

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

Vienna, Austria  
1 March - 8 April 1983

Document:-  
**A/CONF.117/C.1/SR.11**

**11th 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)*

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

idea of the connection between the activity of the predecessor State in respect of the territory concerned struck the French delegation as too vague, and it therefore proposed, in the interests of precision and clarity, to refer to movable State property “having a direct and necessary connection with the administration and management of the territory”. That wording had, in fact, been used by the International Law Commission in paragraph (11) of its commentary on article 12 and in paragraph (23) of its commentary on article 25—the provision concerning State archives.

4. The third amendment proposed by the French delegation was the addition of a new subparagraph (c) to paragraph 2, providing that the predecessor State should retain the property necessary for the functioning of those services which it maintained or established on the territory of the successor State with the agreement of the latter. That amendment was consistent with State practice in such cases, which involved the passing to the successor State of all immovable State property in the “public domain”, namely, property which had been specially adapted for the use of the public or for the provision of public services, including ports, airports, roads, railways and other like installations. Immovable property in the “private domain” used by the predecessor State for the performance of administrative functions was likewise transferred to the successor State with the relevant functions. That meant issuing banks, prisons, courts, and buildings housing administrative services. However, State practice did make one exception to such transfer. Where the predecessor State established a new service (embassy or consulate) or continued to provide a public service after the succession of States, with the specific agreement of the successor State, it retained the property necessary for that purpose, consisting of a very small part of the transferred property as a whole. That might happen, for example, in the case of a public service which the successor State was not in a position to assume and which it requested the predecessor State to maintain, or in the case of functions proper to the predecessor State itself, such as the maintenance of a paymaster’s office through which to continue to pay retirement pensions and other benefits to residents in the transferred part of the territory. The new subparagraph proposed by the French delegation was designed simply to take such practice into account.

5. Mr. NATHAN (Israel) noted that article 13 rightly drew a distinction between movable and immovable State property, a pattern which was followed by the subsequent articles dealing with the specific effects on property of various different categories of succession. As it stood, however, article 13, paragraph 2(b) might appear to imply that movable State property meant tangible, material property as distinct from incorporeal rights such as debt claims or stocks and shares, an erroneous impression which was reinforced by the definition of State property in article 8, which differentiated between property, rights and interests. Since he was sure that it was the Commission’s intention, borne out by both the commentary to article 13 and the wording of article 35, the corresponding article on State debts, which spoke of “property, rights and interests which pass to the successor State” and thus clearly proceeded on the assumption that intangible property

also passed, to encompass both tangible and intangible property, that intention should be reflected clearly in paragraph 2(b). He suggested accordingly that the words “rights and interests” or “including rights and interests” might be added after the words “movable State property” in subparagraph (b).

6. Cases might arise in which it would be impractical to arrange for the transfer of intangible movable property *in specie*. In such circumstances the parties should have the option of agreeing that the predecessor State should pay the appraised value of the property in lieu of its physical passing.

7. The criterion in paragraph 2(b) for determining which movable State property passed to the successor State, namely, that it should be “connected with the activity of the predecessor State in respect of the territory to which the succession of States relates”, was too broad and vague, for a certain type of property might not be connected exclusively with the given territory but might, as in the case of railway rolling stock or cable and wireless equipment, be necessary to the activity of the predecessor State in the whole of its territory and not just in the part subject to succession.

8. While the Commission’s draft was too wide, the French amendment to paragraph 2(b), on the other hand, was excessively narrow, reintroducing the notion of the public domain and hence the distinction between property owned *jure imperii* and that owned *jure gestionis* which had rightly been discarded by the Commission in favour of the single criterion of State ownership. The solution might be to establish the criterion that the movable State property which passed was that which had its principal connection with the territory in question.

9. The French delegation’s proposed amendment to paragraph 1 seemed not only unnecessary but unacceptable because the deletion of “by that State” would disturb the balance of the paragraph, which was weighted towards the primary assumption of agreement and settlement of questions between the two States involved.

