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62. His delegation would have great difficulty in agreeing to the United Kingdom amendment, on account of its subparagraph (*b*).

63. Mr. YANGO (Philippines) said that his delegation supported the text of article 10 of the draft *in toto*.

64. In his delegation's view, the United Kingdom amendment did not match paragraph 2 in either content or style. With regard to subparagraph (*b*) of that amendment, his delegation had serious reservations about the possibility of assessing conduct, and the French delegation's oral amendment did not clarify the matter. His delegation would therefore vote against adoption of the United Kingdom amendment.

65. Mr. KAPETANOVIĆ (Yugoslavia) said that his delegation too would support the International Law Commission's text of article 10 as it stood, for reasons stated by other delegations. It would have to vote against adoption of the United Kingdom amendment for two reasons. First, the text was too flexible, which meant that it would be open to subjective interpretation; secondly, its application could give rise to difficulties for some States, whose constitutional law might provide unconditionally that acceptances of the kind in question must be given in writing.

66. The CHAIRMAN invited the Committee to vote on the United Kingdom amendment (A/CONF.80/C.1/L.14), taking the two subparagraphs separately, as suggested by the United States representative.

Subparagraph (a) of the United Kingdom amendment was rejected by 32 votes to 24, with 16 abstentions.

Subparagraph (b) of the United Kingdom amendment, as orally amended, was rejected by 45 votes to 13, with 18 abstentions.

67. The CHAIRMAN said that, if there was no objection, he would take it that the Committee of the Whole provisionally adopted the text of draft article 10 and referred it to the Drafting Committee for consideration.

It was so agreed.[17]

The meeting rose at 6.05 p.m.

[17] For resumption of the discussion of article 10, see 31st meeting, paras. 25-42.

17th MEETING

Tuesday, 19 April 1977, at 11 a.m.

Chairman: Mr. RIAD (Egypt)

Consideration of the question of succession of States in respect of treaties in accordance with resolutions 3496 (XXX) and 31/18 adopted by the General Assembly on 15 December 1975 and 24 November 1976
[Agenda item 11] (*continued*)

PROPOSED NEW ARTICLE 9 *bis* (Consequences of a succession of States as regards the predecessor State) (*continued*)[1]

1. Mr. YANEZ-BARNUEVO (Spain) said that the new version of article 9 *bis* submitted by the United Kingdom (A/CONF.80/C.1/L.13/Rev.1) contained important changes which took account of the reservations of the representatives of Guyana[2] and the United Republic of Tanzania[3] and the suggestions of the representatives of Brazil[4] and France.[5] He therefore supported the new proposal which, in his opinion, filled a lacuna in the draft articles.

2. Mr. RANJEVA (Madagascar) appreciated the efforts of the United Kingdom to correct the imperfections of the first proposal, but was afraid that the new article 9 *bis* might be a source of confusion, since the article called in question the whole principle of the "clean slate" and the fact raised more problems than it solved.

3. The revised version of article 9 *bis* showed that the problem posed by the article was one of substance and not of form, as had been clearly pointed out by the representatives of the United Republic of Tanzania and Sweden. It was difficult to represent the provision of article 9 *bis* as a corollary of the "clean slate" principle, since, in so far as the convention allowed for different types of succession of States, there should be special machinery governing each type of succession and consequently special rules. He therefore doubted the usefulness of including article 9 *bis* in the draft convention.

4. Moreover, he was afraid that sanction of the "clean slate" principle with regard to the predecessor State might lead to two essential difficulties. It might be asked what would happen in law if, faced with the legal disappearance of the rights and obligations of the predecessor State, the successor State were to be confronted in practice with situations arising out of

[1] For the amendment submitted to proposed new article 9 *bis*, see 15th meeting, foot-note 4

[2] See above, 15th meeting, para. 21.

[3] See above, 15th meeting, para. 34.

[4] See above, 15th meeting, para. 24.

[5] See above, 15th meeting, para. 29.

the rights and obligations assumed by the predecessor State. It might also be asked what was the exact meaning of the words: "events or situations occurring thereafter". What would happen in the case of events or situations which occurred after the date of succession of States but whose origin was prior to that date—in the case, for example, of repayment of debts incurred by the predecessor State in respect of the territory before the succession of States? As a result of such difficulties, his delegation could not support article 9 *bis*.

