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.13

13th 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)*

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

hardly be resolved in the current Conference, and any language that might emerge was hardly likely to contribute to the creation of a world-wide legal framework acceptable to the developed and developing countries alike.

4. All in all, article 14 was a substantial obstacle to the prospects for a widely acceptable convention and an impediment to the success desired by all, and he therefore urged its deletion.

5. Mr. MAAS GEESTERANUS (Netherlands) said that, while agreeing with the International Law Commission's conclusions as stated in paragraph (32) of its commentary on article 14, he was confused by the way in which the principle of permanent sovereignty over natural resources was dealt with in paragraph 4 of the article under consideration and found it difficult to imagine the possible legal effects of that paragraph. In the first place, the text referred to the sovereignty of peoples, which was not a legal concept. States, not populations, were sovereign under international law. Secondly, the text referred to "sovereignty over wealth". In that connection, he remarked in passing that in the French and Spanish texts the adjective *naturelles* (*naturales*) appeared to qualify both wealth and resources, whereas in the English version of both the draft article and the Commission's commentary the adjective "natural" referred only to resources and not to wealth, with the implication that sovereignty extended over all types of wealth. Be that as it might, the concept of sovereignty over any form of wealth was difficult to understand, unlike that of sovereignty over natural resources which was recognized as a guiding principle in international relations. Even that principle, however, was difficult to define in formal legal terms or to translate into actual legal norms. For example, in certain United Nations studies and at certain United Nations conferences, it appeared to be still a moot point whether petroleum should be regarded as a natural resource in the same way as water and air.

6. Unlike certain other delegations, such as that of the United States of America, his delegation held the view that, notwithstanding the hesitations and uncertainties connected with the use of the term "permanent sovereignty", the deletion of any reference to that principle would fail to reflect the reality of modern international relations. A possible way of dealing with the problem would be to supplement the draft convention with a provision concerning the interpretation of the articles in case of dispute. Another solution, which was that proposed in the Netherlands amendment, might be to draft legal norms which could be applied by courts in case of need.

7. Mr. FREELAND (United Kingdom) said that he shared the United States representative's view of article 14 as an unnecessary and perhaps somewhat distracting provision in a convention like that which the Conference was attempting to draft. Being well placed to understand the importance of the process which formed the subject of the article, the United Kingdom delegation believed that the problems dealt with were not likely to be of central importance in modern times and felt that the best course would be to delete the article altogether. Should the Committee not be prepared to adopt that course, he suggested, while acknowledging the Netherlands delegation's efforts, that paragraph 4 at least should be deleted.

8. Introducing his delegation's amendment (A/CONF.117/C.1/L.19), he referred to his remarks at the 1st meeting of the Committee in connection with article 8 concerning the United Kingdom's practice in the granting of independence to former dependent territories. The system had worked well in the past and he felt that it should be reflected in paragraph 1 of article 14 which, as it stood, appeared to be based on an entirely different concept. He could not agree with the assertion in paragraph (13) of the International Law Commission's commentary on article 14 that the provisions of that article were not intended to apply to property belonging to Non-Self-Governing Territories as that property was not affected by the succession of States.

9. Nor did he accept the statement in paragraph (9) of the commentary that "the Constitution of the Federation of Malaya (1957) provided that all property and assets in the Federation or one of the colonies which were vested in Her Majesty should on the date of proclamation of independence vest in the Federation or one of its States". On the contrary, that Constitution expressly referred to all property and assets which were vested in Her Majesty for the purposes of the Federation or of the colony or Settlement of Malacca or the colony or Settlement of Penang, or, in other words, to property vested in the government of the territory concerned. A similar misunderstanding appeared to have arisen in the mind of the commentary's drafters when preparing footnote 154 (paragraph (9)) referring to the Constitution of the Independent State of Western Samoa (1962), where an important phrase, specifying that the property to be vested in Western Samoa on Independence Day was vested in Her Majesty "in right of the Trust Territory of Western Samoa", was indicated only by omission marks.

10. Quite apart from that important flaw, paragraph 1 of article 14 was full of obscurities and difficulties only too prone to give rise to future disputes. The phrase "having belonged to the territory" occurring in subparagraphs (*b*) and (*e*) was clearly not used in terms of strict legal ownership but in some vaguer sense. The phrase "in proportion to the contribution of the dependent territory" in subparagraphs (*c*) and (*f*) seemed to require mathematical calculations that were practically impossible to carry out. Subparagraph (*d*) included the notion of connection with the activity of the predecessor State, which, as the debate on article 13 had shown, gave rise to considerable disagreement. In brief, far from decisively regulating the matter under consideration, the provisions of article 14, paragraph 1, bore the seeds of extensive controversy.

