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19th meeting of the Committee of the Whole

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19th MEETING

Tuesday, 19 April 1977, at 7.25 p.m.

Chairman: Mr. RIAD (Egypt)

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

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

[Agenda item 11] (*continued*)

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

1. Mr. MUSEUX (France) said that his delegation supported the "clean slate" principle as the underlying rule of the future convention, but maintained that there should be precisely formulated exceptions, principally in regard to the continuity of boundary régimes. He therefore welcomed the principle laid down in draft article 11 and noted with satisfaction that it had been widely supported in the discussion. He merely wished to suggest some drafting points which might strengthen the text.

2. He agreed with the Greek representative[2] that the phrase "does not affect" was not particularly felicitous: in reality, nothing affected boundaries more than a transfer of territory from one State to its neighbour. He also agreed with the Italian representative[3] that, in subparagraph (*b*), it was the nature of the obligations and rights and not those exercising them which should remain unchanged. He had no doubt that the Drafting Committee could provide a satisfactory text.

3. Mr. TABIBI (Afghanistan) said he wished to record his appreciation of the constructive debate which had taken place on draft article 11.

4. Many speakers had referred to article 62 of the Vienna Convention on the Law of Treaties, which excepted boundary treaties from the possibility of termination by reason of a fundamental change of circumstances. However, the political climate had greatly changed for the better since the adoption of the Vienna Convention, and it had never been the intention that article 62 should apply to illegal or invalid treaties; that had been made abundantly clear by the explanations given at the United Nations Conference on the Law of Treaties, which had adopted the Vienna Convention, and by the fact that provisions dealing with such treaties were included in part V of the Convention, in particular article 53.

5. Fortunately, it had been possible to settle many territorial disputes by means of negotiation: in Africa, machinery for that purpose was provided by the 1964 Cairo resolution of the Assembly of Heads of State and Government of the Organization of African Unity,[4] to which frequent reference had been made.

6. He thanked the Expert Consultant for his clear statement that the rules laid down in draft article 11 did not touch on the question of the validity of treaties and did not prejudice machinery for the settlement of disputes.[5]

7. He agreed that the Afghan amendment (A/CONF.80/C.1/L.24) should be considered after the discussion on draft article 12.

8. Mr. HELLNERS (Sweden) said that, although he approved of the content of draft article 11, he agreed with the representatives of France and Greece on the desirability of improving the wording of its opening phrase. The negative formulation was inadequate. The same applied to draft article 12.

9. The CHAIRMAN put draft article 11 to the vote.

Draft article 11 was provisionally adopted by 55 votes to none, with 5 abstentions, and referred to the Drafting Committee.[6]

ARTICLE 12 (Other territorial régimes)[7]

10. Mr. HELANIEMI (Finland), introducing his amendment (A/CONF.80/C.1/L.18), said that it was concerned only with drafting. To simplify the text, his delegation proposed that paragraph 1, subparagraph (*a*) and paragraph 2, subparagraph (*a*) should be combined into a single subparagraph (*a*) and that paragraph 1, subparagraph (*b*) and paragraph 2, subparagraph (*b*) should form a single subparagraph (*b*).

11. Mr. SEPÚLVEDA (Mexico) said that, in general, the draft articles had succeeded in maintaining an excellent balance between the "clean slate" principle and the principle of continuity. The continuation of boundary treaties and other territorial régimes, as laid

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

[2] See above, 18th meeting, para. 79.

[3] See above, 18th meeting, para. 46.

[4] 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, resolution 16(I).

[5] See above, 18th meeting, para. 48.

[6] For resumption of the discussion of article 11, see 33rd meeting, paras. 18-26.

[7] The following amendments were submitted: Finland, A/CONF.80/C.1/L.18; Mexico, A/CONF.80/C.1/L.19; Cuba, A/CONF.80/C.1/L.20; Malaysia, A/CONF.80/C.1/L.21; Afghanistan, A/CONF.80/C.1/L.24 (to articles 11 and 12). Argentina submitted a subamendment, A/CONF.80/C.1/L.27, to the Mexican amendment (A/CONF.80/C.1/L.19).

down in draft articles 11 and 12, was completely acceptable in regard to obligations towards other States concerning normal trade, development and co-operation. But when such obligations related to military, naval or air bases which had been established for the benefit of the predecessor State or of other States, they constituted a threat of the use of force and of intimidation. Perhaps the Expert Consultant could be asked to explain why the International Law Commission had not concerned itself with that matter, apart from a brief reference in paragraph (25) of the commentary to articles 11 and 12 (A/CONF.80/4, p. 43-44). It was clear that such restrictions on the free use of its territory should not be transmitted to a successor State, since they did not promote stability or constructive continuity.

