

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

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12th 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)*

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

no new State was established, cases of transfer could be assimilated to those of separation of the territory of a State and its uniting with another State. In both cases, the result was the enlargement of the territory of an existing State by the addition of part of the territory of another State, and in both cases the consent of the populations concerned must have been expressed. A number of speakers had suggested that the question was a matter of drafting. The French delegation was prepared to accept that view and would not request that its first amendment be put to the vote, if the Committee of the Whole was willing to leave the matter to the Drafting Committee.

8. With regard to his delegation's proposed redrafting of paragraph 2(b) of article 13, he had noted the Expert Consultant's acknowledgement that the language used by the International Law Commission was vague. But he had not noted any specific criticism of the wording of the French amendment, which was aimed at achieving clarity and had, moreover, been based on the wording used by the International Law Commission in its commentary. Furthermore, courts at both the national and the international level might one day have to apply the convention currently being drawn up and they would have difficulty in applying provisions that were unduly precise.

9. Since his delegation regarded the text of subparagraph (b), which it had proposed, as more precise and therefore more satisfactory than the International Law Commission's text, it requested that a vote be taken on that amendment. However, it would not object to other possible changes being made in the text of that amendment. Furthermore, he agreed with the representative of Senegal regarding the relevance of the principle of equity. If the Drafting Committee could include in the French amendment a reference to the principle of equity, his delegation would have no objection.

10. Regarding the third French amendment, namely, the addition of a new subparagraph (c), his delegation had been most surprised at the reference which had been made to possible privileges or abuses. The services which the predecessor State might establish or maintain on the territory of the successor State, and for which it would continue to retain certain property, would necessitate the latter State's agreement. If, for example, a university situated on the territory of the predecessor State had a small research centre or an annex on the part of that territory transferred, or if the main works of a drinking-water system were in the predecessor State while the water pipes and purification plant were on the territory transferred, there could be no intention that such services should be cut off at the new frontier. However, his delegation did not insist on the wording of its amendment and was open to further suggestions. Certain proposals to improve the text had in fact already been made, and his delegation was ready to adopt right away the Expert Consultant's proposal, made at the previous meeting, that the words "on the territory of the successor State" should be replaced by the phrase "on the part of the territory transferred to the successor State".

11. In connection with the parallel drawn by several delegations between the agreements referred to in paragraph 1 and those in the new subparagraph (c),

he pointed out that paragraph 1 referred to a formal agreement negotiated and concluded between the States concerned to deal with the whole problem of the passing of State property, whereas the aim of the new subparagraph (c) was a partial agreement whereby the successor State would agree that the services concerned should continue to function or should be established. His delegation could agree to the insertion of the words "recognized as being" before the word "necessary" if that would enable certain delegations to vote in favour of its amendment. The possibility of replacing the word "shall" by "may" at the beginning of the new subparagraph might also be considered. Other improvements of form might also be made, such as relocating the paragraph, but the matter was a drafting one and his delegation was fully confident that the Drafting Committee could achieve the desired result.

12. Lastly, doubts had been raised as to the meaning of paragraph 1 of article 13. The French delegation considered that paragraph 1 described the most desirable and normal solution; in any event, what was both normal and desirable was the negotiation of an agreement between the predecessor and successor States, in all cases.

13. Mr. ZSCHIEDRICH (German Democratic Republic), noting that, under rule 47, paragraph 2, of the rules of procedure, the Drafting Committee had to coordinate and review the drafting of all texts adopted, proposed that the Committee of the Whole should vote on the French amendment to paragraph 1.

14. The CHAIRMAN considered the implications of the French amendment to paragraph 1 too far-reaching for that proposal simply to be referred to the Drafting Committee, as the representative of France had suggested. He believed the Committee of the Whole should vote on all three of the amendments submitted.

15. Mr. PIRIS (France) pointed out that, under the rules of procedure, the Drafting Committee was also authorized to give advice on drafting as requested by the Conference or by the Committee of the Whole. He was agreeable to all three of the amendments being put to the vote, but it should be understood that the Committee of the Whole was not dispensing the Drafting Committee of a task assigned to it under the rules of procedure.

16. Mr. ROSENSTOCK (United States of America) said that his delegation had no objection to the Committee voting on the French amendments; it trusted, however, that there was general agreement that the fact that the word "transfer" was used in the title of article 13 whereas the word "separation" was used in the title of article 16, was to be treated as a matter of drafting.

17. Mr. NAHLIK (Poland) said that the first French amendment had been generally recognized as affecting the substance of the draft article, whereas the brief of the Drafting Committee extended only to drafting matters. A decision should therefore first be taken by the Committee of the Whole on the substance of that amendment.

