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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.

had outweighed the principle of self-determination in the settlement of boundaries. That experience might be relevant to the similar territorial problems in the developing countries during the past two decades, which showed an extraordinary hostility to the notion of applying the principle of self-determination to the readjustment of colonial boundaries. The reaction had been so strong as to prompt the 1964 resolutions referred to by the Hungarian representative, affirming the validity of all borders as they existed at the date of independence. Boundaries thus remained the one legacy of colonialism still zealously upheld.

9. The revision of boundaries could lead to secession movements contrary to the aims of States to create multi-racial societies. Self-determination should be confined to the birth of free nations and did not justify a country's partition into fragments which were not politically or economically viable.

10. With regard to the difficulties of peaceful change, it should be noted, first, that the cause of strife was not the principle of self-determination, but a desire to resist it; if all were prepared to accept a result based on self-determination there was no reason to suppose that violence would ensue any more than it had, for example, in Togoland in 1956 or the Cameroons in 1961. On the other hand, resistance to a plea for self-determination often led to the formation of liberation movements and to costly internal strife.

11. Secondly, self-determination, in the context of territorial disputes between States, seemed sometimes to involve a novel concept in treaty law, by which colonialist boundary treaties were rejected because they were inconsistent with the principle of self-determination. It was almost as though the doctrine of intertemporal law was being developed so as to imply that title to territory, whatever its treaty origin, could be accepted only if consistent with the right of self-determination within the context of the Charter.

12. His delegation reiterated its full support for the policy reflected in draft article 11.

13. Mr. HASSAN (Egypt) said that article 11 set out the most important exception to the "clean slate" principle, and contained inherent safeguards for boundary régimes established by existing treaties. The principle involved was not new; it was reflected, for example, in the resolution adopted by the Assembly of Heads of State and Government of the Organization of African Unity to which previous speakers had referred.

14. The amendment submitted by Afghanistan was not a formal proposal to delete article 11. It might be seen simply as a drafting amendment, though the delegation of Afghanistan seemed not to regard it as such. In any case, the Egyptian delegation considered that article 11 should remain separate and could not support the proposed amendment.

15. Mr. BENBOUCHTA (Morocco) said that the International Law Commission, in its commentary on articles 11 and 12, had noted two types of situation: one typified by settlements in Europe, and the other by United Kingdom practice in the granting of independence to a number of the present developing countries. The International Law Commission had cited cases in which it was sought to establish a homogeneous régime—for example, the case of the United States base in Morocco which the United States had agreed to evacuate following Morocco's rejection, on gaining independence, of the treaty between the United States and the former colonial Power. However, the International Law Commission seemed to have opted in favour of régimes of the first type, which, being only partial settlements and reflecting the interests of neighbour Powers in Europe, did not really apply to situations in developing countries.

16. Consequently, his delegation could not support the International Law Commission's wording. It believed that the task of codification should go beyond the considerations reflected in the commentary and should be seen in its true context, which was political.

17. His delegation had noted the cogent arguments of the delegations of Afghanistan[3] and Somalia.[4] It could add nothing to them for the moment, but it reserved the right to speak again at the end of the debate.

18. Mr. MIRCEA (Romania) praised the work of the International Law Commission in preparing draft article 11, which had such an important bearing on international relations. His delegation had no difficulty in accepting the text, which was consistent with Romania's regard for the principle of the inviolability of boundaries—a principle whose importance was recognized in many bilateral agreements, as well as in multilateral instruments such as the Final Act of the Conference on Security and Co-operation in Europe.[5]

19. His delegation did not, however, agree with the International Law Commission's commentary in its specific reference to a territorial type of treaty. For the nations of the group to which his country belonged, the aim of maintaining common security was paramount; for example, in diplomatic relations they had abandoned the legal fiction which sought to justify diplomatic immunity on extra-territorial grounds.

20. The idea of effects resulting from certain treaties seemed to his delegation a derogation from classical rules. The frontier régime might apply to situations which differed widely, and it should be left to the successor State to decide whether or not to continue the methods employed before its succession.

[3] See above, 17th meeting, paras. 10-20.

[4] See above, 17th meeting, paras. 23-27.

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

That State should be enabled to negotiate peacefully with its neighbours and to challenge the validity of frontier treaties if it saw fit. Article 11 was particularly applicable in the case of newly independent States; in the case of a separation of States and in cases of succession involving a part of territory, the question of establishing a boundary immediately arose.

21. His delegation could understand the reasoning behind the Afghanistan delegation's amendment, but article 12 raised problems about which he would prefer to speak later.

Mr. Riad (Egypt) took the Chair.