12. His delegation had accordingly submitted an amendment (A/CONF.80/C.1/L.19) to deal with the matter in article 12, by an additional paragraph. He was aware that there were difficulties: for example a military base might have been established by virtue of a document which was not technically a treaty. He was open to suggestions designed to improve the text and to harmonize it with other, similar amendments.

13. Mr. ALMODOVAR SALAS (Cuba), introducing his amendment to draft article 12 (A/CONF.80/C.1/L.20), said that the transition of many peoples from colonialism to independence would have been easier if the draft articles under consideration had been adopted as a convention long ago. If the future convention applied only to the effects of successions occurring after its entry into force, scarcely more than a dozen newly independent States would benefit, although there would continue to be case of succession by the uniting and separation of States.

14. His delegation was concerned to extend the application of the future convention to these States at present excluded, which might wish to use it in the exercise of their sovereignty. It was well known that the colonial Powers had imposed unequal treaties which limited the sovereignty of successor States. One form of such treaties, which jeopardized world peace, were those establishing military bases on territory which should be completely independent. His delegation had therefore proposed the addition of a new paragraph to draft article 12, excluding such arrangements from the effects of that article. It was open to suggestions for improving the text of its amendment.

15. Mr. ARIFF (Malaysia), introducing his delegation's amendment to article 12 (A/CONF.80/C.1/L.21), said that while it was not always desirable to draft legal provisions in too brief and concise a manner, he thought the wording proposed by the International Law Commission was unduly long and repetitious. The proposed text consisted of two paragraphs, each divided into two subparagraphs. Paragraph 1 dealt with obligations and rights relating to the use of any territory, or to restrictions upon its use, established by a treaty for the benefit of any territory of a foreign State. If, as his delegation believed, the only new element in paragraph 2 was the reference to a group of States or all States, the substance of article 12 could be adequately expressed in a single paragraph, divided into two subparagraphs, as proposed in his delegations's amendment.

16. He noted that the Finnish amendment was also designed to shorten the text, but he could not approve of the way in which the Finnish delegation proposed to achieve that aim. In his view, it was quite unnecessary to repeat twice, in each subparagraph, the expressions "for the benefit of" and "considered as attaching to". Since both the Malaysian and Finnish amendments were of a drafting nature, however, he would suggest that they should be referred to the Drafting Committee for consideration.

17. The Cuban amendment appeared to go beyond the scope of the International Law Commission's text and to have political overtones. For that reason, it was difficult if not impossible for his delegation to subscribe to it, although close scrutiny might perhaps reveal some substance worthy of consideration. The amendments proposed by Mexico and Argentina (A/CONF.80/C.1/L.27) were of much the same tenor as the Cuban amendment, so that his delegation's reaction to them was similar.

18. Mr. ESTRADA-OYUELA (Argentina) pointed out that the text submitted by his delegation (A/CONF.80/C.1/L.27) had been intended as a subamendment to the Mexican amendment, not as a separate amendment. Moreover, in the English text, the word "party" should appear without an initial capital, in order to conform with article 2, paragraph 1, subparagraph (*m*) of the draft.

19. The foundation of the draft convention was the "clean slate" principle, to which articles 11 and 12 established exceptions. During the discussion on article 11, a number of delegations had made the point that there was a very direct link between that article and article 62 of the Vienna Convention on the Law of Treaties. While that was true of article 11, it was not true of article 12, which dealt with an entirely different situation.

20. In paragraph (30) of its commentary to articles 11 and 12 (A/CONF.80/4, p. 45), the International Law Commission stated that, owing to the legal nexus which had existed between the treaty and the territory prior to the date of the succession of States, it was not open to the successor State simply to invoke article 35 of the Vienna Convention under which a treaty could not impose obligations upon a third State without its consent. That line of reasoning was not acceptable to his delegation from the point of view of the legal doctrine, because legal relations were between persons, not between things.

