

**United Nations Conference on Succession of States
in respect of State Property, Archives and Debts**

Vienna, Austria
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1st meeting of the Committee of the Whole

Extract from Volume I of the *Official Records of the United Nations Conference on Succession of States in respect of State Property, Archives and Debts (Summary records of the plenary meetings and of the meetings of the Committee of the Whole)*

SUMMARY RECORDS OF MEETINGS OF THE COMMITTEE OF THE WHOLE

1st meeting

Wednesday, 2 March 1983, at 10.20 a.m.

Chairman: Mr. ŠAHOVIĆ (Yugoslavia)

Election of the Vice-Chairman

1. The CHAIRMAN invited nominations for the office of Vice-Chairman of the Committee of the Whole.

2. Mr. SHASH (Egypt), speaking on behalf of the group of African States, nominated Mr. Moncef Benouniche (Algeria) for the office of Vice-Chairman.

3. Mrs. BOKOR-SZEGÖ (Hungary), speaking on behalf of the group of Eastern European States, seconded the nomination.

Mr. Moncef Benouniche (Algeria) was elected Vice-Chairman by acclamation.

Election of the Rapporteur

4. The CHAIRMAN invited nominations for the office of Rapporteur of the Committee of the Whole.

5. Mr. MURAKAMI (Japan), speaking on behalf of the group of Asian States, nominated Mrs. Thakore (India).

6. Mr. SHASH (Egypt) seconded the nomination.

Mrs. Thakore (India) was elected Rapporteur by acclamation.

Organization of work

7. The CHAIRMAN drew attention to paragraphs 9 and 23 to 26 of the memorandum of the Secretary-General on the organization of work (A/CONF.117/3) which the Conference had approved at its 2nd plenary meeting. He pointed out that, in paragraph 7 of that document, it was suggested that the Committee might find it appropriate to defer consideration of Part I of the draft articles until it had concluded its initial consideration of the remaining three Parts. In the absence of objection, he would take it that the Committee agreed to start its work by considering Part II on "State property", beginning with article 7.

It was so decided.

8. The CHAIRMAN drew attention to annex 1B, section 1, of document A/CONF.117/3 which set out a tentative timetable for the Committee's consideration of the draft articles.

9. Mr. MONNIER (Switzerland) said it would be useful to establish that the timetable was to be regarded only as a guide and that the allocation of specific weeks for the consideration of particular groups of articles

would not preclude delegations from subsequently submitting new articles related to those groups.

10. The CHAIRMAN said that the Conference had authorized the Committee to apply in a flexible manner the recommendations in document A/CONF.117/3. He pointed out however, that the Committee must have completed its work by 1 April.

Consideration of the question of succession of States in respect of State property, archives and debts, in accordance with General Assembly resolutions 36/113 of 10 December 1981 and 37/11 of 15 November 1982 (A/CONF.117/4, A/CONF.117/5 and Add.1)

[Agenda item 11]

Article 7 (Scope of the articles in the present Part)

11. Mr. GUILLAUME (France) said that, although he had no difficulty with the article, it was evident that the scope of the articles in Part II depended on the definition in article 2, paragraph 1(a), of "succession of States", on which the Government of Canada had made some interesting comments, as reproduced on page 59 of document A/CONF.117/5. The text of article 7 could not be definitively established until article 2, paragraph 1(a) had been adopted.

12. Mr. ECONOMIDES (Greece) wondered whether it was necessary for the Convention to contain four similar introductory articles in the shape of articles 1, 7, 18 and 30. Those four articles should in any case be considered in conjunction by the Drafting Committee.

13. Mr. LEHMANN (Denmark) agreed with the Greek representative. He would be inclined to have a definition of scope only in article 1, as in the Vienna Convention on Succession of States in respect of Treaties.¹

14. Mr. TÜRK (Austria), supporting the previous speaker, suggested that the substance of article 7 should be considered in conjunction with the general provisions in Part I.

15. Mr. TURNARITIS (Cyprus) and Mr. SHASH (Egypt) supported that suggestion.

16. Mr. DJORDJEVIĆ (Yugoslavia) said that he could accept article 7 in its present position but had no objection to its being considered in conjunction with

¹ See *Official Records of the United Nations Conference on Succession of States in Respect of Treaties*, vol. III (United Nations publication, Sales No. E.79.V.10), p. 185.

article 1. He suggested that the matter should be referred to the Drafting Committee.

