

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

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

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

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

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

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

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

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

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

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

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

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

## 2. Amendments

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

217. Those amendments were to the following effect:

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

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

Replace the existing text by the following:

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

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

Replace the existing text by the following:

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

## Consequential amendments

(i) *Article 33*

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

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

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

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

## Paragraph 1

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

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

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

(c) *Afghanistan* (oral amendment)

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

[Not yet considered.]

## 3. Proceedings of the Committee of the Whole

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

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

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

## ARTICLE 30

### 1. International Law Commission text

220. The International Law Commission text provided as follows:

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

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

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

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

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

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

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

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

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

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

## 2. Amendments

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

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

Add to article 30 a paragraph 4 reading as follows:

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

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

### *Paragraph 1*

Add the following subparagraph:

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

## ARTICLE 31

### 1. International Law Commission text

222. The International Law Commission text provided as follows:

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

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

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

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

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

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

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

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

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

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

## 2. Amendments

223. No amendment was submitted to article 31.

## ARTICLE 32

### 1. International Law Commission text

224. The International Law Commission text provided as follows:

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

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

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

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

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

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

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

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

## 2. Amendments

225. The following amendment was submitted to article 32:

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

Delete the article.

## ARTICLE 33

### 1. International Law Commission text

226. The International Law Commission text provided as follows:

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

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

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

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

2. Paragraph 1 does not apply if:

(a) the States concerned otherwise agree; or

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

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

## 2. Amendments

227. No amendment was submitted to article 33.<sup>24</sup>

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

## ARTICLE 34

### 1. International Law Commission text

228. The International Law Commission text provided as follows:

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

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

(a) it is otherwise agreed;

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

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

## 2. Amendments

229. No amendment was submitted to article 34.<sup>25</sup>

## ARTICLE 35

### 1. International Law Commission text

230. The International Law Commission text provided as follows:

#### *Article 35. Participation in treaties not in force at the date of the succession of States in cases of separation of parts of a State*

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

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

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

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

## 2. Amendments

231. The following amendment was submitted to article 35:

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

Replace the existing text by the following:

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

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

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

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

## ARTICLE 36

### 1. International Law Commission text

232. The International Law Commission text provided as follows:

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

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

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

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

### 2. Amendments

233. The following amendment was submitted to article 36:

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

Delete the article.

## PROPOSED NEW ARTICLE 36 bis

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

### *Article 36 bis*

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

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

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

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

### *Consequential changes:*

#### *Article 30, paragraph 1:*

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

#### *Article 30, paragraph 1 (a):*

Delete "State party or".

#### *Article 30, paragraph 2 (c):*

Delete subparagraph (c).

#### *Article 33, paragraph 1 (a):*

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

#### *Article 33, paragraph 1 (b):*

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

## ARTICLE 37

### 1. International Law Commission text

235. The International Law Commission text provided as follows:

#### *Article 37. Notification*

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

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

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

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

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

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

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

### 2. Amendments

236. The following amendment was submitted to article 37:

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

Replace the existing text by the following:

#### *Article 37. Notification*

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

**PROPOSED NEW ARTICLE 37 bis**

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

*Article 37 bis*

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

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

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

238. The International Law Commission text provided as follows:

*Article 38. Cases of State responsibility and outbreak of hostilities*

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

**2. Amendments**

239. No amendment was submitted to article 38.

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

240. The International Law Commission text provided as follows:

*Article 39. Cases of military occupation*

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

**2. Amendments**

241. No amendment was submitted to article 39.

**PROPOSED NEW ARTICLE 39 bis**

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

*Article 39 bis*

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

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

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

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

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

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

**ANNEX TO THE CONVENTION***Conciliation procedure*

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

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

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

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

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

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

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

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

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

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

### Chapter III

#### PREAMBLE AND FINAL CLAUSES

244. As indicated in paragraph 9 above, the Committee of the Whole entrusted to the Drafting Committee the preparation of drafts, for submission directly to the Plenary, concerning the preamble and the final clauses of the future convention.

#### A. PREAMBLE

245. Proposals for the preamble were submitted by *Spain* (A/CONF.80/DC.9) and the *United Nations Council for Namibia* (A/CONF.80/DC.13).

246. They read as follows:

(a) *Spain*: proposal for the preamble to the Convention (A/CONF.80/DC.9)

*The States Parties to the present Convention,*

*Considering* the profound transformation of the international community wrought by the decolonization process,

*Considering also* the present trends in the international community towards greater integration and unification between States,

*Convinced* of the desirability of properly regulating the effects of such transformations upon treaty relations between States,

*Convinced also* that the codification and progressive development of the rules relating to succession of States in respect of treaties will contribute to the achievement of the purposes of the United Nations as set forth in the Charter,

*Having in mind* the principles of international law embodied in the Charter of the United Nations, particularly the principles of the equal rights and self-determination of peoples, of the sovereign equality and independence of all States, of non-interference in the domestic affairs of States, of the prohibition of the threat or use of

force and of respect for, and observance of, human rights and fundamental freedoms for all,

*Reaffirming* that any attempt to disrupt partly or completely the national unity and territorial integrity of a State or its political independence is incompatible with the purposes and principles of the Charter,

*Having in mind also* the provisions of the 1969 Vienna Convention on the Law of Treaties,

*Mindful* that any question relating to the legality of a succession of States is governed by international law and, in particular, by the principles of international law embodied in the Charter of the United Nations and set forth in the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations,

*Affirming* that the rules of customary international law will continue to govern questions not regulated by the present Convention,

*Have agreed* as follows:

(b) *United Nations Council for Namibia*: proposal for the preamble to the Convention (A/CONF.80/DC.13)

*Taking into account* General Assembly resolution 2145 (XXI) of 27 October 1966, by which the General Assembly of the United Nations terminated the Mandate of South Africa over South West Africa (Namibia) and assumed direct responsibility for the Territory until its independence,

#### B. FINAL CLAUSES

247. A draft article of a final clause was submitted by the *United Kingdom* in an annex to a working paper presented by that same delegation in connexion with article 7 (A/CONF.80/C.1/L.9).<sup>26</sup> The draft article proposed for inclusion in the final clauses read as follows:

##### *Article X. Participation in this Convention by a future successor State*

1. Where a succession of States occurs on or after the date on which the present Convention is opened for signature [in Vienna], the successor State may express its consent to be bound thereby only by signature in accordance with article A followed by ratification in accordance with article B or by accession in accordance with article C; it may not become a party or a contracting State by notification of succession in accordance with articles [16,

<sup>26</sup> See foot-note 19 above.

17, 29, 30, 31 or 35] or by ratifying the signature of its predecessor State in accordance with articles [18, 32 or 36] or otherwise by virtue of any of the provisions of parts III or IV of the present Convention.

2. A successor State which, as provided for in paragraph 1, signs the present Convention in accordance with article A or ratifies or accedes to it in accordance with articles B or C may, at the time of signature or of the deposit of its instrument of ratification or accession, declare that it will apply the provisions of the present Convention in respect of its own succession.

3. Where a successor State has made a declaration in accordance with paragraph 2, then, notwithstanding article 7, the provisions of the present Convention shall apply as between the successor State and any other party to the present Convention, to the effects of the particular succession of States in question and shall, subject to paragraph 5, so apply as from the date on which the present Convention enters into force for the successor State.

4. A successor State which has made a declaration in accordance with paragraph 2 may, at the time of making the declaration or at any time thereafter, further declare it will provisionally apply the provisions of the present Convention in respect of its own succession.

5. Where a successor State has made a declaration in accordance with paragraph 4, then, notwithstanding article 7, the provisions of the present Convention shall apply provisionally, as between the successor State and any other State which is a contracting State, to the effects of the succession of States in question.

6. A declaration made in accordance with paragraph 2 or paragraph 4 shall be contained in a written notification addressed to the Secretary-General of the United Nations who shall inform the parties and the States entitled to become parties to the present Convention of the deposit with him of that notification and of its terms.

## ANNEX

### Check list of documents submitted during the 1977 session of the Conference to the Committee of the Whole by States participating in the Conference

[In the list which follows, the reference under the heading "Paragraphs" is to the paragraph or paragraphs of this report in which the text of the document may be found.]

<i>Document No.</i>	<i>Sponsors</i>	<i>Article</i>	<i>Paragraphs</i>
A/CONF.80/C.1/L.1	Byelorussian Soviet Socialist Republic . . . . .	7	205, <i>a</i>
A/CONF.80/C.1/L.2	Romania . . . . .	1, 3 and 4	18
A/CONF.80/C.1/L.3	Australia . . . . .	6	197, <i>a</i>
A/CONF.80/C.1/L.4	Romania . . . . .	5	32
A/CONF.80/C.1/L.5	Romania . . . . .	6	197, <i>b</i>
A/CONF.80/C.1/L.6	Ethiopia . . . . .	6	197, <i>c</i>
A/CONF.80/C.1/L.7	Malaysia . . . . .	7	205, <i>b</i>
A/CONF.80/C.1/L.8	Union of Soviet Socialist Republics . . . . .	6	197, <i>d</i>
A/CONF.80/C.1/L.9	United Kingdom of Great Britain and Northern Ireland: working paper . . . . .	7 and final clauses	247, see foot-note 19
A/CONF.80/C.1/L.10 and Rev.1	Cuba . . . . .	7	See foot- note 20
A/CONF.80/C.1/L.10/Rev.2	Cuba and Somalia . . . . .	7	205, <i>c</i>
A/CONF.80/C.1/L.11	United Kingdom of Great Britain and Northern Ireland .	8	39, <i>a</i>
A/CONF.80/C.1/L.12	United Kingdom of Great Britain and Northern Ireland .	9	46
A/CONF.80/C.1/L.13	United Kingdom of Great Britain and Northern Ireland .	9 <i>bis</i>	See foot- note 7.
A/CONF.80/C.1/L.13/Rev.1	United Kingdom of Great Britain and Northern Ireland .	9 <i>bis</i>	52
A/CONF.80/C.1/L.14	United Kingdom of Great Britain and Northern Ireland .	10	57, <i>a</i> See foot- note 8.
A/CONF.80/C.1/L.15	Malaysia . . . . .	8	39, <i>b</i>
A/CONF.80/C.1/L.16	United States of America . . . . .	7	205, <i>d</i>
A/CONF.80/C.1/L.17	Singapore . . . . .	6	197, <i>e</i>

<i>Document No.</i>	<i>Sponsors</i>	<i>Article</i>	<i>Paragraphs</i>
A/CONF.80/C.1/L.18	Finland . . . . .	12	211, <i>a</i>
A/CONF.80/C.1/L.19	Mexico . . . . .	12	211, <i>b</i>
A/CONF.80/C.1/L.20	Cuba . . . . .	12	211, <i>d</i>
A/CONF.80/C.1/L.21	Malaysia . . . . .	12	211, <i>e</i>
A/CONF.80/C.1/L.22	Union of Soviet Socialist Republics . . . . .	16 <i>bis</i>	95, <i>b</i>
A/CONF.80/C.1/L.23	Swaziland and Sweden . . . . .	18, 29 32 and 36	111; 181, <i>a</i> 225; 233
A/CONF.80/C.1/L.24	Afghanistan . . . . .	11 and 12	65; 211, <i>f</i>
A/CONF.80/C.1/L.25	Austria . . . . .	19	118, <i>a</i>
A/CONF.80/C.1/L.26	Austria . . . . .	22	141
A/CONF.80/C.1/L.27	Argentina: Subamendment to the amendment by Mexico (A/CONF.80/C.1/L.19) . . . . .	12	211, <i>c</i>
A/CONF.80/C.1/L.28	Czechoslovakia, Poland and Ukrainian Soviet Socialist Republic . . . . .	22 <i>bis</i>	188
A/CONF.80/C.1/L.28/Rev.1	Czechoslovakia, Poland, Singapore, Ukrainian Soviet Socialist Republic . . . . .	22 <i>bis</i>	190
A/CONF.80/C.1/L.29	Australia . . . . .	21	134
A/CONF.80/C.1/L.30	Finland . . . . .	23 and 24	148, <i>a</i>
A/CONF.80/C.1/L.31	Finland . . . . .	26 and 27	164, <i>a</i>
A/CONF.80/C.1/L.32	Finland . . . . .	29	181, <i>b</i>
A/CONF.80/C.1/L.33	Australia . . . . .	23	148, <i>b</i>
A/CONF.80/C.1/L.34	Australia . . . . .	26	See foot- note 16.
A/CONF.80/C.1/L.34/Rev.1	Australia and Ireland . . . . .	26	164, <i>b</i>
A/CONF.80/C.1/L.35	Netherlands . . . . .	16 and 2	95, <i>a</i> See foot- note 22.
A/CONF.80/C.1/L.36	Federal Republic of Germany . . . . .	19	118, <i>b</i>
A/CONF.80/C.1/L.37	United States of America . . . . .	37 <i>bis</i>	237
A/CONF.80/C.1/L.38	United States of America . . . . .	39 <i>bis</i>	237
A/CONF.80/C.1/L.39	Finland . . . . .	35	231
A/CONF.80/C.1/L.40	Finland . . . . .	37	236
A/CONF.80/C.1/L.41	France and Switzerland . . . . .	2, 33 and 34	217, <i>a</i> See foot- notes 24 and 25.
A/CONF.80/C.1/L.42 and Corr.1	Malaysia . . . . .	17	104
A/CONF.80/C.1/L.43	Malaysia . . . . .	29	181, <i>c</i>
A/CONF.80/C.1/L.44	Switzerland . . . . .	30	221, <i>a</i>
A/CONF.80/C.1/L.45	Federal Republic of Germany . . . . .	30	221, <i>b</i>
A/CONF.80/C.1/L.46	Cuba . . . . .	2	217, <i>b</i>
A/CONF.80/C.1/L.47	Federal Republic of Germany . . . . .	36 <i>bis</i>	234



## D. REPORT OF THE CONFERENCE (1977 SESSION)

Document A/CONF.80/15

### REPORT OF THE WORK OF THE UNITED NATIONS CONFERENCE ON SUCCESSION OF STATES IN RESPECT OF TREATIES AT ITS 1977 SESSION

[Original: English]  
[22 June 1977]

#### CONTENTS

	Paragraphs	Page
Report of the Conference . . . . .	1-26	137
Recommendation of the Conference . . . . .	26	139
Annex. Text of articles adopted by the Conference . . . . .		140

#### Report of the Conference

1. The General Assembly of the United Nations, by resolution 3496 (XXX) of 15 December 1975, decided to convene a conference of plenipotentiaries in 1977 to consider the draft articles on succession of States in respect of treaties adopted by the International Law Commission at its twenty-sixth session,<sup>1</sup> and to embody the results of its work in an international convention and such other instruments as it might deem appropriate.

2. Subsequently, by resolution 31/18 of 24 November 1976, the General Assembly, after noting, *inter alia*, that the Government of Austria had extended an invitation to hold the United Nations Conference on Succession of States in respect of Treaties at Vienna, decided that the Conference be held from 4 April to 6 May 1977 in that city.

3. The United Nations Conference on Succession of States in respect of Treaties met at the Neue Hofburg in Vienna from 4 April to 6 May 1977.

4. The Conference was opened by the Legal Counsel of the United Nations who made a statement on behalf of the Secretary-General. His Excellency Mr. Rudolf Kirchschlaeger, the Federal President of the Republic of Austria, attended the opening and addressed the Conference.

5. All States were invited to participate in the Conference. The Governments of the following 89 States participated in the Conference: Afghanistan; Algeria; Argentina; Australia; Austria; Barbados; Belgium; Bolivia; Brazil; Bulgaria; Byelorussian Soviet Socialist Republic; Canada; Chile; Colombia; Cuba; Cyprus; Czechoslovakia;

Democratic Yemen; Denmark; Ecuador; Egypt; Ethiopia; Finland; France; German Democratic Republic; Germany, Federal Republic of; Ghana; Greece; Guyana; Holy See; Hungary; India; Indonesia; Iraq; Ireland; Israel; Italy; Ivory Coast; Japan; Kenya; Kuwait; Liberia; Libyan Arab Jamahiriya; Luxembourg; Madagascar; Malaysia; Mexico; Mongolia; Morocco; Netherlands; New Zealand; Niger; Nigeria; Norway; Oman; Pakistan; Papua New Guinea; Peru; Philippines; Poland; Portugal; Qatar; Romania; Saudi Arabia; Senegal; Sierra Leone; Singapore; Somalia; Spain; Sri Lanka; Sudan; Surinam; Swaziland; Sweden; Switzerland; Thailand; Tunisia; Turkey; Uganda; Ukrainian Soviet Socialist Republic; Union of Soviet Socialist Republics; United Arab Emirates; United Kingdom of Great Britain and Northern Ireland; United Republic of Tanzania; United States of America; Uruguay; Venezuela; Yugoslavia and Zaire. The Governments of Iran and the Republic of Korea were represented by observers.<sup>2</sup>

6. The United Nations Council for Namibia also participated in the Conference.<sup>2</sup>

7. The following organizations, which have received a standing invitation from the General Assembly to participate in the sessions and work of all international conferences convened under the auspices of the General Assembly, were represented by observers: Palestine Liberation Organization, South West Africa People's Organization (SWAPO).<sup>2</sup>

8. The following intergovernmental organizations were represented by observers:

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

<sup>2</sup> For the composition of delegations of participants, see document A/CONF.80/INF.3.

*Specialized agencies and other United Nations related agencies*

Food and Agriculture Organization of the United Nations;  
International Civil Aviation Organization;  
International Monetary Fund;  
International Atomic Energy Agency.

*Other intergovernmental organizations*

Asian-African Legal Consultative Committee;  
Commonwealth Secretariat;  
Council of Europe.<sup>2</sup>

9. At its 1st plenary meeting on Monday, 4 April 1977, the Conference elected Mr. Karl Zemanek (Austria) as President.

10. The Conference elected as Vice-Presidents the representatives of the following States: Argentina, Barbados, Bulgaria, Cuba, Ethiopia, France, India, Indonesia, Ireland, Italy, Ivory Coast, Malaysia, Mexico, Morocco, Pakistan, Romania, Sudan, Turkey, Union of Soviet Socialist Republics, United Kingdom of Great Britain and Northern Ireland, United States of America and Zaire.

11. The following committees were set up by the Conference:

*General Committee*

*Chairman:* The President of the Conference;

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

*Committee of the Whole*

*Chairman:* Mr. Fuad Riad (Egypt);

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

*Rapporteur:* Mr. Abdul Hakim Tabibi (Afghanistan);

*Drafting Committee*

*Chairman:* Mr. Mustapha Kamil Yasseen (United Arab Emirates);

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

The Rapporteur of the Committee of the Whole participated *ex officio* in the work of the Drafting Committee in accordance with rule 47 of the rules of procedure of the Conference (A/CONF.80/8).

*Credentials Committee*

*Chairman:* Mr. José Sette-Câmara (Brazil);

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

12. Sir Francis A. Vallat, the International Law Commission's latest Special Rapporteur on the question of succession of States in respect of treaties, acted as Expert Consultant.

13. The Secretary-General of the United Nations was represented by Mr. Erik Suy, Under-Secretary-General, the Legal Counsel. Mr. Yuri M. Rybakov, Director of the Codification Division of the Office of Legal Affairs, acted as Executive Secretary of the Conference. Mr. Santiago Torres Bernárdez acted as Deputy Executive Secretary of the Conference and Secretary of the Committee of the Whole. Miss Jacqueline Dauchy acted as Secretary of the Credentials Committee and as Assistant Secretary of the Committee of the Whole. Mr. Eduardo Valencia Ospina acted as Secretary of the Drafting Committee. Mr. Moritaka Hayashi acted as Assistant Secretary of the Drafting Committee. Mr. Jacques Roman acted as Assistant Secretary of the Drafting and Credentials Committees. Mr. Alexander Borg Olivier acted as Assistant Secretary of the Committee of the Whole.

14. At its 1st plenary meeting, held on 4 April 1977, the Conference adopted the following agenda (A/CONF.80/7):

1. Opening of the Conference by the representative of the Secretary-General
2. Election of the President
3. Adoption of the agenda
4. Adoption of the rules of procedure
5. Election of Vice-Presidents
6. Election of the Chairman of the Committee of the Whole
7. Election of the Chairman of the Drafting Committee
8. Appointment of the Credentials Committee
9. Appointment of other members of the Drafting Committee
10. Organization of work
11. 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
12. Adoption of a convention and other instruments deemed appropriate and of the final act of the Conference
13. Signature of the final act and of the convention and other instruments.

15. At its 3rd plenary meeting, held on 14 April 1977, the Conference decided to add a supplementary item to its agenda entitled "Consideration of request of the United Nations Council for Namibia for active participation in the United Nations Conference on Succession of States in respect of Treaties" (General Assembly resolution 31/149). Under that item the President noted that operative paragraph 3 of General Assembly resolution 31/149, entitled "Action by intergovernmental and non-governmental organizations with respect to Namibia", provides the following:

*Requests all . . . conferences within the United Nations system to consider granting full membership to the United Nations Council for Namibia so that it may participate in that capacity as the Administering Authority for Namibia in the work of those . . . conferences.*

The Conference took a decision in favour of participation as requested by the United Nations Council for Namibia.

16. At the 4th plenary meeting, held on 27 April 1977, the President stated the following:

The Conference will recall that under this item and upon the request of the delegation of the United Nations Council for Namibia referring to General Assembly resolution 31/149, it took a decision concerning that delegation's participation in the Conference. Now, in the context of the implementation of that decision, the delegation of the United Nations Council for Namibia has requested that the Conference should state explicitly that the delegation of the United Nations Council for Namibia has the right to submit proposals and amendments.

The Conference so decided.

17. The Conference adopted its "Rules of Procedure" (A/CONF.80/8) and, on the basis of a memorandum drawn up by the Secretary-General of the United Nations, "methods of work and Procedures of the Conference" (A/CONF.80/9).

18. In connexion with item 11 of its agenda (see para. 14 above), the Conference, pursuant to paragraph 3 of General Assembly resolution 31/18, had before it as the basic proposal for discussion the draft articles on succession of States in respect of treaties adopted by the International Law Commission at its twenty-sixth session (A/CONF.80/4).

19. The Conference, 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 of the 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 of the Office of Legal Affairs of the United Nations Secretariat;

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

20. The Conference decided that the draft articles on succession of States in respect of treaties prepared by the International Law Commission (A/CONF.80/4), as well as the additional articles, amendments and papers relating thereto, submitted by participating delegations (A/CONF.80/C.1/L.1-L.47) would be first considered by the Committee of the Whole. The texts adopted by the Committee of the Whole were referred to the Drafting Committee (A/CONF.80/DC.1-6, 8, 10-12 and 14-17) which was responsible for preparing drafts and giving advice on drafting as requested and for co-ordinating and reviewing the drafting of all texts adopted. In addition, the Committee of the Whole entrusted to the Drafting Committee (A/CONF.80/DC.7) the preparation of drafts for submission directly to the Plenary concerning the preamble and the final clauses of the future convention (A/CONF.80/DC.9 and DC.13).