21. It had also been said that the proposed departure from the "clean slate" principle was necessary in order to assure the stability of the international community; but that conclusion had been drawn on the basis of legal precedents whose applicability his delegation did not accept. It would not appear that the legal precedents of nineteenth-century Europe were for the purpose in question a source of law within the meaning of article 38 of the Statute of the International Court of Justice; nor did it seem that the opinions of colonial Powers, as reflected in paragraphs (21) and (22) of the commentary (*ibid.*, pp. 42-43), could be used as a basis for formulating a general principle. Paragraph (25) of the commentary showed that military bases constituted an exception to the principle of treaty continuity, yet no reference was made to such bases in the text adopted by the International Law Commission. His delegation had sought to rectify that omission by its proposed subamendment, which provided that obligations relating to the use of any territory of a successor State, or to restrictions upon its use, imposed by a treaty relating to the establishment of military bases of the predecessor State or of another State party should be excluded from the application of the provisions of article 12.

22. Paragraph (29) of the commentary to articles 11 and 12 (*ibid.*, p. 45) referred to another type of exception, namely, treaties which conferred specific rights on nationals of a particular foreign State. Such treaties often led to the exploitation of a successor State's natural wealth and resources, thus impeding the full exercice of its sovereignty. His delegation's submendment also provided that the provisions of article 12 should not apply to treaties of that kind.

23. He believed that the exclusion of foreign military bases from the territory of a successor State and the safeguarding of its full sovereignty over its natural wealth and resources were essential to the viability of the successor State. The Fourth Committee of the United Nations General Assembly had had to deal with a number of cases of territories whose wealth had been plundered by the colonial Power. It was necessary to ensure that situations of that kind were not maintained through the applicaton of the principle of continuity of treaties.

24. Mr. TORRES-BERNARDEZ (Secretary of the Committee) said that the text submitted by Argentina would be re-issued in order to make it clear that it was intended as a subamendment to the Mexican amendment. The inconsistency in drafting to which the representative of Argentina had referred would also be corrected.

25. Mr. KATEKA (United Republic of Tanzania) said that, while recognizing the need for an exception to the "clean slate" principle in the case of article 11, his delegation did not see the need for a similar exception in the case of article 12. The international servitudes which article 12 sought to create in favour of other States in the territory of a successor State constituted an endorsement of former colonial situations and were inconsistent with the independent status of the successor State.

26. In paragraph (23) of its commentary to articles 11 and 12 (A/CONF.80/4, p. 43), the International Law Commission referred to the so-called Belbases Agreements of 1921 and 1951 between the United Kingdom and Belgium, under which Belgium, at a nominal rent of one franc per annum, had been granted a lease in perpetuity of port sites at Dar es Salaam and Kigoma in Tanganyika. No self-respecting nation could accept such an offensive encumbrance on its sovereignty, and Prime Minister Nyerere had reacted to that situation by stating that a lease in perpetuity of land in the territory of Tanganyika is not something which is compatible with the sovereignty of Tanganyika when made by an authority whose own rights in Tanganyika were for a limited duration. In paragraph (24) of its commentary, however, the International Law Commission had stated that "Tanganyika itself did not rest its claim to be released from the Belbases Agreements on the clean slate principle. On the contrary, by resting its claim specifically on the limited character of an administering Power's competence to bind a mandated or trust territory, it seems by implication to have recognized that the free port base and transit provisions of the agreements were such as would otherwise have been binding upon a successor State" (*ibid.*, p. 43). It was highly presumptuous of the International Law Commission to have put that interpretation on Tanganyika's action. Encumbrances of that kind were unacceptable in any circumstances, an even if Tanganyika had had colonial status as opposed to trust status, it would have rejected such provisions as being inconsistent with its sovereignty, independence and territorial integrity.

27. There were many similar cases relating to the countries of East Africa; for instance the Nile Waters Agreement of 1929 between the United Kingdom and Egypt,[8] mentioned in paragraph (27) of the commentary (*ibid.*, p. 44). The effect of that Agreement had been to impose encumbrances upon the riparian States to ensure that they did not reduce the quantity of water arriving in Egypt or lower its level. The United Republic of Tanzania maintained good relations with Egypt, and the fact of denouncing an agreement's colonial implication had not had any adverse consequences for the countries concerned. On the contrary, co-operation in the region had been enhanced and expanded; for example, the port facilities offered by the United Republic of Tanzania and the number of beneficiaries therefrom had increased substantially.

