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Chairman: Mr. MENDOZA (Philippines)

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The meeting was called to order at 11 a.m.

ELECTION OF A VICE-CHAIRMAN

1. The CHAIRMAN said that agreement had not yet been reached in the consultations on the election of a Vice-Chairman; consideration of that item would therefore be postponed, although he wished to remind members that it was of urgent importance for them to complete the process of electing the officers.

AGENDA ITEM 107: CONFERENCE OF PLENIPOTENTIARIES ON SUCCESSION OF STATES IN RESPECT OF TREATIES: REPORT OF THE SECRETARY-GENERAL (A/31/144, A/C.6/31/L.2)

2. Mr. MANGAL (Afghanistan) said his delegation felt that the codification and progressive development of international law, in conformity with the principles and purposes of the United Nations Charter, could contribute to the strengthening of friendly relations between States and to the promotion of international co-operation. It did not believe, however, that codification which entailed the suppression of some of the basic principles of the Charter would serve those purposes. Accordingly, while his delegation did not object in principle to the idea that a conference of plenipotentiaries should consider the draft articles on succession of States in respect of treaties prepared by the International Law Commission, it felt that certain basic matters which it regarded as essential to the success of such a conference should be reconsidered and that the General Assembly should, at its present session, explore and evaluate a number of options which were open to the conference.

3. The first of the points which, in the view of his delegation, deserved serious attention by the Assembly was that the views and comments of all Member States on the draft articles should be treated in the same manner. He therefore felt that, without prejudice to General Assembly resolution 3496 (XXX) on the convening of a conference of plenipotentiaries, there should first be a "third reading" of the draft articles by the International Law Commission so that the latter would have an opportunity to consider the views and comments submitted after the preparation of the present draft.

4. Secondly, his delegation still felt, as it had at the thirtieth session, that it would be premature to convene a conference of plenipotentiaries since the draft articles were not ready to be submitted to such a conference.

5. Finally, his delegation felt that, in providing in articles 11 and 12 that succession of States did not affect boundary régimes and other territorial régimes, the draft was according those régimes an unjust guarantee. The proposed conference of plenipotentiaries might violate the basic principle of "fundamental change of circumstances" by giving its seal of approval to colonial treaties or treaties concluded under coercion which had imposed boundaries on States at a time when they had not been fully independent. As his delegation had stated at the twenty-eighth and thirtieth sessions (A/C.6/SR.1543), those articles were inconsistent with the principle of self-determination recognized in the Charter

(Mr. Mangal, Afghanistan)

and reflected political expediency and the desire of the majority to maintain the status quo. If that situation was not remedied before the draft articles were submitted to the conference of plenipotentiaries, it would mean committing a historic error and a new injustice against those peoples which were still under colonial and alien domination and were being denied their fundamental rights.

6. In view of the importance, complexity and controversial nature of the subject, which had also been recognized by the International Law Commission, his delegation felt that at the present session the Committee should explore and evaluate two options which were open to the conference. First of all, whenever the conference was convened - and the later the better, despite the reference made in General Assembly resolution 3496 (XXX) - it would be preferable for it to adopt a declaration or resolution on the subject instead of an international convention, which might not obtain the necessary ratification and accession by all States because of the fact that some of its provisions were inconsistent with the relevant basic principles of the Charter. The second option was to adopt an approach similar to that taken by the General Assembly regarding the "definition of aggression", which had been embodied in a resolution adopted at the twenty-ninth session, instead of referring the matter to a conference of plenipotentiaries or trying to conclude an international convention.

7. For all those reasons, his delegation felt that consideration should be given to the possibility of postponing the proposed conference of plenipotentiaries so as to give the General Assembly and the International Law Commission an opportunity to remedy the present situation by removing the fundamental inconsistencies which he had mentioned between the objectives of the conference and some of the basic principles of the United Nations Charter.