10. Mr. NAHLIK (Poland) expressed the hope that, since the French delegation’s amendments were clearly three quite independent proposals, the Committee would take a decision on each one separately.

11. He stated that he had difficulties of different kinds with all three amendments. There seemed to be very little justification for the proposed deletion of the words “by that State” in paragraph 1. The suggestion that the retention of those words might leave open the possibility of a transfer taking place in an illegal manner was most unlikely, since it was a fundamental principle of the proposed convention, formulated in its article 3, that it would cover only situations which were in conformity with international law.

12. The proposed amendment to paragraph 2(b) seemed to seek to replace a vague wording by another still vaguer. One general concern behind the draft articles, as also behind the 1978 Vienna Convention on Succession of States in Respect of Treaties,<sup>1</sup> was to

<sup>1</sup> *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.

leave the successor State maximum freedom of action. In that respect, the formulation proposed by the International Law Commission had the advantage of being flexible, whereas the French delegation's proposed redraft, although pretending to be restrictive, was so vague, especially in its use of the words "direct and necessary", as to be open to widely differing interpretations.

13. However, it was the third of the French delegation's amendments which caused his delegation the greatest concern. It would be dangerous to admit such an exception as the new proposed subparagraph, which gave too much freedom to the predecessor State and might be used by it as a means of arrogating to itself disproportionate rights and privileges.

14. Mr. MONCEF BENOUNICHE (Algeria) said that in his view the draft article in the form proposed by the International Law Commission satisfactorily covered all aspects of the question.

15. With regard to the proposed deletion of the words "by that State", by which the French delegation sought to preclude the possibility of a transfer occurring by a decision of the predecessor State without the consent of the population of the territory concerned, he pointed out that the article would be read and interpreted in the context of the future convention as a whole. That convention, as the representative of Poland had correctly observed, was based on the premise, set forth in article 3, that its provisions covered only those successions of States which occurred in conformity with international law and, in particular, with the principles embodied in the Charter of the United Nations. Although a few rare examples of the case envisaged by the French delegation were to be found in recent history, they had all been in violation of international law and hence *ipso facto* outside the scope of the article. Thus, seen in relation to article 3, the words "by that State" were not ambiguous and should be retained, since they reflected the important principle of the sovereignty of States in the process of succession.

16. As far as the proposed redraft of paragraph 2(b) was concerned, he suggested that perhaps the Expert Consultant might be asked to explain why the Commission had chosen the wording of its draft article in preference to the other possible formulas which it had considered.

17. He regarded the French proposal for a new subparagraph (c) as superfluous; it assumed agreement between the parties, and paragraph 1 of the draft articles as it stood already covered all such situations quite adequately. There were no grounds for disrupting the coherent structure of the article by adding a special provision for a small category of State property.

18. Mr. ROSENSTOCK (United States of America) said that he could not see that the words "by that State" were significant or were related in any particular way to the provisions of article 3. For example, if the United States were to agree to transfer the State of Florida to Mexico, in exchange for 50 years' guaranteed oil supplies, without the consent of the population of the State, that decision would clearly be illegal, and thus excluded by the terms of article 3, irrespective of the presence or absence of those words in article 13. He

therefore did not accept that the retention of those words could possibly legitimize anything which was barred under article 3.

19. He regarded the proposed redraft of paragraph 2(b) as a much better and clearer version.

20. He noted that in the proposed new subparagraph (c) the crucial words were "with the agreement of the latter", namely, of the successor State. Once properly understood in their context, those words should dispose of many of the objections and fears which had been expressed regarding the possibility that they might give excessive rights to the predecessor State.

21. Mr. FAYAD (Syrian Arab Republic) said that the concept underlying article 13 was most clearly expressed by the wording chosen by the International Law Commission. The amendments proposed by France would tend to restrict or hinder the transfer of State property in that they would make it possible for a predecessor State to retain rights which, in accordance with article 9, should pass to a successor State. His delegation therefore favoured retention of the Commission's text.