17. Mr. MONCEF BENOUNICHE (Algeria) said that the issue was related to the structure of the convention. He agreed with the International Law Commission that, for the sake of clarity, it was appropriate to define the scope of the articles in each Part at the beginning of that Part.

18. Mr. GUILLAUME (France) said that the choice lay between having a general provision on scope and having a provision at the beginning of each Part.

19. The CHAIRMAN suggested that the Committee should defer further consideration of article 7 in view of its link with article 1 and other introductory articles and should request the Drafting Committee to give its views on the structure of the convention.

It was so decided.

Article 8 (State property)

20. Mrs. BOKOR-SZEGÖ (Hungary) suggested that it would be more logical to include a definition of State property in article 2, since the term occurred not only in Part II but also in articles 35 and 36 in Part IV.

21. Msgr. PERESSIN (Holy See) observed that there was some inconsistency between the title of article 8 and its text, in that the former mentioned only "State property" whereas the latter referred also to rights and interests. It should be made quite clear that "State property" included rights and interests.

22. Mrs. THAKORE (India) said that article 8, like article 19 on State archives, defined State property in terms of the internal law of the predecessor State, its purpose being, like that of article 19, not to settle the fate of the State property of the predecessor State but merely to establish a criterion for determining such property. The reference to the internal law of the predecessor State as the criterion for determining State property was logical because, unless the title was vested in the predecessor State under its internal law, no question of succession to the property could really arise. The internal law determined not only the existence of title to property rights and interests but also the attribution of that title to the State. The Indian delegation consequently agreed with the view expressed by the Special Rapporteur that, in determining what property belonged to the predecessor State, or the property which the predecessor State considered to belong to it, its internal law inevitably had to be consulted. Her delegation noted with satisfaction the clarification given in paragraph (11) of the International Law Commission's commentary on article 8 (see A/CONF.117/4). It understood that the term "internal law of the predecessor State" as used in article 8 would be broadly construed to include treaties which had been ratified by that State, irrespective of any national requirement for legislation to put the treaties into effect. It would be glad to hear from the Expert Consultant why the Commission had not considered it necessary to define the concept of internal law in article 2, since most members of the Commission had seemed to favour such a definition.

23. Subject to those comments and to such clarification as might be given by the Expert Consultant,

the Indian delegation supported the definition of State property in article 8. That definition should not be complicated by the addition of a reference to public or private international law as had been suggested by some representatives in the Sixth Committee of the General Assembly. All members of the International Law Commission appeared to have taken the same view on that point.

24. Mr. SUCHARITKUL (Thailand) said that the scope of article 8 was based on the combination of two basic criteria, the time of the succession of States and the system of internal law of the predecessor State. That was clear from paragraph (1) of the International Law Commission's commentary on article 8. If, therefore, the predecessor State decided to dispose of State property immediately prior to the succession, that property would be excluded from the scope of the present convention. He therefore considered that some safeguards with regard to the property of the successor State should be introduced.

25. Mr. NATHAN (Israel) said that the International Law Commission had been wise to include both State property belonging to the public domain and that belonging to the private domain in one definition, thus ruling out any distinction between property owned by the State *de jure imperii* and property owned by it *de jure gestionis*, the test being solely and exclusively that of ownership, irrespective of the purpose which the property served.

26. According to the definition in article 8, the term "State property" would include only property, rights and interests owned directly by the State as such. That excluded public property indirectly owned by the State through public corporations fully owned by the State. With the considerable expansion of its activities in the economic sphere, the State tended increasingly to conduct its public economic activities through such corporations which, although often functioning for all practical purposes as Government departments, nevertheless operated as separate legal entities. If the term "State property" referred only to property owned directly by the State, to the exclusion of such public State-owned or State-controlled corporations, an anomalous situation might arise in many cases of State succession. Public economic enterprises of the largest order and utmost importance for the economic infrastructure of the State which were organized in the form of such wholly owned or controlled State corporations would, as such, be outside the scope of the proposed convention. Furthermore, since they would not qualify as State property, they themselves would not pass as State property from the predecessor State to the successor State, while the shareholding of the predecessor State in them would. A much wider concept of State property had been applied in recent State practice in the definition of the term "State or para-State property" in paragraph 1 of annex XIV to the Treaty of Peace with Italy of 1947.² That definition included, *inter alia*, movable and immovable property of public institutions and public and publicly-owned companies and associations.