5. Mr. SHAHABUDDEEN (Guyana) warned members of the Committee against the temptation of adopting, in the name of the sacrosanct principle of sovereignty of a newly independent State, any proposal asserting that the treaty obligations and rights of the administering Power in respect of the territory of the new State should automatically and instantly cease on the date of the succession of States. There was a case for making a distinction in that context between the treaty rights and the treaty obligations of the predecessor State, since it was the continuance of the treaty rights of the predecessor State in respect of the territory of the newly independent State which were really incompatible with the sovereignty of that State.

6. He did not see why, after centuries of imperial stewardship, the predecessor State should, on the emergence of the newly independent State, necessarily be regarded as instantly absolved from any further treaty obligations in respect of the territory of the new State. In most cases, no doubt, that would be the position adopted, but not in all. The continuance of the treaty obligations of the predecessor State in respect of the territory of the newly independent State was not necessarily inconsistent with the sovereignty of the new State, as was illustrated by the Agreement to resolve the controversy between Venezuela and the United Kingdom of Great Britain and Northern Ireland over the frontier between Venezuela and British Guiana, concluded by the United Kingdom and Venezuela, in consultation with the Government of British Guiana, and signed at Geneva in 1966.[6] Conceivably the continuance of such obligations might be very pertinent to the viability of the new State, far from being an afront to its sovereignty.

7. The fact that independence freed the colony of the political control of the predecessor State did not necessarily have the consequence of freeing the predecessor State of all its treaty obligations for the territory of the new State. However reciprocal such a consequence might appear to be, it was not compelled by any inherent logic in the situation. It should be borne in mind that the political situation resulting from the decolonization process was altogether different from the classical situation involved in the exchange of territories between long-established States. It was the latter situation which constituted the origin and natural context of the principle of moving treaty-frontiers. There, territory was passing from the control of one established sovereign State to another; it was not the welfare of the inhabitants of the territory which was of primary concern but the geopolitical considerations at the root of the continuing rivalries which opposed the Powers involved. In the context of decolonization, on the other hand, territory and people were passing out of the trusteeship of imperial authority into a separate and independent existence. For that reason the Conference should be slow to apply the rule of moving treaty-frontiers, in all its finality, to the particular phenomenon of decolonization, since the rule had originated in extremely different circumstances and was at present being applied to situations arising out of the new principle of self-determination.

8. His delegation felt that the arguments marshalled in support of the United Kingdom proposal were, in the last analysis, based on mere considerations of symmetry. Symmetry, however, should not be sought for its own sake, for if a rule was appropriate in the case of a newly independent State, its corollary was not necessarily justified in the case of the predecessor State. The value of a rule depended on the situation to which it applied and not on some *a priori* principle developed in a different context. The Commission had expressed great caution with regard to application of the moving treaty-frontiers rule contained in article 14. Far from applying the principle to the case of newly independent States, it had stated, in paragraph (1) of its commentary on article 14 that the article concerned "cases which do not involve a union of States or merger of one State with another, and equally do not involve the emergence of a newly independent State" (A/CONF.80/4, p. 49). In his opinion the Conference should exercise the same restraint in the matter as the International Law Commission. He therefore could not support article 9 *bis* proposed by the United Kingdom, either in its original or its revised form.

9. The CHAIRMAN put to the vote article 9 *bis* as proposed by the United Kingdom in document A/CONF.80/C.1/L.13/Rev.1.

Article 9 bis *was rejected by 32 votes to 13, with 32 abstentions.*

ARTICLE 11 (Boundary régimes)[7]

10. Mr. TABIBI (Afghanistan) said that the matter of territorial régimes, dealt with in articles 11 and 12, was "at once important, complex and controversial" as the International Law Commission had stated in paragraph (1) of its commentary on articles 11 and 12 (A/CONF.80/4, p. 38). The International Law Commission had further stated in paragraph (2) of its commentary that "in general [...] the diversity of the

[6] United Nations, *Treaty Series*, vol. 561, p. 323.