[8] See United Nations, *Legislative Texts and Treaty Provisions Concerning the Utilization of International Rivers for other Purposes than Navigation* (United Nations publication, Sales No. 63.V.4), pp. 101 *et seq.*

28. Thus there was no justification for the argument that article 12 was needed in order to ensure peace and stability. His delegation would prefer the article to be deleted altogether; failing that, the text should be improved by the incorporation of some of the amendments before the Committee. The amendments of Cuba and Mexico together with the Argentine subamendment to the Mexican amendment, served to clarify the status of the successor State in regard to its territory. He hoped that the sponsors of those amendments would consult one another with a view to working out a consolidated text.

29. He supported the attempt of the Cuban delegation to deal with the question of foreign military bases. The Argentine subamendment was even more explicit and, if it was incorporated into article 12, it would be possible for this delegation to accept that article. His delegation could not subscribe to the Afghanan proposal to merge articles 11 and 12 (A/CONF.80/C.1/L.24). The amendments submitted by Malaysia and by Finland were on similar lines, and he hoped that the delegations concerned would be able to work out an acceptable compromise text. In any event, the point raised by those two amendments were clearly matters for the Drafting Committee.

30. To sum up, his delegation did not see the necessity for article 12, which attempted to maintain the inequities arising from colonial situations by creating servitudes, but it could subscribe to the texts proposed by Argentina, Cuba and Mexico.

31. Mr ROBINSON (United Nations Council for Namibia) said that, while commending the International Law Commission for its useful commentary to article 12, and particularly paragraph (25) thereof, his delegation was nevertheless constrained to observe that article 12 did not appear to address itself adequately to the issues involved. There was ample documentary evidence that the global strategic aims, both military and economic, of certain predecessor States had more often than not been prejudicial to the sovereign rights of the emergent or successor State. Newly independent States sometimes found themselves saddled with treaties to which they had been neither party nor privy, concluded by the predecessor State with one or more States, which regulated the use of the territory of the successor State, thereby denying it the full exercise of its sovereignty. It was not difficult for his delegation to conceive of a situation in which a territory in transition might be the object of treaty arrangements determining the use of its territory which imposed upon the successor State military servitudes to be enjoyed by foreign States. Such arrangements might even have been concluded by a State purporting to act as administering authority in respect of a particular territory.

32. In the light of those considerations, his delegation wished to express its full support for the amendments submitted by Mexico and Cuba, which contained the same intrinsic elements, although differently expressed. His delegation also supported the Argentine subamendment, which went somewhat further than the Cuban and Mexican amendments in proposing provisions which would guarantee a successor State's exercise of sovereignty over its natural wealth and resources. That was a point of paramount importance, which was reflected in resolutions of the United Nations General Assembly. It seemed to him that it might be possible to merge those three proposals into a single text. To include their provisions in article 12 would be a major step towards ensuring that independent States, at the time of succession, were not denied their right to exercise full sovereignty over the use of their territory.

33. The amendments submitted by Finland and Malaysia appeared to be essentially concerned with drafting and could be referred to the Drafting Committee.

34. Mr. HERNDL (Austria) said that his comments would to some extent relate to article 11 as well as to article 12, since both provisions were part of a system devised by the International Law Commission, which was to be commended for the wisdom it had shown in drafting those articles. State succession was a specific phenomenon of international law which should be viewed in good faith. The principle of good faith was the basis of international relations and of negotiations on treaties in general. It was in the light of that principle that his remarks should be understood and that the International Law Commission had formulated its drafts of articles 11 and 12. When a State concluded a treaty, that treaty, by its very nature, limited the sovereignty of the State to some extent. The State undertook to perform certain commitments, and the principle of *pacta sunt servanda* was a fundamental concept of international law.

35. His delegation was very pleased with the solution which the International Law Commission had devised in articles 11 and 12. It was essential for the future convention to deal with the question of boundary régimes and other territorial régimes if it was to be relevant to the existing international situation. At the opening meeting of the Conference, the Federal President of Austria had drawn attention to the fact that Article 13 of the Charter of the United Nations established a close link between international co-operation in the political field and the progressive development and codification of international law;[9] there could be little fruitful co-operation in the political field, and the prospect for peace would be jeopardized, if boundaries remained uncertain and the territorial *status quo* could be easily challenged.