22. Mrs. THAKORE (India) said that articles 11 and 12 were among the most important of the draft articles prepared by the International Law Commission. They dealt with treaties of a territorial character, also known as "dispositive", "real" or "localized" treaties, and expressed the well-established rule of customary international law that such treaties constituted a special category not affected by a succession of States. They dealt with rights and obligations "running with the land". Articles 11 and 12 also confirmed the decision taken by the Vienna Conference on the Law of Treaties, as reflected in article 62, paragraph 2, subparagraph (*a*) of the Vienna Convention on the Law of Treaties, of 1969, to exclude the treaties in question from the operation of the rule on fundamental change of circumstances.

23. Her delegation fully supported the principles underlying articles 11 and 12. Their formulation was balanced and realistic and represented a laudable effort by the International Law Commission to arrive at generally acceptable solutions. The fact that none of the amendments submitted to articles 11 and 12 challenged the basic principles set out therein bore eloquent testimony to the International Law Commission's success in that regard.

24. Articles 11 and 12 applied to all cases of succession of States, not merely to those resulting in the creation of newly independent States, which meant that boundaries and other territorial régimes established by treaties were in no circumstances affected. The articles thus sought to lay down general rules and applied to all types of treaties, whether bilateral, restricted or general multilateral treaties. They also provided that a treaty's validity was not affected by a succession of States; succession could neither validate nor invalidate a treaty. That was not to say that treaties governing boundaries or other territorial régimes were immutable; it was generally considered that the International Law Commission did not intend the two articles to prejudice the question of validity of treaties or the right of States to seek a change by lawful means available to them under international law. It was precisely to allay anxieties and misunderstandings on that score that article 13 of the draft included a categorical provision that nothing in the articles should be considered "as prejudicing in any respect any question relating to the validity of a treaty". The Commission had considered it psychologically more effective to include that provision in the text of an article rather than to refer to the point in the commentary, and it had recognized, in the first paragraph of its commentary to articles 11 and 12, that the question of "territorial treaties" was at once important, complex and controversial.

25. Her delegation was glad to note that the two articles had received general support in the Sixth Committee of the General Assembly and in Governments' written comments, which showed that the international community at large endorsed the principle of continuity in respect of territorial treaties. The application of the principles reflected in articles 11 and 12 was vital to the maintenance of world peace and security. The resolutions adopted by the Assembly of Heads of State and Government of the Organization of African Unity and the Conference of Heads of State or Government of Non-Aligned Countries, both held at Cairo in 1964, referred to by previous speakers, showed the international community's recognition that treaties establishing territorial régimes must be excepted from the "clean slate" principle, and that chaos would ensue if newly independent States unilaterally repudiated the boundaries they had inherited.

26. Her delegation endorsed the principle of continuity in regard to territorial treaties. States were entitled to challenge existing boundaries, but they should do so not by invoking the "clean slate" principle, but by peaceful negotiations under international law, in accordance with the Charter. Consequently, her delegation maintained that articles 11 and 12 should be retained as they stood, but would support amendments relating to those articles which improved their drafting.

27. Mr. WAITITU (Kenya) re-emphasized his delegation's acceptance of the exceptions to the "clean slate" principle, which were recognized by international law and were now embodied in article 11. Kenya, which had a great respect for international law, considered that any departure from the article as drafted by the International Law Commission would run counter to the interests of peace in the world, to which it was committed. Furthermore, it would be unable to accept any amendment at any point in the draft convention which made the provisions of article 11 less effective. The rejection of the article would create innumerable and insoluble problems in regard to the maintenance of international peace and security.

28. His delegation considered that there was some link between article 12 and article 11, but remained open to proposals for the improvement of article 12, particularly as it affected treaties establishing servitudes. It welcomed the comments made on that sub-

ject at the 17th meeting, especially those of Ethiopia[6] and Pakistan.[7]

29. His delegation was unable to support the amendment proposed by Afghanistan.

30. Mr. BEDJAOUI (Algeria) observed that, in view of their considerable importance, the "territorial treaties" dealt with in article 11 had always been subject to a special régime, in that they were considered to be unaffected by a succession. The concept of the inviolability of frontiers in the event of a succession was upheld by State practice, international jurisprudence, traditional and modern doctrine, and the decisions of regional institutions and meetings.

31. The International Law Commission had referred, in its commentary to articles 11 and 12, to the relevant decisions of the Permanent Court of International Justice, to the exception to the rule on fundamental change of circumstances provided for in article 62, paragraph 2, subparagraph (*a*) of the Vienna Convention on the Law of Treaties, and to the resolutions adopted in 1964 by the Assembly of Heads of State and Government of the Organization of African Unity and the Conference of Heads of State or Government of Non-Aligned Countries. In addition, the representative of the German Democratic Republic had pointed out at the 17th meeting[8] that the principle of respect for frontiers was embodied in the Final Act of the Helsinki Conference.