[7] The following amendment was submitted: Afghanistan, A/CONF.80/C.1/L.24 (to articles 11 and 12).

opinions of writers makes it difficult to find in them clear guidance as to what extent and upon what precise basis international law recognizes that treaties of a territorial character constitute a special category for the purposes of the law applicable to succession of States" (*ibid.*). Because of the complexity of territorial régimes, as acknowledged by the International Law Commission, Afghanistan since 1962 had adopted a very cautious approach to the question in the General Assembly, and he himself, as a member of the first Sub-Committee on the Succession of States and Governments, had repeatedly requested the Commission not to formulate rules which tended to legalize invalid and illegal situations, and would therefore create more obstacles to the solution of numerous territorial disputes currently under negotiation by Member States. He had also followed that cautious approach in his memorandum on the topic of succession of States and Governments to the Sub-Committee on Succession of States and Governments in 1963.[8]

11. The rules in articles 11 and 12 were the result of many years' preparation and discussion by the Governments as well as the International Law Commission and the Sixth Committee of the General Assembly. In his first report on succession of States and Governments in respect of treaties,[9] submitted in 1968, the then Special Rapporteur, Sir Humphrey Waldock, had proposed an article 4 entitled "Boundaries resulting from treaties". In articles 22 and 22 *bis*, which he proposed in 1972 in his fifth report on the succession of States in respect of treaties,[10] he had adopted a somewhat different wording, strongly influenced by article 62 of the Vienna Convention on the Law of Treaties, as he had felt that any rule concerning boundary régimes could only be a restatement of that article. In 1974, when the examination of the draft convention had been in its final stage, the International Law Commission had concluded that, after 15 years of in-depth study it would be dangerous to frame rules which could legalize unlawful treaties. It had therefore introduced the provision contained in article 13 (Questions relating to the validity of a treaty), as article 11 dealt only with the effects of succession as such and did not touch on questions concerning the validity of a treaty. As the boundary régime defined in article 11 was not the only territorial régime, the rule set forth in article 13 had been placed immediately after articles 11 and 12 in order to cover those two articles and the other draft articles whose purpose was the same as those of part V of the Vienna Convention on the Law of Treaties. Consequently, articles 11 and 12 should be examined in conjunction with article 13, as all three articles were closely linked and the provisions of articles 11 and 12 could be misinterpreted without the rule embodied in article 13.

12. In 1974, when submitting the provisions (arts. 29 and 30) now in articles 11 and 12, Sir Francis Vallat had commented that the provisions actually constituted "saving clauses of a limited nature, and no more".[11] The scope of the provisions was limited to the effects of succession and the words "established by a treaty" could only mean "validly established by a valid treaty".[12] The articles obviously referred to "situations lawfully and validly created" and in no way precluded "adjustment by self-determination, negotiation, arbitration or any other method acceptable to the parties concerned".[13] Although the Special Rapporteur's explanations, plus articles 6 and 13 concerning the validity of treaties, were a great improvement on the previous drafts, the Afghan delegation nevertheless still considered that it would be better to delete articles 11 and 12. Afghanistan was a peaceful country with a long-standing policy of non-alignment, strongly in favour of international peace and co-operation and opposed to the violation of agreed frontiers.

13. His delegation was in favour of deleting or merging articles 11 and 12, because it felt that their inclusion in the draft might have the effect of prejudging a boundary dispute where one of the parties challenged colonial or unequal treaties on the basis of the right of self-determination, and that the articles would therefore be prejudicial to the position of newly independent States when challenging a boundary on the grounds that it was established by a treaty which itself was invalid. The argument that articles 11 and 12 were intended to preserve the continuity of a boundary, as being important for maintaining peace, was not a convincing one. If the changing of boundaries could cause disputes, maintaining illegal boundaries against the wishes of border residents would in many cases be a permanent source of tension and friction between States. It was more important that disputes be solved by peaceful means such as direct and friendly negotiations between the parties concerned. The Afghan delegation also considered that the principle of continuity did not mean that boundary treaties, particularly if they were of a colonial and unequal character, should be considered sacred and inviolable.

14. Notwithstanding article III, paragraph 3, of the Charter of the Organization of African Unity,[14] which upheld respect for the sovereignty and territorial integrity of States, article XIX of that same Charter[15] provided for the establishment of a Commission of Mediation, Conciliation and Arbitration to deal with boundary disputes. There were at present many boundary disputes between African States, as there were between States in other parts of the world, that could be solved by peaceful means involving direct

[8] *Yearbook of the International Law Commission, 1963*, vol. II, pp. 284-285, document A/5509, annex II, appendix II.

[9] *Ibid.*, 1968, vol. II, p. 87, document A/CN.4/202.

[10] *Ibid.*, 1972, vol. II, p. 1, document A/CN.4/256 and Add.1-4.