36. The International Law Commission had been wise to provide for continuity of treaties in that regard and equally judicious in deciding not to relate a succession of States directly to the treaties in ques-

[9] See above, 1st plenary meeting, para. 11.

tion, but rather to the obligations and rights created by the treaties. As was demonstrated by the case of the Free Zones of Upper Savoy and the District of Gex[10] and the case of the Åland Islands,[11] the principle of continuity would apply less to the treaties themselves than to the settlement achieved by them. On the basis of that principle, it must also be concluded that continuity would similarly apply to settlements or objective régimes created by way of complementary unilateral acts, in the event that obligations would arise from such acts.

37. A number of delegations had expressed concern over articles 11 and 12, saying that they did not wish their respective States to be considered as bound by treaties which they termed unequal, or otherwise unacceptable in the light of the principle of self-determination. His delegation believed that that point was adequately covered by article 13 of the draft; it was clear that the validity of a treaty had nothing to do with the fact of a succession of States, since the issue of validity had already been settled by the Vienna Convention on the Law of Treaties.

38. The concern to which he had referred was to some extent reflected in the amendments of Cuba and Mexico, as well as in the subamendment of Argentina. Given their very broad and general terms, those proposals could be considered as going beyond the scope of the questions of legality and validity with which the Conference was dealing. As a permanently neutral State, which would not allow the establishment of any foreign military base on its own territory, Austria viewed the parts of those three proposals which related to the question of foreign military bases with some degree of sympathy. Other parts, concerning restrictions on sovereignty in general, were more difficult to accept.

39. In the event of a succession of States, certain territorial principles must be safeguarded, and he feared that, for instance, certain transit rights of land-locked countries might be put in jeopardy if the principle of treaty continuity was not recognized. That remark also applied to other geographically disadvantaged countries. It should be borne in mind that the question of the termination of treaties was already the subject of exhaustive provisions in the Vienna Convention on the Law of Treaties; and some of the fears underlying the proposed amendments to article 12 could be allayed by reference to the well-known principle of international law that restrictions on sovereignty must be interpreted in a restrictive manner. To proceed along that line of thinking would lead to the conclusion that the expression used by the International Law Commission, namely, "the use of any territory", could be interpreted only in a restrictive manner. By implication, moreover, certain cases of exploitation of natural resources would not necessarily fall within the purview of article 12.

40. To sum up, he believed that the International Law Commission had made a praiseworthy effort to draft a broadly acceptable provision, keeping in mind the basic legal principles of *pacta sunt servanda* and good faith. He therefore hoped that the Conference would see fit to adopt article 12 basically as it stood.

41. Mr. YIMER (Ethiopia) said that article 12 was just as important as article 11, with which it was linked. Those articles were designed to preserve peace and the stability of relations between States; they dealt with international servitudes.

42. The provisions of article 12 could affect the vital interests of countries, particularly in the sphere of rights relating to water, navigation and transit, which could not be compromised without endangering peace and security. The article was more particularly concerned with economic questions, and to delete it might compromise the economic situation of the States concerned or even "strangle" certain countries. Since the rule stated in article 12 was firmly based on international law, and in view of the facts which had to be faced in regard to international servitudes, there was no alternative but to accept the International Law Commission's text.

43. The proposed amendments to article 12 were either concerned with drafting or called for the insertion of a new clause. On the question of military, naval and air bases, he emphasized that article 12 was not supposed to protect treaties of that kind, which were of a political nature and which sovereign States had an absolute right to denounce. Consequently, as the International Law Commission had rightly pointed out in its commentary, there was no need to include a clause on military bases in the article. His delegation would nevertheless be willing to accept a new paragraph on that question provided that it was drafted in explicit language.

44. The drafting amendments should be referred to the Drafting Committee.

45. Mr. SAKO (Ivory Coast) said that if articles 11 and 12 were examined in the light of article 13 of the draft, it could be seen that a succession of States in itself had no effect on the validity of treaties establishing boundaries, on rights and obligations relating to a boundary régime, or on rights and obligations relating to the use, or to restrictions on the use, of a territory.