32. The situation could not, in fact, be otherwise, for it was easy to imagine the universal danger to which acceptance of the non-continuity of territorial treaties would give rise. Consequently, his delegation unreservedly supported article 11 as drafted by the International Law Commission.

33. Mrs. HUMAIDAN (Democratic Yemen) said that her delegation believed there were insufficient precedents to justify a claim that the principle set out in article 11 was an established rule of international law. It therefore saw that principle as a rule of progressive development which, as such, was unacceptable in a convention of the type the Conference was drafting. In addition, it had found the arguments advanced in support of article 11 inadequate and not entirely convincing. Consequently, it advocated the deletion of the article.

34. Mr. DAMDINDORJ (Mongolia) considered article 11 to be a well-balanced provision which took into account both the "clean slate" principle and the principle of continuity. The article constituted a significant component of the convention, for it expressly stated the principle of the inviolability of the boundaries of all the States involved in a succession.

35. Like most previous speakers, his delegation supported article 11 as drafted by the International Law Commission. It subscribed, in particular, to the opinions expressed at the 17th meeting by the delegations of Poland[9] and Ethiopia.[10] It considered that the questions of boundary régimes and other territorial régimes should be dealt with separately, and was therefore opposed to the amendment.

36. Mrs. SLAMOVA (Czechoslovakia) remarked that there were numerous examples in history of boundary disputes which had given rise to violations of international peace and security. It was, therefore, only natural that the question of treaties establishing boundaries had been settled in the Vienna Convention on the Law of Treaties and that the status of the boundaries established by such a treaty in the event of a succession should be considered in the present convention.

37. Article 11 provided for a justified exception to the "clean slate" principle, which underlay the entire draft. The wording proposed by the International Law Commission had many advantages, including that of not touching on the purely theoretical question whether treaties establishing a boundary were binding on a successor State or whether that State must respect a boundary as a legal fact created by the application of such a treaty.

38. The rule stated in the article was upheld by a wealth of international practice. If the examples cited by the International Law Commission did not as such appear to provide support for the proposed wording, that was because they illustrated rather the contradictions which could be found in the most concrete treaty. However, they in no case negated the rule that a boundary established by a treaty was not affected by a succession.

39. Her delegation considered article 11 to be one of the most important provisions in the draft and supported its retention in its present form.

40. Mr. RAZZOUQI (Kuwait) said that particular thanks were due to the International Law Commission for its efforts to provide, through the wording of article 11, a balancing provision in the first part of the draft convention.

41. International practice and jurisprudence had long held that territorial treaties should be placed in a special category with regard to the effects of succession of States, and that view had been confirmed in recent years by article 62, paragraph 2, subparagraph (*a*) of the Vienna Convention on the Law of Treaties. Furthermore, the representatives of the States members of the Organization of African Unity and of the Non-Aligned States, which represented two-thirds of the world's population, had expressed

[6] See above, 17th meeting, paras. 28-33.

[7] See above, 17th meeting, paras. 45-49.

[8] See above, 17th meeting, para. 44.

[9] See above, 17th meeting, paras. 38-42.

[10] See above, foot-note 6.

their support for the inviolability of territorial boundaries at their respective meetings at Cairo in 1964, and the overwhelming majority of States whose comments were recorded in document A/CONF.80/5 and Corr.1 were in favour of article 11 as drafted by the International Law Commission. At a time when there were many boundary problems between neighbouring States, acceptance of the contrary principle to that stated in article 11 would lead to unlimited chaos.

42. His delegation understood the word "treaty" as used in article 11 to mean any type of agreement concluded between States as defined in the Vienna Convention on the Law of Treaties and also in article 2, paragraph 1, subparagraph (*a*) of the draft. It wholeheartedly supported article 11 as drafted by the International Law Commission and would oppose any amendment to it and any version of the draft convention in which it did not appear.

43. Mr. ZAKI (Sudan) observed that article 11 embodied a rule already stated in article 62, paragraph 2, subparagraph (*a*) of the Vienna Convention on the Law of Treaties. In exempting treaties establishing a boundary from the effect of draft article 15, it complied with the views of States as expressed, for example, in the Charter of the Organization of African Unity and the resolutions adopted in 1964 by the Assembly of Heads of State and Government of the Organization of African Unity and the Conference of Heads of State or Government of Non-Aligned Countries.

44. His delegation did not believe that article 11 was contrary to the principle of self-determination, which it considered to be fully preserved in the draft convention. The inclusion of the article, as proposed by the International Law Commission, was essential to the maintenance of international peace and security.

