

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

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10th meeting of the Committee of the Whole

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provision on the primary effect of a succession of States on State property, namely, the physical phenomenon of passing. It would be a grave omission if the future convention failed to reflect that clearly.

55. With regard to the comments made by the representative of the Soviet Union, he felt it was clear that the amendments proposed by Algeria and France did not imply that the whole of the State property of the predecessor State would necessarily pass to the successor State, for those amendments contained the express stipulation "in accordance with the provisions of the articles in the present Part", and that Part included articles 13 to 17 which specified how and to what extent such property was affected in various different situations. He thought that merely a drafting point was involved which could be settled by the Drafting Committee.

56. Mr. OESTERHELT (Federal Republic of Germany) said that the French delegation's amendment was commendably clear, sound in law and necessary. Since it was based on the same thinking as his own delegation's amendment he was prepared to withdraw that amendment in the event that the French amendment carried.

57. Mr. MONNIER (Switzerland) said that, unlike the representative of Pakistan, he did not consider that the draft article, as prepared by the Commission, both laid down the rule and specified the effects of the passing of property. In his opinion, the rule as such was merely implicit in article 9; the term "passing" was used only in the title. The merit of the French and Algerian amendments was that they stated the rule expressly.

58. The arguments of the representative of the Soviet Union had not convinced him that there was any ambiguity in the way in which the expression "in accordance with the provisions of the articles in the present Part" was used in the French delegation's amendment; the expression had a generally understood meaning and the article as qualified by that expression could surely not be construed to mean that all the State property of the predecessor State invariably and necessarily passed to the successor State.

59. His delegation would therefore support the French delegation's amendment, which covered all the basic elements required and added a useful clarification in paragraph 2 through the use of the adjectives "concomitant" and "identical".

The meeting rose at 1 p.m.

10th meeting

Tuesday, 8 March 1983, at 3.05 p.m.

Chairman: Mr. ŠAHOVIĆ (Yugoslavia)

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 (continued) (A/CONF.117/4, A/CONF.117/5 and Add.1)

[Agenda item 11]

Article 9 (Effects of the passing of State property) (concluded)

New article 8 bis (Passing of State property) (concluded)

1. Mr. POEGGEL (German Democratic Republic) said that, in his view, the French amendment (A/CONF.117/C.1/L.21) was not sufficiently precise with regard to the effects of State succession on State property. The legal consequence of a succession of States was that both the sovereignty and the internal law of the predecessor State ceased to exist. At the same time, the successor State established its own legal order in the territory concerned, in particular in respect of the State property that had been owned by the predecessor State. The new State acquired that property in its own name and without any formal or specific act of transfer being performed or required. Accordingly, the concepts of a transfer or passing of State property as such from one State to another or of the arising of identical rights of the successor State did not exist.

2. His delegation therefore preferred the text of draft article 9 submitted by the International Law Commission, although it was not opposed to the Drafting Committee studying proposals designed to improve the formulation of the article.

3. Mr. LAMAMRA (Algeria) said that the proposed text for a new article 8 *bis* submitted by his delegation (A/CONF.117/C.1/L.22) should not be viewed as having a structural link with article 9 as drafted by the International Law Commission, or the amendments submitted thereto.

4. In submitting its amendment, his delegation has been prompted by a desire to bring together two divergent points of view. It was therefore disturbing to note that paragraph 1 of the amendments to article 9 submitted by France, which was identical with the new article proposed by Algeria, was still before the Committee.

5. Referring to paragraph 2 of the French amendment, he questioned the relevance of the concept of identical rights of successor States, which acquired the property by virtue of their own sovereignty. A succession of States entailed the extinction of the rights of the predecessor State: the rights of the successor State that arose could be identical, but might also be different. The French text would open the door to efforts by predecessor States to recover national wealth in accordance with the concept of acquired rights. His del-

egation therefore considered that adoption of the French amendment would cause more problems than it would solve.

6. Mr. RASUL (Pakistan) said that his delegation favoured separation of the two elements of the effects of the succession of States on State property and was therefore not fully satisfied with the existing text. He could not, however, agree that the principle of the passing of State property was covered, not by article 9 but by article 10 and subsequent articles: how could the effects of a phenomenon be dealt with before that phenomenon had itself been covered? Article 10 dealt with the date of the passing of State property, not the passing of State property as such.

7. In his delegation's view, the Algerian amendment should be dealt with before the French amendment, since it related to a provision which, if adopted, would precede article 9.