46. His delegation found the Cuban amendment too vague and general, and was more in favour of the Mexican amendment, which was drafted in more precise terms and dealt only with treaties relating to military, naval or air bases. Such an amendment, which was designed to safeguard the independence of

[10] See P.C.I.J., series A/B, No. 46, p. 96.

[11] See League of Nations, *Official Journal, Special Supplement No. 3* (October 1920).

States, would be a useful addition to the text proposed by the International Law Commission.

47. Mr. RANJEVA (Madagascar) said he agreed that the International Law Commission had shown wisdom in its drafting of article 12. Nevertheless his delegation had some difficulty in interpreting, or even understanding that article, particularly where the text spoke of "obligations" relating to the "use" of a territory. Those were general concepts, and they might lead to surprising conclusions contrary to the "clean slate" principle, which was the basis of the régime of succession of States in respect of treaties, particularly where the fate of the predecessor State's obligations was concerned.

48. Article 12 constituted a real exception to the eradication of obligations deriving from treaties concluded by predecessor States, some of which involved a veritable *diminutio capitis* for the successor State. To think that such obligations could survive a succession was a legal and political absurdity, especially as those obligations affected two important aspects of the successor State's security: the laws of war and peace, with the problem of military bases; and the right to choose its mode of economic development, including the question of concessions and exploitation of natural resources.

49. His delegation believed that there were two reasons for the silence of the International Law Commission on that matter: first, it had excluded problems of war and peace from its field of study, so that it would have been difficult to devote an article to the question of military bases; secondly, the Commission had probably considered that economic problems came within the topic of succession of States in respect of matters other than treaties.

50. A number of delegations had already stressed the need for reflection on those questions and on the very principle of exceptions to the "clean slate" rule. If it was considered necessary to maintain such exceptions, they should be enumerated as exhaustively as possible. In that case, it would seem appropriate to adopt, with a few drafting changes, the amendments submitted by Argentina, Cuba and Mexico, which had the merit of dispelling all possible doubts about impairing the full territorial competence of successor States, in that they ruled out all obligations relating to non-peaceful uses of a territory. The "clean slate" principle should apply not only in theory, but also in fact. If, on the other hand, all exceptions to the full application of the "clean slate" principle were rejected, the provisions of article 12, and even those of article 11, would have no raison d'être.

51. Mr. MBACKÉ (Senegal) said he thought it was inevitable that article 12 should evoke a reaction from the newly independent States, because the International Law Commission's text ignored certain matters of vital importance to them and, indeed, to all developing countries. The wording of the article was too general and did not deal specifically with certain points raised by other delegations and taken up in the amendments submitted by Argentina, Cuba and Mexico, which had brought out the dangers of a draft article that established a system of continuity without specifying what it related to. His delegation therefore had some misgivings about the International Law Commission's text.

52. If it was decided to adopt the proposed amendments, which contained ideas attractive to his delegation, it would be desirable for the three countries concerned to agree on a joint text. Otherwise, his delegation would support the deletion of article 12. If that article was deleted, treaties establishing servitudes would be placed on the same footing as other treaties, and the "clean slate" principle would again apply for States wishing to free themselves from those treaties. Even though it would then be necessary to settle the question of the distinction between boundary régimes and territorial régimes, that would be only a minor disadvantage less serious than those presented by the existing text of the article.

53. It might be possible to combine the drafting amendments proposed by Finland and Malaysia. The French version of the Malaysian amendment was, in any case, not very elegantly drafted, and his delegation suggested that it should be revised.

54. Mr. OSMAN (Somalia) associated himself with the comments of the representative of Madagascar concerning boundary régimes and other territorial régimes. By adopting article 11, the Committee of the Whole had taken a disturbing decision; for the provisions of that article were not in conformity with international law and did not accurately reflect the current thinking of the developing countries. There seemed to be some confusion in the Committee between treaties establishing rights and obligations concluded between European States and similar treaties of colonialist and imperialist countries. At the end of the nineteenth century, certain African countries had entered into direct collusion with the European colonial Powers to colonize Africa, and one State in particular had overtly taken part in the partition of the Somali nation. His Government made no distinction between white and black colonial Powers.