21. Pursuant to a recommendation of the General Committee adopted at its meeting on 2 May 1977, the

Conference, at its 5th meeting, held on 5 May 1977, decided to proceed with the consideration at the Plenary level of the articles whose examination had been completed by the Committee of the Whole. As a result of such a consideration, the Conference adopted articles 1, 3-5, 8-11 and 13-29. Such adoption was made without prejudice to any consequential adjustments that might be required in the light of decisions on articles yet to be considered. The stage reached in the consideration of the remaining articles and amendments thereto is reflected in the report of the Committee of the Whole (A/CONF.80/14).

22. At its 6th plenary meeting, held on 5 May 1977, the Conference took note of the report of the Committee of the Whole.

23. At its 7th plenary meeting, held on 6 May 1977, the Conference approved the report of its Credentials Committee (A/CONF.80/12).

24. At the same meeting the representative of Austria, referring to the decision of the General Assembly to accept the invitation extended by the Government of Austria to hold the United Nations Conference on Succession of States in Respect of Treaties in Vienna (General Assembly resolution 31/18), stated that the invitation referred to in General Assembly resolution 31/18 would extend, as a matter of course, to a resumed session of the Conference which would make it possible for the Conference to continue its work in Vienna in 1978.

25. The annex to the present report reproduces titles and texts of articles adopted by the Conference during the period 4 April to 6 May 1977. The deliberations of the Conference are recorded in the summary records of the Conference (A/CONF.80/SR.1-SR.8)<sup>3</sup> and in the summary records (A/CONF.80/C.1/SR.1-SR.36)<sup>4</sup> and the report (A/CONF.80/14)<sup>5</sup> of the Committee of the Whole.

#### RECOMMENDATION OF THE CONFERENCE

26. At its 7th plenary meeting, held on 6 May 1977, the Conference adopted the following recommendation:

*The United Nations Conference on Succession of States in Respect of Treaties,*

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

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

<sup>3</sup> *Official Records of the United Nations Conference on Succession of States in Respect of Treaties*, vol. I, *Summary records of the plenary meeting and of the meetings of the Committee of the Whole* (United Nations publication, Sales No. E.78.V.8), pp. 1-19.

<sup>4</sup> *Ibid.*, pp. 21 *et seq.*

<sup>5</sup> See pp. 98 *et seq.*, sect. C.

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

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

*Taking note* of the statement of the representative of Austria that the invitation of the Government of Austria referred to in General Assembly resolution 31/18 would extend to a resumed

session of the Conference, which would make it possible for the Conference to continue its work in Vienna in 1978,

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

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

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

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

## ANNEX

### Text of Articles adopted by the Conference<sup>a</sup>

#### *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.

#### *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. 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. 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.

#### *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.

#### *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<sup>b</sup>*

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.

<sup>a</sup> The Conference has not yet adopted any decision concerning the grouping of the articles in parts and sections nor on the titles of those parts and sections. See p. 134 above, sect. C, document A/CONF.80/14, para. 243.

<sup>b</sup> No decision has been taken yet on the title of the article. See p. 110 above, sect. C, document A/CONF.80/14, para. 70.

*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. 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 State 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. 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. 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 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. 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. 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. 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 of the Law of Treaties apply in respect of that reservation.

*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 States 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. 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. 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.

#### *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. 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.

#### *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. 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. 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.

## E. REPORT OF THE COMMITTEE OF THE WHOLE (RESUMED SESSION)

Document A/CONF.80/30

### REPORT OF THE COMMITTEE OF THE WHOLE ON ITS WORK AT THE RESUMED SESSION OF THE CONFERENCE (1978)

[Original: English]  
[15 December 1978]

#### CONTENTS

	<i>Paragraphs</i>	<i>Page</i>
<b>Chapter I. Introduction</b> .....	1-17	147
<b>Chapter II. Consideration by the Committee of the Whole of the draft articles on succession of States in respect of treaties deferred from the 1977 session of the Conference or submitted at the resumed session</b> .....	18-157	149
<i>Article 2</i> (Use of terms) .....	18-24	149
1. International Law Commission text .....	18	149
2. Amendments .....	19-20	150
3. Proceedings of the Committee of the Whole .....	21-24	150
(a) At the 1977 session .....	21	150
(b) At the resumed session .....	22-24	150
(i) Resumed consideration .....	22	150
(ii) Consideration of the report of the Drafting Committee .....	23	150
(iii) Text approved by the Committee of the Whole .....	24	150
<i>Article 6</i> (Cases of succession of States covered by the present articles) .....	25-31	151
1. International Law Commission text .....	25	151
2. Amendments .....	26-27	151
3. Proceedings of the Committee of the Whole .....	28-31	151
(a) At the 1977 session .....	28	151
(b) At the resumed session .....	29-31	151
(i) Consideration of the first report of the Informal Consultations Group .....	29	151
(ii) Consideration of the report of the Drafting Committee .....	30	151
(iii) Text approved by the Committee of the Whole .....	31	151
<i>Article 7</i> (Non-retroactivity of the present articles) .....	32-40	151
1. International Law Commission text .....	32	151
2. Amendments .....	33-34	152
3. Proceedings of the Committee of the Whole .....	35-40	152
(a) At the 1977 session .....	35	152
(b) At the resumed session .....	36-40	152
(i) Consideration of the first report of the Informal Consultations Group .....	36-38	152
(ii) Consideration of the report of the Drafting Committee .....	39	153
(iii) Text approved by the Committee of the Whole .....	40	153
<i>Title for article 11</i> .....	41-44	153
1. Proceedings at the 1977 session .....	41	153
2. Proceedings of the Committee of the Whole at the resumed session .....	42-44	153
(i) Reference to the Drafting Committee .....	42	153
(ii) Consideration of the report of the Drafting Committee .....	43	153
(iii) Title approved by the Committee of the Whole .....	44	153
<i>Article 12</i> (Other territorial régimes) and <i>new article 12 bis</i> .....	45-52	153
1. International Law Commission text .....	45	153
2. Amendments .....	46-47	154



	Paragraphs	Page
3. Proceedings of the Committee of the Whole	48-52	154
(a) At the 1977 session	48	154
(b) At the resumed session	49-52	154
(i) Consideration of the second report of the Informal Consultations Group	49-50	154
(ii) Consideration of the report of the Drafting Committee	51	155
(iii) Text approved by the Committee of the Whole	52	155
<i>Proposed new article 22 bis</i>	53-56	155
1. Text for the proposed new article	53	155
2. Proceedings of the Committee of the Whole	54-56	155
(a) At the 1977 session	54-55	155
(b) At the resumed session	56	155
<i>Article 30 (Effects of a uniting of States in respect of treaties in force at the date of the succession of States)</i>	57-64	156
1. International Law Commission text	57	156
2. Amendments	58-59	156
3. Proceedings of the Committee of the Whole	60-64	156
(i) Meetings	60	156
(ii) Initial consideration	61-62	156
(iii) Consideration of the report of the Drafting Committee	63	156
(iv) Text approved by the Committee of the Whole	64	156
<i>Proposed new article 30 bis and draft resolution concerning article 30</i>	65-73	157
1. Text of the proposed new article and draft resolution	65-66	157
2. Proceedings of the Committee of the Whole	67-73	157
(i) Meetings	67	157
(ii) Initial consideration	68-69	157
(iii) Consideration of the second report of the Informal Consultations Group	70-71	158
(iv) Consideration of the report of the Drafting Committee	72	158
(v) Text of the draft resolution approved by the Committee of the Whole	73	158
<i>Article 31 (Effects of a uniting of States in respect of treaties not in force at the date of the succession of States)</i>	74-79	158
1. International Law Commission text	74	158
2. Amendments	75	158
3. Proceedings of the Committee of the Whole	76-79	158
(i) Meetings	76	158
(ii) Initial consideration	77	159
(iii) Consideration of the report of the Drafting Committee	78	159
(iv) Text approved by the Committee of the Whole	79	159
<i>Article 32 (Effects of a uniting of States in respect of treaties signed by a predecessor State subject to ratification, acceptance or approval)</i>	80-86	159
1. International Law Commission text	80	159
2. Amendments	81-82	159
3. Proceedings of the Committee of the Whole	83-86	159
(i) Meetings	83	159
(ii) Initial consideration	84	159
(iii) Consideration of the report of the Drafting Committee	85	160
(iv) Text approved by the Committee of the Whole	86	160
<i>Article 33 (Succession of States in cases of separation of parts of a State)</i>	87-96	160
1. International Law Commission text	87	160
2. Amendments	88-89	160
3. Proceedings of the Committee of the Whole	90-96	161
(i) Meetings	90	161
(ii) Initial consideration	91-94	161
(iii) Consideration of the report of the Drafting Committee	95	161
(iv) Text approved by the Committee of the Whole	96	161
<i>Article 34 (Position if a State continues after separation of part of its territory)</i>	97-102	161
1. International Law Commission text	97	161
2. Amendments	98	161

	<i>Paragraphs</i>	<i>Page</i>
3. Proceedings of the Committee of the Whole . . . . .	99-102	162
(i) Meetings . . . . .	99	162
(ii) Initial consideration . . . . .	100	162
(iii) Consideration of the report of the Drafting Committee . . . . .	101	162
(iv) Text approved by the Committee of the Whole . . . . .	102	162
<i>Article 35</i> (Participation in treaties not in force at the date of the succession of States in cases of separation of parts of a State) . . . . .	103-109	162
1. International Law Commission text . . . . .	103	162
2. Amendments . . . . .	104-105	162
3. Proceedings of the Committee of the Whole . . . . .	106-109	162
(i) Meetings . . . . .	106	162
(ii) Initial consideration . . . . .	107	162
(iii) Consideration of the report of the Drafting Committee . . . . .	108	162
(iv) Text approved by the Committee of the Whole . . . . .	109	162
<i>Article 36</i> (Participation in cases of separation of parts of a State in treaties signed by the predecessor State subject to ratification, acceptance or approval) . . . . .	110-117	163
1. International Law Commission text . . . . .	110	163
2. Amendments . . . . .	111-112	163
3. Proceedings of the Committee of the Whole . . . . .	113-117	163
(i) Meetings . . . . .	113	163
(ii) Initial consideration . . . . .	114-115	163
(iii) Consideration of the report of the Drafting Committee . . . . .	116	163
(iv) Text approved by the Committee of the Whole . . . . .	117	163
<i>Proposed new article 36 bis</i> . . . . .	118-119	163
1. Text of the proposed new article . . . . .	118	163
2. Proceedings of the Committee of the Whole . . . . .	119	164
<i>Article 37</i> (Notifications) . . . . .	120-126	164
1. International Law Commission text . . . . .	120	164
2. Amendments . . . . .	121-122	164
3. Proceedings of the Committee of the Whole . . . . .	123-126	164
(i) Meetings . . . . .	123	164
(ii) Initial consideration . . . . .	124	164
(iii) Consideration of the report of the Drafting Committee . . . . .	125	164
(iv) Text approved by the Committee of the Whole . . . . .	126	164
<i>Proposed new article 37 bis</i> . . . . .	127-129	164
1. Text of the proposed new article . . . . .	127-128	164
2. Proceedings of the Committee of the Whole . . . . .	129	165
<i>Article 38</i> (Cases of State responsibility and outbreak of hostilities) . . . . .	130-136	165
1. International Law Commission text . . . . .	130	165
2. Amendments . . . . .	131-132	165
3. Proceedings of the Committee of the Whole . . . . .	133-136	165
(i) Meetings . . . . .	133	165
(ii) Initial consideration . . . . .	134	165
(iii) Consideration of the report of the Drafting Committee . . . . .	135	165
(iv) Text adopted by the Committee of the Whole . . . . .	136	165
<i>Article 39</i> (Cases of military occupation) . . . . .	137-143	165
1. International Law Commission text . . . . .	137	165
2. Amendments . . . . .	138-139	166
3. Proceedings of the Committee of the Whole . . . . .	140-143	166
(i) Meetings . . . . .	140	166
(ii) Initial consideration . . . . .	141	166
(iii) Consideration of the report of the Drafting Committee . . . . .	142	166
(iv) Text approved by the Committee of the Whole . . . . .	143	166

	Paragraphs	Page
<i>Proposed new article 39 bis</i> .....	144-153	166
1. Text of the proposed new article .....	144	166
2. Amendments .....	145	167
3. Proceedings of the Committee of the Whole .....	146-153	167
(i) Meetings .....	146	167
(ii) Initial consideration .....	147-149	167
(iii) Consideration of the report of the <i>Ad Hoc</i> Group on Peaceful Settlement of Disputes .....	150-151	167
(iv) Consideration of the report of the Drafting Committee .....	152	168
(v) Text adopted by the Committee of the Whole .....	153	168
<i>Proposed new article 39 ter</i> .....	154-155	169
1. Text of the proposed new article .....	154	169
2. Proceedings of the Committee of the Whole .....	155	169
<i>Proposed new article 40</i> .....	156-157	169
1. Text of the proposed new article .....	156	169
2. Proceedings of the Committee of the Whole .....	157	169
<b>Chapter III. Proposals concerning the preamble and final clauses referred to the Drafting Committee</b> .....	158-162	169
A. PREAMBLE .....	159-160	169
B. FINAL CLAUSES .....	161-162	170
<b>Chapter IV. Parts and sections into which the draft articles are divided</b> .....	163-165	172
<i>Annex. Check list of documents submitted during the resumed session (1978) of the Conference to the Committee of the Whole by States participating in the Conference</i> .....		173

## Chapter I

### INTRODUCTION

1. In accordance with resolution 32/47 adopted by the General Assembly of the United Nations on 8 December 1977, and pursuant to a recommendation adopted by the United Nations Conference on Succession of States in Respect of Treaties at its 7th plenary meeting on 6 May 1977 (A/CONF.80/15, para. 26),<sup>1</sup> at the conclusion of its 1977 session, a resumed session of the Conference opened on 31 July 1978 at the Neue Hofburg in Vienna.

2. At the resumed session of the Conference, the Committee of the Whole completed its consideration of item 11 of the agenda (A/CONF.80/7) of the Conference, 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" referred to it by the Conference at its 1st plenary meeting on 4 April 1977. Also relevant to this item was General Assembly resolution 32/47. The present document contains the report of the Committee of the Whole on its consideration of that item

during the resumed session of the Conference. It is, therefore, a continuation of and a supplement to the report on the work of the Committee of the Whole at the 1977 session (A/CONF.80/14).<sup>2</sup>

3. At the resumed session of the Conference, the Chairman, Mr. Fuad Riad (Egypt), and the Vice-Chairman, Mr. Jean-Pierre Ritter (Switzerland), of the Committee of the Whole, continued to exercise the office for which they were respectively elected in 1977. The Rapporteur elected at the 1977 session, Mr. Abdul Hakim Tabibi (Afghanistan) being unable to attend the resumed session of the Conference, the Committee of the Whole elected, at its 51st meeting, on 15 August 1978, Mrs. Kuljit Thakore (India) as Rapporteur of the Committee of the Whole for that session.

4. Mr. Erik Suy, Under-Secretary-General, the Legal Counsel, acted as representative of the Secretary-General of the United Nations and Mr. Valentin A. Romanov, Director of the Codification Division of the Office of Legal Affairs, as Executive Secretary of the Conference. Mr. Santiago

<sup>1</sup> See p. 139 sect. D above.

<sup>2</sup> See p. 98 sect. C above.

Torres Bernárdez, Deputy Executive Secretary of the Conference, acted as Secretary of the Committee of the Whole; Mr. Raymond Sommereyns and Mr. Alexander Borg Olivier acted as Assistant Secretaries of the Committee of the Whole.

5. In addition to the basic proposal for discussion by the Conference, namely, the draft articles on succession of States in respect of treaties adopted by the International Law Commission at its twenty-sixth session (A/CONF.80/4),<sup>3</sup> and the background documentation referred to in paragraph 6 of the Report of the Committee of the Whole concerning the 1977 session of the Conference (A/CONF.80/14),<sup>4</sup> the Committee of the Whole had at its disposal at the resumed session, the Report of the Conference concerning the 1977 session (A/CONF.80/15),<sup>5</sup> annex II of which reproduced the Report of the Committee of the Whole referred to above, and the summary records of the plenary meetings and meetings of the Committee of the Whole held in 1977 (A/CONF.80/16).<sup>6</sup>

6. At the resumed session of the Conference, the Committee of the Whole held 21 meetings between 31 July and 22 August 1978.

7. During these meetings, the Committee of the Whole continued the examination of the draft articles contained in the basic proposal and new articles proposed by participating delegations, as well as of amendments thereto, concluding the consideration of those articles the examination of which had not been completed by the Committee at the 1977 session (articles 2, 6, 7, 12 and 22 *bis*) as well as of those articles the examination of which had not been initiated by the Committee at the 1977 session (articles 30, 30 *bis* 31, 32, 33, 34, 35, 36, 36 *bis*, 37, 37 *bis*, 38, 39, 39 *bis*, 39 *ter* and the proposed new article 40).

8. The deliberations of the Committee of the Whole, at the resumed session of the Conference, proceeded in accordance with the methods of work and procedures approved by the Conference in 1977 (A/CONF.80/9) and a memorandum by the Secretary-General entitled "Methods of work and procedures adopted by the Conference as may be applicable to its resumed session" (A/CONF.80/17) which the Conference took note of at its 10th plenary meeting, on 31 July 1978.

9. At the resumed session, the Committee of the Whole proceeded, therefore, mainly by way of article-by-article discussion. In the consideration of individual draft articles and amendments thereto, which had not yet been considered, the procedure followed was in general the same as that followed at the 1977 session. The general remarks made in this connexion in paragraphs 10 and 11 of the

Report of the Committee of the Whole concerning the 1977 session (A/CONF.80/14) are therefore equally applicable to the consideration of those articles at the resumed session. The only exceptions were the following:

(a) article 39 *bis* on settlement of disputes, together with an amendment thereto, was referred to the *Ad Hoc* Group on Peaceful Settlement of Disputes established at the resumed session by the Committee of the Whole at its 45th meeting on 4 August 1978, after an initial consideration of the subject-matter by the Committee; the Committee of the Whole considered the report submitted by the *Ad Hoc* Group on Peaceful Settlement of Disputes (A/CONF.80/C.1/L.60 and Corr.1) and referred the agreed text on peaceful settlement of disputes contained therein to the Drafting Committee;

(b) a proposed Conference resolution on incompatible treaty obligation, submitted following the withdrawal of a proposed new article 30 *bis*, was referred by the Committee of the Whole, following initial consideration, to the Informal Consultations Group chaired by the Vice-Chairman of the Committee of the Whole established at the 1977 session. The Committee of the Whole took its decision thereon, on the basis of a report submitted by the Informal Consultations Group (A/CONF.80/C.1/L.62), before referring the matter to the Drafting Committee.

10. Regarding the draft articles and related amendments the consideration of which had been initiated by the Committee of the Whole but not completed at the 1977 session, the Committee proceeded as follows:

(a) it resumed consideration of draft article 2 of the basic proposal, and amendments thereto, and thereafter referred the text for draft article 2 to the Drafting Committee; subsequently the Committee of the Whole considered the report of the Drafting Committee on article 2;

(b) it considered draft articles 6, 7 and 12 which had been referred, at the 1977 session, to the Informal Consultations Group mentioned in paragraph 9 (b) above, on the basis of the corresponding reports (A/CONF.80/C.1/L.59 and L.62) submitted by that Group, before referring the articles contained therein to the Drafting Committee; subsequently, the Committee of the Whole considered the reports of the Drafting Committee on articles 6, 7, 12 and 12 *bis*.

(c) with respect to article 22 *bis*, which had been referred at the 1977 session to the Drafting Committee, the Committee of the Whole took no action, this amendment having been withdrawn by its sponsors during the resumed session of the Conference.

11. The Committee of the Whole entrusted the Drafting Committee with the task of reporting on the division of the Convention into parts and sections and took its decisions thereon on the basis of the corresponding report of the Drafting Committee.

12. In accordance with a decision taken by the Committee of the Whole at its 1977 session,<sup>7</sup> the Drafting

<sup>3</sup> See p. 5 sect. B above.

<sup>4</sup> An addition to the select bibliography (see p. 98, sect. C above, A/CONF.80/14, para. 6 c) was issued during the resumed session as document ST/LIB/SER.B/24/Add.1

<sup>5</sup> See p. 137 sect. D above.

<sup>6</sup> *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).

<sup>7</sup> See p. 104, sect. C above, A/CONF.80/14, para. 9.

Committee submitted directly to the Plenary of the Conference its reports on the preamble and the final clauses of the Convention. Proposals made by participating delegations, at the 1977 session and at the resumed session, concerning the preamble and the final clauses were not, therefore, discussed in the Committee of the Whole but referred to the Drafting Committee.

13. In addition to the introduction contained in Chapter I, the present report contains three chapters: Chapter II, "Consideration by the Committee of the Whole of the draft articles on succession of States in respect of treaties deferred from the 1977 session of the Conference or submitted at the resumed session"; Chapter III, "Proposals concerning the preamble and final clauses referred to the Drafting Committee"; and Chapter IV, "Parts and sections into which the draft articles are divided". An annex contains a check-list of documents submitted during the resumed session of the Conference to the Committee of the Whole by States participating in the Conference.

14. Chapter II of the present report describes the proceedings of the Committee of the Whole, article by article, in numerical order. In most cases, the articles in Chapter II are dealt with as follows: the text of the International Law Commission's draft article, or of the

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, making, whenever necessary, a distinction between proceedings at the 1977 session and proceedings at the resumed session.

15. Chapter III of the present report contains the text of the proposals concerning the preamble and final clauses.

16. Chapter IV of the present report deals with the parts and sections into which the draft articles are divided.

17. The present report is designed to be read in conjunction with the summary records of the Committee of the Whole relating to the resumed session.<sup>8</sup> Attention is drawn to the statements made by the Chairman of the Drafting Committee when introducing texts proposed by that Committee.<sup>9</sup>

<sup>8</sup> See *Official Records of the United Nations Conference on Succession of States in Respect of Treaties*, vol. II, *Summary records of the plenary meetings and of the meetings of the Committee of the Whole* (United Nations publication, Sale No. E.79.V.10 p. 31-45 et seq., 37th-57th meetings).

<sup>9</sup> *Ibid.*, pp. 126, 141 and 145, 53rd, 56th and 57th meetings.