² United Nations, *Treaty Series*, vol. 49, p. 3.

27. *Prima facie* the term "State property" would also include "State archives", as the Commission had indicated in its commentary on draft article 18. State archives being dealt with in a separate part of the draft articles, article 8 might usefully indicate that the term "State property" meant "State property other than State archives".

28. Mr. CHO (Republic of Korea) said that his delegation could accept article 8 as drafted by the International Law Commission, provided that the criterion of State property was determined by the internal law of the predecessor State.

29. Mr. FREELAND (United Kingdom) underlined the need to consider the content of article 8 in close association with whatever might later be agreed for inclusion in article 2. A number of the terms used in article 8 would have to be defined in article 2, which would therefore affect the scope of article 8. Article 8 in its present form created some degree of uncertainty when read in relation to United Kingdom practice in the granting of independence to former dependent territories of the United Kingdom. Under that practice, two legally distinct governments were involved; the Government of the United Kingdom and the government of the dependent territory, which by the time of independence would own by far the greater part of the State property in the territory. What should and did happen was that the property of the government of the dependent territory passed to the new international entity, namely the government of the newly independent State. Provision for such situations should be made in article 8, as it would also need to be made elsewhere in the draft; but no final position could be taken on the matter until the effect of article 2 on article 8 became clear.

30. Mr. OESTERHELT (Federal Republic of Germany) said that further clarification of article 8 was needed. He shared the view of many delegations in the Sixth Committee of the General Assembly that the term "rights and interests" should be further examined, particularly in relation to their scope. With regard to the reference to the "internal law of the predecessor State", he endorsed the view expressed in paragraph (8) of the commentary on article 8.

31. Mr. MURAKAMI (Japan) said that, according to the present draft article 8, "State property" included the "rights and interests" of a State. If interpreted widely, those rights and interests might include rights and interests provided for by treaties. The application of two treaties, namely the present convention and the Vienna Convention on Succession of States in respect of Treaties might thus arise. It was his delegation's understanding that, in such a case, the latter Convention would prevail over the former. On the question of succession of States in respect of such matters as a State's subscription to the capital stock of certain international institutions, it was also his delegation's understanding that the constituent instrument and the internal rules of the institution concerned should prevail over the provisions of the proposed convention.

32. Mr. DJORDJEVIĆ (Yugoslavia) said that the definition in article 8 might usefully be inserted in article 2 together with the other definitions, so that its

scope might be extended to the draft articles as a whole. It would also be useful to consider article 8 in conjunction with articles 19 and 31. He agreed with those speakers who had seen the reference to internal law as a problem and felt that some further clarification was needed. Paragraph (11) of the International Law Commission's commentary on article 8 provided a useful basis for further consideration of the question.

33. Mr. MONNIER (Switzerland) said that his delegation could accept the definition of State property in article 8 as property, rights and interests by reference to the internal law of the predecessor State. As he saw it, such a reference to internal law was the only way to define the concept, since international law provided no definition of its own. The Swiss delegation was satisfied with the comments in paragraph 11 of the commentary on article 8.

34. The Swiss delegation could agree to the present article 8 being either included in article 2 or appearing at the beginning of Part II. However, its inclusion in article 2 might overburden that article and cause difficulties elsewhere.

35. Mr. SHASH (Egypt) drew attention to an inconsistency in the Arabic translation of the term "State property" which undoubtedly caused some confusion for the representatives of Arabic-speaking countries. The translation as it appeared in the title of article 8 should be used throughout. In his view, all the articles containing definitions should be considered when Part I was examined, at which time the concept of State property, too, could be further clarified.

36. Mrs. OLIVEROS (Argentina) said that there appeared to be some confusion between the concept of State property as used in the title and as defined in article 8. According to Argentina's legal system, which was based on Roman law, "property" was understood to mean real property and also movable property; linking those with "rights and interests", which were covered in different parts of the Argentine legal code, could give rise to confusion. It was therefore essential to define State property clearly, either as something tangible, or as something less tangible, as represented by the State corporations and State activities referred to by the representative of Israel.

37. Regarding the possibility of including a definition of State property in article 2, she suggested that the Drafting Committee should consider establishing a unified concept since the concepts of property, rights and interests appeared to differ in the various parts of the draft articles.

