State and any contracting State which expressly so agrees or by reason of its conduct is to be considered as having so agreed.

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

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

Article 27. Bilateral treaties

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

(*a*) they expressly so agree; or

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

ARTICLE 28

1. International Law Commission text

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

Article 28. Termination of provisional application

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

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

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

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

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

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

2. Amendments

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

172. This amendment was to the following effect:

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

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

[Rejected; see para. 174 below.]

3. Proceedings of the Committee of the Whole

(i) *Meetings*

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

(ii) *Initial consideration*

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

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

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

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

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

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

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

Article 28. Termination of provisional application

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

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

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

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

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

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

ARTICLE 29

1. International Law Commission text

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

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

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

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

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

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

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

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

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

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

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

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

2. Amendments

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

181. Those amendments were to the following effect:

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

Delete paragraph 3.

[Rejected; see para. 184 below.]

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

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

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

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

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

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

[Rejected; see para. 184 below.]

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

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

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

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

3. Proceedings of the Committee of the Whole

(i) *Meetings*

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

(ii) *Initial consideration*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

PROPOSED NEW ARTICLE 22 *bis*

1. Text of the proposed new article

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

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

Article 22 bis. *Notification by a depositary*

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

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

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

190. It read as follows:

Article 22 bis

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

2. Proceedings of the Committee of the Whole

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

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

193. At its 32nd meeting, the Committee had before it the revised version of the proposed new article 22 *bis* (A/CONF.80/C.1/L.28/Rev.1). It referred it to the Drafting Committee together with the suggestions that had been made orally by various delegations during the Committee's consideration of the proposed article 22 *bis* at the 31st and 32nd meetings. The Drafting Committee was requested to prepare a formulation taking into account the text in document A/CONF.80/C.1/L.28/Rev.1 and the referred oral suggestions relating thereto.[17] The Committee agreed to defer its decision on the proposed new provision until the Drafting Committee had recommended the requested formulation.

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

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

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

(a) *France*

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

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

The beginning of the text would then read as follows:

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

(b) *Pakistan*

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

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

(c) *Malaysia*

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

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

(d) *Netherlands*

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

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

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

(f) *Italy*

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

(g) *Greece*

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

(ii) Prepare a title for the proposed provision.

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

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

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

2. *Draft articles whose consideration has been referred to an informal consultations group*[18]

ARTICLE 6

1. International Law Commission text

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

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

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

2. Amendments

196. Amendments to article 6 were submitted by *Australia* (A/CONF.80/C.1/L.3), *Romania* (A/CONF.80/C.1/L.5), *Ethiopia* (A/CONF.80/C.1/L.6), the *Soviet Union* (A/CONF.80/C.1/L.8), and *Singapore* (A/CONF.80/C.1/L.17).

197. These amendments were to the following effect:

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

Delete the text of article 6 and substitute the following:

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

[Withdrawn; see para. 199 below.]

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

Replace the present text by the following:

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

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

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

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

Replace the text of the article by the following:

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

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

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

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

Replace the present text by the following:

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

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

[Withdrawn; see para. 200 below.]

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

Replace the existing text by the following:

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

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

3. Proceedings of the Committee of the Whole

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

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

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

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

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

ARTICLE 7

1. International Law Commission text

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

Article 7. Non-retroactivity of the present articles

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

2. Amendments

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

[18] See para. 10 above.

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

205. These amendments were to the following effect:

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

Replace the title of article 7 by the following:

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

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

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

Replace the existing text by the following:

Article 7. Non-retroactivity of the present articles

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

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

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

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

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

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

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

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

Replace the existing text by the following:

Article 7. Application of the present articles

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

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

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

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

3. Proceedings of the Committee of the Whole

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

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

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

ARTICLE 12

1. International Law Commission text

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

Article 12. Other territorial régimes

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

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

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

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

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

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

2. Amendments

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

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

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

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

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

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

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

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

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

Delete the text of article 12 and substitute the following:

Article 12. Other territorial régimes

A succession of States does not as such affect:

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

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

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

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

Add a new paragraph reading as follows:

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

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

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

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

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

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

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

Add the following new paragraph:

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

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

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

Replace the present text by the following:

A succession of States does not as such affect:

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

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

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

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

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

[Deferred; see para. 68 above.]

3. Proceedings of the Committee of the Whole

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

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

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

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

ARTICLE 2[21]

1. International Law Commission text

215. The International Law Commission text provided as follows:

Article 2. Use of terms

1. For the purposes of the present articles:

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

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

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

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