18. Mr. FREELAND (United Kingdom) said that his delegation was unable to accept any suggestion that the role of the Drafting Committee was confined to

examining texts which had been adopted by the Committee of the Whole. Such an interpretation would make the opening phrase of rule 47, paragraph 2, of the rules of procedure totally meaningless; at the same time it would deprive the Committee of the Whole of an element of flexibility which could be very useful in its search for common ground.

19. The CHAIRMAN invited the Committee to vote separately on the three amendments to article 13 submitted by France in document A/CONF.117/C.1/L.16.

The amendment to paragraph 1 was rejected by 35 votes to 19, with 6 abstentions.

The amendment to paragraph 2(b) was rejected by 31 votes to 20, with 7 abstentions.

The amendment to paragraph 2, proposing to add a subparagraph (c), as orally revised, was rejected by 39 votes to 10, with 10 abstentions.

20. The CHAIRMAN invited the Committee to vote on article 13 as proposed by the International Law Commission.

Article 13 was adopted by 40 votes to none, with 18 abstentions, and referred to the Drafting Committee.

21. Mr. SHASH (Egypt), speaking in explanation of vote, said that his delegation had abstained in the vote on the first French amendment because its concern regarding the use of the term "transfer" in article 13 had not been fully dispelled by the Expert Consultant's explanation, which had referred to article 3. His delegation had abstained in the vote on the second French amendment and it had voted against the third French amendment. It had voted in favour of article 13, as proposed by the International Law Commission, on the understanding that efforts would be made to clarify the meaning of the word "transfer".

22. Mr. MURAKAMI (Japan) said that his delegation had voted in favour of the French amendment regarding paragraph 1, because it simplified the text without changing the substance of the provision. It did not share the concern expressed by some delegations about the possible illegality of the transfer under paragraph 1 which might arise by deleting the words "by that State". His delegation considered such fear to be groundless; article 3 dealt with such a problem with sufficient clarity. His delegation shared the concern of the French delegation regarding the difficulty of making a clear distinction between the cases of transfer of part of the territory envisaged in article 13 and the cases of separation of part of the territory covered by article 16, paragraph 2 and was of the view that that question should be resolved when the Committee took up article 2 or when it took up both article 13 and article 16, as well as the corresponding articles in the other parts of the convention.

23. The Japanese delegation had also voted in favour of the French amendment regarding paragraph 2(b); it supported the wording of that amendment because it was clearer and more precise than that used by the International Law Commission in its text.

24. Mr. AL-KHASAWNEH (Jordan) said that his delegation had voted against the first French amend-

ment because it had been convinced by the arguments presented by the Expert Consultant. It had voted in favour of the second French amendment, however, because it considered the wording which it proposed more appropriate to the type of succession envisaged in article 13. It had voted against the new paragraph 2, subparagraph (c) proposed by France because it would make paragraph 2 self-contradictory, since the opening phrase of the paragraph limited the subsequent subparagraphs to cases where there was an absence of agreement between the States concerned.

25. Mr. SAINT-MARTIN (Canada) said that his delegation had abstained in the vote on article 13 as proposed by the International Law Commission because it was dissatisfied with the formulation in paragraph 2, subparagraph (b), "... connected with the activity of the predecessor State in respect of the territory . . .". He regretted that the Committee had not accepted the text proposed by France for that subparagraph.

26. Mr. ECONOMIDES (Greece) said that he had voted in favour of the French amendment to subparagraph (b) of paragraph 2 and the proposal to add a new subparagraph (c) as lending precision to the text. However, he had also voted in favour of article 13 as proposed by the International Law Commission. Its provisions, particularly those in paragraph 1, were sufficiently positive to deserve support.

27. Mr. LAMAMRA (Algeria) said that he had voted against the French amendments. He wished to recall that the transfer of part of the territory of a State, to which article 13 referred, must take place in conformity with the provisions of international law as incorporated in the Charter of the United Nations. Such a transfer could in no way be interpreted as including the transfer by a colonial Power to another State of its powers of administration of a non-self-governing territory. In fact, the transfer must in no way infringe the inalienable right to self-government and independence of peoples under colonial domination in accordance with the Declaration on the Granting of Independence to Colonial Countries and Peoples.¹ In fact, the use of the expression "part of the territory of a State" excluded such an interpretation, since in contemporary international law a non-self-governing territory did not have the same status as did the territory of the Administering Power.