38. Mr. GUILLAUME (France) said that, in his delegation's view, the only way of defining State property was to refer to the internal law of the predecessor State, as the International Law Commission had done for the reasons given in paragraph (11) of its commentary. However that was not a complete solution. As the representative of Argentina had pointed out, for countries with a basis of Roman law, the concept of property was clear but the concept of rights and interests was less clear. In paragraph (10) of its commentary, the Commission had stated that the expression "property, rights and interests" referred only to rights and interests of a legal nature, but that merely raised the

question of what a legal interest was. Further thought was therefore required, particularly in the light of the jurisprudence in the treaties quoted in the same paragraph.

39. A further problem was that “property, rights and interests” could be associated with obligations or commitments entered into with third parties in respect of land or buildings (such as mortgages and encumbrances). It was clear that the definition given in article 8 meant “including any obligation attaching thereto”. If everybody was in agreement, it would not be necessary to amend article 8; if there was any doubt, the article would have to be redrafted. It also seemed that “property, rights and interests” associated with a State meant only those directly involved with the State and not those aspects associated with corporations or private individuals involved in economic activities, since they were not directly State property.

40. Mr. DI BIASE (Uruguay) drew attention to the comments of his Government which were to be found in documents A/37/454/Add.1 and A/CONF.117/5. It seemed wrong to include “rights and interests” in a definition of property and the expression “interests” in particular might extend the scope of the article beyond what was intended. It should therefore be removed.

41. Mr. SAINT-MARTIN (Canada) endorsed the comments made by the representative of France. One of the general principles of law was that no one could pass on to another more rights than he possessed. Consequently the passing to the successor State of the State property of the predecessor State therefore included all the obligations associated with the property concerned.

42. Mr. BOSCO (Italy) said that it was very difficult to provide a proper definition of the general concept of “property, rights and interests” in a convention of a universal type. The International Law Commission, recognizing, as was indicated in paragraph (4) of its commentary on article 8, that no generally applicable criteria could be deduced from treaty provisions, had simply referred to the internal law of the predecessor State. That could have different consequences however according to the legal system concerned.

43. The CHAIRMAN observed that a number of problems had already been identified by various speakers which might to some degree at least be clarified by the Expert Consultant upon his arrival. A list of the questions which had been raised explicitly or implicitly during the discussion would therefore be kept to that end.

44. Mr. ECONOMIDES (Greece) said that, from the standpoint of the presentation of the draft articles, he tended to agree that the provisions of article 8 would be better included in article 2. As far as substance was concerned, he shared the view that “State property” was a broad concept covering not only property in the traditional sense but also less tangible aspects, including the matter of obligation.

45. For his delegation, the crucial problem in article 8 was the lack of a definition of the concept of a State. Under the present wording, the term could be defined by the predecessor State itself according to its own legislation. He agreed with the United Kingdom delega-

tion that article 8 should be studied in conjunction with the definition of the term “predecessor State” under article 2.

46. Mr. MONCEF BENOUNICHE (Algeria) said that article 8 appeared to draw a distinction between the nature of property and the owner of property. So far as the latter was concerned, he shared the concerns of the representative of Greece.

47. Mr. LEHMANN (Denmark) observed that it was very difficult to establish a general definition of the concept of property which would be applicable to all international systems. State property should be defined as meaning all that was owned by the predecessor State, according to its internal law, at the date of the succession.

48. He agreed that the use of the word “property” in a definition of the concept of property was not felicitous. Since the key purpose of article 8 was to cover the applicability of internal law, the article should perhaps concentrate on providing a clear definition of State ownership and leave aside the question of the property law of individual States.

49. Mr. MIKULKA (Czechoslovakia) supported the proposal by the Hungarian delegation regarding the position of the provision in article 8. His delegation could also endorse the views expressed by the delegation of Switzerland. However, it shared the concern expressed by previous speakers regarding the difficulty of linking together property, rights and interests and the need for a definition of the concept of a State.

50. Mr. KÖCK (Holy See) supported the remarks of the representative of Denmark. State property was what was owned by the predecessor State. The problems of linking property with rights and interests could perhaps be overcome by referring in article 8 to “property, including rights and interests”.

51. Mr. SHASH (Egypt) said that it was important to obtain some clarification of the various points raised before deciding whether to proceed with the discussion of article 8 under Part II or to take it up in connection with article 2 in Part I. His delegation considered the three major points of concern to be: the definition of State property; the date of succession; and the applicability or otherwise of internal law.