8. Mr. HUSSEN (Somalia) supported the Afghan representative's proposal and recalled that at the thirtieth session of the General Assembly several delegations had objected to the inclusion of articles 11 and 12 in the draft, feeling that they would have an adverse effect on the right of peoples to self-determination, and that the General Assembly had decided that it was necessary to develop and substantially improve those parts of the draft.

9. His delegation therefore firmly believed that the Committee could not confine itself to considering the question of the date and venue for convening a conference of plenipotentiaries since convening such a conference would be an exercise in futility and would serve no useful purpose unless its terms of reference were properly defined and agreed upon and unless the draft articles which were to constitute its basic guidelines reflected the principles established in the complex area of international law now under consideration.

10. Although his Government had stated Somalia's position on several occasions, he wished once again to draw the Committee's attention to the fact that articles 11 and 12 were inadequate in that the exception made regarding "boundary régimes" was not in conformity with the basic principles of international law or with those of the United Nations Charter. The codification of that exceptional norm would mean violating a cardinal principle since it would

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(Mr. Hussen, Somalia)

prejudice the right to self-determination of peoples adversely affected by colonial boundary treaties which, in the light of the clean slate principle, should be regarded as null and void. The introduction of article 13 in the new text did not resolve the matter, since it did not make articles 11 and 12 any clearer - which had, he understood, been the Commission's purpose in including it - and did not address itself to the central issue which had given rise to its formulation.

11. In conclusion, his delegation wished to express reservations regarding the validity of the exceptional norm contained in articles 11 and 12 and strongly recommended that they should be deleted. If, however, the draft articles did deal with the question of boundary régimes, it must reflect realistic and equitable principles of international law which under no circumstances prejudiced the fundamental and inalienable right of peoples to self-determination.

12. Mr. BUSSE (Federal Republic of Germany), referring to the comments made by his delegation during the writing of the draft articles and at the thirtieth session, said that the decision to convene a conference of plenipotentiaries in 1977 had been contrary to his Government's wishes. He felt that substantive debate on the subject should be reserved for the conference, which, in the opinion of his delegation, should be held in Europe and should not be of too short a duration. Since his Government thought it important that the conference should not affect other dates already set for 1977, he proposed that it should be convened in 1978.

13. Mr. MAAS GEESTERANUS (Netherlands) said that his delegation fully agreed with the Cameroonian and other delegations that the substantive aspects of the proposed codification were a matter for the conference of plenipotentiaries; however, the conference would not be dealing merely with the draft articles prepared by the International Law Commission, since it was clear from the debates in past years and from the comments of Governments that some matters of substance - such as the question of the rules applying to newly independent States - had not been fully dealt with in the draft articles. He therefore thought it advisable to reserve at least six weeks for the conference and felt that the latter should perhaps have summary records, which would mean reconsidering the statement on financial implications presented to the General Assembly by the Secretary-General at the thirtieth session.

14. Looking at the note by the Secretariat on the tentative dates of conferences and meetings dealing with legal questions (A/C.6/31/L.2), it seemed to him difficult, if not impossible, to find a convenient period for the conference of plenipotentiaries during the first half of 1977, and he believed that, although there were some dates which did not overlap exactly with those of other legal meetings, they would still create an excessively heavy burden for Governments and their experts.

15. His delegation agreed with the forecast made by the United Kingdom delegation to the effect that 1978 would probably be less burdened than the preceding years, and it also agreed with the delegation of Zambia that the current session of the General Assembly should set definite dates for the conference. His delegation therefore suggested to the Committee that it should propose to the General Assembly a fixed period of six weeks in the first half of 1978 for the conference of plenipotentiaries on succession of States in respect of treaties.

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16. Mr. KOLESNIK (Union of Soviet Socialist Republics) said he did not think there was any valid reason for postponing the convening of the conference of plenipotentiaries; the International Law Commission had completed its work on succession of States in respect of treaties and the draft articles submitted were ready for consideration by the conference. The fact that the draft articles were not perfect constituted no obstacle, for if there was no disagreement concerning the text, it would suffice to open it for signature and the conference would be unnecessary. Similarly, his delegation saw no practical purpose in a third reading of the draft.