45. Mr. MARESCA (Italy) remarked that, if the Committee had been dealing with law in abstraction from reality, both article 11 and article 12 would have been unnecessary, for the draft convention was intended to define the legal effects of succession on treaties in force and, once treaties relating to territorial matters had been applied, they ceased to exist in the legal sense. In terms of practice, however, omission of those articles would mean that, by virtue of the "clean slate" principle, any successor State would have the right to attempt to extend its boundaries as far as it wished, with all the adverse consequences for international peace which the Conference had been convened to avoid. Consequently, his delegation was convinced of the need for both article 11 and article 12, even though the rules they stated were already contained in the Vienna Convention on the Law of Treaties and the *rebus sic stantibus* clause.

46. In view of the definiton of a "succession of States" given in article 2, paragraph 1, subparagraph (*b*), it would be more appropriate, in the French versions of articles 11 and 22, to replace the words "*n'affecte pas*" by the words "*ne porte pas atteinte*". In all languages, the words "obligations" and "rights" should be preceded by the words "the content of" wherever they appeared, whether simply or in combination, in either of the articles.

47. Sir Francis VALLAT (Expert Consultant) emphasized that it was not the Expert Consultant, but the Conference and, subsequently, the States which would apply the convention which were the masters of that instrument. As Expert Consultant, he could do no more than give his personal ideas concerning the International Law Commission's motivations in drafting the articles and the proper interpretation of their provisions. It was in the light of those remarks that he would attempt to answer the question put to him at the 17th meeting.

48. In reply to the representative of Afghanistan,[11] he said that the International Law Commission had drafted articles 11 and 12 so as to avoid, as far as possible, prejudicing questions concerning the validity of treaties, and had confirmed that intention in article 13. As to the question whether the phrase in article 11, subparagraph (*a*), meant "a boundary validly established by a valid treaty", he thought he had covered the point concerning the validity of the treaty as far as possible in commenting on the International Law Commission's intention in drafting the article. As to whether or not the boundary was "validly established", he could only say that a treaty either established a boundary or it did not, and that if a boundary was in fact established, it was presumably validly established. The representative of Afghanistan had further asked whether the intention in article 11, subparagraph (*a*) was to refer to a situation "lawfully and validly created": that was in fact the wording he himself would have preferred to see in the article. Finally, the representative of Afghanistan had asked for confirmation that there was nothing in the article which in any way precluded adjustment of boundaries by self-determination, negotiation, arbitration or any other method accepted by neighbouring countries. In stating that that was so, he wished to point out that the governing phrase was "or any other method accepted by neighbouring countries", which should be taken to mean that the settlement, by the States concerned, of boundary disputes arising after a succession, of States, was in no way prejudiced by article 11 and that nothing in that article precluded the exercise in such disputes, where appropriate, of the principle of self-determination.

49. The answer to the question put by the representative of Somalia[12] concerning the effect of article 11 on cessionary as opposed to boundary treaties lay to some extent in his replies to the questions of the representative of Afghanistan and in the question

[11] See above, 17th meeting, para. 19.

[12] See above, 17th meeting, para. 26.

itself. That question turned on the distinction between a cessionary and a boundary treaty. A treaty which established a boundary would normally be called a "boundary treaty", but if the authority seeking to establish the boundary was in some way legally incapacitated from ceding the territory concerned, the treaty could be challenged as invalid.

50. Finally, in answer of the representative of Thailand,[13] who had asked about the distinction between the phrase "boundary régimes" in the title of article 11 and the phrase "the régime of a boundary" which appeared in subparagraph (*b*) of that article, he drew attention to the first part of paragraph (19) of the commentary, and particularly to the statement to the effect that some members of the Commission had considered that "a boundary treaty may contain ancillary provisions which were intended to form a continuing part of the boundary régime created by the treaty and the termination of which on a succession of States would materially change the boundary settlement established by the treaty" (A/CONF.80/4, p. 42). What the Commission had had in mind in that respect were provisions so closely related to the settlement of the boundary that they could be regarded as part of the boundary settlement itself and as being indivisible from it.

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

51. Mr. MAKAREVICH (Ukrainian Soviet Socialist Republic) said his delegation considered article 11 to be of fundamental importance for the entire draft convention and to reflect the desire of States to stabilize frontiers, thereby contributing to the progressive development of international law. The discussion so far showed that the Commision's approach corresponded in essence to that adopted in contemporary State practice and that the article was satisfactory to the overwhelming majority of delegations. The failure to respect boundary treaties and the resultant disputes had been the main source of international conflicts in the past, but there had been a fundamental change in the procedure for the settlement of such disputes, thanks largely to the practice of the world's first socialist State.