8. Mr. BOCAR LY (Senegal) said that, although his delegation had already expressed its support for the International Law Commission's text of article 10, it wished to comment on the amendments to that article which had since been submitted.

9. Referring to the French amendment, he said that his delegation would have difficulty in accepting the term "identical rights", which could have dangerous implications. The successor State was already restrained by a number of safeguards contained in articles 6, 12 and 24. Adoption of the French amendment would impose a further restriction on the successor State, particularly under private law.

10. He understood that the Algerian amendment had been submitted in a spirit of compromise: on that basis, his delegation would be prepared to accept it.

11. Mr. MAAS GEESTERANUS (Netherlands) noted that the French amendment was an attempt to combine the idea of continuity, which had been recognized as important by a number of delegations, with the original elements of the International Law Commission draft. The delegation of the Federal Republic of Germany had indicated that it was prepared to withdraw its amendment to article 9 (A/CONF.117/C.1/L.3) if the French proposal was acceptable to the Committee. The Netherlands delegation for its part was prepared to accept the French delegation's effort at compromise.

12. Mr. PHAM GIANG (Viet Nam) said that the variety of views which had been expressed showed the complexity of the question of the legal implications of the passing of State property.

13. Draft article 9, as proposed by the International Law Commission, dealt in a clear manner with the concept and effects of the passing of State property and his delegation favoured the retention of that text. However, it would be prepared to accept the Algerian amendment as a complement to the International Law Commission's draft, if other delegations deemed it essential to have a separate definition of the passing of State property.

14. Mr. MASUD (Observer for the Asian-African Legal Consultative Committee) said that, while the French and Algerian amendments to article 9 solved

some problems, they created others. The concerns of the representative of France could, to a large extent, be taken care of by the use of the words "concomitant and identical rights" in the text proposed by the International Law Commission. He noted that the International Law Commission's draft made no reference to the question of obligations attaching to State property passing to a successor State.

15. Mr. DJORDJEVIĆ (Yugoslavia) said that his delegation had originally been prepared to accept the existing text of article 9 but the discussion of the French and Algerian amendments had highlighted certain problems. Although the existing article was satisfactory, he therefore considered that those amendments should be sent to the Drafting Committee for purposes of further clarification of the provision contained in the article.

16. Mr. TEPAVITCHAROV (Bulgaria) said that the French amendment was at the same time too vague and too selective. It was somewhat of a contradiction to have a general provision concerning the effect of the succession of States which dealt with only one element, namely State property, to the exclusion of the other two elements with which the draft convention was concerned, namely archives and debts.

17. It could be argued that paragraph 2 of the French amendment clarified paragraph 1, by making it clear that not all property of the predecessor State passed to the successor State. The limitative clause, however, was not linked to objective criteria or related to any article of the draft convention. The only link was between the rights of the predecessor State and those of the successor State. The French amendment could therefore not be accepted as generally applicable.

18. He found the Commission's text the most balanced and unambiguous. The suggestion by the Expert Consultant at the previous meeting that the word "concomitant" should be added before "arising" in that text would meet a concern voiced by a number of speakers and would be acceptable to his delegation.

19. Mr. FAYAD (Syrian Arab Republic) said that amplification of the provision in article 9 by way of explanation had the effect of complicating it: the International Law Commission's text was perfectly clear. Articles 7 and 8 already defined the State property that could pass. He agreed with the Expert Consultant that no legal vacuum existed in the case of a succession of States. His delegation therefore supported the retention of the International Law Commission's text.

20. Mr. SHASH (Egypt) also found the International Law Commission's text legally correct and therefore supported its retention. He could not accept the concept of identical rights which was referred to in the French amendment. The sovereignty of one State ended and the sovereignty of another arose. Continuity related more to a succession of Governments than to one of States. If any amplification was needed, it was provided by the new article 8 *bis* proposed by Algeria.

21. Mr. MUCHUI (Kenya) said that his delegation had previously expressed support for the present text of article 9. However, it was prepared to consider the

French and Algerian amendments on their merits. Paragraph 1 of the French amendment was the same as the Algerian amendment and both were an improvement on the original text in that they brought out more clearly the concept of the passing of State property which, in the International Law Commission draft, could be inferred only from the title of article 9. However, the title of the new article proposed by Algeria was more appropriate than the title of the French amendment and he therefore favoured adoption of the former. The Soviet representative's criticism at the previous meeting that the Algerian proposal appeared at first sight to refer to all State property had been convincingly refuted by the Swiss representative. He saw no need to include in the article the concept of the corresponding passing of obligations, in view of the general agreement which the Committee had reached on that question after discussion.