17. The fact that the calendar of conferences for 1977 was already very full was not a serious argument for postponing the convening of the conference, and in any case the number of conferences of legal nature was increasing as the years passed. The Sixth Committee had a certain moral obligation towards the International Law Commission, since it had for many years recommended that the latter should complete the draft in question and it should not at the current stage postpone consideration of that text.

18. Lastly, he noted that the envisaged convention was directly related to the historical process of eliminating the consequences of colonialism. In that connexion, he observed that the principle of self-determination was one of the key aspects of the draft articles prepared by the International Law Commission, being reflected specifically in the clean slate principle.

19. In his view, all that remained for the Sixth Committee to do was simply to set a precise date for the convening of the conference and the venue thereof; in that connexion, he expressed gratitude to the Government of Austria for having offered to host the conference in Vienna.

20. Mr. KUMI (Ghana) said he was opposed to reopening the debate on the draft articles prepared by the International Law Commission, because his delegation believed that substantive consideration of the draft articles had already been completed. Moreover, the only reason for including the item in the agenda of the thirty-first session of the General Assembly was to take a decision on the venue and date of the conference of plenipotentiaries. His delegation considered that the conference should be held in Vienna in the spring of 1977.

21. Mr. HAGOS (Ethiopia) said that the provisions of the draft articles prepared by the International Law Commission concerning boundary régimes were not in conformity with the principle of self-determination. In any case, he considered that the Sixth Committee should not re-examine the draft articles; that task should be left to the conference of plenipotentiaries.

22. Lastly, his delegation supported the proposal that the conference should be held in Vienna in 1977.

23. Mr. HUSSEIN (Somalia) explained that his delegation was not opposed to the idea of holding the conference of plenipotentiaries in Vienna in 1977. The sole purpose of his previous statement had been to point out that before holding the conference certain pending problems would have to be solved, in order to permit a consensus on the draft convention.

24. It should be remembered that in many parts of the world boundaries had been established by the colonial Powers without the consent of the peoples concerned and consequently his delegation could not agree that boundary régimes should be excluded from the application of the principle of self-determination, since the two were closely linked.

25. Mr. QAZILBASH (Pakistan) said it was evident from the report of the International Law Commission that it had thoroughly considered the draft articles on succession of States in respect of treaties, which represented a compromise formula based on a broad spectrum of legal views and opinions. Consequently, his delegation believed that the conference of plenipotentiaries envisaged in General Assembly resolution 3496 (XXX) should be held in 1977 with a view to giving the draft articles prepared by the International Law Commission the form of a convention and approving that instrument.

26. In his delegation's view, there was no good reason, either substantive or procedural, to put off the convening of the conference, since there were no insuperable obstacles in the way of the approval of the draft; moreover, the argument that a number of conferences of a legal character were to be held in 1977 was not convincing, since that happened every year, including the current year.

27. Lastly, he thanked the Government of Austria for having offered to host the conference of plenipotentiaries in Vienna in the spring of 1977.

28. Miss AGUTA (Nigeria) agreed that the conference of plenipotentiaries should be held early in May 1977, since she saw no valid reason that would warrant its postponement. In any case, in view of the many legal conferences scheduled for that year, her delegation would prefer the Vienna conference to last no more than four or five weeks.

29. Mr. BAYAND (Iran) thanked the delegation of Austria for that country's offer to host the conference of plenipotentiaries and said that the draft articles were ready to be submitted for consideration by that conference. In the light of General Assembly resolution 3496 (XXX) there was no need for the International Law Commission to undertake a further reading of the draft, whose authors had succeeded in striking a fairly equitable balance between the clean principle and the continuity ipso jure of territorial treaties. It would be for the conference of plenipotentiaries to correct existing defects, and on that occasion all participating countries could express their views and exert an influence on the preparation of the final text.