22. Mr. DELPECH (Argentina) said that other speakers, and particularly the representative of Algeria, had already expressed most of his delegation's objections to the amendments proposed by France. In general he felt that it would be best to retain the wording prepared by the International Law Commission.

23. Mr. PAREDES (Ecuador) said that the deletion of the phrase "by that State" in paragraph 1 had dangerous implications in that it would not exclude the possibility that a foreign Power might bring pressure to bear on a State to transfer part of its territory.

24. His delegation also objected to the other amendments proposed by France since they might give rise to conflicting interpretations.

25. Mr. HAWAS (Egypt) said that his delegation preferred the text of article 13 as drafted by the International Law Commission. In particular, he considered that the amendment proposed by France to paragraph 1 was incompatible with the terms of article 3. Commenting on the proposed redraft of paragraph 2(b) he felt that the Commission's wording was preferable, but suggested that the Expert Consultant might perhaps explain the reasoning by which the Commission had arrived at its formulation of the subparagraph. The proposed additional subparagraph (c) seemed to the Egyptian delegation to confer on the predecessor State a privilege to which it was not entitled, and was therefore unacceptable.

26. Mr. A. BIN DAAR (United Arab Emirates) said that he too could not accept the amendments proposed by France to article 13. There was every reason to suppose that disputes would arise between predecessor and successor States as to what constituted "a direct and necessary connection" in the amended version of paragraph 2(b). The effect of the proposed additional subparagraph (c) would be to put pressure on the successor State to accept any agreement in advance, and to give the predecessor State the opportunity of determining for itself what property it would retain in the territory of the successor State.

27. Mr. MUCHUI (Kenya) said that the French delegation's amendment to paragraph 1 would open the door to illegal transfers of territory in contravention of article 3.

28. With respect to paragraph 2(b) he felt that the revised wording submitted by France was too restrictive and agreed with previous speakers that it would be desirable to ask the Expert Consultant to explain how the Commission had arrived at its version of the text, which had the merit of leaving greater scope for interpretation.

29. With regard to the proposed additional subparagraph (c), he said it had been pointed out by other speakers that the phrase "with the agreement of the latter" was redundant, since under the terms of paragraph 1 the passing of State property was to be settled by agreement between the predecessor and successor States. A new subparagraph in the terms proposed by France would be a potential source of misunderstanding, and in any event belonged properly to paragraph 1 rather than paragraph 2, whose purpose was to establish rules to be followed when there was no agreement between the States concerned.

30. Mr. ZSCHIEDRICH (German Democratic Republic) said that it was to be noted that the definitions of the various types of State succession were largely identical in the 1978 Vienna Convention on Succession of States in Respect of Treaties and in the draft convention under consideration, thus ensuring the greatest possible uniformity in the application and interpretation of the two instruments. On the other hand, a comparison of the respective articles showed that article 13, and the corresponding articles 25 and 35, were an improvement on article 15 of the 1978 Vienna Convention. In paragraphs (1) to (11) of its commentary to article 13 the International Law Commission had convincingly explained the reasons for the changes.

31. His delegation strongly supported the distinction between movable and immovable property formulated in article 13 and the differentiated treatment accorded to the two types of property. The Commission's theoretical approach to movable State property in paragraph 2(b) was also fully justified.

32. Referring to the French delegation's amendments to article 13, he said that the proposed redraft of paragraph 2(b) had the effect of limiting the scope of the article. The proposed deletion of the words "by that State" in paragraph 1 was not acceptable; it might be less misleading and less open to differing interpretations to say "... the predecessor State from which the property in question passes", but on balance his delegation would prefer the Commission's version.

33. The proposed new subparagraph (c) introduced a totally new element into article 13 and indeed into the draft articles as a whole. It appeared to put the predecessor State in a position in which it could exercise some rights with respect to property which normally passed to the successor State and his delegation accordingly felt that the proposed subparagraph should not be included.

34. Mr. CHOMON (Cuba) said that article 13 as drafted by the Commission was fully adequate and that his delegation would have difficulty in accepting the

French delegation's amendments. In particular, the re-drafting of paragraph 2(b), weakened the effect of the article by imposing a restriction on successor States which was at variance with the purpose of the text. The proposed new subparagraph (c) granted excessive privileges to predecessor States.