[11] *Ibid.*, 1974, vol. I, p. 204, 1286th meeting, para. 51.

[12] *Ibid.*, para. 53.

[13] *Ibid.*

[14] United Nations, *Treaty Series*, vol. 479, p. 74.

[15] *Ibid.*, p. 80.

negotiations by the parties concerned. It would be dangerous to accept the theory that an unlawful treaty could establish a valid boundary régime. The Conference should not give the impression that it supported invalid boundaries in violation of human rights and the principles of *jus cogens*. It would also be dangerous to recognize purely *de facto* situations, as, in many cases, that might mean recognizing territories which had been occupied by military force. It would be a great mistake to adopt provisions which, despite article 13, could be interpreted in any way as discouraging negotiation, arbitration or any other type of peaceful settlement of disputes.

15. His delegation also had doubts about the interpretation and application of articles 11 and 12 because it was uncertain about the terms "boundary", "frontier", "demarcation line", "zone of influence", "neutral zone" and many others used in that context. As a boundary was not only a geometrical line, but comprised a human element which the term "boundary" did not take into account, it would be better to combine article 11 and article 12 so as to have a single article which covered territorial régimes.

16. It was also uncertain about including articles 11 and 12 in the draft convention, as the question of boundary and territorial régime was outside the scope of succession of States in respect of treaties; it belonged rather to the area of succession in respect of rights and duties resulting from sources other than treaties.

17. In his delegation's opinion articles 11 and 12 were not based on adequate judicial precedents. The cases mentioned in the commentary did not suffice to establish the rules under consideration. The International Law Commission itself had drawn attention to their weaknesses. Most of the examples cited failed to support the rules embodied in articles 11 and 12.

18. Despite the safeguards in articles 6 and 13, his delegation was reluctant to support articles 11 and 12, particularly article 11, and considered that it would be better to delete them. That cautious approach was also supported by the position adopted in 1948 by one of the Special Rapporteurs on the Law of Treaties, Sir Gerard Fitzmaurice.

19. He hoped that the Expert Consultant would confirm that, if the two articles were adopted, they would in no way prejudice the validity of treaties; that in subparagraph (*a*) of article 11 the words "boundary established by a treaty" meant nothing more than "boundary validly established by a valid treaty"; that the obvious intention of the rule was to refer to situations lawfully and validly created; and that there was nothing in the article which in any way precluded adjustment by self-determination, negotiation, arbitration or any other method accepted by neighbouring countries.

20. If, after confirmation of this interpretation, the Conference decided to retain articles 11 and 12, the Afghan delegation would support their combination in a single article entitled "Territorial régimes", as proposed in the amendment submitted in document A/CONF.80/C.1/L.24.

21. Mr. MBACKE (Senegal) stated that article 11 could not fail to be of interest to newly independent States, the boundaries of which had been drawn under agreements concluded by predecessor States without taking account of the interests of the peoples concerned. As a result, families were sometimes separated by a boundary, towns were divided in two, and villagers living on one side of a boundary had their fields on the other side. Regional organizations had turned their attention to the problem and had arrived at a *modus vivendi* by affirming the maintenance of boundaries regardless of such difficulties. In 1964, at Cairo, the Assembly of Heads of State and Government of the Organization of African Unity had adopted resolution 16 (I) according to which "all Member States pledge themselves to respect the borders existing on their achievement of national independence"[16] thus precluding any possibility of disputes on legal grounds.

22. However, the International Law Commission's draft implied that boundaries could not be challenged on grounds of a succession of States but that they might be on other grounds. The States Members of the Organizaion of African Unity were thus placed in a difficult position, since they were bound by the resolution adopted in 1964. Furthermore, the formula "does not as such affect" at the beginning of article 11 was not current legal language. If a State could not invoke a succession of States to dispute a treaty concerning a boundary régime, it might similarly be argued that a State could not invoke a succession of States to maintain a boundary. Thus the wording was ambiguous, although it appeared from a reading of the commentary that the International Law Commission supported the principle that boundaries were sacrosanct. In his view, the wording of article 11 was not rigorous enough.