52. The inclusion of article 11 in the draft was justified on the basis of the generally recognized principles of territorial integrity and inviolability embodied in the Charter of the United Nations and in various other decisions and resolutions of that Organization, in the Charter of the Organization of African Unity and in the resolutions adopted in 1964 by the Assembly of Heads of State and Government of that Organization and the Conference of Heads of State or Government of Non-Aligned Countries, and in the Final Act of the Helsinki Conference. That the exception to the "clean slate" principle provided for in article 11 was justified, was confirmed by article 62, paragraph 2, subparagraph (*a*) of the Vienna Convention on the Law of Treaties. Article 11 was confined solely to the question of the effects of a succession of States as such on boundaries and a boundary régime established by a treaty, and did not in any way relate to the validity of the treaty or to any other grounds which might exist for a subsequent change and revision of boundaries. For changing an existing treaty relating to boundaries, the successor State always retained the right to resort to means recognized by international law as legitimate for that purpose. His delegation wholeheartedly supported the retention of article 11 as a separate article, in the form in which it had been drafted by the International Law Commission.

53. Mr. JELIĆ (Yugoslavia) said that his delegation supported the retention of draft article 11 for the reasons advanced by the International Law Commission in its commentary and by previous speakers. It also believed that the article should be retained because it protected the right of third States bordering on territory to which a succession of States related to continue in existence within the frontiers established prior to the succession, until such time as these frontiers were adjusted by lawful means.

54. Mr. SEPÚLVEDA (Mexico) said that his delegation supported the International Law Commission's text of article 11, which was perfectly satisfactory because it clearly expressed the principle of the continuity and permanence of boundaries established by treaties. That fundamental principle of international law was essential to the maintenance of international peace and security.

55. His delegation was grateful to the Expert Consultant, who had pointed out that there would be few dangers in adopting article 11 as it stood, and to other delegations which had stressed that any treaty or boundary régime could be revised in accordance with the rules of international law, which rejected unequal treaties. The text of draft article 11 struck a balance between the principle of continuity and the "clean slate" principle and ensured the stability of international relations by providing a guarantee of the boundaries of the successor State and of neighbouring States.

56. His delegation could not adopt a position on the amendment to draft articles 11 and 12 submitted by Afghanistan until the Committee had discussed draft article 12.

57. Mr. SHAHABUDDEEN (Guyana) said that his delegation supported draft article 11. It understood that article to mean that, in accordance with the "clean slate" principle embodied in draft article 15, the successor State did not automatically inherit the treaties of the predecessor State which, at the date of succession, had been in force in respect of the territory to which the succession had related. It was therefore a matter of common sense that any boundaries which had actually been established under such

[13] See above, 17th meeting, paras. 34-36.

treaties, as distinct from the treaties themselves, would not cease to be valid with effect from the date of succession.

58. That view was based on consideration of stability, the overwhelming weight of State practice, accepted doctrine and the probably universal rule of municipal law that the repeal of a statute did not ordinarily operate to obliterate things done and situations established under the statute before its repeal. Thus, his delegation understood draft article 11 as stating that the mere fact that one State had replaced another in the responsibility for the international relations of a territory, did not affect the boundaries of the territory established under a previous treaty, even if the operation of the treaty itself ceased by virtue of the succession of States.

59. His delegation was confident, however, that if draft article 11 was not adopted, the situation in international law would not change. It accordingly considered that the article was substantially declaratory in nature, though it agreed with the International Law Commission that in giving effect to the "clean slate" principle, it was reasonable, sensible and practical to declare that situation explicitly.

60. As to the wording of article 11, his delegation had no particular difficulty with the words "as such", which had been used in countless instances of drafting usage and seemed to be conveying the idea that the mere fact of a succession of States was not to be understood to have certain consequences.

61. With regard to the relationship between draft articles 11 and 12, his delegation thought it should be borne in mind that, in accordance with the provisions of article 1, the draft convention dealt only with the effects of a succession of States in respect of treaties and that draft article 11, subparagraph (*a*) dealt only with boundaries established by treaties. Boundaries could be established either by treaty or by other means. Even if an existing treaty was considered to be invalid, the boundary it had established would still be valid. Such boundaries would therefore continue whether or not draft articles 11 and 13, or either of them, were included in the future convention.

62. Moreover, the position of States which wished to challenge the validity of a boundary established by a treaty on the grounds that the treaty was invalid, was satisfactorily safeguarded by article 13. Thus, in so far as article 11 applied, the position of States which opposed its retention was fully protected by article 13.

63. With regard to the principle of the right to self-determination referred to by the delegatons which were opposed to article 11, his delegation was not convinced that that principle operated in the same area as the principle of the continuity of established boundaries; hence it did not think that there was necessarily any conflict between those two principles. If an existing boundary was thought to divide a natural political unit in an unreasonable manner, the principle of the right to self-determination would apply in regard to the question whether the segment of the unit which was said to be "on the wrong side of the fence" should be given autonomy as a separate State or made a part of the claimant State to which it was related. If application of the principle of the right to self-deterination resulted in the establishment by the people concerned of a separate State, the old boundary would either remain as it had been or could be modified by the two parties concerned. If the result was that the autonomy of the people concerned took the form of incorporation into the claimant State, then the old boundary which had divided them would automatically disappear. In other words, the continuity of the established boundary did not preclude the operation of the principle of the right to self-determination.