30. With regard to the holding of the conference, his delegation tended to

(Mr. Bayand, Iran)

prefer 1977, but its position on that point remained flexible and it would support the decision of the majority.

31. Mr. OKIVONGA (Uganda) said that nothing would be gained by postponing the conference. He agreed that the latter should be held in Vienna and said that his delegation would support whatever decision the Committee took with regard to the dates.

32. Mr. OLOGOUDU (Benin) said the Committee should abide by General Assembly resolution 3496 (XXX) and proceed with the organization of the conference of plenipotentiaries envisaged therein. The delegations which had raised objections to some of the draft articles would have an opportunity to present their points of view at the conference, which would have to examine and resolve all the objections and criticisms voiced. He agreed that the conference should be held in Vienna and was opposed to postponing it beyond 1977. He therefore suggested that a period in that year should be chosen which would enable the greatest number of participants to attend the conference, without impeding other meetings of a legal character. He regarded as invalid the argument that the calendar of meetings of that type for 1978 provided more opportunities for holding the conference than that for 1977.

33. Mr. BOOH BOOH (United Republic of Cameroon) recalled that his delegation had previously supported the idea of holding the conference in 1977. The arguments which had been adduced on that occasion against that solution, such as the proposal for resubmission to the International Law Commission or to a group of experts, had currently been superseded by the General Assembly resolution. No prior agreement on substantive questions was required for the convening of the conference. Delegations such as his own which had reservations in that regard could discuss them at the conference of plenipotentiaries. It was difficult for many countries with a limited number of experts to attend more than one conference of the same type and it would therefore be advisable for the conference to meet for a short period - five weeks would suffice - since very lengthy gatherings were expensive and in some cases unproductive.

34. Mr. DONORABAYE (Chad) said that his delegation supported the convening of the conference of plenipotentiaries in 1977, in accordance with the decision of the General Assembly. There was no justification for postponing it until 1978 in the hope that the calendar of meetings might be less full in that year. He agreed that the conference should be held from 4 April to 7 May 1977.

35. Mr. RATSISALOZAFY (Madagascar) said that the draft articles were the result of years of work in the course of which eminent jurists had considered carefully the questions of substance. Even if there were still some points requiring improvement or clarification, that would be a task for the conference of plenipotentiaries.

36. Mr. MANSOURI (Saudi Arabia) agreed that the conference should be held during the first half of 1977, especially since no list of the meetings and conferences planned for 1978 was available.

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37. Mr. DIA (Senegal) stressed that the Committee had an obligation to the General Assembly not to reopen discussion of a date which had already been fixed. It was not a question, therefore, of postponing the convening of the conference, but of confirming it, so that there should be no further discussion of the possibility of holding it in 1978.

38. Mr. MANYANG D'AWOL (Sudan) agreed that the conference should be held in 1977 and that it should deal with questions of substance relating to the draft articles. He agreed with the delegation of the United Republic of Cameroon that the work of the conference should not last more than five weeks.

39. Mr. LOVO-CASTELAR (El Salvador) said that his delegation supported the holding of the conference in 1977, as laid down in General Assembly resolution 3496 (XXX).

40. Mr. HENDAWY (Egypt) recalled that, at the previous session, the efforts of the Committee had been directed towards ensuring that the conference of plenipotentiaries was held in 1977. It was inappropriate, therefore, to reconsider the point which, moreover, had already been decided by the General Assembly. Efforts should be made to ensure that the conference did not coincide with other international meetings of a legal nature.

41. Mr. HUSSEN (Somalia) said that there appeared to be a contradiction in the attitude of some speakers who maintained that the Committee should not at the current time deal with matters of substance but should proceed with consideration of the convening of the conference in 1977, while at the same time proposing that the duration of the conference should be limited. If the conference of plenipotentiaries was to deal with the substantive aspects of succession of States in respect of treaties, it should be allowed with sufficient time to do so, which, in the opinion of his delegation, would require not less than six months.