52. Mr. BINTOU (Zaire) said that it should be made clear whether the concept of property rights and interests included obligations.

53. Mr. BOSCO (Italy) said that in his delegation’s view the concept of property should cover both tangible goods and intangibles.

54. A limited concept of property would give rise to difficulties in connection with the interpretation of article 14.

55. Mr. GUILLAUME (France) suggested that a time-limit should be set for the submission of amendments to articles 7 to 12.

56. Mr. do NASCIMENTO e SILVA (Brazil) proposed that further discussion of article 8 should be postponed until the Committee had considered the other draft articles relating to State property.

57. After a procedural discussion, the CHAIRMAN suggested that the discussion of article 8 should be suspended pending clarification by the Expert Consultant of the points so far raised. A suspension would also provide an opportunity for delegations to submit amendments. It was understood that the Committee would resume consideration of article 8 at a later date.

It was so agreed.

Article 9 (Effects of the passing of State property)

58. Mr. TÜRK (Austria) said that his delegation attached particular importance to article 9 and had submitted written comments on earlier drafts. He stressed that any solution to the problems raised by article 9 should be applied also to articles 20 and 32. Those three articles, which dealt with the three different aspects of the same problem, should be merged and included under the general provisions in Part I.

59. Mr. ECONOMIDES (Greece) endorsed that view. Articles 9, 20 and 32 were virtual repetitions of the same provision.

60. Mr. SHASH (Egypt) said that such a procedure would give his delegation some difficulties. The text had been drafted under three main headings corresponding to the three topics involved. While repetitions were bound to occur as a result, the structure had a definite logic, particularly in relation to the concept of the effects of passing, since the three articles in question all related to succession. He believed that the valuable work done by the International Law Commission should not be prejudiced.

61. Mr. GUILLAUME (France) said that the value of the work done by the International Law Commission and the Special Rapporteur in providing the Conference with a basis for its discussions, was not in question. It should nevertheless be borne in mind that the International Law Commission was composed of independent experts. The Conference, as a body of sovereign States, was fully entitled to express views on and to amend the Commission's draft.

62. The possibility of merging articles 9, 20 and 32 merited further study. On the other hand, the Conference might wish to retain the three topics under separate headings and perhaps even consider drafting an *à la carte* form of convention with States being free to accede to certain sections independently of their accession to others. His delegation had no fixed views on the matter at the present stage but believed that serious thought should be given to the general structure of the draft convention.

63. Mr. MONCEF BENOUNICHE (Algeria) said that the problems cited in respect of article 9 were bound to emerge later in connection with other articles. He believed that the structure proposed by the International Law Commission was a sound one.

64. Mr. MUCHUI (Kenya) agreed that a general decision was required as to whether the Conference wished to discuss the draft as submitted or change the presentation. His delegation's position was that the structure proposed by the International Law Commission was a useful one and should be used as the basis for discussion. The interrelationship between various articles should however be kept constantly in mind during the discussions.

65. Mr. MONNIER (Switzerland) said that the substance of the amendments proposed by delegations would have an important bearing on whether or not the proposed structure of the draft convention should be maintained. He reaffirmed the right of the Conference, as a plenipotentiary body, to make any changes in the draft before it.

66. Mr. BOSCO (Italy) said that the question of structure should be given careful thought; if a number of provisions were relocated in Part I, that part of the draft articles would become too long to be taken up at the end of the Conference.

67. Mr. do NASCIMENTO e SILVA (Brazil) said that the idea of merging articles 9, 20 and 32 was attractive in a certain sense. However, considering that such an article would constitute a general provision applicable to the whole convention, he had serious doubts as to the convenience of departing from the approach adopted, after lengthy consideration, by the International Law Commission. In his view, it would be preferable to maintain article 9 as drafted.

68. Mr. SHASH (Egypt) agreed with the previous speaker. The Conference was dealing with three different topics and it was more logical to deal with them separately under separate headings.

69. The CHAIRMAN noted that a distinction should be drawn between different types of provisions. Article 7, which concerned scope, and article 8, which was in the nature of a definition, could possibly be placed in Part I. On the other hand, article 9 and similar provisions related to specific subjects. The International Law Commission had therefore never considered placing them in Part I of the draft convention.

The meeting rose at 1.05 p.m.