22. With regard to paragraph 2 of the French amendment to article 9, he agreed with the view expressed by other speakers that the concept of identical rights was too restrictive and might cause difficulty in exceptional cases. He favoured the inclusion in the draft convention of the new article 8 *bis* proposed by Algeria and the retention of article 9 as at present worded but with the addition of the word "concomitant" after the words "... the arising of the".

23. Mr. AL-KHASAWNEH (Jordan) said that article 9, as drafted by the International Law Commission, was compact and logical, although it would be improved by the addition of the word "concomitant". He would have difficulty in accepting the French amendment, and particularly the reference to "identical rights", which would open the door to the possibility of abuse of the acquired rights of third parties. The question of continuity, which had been raised by the Netherlands representative, was fully discussed in paragraphs (3) and (4) of the International Law Commission's commentary on article 9. He agreed with the views expressed on that subject by the Egyptian representative.

24. Mr. MONCEF BENOUNICHE (Algeria) said that his delegation's proposal was not an amendment to article 9; it was a proposal to insert an entirely new article in the draft convention. It should therefore not be discussed in conjunction with the French amendment to article 9. Referring to the text of the proposed new article, he said that his delegation could accept the insertion of the words "of the articles" after the phrase "in accordance with the provisions".

25. Mr. SAINT-MARTIN (Canada) supported the French amendment.

26. Mr. BEN SOLTANE (Tunisia) said that he shared the views of the Algerian and Egyptian representatives concerning the reference in the French amendment to "identical rights". Inclusion of the word "identical" might have the effect of limiting the rights of successor States. His delegation supported the International Law Commission's text of article 9.

27. Mr. PAREDES (Ecuador) supported the insertion of the new article 8 *bis* proposed by Algeria. That article should be followed by the International Law Commission's

text of article 9, to which it would be appropriate to add the word "concomitant".

28. Mr. PIRIS (France) said that many delegations had expressed themselves in favour of separating what were in fact two concepts, namely the passing of State property and the effects of that passing. Such separation was achieved both by the French amendment, which was divided into two paragraphs, and by the Algerian proposal to insert in the proposed convention a new article 8 *bis* distinct from article 9 as drafted by the International Law Commission. A number of speakers had expressed a preference for the title used in the Algerian amendment. For the moment, his delegation maintained the title it had proposed, but it could agree to the question of the title being decided by the Drafting Committee.

29. The French delegation could also agree to ending paragraph 1 of its amendment with the words "... in accordance with the provisions of the articles in the present Part". Several speakers, including the representatives of Switzerland, Greece and Kenya, had already refuted the Soviet representative's argument that paragraph 1 of the French amendment might be interpreted as implying that all State property would in all cases pass from the predecessor to the successor State.

30. His delegation agreed with the Soviet delegation that not all State property of the predecessor State passed to the successor State, but it considered that the drafting of paragraph 1 of its amendment expressed that idea quite clearly, since the concluding phrase of the paragraph stated that the passing of State property would take place in accordance with the provisions of the subsequent articles, that was to say, within the limits set by those provisions. However, if the Drafting Committee could find a better formulation for that particular point than that in document A/CONF.117/C.1/L.21, his delegation would be prepared to accept it.

31. With regard to paragraph 2 of the French amendment, the introduction of the word "concomitant" before the word "origination", which reflected continuity, had been well received by all speakers. Only the reference to "identical rights" seemed to present difficulties for some delegations. However, since the Committee of the Whole was unanimously of the opinion that rights to State property passed together with such obligations as might be attached to that property, it seemed preferable to say so in the text.

32. Some speakers had feared that the term "identical rights" might be interpreted as limiting the sovereignty of the successor State. Such was not his delegation's interpretation: it considered that the article dealt only with the effects on State property of the succession of States as such, at the actual date of the succession. Subsequently, the successor State was free to exercise its sovereignty as it wished.

33. He drew attention to the fact that the Drafting Committee had been requested to take account of his delegation's amendment to article 8 (A/CONF.117/C.1/L.5). His delegation maintained its amendment to article 9 (A/CONF.117/C.1/L.21) and trusted that the Drafting Committee would be informed of the discussion on that article in order to help it in reviewing the wording of article 8.