11. The object of the United Kingdom amendment was, in the first place, to encourage agreement between the predecessor and successor States and subsequently to provide residual rules in the event that no agreement was reached. Subparagraph (*b*) of the amendment made it clear that the basic rule should be that followed in the past by the United Kingdom. In that connection, he said that if the words "government of the territory" were unacceptable, he would be prepared to replace them by some other suitable phrase. Lastly, the proposed subparagraph (*c*) provided the ultimate residual

rule which should come into operation if neither (*a*) nor (*b*) applied. In that case, too, his delegation was prepared to adopt a flexible attitude with regard to the use of the words "direct and necessary link", which the Committee had rejected by voting against the French amendment to article 13 (A/CONF.117/C.1/L.16 and Corr.1).

12. Mrs. THAKORE (India) said that her delegation did not share the views expressed by the previous speakers. In its commentary on article 14, the International Law Commission gave persuasive arguments in favour of including the article, to which India attached considerable importance. Both the United Kingdom and the Netherlands amendments conflicted with the letter and the spirit of the Commission's draft of article 14, which constituted a major example of the progressive development of international law and was possibly the Commission's most important contribution to the draft convention as a whole.

13. One of the main reasons for the International Law Commission's decision to give separate and special treatment to newly independent States, thereby taking full account of the special circumstances surrounding the emergence of such States, had been outlined in a statement made by the Special Rapporteur before the International Law Commission on 28 May 1981[1] when he had said that succession involving newly independent States should not in principle be settled by agreements between the predecessor State and successor State for fear of one-sided agreements favourable to the former administering Power. Another reason stemmed from the introduction of the concept of the dependent territory's contribution to the creation of certain immovable and movable State property of the predecessor State and of the principle that such property should pass to the successor State in proportion to that contribution.

14. Paragraph 1 of the International Law Commission's draft article 14 provided eminently equitable solutions designed to preserve *inter alia* the patrimony and the historical and cultural heritage of the people inhabiting the dependent territory concerned. Her delegation therefore favoured the Commission's draft and would oppose the United Kingdom amendment, which was too restrictive and failed to retain the essential features of the Commission's text.

15. Referring to the Netherlands amendment to paragraph 4 of article 14, she said that it considerably watered down the rule couched in positive and absolute terms in the Commission's draft and merely paid lip service to the principle of permanent sovereignty of every people over its wealth and natural resources, a principle which was in the nature of a rule of *jus cogens*. Far from limiting the scope of paragraph 4, her delegation wished to see the principle of permanent sovereignty of every people over its wealth and natural resources further strengthened by the addition of the words "and economic activities" at the end of the paragraph, thereby echoing the Charter of Economic Rights and Duties of States[2] and taking account of the view repeatedly expressed in the Sixth Committee of the General Assembly that political independence was of no value without economic independence. In that connection she noted with interest the view expressed by some members of the Commission in paragraph (30) of the commentary on article 14, that any agreements which violated the principle of the permanent sovereignty of every people over its wealth and natural resources should be void *ab initio*.

16. In conclusion, she expressed surprise at the Netherlands representative's statement questioning the legal validity of the principle of sovereignty of every people over its wealth and natural resources and, in that connection, referred to the General Assembly's most recent decision upholding that principle, namely, resolution 37/103 of 16 December 1982.

Mr. Šahović (Yugoslavia) took the Chair.

17. Mrs. OLIVEROS (Argentina) said that the issues relating to the independence of peoples and the natural right of all human beings to dwell in freedom in their own land had always been of profound concern to the whole of Latin America, where, after decolonization, successful in spite of the tragedy of internecine wars, the rights of the peoples had ultimately triumphed. The International Law Commission had given tangible expression in the draft articles to the aspirations which lay at the heart of the process of decolonization. Its draft of article 14 had the support of her delegation.