## Chapter II

### CONSIDERATION BY THE COMMITTEE OF THE WHOLE OF THE DRAFT ARTICLES ON SUCCESSION OF STATES IN RESPECT OF TREATIES DEFERRED FROM THE 1977 SESSION OF THE CONFERENCE OR SUBMITTED AT THE RESUMED SESSION

#### ARTICLE 2

##### 1. International Law Commission text

18. 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 designations;

(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;

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

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

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

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

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

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

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

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

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

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

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

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

## 2. Amendments

19. Amendments to article 2 were submitted at the 1977 session by *France* and *Switzerland* (A/CONF.80/C.1/L.41) and by *Cuba* (A/CONF.80/C.1/L.46). At the 1977 session, an oral amendment was also submitted by *Afghanistan*. At the resumed session *France* and *Switzerland* submitted a revised version of their amendment to article 2 (A/CONF.80/C.1/L.41/Rev.1).

20. These amendments were to the following effect:

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

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

[For the text, see A/CONF.80/14, para. 217. Amendment withdrawn; see para. 22 below.]

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

Replace the existing text by the following:

"newly independent State" means a successor State the territory of which, immediately before the date of the succession of States, was a territory in respect of which competence for international relations was exercised either by a single predecessor State or by two or more predecessor States which have not been entirely absorbed by the Successor State;

[Withdrawn; see para. 22 below.]

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

*Paragraph 1, subparagraphs (a) and (b)*

[For the text, see A/CONF.80/14, para. 217. Amendment withdrawn; see para. 22 below.]

(c) *Afghanistan* (oral amendment)

*Paragraph 1, subparagraphs (l) and (m)*

[For the text, see A/CONF.80/14, para. 217.]

## 3. Proceedings of the Committee of the Whole

### (a) *At the 1977 session*

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

### (b) *At the resumed session*

#### (i) *Resumed consideration*

22. At the resumed session, the Committee of the Whole considered article 2 and amendments thereto at its 52nd meeting, on 15 August 1978. At the same meeting, the amendments by *France* and *Switzerland* (A/CONF.80/C.1/L.41/Rev.1) and by *Cuba* (A/CONF.80/C.1/L.46) were withdrawn. Thereafter, the Committee of the Whole adopted the text of the International Law Commission for

article 2 by 71 votes to 5, with 1 abstention, and referred it to the Drafting Committee.

#### (ii) *Consideration of the report of the Drafting Committee*

23. At the 56th meeting of the Committee of the Whole, on 21 August 1978, the Chairman of the Drafting Committee introduced a report of the Drafting Committee (A/CONF.80/C.1/6), containing the text of article 2 adopted by the Committee (for the text see para. 24 below). The Committee of the Whole approved without a vote the title and text of article 2 as recommended by the Drafting Committee.

#### (iii) *Text approved by the Committee of the Whole*

24. The Committee of the Whole recommends that the Conference should adopt the following text for article 2:

#### *Article 2. Use of terms*

1. For the purposes of the present Convention:

(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;

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

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

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

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

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

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

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

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

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

(m) "other State party" means in relation to a successor State any party, other than the predecessor State, to a treaty in force at

the date of a succession of States in respect of the territory to which that succession of States relates;

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

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

## ARTICLE 6

### 1. International Law Commission text

25. The International Law Commission text 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

26. At the 1977 session, 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).

27. These amendments were to the following effect:

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

[For the text, see A/CONF.80/14, para. 197. Amendment withdrawn; see para. 28 below.]

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

[For the text, see A/CONF.80/14, para. 197. Amendment referred to the Informal Consultations Group; see para. 28 below. Amendment withdrawn; see para. 29 below.]

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

[For the text, see A/CONF.80/14, para. 197. Amendment referred to the Informal Consultations Group; see para. 28 below.]

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

[For the text, see A/CONF.80/14, para. 197. Amendment withdrawn; see para. 28 below.]

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

[For the text, see A/CONF.80/14, para. 197. Amendment referred to the Informal Consultations Group; see para. 28 below.]

## 3. Proceedings of the Committee of the Whole

### (a) *At the 1977 session*

28. 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. At the 7th meeting of the Committee of the Whole, the amendment by *Australia* (A/CONF.80/C.1/L.3) was withdrawn. 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. Also at the 9th meeting, the Committee decided to refer article 6 and the remaining amendments thereto to the Informal Consultations Group. 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 would be made at the resumed session of the Conference. The Committee took note of that statement.

### (b) *At the resumed session*

#### (i) *Consideration of the first report of the Informal Consultations Group*

29. The Committee of the Whole considered the first report of the Informal Consultations Group (A/CONF.80/C.1/L.59), which related to articles 6 and 7, at its 50th meeting, on 14 August 1978, and at its 51st meeting, on 15 August 1978. So far as article 6 is concerned, the Informal Consultations Group recommended to the Committee of the Whole to adopt the text proposed by the International Law Commission for that article without change. At the 50th meeting of the Committee of the Whole the amendment by *Romania* (A/CONF.80/C.1/L.5) was withdrawn. At its 51st meeting, the Committee of the Whole decided to refer the text of the International Law Commission for article 6 to the Drafting Committee.

#### (ii) *Consideration of the report of the Drafting Committee*

30. At the 53rd meeting of the Committee of the Whole, on 17 August 1978, the Chairman of the Drafting Committee introduced a report of the Drafting Committee (A/CONF.80/C.1/5) containing the text of article 6 adopted by the Committee (for the text see para. 31 below). The Committee of the Whole approved without a vote the title and text of article 6 as recommended by the Drafting Committee.

#### (iii) *Text approved by the Committee of the Whole*

31. The Committee of the Whole recommends that the Conference should adopt the following text for article 6:

#### *Article 6. Cases of succession of States covered by the present Convention*

The present Convention applies 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.

## ARTICLE 7

### 1. International Law Commission text

32. The International Law Commission text 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**

33. At the 1977 session, amendments to article 7 were submitted by the *Byelorussian SSR* (A/CONF.80/C.1/L.1), *Malaysia* (A/CONF.80/C.1/L.7), *Cuba* and *Somalia* (A/CONF.80/C.1/L.10/Rev.2) and the *United States of America* (A/CONF.80/C.1/L.16).<sup>10</sup> At the resumed session, at the 40th meeting of the Committee of the Whole, on 2 August 1978, the Chairman of the Committee announced that he was informed that the amendment contained in document A/CONF.80/C.1/L.10/Rev.2 had been withdrawn and that the document had been withdrawn from circulation.<sup>11</sup>

34. The remaining amendments were to the following effect:

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

[For the text, see A/CONF.80/14, para. 205. Amendment referred to the Informal Consultations Group; see para. 35 below.]

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

[For the text, see A/CONF.80/14, para. 205. Amendment referred to the Informal Consultations Group; see para. 35 below.]

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

[For the text, see A/CONF.80/14, para. 205. Amendment referred to the Informal Consultations Group; see para. 35 below.]

**3. Proceedings of the Committee of the Whole**

**(a) At the 1977 session**

35. 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. 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. At its 34th meeting, on 2 May 1977, the Committee of the Whole

<sup>10</sup> A working paper was submitted in connexion with article 7 by the *United Kingdom* (A/CONF.80/C.1/L.9). It contained a proposal relating to the final clauses (see p. 134, sect. C, A/CONF.80/14, para. 247).

<sup>11</sup> See *Official Records of the United Nations Conference on Succession of States in Respect of Treaties*, vol. II, *Summary records of the plenary meetings and of the meetings of the Committee of the Whole* (United Nations publication, Sales No. E.79.V.10, p. 56 40th meeting, para. 59).

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 would be made at the resumed session of the Conference. The Committee took note of that statement.

**(b) At the resumed session**

**(i) Consideration of the first report of the Informal Consultations Group**

36. The Committee of the Whole considered the first report of the Informal Consultations Group (A/CONF.80/C.1/L.59), which related to articles 6 and 7, at its 50th meeting, on 14 August 1978, and its 51st meeting, on 15 August 1978.

37. So far as article 7 is concerned, the first report (A/CONF.80/C.1/L.59) of the Informal Consultations Group stated the following:

[...]

4. The Group recommends the Committee of the Whole to adopt for this article the text proposed under A below.

5. The opinion was expressed in the Group that paragraph 1 should be completed as shown under B below, the words in italics being the proposed addition on which it was not possible to reach a consensus.

**A**

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

"2. A successor State may, at the time of expressing its consent to be bound by the present Convention or at any time thereafter, declare that it will apply the provisions of the Convention in respect of its own succession of States which has occurred before the entry into force of the Convention in relation to any other contracting State or State party to the Convention which declares its willingness to accept the declaration of the successor State. Upon the entry into force of the Convention as between such States, the provisions of the Convention shall then apply to the effects of the succession of States as from the date of such succession.

"3. A successor State may at the time of signing the present Convention declare that it will apply the provisions of the Convention provisionally in respect of its own succession of States which has occurred before the entry into force of the Convention in relation to any other signatory State which declares its willingness to accept the declaration of the successor State; those provisions shall then apply provisionally to the effects of the succession of States as between those two States as from the date of such succession.

"4. Any declaration made in accordance with the provisions of paragraph 2 or 3 shall be contained in a written notification to the Secretary-General of the United Nations, who shall inform the parties and the States entitled to become parties to the present Convention of the deposit with him of that notification and of its terms."

**B**

"1. Without prejudice to the application of any of the rules set forth in the present Convention to which the effects of a



succession of States would be subject under international law independently of the Convention, the Convention applies only in respect of a succession of States which has occurred after the entry into force of the present Convention *and in respect of a succession of States produced after the opening of the Convention for signature and before its entry into force*, except as may be otherwise agreed."

38. At its 51st meeting, the Committee of the Whole decided to refer the text proposed for article 7 under A in the first report of the Informal Consultations Group to the Drafting Committee. The Committee also agreed that the Drafting Committee should formulate an appropriate title for the article.

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

39. At its 53rd meeting, on 17 August 1978, and at its 56th meeting, on 21 August 1978, the Committee of the Whole considered a report of the Drafting Committee (A/CONF.80/C.1/5) containing the text of article 7 adopted by that Committee, which was introduced by the Chairman of the Drafting Committee at the 53rd meeting. At the 53rd meeting, of the Committee of the Whole, the representative of the *United Kingdom of Great Britain and Northern Ireland* orally proposed an amendment to paragraph 3 of the text adopted by the Drafting Committee for article 7 aiming at inserting: (a) at the beginning of the paragraph, the words "or of expressing its consent to be bound by" between the word "signing" and the words "the present Convention"; and (b) the words "or contracting" between the word "signatory" and the word "State". The representative of the United Kingdom further introduced his oral amendment at the 56th meeting of the Committee of the Whole. At the same meeting, the Committee of the Whole adopted without a vote the oral amendment by the *United Kingdom* and thereafter the text as amended and the title for article 7 recommended by the Drafting Committee (see para. 40 below).

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

40. The Committee of the Whole recommends that the Conference should adopt the following text for article 7:

*Article 7. Temporal application of the present Convention*

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

2. A successor State may, at the time of expressing its consent to be bound by the present Convention or at any time thereafter, make a declaration that it will apply the provisions of the Convention in respect of its own succession of States which has occurred before the entry into force of the Convention in relation to any other contracting State or State party to the Convention which makes a declaration accepting the declaration of the successor State. Upon the entry into force of the Convention as between the States making the declarations or upon the making of the declaration of acceptance, whichever occurs later, the provisions of the Convention shall apply to the effects of the succession of States as from the date of that succession of States.

3. A successor State may at the time of signing or of expressing its consent to be bound by the present Convention make a declaration that it will apply the provisions of the Convention

provisionally in respect of its own succession of States which has occurred before the entry into force of the Convention in relation to any other signatory or contracting State which makes a declaration accepting the declaration of the successor State; upon the making of the declaration of acceptance, those provisions shall apply provisionally to the effects of the succession of States as between those two States as from the date of that succession of States.

4. Any declaration made in accordance with paragraph 2 or 3 shall be contained in a written notification communicated to the depositary, who shall inform the parties and the States entitled to become parties to the present Convention of the communication to him of that notification and of its terms.

TITLE FOR ARTICLE 11

1. *Proceedings at the 1977 session*

41. At its 5th plenary meeting, on 5 May 1977, the Conference adopted the text of article 11, but no decision was taken either by the Committee of the Whole or by the Conference on the title of the article, pending further consideration of article 12 by the Committee of the Whole (see A/CONF.80/15, annex, article 11 and A/CONF.80/14, para. 70).

2. *Proceedings of the Committee of the Whole at the resumed session*

(i) *Reference to the Drafting Committee*

42. At its 55th meeting, on 18 August 1977, the Committee of the Whole, after having concluded its initial consideration of article 12 and approved a text for that article, agreed that the Drafting Committee should formulate an appropriate title for article 11.

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

43. At the 56th meeting of the Committee of the Whole, on 21 August 1978, the Chairman of the Drafting Committee introduced a report of the Drafting Committee (A/CONF.80/C.1/7), containing the title of article 11 adopted by the Committee (for the text see para. 44 below). The Committee of the Whole approved without a vote the title of article 11 as recommended by the Drafting Committee.

(iii) *Title approved by the Committee of the Whole*

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

*Article 11. Boundary régimes*

ARTICLE 12 AND NEW ARTICLE 12 *bis*

1. *International Law Commission text*

45. The International Law Commission text 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**

46. At the 1977 session, amendments were submitted to article 12 by *Finland* (A/CONF.80/C.1/L.18), *Mexico* (A/CONF.80/C.1/L.19), *Cuba* (A/CONF.80/C.1/L.20), *Malaysia* (A/CONF.80/C.1/L.21) and *Afghanistan* (A/CONF.80/C.1/L.24). A subamendment was submitted by *Argentina* (A/CONF.80/C.1/L.27) to the amendment by *Mexico* (A/CONF.80/C.1/L.19).

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

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

[For the text, see A/CONF.80/14, para. 211. Amendment referred to the Informal Consultations Group; see para. 48 below.]

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

[For the text, see A/CONF.80/14, para. 211. Amendment referred to the Informal Consultations Group; see para. 48 below.]

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

[For the text, see A/CONF.80/14, para. 211. Subamendment referred to the Informal Consultations Group; see para. 48 below.]

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

[For the text, see A/CONF.80/14, para. 211. Amendment referred to the Informal Consultations Group; see para. 49 below.]

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

[For the text, see A/CONF.80/14, para. 211. Amendment referred to the Informal Consultations Group; see para. 48 below.]

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

[For the text, see A/CONF.80/14, para. 211. At the 1977 session, a decision on this amendment was deferred.]<sup>12</sup>

**3. Proceedings of the Committee of the Whole****(a) At the 1977 session**

48. The Committee of the Whole initially considered article 12 and the amendments thereto at its 19th, 20th and 21st meetings, on the 19 and 20 April 1977. 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. 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 would be made at the resumed session of the Conference. The Committee took note of that statement.

**(b) At the resumed session****(i) Consideration of the second report of the Informal Consultations Group**

49. The Committee of the Whole considered the second report of the Informal Consultations Group (A/CONF.80/C.1/L.62) at its 54th and at its 55th meetings on 18 August 1978. So far as article 12 is concerned, the second report of the Informal Consultations Group stated the following:

*Article 12*

2. The Group recommends, by consensus, that the Committee of the Whole should add to the text of article 12 proposed by the International Law Commission a third paragraph reading as follows:

"3. The provisions of the present article do not apply to treaty obligations accepted by the predecessor State and providing for the establishment of foreign military bases on the territory to which the succession of States relates".

3. In addition, the Group recommends the Committee of the Whole to adopt a new article reading as follows, to be inserted between article 12 and article 13:

*"Article 12 bis*

"Nothing in the present Convention shall affect the principles of international law affirming the permanent sovereignty of every people and every State over its natural wealth and resources".

4. This recommendation was adopted by consensus, with some delegations reserving the position of their Government. One of these delegations subsequently informed the Group of its Government's negative decision.

5. The Group wishes to emphasize the link between the proposed new article and article 12.

<sup>12</sup> The amendment by Afghanistan sought to 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". At its 5th plenary meeting, on 5 May 1977, the Conference adopted the text of article 11, but no decision was taken on the title of the article (see p. 140, sect. D above, A/CONF.80/15, annex, article 11).

50. At its 55th meeting the Committee of the Whole took the following decisions regarding the above-mentioned report (A/CONF.80/C.1/L.62) of the Informal Consultations Group:

By 74 votes to none, with 12 abstentions, the Committee of the Whole adopted the text for a new article 12 *bis*, to be inserted between article 12 and article 13, as recommended by the Informal Consultations Group, and referred it to the Drafting Committee. The Committee also agreed that the Drafting Committee should formulate a title for the article.

By 84 votes to none, with 1 abstention, the Committee of the Whole adopted a new paragraph 3 for article 12, as recommended by the Informal Consultations Group.

By 86 votes to none, with 1 abstention, the Committee adopted the text of the International Law Commission for article 12, as amended by the addition of the third paragraph recommended by the Informal Consultations Group, and referred it to the Drafting Committee. The Committee also agreed that the Drafting Committee should formulate an appropriate title for the article.

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

51. At the 56th meeting of the Committee of the Whole, on 21 August 1978, the Chairman of the Drafting Committee introduced a report of the Drafting Committee (A/CONF.80/C.1/7), containing the text of article 12 and of article 12 *bis* adopted by the Committee (for the text see para. 52 below). The Committee of the Whole approved without a vote, the title and text of article 12 and the title and text of article 12 *bis* as recommended by the Drafting Committee.

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

52. The Committee of the Whole recommends that the Conference should adopt the following texts for articles 12 and 12 *bis*, respectively:

**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.

3. The provisions of the present article do not apply to treaty obligations of the predecessor State providing for the establishment of foreign military bases on the territory to which the succession of States relates.

**Article 12 bis. The present Convention and permanent sovereignty over natural wealth and resources**

Nothing in the present Convention shall affect the principles of international law affirming the permanent sovereignty of every people and every State over its natural wealth and resources.

**PROPOSED NEW ARTICLE 22 bis**

**1. Text for the proposed new article**

53. An amendment seeking to insert a new article 22 *bis* concerning notifications by a depositary was submitted at the 1977 session by *Czechoslovakia, Poland* and the *Ukrainian SSR* (A/CONF.80/C.1/L.28). A revised version of the text was subsequently submitted at the session by *Czechoslovakia, Poland, Singapore* and *Ukrainian SSR* (A/CONF.80/C.1/L.28/Rev.1). For the texts of these proposals, see A/CONF.80/14, paragraphs 188 and 190.

**2. Proceedings of the Committee of the Whole**

**(a) At the 1977 session**

54. 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. 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.

55. 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 (for the text of the oral suggestions see A/CONF.80/14, foot-note 17). The Committee agreed to defer its decision on the proposed new provision until the Drafting Committee had recommended the requested formulation. 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 resumed session of the Conference. The Committee of the Whole took note of that statement.

**(b) At the resumed session**

56. At the 40th meeting of the Committee of the Whole, on 2 August 1978, the Chairman of the Committee announced that the amendment contained in document

A/CONF.80/C.1/L.28/Rev.1 seeking to insert a new article 22 *bis* had been withdrawn by the sponsors.<sup>13</sup>

## ARTICLE 30

### 1. International Law Commission text

57. The International Law Commission text provided as follows:

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

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

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

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

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

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

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

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

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

### 2. Amendments

58. At the 1977 session, amendments to article 30 were submitted by *Switzerland* (A/CONF.80/C.1/L.44) and the *Federal Republic of Germany* (A/CONF.80/C.1/L.45). At the resumed session, the *Federal Republic of Germany* submitted a revised version of its amendment (A/CONF.80/C.1/L.45/Rev.1). An amendment to article 30 (A/CONF.80/C.1/L.49) was also submitted by *Japan*.

59. These amendments were to the following effect:

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

Add to article 30 a paragraph 4 reading as follows:

[For the text, see A/CONF.80/14, para. 221.]

[Rejected; see para. 61 below.]

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

*Paragraph 1:* Add the following subparagraph:

(c) it appears from the treaty or is otherwise established that the application of the treaty, wholly or in part, in respect of the successor State would be incompatible with another treaty obligation; in this case, it is for the successor State to indicate the provisions of which treaty are to continue.

[Withdrawn; see para. 61 below.]

(c) *Japan* (A/CONF.80/C.1/L.49)

Add to article 30 a paragraph 4 reading as follows:

Notwithstanding paragraph 2, any treaty continuing in force in conformity with paragraph 1 shall apply in respect of the entire territory of the successor State if it appears from the treaty or is otherwise established that it would be incompatible with its object and purpose or would radically change the conditions for the operation of the treaty to apply the treaty only in respect of the part of the territory of the successor State in respect of which the treaty was in force at the date of the succession of States.

[Withdrawn; see para. 61 below.]

### 3. Proceedings of the Committee of the Whole

#### (i) Meetings

60. The Committee of the Whole initially considered article 30 and the amendments thereto at its 37th meeting, on 31 July 1978, and at its 38th and 39th meetings, on 1 August 1978. At its 53rd meeting, on 17 August 1978 it considered the report of the Drafting Committee on the article.

#### (ii) Initial consideration

61. At the 39th meeting of the Committee of the Whole, the amendment by the *Federal Republic of Germany* (A/CONF.80/C.1/L.45/Rev.1) and the amendment by *Japan* (A/CONF.80/C.1/L.49) were withdrawn. At the same meeting, the amendment by *Switzerland* (A/CONF.80/C.1/L.44) was rejected by 31 votes to 15, with 32 abstentions.

62. At the same meeting, the Committee of the Whole decided to refer the text of the International Law Commission for article 30 to the Drafting Committee.

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

63. At the 53rd meeting of the Committee of the Whole, the Chairman of the Drafting Committee introduced a report of the Drafting Committee (A/CONF.80/C.1/4), containing the text of article 30 adopted by the Committee (for the text, see para. 64 below). The Committee of the Whole approved without a vote the title and text of article 30 as recommended by the Drafting Committee.

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

64. The Committee of the Whole recommends that the Conference should adopt the following text for article 30:

<sup>13</sup> See *Official Records of the United Nations Conference on Succession of States in Respect of Treaties*, vol. II, *Summary records of the plenary meetings and of the meetings of the Committee of the Whole*, (United Nations publication, Sales No. E.79.V.10, p. 56, 40th meeting, para. 59.

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

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

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

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

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

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

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

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

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

**PROPOSED NEW ARTICLE 30 *bis*  
AND DRAFT RESOLUTION CONCERNING ARTICLE 30**

**1. Text of the proposed new article and draft resolution**

65. *The United States of America* proposed the insertion of a new article 30 *bis* (A/CONF.80/C.1/L.50) reading as follows:

*Article 30 bis. (Conflicting treaty régimes)*

If the application of paragraphs 1 or 2 of Article 30 results in a succession to conflicting or inconsistent treaty régimes, the following rules shall apply:

(a) the successor State and the other parties to the treaties in question shall make every effort to eliminate the conflict through a process of consultation and negotiation;

(b) if the conflict has not been resolved within a period of one year from the date on which the conflict was brought to the attention of the successor State or other parties to the treaties in question, the inconsistent or incompatible obligations shall cease to be in force;

(c) termination of inconsistent or incompatible obligations pursuant to subparagraph (b) of this Article shall apply with respect to the whole treaty unless the treaty otherwise provides or the parties otherwise agree;

(d) termination of inconsistent or incompatible obligations pursuant to subparagraph (b) of this Article may apply to particular clauses where:

(1) the said clauses are separable from the remainder of the treaty with regard to their application;

(2) it appears from the treaty or is otherwise established that acceptance of those clauses was not an essential basis of the consent of the other party or parties to be bound by the treaty as a whole; and

(3) continued performance of the remainder of the treaty would not be unjust.