23. Mr. OSMAN (Somalia) endorsed the views of the representative of Afghanistan on article 11, which touched upon one of the most delicate issues of the law pertaining to the succession of States. Recalling that article 11 had given rise to prolonged discussion at the thirtieth session of the General Assembly and that it created difficulties for many States, as indicated in the commentary of the International Law Commission and the working paper prepared by the Secretariat (A/CONF.80/5 and Corr.1), he made it clear that his own Government also did not support the draft article. In fact, that draft article contained an

[16] OAU, *Resolutions adopted by the Assembly of Heads of State and Government of independent African countries and Resolutions and Declarations adopted by the Assembly of Heads of State and Government, 1963-1972*, Addis Ababa (Ethiopia), 1973, p. 34.

entirely artificial exception to the "clean slate" principle and was not consistent with generally accepted principles of international law and the rules of *jus cogens* laid down in the Charter of the United Nations. Its legal basis was questionable and the International Law Commission itself admitted in its commentary that there was indeed no rule to support the theory that treaties dealing with a boundary régime constituted a special category of treaties.

24. Examining the basis of article 11 as reflected in the Commission's commentary, he said that the precedents and case law referred to by the Commission were not convincing and did not reflect the sentiment of the world community. The cases cited were not connected with the delimitation of a frontier or any territorial arrangement whatsoever and only related to situations which had arisen in the nineteenth century when the international community had been completely different from the contemporary world. Furthermore, the extracts from judgements cited in the commentary were mere *obiter dicta* and as such could not be considered as expressing fundamental principles of international law. The disputes mentioned concerned European countries and the International Law Commission had lamentably failed to substantiate its thesis by reference to the decisions of judicial organs from other regions. Moreover, as the decisions mentioned related to the relationships between a colonial Power and a former dependent country, his delegation regretted that the International Law Commission had placed undue emphasis on the attitude of the former colonial Power. For those reasons, his delegation considered that article 11 as well as article 12 were predominantly influenced by political considerations rather than doctrine. It was no coincidence that those provisions, in line with article 62 of the Vienna Convention on the Law of Treaties, merely reflected and justified the practice followed by the United Kingdom in the eighteenth and nineteenth centuries. Would it not be a setback in the codification of just and equitable principles to support provisions which future generations would regard as transitory? The codification of the exception in the form of a rule embodied in the draft article would violate a fundamental principle inasmuch as it would be prejudicial to the right to self-determination of peoples affected by boundary treaties which dated back to the colonial era and which should be regarded as null and void.

25. He pointed out that although the resolution of the Assembly of Heads of State and Government of the Organization of African Unity referred to[17] did not apply to disputes concerning existing boundaries and territorial régimes, in the course of discussion on that resolution, President Nyerere and President Nkrumah had placed on record that it would provide a mechanism for the resolution of boundary disputes in the future.

[17] See above, para. 21.

26. Summing up, he said that the adoption of the present text of article 11 would have serious consequences for the international community. The rule which it embodied was an artificial one, since it was impossible to separate the delimitation of a boundary from the treaty itself. Article 11 was contrary to the principle of *rebus sic stantibus* and to the right of peoples to self-determination. Nor was it made clear that the article did not apply to treaties involving transfers of territory concluded by colonial Powers and in general to inequitable colonial treaties. Finally, that provision would be prejudicial to peaceful negotiations for the settlement of boundary disputes inherited from the colonial past.

27. In order to promote the peaceful settlement of such disputes, that draft article should be more balanced in form, otherwise it must be deleted. Thus his delegation had serious reservations about the exception established by the rule laid down in articles 11 and 12.

28. Mr. YIMER (Ethiopia) emphasized the importance of article 11, which had already been widely accepted by Governments both in their written observations and in the Sixth Committee of the General Assembly. Its inclusion in the proposed convention would undoubtedly ensure the widespread acceptance of that instrument. Article 11 embodied the most important exception to the "clean slate" principle on which the whole draft was based. No amendment to one of the general provisions, particularly article 7, or any other provision of the draft could reduce the force of that overriding basic exception.

29. The importance of article 11 lay in the fact that it aimed at maintaining international peace and security by reaffirming the principle of respect for the territorial integrity of States as embodied in the Charter of the United Nations and the Charter of the Organization of African Unity. He wondered what would happen if a new State were to repudiate the boundaries it had inherited and were to claim the territory of another State. If such an option were allowed, the principle of the territorial integrity of States would be undermined and international peace and security would be endangered. Recent history provided examples of such action.