18. She could not endorse either of the amendments proposed respectively by the Netherlands and the United Kingdom, for they would disturb the delicate balance of the draft article as a whole in a way which would distort the very essence of the future convention and destroy its *raison d'être*. The intentions of the Commission in structuring the article in such a carefully balanced way were evident from paragraph (13) of the commentary, which recognized the different nature of property belonging to a dependent territory and explained the different formulation of subparagraphs (*b*) and (*e*) of paragraph 1, which hinged on the special meaning given to the word "property" and its differentiation from the term "State property" as used in subparagraphs (*a*) and (*d*). That balanced approach sprang from two essential premises, namely, first, that of the viability of the territory upon attaining independence and, second, that of equity, which required that preferential treatment should be given to newly independent States in the norms governing that particular aspect of the process of succession. In that respect, the reference to the contribution made by the dependent territory to the creation of certain movable or immovable State property held by the predecessor State was crucial. It was first and foremost for that reason that her delegation could not accept the amendments in A/CONF.117/C.1/L.18 and L.19 and would vote in favour of the Commission's text.

19. Mr. KEROUAZ (Algeria) said that his delegation was perfectly satisfied with the article as it stood and was pleased to see that the Commission had paid due regard to the principle of the permanent sovereignty of

[1] See *Yearbook of the International Law Commission, 1981*, vol. I (United Nations publication, Sales No. E.82.V.3), 1661st meeting, paras. 90 and 92.

[2] General Assembly resolution 3281 (XXIX).

peoples over their wealth and natural resources and had affirmed that agreements concluded between the predecessor State and the newly independent State regarding succession to State property should not infringe that principle. Of all the provisions of the proposed convention, those of article 14 had received particularly warm support from the great majority of delegations to the Sixth Committee of the General Assembly; those delegations had recognized them as a contribution to the progressive development of international law. The International Law Commission had drawn on recent historical material and fashioned a provision which met the needs of the modern age and was in close conformity with State practice. It was worth noting that the principle of permanent sovereignty was already embodied in the 1978 Vienna Convention on Succession of States in Respect of Treaties.

20. His delegation would have liked paragraph 4 of article 14 to be strengthened by the addition, at the end, of some such phrase as "and the full and unrestricted exercise of that principle", together with a reference to sovereignty over economic activities carried out in the territory of the newly independent State. Since the recognition of a principle frequently implied recognition of exceptions to that principle, it was essential to establish plainly that there could be no diminution of, or deviation from, the principle of permanent sovereignty over natural resources and that the rights which it conferred were absolute, indivisible and inalienable. Nevertheless, in deference to those delegations whose views differed from his own, he would not submit a formal proposal at that stage.

21. He reserved his delegation's right to comment at a later stage on the amendments proposed by the Netherlands and the United Kingdom.

22. Mr. PHAM GIANG (Viet Nam) noted that the provisions of article 14 would affect more than a hundred States, including his own, which had freed themselves of colonial rule and attained independence since the Second World War. Those provisions were therefore of considerable significance in modern international relations, especially since the process of decolonization was not yet complete, a few peoples and territories remaining under the colonial yoke but certain to achieve their liberation within a few years.

23. Article 14 was sound in substance and clear and precise in form. It rested on a distinction between two separate aspects of the passing of State property in successions involving newly independent States, reflected in the different formulation of the two groups of subparagraphs of paragraph 1. The first group, subparagraphs (*a*), (*d*) and (*e*), provided for the automatic passing from the predecessor State to the successor State of all immovable and movable State property of the predecessor State having a connection with the territory in question, while subparagraphs (*c*) and (*f*) guaranteed to the successor State a just share in such of that property which remained in the possession of the predecessor State but to the creation of which the dependent territory had contributed before succession. The provisions were designed to apply in an identical way to the situation of all newly independent States irrespective of the manner in which they had attained independence or whether they had been formed from one dependent territory or from several distinct territories; that was undoubtedly correct since, as the Commission pointed out in paragraph (4) of its commentary to the article, the basis for the succession in each case was the same: decolonization.

24. His delegation regarded the rules established by article 14 as fair and equitable. The preferential treatment accorded to newly independent States represented a form of compensation for the economic and financial exploitation which they had suffered over long periods, sometimes centuries, of colonial rule. The article was fully in line with article 11, which provided for the passing of State property to the successor State without compensation to the predecessor State, and should be read in conjunction with that article.

25. There was a further reason for giving unreserved support to the Commission's draft article. It was evident that throughout the history of decolonization there had always been some inequality in the relative positions of the colonial Power and former colony as they embarked on independence negotiations. Being in a position of superior strength in all respects, the colonial Power always sought to impose its own conditions on the independence process, and the former colony often had no option but to accept them and to refrain from pressing its claims to certain property. Thus the results of negotiations were almost inevitably unfavourable to the successor State and detrimental to its economic development and viability. The draft article found solutions which accorded with the practice of States and in particular with the approach of his own country after its declaration of independence.