42. Mr. GANAI (Tunisia) said he would not speak on the substance of the draft, since that was a task for the conference of plenipotentiaries. The convening of the conference should not be postponed until 1978, in the hope that the calendar of meetings of a legal nature for that year would be less full.

43. Referring to the period from 4 April to 7 May 1977 suggested by the Austrian delegation, he said that, at the previous meeting, that delegation had left open the possibility that the conference might be held at a more opportune time. He would be grateful if the Austrian delegation would provide the Committee with any information which it might have in that regard.

44. Mr. WOLF (Austria) confirmed that, at the previous day's meeting, he had informed the Committee that the Vienna Conference Centre would be prepared to accommodate the conference between 4 April and 7 May 1977. However, he had undertaken to ascertain whether the Conference Centre would be able to accommodate the conference from 28 March 1977, also for a five-week period, as a number of delegations had proposed and for the greater convenience of the Secretariat.

(Mr. Wolf, Austria)

When he received a reply, he would communicate it to the Chairman, or to the Committee if it was still in session.

45. Mr. AL-ADOOFI (Yemen) said he was surprised that the question of whether the conference of plenipotentiaries should be convened in 1977 was still being discussed, since the General Assembly appeared to have taken a final decision on the matter in its resolution 3496 (XXX). His delegation felt that the Committee should abide by that decision. With regard to the exact date in 1977, he recommended that the Committee should choose a time which would be convenient for all delegations and which did not clash with other conferences dealing with legal matters, in particular the Third Conference on the Law of the Sea, which was to begin on 23 May, although some of the preliminary meetings were to commence much earlier.
46. Mr. LAUTERPACHT (Australia) said there appeared to be a fairly clear feeling among delegations that the conference of plenipotentiaries should be held in 1977. Consequently, he suggested that consideration of the item should be postponed and asked the Chairman to hold informal consultations with the main groups to enable the Bureau to prepare a draft resolution for subsequent consideration by the Committee. Such a postponement would also enable the representative of Austria to ascertain the dates most convenient to his Government.
47. The CHAIRMAN agreed with the suggestion that, once the general consideration of the item had been completed, the various parties concerned should draw up a draft resolution, after holding consultations on the most important aspects, such as whether the conference should be held in 1977 as the General Assembly had decided, the specific date and venue, and other pertinent questions.
48. Mr. NOEL (Papua New Guinea) said that his delegation would support any decision taken by a majority of the Committee for or against the convening of the conference in 1977. However, under no circumstances should the concerns relating to boundary treaties expressed by Somalia and Afghanistan, among others, be overlooked since such questions could affect international peace and harmony, as shown by many notable examples not only in Africa, but also in Asia and other areas of the world.
49. Mr. CAMARA (Guinea) agreed that the conference of plenipotentiaries should be held in Vienna in the following year. His only concern with regard to the date was that there should be no overlapping with other conferences of a legal nature.
50. Mr. APUNTE (Ecuador) stressed that the Committee should abide by the provisions of General Assembly resolution 3496 (XXX), according to which it was to decide only on the date of the conference. In the course of the conference, all countries would have an opportunity to express their points of view with regard to the substantive aspects of the question, which was of great importance both for the new, recently independent States and for the process of codification of international law.

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(Mr. Apunte, Ecuador)

51. Since there was no reason to postpone the holding of the conference, he agreed that it should take place in Vienna in 1977.

52. The CHAIRMAN suggested that consideration of the item should be concluded and that the various regional groups should draw up a draft resolution on the question with a view to reopening the debate only for consideration of that draft. If there was no objection, he would take it that the Committee agreed with his suggestion.

53. It was so decided.

The meeting rose at 12.45 p.m.