30. Clearly, the international community as a whole was against an absolute "clean slate" principle of State succession. Like any other principle of law, it was subject to exceptions, the most important of which being that contained in article 11. That exception had been admitted by most jurists and accepted in State practice. The Organization of African Unity as well as the Conference of Heads of State or Government of Non-Aligned Countries had also accepted it in 1964. But States which had thus confirmed the principle of respect for boundaries existing at the time of independence were precisely those which had inherited boundaries drawn, for the most part, by predecessor States. Yet, they had sought to act in the interests of peace and the stability of boundaries.

31. As the International Law Commission had pointed out in its commentary on article 11, the reasons justifying the provisions of article 62, paragraph 2, subparagraph (*a*) of the Vienna Convention on the Law of Treaties, according to which a fundamental change of circumstances might not be invoked as a ground for terminating a treaty establishing a boundary, were also valid for the article under discussion. The importance of the principle of inviolability of boundaries lay in the fact that article 62 of the Vienna Convention on the Law of Treaties had been one of those adopted by an overwhelming majority. Article 11 did no more than reaffirm the rule set forth in that provision of the Vienna Convention.

32. The arguments based on the principle of self-determination expounded by some delegations in order to rebut the principle embodied in article 11 were irrelevant. He would only point out that, by making the "clean slate" principle the cornerstone of the draft, the International Law Commission had given effect to the principle of self-determination, but had also brought out clearly its limitations by providing for exceptions such as the one in article 11. In view of the existence of article 62 of the Vienna Convention on the Law of Treaties, the deletion of article 11 would create an inconsistency in the codification of international law.

33. In conclusion, he said that the exception to the "clean slate" principle stated in article 11 was so fundamental that no other provision in the draft could be in conflict with it. Thus, the article must be adopted as drafted by the International Law Commission.

34. Mr. SUCHARITKUL (Thailand) requested clarification from the Expert Consultant on the meaning of the terms "régime of the boundary" and "boundary régimes". In its commentary, the International Law Commission gave no further explanation, but merely referred to boundary and other territorial régimes.

35. The Thai delegation did not dispute the need for certainty in international relations regarding frontiers already established by treaties between the parties concerned. It would, however, strongly protest against any suggestion that the frontiers already established could subsequently be altered through the application of a provision in an old treaty which had been abrogated or denounced by either of the contracting parties in accordance with the agreed procedure. Nor could it agree that unequal treaties concluded long before between colonial Powers and an Asian State, and subsequently abrogated, could be revived and invoked by a State claiming to succeed to the treaty rights of those colonial Powers. Thus, a treaty provision which had long been abrogated concerning future changes in a boundary at the expense of an Asian contracting party would be regarded as an unequal provision and, after its effective abrogation, could not be invoked to alter an already well-established boundary. In the Thai delegation's view, a frontier long established by treaty or otherwise should not be altered, regardless of any political provision in a treaty to the effect that a change in certain geographical elements such as a watercourse could move the frontier only in favour of the colonial Power and at the expense of the Asian State.

36. Lastly, he wished to reaffirm the principle of non-retroactivity, as expounded in article 7 of the draft, with regard to boundaries. His delegation could only accept the article under consideration if the term "boundary régime" was satisfactorily clarified and if reasonable safeguards against the possibility of reviving unequal treaties were given.

37. His delegation was able to support Afghanistan's amendment for the reasons put forward by its delegation.

38. Mr. PASZKOWSKI (Poland) said that a provision on boundary régimes was indispensable in the future convention. The increasingly advanced codification of international law often raised problems of the harmonization of various institutions and principles, so that their scope had to be accurately defined. International law was made up of a set of rules which had to be properly co-ordinated. The article under consideration was, indeed, a provision which must be co-ordinated with article 62, paragraph 2, subparagraph (*a*) of the Vienna Convention on the Law of Treaties. The article proposed by the International Law Commission was excellently drafted and the Polish delegation fully endorsed the commentary on that provision.

39. Boundary treaties were traditionally and universally regarded as having separate status because of their purpose and their legal effects. The aim of those treaties was, in essence, to determine in legal form the extent of States' sovereignty in space. Once a boundary treaty had been concluded, the boundary established and the boundary régime were protected, not only by the general law of treaties and, in particular, the principle that *pacta sunt servanda,* but also by other universally binding principles of international law such as the sovereign equality of States, the territorial integrity of States, the inviolability of frontiers and the prohibition of the threat or use of force. Moreover, it was generally admitted that boundary treaties created an essentially permanent, objective, factual situation which was effective *erga omnes.*

40. The succession of one State to another could not *per se* undermine the territorial rights of other States and, in particular, it could not alter the boundaries of other States. The very concept of succession was a barrier in that respect. The process of succession took place on a definite territory. The successor State could not acquire more territorial rights than had been possessed by the predecessor State, and it was clear that, because of its natural and legal limitations, a succession of States could not be a ground

for challenging existing boundaries and boundary régimes. The Polish delegation was therefore entirely in favour of article 11 as proposed.