55. In formulating draft articles 11 and 12, the International Law Commission seemed to have been guided by cases involving the interests of imperialist Powers, particularly the Åland Islands case (A/CONF.80/4, pp. 38-39, para. (5) of the commentary). It was questionable, however, to what extent a judgement rendered in the nineteenth century was applicable today. Attention might also be called to the problems which had arisen in regard to the Suez Canal in Egypt and the imperialist bases established by certain colonial powers in Libya. Those were certainly cases of agreements creating international servitudes which, once denounced by Egypt and Libya as sovereign States, had lapsed.

56. Draft article 12 was supported neither by doctrine nor by practice of States, and a distinction should be made between treaties and agreements concluded within the framework of certain situations in Europe and those concluded in favour of colonial interests. His delegation considered that draft article 12 should be deleted *in toto*.

57. Mr. YIMER (Ethiopia) said that a conference for the codification of rules of international law was not an appropriate occasion to bring up political controversies, as the representative of Somalia had just done. The Conference should not be used as a forum for airing unfounded claims and opinions relating to other States, even though it was true that a neighbouring State to the east of Ethiopia was participating in an international conspiracy to dismember Ethiopia.

58. Mr. OSMAN (Somalia), speaking on a point of order, said he failed to understand why his statement had caused such concern to the representative of Ethiopia, since he had confined himself to expressing his delegation's views on draft articles 11 and 12, without expressly mentioning Ethiopia.

59. Mr. YIMER (Ethiopia), speaking on a point of order, said that he had merely been replying to the insinuations of the representative of Somalia. While it was a fact that Somalia had committed aggression against Ethiopia, the Conference had not been convened to discuss political problems, but to make law. His delegation appealed to all States to refrain from interfering in the internal affairs of countries represented at the Conference, for otherwise it would be impossible to make any progress.

60. The CHAIRMAN, replying to a question by the representative of Somalia, said that the right of reply was recognized when one delegation mentioned another in such a way that it could be identified, even if it was not expressly named. He asked delegations to refrain from expressly mentioning other countries to call their conduct in question.

61. Mr. TABIBI (Afghanistan) moved the immediate adjournment of the meeting under rule 25 of the Conference's rules of procedure (A/CONF.80/8).

It was so agreed.

The meeting rose at 9.55 p.m.

20th MEETING

Wednesday, 20 April 1977, at 11.15 a.m.

Chairman: Mr. RIAD (Egypt)

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

ARTICLE 12 (Other territorial régimes) (*continued*)[1]

1. Mr. MUDHO (Kenya) said that, when expressing support for the retention of article 11, his delegation had made some reservations concerning article 12.[2] Subsequently, it had had a chance of hearing the statements of other delegations and had been particularly impressed by the views of the representatives of Austria[3] and the United Republic of Tanzania.[4] The former had sounded a word of caution by emphasizing the obvious political implications of the article under discussion, while the latter had shown that its literal interpretation and application would entail an unacceptable curb on the sovereignty of a successor State. Nevertheless, it appeared from a study of the commentary by the International Law Commission that a provision along the lines of the proposed article was desirable. As his delegation had pointed out in 1974 in the Sixth Committee, such a provision must always be interpreted to mean that "in cases of localized treaties a newly independent State did not inherit the territorial régime created but it did inherit an obligation where necessary to renegotiate the provisions of such a treaty so as to achieve the protection of the vital interests of a beneficiary State while not jeopardizing the successor State's independence" (A/CONF.80/5, p. 157). "A State in exercise of its sovereignty might confer any benefit or undertake any obligations it so desired with respect to its territory by treaty. It was for the State to judge for itself what it should receive in return. Once such a choice was made the States concerned must respect their mutual undertakings. It was, however, going too far to say that a newly independent State should, with respect to the enjoyment of its territory and use of its resources for the benefit of its peoples, be permanently fettered by servitudes imposed on the territory by the former colonial Power for the benefit of other States in consideration of motives which might have been satisfactory to the predecessor State but not consented to by the successor State. Such a proposal could hardly be

[1] For the amendments submitted to article 12, see 19th meeting, foot-note 7.

[2] See above, 18th meeting, paras. 27-29.

[3] See above, 19th meeting, paras. 34-40.

[4] See above, 19th meeting, paras. 25-30.