[Withdrawn; see para. 68 below.]

66. Subsequently, the *United States of America* proposed a draft Conference resolution on incompatible treaty obligations and rights (A/CONF.80/C.1/L.51/Rev.2)<sup>14</sup> reading as follows:

*The United Nations Conference on Succession of States in Respect of Treaties,*

*Considering* that a uniting of States may give rise to incompatible obligations and rights under treaties, and

*Recognizing* the desirability of resolving such questions through a process of consultation and negotiation,

*Recommends* that if a uniting of States gives rise to incompatible obligations or rights under treaties, the successor State and the other States parties to the treaties in question make every effort to resolve the matter through a process of consultation and negotiation.

[Referred to the Informal Consultations Group; see para. 69 below.]

**2. Proceedings of the Committee of the Whole**

**(i) Meetings**

67. Statements concerning the proposed new article 30 *bis* were made at the 38th and 39th meetings of the Committee of the Whole, on 1 August 1978, during the consideration of article 30. The Committee of the Whole initially considered the proposed draft resolution at its 39th meeting, on 1 August 1978, and at its 40th meeting, on 2 August 1978. At its 54th and 55th meetings, on 18 August 1978, the Committee considered the report on the proposed draft resolution submitted by the Informal Consultations Group, and at its 56th meeting, on 21 August 1978, the report by the Drafting Committee thereon.

**(ii) Initial consideration**

68. At the 39th meeting of the Committee of the Whole, the amendment by the *United States of America* seeking to add a new article 30 *bis* (A/CONF.80/C.1/L.50), was withdrawn.

69. At its 40th meeting, the Committee of the Whole decided to refer the proposed draft resolution then contained in document A/CONF.80/C.1/L.51/Rev.1, but later

<sup>14</sup> In its original version (A/CONF.80/C.1/L.51) the proposed draft Conference resolution read as follows:

"If the application of article 29 or article 30 of this Convention results in incompatible treaty obligations for the successor or any other State or States, the successor State and other State or States parties to the treaty or treaties in question shall make every effort to resolve the matter through consultation and negotiation."

In its first revised version (A/CONF.80/C.1/L.51/Rev.1) the proposed draft Conference resolution read as follows:

"If the application of article 30 of this Convention results in incompatible treaty obligations for the successor or any other State or States party, the successor State and other State or States parties to the treaties in question shall make every effort to resolve the matter through consultation and negotiation."

re-issued in revised form in document A/CONF.80/C.1/L.51/Rev.2 to its Informal Consultations Group.

(iii) *Consideration of the second report of the Informal Consultations Group*

70. The Committee of the Whole considered the second report of the Informal Consultations Group (A/CONF.80/C.1/L.62) at its 54th and at its 55th meetings on 18 August 1978. So far as the proposed draft resolution is concerned, the Informal Consultations Group reported as follows:

*Resolution concerning article 30*

6. The Informal Consultations Group decided, by consensus, with some delegations reserving the position of their Government, to submit the following text to the Committee of the Whole:

"The United Nations Conference on Succession of States in Respect of Treaties,

"*Considering* that a uniting of States may give rise to incompatible obligations and rights as a result of the differing treaty régimes applicable to the two or more States which unite,

"*Recognizing* the desirability of resolving such questions through a process of consultation and negotiation,

"*Recommends* that if a uniting of States gives rise to incompatible obligations or rights under treaties, the successor State and the other States parties to the treaties in question make every effort to resolve the matter by mutual agreement."

71. At its 55th meeting, the Committee of the Whole adopted the text for the draft Conference resolution concerning article 30 as recommended by the Informal Consultations Group in its second report (A/CONF.80/C.1/L.62), by 49 votes to 8 with 30 abstentions, and referred it to the Drafting Committee. The Committee also agreed that the Drafting Committee should formulate an appropriate title for the draft Conference resolution.

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

72. At the 56th meeting of the Committee of the Whole, on 21 August 1978 the Chairman of the Drafting Committee introduced a report of the Drafting Committee (A/CONF.80/C.1/8), containing the text of the draft Conference resolution concerning article 30 adopted by the Committee (for the text see para. 73 below). The Committee of the Whole approved without a vote the title and text of the draft resolution as recommended by the Drafting Committee.

(v) *Text of the draft resolution approved by the Committee of the Whole*

73. The Committee of the Whole recommends that the Conference should adopt the following text for the draft resolution concerning article 30:

*Resolution relating to incompatible treaty obligations and rights arising from a uniting of States*

*The United Nations Conference on Succession of States in Respect of treaties,*

*Considering* that a uniting of States may give rise to incompatible obligations and rights as a result of the differing treaty régimes applicable to the two or more States which unite,

*Recognizing* the desirability of resolving such questions through a process of consultation and negotiation,

*Recommends* that if a uniting of States gives rise to incompatible obligations or rights under treaties, the successor State and the other States parties to the treaties in question make every effort to resolve the matter by mutual agreement.

ARTICLE 31

1. International Law Commission text

74. The International Law Commission text provided as follows:

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

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

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

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

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

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

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

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

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

2. Amendments

75. No amendment was submitted to article 31.

3. Proceedings of the Committee of the Whole

(i) *Meetings*

76. The Committee of the Whole initially considered article 31 at its 40th meeting, on 2 August 1978. At its 53rd meeting, on 17 August 1978, it considered the report of the Drafting Committee on the article.

(ii) *Initial consideration*

77. At its 40th meeting, the Committee of the Whole decided to refer the text of the International Law Commission for article 31 to the Drafting Committee.

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

78. At the 53rd meeting of the Committee of the Whole, the Chairman of the Drafting Committee introduced a report of the Drafting Committee (A/CONF.80/C.1/4) containing the text of article 31 adopted by the Committee (for the text, see para. 79 below). The Committee of the Whole approved without a vote the title and text of article 31 as recommended by the Drafting Committee.

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

79. The Committee of the Whole recommends that the Conference should adopt the following text for article 31:

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

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

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

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

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

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

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

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

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

## ARTICLE 32

## 1. International Law Commission text

80. The International Law Commission text provided as follows:

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

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

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

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

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

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

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

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

## 2. Amendments

81. At the 1977 session, an amendment to article 32 was submitted jointly by *Swaziland* and *Sweden* (A/CONF.80/C.1/L.23).

82. This amendment was to the following effect:

[For the text, see A/CONF.80/14, para. 225.]

[Amendment withdrawn; see para. 84 below.]

## 3. Proceedings of the Committee of the Whole

(i) *Meetings*

83. The Committee of the Whole initially considered article 32 and the amendment thereto at its 40th meeting, on 2 August 1978. At its 53rd meeting, on 17 August 1978, it considered the report of the Drafting Committee on the article.

(ii) *Initial consideration*

84. At the 40th meeting of the Committee of the Whole, the amendment by *Swaziland* and *Sweden* (A/CONF.80/C.1/L.23) was withdrawn. At the same meeting, the Committee adopted by 52 votes to 4, with 22 abstentions, the text proposed for the article by the International Law Commission, and referred it to the Drafting Committee.

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

85. At the 53rd meeting of the Committee of the Whole, the Chairman of the Drafting Committee introduced a report of the Drafting Committee (A/CONF.80/C.1/4) containing the text of article 32 adopted by the Committee (for the text see para. 86 below). The Committee of the Whole approved without a vote the title and text of article 32 as recommended by the Drafting Committee.

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

86. The Committee of the Whole recommends that the Conference should adopt the following text for article 32:

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

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

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

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

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

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

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

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

**ARTICLE 33****1. International Law Commission text**

87. The International Law Commission text provided as follows:

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

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

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

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

2 Paragraph 1 does not apply if:

(a) the States concerned otherwise agree; or

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

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

**2. Amendments**

88. At the resumed session, amendments were submitted to article 33 by *France* and *Switzerland* (A/CONF.80/C.1/L.41/Rev.1),<sup>15</sup> the *Federal Republic of Germany* (A/CONF.80/C.1/L.52) and *Pakistan* (A/CONF.80/C.1/L.54).

89. These amendments were to the following effect:

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

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

[The part of the amendment relating to paragraph 1, subparagraph (a), was rejected; see para. 91 below; the part of the amendment concerning paragraph 3 was adopted; see para. 93 below.]

(b) *Federal Republic of Germany* (A/CONF.80/C.1/L.52)

Insert in paragraph 1 a new subparagraph (b) as follows:

(b) any bilateral treaty in force at the date of the succession of States in respect to the entire territory of the predecessor State is considered as being in force between the successor State and the other State party when they expressly so agree or, by reason of their conduct, are to be considered as having so agreed; the treaty applies in the relations between the successor State and the other State party from the date of the succession of States unless a different intention appears from their agreement or is otherwise established.

**Consequential changes:**

Paragraph 1, subparagraph (b), will become subparagraph (c);

In *paragraph 1*, subparagraph (a) insert the word "multilateral" before the word "treaty";

In *paragraph 2*, of the beginning, delete "does" and insert instead "subparagraphs (a) and (c) do".

[Rejected; see para. 91 below.]

(c) *Pakistan* (A/CONF.80/C.1/L.54)

Add the following words at the end of paragraph 3:

except to the extent that if it has derived any benefits, directly or indirectly, under a treaty, the successor State shall have the corresponding obligations.

<sup>15</sup> The amendment by *France* and *Switzerland* to article 33 in document A/CONF.80/C.1/L.41/Rev.1 was identical to the amendment to that article submitted by those delegations at the 1977 session in document A/CONF.80/C.1/L.41 (see p. 129, sect. C above A/CONF.80/14, para. 217).



[*Paragraph 3* having been deleted, this amendment was not put to the vote; see para. 93 below.]

### 3. Proceedings of the Committee of the Whole

#### (i) Meetings

90. The Committee of the Whole initially considered article 33 and the amendments thereto at its 40th and 41st meetings, on 2 August 1978, at its 42nd meeting, on 3 August 1978, at its 47th meeting, on 7 August 1978, and at its 48th and 49th meetings, on 8 August 1978. At its 53rd meeting, on 17 August 1978, it considered the report of the Drafting Committee on the article.

#### (ii) Initial consideration

91. At its 48th meeting, the Committee of the Whole began to vote on article 33 and amendments thereto paragraph by paragraph. It rejected the first part of the amendment by *France* and *Switzerland* (A/CONF.80/C.1/L.41/Rev.1) seeking to delete *paragraph 1*, subparagraph (a), by 69 votes to 7, with 9 abstentions. At the same meeting the Committee rejected the amendment by the *Federal Republic of Germany* (A/CONF.80/C.1/L.52) to *paragraph 1* by 57 votes to 5, with 20 abstentions. The Committee of the Whole then adopted *paragraph 1* of article 33 as proposed by the International Law Commission, by 77 votes to 3, with 5 abstentions.

92. The Committee also adopted, at the same meeting, *paragraph 2* of article 33 as proposed by the International Law Commission, by 80 votes to none, with 3 abstentions.

93. At its 49th meeting, the Committee of the Whole voted by roll-call on the second part of the amendment by *France* and *Switzerland* (A/CONF.80/C.1/L.41/Rev.1) seeking to delete *paragraph 3* of article 33. The amendment was adopted by 52 votes to 9, with 22 abstentions. The vote was as follows:

*In favour:* Angola; Argentina; Austria; Bulgaria; Burundi; Byelorussian Soviet Socialist Republic; Canada; Cuba; Cyprus; Egypt; Ethiopia; France; German Democratic Republic; Germany; Federal Republic of; Ghana; Greece; Hungary; Indonesia; Iraq; Italy; Ivory Coast; Kenya; Liberia; Libyan Arab Jamahiriya; Madagascar; Malaysia; Mali; Mexico; Netherlands; Niger; Nigeria; Norway; Pakistan; Panama; Peru; Philippines; Poland; Portugal; Romania; Senegal; Sierra Leone; Spain; Switzerland; Tunisia; Uganda; Ukrainian Soviet Socialist Republic; Union of Soviet Socialist Republics; United Arab Emirates; United Republic of Tanzania; United States of America; Yemen; Zaire.

*Against:* Australia; Finland; Japan; Papua New Guinea; Singapore; Suriname; Trinidad and Tobago; Venezuela; Yugoslavia;

*Abstentions:* Belgium; Brazil; Czechoslovakia; Democratic Yemen; Denmark; Guyana; Holy See; India; Ireland; Israel; Jordan; Kuwait; Lebanon; New Zealand; Republic of Korea; Somalia; Sri Lanka; Swaziland; Sweden; Thailand; Turkey; United Kingdom of Great Britain and Northern Ireland.

94. The Committee of the Whole then adopted the text of the International Law Commission for article 33, as amended by the deletion of paragraph 3, by 73 votes to 4, with 6 abstentions, and referred it to the Drafting Committee.

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

95. At the 53rd meeting of the Committee of the Whole, the Chairman of the Drafting Committee introduced a report of the Drafting Committee (A/CONF.80/C.1/4) containing the text of article 33 adopted by the Committee (for the text, see para. 96 below). The Committee of the Whole approved without a vote the title and text of article 33 as recommended by the Drafting Committee.

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

96. The Committee of the Whole recommends that the Conference should adopt the following text for article 33:

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

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

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

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

2. Paragraph 1 does not apply if:

(a) the States concerned otherwise agree; or

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

### ARTICLE 34

#### 1. International Law Commission text

97. The International Law Commission text provided as follows:

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

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

(a) it is otherwise agreed;

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

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

#### 2. Amendments

98. The amendment submitted at the resumed session by *France* and *Switzerland* in document A/CONF.80/C.1/

L.41/Rev.1 included a consequential amendment to article 34 to the following effect: Renumber article 34 as 15 *bis*. [Decision deferred; see para. 100 below.]

### 3. Proceedings of the Committee of the Whole

#### (i) Meetings

99. The Committee of the Whole initially considered article 34 at its 41st meeting, on 2 August 1978, and at its 42nd meeting, on 3 August 1978. At its 53rd meeting, on 17 August 1978, it considered the report of the Drafting Committee on this article.

#### (ii) Initial consideration

100. At its 42nd meeting, the Committee of the Whole decided to refer the text of the International Law Commission for article 34 to the Drafting Committee, and to defer consideration of the amendment to article 34 until a decision had been taken on article 33.

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

101. At the 53rd meeting of the Committee of the Whole, the Chairman of the Drafting Committee introduced a report of the Drafting Committee (A/CONF.80/C.1/4) containing the text of article 34 adopted by the Committee (for the text, see para. 102 below). The Committee of the Whole approved without a vote the title and text of article 34 as recommended by the Drafting Committee.

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

102. The Committee of the Whole recommends that the Conference should adopt the following text for article 34:

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

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

- (a) the States concerned otherwise agree;
- (b) it is established that the treaty related only to the territory which has separated from the predecessor State; or
- (c) it appears from the treaty or is otherwise established that the application of the treaty in respect of the predecessor State would be incompatible with the object and purpose of the treaty or would radically change the conditions for its operation.

### ARTICLE 35

#### 1. International Law Commission text

103. The International Law Commission text provides as follows:

##### *Article 35. Participation in treaties not in force at the date of the succession of States in cases of separation of parts of a State*

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

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

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

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

### 2. Amendments

104. At the 1977 session, an amendment was submitted to article 35 by *Finland* (A/CONF.80/C.1/L.39).

105. This amendment was to the following effect:

[For the text, see A/CONF.80/14, para. 231.]

[Referred to the Drafting Committee; see para. 107 below.]

### 3. Proceedings of the Committee of the Whole

#### (i) Meetings

106. The Committee of the Whole initially considered article 35 and the amendment thereto at its 43rd meeting, on 3 August 1978. At its 53rd meeting, on 17 August 1978, it considered the report of the Drafting Committee on the article.

#### (ii) Initial consideration

107. At its 43rd meeting, the Committee of the Whole decided to refer the text of the International Law Commission for article 35 to the Drafting Committee. It also referred to the Drafting Committee the amendment by *Finland* (A/CONF.80/C.1/L.39) as a drafting suggestion.

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

108. At the 53rd meeting of the Committee of the Whole, the Chairman of the Drafting Committee introduced a report of the Drafting Committee (A/CONF.80/C.1/4) containing the text of article 35 adopted by the Committee (for the text, see para. 109 below). The Committee of the Whole approved without a vote the title and text of article 35 as recommended by the Drafting Committee.

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

109. The Committee of the Whole recommends that the Conference should adopt the following text for article 35:

##### *Article 35. Participation in treaties not in force at the date of the succession of States in cases of separation of parts of a State*

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

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

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

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

## ARTICLE 36

### 1. International Law Commission text

110. The International Law Commission text provided as follows:

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

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

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

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

### 2. Amendments

111. At the 1977 session, an amendment to article 36 was submitted jointly by *Swaziland* and *Sweden* (A/CONF.80/C.1/L.23).

112. This amendment was to the following effect:

[For the text, see A/CONF.80/14, para. 233.]

[Amendment withdrawn; see para. 114 below.]

### 3. Proceedings of the Committee of the Whole

#### (i) Meetings

113. The Committee of the Whole initially considered article 36 at its 43rd meeting, on 3 August 1978. At its 53rd meeting, on 17 August 1978, it considered the report of the Drafting Committee on the article.

#### (ii) Initial consideration

114. At the 40th meeting of the Committee of the Whole, the amendment by *Swaziland* and *Sweden* (A/CONF.80/C.1/L.23) was withdrawn.

115. At its 43rd meeting, the Committee of the Whole adopted by 60 votes to 3, with 12 abstentions the text of the International Law Commission for article 36 and referred it to the Drafting Committee.

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

116. At the 53rd meeting of the Committee of the Whole, the Chairman of the Drafting Committee introduced a report of the Drafting Committee (A/CONF.80/C.1/4) containing the text of article 36 adopted by the Committee (for the text, see para. 117 below). The Committee of the Whole approved without a vote the title and text of article 36 as recommended by the Drafting Committee.

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

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

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

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

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

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

## PROPOSED NEW ARTICLE 36 bis

### 1. Text of the proposed new article

118. At the 1977 session, the *Federal Republic of Germany* proposed the insertion of a new article 36 bis (A/CONF.80/C.1/L.47), the text of which was reproduced in A/CONF.80/14, para. 234. This amendment was withdrawn at the resumed session. Instead, the *Federal Republic of Germany* proposed the insertion of a new article 36 bis (A/CONF.80/C.1/L.53) reading as follows:

#### *Article 36 bis*

1. When under articles 30, 31, 33 and 35 a treaty continues in force for a successor State or a successor State participates otherwise in a treaty not yet in force for the predecessor State, the successor State shall be considered as maintaining

(a) any reservation to that treaty made by the predecessor State in regard to the territory to which the succession of States relates;

(b) the consent of the predecessor State expressed, in conformity with the treaty, to be bound by part of the treaty;

(c) the choice of the predecessor State made, in conformity with that treaty, between differing provisions in the application of the treaty.

2. Notwithstanding paragraph 1, the successor State may however:

(a) withdraw or modify, wholly or partly, the reservation (paragraph 1 subparagraph (a)) or formulate a new reservation, subject to the conditions laid down in the treaty and the rules set out in articles 19, 20, 21, 22 and 23 of the Vienna Convention on the Law of Treaties;

(b) withdraw or modify the consent to be bound by part of the treaty (paragraph 1 subparagraph (b));

(c) alter the choice made between differing provisions in the application of the treaty (paragraph 1 subparagraph (c)).

[Withdrawn; see para. 119 below.]

## 2. Proceedings of the Committee of the Whole

119. The Committee of the Whole considered the amendment by the *Federal Republic of Germany* (A/CONF.80/C.1/L.53) seeking to add a new article 36 *bis*, at its 43rd meeting, on 3 August 1978. At this meeting, the amendment was withdrawn.

## ARTICLE 37

### 1. International Law Commission text

120. The International Law Commission text provided as follows:

#### *Article 37. Notification*

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

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

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

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

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

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

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

### 2. Amendments

121. At the 1977 session, an amendment to article 37 was submitted by *Finland* (A/CONF.80/C.1/L.40).

122. This amendment was to the following effect:

[For the text, see A/CONF.80/14, para. 236.]

[Referred to the Drafting Committee; see para. 124 below.]

## 3. Proceedings of the Committee of the Whole

### (i) Meetings

123. The Committee of the Whole initially considered article 37 and the amendment thereto at its 43rd meeting,

on 3 August 1978. At its 53rd meeting, on 17 August 1978, it considered the report of the Drafting Committee on the article.

### (ii) Initial consideration

124. At its 43rd meeting, the Committee of the Whole decided to refer the text of the International Law Commission for article 37 to the Drafting Committee. It also referred to the Drafting Committee the amendment by *Finland* (A/CONF.80/C.1/L.40) as a drafting suggestion.

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

125. At the 53rd meeting of the Committee of the Whole, the Chairman of the Drafting Committee introduced a report of the Drafting Committee (A/CONF.80/C.1/4) containing the text of article 37 adopted by the Committee (for the text, see para. 126 below). The Committee of the Whole approved without a vote the title and text of article 37 as recommended by the Drafting Committee.

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

126. The Committee of the Whole recommends that the Conference should adopt the following text for article 37:

#### *Article 37. Notifications*

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

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

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

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

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

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

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

## PROPOSED NEW ARTICLE 37 *bis*

### 1. Text of the proposed new article

127. At the 1977 session, the *United States of America* proposed the insertion of a new article 37 *bis* (A/CONF.80/C.1/L.37). The text of the amendment was reproduced in A/CONF.80/14, para. 237. At the resumed session, the *United States of America* submitted a revised version of the amendment (A/CONF.80/C.1/L.37/Rev.1) reading as follows:

*Article 37 bis. Objections to succession*

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

2. An objection to succession to a treaty made pursuant to paragraph 1 by the successor State shall prevent the application of the treaty to the successor State.

3. An objection to succession to a treaty made pursuant to paragraph 1 by a party to the treaty shall prevent the application of the treaty as between the objecting State and the successor State.

4. The resolution of any dispute resulting from the application of this article shall be sought through the means indicated in Article 39 *bis* of the Convention.

[Replaced by A/CONF.80/C.1/L.37/Rev.2; see para. 128 below.]

128. Subsequently, the *United States of America* submitted a second revised version of the amendment (A/CONF.80/C.1/L.37/Rev.2) reading as follows:

*Article 37 bis. Objections to succession*

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

2. In the case of an objection to succession to a treaty pursuant to paragraph 1, the successor State and the other State party or parties shall seek a solution through a process of consultation and negotiation.