64. Those considerations had convinced his delegation that draft article 11 was a sensible and desirable provision which should be adopted as it stood.

65. Mr. SANYAOLU (Nigeria) said that his delegation fully supported the principle embodied in draft article 11, because it was designed to maintain international peace and security and it confirmed the resolution adopted by the Assembly of Heads of State and Government of the Organization of African Unity held at Cairo in 1964.

66. Mr. KRISHNADASAN (Swaziland) said that articles 11 and 12 constituted the main exceptions to the "clean slate" principle embodied in article 15. Although the International Law Commission had endeavoured to ensure international peace and security by including those articles in the draft convention, its efforts were open to criticism because the articles in question did not take due account of the principles of self-determination and the sovereign equality of States guaranteed in article 15. Colonial boundaries had been established for strategic and economic reasons, without any regard to geographical or ethnic considerations and he agreed with the view expressed by the representative of Afghanistan[14] that it could be just as dangerous to maintain a boundary as to do away with it.

67. Many delegations had referred to the resolution adopted in 1964 by the Assembly of Heads of State and Government of the Organization of African Unity and to the resolution adopted in the same year by the Conference of Heads of State or Government of Non-Aligned Countries. But in his delegation's view, the future convention need not necessarily elevate to the status of a rule of international law the provisions of resolutions which had been adopted at a given moment in the history of a region with a view to ensuring international peace and the stability of international relations. While it was true that article 62

[14] See above, 17th meeting, para. 13.

of the Vienna Convention on the Law of Treaties laid down that a fundamental change of circumstances could not be invoked as a ground for terminating or withdrawing from a boundary treaty, that article had to be read in the light of other well-established rules of international law, because both the Vienna Convention and customary international law provided that a State could be bound by a treaty only if it had established its consent to be bound. Without that element of consent, there was no reason why a successor State should automatically succeed to a treaty of the predecessor State establishing a boundary or other territorial régime. His delegation did not deny the need for treaties of a territorial character, but believed that if it was necessary to formulate rules governing boundary or other territorial régimes, such rules should be in keeping with present realities and widely accepted rules of international law. It did not believe that there existed at present such widely accepted rules of international law justifying articles 11 and 12.

68. The inclusion of the words "as such" in the opening phrase of article 11 might, however, enable his delegation to accept the article; they represented an improvement over the wording of earlier drafts prepared by the International Law Commission. He noted, however, that some delegations had stated that if draft articles 11 and 12 were deleted, the result would be chaos. The representative of Guyana had replied that, if draft article 11 was not adopted, State practice with regard to boundaries would not change. His own delegation had taken that reasoning one step further and had reached the conclusion that article 11 need not be included in the draft at all.

69. He fully agreed with the views expressed by the Expert Consultant in his replies to the question asked by the representative of Afghanistan concerning self-determination and to the question asked by the representative of Somalia concerning the effects of cessionary treaties.

70. Mr. SETTE CÂMARA (Brazil) said that, during its discussions on the problems raised by treaties of a territorial character, the International Law Commission had agreed that such treaties could not be considered to be governed by the rules embodied in draft article 14 relating to moving treaty frontiers and those in draft article 15 relating to the "clean slate" principle. The legal basis for the special treatment of treaties of a territorial character could be traced back to the Roman law maxims *"nemo plus juris transferre potest quam ipse habet"* and *"res transit cum onere"*. Thus, the real rights established by a treaty created, in the territory in question, a legal situation which was intended to have a considerable degree of permanence.

71. His delegation thought that the International Law Commission had been right to deal with the cases of boundary régimes and other territorial régimes in separate articles, since a boundary treaty defining a frontier or establishing a special régime for it was instantly executed, whereas other territorial treaties entailed repeated acts of continuous execution.

72. There was little doubt that boundary settlements constituted an exception to the "clean slate" rule, and that doctrine and the virtually unanimous practice of States favoured the continuity of such settlements *ipso jure*. Throughout the decolonization process, which constituted the main body of modern State practice concerning succession, there had been no trace of any claim to the invalidity of boundary treaties based on the "clean slate" rule. Even the strongest defenders of the principle of absolute freedom of the successor State to maintain or terminate previous treaties had not hesitated to proclaim that boundaries previously established by treaty remained in force. Moreover, the resolution adopted by the Assembly of Heads of State and Government of the Organization of African Unity in 1964 provided that "all Member States pledge themselves to respect the borders existing on their achievement of national independence". The International Law Commission had, however, stressed time and time again that the rule of continuity did not mean that boundary treaties were sacred and untouchable. They were inherited together with any disputes and controversies relating to them, and could be challenged. Indeed, they had been challenged in the past, but on other grounds than that of the "clean slate" rule. Thus, a treaty could be attacked on any legal ground that might be available to the successor State under international law.