41. The rule expressed in article 11 was almost unanimously supported by the literature. Some authors had referred, in that context, to "genuine succession". The article under consideration also reflected the general practice of States, including that of newly independent States. In that connexion, he recalled article III of the Charter of the Organization of African Unity[18] and resolution 16 (I) adopted by that organization in 1964.

42. He welcomed the fact that many States, representing various regions, had expressed similar views in their written comments. It was also clear from the present discussion that there was broad support for article 11 in the Committee. He regretted that he was unable to support Afghanistan's amendment, since he was convinced that the provisions of article 11 should be in a separate article.

43. Mr. POEGGEL (German Democratic Republic) said that article 11 should be retained in the form and place proposed by the International Law Commission. That article allowed a justified exception from the "clean slate" principle and was fully in accordance with article 62, paragraph 2, subparagraph (*a*) of the Vienna Convention on the Law of Treaties.

44. The succession of States in respect of boundaries went beyond the succession of States in respect of treaties; it should therefore be considered in relation to international peace and security. Disputes concerning boundaries had often given rise to wars in Europe. In the light of their experience, European States had accepted the principle of the inviolability of frontiers and had included it in their bilateral treaties. The States which had signed the Final Act of the Helsinki Conference[19] on I August, 1975 had also regarded each other's frontiers and the frontiers of other European States as inviolable. The delegation of the German Democratic Republic therefore considered article 11 as indispensable.

45. Mr. SATTAR (Pakistan) noted that only one amendment, which had been distributed shortly before the meeting, had been proposed to the article under consideration, and that amendment related only to the form, since it consisted of combining articles 11 and 12 into one provision. Consequently, the Commission should not consider that amendment until it had examined the substance of articles 11 and 12.

46. The present discussion and the commentary by the International Law Commission on article 11 had confirmed the view expressed by the Government of Pakistan at the twenty-ninth session of the General Assembly and in its written comments in 1975 (see A/CONF.80/5, pp. 164-165). Article 11 embodied a rule which was firmly entrenched in State practice, consistent with the principle of respect for territorial integrity as proclaimed in the Charter, and upheld by the majority of old and new States. In addition, that rule was indispensable for the maintenance of international peace and the promotion of amicable relations among neighbouring States.

47. In drafting article 11, the International Law Commission had preferred the view of modern jurists that, in the succession of States, the rule should be stated in terms of boundaries established by treaty rather than treaties establishing boundaries. He entirely endorsed that choice, since, when the successor State replaced the predecessor State, it did so in respect of a territory with certain boundaries. For the successor State, its boundaries represented a legal and factual situation which might be the product of a treaty, but a treaty whose boundary clauses had been implemented prior to the occurrence of the succession. In the context of succession, therefore, the main point was not so much the continuance in force of a treaty as the continuance of a territorial situation resulting from the prior implementation of the treaty. A succession of States as such could not confer validity on the boundaries of a successor State. But neither did it permit or justify any challenge to the boundaries of the successor State. Any demand for the revision of an old boundary settlement on the occasion of a succession of States had no connexion with the law of succession, as pointed out by the International Law Commission in paragraph (16) of the commentary on article 11 (A/CONF.80/4, p. 41). The other State party did not derive from the fact of succession any right to challenge or denounce the pre-existing boundary with the successor State. If that were not the case, the territorial integrity of a newly independent State would be jeopardized and threats to international peace as well as conflicts between neighbouring States would be encouraged.

48. It had been suggested that, in the article under consideration, the term "treaty" meant a valid treaty. The question of the validity of a treaty was a separate question covered by article 13. Of course that question would be decided, not unilaterally, but objectively, as laid down in the Vienna Convention on the Law of Treaties. Some had considered that the principle of the continuity of international boundaries contradicted the principle of self-determination. That objection had earlier been made during the discussion of article 62 of the Vienna Convention but, after due consideration, had been rejected, for the two principles were separate. The fact of succession could not set in action the principle of self-determination.