3. If, under paragraph 2, no solution has been reached within a period of twelve months following the date on which the objection was raised, a resolution of the matter shall be sought through the means indicated in article 39 *bis*.

[Withdrawn; see para. 129 below.]

**2. Proceedings of the Committee of the Whole**

129. The Committee of the Whole considered the amendment by the *United States of America* at its 43rd meeting on 3 August 1978, at its 44th meeting, on 4 August 1978, and at its 46th meeting, on 7 August 1978. At the 44th meeting of the Committee, the *United States of America* announced that a second revised version of the amendment would be circulated. At the 46th meeting, the amendment by the *United States of America* (A/CONF.80/C.1/L.37/Rev.2) was withdrawn.

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

130. The International Law Commission text provided as follows:

*Article 38. Cases of State responsibility and outbreak of hostilities*

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

**2. Amendments**

131. An amendment to article 38 was submitted by *Mexico* (A/CONF.80/C.1/L.55).

132. This amendment was to the following effect:

Delete article 38 of the text proposed by the International Law Commission.

[Withdrawn; see para. 134 below.]

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

133. The Committee of the Whole initially considered article 38 and the amendment thereto at its 43rd meeting, on 3 August 1978. At its 53rd meeting, on 17 August 1978, it considered the report of the Drafting Committee on the article.

*(ii) Initial consideration*

134. At the 43rd meeting of the Committee of the Whole, the amendment by *Mexico* (A/CONF.80/C.1/L.55) was withdrawn. At the same meeting, the Committee of the Whole decided to refer the text by the International Law Commission for article 38 to the Drafting Committee.

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

135. At the 53rd meeting of the Committee of the Whole, the Chairman of the Drafting Committee introduced a report of the Drafting Committee (A/CONF.80/C.1/4) containing the text of article 38 adopted by the Committee (for the text, see para. 136 below). The Committee of the Whole approved without a vote the title and text of article 38 as recommended by the Drafting Committee.

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

136. The Committee of the Whole recommends that the Conference should adopt the following text for article 38:

*Article 38. Cases of State responsibility and outbreak of hostilities*

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

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

137. The International Law Commission text provided as follows:

*Article 39. Cases of military occupation*

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

**2. Amendments**

138. An amendment to article 39 was submitted by Mexico (A/CONF.80/C.1/L.55).

139. This amendment was to the following effect:

Delete article 39 of the text proposed by the International Law Commission.

[Withdrawn; see para. 141 below.]

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

140. The Committee of the Whole initially considered article 39 and the amendment thereto at its 43rd meeting, on 3 August 1978. At its 53rd meeting, on 17 August 1978, it considered the report of the Drafting Committee on the article.

*(ii) Initial consideration*

141. At the 43rd meeting of the Committee of the Whole, the amendment by Mexico (A/CONF.80/C.1/L.55) was withdrawn. At the same meeting, the Committee of the Whole decided to refer the text by the International Law Commission for article 39 to the Drafting Committee.

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

142. At the 53rd meeting of the Committee of the Whole, the Chairman of the Drafting Committee introduced a report of the Drafting Committee (A/CONF.80/C.1/4) containing the text of article 39 adopted by the Committee (for the text, see para. 143 below). The Committee of the Whole approved without a vote the title and text of article 39 as recommended by the Drafting Committee.

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

143. The Committee of the Whole recommends that the Conference should adopt the following text for article 39:

*Article 39. Cases of military occupation*

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

**PROPOSED NEW ARTICLE 39 bis****1. Text of the proposed new article**

144. At the 1977 session, the *United States of America* proposed the insertion of a new article 39 bis (A/CONF.80/C.1/L.38), the text of which was reproduced in A/CONF.80/14, para. 242. At the resumed session, the *United States of America* submitted a revised version of the amendment (A/CONF.80/C.1/L.38/Rev.1) reading as follows:

*Article 39 bis. Settlement of disputes*

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

2. Each State Party may at the time of signature or ratification of this Convention or accession thereto declare that it does not consider itself bound by paragraph 1 of this article. The other States Parties shall not be bound by paragraph 1 of this article with respect to any State Party which has made such a declaration.

3. Any State Party which has made a declaration in accordance with paragraph 2 of this article may at any time withdraw that declaration by notification to the Secretary-General of the United Nations.

4. When a dispute concerning the interpretation or application of this Convention includes a State Party which has made a declaration under paragraph 2, if the dispute is not settled through negotiations or by other agreed means, any party to the dispute may submit it to the conciliation procedure in the Annex to the Convention by submitting a request to that effect to the Secretary-General of the United Nations.

**ANNEX TO THE CONVENTION***Conciliation Procedure*

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

2. The Chairman of the Commission shall be chosen by the other two members. If the other two members are unable to agree within sixty days from receipt of the request referred to in paragraph 4 of article 39 bis or if one of the parties to the dispute has not availed itself of its right to designate a member of the Commission, the Chairman shall be designated at the request of one of the parties to the dispute by the Secretary-General of the United Nations. The appointment shall be made within a period of one month from such a request. The Secretary-General shall appoint as the Chairman a qualified jurist who is not a national of any State party to the dispute.

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

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

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

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

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

[Referred to the *Ad Hoc* Group on Peaceful Settlement of Disputes established by the Committee of the Whole; see para. 148 below.]

## 2. Amendments

145. An amendment to the proposed article 39 *bis* was submitted by the *Netherlands* (A/CONF.80/C.1/L.56). This amendment was to the following effect:

Insert a new article 39 *bis*, reading as follows:

### *Article 39 bis. Settlement of Disputes*

If any dispute regarding the interpretation or application of this Convention is not settled through diplomatic channels, the following procedures shall be followed:

(a) any one of the parties to a dispute concerning the interpretation or application of article 6 or article 33 (3) may, by a written application, submit it to the International Court of Justice for a decision unless the parties by common consent agree to submit the dispute to arbitration;

(b) any one of the parties to a dispute concerning the interpretation or application of any of the other provisions of this Convention may by a written notification to the other party or parties to the dispute, submit it to arbitration. The arbitration award shall be final and binding on the parties to the dispute. If the arrangements necessary to permit this arbitration to proceed, including the selection of the arbitrator or arbitrators, have not been completed within one year of the date of receipt of the notification, any party or parties to the dispute which are not primarily responsible for the failure to complete the arrangements may submit the dispute to the International Court of Justice for decision in accordance with the Statute of the Court.

[Withdrawn; see para. 151 below.]

## 3. Proceedings in the Committee of the Whole

### (i) *Meetings*

146. The Committee of the Whole initially considered the proposed new article 39 *bis* and the amendment thereto at its 44th and 45th meetings, on 4 August 1978, and its 46th meeting, on 7 August 1978, and at its 49th meeting, on 8 August 1978. The agreed text of the *Ad Hoc* Group on Peaceful Settlement of Disputes was considered by the Committee of the Whole at its 51st meeting, on 15 August 1978.

### (ii) *Initial consideration*

147. At its 45th meeting, the Committee of the Whole decided to set up an *Ad Hoc* Group to consider the inclusion in the draft convention of a provision on the settlement of disputes.

148. At its 46th meeting, the Committee of the Whole decided to postpone further consideration of the proposed new article 39 *bis* and the amendment thereto until the *Ad Hoc* Group established by the Committee made its recommendations thereon.

149. At the 49th meeting of the Committee of the Whole, the Chairman announced that the composition of the *Ad Hoc* on Peaceful Settlement of Disputes, as communicated to him by the President of the Conference, was as follows: Brazil, Bulgaria, Czechoslovakia, Guyana,

Iraq, Malaysia, Mali, Netherlands, Niger, Sri Lanka, Swaziland, Union of Soviet Socialist Republics, United Kingdom of Great Britain and Northern Ireland, United States of America and Venezuela, as well as States which had a particular interest in the subject.

### (iii) *Consideration of the report of the Ad Hoc Group on Peaceful Settlement of Disputes*

150. The *Ad Hoc* Group on Peaceful Settlement of Disputes submitted to the Committee of the Whole an agreed text on peaceful settlement of disputes (A/CONF.80/C.1/L.60) for insertion in the future convention. The agreed text submitted by the *Ad Hoc* Group read as follows:

#### *Article A*

If a dispute regarding the interpretation or application of the present Convention arises between two or more States parties they shall seek to resolve it by a process of consultation and negotiation upon the request of any of them.

#### *Article B*

If the dispute is not resolved within six months of the date on which the request referred to in article A has been made, any party to the dispute may submit it to the conciliation procedure in the Annex to this Convention by submitting a request to that effect to the Secretary-General of the United Nations and to the other State party or States parties to the dispute.

#### *Article C*

Any State party to the present Convention, at the time of signature or, ratification of this Convention or accession thereto or at any time thereafter, may, by notification to the depositary, declare that, where a dispute has not been resolved by the application of the procedures set forth in articles A and B, such dispute may be submitted for a decision to the International Court of Justice by a written application of any party to the dispute, or in the alternative to arbitration, provided that the other State party to the dispute has made a like declaration.

#### *Article D*

Without prejudice to articles A, B and C., if a dispute regarding the interpretation or application of the present Convention arises between two or more States parties, they may by common consent, agree to submit it to arbitration, or to the International Court of Justice, or to any other appropriate procedure for the settlement of disputes.

#### *Article E*

Nothing in the foregoing articles shall affect the rights or obligations of the parties under any provisions in force binding the parties with regard to the settlement of disputes.

## ANNEX

### *Conciliation Procedure*

1. A list of conciliators consisting of qualified jurists shall be drawn up and maintained by the Secretary-General of the United Nations. To this end, every State which is a Member of the United Nations or a party to the present Convention shall be invited to nominate two conciliators, and the names of the persons so nominated shall constitute the list. The term of a conciliator, including that of any conciliator nominated to fill a casual vacancy, shall be five years and may be renewed. A conciliator whose term expires shall continue to fulfil any function for which he shall have been chosen under the following paragraph.

2. When a request has been made to the Secretary-General under article B, the Secretary-General shall bring the dispute before a conciliation commission constituted as follows:

The State or States constituting one of the parties to the dispute shall appoint:

(a) one conciliator of the nationality of that State or of one of those States, who may or may not be chosen from the list referred to in paragraph 1; and

(b) one conciliator not of the nationality of that State or of any of those States, who shall be chosen from the list.

The State or States constituting the other party to the dispute shall appoint two conciliators in the same way. The four conciliators chosen by the parties shall be appointed within sixty days following the date on which the Secretary-General receives the request.

The four conciliators shall, within sixty days following the date of the last of their own appointments, appoint a fifth conciliator chosen from the list, who shall be chairman.

If the appointment of the Chairman or of any of the other conciliators has not been made within the period prescribed above for such appointment, it shall be made by the Secretary-General within sixty days following the expiry of that period. The appointment of the chairman may be made by the Secretary-General either from the list or from the membership of the International Law Commission. Any of the periods within which appointments must be made may be extended by agreement between the parties to the dispute.

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

3. The Conciliation Commission shall decide its own procedure. The Commission, with the consent of the parties to the dispute, may invite any party to the treaty to submit to it its views orally or in writing. Decisions and recommendations of the Commission shall be made by a majority vote of the five members.

4. The Commission may draw the attention of the parties to the dispute to any measures which might facilitate an amicable settlement.

5. The Commission shall hear the parties, examine the claims and objections, and make proposals to the parties with a view to reaching an amicable settlement of the dispute.

6. The Commission shall report within twelve months of its constitution. Its report shall be deposited with the Secretary-General and transmitted to the parties to the dispute. The report of the Commission, including any conclusions stated therein regarding the facts or questions of law, shall not be binding upon the parties and it shall have no other character than that of recommendations submitted for the consideration of the parties in order to facilitate an amicable settlement of the dispute.

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

151. The Committee of the Whole considered the agreed text (A/CONF.80/C.1/L.60), submitted by the *Ad Hoc* Group on Peaceful Settlement of Disputes, at its 51st and 52nd meeting, on 15 August 1978. At the 52nd meeting of the Committee of the Whole, the amendment by the *Netherlands* (A/CONF.80/C.1/L.56) was withdrawn. At its 52nd meeting, the Committee of the Whole decided to refer the agreed text (A/CONF.80/C.1/L.60) submitted by the *Ad Hoc* Group on Peaceful Settlement of Disputes to the Drafting Committee.

#### (iv) *Consideration of the report of the Drafting Committee*

152. At the 57th meeting of the Committee of the Whole, on 22 August 1978, the Chairman of the Drafting Committee introduced a report of the Drafting Committee (A/CONF.80/C.1/9 and Add.1), containing the titles and texts of the articles, provisionally designated A to E, relating to peaceful settlement of disputes, as well as the text of the Annex to the Convention, adopted by the Drafting Committee. The Committee of the Whole approved the titles and texts of articles A to E and the text of the Annex to the Convention as recommended by the Drafting Committee.

#### (v) *Text adopted by the Committee of the Whole*

153. The Committee of the Whole recommends that the Conference should adopt the following text for the articles

provisionally designated A to E and for the Annex to the Convention:

#### *Article A. Consultation and negotiation*

If a dispute regarding the interpretation or application of the present Convention arises between two or more Parties to the Convention they shall, upon the request of any of them, seek to resolve it by a process of consultation and negotiation.

#### *Article B. Conciliation*

If the dispute is not resolved within six months of the date on which the request referred to in article A has been made, any party to the dispute may submit it to the conciliation procedure specified in the Annex to the present Convention by submitting a request to that effect to the Secretary-General of the United Nations and informing the other party or parties to the dispute of the request.

#### *Article C. Judicial settlement and arbitration*

Any State at the time of signature or ratification of the present Convention or accession thereto or at any time thereafter may, by notification to the depositary, declare that, where a dispute has not been resolved by the application of the procedures referred to in articles A and B, that dispute may be submitted for a decision to the International Court of Justice by a written application of any party to the dispute, or in the alternative to arbitration, provided that the other party to the dispute has made a like declaration.

#### *Article D. Settlement by common consent*

Notwithstanding articles A, B and C, if a dispute regarding the interpretation or application of the present Convention arises between two or more Parties to the Convention, they may by common consent agree to submit it to the International Court of Justice, or to arbitration, or to any other appropriate procedure for the settlement of disputes.

#### *Article E. Other provisions in force for the settlement of disputes*

Nothing in the articles A to D shall affect the rights or obligations of the Parties to the present Convention under any provisions in force binding them with regard to the settlement of disputes.

#### *Annex*

1. A list of conciliators consisting of qualified jurists shall be drawn up and maintained by the Secretary-General of the United Nations. To this end, every State which is a Member of the United Nations or a Party to the present Convention shall be invited to nominate two conciliators, and the names of the persons so nominated shall constitute the list. The term of a conciliator, including that of any conciliator nominated to fill a casual vacancy, shall be five years and may be renewed. A conciliator whose term expires shall continue to fulfil any function for which he shall have been chosen under the following paragraph.

2. When a request has been made to the Secretary-General under article B, the Secretary-General shall bring the dispute before a conciliation commission constituted as follows:

The State or States constituting one of the parties to the dispute shall appoint:

(a) one conciliator of the nationality of that State or of one of those States, who may or may not be chosen from the list referred to in paragraph 1; and

(b) one conciliator not of the nationality of that State or of any of those States, who shall be chosen from the list.

The State or States constituting the other party to the dispute shall appoint two conciliators in the same way. The four conciliators chosen by the parties shall be appointed within sixty days following the date on which the Secretary-General receives the request.

The four conciliators shall, within sixty days following the date of the appointment of the last of them, appoint a fifth conciliator chosen from the list, who shall be chairman.

If the appointment of the Chairman or of any of the other conciliators has not been made within the period prescribed above for such appointment, it shall be made by the Secretary-General within sixty days following the expiry of that period. The appointment of the chairman may be made by the Secretary-



General either from the list or from the membership of the International Law Commission. Any of the periods within which appointments must be made may be extended by agreement between the parties to the dispute.

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

3. The Conciliation Commission shall decide its own procedure. The Commission, with the consent of the parties to the dispute, may invite any party to the present Convention to submit to it its views orally or in writing. Decisions and recommendations of the Commission shall be made by a majority vote of the five members.

4. The Commission may draw the attention of the parties to the dispute to any measures which might facilitate an amicable settlement.

5. The Commission shall hear the parties, examine the claims and objections, and make proposals to the parties with a view to reaching an amicable settlement of the dispute.

6. The Commission shall report within twelve months of its constitution. Its report shall be deposited with the Secretary-General and transmitted to the parties to the dispute. The report of the Commission, including any conclusions stated therein regarding the facts or questions of law, shall not be binding upon the parties and it shall have no other character than that of recommendations submitted for the consideration of the parties in order to facilitate an amicable settlement of the dispute.

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

#### PROPOSED NEW ARTICLE 39 *ter*

##### 1. Text of the proposed new article

154. An amendment seeking to add a new article 39 *ter* was submitted by *Argentina* (A/CONF.80/C.1/L.58). The text of the proposed new article read as follows:

##### *Article 39 ter. Miscellaneous provisions*

When there is a dispute concerning sovereignty over a territory which is under foreign domination or is a colonial dependency, and the United Nations has recommended means for a peaceful settlement and there is then a succession of States, the successor State shall not be bound by treaties falling under article 11 or

article 12, paragraphs 1 and 2, concluded by the predecessor State with respect to the disputed territory.

[Withdrawn; see para. 155 below.]

#### 2. Proceedings in the Committee of the Whole

155. At the 49th meeting of the Committee of the Whole, on 8 August 1978, the representative of Argentina requested postponement of the consideration of the proposed new article 39 *ter* (A/CONF.80/C.1/L.58). At the 55th meeting of the Committee of the Whole, on 18 August 1978, the amendment by *Argentina* was withdrawn.

#### PROPOSED NEW ARTICLE 40

##### 1. Text of the proposed new article

156. An amendment seeking to add a new article 40 was submitted by the *Netherlands* (A/CONF.80/C.1/L.57). The text of the proposed new article read as follows:

##### *Article 40*

Any question that may arise in regard to a treaty from a succession of States, for which question this Convention does not lay down any specific provisions, shall be governed by the Vienna Convention on the Law of Treaties.

[Withdrawn; see para. 157 below.]

#### 2. Proceedings of the Committee of the Whole

157. The Committee of the Whole considered the amendment by the *Netherlands* (A/CONF.80/C.1/L.57) at its 47th meeting, on 7 August 1978. At the same meeting the amendment was withdrawn. The Committee thereupon agreed that the Drafting Committee should attempt to cover the point raised by the Netherlands amendment in the preamble to the draft convention.

### Chapter III

#### PROPOSALS CONCERNING THE PREAMBLE AND FINAL CLAUSES REFERRED TO THE DRAFTING COMMITTEE

158. At its 21st meeting, on 20 April 1977, the Committee of the Whole 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 Convention. For the reports of the Drafting Committee to the Plenary concerning the preamble and the final clauses of the Convention see A/CONF.80/21 and A/CONF.80/19, respectively.

##### A. PREAMBLE

159. At the 1977 session, proposals for the preamble were submitted by *Spain* (A/CONF.80/DC.9) and the *United Nations Council for Namibia* (A/CONF.80/DC.13). At the resumed session of the Conference, proposals for the preamble were submitted by *Ivory Coast* (A/CONF.80/DC.21), *Uganda* (A/CONF.80/DC.26), the *Ukrainian SSR* (A/CONF.80/DC.29) and *Ivory Coast* and *Spain* (A/CONF.80/DC.30).

160. The proposals read as follows:

(a) *Spain* (A/CONF.80/DC.9)

[For the text, see A/CONF.80/14, para. 246.]

(b) *United Nations Council for Namibia* (A/CONF.80/DC.13)<sup>16</sup>

[For the text, see A/CONF.80/14, para. 246.]

<sup>16</sup> At the 12th plenary meeting of the Conference, on 17 August 1978, the proposal for the preamble by the United Nations Council for Namibia was withdrawn.

(c) *Ivory Coast* (A/CONF.80/DC.21)

*The States of the international community, parties to the present Convention,*

Conscious that the economic, political, social and cultural development of the nations and, ultimately, the flowering of mankind are only conceivable in an environment of peace, communication and fraternity, mutual understanding and tolerance, and,

Desirous of promoting, maintaining, consolidating and perpetuating friendly relations between the different countries, regardless of their constitutional or social regimes and of their political and economic ideologies, by establishing systematic and objective security of international legal relations *inter alia*, and,

Bearing constantly in mind the purposes and principles of the Charter of the United Nations and thus being aware of the imperative need to reconcile the essential concepts of national sovereignty and the equality of States with the concept of acquired rights, by the application of bilateral and multilateral conventions and,

Considering the need to codify the topic of succession of States in respect of treaties by applying the principle *res inter alios acta nec nocere nec prodere potest*, modified, however, by the principle *pacta sunt servanda*, and affirming that situations not covered by the present Convention must continue to be governed by the rules of customary international law;

*Have agreed* on the following provisions:

(d) *Uganda* (A/CONF.80/DC.26)

*The States Parties to the present Convention:*

*Mindful* of the right of peoples to self-determination;

*Observing* at the same time the increasing interdependence of nations;

*Accepting* as a basic principle in international relations the equality of nations;

*Desirous* of maintaining international legal order, stability, peaceful co-existence and co-operation and in the spirit of the furtherance of the brotherhood of nations irrespective of their cultural and constitutional differences;

*Desirous* of amplifying and consolidating the rules and practices of customary international law in regard to the succession of States in respect of treaties in a convention;

*Have agreed* to the following provisions:

(e) *Ukrainian Soviet Socialist Republic* A/CONF.80/DC.29)

Include the following provision in the Preamble:

*Emphasizing* that the consistent observance of general multilateral treaties which deal 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, is of special importance for the strengthening of peace and international security, for the development of equitable and mutually advantageous co-operation and for the deepening of confidence between all States,

(f) *Ivory Coast and Spain* (A/CONF.80/DC.30)

*The States Parties to the present Convention,*

*Considering* the profound changes in the international community brought about both by the decolonization process and by the present trend towards greater integration and unification of States, as well as by the growing interdependence of nations,

*Convinced* of the need for proper regulation of the effects of such changes through the codification and progressive development of the rules relating to succession of States in respect of treaties as a means of ensuring greater juridical security in international relations;

*Conscious* of the imperative need to reconcile, on the one hand, the principles of national sovereignty and equality of States and, on the other hand, the principle of rights acquired under international treaties,

*Bearing in mind* also the purposes and principles of the United Nations and the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations,

*Reaffirming* that any attempt to disrupt, partly or completely, the national unity and territorial integrity of a State or its political independence is incompatible with the purposes and principles of the Charter,

*Bearing in mind* also the provisions of the 1969 Vienna Convention on the Law of Treaties and affirming that the rules of customary international law will continue to govern matters not regulated in the present Convention,

*Have agreed* on the following:

## B. FINAL CLAUSES

161. At the 1977 session, a draft article of a final clause concerning participation in the Convention by a future successor State was submitted by the *United Kingdom* in an annex to a working paper presented by that same delegation in connexion with article 7 (A/CONF.80/C.1/L.9). At the resumed session, draft articles for final clauses were submitted by the *Netherlands* (A/CONF.80/DC.19/Rev.1), *Ivory Coast* (A/CONF.80/DC.22), *Japan* (A/CONF.80/DC.25) and *Zaire* (A/CONF.80/DC.27).