35. Mr. JOMARD (Iraq) agreed with the previous speaker that the Commission's version of article 13 was preferable. The provision in the proposed additional paragraph was redundant in that the contingency that it was intended to cover was already dealt with by paragraph 1.

36. Mr. OESTERHELT (Federal Republic of Germany) said that his delegation supported the amendments proposed by France, which remedied deficiencies in article 13 and in other provisions. In particular, his delegation felt that the Commission's wording in paragraph 2(b) was unduly vague and the proposed reference in the French amendment to "a direct and necessary connection" would represent a definite improvement in that respect. He thought that the International Law Commission had been right to state that State practice showed that a direct and necessary link was the condition for the passing of property.<sup>2</sup>

37. He emphasized that the proposed new subparagraph (c) would allow a predecessor State to retain certain property only if there was an agreement with the successor State with regard to the continued functioning of certain services. The provision corresponded to international practice and its place in paragraph 2 of article 13 was correctly chosen.

38. Mr. BOCAR LY (Senegal) said that the amendment proposed by France to paragraph 1 would disrupt the balance of article 13. He suggested that the Expert Consultant might be asked to comment on its implications.

39. His delegation agreed with the representative of Algeria that the deletion of the phrase "by that State" in paragraph 1 would be ill-advised, for the phrase served to reinforce the important principle of sovereignty of States affirmed in article 3. The words "a direct and necessary connection" in the amended version of paragraph 2(b) were also unsatisfactory in that they left open the possibility that a predecessor State might interpret them in such a way as to withhold property that would normally pass in the event of a succession. The expression used in the Commission's draft—"connected with the activity of the predecessor State"—echoed the principle of equity, which the French delegation's amendment did not take into account.

40. In the additional subparagraph (c) proposed by France the reference to "services which it [the predecessor State] . . . establishes" was surely misplaced, since the establishment of services would be governed by the rules concerning normal relations between sovereign States, not by those applicable to a succession of States.

<sup>2</sup> *Yearbook of the International Law Commission, 1976*, vol. II (Part I) (United Nations publication, Sales No. E.77.V.5 (Part I)), document A/CN.4/292, chap. III, article 12, para. (29) of the commentary.

41. In general, therefore, his delegation would prefer the original drafting of the article.

42. Mr. ECONOMIDES (Greece) said that in his opinion it was relatively immaterial whether the phrase "by that State" in paragraph 1 was retained or deleted, for the interpretation of the article would not be affected either way. More significant was the omission from paragraph 1 of any reference to internal law: any transfer of territory must be in conformity with both international and internal law, and he wondered if the Expert Consultant could confirm whether that aspect was in fact covered implicitly in the text.

43. His delegation felt that, if the proposed new subparagraph (c) were to be added, it should come after paragraph 2(a), with whose subject matter it was directly linked. Secondly, his delegation would prefer the words "may, however, retain" to be substituted for "shall, however, retain". With those provisos his delegation found the proposed new subparagraph acceptable.

44. Mr. MIKULKA (Czechoslovakia) said that he favoured the International Law Commission's draft. He suggested, however, that a slight drafting change might be introduced in paragraph 1 in order to make it quite clear that the predecessor State and the successor State were under no obligation to negotiate an agreement with regard to the passing of State property. The Drafting Committee might perhaps be invited to bear that point in mind. He was opposed to all three of the amendments proposed by France.