28. Mr. FREELAND (United Kingdom) said that his delegation had voted in favour of the French amendments for the reasons which he had already given. It had abstained in the vote on article 13 as proposed by the International Law Commission because the discussion had disclosed a number of defects in that text, largely of a drafting nature, some of which might, he hoped, be rectified by the Drafting Committee. In particular, he found the phrase "connected with the activity of the predecessor State in respect of the territory" undesirably vague and he would revert to the matter again in connection with article 14.

29. The CHAIRMAN announced that the Committee had completed its consideration of article 13.

¹ General Assembly resolution 1514 (XV).

Preparation of a draft preamble and draft final clauses

30. The CHAIRMAN drew attention to the question of preparing a draft preamble and draft final clauses for the future convention. In accordance with the practice of previous codification conferences, as suggested in paragraph 19 of the document on methods of work (A/CONF.117/9), that task might be entrusted to the Drafting Committee. All delegations were free to submit proposals on the subject to the Committee of the Whole. However, if the Conference followed previous practice, such proposals would automatically be referred to the Drafting Committee. Subsequently, the draft preamble and draft final clauses prepared by the Drafting Committee would be submitted direct to the Conference at a plenary meeting. He asked whether the Committee agreed to adopt that traditional procedure for preparing the draft preamble and draft final clauses.

31. Mr. SHASH (Egypt) said that before taking a decision, the Committee must decide whether or not

the final clauses would make provision for reservations regarding certain articles of the future convention.

32. Mr. MAAS GEESTERANUS (Netherlands) supported that view.

33. Mr. MONNIER (Switzerland) said that the Chairman's suggestion was acceptable as it was in conformity with previous practice. The final clauses were normally of a technical nature and did not cover the question of reservations. That question could be discussed by the Conference in plenary meeting at an appropriate stage.

34. Mr. LAMAMRA (Algeria) observed that the question of reservations should be the subject of consultations among the regional groups. However, that did not preclude the preparation of draft final clauses by the Drafting Committee in accordance with past practice.

The Committee of the Whole agreed to entrust to the Drafting Committee the task of preparing a draft preamble and draft final clauses.

The meeting rose at 4.40 p.m.

13th meeting

Thursday, 10 March 1983, at 10.10 a.m.

Chairman: Mr. ŠAHOVIĆ (Yugoslavia)

In the absence of the Chairman, Mr. Moncef Benouniche (Algeria), Vice-Chairman, took the Chair.

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 14 (Newly independent State)

1. The CHAIRMAN invited the Committee to consider article 14 and the amendments thereto proposed by the Netherlands (A/CONF.117/C.1/L.18) and the United Kingdom (A/CONF.117/C.1/L.19).

2. Mr. ROSENSTOCK (United States of America) said that in his delegation's opinion article 14 was both unnecessary and unwise. The article created distinctions which were not well founded in logic, law or inherent justice. In urging the deletion of the notion of a special régime for newly independent States from the draft convention under consideration and, consequently, the deletion of article 14, his delegation was guided neither by self-interest nor by ideological motives. Although the United States had at one time been a newly independent State and had acquired substantial territory by purchase, it had not recently been meaningfully involved in any relevant situations either as a predecessor or as a successor State and did not expect to be involved in any substantial successions in the foreseeable future. Neither was it opposed in principle to elaborating a special régime for newly independent

States where it was possible or opportune to do so. For example, in the matter of succession of States in respect of treaties the United States had supported such a special régime and the application of the so-called *tabula rasa* principle, which in that context accurately reflected existing law and corresponded to a just view of the volitional and sovereign act of undertaking a treaty obligation. Nothing in the material before the Committee, however, indicated that article 14 was an accurate statement of existing law or that its provisions should be accepted as progressive development of international law. Moreover, in the light, *inter alia*, of article 4 of the draft, it appeared unlikely that the particular situations covered by article 14 would ever be of substantial importance in the future. In that respect, he completely agreed with the views expressed by the representative of Pakistan at the Committee's 3rd meeting; it was not only the United States but the developed States in general, as well as others with century-old traditions, that were least likely to be party to such situations in the future. Accordingly, the United States delegation believed that article 14 was not required by law, logic or justice, did not deal with subjects likely to be of great future importance and would hardly prove to be a stabilizing factor.

3. It might be thought that, since his delegation did not consider the area covered by the article to be a vital one, it should acquiesce in the wishes of others. The difficulty was that article 14 focused on some highly controversial issues which were not essential to the draft convention and which were, in any event, being dealt with elsewhere. In particular, differences arising over matters raised in paragraph 4 of the article would