162. The draft articles read as follows:

(a) *United Kingdom of Great Britain and Northern Ireland* (A/CONF.80/C.1/L.9):

[For the text, see A/CONF.80/14, para. 247.]

(b) *Netherlands* (A/CONF.80/DC.19/Rev.1)<sup>17</sup>*Article A. Signature*

The present Convention shall be open for signature by all States until . . . . . at the Federal Ministry for Foreign Affairs of the Republic of Austria and subsequently, until . . . . . at United Nations Headquarters, New York.

*Article B. Ratification, acceptance or approval*

The present Convention is subject to ratification, acceptance or approval by signatory States. The instruments of ratification, acceptance or approval shall be deposited with the Secretary-General of the United Nations.

<sup>17</sup> In its original version (A/CONF.80/DC.19), the proposal contained an article (f) entitled "Reservations", which read as follows: "No reservations may be made to the present Convention".

*Article C. Accession*

The present Convention shall remain open for accession by any non-signatory State. The instruments of accession shall be deposited with the Secretary-General of the United Nations.

*Article D. Entry into force*

1. The present Convention shall enter into force on the first day of the second month following the date of deposit of the fifteenth instrument of ratification, acceptance, approval or accession.

2. For each State depositing its instrument of ratification, acceptance, approval or accession after the entry into force of the present Convention, it shall enter into force on the first day of the second month following the date of deposit of such instrument.

*Article E. Depositary functions*

The Secretary-General of the United Nations shall inform all signatory and acceding States:

(a) of signatures to the present Convention and of the deposit of instruments of ratification, acceptance, approval or accession in accordance with Articles A, B and C;

(b) of the date on which the present Convention will enter into force in accordance with Article D.

*(c) Ivory Coast (A/CONF.80/DC.22)**Article . . . . Signature*

The present Convention is open for signature by all States as specified below:

from to 1978 at the Federal Ministry for Foreign Affairs of Austria.

from to 1979 (?) at the Headquarters of the United Nations in New York.

*Article . . . . Accession*

After expiry of the periods specified in the last paragraph of article . . . above, any State so desiring may become a party to the present Convention by accession at any time.

The instruments of accession shall be transmitted to the Secretary-General of the United Nations and deposited at the Headquarters of that Organization.

*Article . . . . Ratification*

The present Convention is subject to ratification. The instruments of ratification shall be transmitted to the Secretary-General of the United Nations and deposited at the Headquarters of that Organization.

*Article . . . . Entry into force*

The present Convention shall enter into force on the thirtieth day following the date of deposit of the . . . instrument of ratification. For States acceding to the Convention, it shall enter into force thirty days after the deposit of the instrument of accession.

*Article . . .*

The original of the present Convention, of which the English, French, Spanish and Russian texts are equally authentic, shall be deposited with the United Nations and the Secretary-General of that Organization shall transmit certified copies to the States parties thereto.

IN WITNESS WHEREOF the undersigned plenipotentiaries, being duly authorized by their respective Governments, have signed the present Convention.

*(d) Japan (A/CONF.80/DC.25)**Article A. Signature*

The present Convention shall be open for signature by all States until at the Federal Ministry for Foreign Affairs of the Republic of Austria, and subsequently, until at United Nations Headquarters, New York.

*Article B. Ratification, acceptance or approval*

The present Convention is subject to ratification, acceptance or approval. The instruments of ratification, acceptance or approval shall be deposited with the Secretary-General of the United Nations.

*Article C. Accession*

The present Convention shall remain open for accession by any non-signatory State. The instruments of accession shall be deposited with the Secretary-General of the United Nations.

*Article D. Entry into force*

1. The present Convention shall enter into force on the thirtieth day following the date of deposit of the twenty-fifth instrument of ratification, acceptance, approval or accession.

2. For each State ratifying, accepting, approving or acceding to the Convention after the deposit of the twenty-fifth instrument of ratification, acceptance, approval or accession, the Convention shall enter into force on the thirtieth day after deposit by such State of its instrument of ratification, acceptance, approval or accession.

*Article E. Authentic texts*

The original of the present Convention, of which the Arabic, Chinese, English, French, Russian and Spanish are equally authentic, shall be deposited with the Secretary-General of the United Nations.

*(e) Zaire (A/CONF.80/DC.27)**Article A. Signature*

The present Convention shall be open for signature by all States Members of the United Nations or of any of the specialized agencies or of the International Atomic Energy Agency or parties to the Statute of the International Court of Justice, or by any other State invited by the General Assembly of the United Nations to become a party to the Convention, as follows: until 30 September 1978, at the Federal Ministry for Foreign Affairs of the Republic of Austria, and subsequently, until 30 August 1979, at United Nations Headquarters, New York.

*Article B. Ratification*

The present Convention is subject to ratification. The instruments of ratification shall be deposited with the Secretary-General of the United Nations.

*Article C. Accession*

The present Convention shall remain open for accession by any State belonging to one of the four categories mentioned in Article A. The instruments of accession shall be deposited with the Secretary-General of the United Nations.

*Article D. Entry into force*

The present Convention shall enter into force on the thirtieth day following the date of deposit with the Secretary-General of the United Nations of the twenty-fifth instrument of ratification or accession.

For each State ratifying or acceding to the Convention after the deposit of the twenty-fifth instrument of ratification or accession, the Convention shall enter into force on the thirtieth day after deposit by such State of its instrument of ratification or accession.

*Article E. Notification*

The Secretary-General of the United Nations shall notify all States belonging to one of the four categories mentioned in Article A:

(a) of signatures to the present Convention and of the deposit of instruments of ratification or accession, in accordance with Articles A, B and C;

(b) of the date on which the present Convention will enter into force in accordance with Article D.

*Article F. Authentic texts*

The original of the present Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations, who shall transmit certified copies to all States belonging to one of the four categories mentioned in Article A.

IN WITNESS WHEREOF the undersigned Plenipotentiaries, being duly authorized thereto by their respective Governments, have signed the present Convention".

**Chapter IV****PARTS AND SECTIONS INTO WHICH THE DRAFT ARTICLES ARE DIVIDED**

163. At its 53rd meeting, on 17 August 1978, the Committee of the Whole decided to request the Drafting Committee to examine the question of the division of the draft articles into parts and sections as well as the titles for such parts and sections, and to report thereon to the Committee of the Whole.

164. At the 57th meeting of the Committee of the Whole, on 22 August 1978, the Chairman of the Drafting Committee introduced the report of the Drafting Committee concerning the division of the Convention into parts and sections and titles thereof adopted by the Drafting Committee (A/CONF.80/C.1/10). The Committee of the Whole approved the division of the Convention into parts and sections as well as the titles for such parts and sections as recommended by the Drafting Committee (see para. 165 below).

165. The Committee of the Whole recommends that the Conference should adopt the division of the Convention into parts and sections and titles thereof, as follows:

[Preamble]

**Part I. General provisions**

[Articles 1 to 12, 12 *bis* and 13]

**Part II. Succession in respect of part of territory**

[Article 14]

**Part III. Newly independent States**

[Articles 15 to 29]

**SECTION 1. GENERAL RULE**

[Article 15].

**SECTION 2. MULTILATERAL TREATIES**

[Articles 16 to 22]

**SECTION 3. BILATERAL TREATIES**

[Articles 23 to 25]

**SECTION 4. PROVISIONAL APPLICATION**

[Articles 26 to 28]

**SECTION 5. NEWLY INDEPENDENT STATES FORMED FROM TWO OR MORE TERRITORIES**

[Article 29]

**Part IV. Uniting and separation of States**

[Articles 30 to 37]

**Part V. Miscellaneous provisions**

[Articles 38 and 39]

**Part VI. Settlement of disputes**

[Articles A to E]

**Part VII. Final provisions**

[Articles I to V]

*Annex*

## ANNEX

**Check list of documents submitted during the resumed session (1978) of the Conference  
to the Committee of the Whole by States participating in the Conference**

[In the list which follows, the reference under the heading "Paragraph" is to the paragraph or paragraphs of this report in which the text of the document may be found.]

<i>Document No.</i>	<i>Sponsors</i>	<i>Article</i>	<i>Paragraph</i>
A/CONF.80/C.1/L.37/Rev.1	United States of America . . . . .	37 <i>bis</i>	127
A/CONF.80/C.1/L.37/Rev.2	United States of America . . . . .	37 <i>bis</i>	128
A/CONF.80/C.1/L.38/Rev.1	United States of America . . . . .	39 <i>bis</i>	144
A/CONF.80/C.1/L.41/Rev.1	France and Switzerland . . . . .	2, 33 and 34	20 (a); 89 (a) and 98
A/CONF.80/C.1/L.45/Rev.1	Federal Republic of Germany . . . . .	30	59 (b)
A/CONF.80/C.1/L.49	Japan . . . . .	30	59 (c)
A/CONF.80/C.1/L.50	United States of America . . . . .	30 <i>bis</i>	65
A/CONF.80/C.1/L.51/Rev.1	United States of America . . . . .	30 <i>bis</i>	See foot-note 14
A/CONF.80/C.1/L.51/Rev.2	United States of America . . . . .	30 <i>bis</i>	66
A/CONF.80/C.1/L.52	Federal Republic of Germany . . . . .	33	89 (b)
A/CONF.80/C.1/L.53	Federal Republic of Germany . . . . .	36 <i>bis</i>	118
A/CONF.80/C.1/L.54	Pakistan . . . . .	33	89 (c)
A/CONF.80/C.1/L.55	Mexico . . . . .	38 and 39	132, 139
A/CONF.80/C.1/L.56	Netherlands: amendment to the proposal contained in document A/CONF.80/C.1/L.38/Rev.1 . . . . .	39 <i>bis</i>	145
A/CONF.80/C.1/L.57	Netherlands . . . . .	40	156
A/CONF.80/C.1/L.58	Argentina . . . . .	39 <i>ter</i>	154

## F. TEXTS SUBMITTED DIRECTLY TO THE CONFERENCE IN PLENARY MEETING BY THE DRAFTING COMMITTEE IN ACCORDANCE WITH THE DECISIONS TAKEN BY THE CONFERENCE

### 1. Title of the Convention

DOCUMENT A/CONF.80/27

[Original: Arabic/English/French/Russian/Spanish]  
[21 August 1978]

The Drafting Committee, in accordance with the decision taken by the Conference at its 13th plenary meeting on 21 August 1978, submits the following title for the Convention: "*Vienna Convention on Succession of States in Respect of Treaties*"

### 2. Preamble of the Convention

DOCUMENT A/CONF.80/21

[Original: Arabic/English/French/Russian/Spanish]  
[19 August 1978]

The Drafting Committee, in accordance with the decision taken by the Committee of the Whole at its 21st meeting on 20 April 1977, submits the following text for the preamble of the Convention:

*The States Parties to the present Convention,*

*Considering* the profound transformation of the international community brought about by the decolonization process,

*Considering also* that other factors may lead to cases of succession of States in the future,

*Convinced*, in these circumstances, of the need for the codification and progressive development of the rules relating to succession of States in respect of treaties as a means for ensuring greater juridical security in international relations,

*Noting* that the principles of free consent, good faith and *pacta sunt servanda* are universally recognized,

*Emphasizing* that the consistent observance of general multilateral treaties which deal with the codification and progressive development of international law and those the object and purpose of which are of interest to the international community as a whole is of special importance for the strengthening of peace and international co-operation,

*Having in mind* the principles of international law embodied in the Charter of the United Nations, such as the principles of the equal rights and self-determination of peoples, of the sovereign equality and independence of all States, of non-interference in the domestic affairs of States, of the prohibition of the threat or use of force, and of universal respect for, and observance of, human rights and fundamental freedoms for all,

*Recalling* that respect for the territorial integrity and political independence of any State is required by the Charter of the United Nations,

*Bearing in mind* the provisions of the Vienna Convention on the Law of Treaties of 1969,

*Bearing also in mind* article 73 of that Convention,

*Affirming* that questions of the law of treaties other than those that may arise from a succession of States are governed by the relevant rules of international law, including those rules of customary international law which are embodied in the Vienna Convention on the Law of Treaties of 1969,

*Affirming* that the rules of customary international law will continue to govern questions not regulated by the provisions of the present Convention,

*Have agreed* as follows:

### 3. Final clauses of the Convention

DOCUMENT A/CONF.80/19

[Original: Arabic/English/French/Russian/Spanish]  
[16 August 1978]

The Drafting Committee, in accordance with the decision taken by the Committee of the Whole at its 21st meeting on 20 April 1977, submits the following text for the final clauses of the Convention:

#### Article [I]. Signature

The present Convention shall be open for signature by all States until 28 February 1979 at the Federal Ministry for Foreign Affairs of the Republic of Austria and subsequently, until 31 August 1979, at United Nations Headquarters in New York.

#### Article [II]. Ratification

The present Convention is subject to ratification. The instruments of ratification shall be deposited with the Secretary-General of the United Nations.

#### Article [III]. Accession

The present Convention shall remain open for accession by any State. The instruments of accession shall be deposited with the Secretary-General of the United Nations.

#### Article [IV]. Entry into force

1. The present Convention shall enter into force on the thirtieth day following the date of deposit of the tenth\* instrument of ratification or accession.

2. For each State ratifying or acceding to the Convention after the deposit of the tenth instrument of ratification or accession, the Convention shall enter into force on the thirtieth day after deposit by such State of its instrument of ratification or accession.

\* A minority of the members of the Drafting Committee favoured a figure of twenty or more instruments.

*Article [V]. Authentic texts*

The original of the present Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

IN WITNESS WHEREOF the undersigned Plenipotentiaries, being duly authorized thereto by their respective Governments, have signed the present Convention.

DONE at Vienna, this ... day of August, one thousand nine hundred and seventy-eight.

**4. Final Act**

DOCUMENT A/CONF.80/26

[Original: Arabic/English/French/Russian/Spanish]  
[21 August 1978]

The Drafting Committee, in accordance with a decision taken by the Conference on 31 July 1978, submits the following text for the Final Act of the Conference:

**FINAL ACT**

**of the United Nations Conference on Succession of States  
in Respect of Treaties**

1. The General Assembly of the United Nations, by resolution 3496 (XXX) of 15 December 1975, decided to convene a conference of plenipotentiaries in 1977 to consider the draft articles on succession of States in respect of treaties adopted by the International Law Commission at its twenty-sixth session (Report of the International Law Commission on the work of its twenty-sixth session, A/9610/Rev.1,<sup>1</sup> chapter II, section D), and to embody the results of its work in an international convention and such other instruments as it might deem appropriate.

2. Subsequently, by resolution 31/18 of 24 November 1976, the General Assembly, after noting, *inter alia*, that the Government of Austria had extended an invitation to hold the United Nations Conference on Succession of States in Respect of Treaties at Vienna, decided that the Conference was to be held from 4 April to 6 May 1977 in that city.

3. The United Nations Conference on Succession of States in Respect of Treaties met initially at the Neue Hofburg in Vienna from 4 April to 6 May 1977.

4. On 6 May 1977, the Conference noted that due to the intrinsic complexity of the subject-matter it had not been possible for it in the time available to conclude its work, and that, as stated by the representative of Austria, the original invitation of the Government of Austria would extend to a resumed session of the Conference, which would enable the Conference to continue its work at Vienna in 1978. It therefore recommended that the General Assembly decide to reconvene the Conference in the first half of 1978, preferably in April at Vienna, for a final session of four weeks. At the same time the Conference adopted the report on its work for the period 4 April to 6 May 1977 (A/CONF.80/15) and requested the Secretary-General to transmit that report to the General Assembly at its thirty-second session.

5. The General Assembly, by resolution 32/47 of 8 December 1977, having, *inter alia*, noted the recommendation of the Conference and having taken into account that the original invitation of the Government of Austria extended also to a resumed session of the Conference, approved the convening of a resumed session of the Conference for a period of three weeks, from 31 July to 18 August 1978, with a possible extension of up to one further week should that prove necessary in the view of the Conference.

6. The Conference held its resumed session at the Neue Hofburg in Vienna from 31 July to ... August 1978.

7. The General Assembly, by resolution 31/18 of 24 November 1976, requested the Secretary-General to invite all States to participate in the Conference. The delegations of 100 States participated in the Conference. The delegations of 89 States participated in the 1977 session and of 94 in the resumed session, as follows: Afghanistan (1977 session only); Algeria; Angola (resumed session only); Argentina; Australia; Austria; Barbados (1977 session only); Belgium; Bolivia; Brazil; Bulgaria; Burundi (resumed session only); Byelorussian Soviet Socialist Republic; Canada; Chile; Colombia (1977 session only); Cuba; Cyprus; Czechoslovakia; Democratic Yemen; Denmark; Ecuador (1977 session only); Egypt; Ethiopia; Finland; France; German Democratic Republic; Germany, Federal Republic of; Ghana; Greece; Guyana; Holy See; Hungary; India; Indonesia; Iraq; Ireland; Israel; Ivory Coast; Japan; Jordan (resumed session only); Kenya; Kuwait; Lebanon (resumed session only); Liberia; Libyan Arab Jamahiriya; Luxembourg; Madagascar; Malaysia; Mali (resumed session only); Mauritania (resumed session only); Mexico; Mongolia (1977 session only); Morocco (1977 session only); Netherlands, New Zealand; Niger; Nigeria; Norway; Oman; Pakistan; Panama (resumed session only); Papua New Guinea; Peru; Philippines; Poland; Portugal; Qatar; Republic of Korea (resumed session only); Romania; Saudi Arabia; Senegal; Sierra Leone; Singapore; Somalia; Spain; Sri Lanka; Sudan; Suriname; Swaziland; Sweden; Switzerland; Syrian Arab Republic (resumed session only); Thailand; Trinidad and Tobago (resumed session only); Tunisia; Turkey; Uganda; Ukrainian Soviet Socialist Republic; Union of Soviet Socialist Republics; United Arab Emirates; United Kingdom of Great Britain and Northern Ireland; United Republic of Tanzania; United States of America; Uruguay; Venezuela; Yemen (resumed session only); Yugoslavia; and Zaire.

The Republic of Korea, which participated in the resumed session, was represented by an observer at the 1977 session.

The following States were represented by observers: Guatemala (resumed session only) and Iran.

8. Also pursuant to General Assembly resolution 31/18 of 24 November 1976, the Secretary-General invited the United Nations Council for Namibia to attend the Conference. At the 1977 session, the delegation of the United Nations Council for Namibia at the Conference made a request for active participation, referring to General Assembly resolution 31/149 of 20 December 1976. The Conference considered that request and decided in favour of participation as requested by the Council.

9. By resolution 31/18 of 24 November 1976, the General Assembly also requested the Secretary-General to invite to the Conference representatives of organizations that have received a standing invitation from the General Assembly to participate in the sessions and the work of all international conferences convened under its auspices, in the capacity of observers. In accordance with General Assembly resolutions 3237 (XXIX) of 22 November 1974 and 31/152 of 20 December 1976, the following organizations having received a standing invitation from the General Assembly to participate in the sessions and the work of all international conferences convened under its auspices were represented at the Conference by observers:

Palestine Liberation Organization

South West Africa People's Organization (1977 session only).

10. Pursuant to General Assembly resolution 31/18 of 24 November 1976, the Secretary-General invited to the Conference representatives of national liberation movements recognized in its area by the Organization of African Unity in the capacity of observers in accordance with General Assembly resolution 3280 (XXIX) of 10 December 1974. No national liberation movement was represented at the Conference.

11. The General Assembly, by resolution 31/18 of 24 November 1976, requested the Secretary-General to invite the specialized agencies and the International Atomic Energy Agency, as well as interested organs of the United Nations and interested regional intergovernmental organizations, to be represented at the Confer-

<sup>1</sup> Official Records of the General Assembly, Twenty-ninth Session, Supplement No. 10.

ence by observers. The following intergovernmental organizations were represented at the Conference by observers:

*Specialized and related agencies*

Food and Agriculture Organization of the United Nations (1977 session only)

International Civil Aviation Organization (1977 session only)

International Monetary Fund (1977 session only)

International Atomic Energy Agency (1977 session only)

*Other intergovernmental organizations*

Asian-African Legal Consultative Committee (1977 session only)

Commonwealth Secretariat

Council of Europe

12. The Conference elected Mr. Karl Zemanek (Austria) as President.

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

14. The following committees were set up by the Conference:

*General Committee*

*Chairman:* The President of the Conference

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

*Committee of the Whole*

*Chairman:* Mr. Fuad Riad (Egypt)

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

*Rapporteur:* Mr. Abdul Hakim Tabibi (Afghanistan) (1977 session)

Mrs. Kuljit Thakore (India) (resumed session)

*Drafting Committee*

*Chairman:* Mr. Mustapha Kamil Yasseen (United Arab Emirates)

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

The Rapporteur of the Committee of the Whole participated *ex officio* in the work of the Drafting Committee in accordance with rule 47 of the rules of procedure of the Conference.

*Credentials Committee*

*Chairman:* Mr. José Sette Câmara (Brazil)

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

15. Sir Francis A. Vallat, the International Law Commission's latest Special Rapporteur on Succession of States in respect of treaties, was the Expert Consultant.

16. The Secretary-General of the United Nations was represented by Mr. Erik Suy, Under-Secretary-General, The Legal Counsel. Mr. Yuri M. Rybakov, then Director of the Codification Division of the Office of Legal Affairs of the United Nations, was the Executive Secretary of the Conference at the 1977 session. At the resumed session, Mr. Valentin A. Romanov, Director of the

Codification Division of the Office of Legal Affairs of the United Nations, was the Executive Secretary of the Conference. Mr. Santiago Torres Bernádez was the Deputy Executive Secretary of the Conference.

17. The General Assembly, by its resolution 31/18 of 24 November 1976, referred to the Conference as the basic proposal for its consideration the draft articles on succession of States in respect of treaties adopted by the International Law Commission at its twenty-sixth session.

18. The Conference also had before it written comments of Governments on the final draft articles on succession of States in respect of treaties, submitted pursuant to General Assembly resolutions 3315 (XXIX), Part II, and 3496 (XXX), as well as comments made orally on the draft articles in the Sixth Committee of the General Assembly at the General Assembly's twenty-ninth and thirtieth sessions. The comments were contained in an analytical compilation prepared by the Secretariat of the United Nations (A/CONF.80/5 and Corr.1). In addition, the Conference had before it other relevant documentation prepared by the Secretariat of the United Nations.