45. Mr. LEITE (Portugal) supported the French delegation's amendments.

46. Mr. MONNIER (Switzerland) said that he was in favour of the French delegation's amendment to paragraph 1 of article 13 to the extent that it was connected with the provision contained in article 16, paragraph 2. The two hypotheses envisaged in articles 13 and 16, paragraph 2, respectively, would in his view be extremely difficult to distinguish in practice; in fact, it was his delegation's intention in due course to propose the deletion of article 16, paragraph 2 so that the draft convention might deal with only one situation of transfer of part of the territory of a State to another State. He saw no substance in the view expressed by some previous speakers that the French amendment to paragraph 1 of article 13 conflicted with the provision contained in article 3. He also accepted the French delegation's amendment to paragraph 2(b) and the proposed new subparagraph (c), especially in the light of the remarks made by the representative of the United States of America. Unlike some speakers, he failed to see any discrepancy between the reference to an agreement in the proposed new subparagraph and the phrase "in the absence of such an agreement" at the beginning of paragraph 2; that phrase referred to agreement on the passing of State property, whereas the agreement mentioned in the text proposed by France related to the maintenance or establishment of services in the territory of the successor State.

47. Mr. EDWARDS (United Kingdom) said that he supported all three of the French delegation's amendments. The first, relating to paragraph 1 of article 13, left open a number of possibilities which the Inter-

national Law Commission's draft excluded. The effect of the second, concerning paragraph 2(b), would be to remove the phrase "connected with the activity of the predecessor State", with which his delegation had never been satisfied; and the third, proposing the addition of a new subparagraph, did no more than reflect existing practice. He drew particular attention to the fact mentioned by the representative of the Federal Republic of Germany that the services mentioned in the proposed new subparagraph would be established with the agreement of the successor State.

48. Mr. CONSTANTIN (Romania) said that he was in favour of the International Law Commission's draft and opposed the French delegation's amendments. At the same time, like the representative of Czechoslovakia, he felt that the Drafting Committee might usefully consider the wording of paragraph 1. In his view, it was important to stress that, in the event of a transfer of part of the territory of a State to another State, the States concerned should reach agreement on the passing of State property.

49. Mr. HALTTUNEN (Finland) opposed the French delegation's amendment to paragraph 1, as the proposed deletion of the phrase "by that State" might leave some doubt as to whether the definition of State property contained in article 8 was applicable to the articles in Part II, section 2, of the draft convention. The Drafting Committee might be requested to look into possible ways of avoiding such confusion, bearing in mind that there were three possible kinds of State property, namely, the property of the predecessor State, that of the successor State and that of a third State. He had no objection to the other amendments proposed by France.

50. Mr. RASUL (Pakistan) requested the Expert Consultant to throw some light on the phrase "is to be settled by agreement" in paragraph 1 of article 13. That phrase might be construed as the enunciation of a principle, in which case it was surely out of place in article 13. In the light of the Expert Consultant's explanations, the Committee might consider asking the Drafting Committee to make the language of the paragraph clearer.

51. Mr. do NASCIMENTO e SILVA (Brazil) remarked that, since the question of the transfer of part of a State's territory would normally be settled by agreement between the two States concerned, the rules contained in paragraph 2 of article 13 were merely residual in nature. Referring to the French delegation's amendment to paragraph 1, he said that although the deletion of the phrase "by that State" would not, in his view, involve any discrepancy with article 3, he would prefer the original text to be maintained. The wording proposed by France for paragraph 2(b) was undeniably more precise but it was also too restrictive. The International Law Commission had examined a text like that proposed by France and had discarded it. Lastly, the proposed new subparagraph (c) would be out of place in paragraph 2, which applied to cases where there was no agreement. The new text proposed by France envisaged the existence of an agreement and, for that reason, was subsumed under paragraph 1.

52. Mr. MAAS GEESTERANUS (Netherlands) agreed with the representative of Finland that some

drafting work was required on the phrase “State property of the predecessor State”, which was not in harmony with the wording of article 8. Referring to the French delegation’s amendment to paragraph 2(b), he said that the proposed text, if still somewhat vague as the representative of Senegal had remarked, was nevertheless less vague than the wording adopted by the International Law Commission; it was useful to specify that the connection of the movable State property in question should be with the administration and management of the territory to which the succession of States related and that the connection should be direct and necessary. The text of paragraph 2(b) proposed by France made for a better understanding of the International Law Commission’s ideas without sacrificing any of them.