73. The exceptional nature of boundary treaties had also been recognized by the Vienna Conference on the Law of Treaties, which had decided to exclude treaties of that kind from the rule on fundamental change of circumstances. That exclusion of boundary treaties from the effects of the *rebus sic stantibus* rule showed that the special status of such treaties was in the interests of the international community as a whole. Accordingly, the basic principle of the rules proposed by the International Law Commission was that a succession of States should not be invoked as grounds for the unilateral modification or invalidation of boundaries, boundary régimes or other territorial régimes. According to the draft articles, it was not the treaty itself which was in a special category of treaties transmitted when succession occurred, but rather the legal situations resulting from the application of the treaty to boundaries and territorial rights. The International Law Commission had established that distinction in full awareness of the problems which might arise from the complex question of the separation of the dispositive and non-dispositive provisions of articles 11 and 12 and from a departure from the principle of the integrity of treaties, which was one of the cornerstones of the rules of interpretation established by the Vienna Convention on the Law of Treaties.

74. According to the comments of Governments on the draft articles (A/CONF.80/5 and Corr.1) and the report which the Special Rapporteur had submitted to the International Law Commission,[15] there was little doubt that the large majority of States supported the draft articles. The few reservations expressed by States had failed to attract his delegation's support. It considered that articles 11 and 12 must be retained because, if every newly independent State could unilaterally repudiate the boundaries which had constituted the material basis for its creation, the international situation would be chaotic. It should, however, be borne in mind that no State was bound to accept an inheritance of injustice or controversial boundary lines, because it would always be able to contest the legality of a treaty stipulation by the normal means established by the Charter of the United Nations for the settlement of international disputes. It had been in order to dispel any doubts on that specific point that the International Law Commission had decided to include draft article 13, which provided that "Nothing in the present articles shall be considered as prejudicing in any respect any question relating to the validity of a treaty".

75. His delegation fully supported articles 11 and 12, which were well-balanced and provided adequate solutions to problems of enormous international interest, such as those relating to international boundaries, rights of transit on international waterways, the use of international rivers and the demilitarization of certain territories. The text of articles 11 and 12 was cautious and extremely ingenious and the exhaustive commentary to those articles, which included a detailed examination of the evidence in support of the traditional doctrine of continuity and a review of State practice, was very convincing. His delegation was therefore prepared to vote in favour of the text of draft articles 11 and 12 as proposed by the International Law Commission.

76. Mr. GILCHRIST (Australia) said that his delegation supported the text of draft article 11, which reflected the opinion of the majority of international jurists that treaties of a territorial character fell within a special category which was not affected by a succession of States. Article 11 thus constituted a necessary exception to the "clean slate" principle. Moreover, as the representatives of Poland[16] and Italy had pointed out, a newly independent State was not born into a legal vacuum. It became a member of international society by virtue of the laws constituting and governing that society. The provisions of article 11 were therefore binding not only on newly independent States, but also on third States, which had to respect the territorial integrity of newly independent States.

77. He would not refer in detail to the cogent arguments advanced by the many other delegations which were in favour of article 11, but he thought the representative of Algeria had lucidly summed up the reasons why article 11 was important and justified. His delegation would vote in favour of articles 11 and 12, subject to the necessary qualification imposed by article 13. Taken together, those three draft articles were most desirable and in keeping with the general interests of the international community as a whole.

78. Mr. FERNANDINI (Peru) said that his delegation considered article 11 essential to the draft convention as a whole and believed that it should be maintained. Neverheless, it had some doubts about the wording of the first line of the article because, in Spanish, the words *"de por sí"* might lead to confusion and misunderstanding. The deletion of those words would certainly improve the text of the article. He agreed with the representative of Italy that the Drafting Committee might be able to find a way of making the wording of article 11 acceptable to all delegations.

79. Mr. EUSTATHIADES (Greece) said that his delegation fully supported article 11 because, if there was any one article in the draft which was the expression *par excellence* of general international law, it was certainly that article. The rule it embodied covered both partial and total territorial changes, such as partial successions or the creation of new States. He used the term "territorial change" as distinct from the term "succession of States", because a succession of States implied a change of boundaries. There was no doubt that the comment to that effect made by the representative of Italy should be borne in mind by the Drafting Committee when it considered the wording of article 11. His delegation did not believe, however, that the Drafting Committee would be able to make any great improvements in the wording proposed by the International Law Commission.

80. He also agreed with the representative of Italy that the rule in article 11 must be seen as a rule which mainly, if not exclusively, affected third States, whose interests it was designed to safeguard and protect.