19. The Conference assigned to the Committee of the Whole the consideration of the draft articles on succession of States in respect of treaties adopted by the International Law Commission. The Drafting Committee, in addition to its responsibilities for drafting and for co-ordinating and reviewing all the texts adopted, was entrusted by the Conference with the preparation of the title, preamble and final clauses of the Convention, and the Final Act of the Conference.

20. On the basis of the deliberations recorded in the records of the Conference (A/CONF.80/SR.1 to SR.00), and the records (A/CONF.80/C.1/SR.1 to SR.00) and reports (A/CONF.80/14 and A/CONF.80/00) of the Committee of the Whole, the Conference drew up the following Convention:

*Vienna Convention on Succession of States in Respect of Treaties*

21. The foregoing Convention, which is subject to ratification, was adopted by the Conference on ... August 1978, and opened for signature on ... August 1978, in accordance with its provisions, until 28 February 1979 at the Federal Ministry for Foreign Affairs of the Republic of Austria and, subsequently, until 31 August 1979, at United Nations Headquarters in New York. The same instrument was also opened for accession in accordance with its provisions.

22. After 28 February 1979, the closing date for signature at the Federal Ministry for Foreign Affairs of the Republic of Austria, the Convention will be deposited with the Secretary-General of the United Nations.

23. The Conference also adopted the following resolutions, which are annexed to the Final Act:

...

IN WITNESS WHEREOF the representatives have signed this Final Act.

DONE at Vienna this ... day of August, one thousand nine hundred and seventy-eight, in a single copy in the Arabic, Chinese, English, French, Russian and Spanish languages, each text being equally authentic. By unanimous decision of the Conference, the original of this Final Act shall be deposited in the archives of the Federal Ministry for Foreign Affairs of the Republic of Austria.

*The President of the Conference:*

*The Executive Secretary of the Conference:*

ANNEX

Resolutions adopted by the United Nations Conference on Succession of States in Respect of Treaties.

...



## G. DRAFT RESOLUTIONS SUBMITTED TO THE CONFERENCE IN PLENARY MEETING

### 1

DOCUMENT A/CONF.80/L.1 AND ADD.1 AND 2\*

Algeria, Angola, Burundi, Cuba, Cyprus, Democratic Yemen, Egypt, Ethiopia, Ghana, Guyana, India, Indonesia, Iraq, Ivory Coast, Jordan, Kenya, Kuwait, Lebanon, Liberia, Libyan Arab Jamahiriya, Madagascar, Malaysia, Mali, Mauritania, Niger, Nigeria, Pakistan, Qatar, Romania, Saudi Arabia, Senegal, Sierra Leone, Somalia, Sri Lanka, Sudan, Suriname, Swaziland, Trinidad and Tobago, Tunisia, Uganda, United Arab Emirates, United Republic of Tanzania, Yugoslavia, United Nations Council for Namibia: draft resolution

[Original: English]

[15 August 1978]

*The United Nations Conference on Succession of States in Respect of Treaties,*

Taking note of the statement made by the Chairman of the delegation of the United Nations Council for Namibia during the resumed session of the Conference;<sup>1</sup>

Taking into account United Nations General Assembly resolution 2145 (XXI) of 27 October 1966, by which the General Assembly decided to terminate the Mandate of South Africa over Namibia and by which the United Nations assumed direct responsibility for the Territory until independence, and General Assembly resolution 2248 (S-V) of 19 May 1967, by which the United Nations Council for Namibia was established and entrusted with the responsibility of administering the Territory until independence;

Recalling the advisory opinion of the International Court of Justice of 21 June 1971 which declared that the continued presence of South Africa in Namibia being illegal, South Africa is under obligation to withdraw its administration from the Territory and thus put an end to its illegal occupation of the Territory;

Further recalling the relevant resolutions of the United Nations, in particular Security Council resolutions 385 (1976) which reaffirmed the territorial integrity and unity

of Namibia and 432 (1978) which took note of paragraph 7 of General Assembly resolution 32/9 D (1977) declaring that Walvis Bay is an integral part of Namibia;

Resolves that the relevant articles of the Convention shall be interpreted, in the case of Namibia, in conformity with United Nations resolutions on the question of Namibia;

Further resolves that South Africa is not the predecessor State of the future independent State of Namibia.

### 2

DOCUMENT A/CONF.80/L.2

Austria: draft resolution

[Original: English]

[21 August 1978]

TRIBUTE TO THE SPECIAL RAPPORTEURS  
AND THE EXPERT CONSULTANT

*The United Nations Conference on Succession of States in Respect of Treaties,*

Having adopted the Vienna Convention on Succession of States in Respect of Treaties on the basis of the draft articles prepared by the International Law Commission,

Resolves to express to Sir Humphrey Waldock, Special Rapporteur of the International Law Commission, and to Sir Francis Vallat, Special Rapporteur of the International Law Commission and Expert Consultant to the Conference, its deep appreciation of the invaluable contribution they have made to the codification and progressive development of the rules of international law on succession of States in respect of treaties.

### 3

DOCUMENT A/CONF.80/L.3

Czechoslovakia, Iraq, Mexico, Niger, United Kingdom of Great Britain and Northern Ireland: \* draft resolution

[Original: English]

[21 August 1978]

TRIBUTE TO THE INTERNATIONAL LAW COMMISSION

*The United Nations Conference on Succession of States in Respect of Treaties,*

\* On behalf of the members of their respective regional groups.

\* Incorporating document A/CONF.80/L.1/Add.1/Corr.1. Documents A/CONF.80/L.1/Add.1 of 17 August 1978 and A/CONF.80/L.1/Add.1/Corr.1 were issued to add Cyprus, Indonesia, Iraq, Qatar, Saudi Arabia, Sri Lanka, Trinidad and Tobago, Tunisia and United Arab Emirates to the list of sponsors. Document A/CONF.80/L.1/Add.2 of 21 August 1978 was issued to add Malaysia to that list.

<sup>1</sup> See *Official Records of the United Nations Conference on Succession of States in Respect of Treaties*, vol. II, *Summary records of the plenary meetings and of the meetings of the Committee of the Whole* (United Nations publication, Sales No. E.79.V.10), pp. 41-42, 38th meeting, paras. 62-70.

*Having adopted* the Vienna Convention on Succession of States in Respect of Treaties on the basis of the draft articles prepared by the International Law Commission,

*Resolves* to express its deep gratitude to the International Law Commission for its outstanding contribution to the codification and progressive development of the law of succession of States in respect of treaties.

4

DOCUMENT A/CONF.80/L.4

Czechoslovakia, Iraq, Mexico, Niger, United Kingdom of Great Britain and Northern Ireland:\* draft resolution

[Original: English]  
[21 August 1978]

---

\* On behalf of the members of their respective regional groups.

TRIBUTE TO THE PEOPLE AND TO THE FEDERAL GOVERNMENT OF AUSTRIA

*The United Nations Conference on Succession of States in Respect of Treaties,*

*Having adopted* the Vienna Convention on Succession of States in Respect of Treaties,

*Expresses its deep appreciation and gratitude* to the people and the Federal Government of Austria for having made possible the holding of the Conference in Vienna and for their continued and most generous hospitality which contributed greatly to the successful completion of the work of the Conference.

**FINAL ACT  
OF THE UNITED NATIONS CONFERENCE  
ON SUCCESSION OF STATES IN RESPECT  
OF TREATIES**

**(Document A/CONF.80/32)**

1. The General Assembly of the United Nations, by resolution 3496 (XXX) of 15 December 1975, decided to convene a conference of plenipotentiaries in 1977 to consider the draft articles on succession of States in respect of treaties adopted by the International Law Commission at its twenty-sixth session (Report of the International Law Commission on the work of its twenty-sixth session, A/9610/Rev.1,<sup>1</sup> chapter II, section D), and to embody the results of its work in an international convention and such other instruments as it might deem appropriate.

2. Subsequently, by resolution 31/18 of 24 November 1976, the General Assembly, after noting, *inter alia*, that the Government of Austria had extended an invitation to hold the United Nations Conference on Succession of States in Respect of Treaties at Vienna, decided that the Conference was to be held from 4 April to 6 May 1977 in that city.

3. The United Nations Conference on Succession of States in Respect of Treaties met initially at the Neue Hofburg in Vienna from 4 April to 6 May 1977.

4. On 6 May 1977, the Conference noted that due to the intrinsic complexity of the subject-matter it had not been possible for it in the time available to conclude its work, and that, as stated by the representative of Austria, the original invitation of the Government of Austria would extend to a resumed session of the Conference, which would enable the Conference to continue its work at Vienna in 1978. It therefore recommended that the General Assembly decide to reconvene the Conference in the first half of 1978, preferably in April at Vienna, for a final session of four weeks. At the same time the Conference adopted the report on its work for the period 4 April to 6 May 1977 (A/CONF.80/15) and requested the Secretary-General to transmit that report to the General Assembly at its thirty-second session.

5. The General Assembly, by resolution 32/47 of 8 December 1977, having, *inter alia*, noted the recommendation of the Conference and having taken into account that the original invitation of the Government of Austria extended also to a resumed session of the Conference, approved the convening of a resumed session of the Conference for a period of three weeks, from 31 July to 18 August 1978, with a possible extension of up to one further week should that prove necessary in the view of the Conference.

6. The Conference held its resumed session at the Neue Hofburg in Vienna from 31 July to 23 August 1978.

7. The General Assembly, by resolution 31/18 of 24 November 1976, requested the Secretary-General to invite all States to participate in the Conference. The delegations

of 100 States participated in the Conference. The delegations of 89 States participated in the 1977 session and of 94 in the resumed session, as follows: Afghanistan (1977 session only); Algeria; Angola (resumed session only); Argentina; Australia; Austria; Barbados (1977 session only); Belgium; Bolivia; Brazil; Bulgaria; Burundi (resumed session only); Byelorussian Soviet Socialist Republic; Canada; Chile; Colombia (1977 session only); Cuba; Cyprus; Czechoslovakia; Democratic Yemen; Denmark; Ecuador (1977 session only); Egypt; Ethiopia; Finland; France; German Democratic Republic; Germany, Federal Republic of; Ghana; Greece; Guyana; Holy See; Hungary; India; Indonesia; Iraq; Ireland; Israel; Italy; Ivory Coast; Japan; Jordan (resumed session only); Kenya; Kuwait; Lebanon (resumed session only); Liberia; Libyan Arab Jamahiriya; Luxembourg; Madagascar; Malaysia; Mali (resumed session only); Mauritania (resumed session only); Mexico; Mongolia (1977 session only); Morocco (1977 session only); Netherlands; New Zealand; Niger; Nigeria; Norway; Oman; Pakistan; Panama (resumed session only); Papua New Guinea; Peru; Philippines; Poland; Portugal; Qatar; Republic of Korea (resumed session only); Romania; Saudi Arabia; Senegal; Sierra Leone; Singapore; Somalia; Spain; Sri Lanka; Sudan; Suriname; Swaziland; Sweden; Switzerland; Syrian Arab Republic (resumed session only); Thailand; Trinidad and Tobago (resumed session only); Tunisia; Turkey; Uganda; Ukrainian Soviet Socialist Republic; Union of Soviet Socialist Republics; United Arab Emirates; United Kingdom of Great Britain and Northern Ireland; United Republic of Tanzania; United States of America; Uruguay; Venezuela; Yemen (resumed session only); Yugoslavia and Zaire.

The Republic of Korea, which participated in the resumed session, was represented by an observer at the 1977 session.

The following States were represented by observers: Guatemala (resumed session only) and Iran.

8. Also pursuant to General Assembly resolution 31/18 of 24 November 1976, the Secretary-General invited the United Nations Council for Namibia to attend the Conference. At the 1977 session, the delegation of the United Nations Council for Namibia at the Conference made a request for active participation, referring to General Assembly resolution 31/149 of 20 December 1976. The Conference considered that request and decided in favour of participation as requested by the Council.

9. By resolution 31/18 of 24 November 1976, the General Assembly also requested the Secretary-General to invite to the Conference representatives of organizations that have received a standing invitation from the General Assembly to participate in the sessions and the work of all international conferences convened under its auspices, in the capacity of observers. In accordance with General Assembly resolutions 3237 (XXIX) of 22 November 1974

<sup>1</sup> Official Records of the General Assembly, Twenty-ninth Session, Supplement No. 10.

and 31/152 of 20 December 1976, the following organizations having received a standing invitation from the General Assembly to participate in the sessions and the work of all international conferences convened under its auspices were represented at the Conference by observers:

Palestine Liberation Organization  
South West Africa People's Organization (1977 session only).

10. Pursuant to General Assembly resolution 31/18 of 24 November 1976, the Secretary-General invited to the Conference representatives of national liberation movements recognized in its area by the Organization of African Unity in the capacity of observers in accordance with General Assembly resolution 3280 (XXIX) of 10 December 1974. No national liberation movement was represented at the Conference.

11. The General Assembly, by resolution 31/18 of 24 November 1976, requested the Secretary-General to invite the specialized agencies and the International Atomic Energy Agency, as well as interested organs of the United Nations and interested regional intergovernmental organizations, to be represented at the Conference by observers. The following intergovernmental organizations were represented at the Conference by observers:

#### *Specialized and related agencies*

Food and Agriculture Organization of the United Nations (1977 session only)  
International Civil Aviation Organization (1977 session only)  
International Monetary Fund (1977 session only)  
International Atomic Energy Agency (1977 session only)

#### *Other intergovernmental organizations*

Asian-African Legal Consultative Committee (1977 session only)  
Commonwealth Secretariat  
Council of Europe

12. The Conference elected Mr. Karl Zemanek (Austria) as President.

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

14. The following committees were set up by the Conference:

#### *General Committee*

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

#### *Committee of the Whole*

*Chairman:* Mr. Fuad Riad (Egypt)  
*Vice-Chairman:* Mr. Jean-Pierre Ritter (Switzerland)  
*Rapporteur:* Mr. Abdul Hakim Tabibi (Afghanistan) (1977 session)  
Mrs. Kuljit Thakore (India) (resumed session)

#### *Drafting Committee*

*Chairman:* Mr. Mustapha Kamil Yasseen (United Arab Emirates)

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

The Rapporteur of the Committee of the Whole participated *ex officio* in the work of the Drafting Committee in accordance with rule 47 of the rules of procedure of the Conference.

#### *Credentials Committee*

*Chairman:* Mr. José Sette Câmara (Brazil)  
*Members:* The representatives of Brazil; Chile; Germany, Federal Republic of; Nigeria; Philippines; Qatar; Sudan; Sweden and Union of Soviet Socialist Republics.

15. Sir Francis A. Vallat, the International Law Commission's latest Special Rapporteur on Succession of States in respect of treaties, was the Expert Consultant.

16. The Secretary-General of the United Nations was represented by M. Erik Suy, Under-Secretary-General, The Legal Counsel. Mr. Yuri M. Rybakov, then Director of the Codification Division of the Office of Legal Affairs of the United Nations, was the Executive Secretary of the Conference at the 1977 session. At the resumed session, Mr. Valentin A. Romanov, Director of the Codification Division of the Office of Legal Affairs of the United Nations, was the Executive Secretary of the Conference. Mr. Santiago Torres Bernárdez was the Deputy Executive Secretary of the Conference.

17. The General Assembly, by its resolution 31/18 of 24 November 1976, referred to the Conference as the basic proposal for its consideration the draft articles on succession of States in respect of treaties adopted by the International Law Commission at its twenty-sixth session.

18. The Conference also had before it written comments of Governments on the final draft articles on succession of States in respect of treaties, submitted pursuant to General Assembly resolutions 3315 (XXIX), Part II, and 3496 (XXX), as well as comments made orally on the draft articles in the Sixth Committee of the General Assembly at the General Assembly's twenty-ninth and thirtieth sessions. The comments were contained in an analytical compilation prepared by the Secretariat of the

United Nations (A/CONF.80/5 and Corr.1). In addition, the Conference had before it other relevant documentation prepared by the Secretariat of the United Nations.

19. The Conference assigned to the Committee of the Whole the consideration of the draft articles on succession of States in respect of treaties adopted by the International Law Commission. The Drafting Committee, in addition to its responsibilities for drafting and for co-ordinating and reviewing all the texts adopted, was entrusted by the Conference with the preparation of the title, preamble and final clauses of the Convention, and the Final Act of the Conference.

20. On the basis of the deliberations recorded in the records of the Conference (A/CONF.80/SR.1 to SR.15), and the records (A/CONF.80/C.1/SR.1 to SR. 57) and reports (A/CONF.80/14 and 30) of the Committee of the Whole, the Conference drew up the following Convention:

*Vienna Convention on Succession of States  
in Respect of Treaties*

21. The foregoing Convention, which is subject to ratification, was adopted by the Conference on 22 August 1978, and opened for signature on 23 August 1978, in accordance with its provisions, until 28 February 1979 at the Federal Ministry for Foreign Affairs of the Republic of Austria and, subsequently, until 31 August 1979, at United Nations Headquarters in New York. The same instrument

was also opened for accession in accordance with its provisions,

22. After 28 February 1979, the closing date for signature at the Federal Ministry for Foreign Affairs of the Republic of Austria, the Convention will be deposited with the Secretary-General of the United Nations.

23. The Conference also adopted the following resolutions, which are annexed to this Final Act:

*Resolution concerning Namibia*

*Resolution relating to incompatible treaty obligations  
and rights arising from a uniting of States*

*Tribute to the Special Rapporteurs and the Expert  
Consultant*

*Tribute to the International Law Commission*

*Tribute to the People and to the Federal Government of  
Austria*

IN WITNESS WHEREOF the representatives have signed this Final Act.

DONE at Vienna this twenty-third day of August, one thousand nine hundred and seventy-eight, in a single copy in the Arabic, Chinese, English, French, Russian and Spanish languages, each text being equally authentic. By unanimous decision of the Conference, the original of this Final Act shall be deposited in the archives of the Federal Ministry for Foreign Affairs of the Republic of Austria.

## ANNEX

### Resolutions adopted by the United Nations Conference on Succession of States in Respect of Treaties

*Resolution concerning Namibia*

*The United Nations Conference on Succession of States in Respect of Treaties,*

*Taking note* of the statement made by the Chairman of the delegation of the United Nations Council for Namibia during the resumed session of the Conference,<sup>a</sup>

*Taking into account* United Nations General Assembly resolution 2145 (XXI) of 27 October 1966, by which the General Assembly decided to terminate the Mandate of South Africa over Namibia and by which the United Nations assumed direct responsibility for the Territory until independence, and General Assembly resolution 2248 (S-V) of 19 May 1967, by which the United Nations Council for Namibia was established and entrusted with the responsibility of administering the Territory until independence,

*Recalling* the advisory opinion of the International Court of Justice of 21 June 1971 which declared that the continued presence of South Africa in Namibia being illegal, South Africa is under obligation to withdraw its administration from the Territory and thus put an end to its illegal occupation of the Territory,

*Further recalling* the relevant resolutions of the United Nations, in particular Security Council resolutions 385 (1976) which reaffirmed the territorial integrity and unity of Namibia and 432 (1978) which took note of paragraph 7 of General Assembly resolution 32/9 D (1977) declaring that Walvis Bay is an integral part of Namibia,

*Resolves* that the relevant articles of the Vienna Convention on Succession of States in Respect of Treaties shall be interpreted, in the case of Namibia, in conformity with United Nations resolutions on the question of Namibia;

*Further resolves* that South Africa is not the predecessor State of the future independent State of Namibia.

*Resolution relating to Incompatible Treaty Obligations  
and Rights arising from a Uniting of States*

*The United Nations Conference on Succession of States in Respect of Treaties,*

*Considering* that a uniting of States may give rise to incompatible obligations and rights as a result of the differing treaty régimes applicable to the two or more States which unite,

*Recognizing* the desirability of resolving such questions through a process of consultation and negotiation,

*Recommends* that if a uniting of States gives rise to incompatible obligations or rights under treaties, the successor State and the other

<sup>a</sup> See *Official Records of the United Nations Conference on Succession of States in Respect of Treaties*, vol. II, *Summary records of the plenary meetings and of the meetings of the Committee of the Whole* (United Nations publication, Sale No. E.79.V.10), pp. 41-42, 38th meeting, paras. 62-70.

States parties to the treaties in question make every effort to resolve the matter by mutual agreement.

**Tribute to the Special Rapporteurs and the Expert Consultant**

*The United Nations Conference on Succession of States in Respect of Treaties.*

*Having adopted* the Vienna Convention on Succession of States in Respect of Treaties on the basis of the draft articles prepared by the International Law Commission,

*Resolves* to express to Sir Humphrey Waldock, Special Rapporteur of the International Law Commission, and to Sir Francis Vallat, Special Rapporteur of the International Law Commission and Expert Consultant to the Conference, its deep appreciation of the invaluable contribution they have made to the codification and progressive development of the rules of international law on succession of States in respect of treaties.

**Tribute to the International Law Commission**

*The United Nations Conference on Succession of States in Respect of Treaties,*

*Having adopted* the Vienna Convention on Succession of States in Respect of Treaties on the basis of the draft articles prepared by the International Law Commission,

*Resolves* to express its deep gratitude to the International Law Commission for its outstanding contribution to the codification and progressive development of the law of succession of States in respect of treaties.

**Tribute to the People and to the Federal Government of Austria**

*The United Nations Conference on Succession of States in Respect of Treaties,*

*Having adopted* the Vienna Convention on Succession of States in Respect of Treaties,

*Expresses its deep appreciation and gratitude* to the People and the Federal Government of Austria for having made possible the holding of the Conference in Vienna and for their continued and most generous hospitality which contributed greatly to the successful completion of the work of the Conference.

**VIENNA CONVENTION  
ON SUCCESSION OF STATES  
IN RESPECT OF TREATIES**

**(Document A/CONF.80/31\*)**

---

\* Incorporating document A/CONF.80/31/Corr.2.



*The States Parties to the present Convention,*

*Considering* the profound transformation of the international community brought about by the decolonization process,

*Considering also* that other factors may lead to cases of succession of States in the future,

*Convinced*, in these circumstances, of the need for the codification and progressive development of the rules relating to succession of States in respect of treaties as a means for ensuring greater juridical security in international relations,

*Noting* that the principles of free consent, good faith and *pacta sunt servanda* are universally recognized,

*Emphasizing* that the consistent observance of general multilateral treaties which deal with the codification and progressive development of international law and those the object and purpose of which are of interest to the international community as a whole is of special importance for the strengthening of peace and international co-operation,

*Having in mind* the principles of international law embodied in the Charter of the United Nations, such as the principles of the equal rights and self-determination of peoples, of the sovereign equality and independence of all States, of non-interference in the domestic affairs of States, of the prohibition of the threat or use of force, and of universal respect for, and observance of, human rights and fundamental freedoms for all,

*Recalling* that respect for the territorial integrity and political independence of any State is required by the Charter of the United Nations,

*Bearing in mind* the provisions of the Vienna Convention on the Law of Treaties of 1969,

*Bearing also in mind* article 73 of that Convention,

*Affirming* that questions of the law of treaties other than those that may arise from a succession of States are governed by the relevant rules of international law, including those rules of customary international law which are embodied in the Vienna Convention on the Law of Treaties of 1969,

*Affirming* that the rules of customary international law will continue to govern questions not regulated by the provisions of the present Convention,

*Have agreed* as follows:

## Part I. General provisions

### 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.

### Article 2. Use of terms

1. For the purposes of the present Convention:

(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;

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

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

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

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

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

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

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

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

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

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

(n) "international organization" means an inter-governmental organization.