49. The principle of the continued validity of a boundary established by treaty following a succession of States was firmly established in practice, particu-

[18] United Nations, *Treaty Series*, vol. 479, p. 74.

[19] Conference on Security and Co-operation in Europe, *Final Act*, Lausanne, Imprimeries réunies, p. 76.

larly the practice of newly independent States. That principle had been enshrined in 1964 in resolution 16 (I) adopted by the Organization of African Unity and a similar resolution adopted by the Conference of Heads of State or Government of the Non-Aligned Countries. In their written comments, as set out in the analytical compilation of comments of Governments (A/CONF.80/5 and Corr.1), States had described article 11 as right, reasonable, balanced and realistic, incontestable, well-established and universally recognized, or in full harmony with State practice and the general principles of international law. His delegation considered that respect for the rule set out in article 11 was an essential prerequisite for peace and amicable relations between neighbouring States. The inclusion of that provision in the future convention was vital if that document was to be balanced, viable and acceptable.

The meeting rose at 1.05 p.m.

18th MEETING

Tuesday, 19 April 1977, at 3.30 p.m.

Chairman: Mr. RIAD (Egypt)

In the absence of the Chairman, Mr. Ritter (Switzerland), Vice-Chairman, took the Chair.

Organization of work: request for interpretation for meetings of regional groups

1. Mr. YACOUBA (Niger), speaking on a point of order, said that as Chairman of the African Group he must formally complain that interpreting services had been abruptly terminated during one of the Group's meetings. He drew the attention of the General Committee and of all delegations to the lack of respect being shown for the African Group—the group representing the region with which the Conference's work was primarily concerned.

2. Mr. KATEKA (United Republic of Tanzania) supported the Nigerian representative, and asked for an explanation from the secretariat.

3. Mr. MUDHO (Kenya) supported the previous speakers, and sought an assurance from the Representative of the Secretary-General that the incident in question would not be repeated. He requested that the African Group's complaint be recorded in the summary record of the meeting.

4. Mr. RYBAKOV (Executive Secretary of the Conference) assured the African Group he would immediately take up the matter with the interpretation service to find out what had happened. He described the situation concerning the interpretation servicing of the regional groups in addition to the regular and night meetings of the Committee of the Whole, of the Drafting Committee and of the informal consultational group. He promised to contact the Office of Conference Services at Geneva to explore the possibility of obtaining additional interpreters in spite of existing financial limitations.

Consideration of the question of succession of States in respect of treaties in accordance with resolutions 3496 (XXX) and 31/18 adopted by the General Assembly on 15 December 1975 and 24 November 1976 [Agenda item 11] (*continued*)

ARTICLE 11 (Boundary régimes) (*continued*)[1]

5. Mr. NYEKI (Hungary) said that his delegation supported the draft of article 11, which was fully in conformity with the principles of international law and, in particular, with article 62, paragraph 2, subparagraph (*a*) of the Vienna Convention on the Law of Treaties. His delegation had noted the far-reaching analysis of State practice in the commentary provided by the International Law Commission, and wished to stress that the need for article 11 was linked with the need to establish international peace and security. The history of Europe showed that most conflicts in that region had stemmed from boundary disputes, and European States had learnt to respect the principle of the inviolability of international boundaries. That principle had been acknowledged in resolutions adopted in 1964 by the Assembly of Heads of State and Government of the Organization of African Unity[2] and by the Conference of Heads of State or Government of Non-Aligned Countries.

6. With regard to the amendment submitted by Afghanistan (A/CONF.80/C.1/L.24), his delegation considered that boundary régimes should remain the subject of a separate article 11.

7. Mr. SIMMONDS (Ghana) said that his delegation supported draft article 11, which was of overriding importance for the maintenance of international peace and security.

8. Many colonial boundaries had been arbitrarily fixed by, and in the interests of, colonial Powers, often without legal justification and with no geographical, ethnic, linguistic or historical basis. Nineteenth-century European history in particular had shown that, in general, strategic and political considerations

[1] For the amendment submitted to article 11, see 17th meeting, foot-note 7.

[2] OAU, *Resolutions adopted by the Assembly of Heads of State and Government of independent African countries and Resolutions and declarations adopted by the Assembly of Heads of State and Government, 1963-1972*, Addis Ababa (Ethiopia), 1973, p. 34.