34. Mr. CONSTANTIN (Romania) said that, after listening carefully to all the arguments, his delegation was convinced, like the majority of those who had spoken, that the International Law Commission's draft article was the best, since it was clear and unambiguous.

35. The CHAIRMAN said that the Committee now appeared to have concluded its discussion of article 9. The amendment submitted by Greece having been withdrawn, he invited the Committee to vote on the French amendment in document A/CONF.117/C.1/L.21.

The French amendment was rejected by 29 votes to 21, with 10 abstentions.

36. The CHAIRMAN invited the Committee to vote on the amendment submitted by the Federal Republic of Germany (A/CONF.117/C.1/L.3).

37. Mr. OESTERHELT (Federal Republic of Germany) said that the content of his delegation's amendment appeared to be covered by the general understanding reached by the Committee of the Whole. In the light of the discussion which had taken place and the suggestions which had been made, he hoped that the Drafting Committee would be able to produce a form of wording for article 9 which better expressed the understanding reached. His delegation was prepared to withdraw its amendment in the light of that possibility, but reserved the right to reintroduce it later if the text produced by the Drafting Committee did not come up to his delegation's expectations.

38. The CHAIRMAN invited the Committee to vote on draft article 9, as proposed by the International Law Commission.

Draft article 9, as proposed by the International Law Commission, was adopted by 45 votes to none, with 18 abstentions.

39. Mr. MAAS GEESTERANUS (Netherlands) thanked the representative of the Federal Republic of Germany for having drawn attention to the fact that the discussion in the Committee had resulted in a certain understanding regarding particular elements of the International Law Commission's draft article. His delegation could, as a result, accept the article, but had abstained in the vote on it, as it could summon up little enthusiasm for its wording.

40. Mr. MURAKAMI (Japan) said it was his delegation's understanding that no State could pass more than it owned to another State. It also considered that, as the Expert Consultant had confirmed, the words "the extinction of the rights of the predecessor State and the arising of the rights of the successor State" reflected two aspects of one uninterrupted process with no time gap. It was on that basis that his delegation had not opposed the adoption of the International Law Commission's text.

41. Mr. MONNIER (Switzerland) said that his delegation had voted in favour of the French amendment. It had voted in favour of the International Law Commission's text in the light of the clarification provided by the French amendment and the explanations given by the Expert Consultant. Those clarifications were

based on simple elements and rules which his delegation considered to be implicit in the text adopted, even though they were not expressed.

42. Mrs. OLIVEROS (Argentina) said that her delegation had been able to approve the International Law Commission's text, but would have preferred to see included in it the qualifications "concomitant" and "identical" which appeared in the French amendment. Those concepts were, however, implicit in the International Law Commission's text, according to the explanation given by the Expert Consultant; her delegation had therefore not opposed the adoption of article 9.

43. Mr. FREELAND (United Kingdom) said that his delegation had voted in favour of the French amendment basically because, in its view, that text brought out more clearly what his delegation understood to be the intent of article 9.

44. His delegation had abstained in the vote on the Law Commission's text because it continued to believe that the phrase "the extinction of the rights of the predecessor State and the arising of the rights of the successor State" might give rise to doubts. It had been somewhat reassured by the comments of some speakers but felt there was still room for improvement. He suggested that if, for example, the word "relinquishment" were to replace "extinction", and "vesting" or "assumption" were to replace "arising", the interpretation of the article would be less open to doubt. He hoped that the Drafting Committee would agree that some such adjustment might be made to the text of the article.

45. Mr. RASUL (Pakistan) said that his delegation had voted in favour of both the French amendment and the Law Commission's text because it was basically satisfied with the Expert Consultant's explanation that nobody could transfer more rights than he possessed. It also understood the use of the words "concomitant" and "identical" to be consistent with that explanation and had therefore voted in favour of the French amendment.

46. Mr. DALTON (United States of America) said that his delegation had voted in favour of the French amendment because it found it clear and reasonable. It had been unable to vote in favour of the International Law Commission's text because its drafting was not clear. While his delegation did not regard article 9 as necessary and believed the proposed convention could function satisfactorily without it, it would be prepared to reconsider its position if changes on the lines suggested by the representative of the United Kingdom at the 7th meeting were accepted by the Drafting Committee and if the Algerian proposal for a new article 8 *bis* were accepted.