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

### *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. 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 6. Cases of succession of States covered by the present Convention*

The present Convention applies 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.

### *Article 7. Temporal application of the present Convention*

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

2. A successor State may, at the time of expressing its consent to be bound by the present convention or at any time thereafter, make a declaration that it will apply the provisions of the Convention in respect of its own succession of States which has occurred before the entry into force of the Convention in relation to any other contracting State or State Party to the Convention which makes a declaration accepting the declaration of the successor State. Upon the entry into force of the Convention as between the States making the declarations or upon the making of the declaration of acceptance, whichever occurs later, the provisions of the Convention shall apply to the effects of the succession of States as from the date of that succession of States.

3. A successor State may at the time of signing or of expressing its consent to be bound by the present Convention make a declaration that it will apply the provisions of the Convention provisionally in respect of its own succession of States which has occurred before the entry into force of the Convention in relation to any other signatory or contracting State which makes a declaration accepting the declaration of the successor State; upon the making of the declaration of acceptance, those provisions shall apply provisionally to the effects of the succession of States as between those two States as from the date of that succession of States.

4. Any declaration made in accordance with paragraph 2 or 3 shall be contained in a written notification communicated to the depositary, who shall inform the Parties and the States entitled to become Parties to the present Convention of the communication to him of that notification and of its terms.

### *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 by reason 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.

*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 by reason 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.

*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 to the treaty, 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 to the treaty, that 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. 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.

*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.

3. The provisions of the present article do not apply to treaty obligations of the predecessor State providing for the establishment of foreign military bases on the territory to which the succession of States relates.

*Article 13. The present Convention and permanent sovereignty over natural wealth and resources*

Nothing in the present Convention shall affect the principles of international law affirming the permanent sovereignty of every people and every State over its natural wealth and resources.

*Article 14. 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.

**Part II. Succession in respect of part of territory**

*Article 15. 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.

**Part III. Newly independent States**

**SECTION 1. GENERAL RULE**

*Article 16. 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.

**SECTION 2. MULTILATERAL TREATIES**

*Article 17. 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 18. 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 19. 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 20. 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 17 or 18, 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 17 or 18, 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 to 23 of the Vienna Convention on the Law of Treaties apply in respect of that reservation.

*Article 21. Consent to be bound by part of a treaty and choice between differing provisions*

1. When making a notification of succession under article 17 or 18 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 expressed or choice made by itself or by the predecessor State in respect of the territory to which the succession of States 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 22. Notification of succession*

1. A notification of succession in respect of a multi-lateral treaty under article 17 or 18 shall be made in writing.

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

3. Unless the treaty otherwise provides, the notification 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 is received by the depositary, or, if there is no depositary on the date on which it is 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 connection therewith by the newly independent State.

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

#### *Article 23. 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 17 or article 18, 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 in so far as that treaty may be applied provisionally in accordance with article 27 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 18, paragraph 1, shall be considered a contracting State to the treaty from the date on which the notification of succession is made.

### SECTION 3. BILATERAL TREATIES

#### *Article 24. 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 25. The position as between the predecessor State and the newly independent State*

A treaty which under article 24 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 being in force also in the relations between the predecessor State and the newly independent State.

#### *Article 26. Termination, suspension of operation or amendment of the treaty as between the predecessor State and the other State party*

1. When under article 24 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 24 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 24 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.

#### SECTION 4. PROVISIONAL APPLICATION

##### *Article 27. 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 17, 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 17, 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 28. 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 29. Termination of provisional application*

1. Unless the treaty otherwise provides or it is otherwise agreed, the provisional application of a multilateral treaty under article 27 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 17, 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 28 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 of 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 27 shall be terminated if the newly independent State gives notice of its intention not to become a party to the treaty.

#### SECTION 5. NEWLY INDEPENDENT STATES FORMED FROM TWO OR MORE TERRITORIES

##### *Article 30. Newly independent States formed from two or more territories*

1. Articles 16 to 29 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 17, 18 or 24 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 17, paragraph 3, or under article 18, 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 17, paragraph 3, or 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; 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 19 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 19, 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 19, paragraph 4, the newly independent State and the other States parties or, as the case may be, the other contracting States otherwise agree.

#### Part IV. Uniting and separation of States

##### *Article 31. Effects of a uniting of States in respect of treaties in force at the date of the succession of States*

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

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

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

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

(a) in the case of a multilateral treaty not falling within the category mentioned in article 17, paragraph 3, the successor State makes a notification that the treaty shall apply in respect of its entire territory;

(b) in the case of a multilateral treaty falling within the category mentioned in article 17, paragraph 3, the successor State and the other States parties otherwise agree; or

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

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

##### *Article 32. Effects of a uniting of States in respect of treaties not in force at the date of the succession of States*

1. Subject to paragraphs 3 and 4, a successor State falling under article 31 may, by making a notification, establish its status as a contracting State to a multilateral treaty which is not in force if, at the date of the succession of States, any of the predecessor States was a contracting State to the treaty.

2. Subject to paragraphs 3 and 4, a successor State falling under article 31 may, by making a notification, establish its status as a party to a multilateral treaty which enters into force after the date of the succession of States if, at that date, any of the predecessor States was a contracting State to the treaty.

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

4. If the treaty is one falling within the category mentioned in article 17, paragraph 3, the successor State may establish its status as a party or as a contracting State to the treaty only with the consent of all the parties or of all the contracting States.

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

(a) in the case of a multilateral treaty not falling within the category mentioned in article 17, paragraph 3, the successor State indicates in its notification made under paragraph 1 or 2 that the treaty shall apply in respect of its entire territory; or

(b) in the case of a multilateral treaty falling within the category mentioned in article 17, paragraph 3, the successor State and all the parties or, as the case may be, all the contracting States otherwise agree.

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

of the treaty or would radically change the conditions for its operation.

*Article 33. Effects of a uniting of States in respect of treaties signed by a predecessor State subject to ratification, acceptance or approval*

1. Subject to paragraphs 2 and 3, if before the date of the succession of States one of the predecessor States had signed a multilateral treaty subject to ratification, acceptance or approval, a successor State falling under article 31 may ratify, accept or approve the treaty as if it had signed that treaty and may thereby become a party or a contracting State to it.

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

3. If the treaty is one falling within the category mentioned in article 17, paragraph 3, the successor State may become a party or a contracting State to the treaty only with the consent of all the parties or of all the contracting States.

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

(a) in the case of a multilateral treaty not falling within the category mentioned in article 17, paragraph 3, the successor State when ratifying, accepting or approving the treaty gives notice that the treaty shall apply in respect of its entire territory;

(b) in the case of a multilateral treaty falling within the category mentioned in article 17, paragraph 3, the successor State and all the parties or, as the case may be, all the contracting States otherwise agree.

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

*Article 34. Succession of States in cases of separation of parts of a State*

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

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

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

2. Paragraph 1 does not apply if:

(a) the States concerned otherwise agree; or

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

*Article 35. Position if a State continues after separation of part of its territory*

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

(a) the States concerned otherwise agree;

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

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

*Article 36. Participation in treaties not in force at the date of the succession of States in cases of separation of parts of a State*

1. Subject to paragraphs 3 and 4, a successor State falling under article 34, paragraph 1, may, by making a notification, establish its status as a contracting State to a multilateral treaty which is not in force if, at the date of the succession of States, the predecessor State was a contracting State to the treaty in respect of the territory to which the succession of States relates.

2. Subject to paragraphs 3 and 4, a successor State falling under article 34, paragraph 1, may, by making a notification, establish its status as a party to a multilateral treaty which enters into force after the date of the succession of States if at that date the predecessor State was a contracting State to the treaty in respect of the territory to which the succession of States relates.

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

4. If the treaty is one falling within the category mentioned in article 17, paragraph 3, the successor State may establish its status as a party or as a contracting State to the treaty only with the consent of all the parties or of all the contracting States.

*Article 37. Participation in cases of separation of parts of a State in treaties signed by the predecessor State subject to ratification, acceptance or approval*

1. Subject to paragraphs 2 and 3, if before the date of the succession of States the predecessor State had signed



a multilateral treaty subject to ratification, acceptance or approval and the treaty, if it had been in force at that date, would have applied in respect of the territory to which the succession of States relates, a successor State falling under article 34, paragraph 1, may ratify, accept or approve the treaty as if it had signed that treaty and may thereby become a party or a contracting State to it.

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

3. If the treaty is one falling within the category mentioned in article 17, paragraph 3, the successor State may become a party or a contracting State to the treaty only with the consent of all the parties or of all the contracting States.

#### *Article 38. Notifications*

1. Any notification under articles 31, 32 or 36 shall be made in writing.

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

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

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

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

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

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

### **Part V. Miscellaneous provisions**

#### *Article 39. Cases of State responsibility and outbreak of hostilities*

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

#### *Article 40. Cases of military occupation*

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

### **Part VI. Settlement of disputes**

#### *Article 41. Consultation and negotiation*

If a dispute regarding the interpretation or application of the present Convention arises between two or more Parties to the Convention, they shall, upon the request of any of them, seek to resolve it by a process of consultation and negotiation.

#### *Article 42. Conciliation*

If the dispute is not resolved within six months of the date on which the request referred to in article 41 has been made, any party to the dispute may submit it to the conciliation procedure specified in the Annex to the present Convention by submitting a request to that effect to the Secretary-General of the United Nations and informing the other party or parties to the dispute of the request.

#### *Article 43. Judicial settlement and arbitration*

Any State at the time of signature or ratification of the present Convention or accession thereto or at any time thereafter, may, by notification to the depositary, declare that, where a dispute has not been resolved by the application of the procedures referred to in articles 41 and 42, that dispute may be submitted for a decision to the International Court of Justice by a written application of any party to the dispute, or in the alternative to arbitration, provided that the other party to the dispute has made a like declaration.

#### *Article 44. Settlement by common consent*

Notwithstanding articles 41, 42 and 43, if a dispute regarding the interpretation or application of the present Convention arises between two or more Parties to the Convention, they may by common consent agree to submit it to the International Court of Justice, or to arbitration, or to any other appropriate procedure for the settlement of disputes.

#### *Article 45. Other provisions in force for the settlement of disputes*

Nothing in articles 41 to 44 shall affect the rights or obligations of the Parties to the present Convention under any provisions in force binding them with regard to the settlement of disputes.

### **Part VII. Final provisions**

#### *Article 46. Signature*

The present Convention shall be open for signature by all States until 28 February 1979 at the Federal Ministry

for Foreign Affairs of the Republic of Austria, and subsequently, until 31 August 1979, at United Nations Headquarters in New York.

#### *Article 47. Ratification*

The present Convention is subject to ratification. The instruments of ratification shall be deposited with the Secretary-General of the United Nations.

#### *Article 48. Accession*

The present Convention shall remain open for accession by any State. The instruments of accession shall be deposited with the Secretary-General of the United Nations.

#### *Article 49. Entry into force*

1. The present Convention shall enter into force on the thirtieth day following the date of deposit of the fifteenth instrument of ratification or accession.

2. For each State ratifying or acceding to the Convention after the deposit of the fifteenth instrument of ratification or accession, the Convention shall enter into force on the thirtieth day after deposit by such State of its instrument of ratification or accession.

#### *Article 50. Authentic texts*

The original of the present Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

IN WITNESS WHEREOF the undersigned Plenipotentiaries, being duly authorized thereto by their respective Governments, have signed the present Convention.

DONE at Vienna, this twenty-third day of August, one thousand nine hundred and seventy-eight.

### ANNEX

1. A list of conciliators consisting of qualified jurists shall be drawn up and maintained by the Secretary-General of the United Nations. To this end, every State which is a Member of the United Nations or a Party to the present Convention shall be invited to nominate two conciliators, and the names of the persons so nominated shall constitute the list. The term of a conciliator, including that of any conciliator nominated to fill a casual vacancy, shall be five years and may be renewed. A conciliator whose term expires shall continue to fulfil any function for which he shall have been chosen under the following paragraph.

2. When a request has been made to the Secretary-General under article 42, the Secretary-General shall bring the dispute before a conciliation commission constituted as follows:

The State or States constituting one of the parties to the dispute shall appoint:

(a) one conciliator of the nationality of that State or of one of those States, who may or may not be chosen from the list referred to in paragraph 1; and

(b) one conciliator not of the nationality of that State or of any of those States, who shall be chosen from the list.

The State or States constituting the other party to the dispute shall appoint two conciliators in the same way. The four conciliators chosen by the parties shall be appointed within sixty days following the date on which the Secretary-General receives the request.

The four conciliators shall, within sixty days following the date of the appointment of the last of them, appoint a fifth conciliator chosen from the list, who shall be chairman.

If the appointment of the Chairman or of any of the other conciliators has not been made within the period prescribed above for such appointment, it shall be made by the Secretary-General

within sixty days following the expiry of that period. The appointment of the Chairman may be made by the Secretary-General either from the list or from the membership of the International Law Commission. Any of the periods within which appointments must be made may be extended by agreement between the parties to the dispute.

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

3. The Conciliation Commission shall decide its own procedure. The Commission, with the consent of the parties to the dispute, may invite any Party to the present Convention to submit to it its views orally or in writing. Decisions and recommendations of the Commission shall be made by a majority vote of the five members.

4. The Commission may draw the attention of the parties to the dispute to any measures which might facilitate an amicable settlement.

5. The Commission shall hear the parties, examine the claims and objections, and make proposals to the parties with a view to reaching an amicable settlement of the dispute.

6. The Commission shall report within twelve months of its constitution. Its report shall be deposited with the Secretary-General and transmitted to the parties to the dispute. The report of the Commission, including any conclusions stated therein regarding the facts or questions of law, shall not be binding upon the parties and it shall have no other character than that of recommendations submitted for the consideration of the parties in order to facilitate an amicable settlement of the dispute.

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

### كيفية الحصول على منشورات الأمم المتحدة

يمكن الحصول على منشورات الأمم المتحدة من المكتبات ودور التوزيع في جميع أنحاء العالم . استلم منها من المكتبة التي تتعامل معها أو اكتب إلى الأمم المتحدة ، قسم البيع في نيويورك أو في جنيف .

#### 如何购取联合国出版物

联合国出版物在全世界各地的书店和经售处均有发售。请向书店询问或写信到纽约或日内瓦的联合国销售组。

#### HOW TO OBTAIN UNITED NATIONS PUBLICATIONS

United Nations publications may be obtained from bookstores and distributors throughout the world. Consult your bookstore or write to: United Nations, Sales Section, New York or Geneva.

#### COMMENT SE PROCURER LES PUBLICATIONS DES NATIONS UNIES

Les publications des Nations Unies sont en vente dans les librairies et les agences dépositaires du monde entier. Informez-vous auprès de votre libraire ou adressez-vous à : Nations Unies, Section des ventes, New York ou Genève.

#### КАК ПОЛУЧИТЬ ИЗДАНИЯ ОРГАНИЗАЦИИ ОБЪЕДИНЕННЫХ НАЦИЙ

Издания Организации Объединенных Наций можно купить в книжных магазинах и агентствах во всех районах мира. Наводите справки об изданиях в вашем книжном магазине или пишите по адресу: Организация Объединенных Наций, Секция по продаже изданий, Нью-Йорк или Женева.

#### COMO CONSEGUIR PUBLICACIONES DE LAS NACIONES UNIDAS

Las publicaciones de las Naciones Unidas están en venta en librerías y casas distribuidoras en todas partes del mundo. Consulte a su librero o diríjase a: Naciones Unidas, Sección de Ventas, Nueva York o Ginebra.

## **ANNEX 16**

# Evidence in International Arbitration

Robert Pietrowski

## Author

› Robert Pietrowski

## Source

› Robert Pietrowski,  
**Evidence in International Arbitration**, Arbitration International, (© LCIA; Kluwer Law International 2006, Volume 22 Issue 3) pp. 373 – 410

(\*)


The Parties may present any proof that they judge useful, and the Court is entirely free to take the evidence into account to the extent that it deems it pertinent.<sup>(1)</sup>

M. Huber

IN MANY respects Judge Huber's statement, made in 1925 in connection with the amendment of the rules of the Permanent Court of International Justice,<sup>(2)</sup> still holds true today with respect to much of the practice and procedure relating to evidence in international arbitration. Subject to the principle that arbitrations should be conducted in an orderly and efficient manner that ensures equal treatment of the parties, the parties to an international arbitration are generally free to submit any evidence they wish in order to prove the facts necessary to establish their respective cases. It is within the discretion of the tribunal to evaluate the evidence submitted.

## 1. The Evolution of Common Principles and Rules

The purpose of evidence in proceedings before international arbitral tribunals, as in proceedings before municipal courts, is to assist the tribunal in determining the truth as to disputed issues of fact. Like municipal courts, international tribunals have rules of procedure that govern the submission of evidence and its evaluation by the tribunal. Such rules, however, are less restrictive than those typically found in municipal law systems.

International arbitration may occur between sovereign states (or other international persons), between a sovereign state and a private party or, as is  page "373" usually the case in international commercial arbitrations, between private parties. The conduct of the arbitration may be governed by international law, by municipal law – that is, the 'national' or 'local' law of the place of the arbitration – or by some combination thereof. Regardless of the nature of the parties and the law applicable to the arbitration, certain principles and rules pertaining to evidence will in principle be applicable to any arbitration. These principles and rules have evolved from the process of international arbitration over the past two centuries. They have been agreed to in numerous bilateral arbitration treaties and *compromis* and have been codified in various multilateral conventions, model laws and model rules, and in the rules of international organizations and institutions, such that they are now generally applicable to all international arbitrations unless the parties agree otherwise.

This is not to say that there is uniformity in the treatment of evidence in international arbitration. Clearly, such is not the case. For example, a tribunal is less likely to order the production of evidence in an arbitration between states than in a commercial arbitration between private parties, due to the respect accorded the dignity of sovereign states.<sup>(3)</sup> And discovery is likely to be more liberal in an arbitration where the parties, counsel and arbitrators are all from common law jurisdictions than in an arbitration where all of the players are from civil law jurisdictions.

Nevertheless, there are a number of principles and rules of evidence that are generally applicable to all international arbitrations irrespective of the nature of the parties and the law governing the conduct of the arbitration. Thus, regardless of whether the parties are states or private parties and whether the arbitration is governed by international law or municipal law, the procedure of most international tribunals is characterized by an absence of restrictive rules governing the form, submission and admissibility of evidence. The evaluation of the evidence is entirely within the discretion of the tribunal. The proceedings usually consist of a written phase followed by an oral phase. The tribunal has authority to set time limits and make procedural orders. Each party has the burden of proof with respect to the facts necessary to establish its case and is required to produce the evidence upon which it relies for that purpose. In addition, the tribunal in its discretion may order the production of further evidence. Priority is given to documentary evidence, and tribunals generally admit all documents submitted by the parties.



Tribunals also generally admit any testimonial evidence offered by the parties. Affidavits and written witness statements are common in international practice. Oral testimony by witnesses is usually directed by counsel under the control of the tribunal, and is subject to cross-examination by opposing counsel as well as questions by the tribunal. Experts may be called at the instance of the tribunal or the parties to express [page "374"](#) opinions on technical issues or other matters requiring special expertise. Experts are expected to be independent and objective, but the tribunal is not bound by the expert's opinion. The tribunal or its experts may visit the place where the dispute arose to gather evidence or acquaint the tribunal in a general way with the factual background of the case. Certain types of evidence are privileged. The evidence of interested persons is usually admissible. Evidence obtained during settlement negotiations is not.

These procedures and practices represent a combination of features drawn from the common law and the civil law. For example, the freedom from technical, restrictive rules of evidence is derived from the civil law. The common law rules of admissibility concerning competence, relevance and materiality have developed largely in the context of jury trials and thus have no place in international arbitration. The priority given to documentary evidence in international procedure is also derived from the civil law, which has historically been distrustful of oral evidence. In the common law system, facts are generally proved by testimonial evidence and even documentary evidence is usually introduced by oral testimony. Other features of international practice are derived from the common law, such as the practice of allowing witnesses to be examined by counsel and cross-examined by opposing counsel under the direction of the tribunal. In civil law systems, the examination of witnesses is conducted by the tribunal. Also, the use of *ex parte* affidavits and written witness statements is derived from the common law.

Much of this combination of civil law procedures and common law procedures has been codified in such instruments as the UNCITRAL Arbitration Rules, the various arbitration rules of the Permanent Court of Arbitration and the International Bar Association's Rules on the Taking of Evidence in International Commercial Arbitration.

Although these principles and rules of evidence are generally applicable to all international arbitrations, the reported case law discussing these principles and rules consists principally of awards in arbitrations between states and arbitrations between states and private parties. This is because international commercial arbitration remains largely a confidential process. Most international commercial arbitration awards are not published or are published in a redacted format. As Pierre Lalive has observed:

The confidential character of arbitrations, together with their multiplicity and variety, constitutes a tremendous obstacle to a true knowledge of the subject. We must be aware of the fact that our experience is necessarily limited and our data partial.<sup>(4)</sup>

Arbitrations between states, on the other hand, as well as arbitrations between states and private parties, are not generally confidential and the awards in such arbitrations are usually published. These awards contain a wealth of jurisprudence [page "375"](#) concerning the procedural law applicable to international arbitration, including the law of evidence, and are often referred to by tribunals in international commercial arbitrations.

The use of arbitration to resolve disputes between states can be traced back to ancient Greece, while commercial arbitration between private parties originated in the guilds and trade associations of medieval Europe. The process of arbitration as we know it today, however, is generally considered to have begun with the Jay Treaty of 1794, which provided for the arbitration of certain disputes between Great Britain and the USA. The Jay Treaty provided for the establishment of three mixed commissions and contained provisions concerning the appointment and replacement of commissioners; the appointment of agents as intermediaries between the parties and the tribunal; the taking of evidence, both documentary and testimonial; the evaluation of evidence; the applicable law; authentication of documents; decisions by majority vote; and the final and binding nature of the commissions' decisions. As Ralston observed in his classic work on the history of arbitration:

The modern era of arbitral or judicial settlement of international disputes, by common accord among all writers upon the subject, dates from the signing on November 19, 1794, of the Jay Treaty between Great Britain and the United States. Prior to this time arbitrations were irregular and spasmodic; from this