53. Mr. BEDJAOUI (Expert Consultant) said that the deletion of the words “by that State” from paragraph 1 of article 13 opened up a large number of possibilities which the International Law Commission had deliberately wanted to exclude in the specific context of article 13. That article envisaged the case of the transfer of part of the territory of a State not accompanied by the establishment of a new State, whereas article 16 dealt with cases where parts of the territory of a State separated from that State and formed a new State.

54. In connection with the succession of States in respect of treaties as well as in respect of matters other than treaties, the Commission had decided to proceed on the basis of three broad categories of cases: (a) succession in respect of part of a territory; (b) newly independent States; and (c) the uniting and separation of States. It was quite evident that a territory which was large enough and contained a sufficiently large population to form a separate new State had to be treated in a different way, *inter alia* as regards State property, than a much smaller territory whose transfer did not involve the establishment of a new State. In that connection, he referred to the case of the extension, as the result of an agreement, of the Geneva-Cointrin airport into former French territory, mentioned in paragraph (2) of the Commission’s commentary on article 13. Indeed, the criterion of dimension had been in the forefront of the Commission’s thinking with regard to the distinction between articles 13 and 16, paragraph 2. For the same reason, article 13 placed the accent on agreement between the two States involved, whereas in article 16 the possibility of agreement was given a less pre-eminent place. He did not think that the deletion of the words “by that State” would bring article 13 into conflict with article 3, which was a general safeguard clause covering all categories of cases envisaged in the draft convention. Whether or not those words were retained, the situation envisaged in article 13 had to remain in conformity with international law and, in particular, with the Charter of the United Nations.

55. It was true that article 13, paragraph 2 was rather vague, but precision, though desirable, had to be based on the right criteria. Could the Conference decide exactly what property would be involved and which authority would determine the need for the transfer? There was a great danger in trying to draft excessively specific language and a text that took account of all situations would be difficult to draft.

56. Although the idea behind the new subparagraph (c) proposed by France was a good one, he feared that problems would arise because the new subparagraph, while intended to form part of paragraph 2 which postulated the lack of an agreement between the predecessor and successor States, referred to an agreement. He found it hard to envisage the possibility that the agreement was not the same one: either there would be a single agreement covering all the relevant matters, or there would be none. Moreover, since the proposed new subparagraph referred to an agreement between the parties, that was yet another reason to keep the words “by that State” in paragraph 1 of article 13.

57. He also had doubts about the wording “the predecessor State shall, however, retain the property necessary for the functioning of those services . . .”, because, taken literally in conjunction with subparagraph (b), it might leave open the possibility of joint administration by the successor State with the predecessor State itself.

58. Lastly, he considered that the proposed new subparagraph (c) was too wide in scope, because it seemed to provide that the predecessor State would retain the property necessary for the functioning of the services which it maintained or established in the entire territory of the successor State, rather than merely in the part that was transferred to the latter.

59. Mr. ROSENSTOCK (United States of America) thanked the Expert Consultant for confirming that the words “by that State” did not affect the principle of article 13, and that the change in terminology from “transfer” to “separation” was in large measure a drafting amendment. He assumed that the Drafting Committee would decide which was the better word.

60. He also appreciated the Expert Consultant’s point that article 13 covered a category of succession of States that was not dealt with in the 1978 Vienna Convention on Succession of States in Respect of Treaties. Although it was unnecessary to follow that Convention slavishly, the Conference should not depart from it lightly without very compelling reasons, and certainly not because of mere niceties. His delegation considered that the new category added little and was likely to create confusion and undesirable differences of treatment, although it had been interested to hear the thinking behind the proposal.

61. Mr. MONNIER (Switzerland) thanked the Expert Consultant for his explanation. Nevertheless, he was obliged to point out that, in addition to the two principal hypotheses envisaged in articles 13 and 16, paragraph 2 of article 16 introduced a third hypothesis, namely, that of part of a territory which separated from one State to unite with another. It was only fair that article 16 should grant more favourable provisions to new States, which had special needs. But such a rule was not appropriate when a territory united with an already existing State. There was no need to make a legal distinction between situations where the only difference was one of the size of the area transferred.