47. Mr. PIRIS (France) said that his delegation had been unable to vote in favour of the International Law Commission's text for reasons similar to those given by the representative of the United Kingdom. However, he pointed out that there had been general agreement in the Committee as to the concomitance of the extinction and arising of the rights of the predecessor and successor States and the impossibility of the passing of more rights than the predecessor State possessed. State

property of the predecessor State therefore passed to the successor State with the obligations attached to it. Because of that unanimous interpretation, his delegation had merely abstained on the text of article 9.

48. Mr. de VIDTS (Belgium) said that his delegation had voted in favour of the French amendment because it considered that text clearer and more sound from a legal standpoint. It had, however, been able to accept the International Law Commission's text on the basis of the explanations given by the representative of Switzerland, which his delegation endorsed.

49. The CHAIRMAN invited the Committee to vote on the Algerian amendment, which called for the addition of a new article 8 *bis* between articles 8 and 9.

50. Mr. TÜRK (Austria) said that many delegations felt that the newly adopted article 9 was incomplete and his own delegation saw no need for a separate new article before article 9. He therefore proposed that the text of the proposed new article 8 *bis* should be incorporated in article 9 as paragraph 1.

51. The CHAIRMAN pointed out that that solution was similar to the French amendment which had just been rejected by the Committee. Moreover the proposal involved a question of presentation which might possibly be resolved in a different way.

52. Mr. AL-KHASAWNEH (Jordan) said that, if the Austrian representative's proposal were adopted, the title of article 9 would have to be changed to "Effects of succession on State property", in line with the content of the Algerian amendment.

53. Mr. ECONOMIDES (Greece) agreed with the Chairman's view that the Austrian representative's

proposal was related to the presentation of the draft convention and could be simply referred to the Drafting Committee, if the Algerian delegation did not object.

54. Mr. LAMAMRA (Algeria) said that his delegation had already stressed the autonomy of its amendment, but at the same time fully respected the International Law Commission's text, which had been adopted, including its title. He hoped that the Algerian amendment would be treated independently and as a whole and voted upon accordingly.

55. Mr. BEN SOLTANE (Tunisia) supported the Algerian representative's remarks.

56. Mr. TÜRK (Austria) said that he did not wish to press the proposal he had made. The question was one of form which could be dealt with by the Drafting Committee.

57. The CHAIRMAN invited the Committee to vote on the Algerian amendment (A/CONF.117/C.1/L.22).

The Algerian amendment was adopted by 35 votes to none, with 21 abstentions.

58. Mr. SHASH (Egypt) said that his delegation had abstained in the vote because the idea contained in the new article 8 *bis* was implicit in articles 9 and 10 and also because there would be considerable repetition in the consideration of other parts of the proposed convention.

59. The CHAIRMAN noted that the Committee had completed its consideration of the draft articles in Part II, section 1. The articles adopted would be sent to the Drafting Committee.

The meeting rose at 5.45. p.m.

11th meeting

Wednesday, 9 March 1983, at 10.10 a.m.

Chairman: Mr. ŠAHOVIĆ (Yugoslavia)

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 (continued) (A/CONF.117/4, A/CONF.117/5 and Add.1)

[Agenda item 11]

Article 13 (Transfer of part of the territory of a State)

1. Mr. PIRIS (France) introduced the three amendments proposed by his delegation to article 13 (A/CONF.117/C.1/L.16 and Corr.1).

2. The first amendment was the deletion from paragraph 1 of the words "by that State". His delegation considered that the distinction between cases of transfer of part of the territory of a State to another State (article 13) and those of separation of part or parts of the territory of a State with a view to its uniting with another State (article 16, paragraph 2) was not clear. In its commentary on article 13, the International Law

Commission based that distinction on the fact that the first case concerned the transfer of territory without the consent of the populations concerned, whereas that consent was required in the second case. However, historical examples existed of territory ceded by one State to another following a referendum among the inhabitants concerned; furthermore, it might be asked whether a transfer of territory carried out without the consent of the population concerned would not violate the Charter of the United Nations and the principle of self-determination. The proposed deletion would cover all transfer situations, whatever their origin.

3. The second amendment related to paragraph 2(b), which dealt with a situation in which there was no agreement between the predecessor and successor States. As at present worded, the subparagraph provided that movable State property of the predecessor State "connected with the activity of the predecessor State in respect of the territory to which the succession of States relates shall pass to the successor State". The