81. Mr. MARSH (Liberia) said that his delegation supported the International Law Commission's text of article 11 and would vote in favour of its retention.

82. Mr. MEDEIROS QUEREJAZU (Bolivia) said that his comments would relate to both article 11 and article 12.

83. When any form of succession of States occurred, the question arose what territory was involved, how it should be defined and to what extent its power could be exercised without coming into

[15] See *Yearbook of the International Law Commission, 1974*, vol. II, part one, p. 1, document A/CN.4/278 and Add.1-6.

[16] See above, 17th meeting, para. 40.

conflict with the sovereignty of other States. It was thus in the general interest that a succession of States should take place within the framework of international law and that was the object of the proposed article 11. The experience of Latin America clearly illustrated the point: as they had achieved independence in the nineteenth century, the former Spanish colonies had realized the need to establish the general principle of *uti possidetis juris,* whereby the newly independent States accepted the territorial boundaries obtaining in 1810 under Spanish law. Similarly, with regard to frontiers with other ex-colonies, the Latin American States had constantly invoked treaties signed by Spain, such as those of Tordesillas and San Ildefonso concluded with Portugal.

84. It was true that some boundary treaties might be null and void or might not correspond to the economic and geographical facts of a given region. There had been many such instances in Latin America. But that was a separate issue, which did not affect the succession of States as such and which was dealt with in draft article 13. In paragraph (17) of its commentary to articles 11 and 12, the International Law Commission explicitly stated that its draft "would leave untouched any other ground of claiming the revision or setting aside of the boundary settlement" and that "the mere occurrence of a succession of States" would not "consecrate the existing boundary" (A/CONF.80/4, p. 42).

85. When a succession of States occurred, in addition to boundaries, "real" elements attaching to the territories concerned by virtue of multilateral or bilateral treaties also had to be taken into consideration; that point was covered by draft article 12. It was clear from the examples given in the commentary to articles 11 and 12, that the International Law Commission had adopted a broad definition of territory. His delegation wished to refer particularly to rights of free transit, which were of great interest to land-locked countries and which clearly fell within the purview of article 12. Rights of transit were legally attached to the territory across which they were exercised, and under that article they could not be affected by a succession of States. Similarly, the corresponding obligations of a transit State could not cease or diminish as a result of any form of succession which might occur in the territory concerned.

86. The recent accession to independence of a number of land-locked States had drawn attention to the difficulties hindering their economic and social development if they lacked free access to the sea. There had been two multilateral conventions establishing transit rights: the Convention on the High Seas (Geneva, 1958)[17] and the Convention on Transit Trade of Land-Locked States (New York, 1965).[18] It was hoped that the question of land-locked States would also receive due consideration in the future United Nations convention on the law of the sea. Freedom of transit was the subject of many bilateral treaties, from which it was possible to establish the legal relationship between the active party—the land-locked State—and the passive party—the transit State—and to distinguish the "real" element, which was a permanent obligation relating to the use of the territory through which transit took place. Other treaties dealt with free access to and from the sea by navigable rivers flowing through the land-locked country and the transit country, or forming the boundary between them. Many writers on territorial treaties regarded such rights as real rights, which were exercised *erga omnes,* but the International Law Commission had preferred to draft articles 11 and 12 in such a way that the rules laid down did not relate to the treaty itself, but to the legal situation consequent upon it, which should be maintained within the framework of international law when a succession of States occurred. That was not an exception to the "clean slate" principle, but rather the formulation of a general rule applicable to all cases of succession of States in respect of treaties. And that rule was in conformity not only with legal theory and State practice, but also with justice in international relations.

87. Mr. SAID (Libyan Arab Jamahiriya) said that his delegation had no objection to draft articles 11 and 12, since it believed that boundary treaties should be characterized by continuity, in order to promote stability in international relations and safeguard peace and security. He was convinced of the validity of the principles underlying those articles, but wished nevertheless to associate himself with the statements made by the representatives of Somalia[19] and Morocco, concerning treaties concluded between colonial Powers without regard to the geographical, economic or social ties of the territories concerned. However, draft article 13 contained a clear reservation on that point.

88. It was his delegation's view that the resolution adopted at Cairo by the Assembly of Heads of State and Government of the Organization of African Unity in 1964, to which paragraph (11) of the commentary to articles 11 and 12 referred (A/CONF.80/4, p. 40), must be understood in the context of the circumstances prevailing at the time of its adoption, which had subsequently led to the establishment of a committee to consider boundary disputes.

The meeting rose at 6.40 p.m.

[17] United Nations, *Treaty Series,* vol. 450, p. 82.

[18] *Ibid.,* vol. 597, p. 42.

[19] See above, 17th meeting, para. 26.