62. Mr. ECONOMIDES (Greece), repeating his earlier question in more precise terms, inquired whether it was implicit in the formulation of article 13



that the transfer of part of the territory of a State should be in conformity with its internal law.

63. Mr. BEDJAOUÏ (Expert Consultant), replying to the Swiss representative, explained that he had merely listed the various situations mentioned by the International Law Commission in its commentary to article 13.

64. In reply to the Greek representative, he said that it was probably implicit in article 13 that the transfer of part of a State's territory had to be consistent with the internal law, for in general a State did not transfer territory unless so authorized by its Constitution or

Parliament. Article 16, paragraph 2, on the other hand, envisaged the case of part of a State's territory seceding from that State.

65. Mr. SHASH (Egypt) asked whether the Expert Consultant could explain why the commentary on article 13 referred, in its paragraph (3), to the possible need to consult the population of territory affected by a transfer, whereas the commentary on article 16 contained no such reference.

*The meeting rose at 1.05 p.m.*

## 12th meeting

Wednesday, 9 March 1983, at 3.15 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 13 (Transfer of part of the territory of a State) (concluded)*

1. Mr. BEDJAOUÏ (Expert Consultant), replying to the question asked by the representative of Greece at the preceding meeting, said that article 3 stated and defined the general conditions for the regular and legal succession of States and article 13 was not intended to be in any way prejudicial to article 3.

2. Mr. ECONOMIDES (Greece) thanked the Expert Consultant for his reply.

3. In his view, the scope of the draft convention covered only the effects of a succession of States in respect of State property, archives and debts and not the succession of States as such, as a legal institution. The question of determining when a succession of States was legal according to international law was not dealt with in the draft convention. That depended on other rules of international law and, in particular, on the Charter of the United Nations. The International Law Commission should therefore have expressly referred in article 13 to the lawful nature of the transfer in relation to the internal law of the predecessor State. In other articles, particularly article 16, the question of the internal law of the predecessor State was not relevant because in the cases covered by those articles a succession of States often occurred against the will of the predecessor State. What was relevant in those circumstances was the legal character of the succession in accordance with article 3. In the case of article 13, that legal character contained two elements, one relating to internal law and the other to international law, whereas, in the case of the other articles, what mattered was the legal character from the point of view of international law.

4. Mr. BROWN (Australia) said that, while he appreciated the efforts of the French delegation to achieve clarity and precision in the text, that should not be done at the expense of common understanding. His delegation was therefore unable to support the French amendments but could approve the International Law Commission's text, on which there appeared to be a greater measure of agreement.

5. Mr. PIRIS (France), replying to points raised in connection with his delegation's amendments to article 13, said that the French delegation was not altogether convinced by the explanation given by the Expert Consultant with reference to the proposal to delete the words "by that State" in paragraph 1. He wondered what criteria would make it possible to distinguish between the cases covered by article 13, paragraph 1, and those covered by article 16, paragraph 2, since the International Law Commission did not provide any and the principle of consulting the inhabitants, which was absolute, applied in both cases, whatever the circumstances. In that connection, he referred to an example quoted by the representative of Egypt of a minor frontier adjustment between France and Italy involving a small territory and a mere seven persons, whom France had felt it necessary to consult before making the adjustment.

6. Consequently, his delegation fully agreed with the suggestion made by the representative of Switzerland at the previous meeting that the deletion of the words "by that State" in paragraph 1 of article 13 should logically be followed by the deletion of paragraph 2 of article 16. Naturally, the question was not one of confusing the transfer and the separation of a State—those processes were of two different legal categories—but, on the contrary, of clarifying both possibilities. Article 13 should cover the transfer of part of the territory of a State, when the transfer did not lead to the establishment of a new State, while article 16 should cover all cases where the separation of part or parts of a territory would lead to the establishment of a new State.

7. The deletion of the words "by that State" and of paragraph 2 of article 16 would simply mean that, when