26. The point of departure for the amendment proposed by the United Kingdom was quite different from that of the Commission's draft and its approach was patently unfavourable to newly independent successor States. A comparison of the two texts made it clear that the draft article as it stood did far greater justice to the cause of such States. His delegation could not accept the proposed amendment.

27. Mr. MOKA (Congo) said that although article 14 might be of no importance to some developed countries, it would be necessary to dependent territories since the question of the succession to State property would arise when those territories attained independence. His delegation was therefore in favour of maintaining the text proposed by the International Law Commission.

28. Mr. OESTERHELT (Federal Republic of Germany) said that he had difficulty in grasping the exact scope and meaning of paragraph 4 of the article. The commentary recorded a divergence of views within the International Law Commission respecting the procedure by which the nullity of an agreement infringing the principle of permanent sovereignty over natural resources would be established, some members maintaining that that invalidity should derive intrinsically from contemporary international law and not simply from subsequent denunciation.

29. That unresolved difference of opinion raised two questions. The first was whether the wording, and in particular the words "shall not", referred to the possibility of a denunciation of the agreement by one party thereto, revoking or otherwise invalidating its consent

to be bound by it, or whether it implied the nullity of the agreement *ab initio* irrespective of any action on the part of a party.

30. The second question concerned the nature of the nullity itself. Was it a "nullity agreed *inter partes*", in the sense that the parties to the future convention would agree not to conclude certain agreements which would violate a given principle and to consider void agreements which did not respect that principle? Or was it implied in paragraph 4 that any such agreement would be null and void absolutely, without the States concerned agreeing to that nullity or otherwise recognizing any obligation to respect it?

31. His delegation would be grateful if the Expert Consultant would comment on those questions from the standpoint of the Commission and the authors of the provision.

32. Mr. MURAKAMI (Japan) thought it essential that, in the drafting of the future convention, due regard should be paid to the importance of agreement between the parties involved, as well as to good faith, the sovereign equality of States and the self-determination of peoples. Equally important was the need to maintain legal order in the international community. Further, the provisions of the convention should be essentially residuary rules.

33. His delegation had noted with great concern the exclusion of the element of agreement of the parties from the criteria for succession of States in paragraph 1 of article 14 as proposed by the International Law Commission. That text disregarded the need to respect the agreement of the parties and would hamper the free exercise of the will of States and the international order based thereon. Moreover, it might well be a source of disputes and affect legal stability in international relations and conflicted with his delegation's view that the provisions of the convention ought to be residuary in character. It might also run counter to the principle of self-determination since it would prevent a newly independent State from exercising its will freely.

34. In his delegation's view, paragraph 1 should be modified in order to emphasize the criterion of agreement of the parties. He therefore supported paragraph 1(*a*) of the United Kingdom amendment.

35. Paragraph 1, subparagraphs (*b*) and (*e*) of article 14 contained the phrase "having belonged to" the territory in question. His delegation considered that the question whether and in what manner an entity had possessed the property in question before the period of its dependence should be determined in accordance with the rules of international and internal law applicable at that time.

36. In subparagraphs (*c*) and (*f*), the words "the contribution of the dependent territory" were too vague to be used as legal terminology. Unless the meaning of "contribution" and the way in which it could be measured were clarified, those subparagraphs could never provide satisfactory criteria for the apportionment of the property concerned between the predecessor and the successor States.

37. Similar comments could be made concerning the phrase "connected with the territory to which the succession of States relates" in subparagraph (*d*); in that context his delegation preferred the wording "a direct and necessary link with the management and administration of the territory . . ." used in the United Kingdom amendment.

38. Those comments applied also to all other provisions with similar wording.

39. In connection with subparagraphs (*b*) to (*f*), his delegation would like to register its understanding that the passing of State property situated in a third State did not affect the legal régime of that third State with respect to the property concerned, and the understanding applied also to all other provisions dealing with that problem.

40. His delegation also had great difficulty in accepting the provision in paragraph 4. Besides being extremely unclear, the text was at variance with his delegation's position concerning agreement of the parties; accordingly, his delegation would prefer the provision to be deleted.

41. His delegation reserved the right to comment on the article again later, if necessary.

42. Mrs. ULYANOVA (Ukrainian Soviet Socialist Republic) said that, as the article related to an extremely important area of modern international law, her delegation strongly objected to the suggestion that article 14 should be deleted. To exclude the specific case of succession covered by the article from the section of the proposed convention dealing with property and to retain it only in those sections relating to archives and debts would be to destroy the coherence of the whole successful and well-balanced structure. Articles 13 to 16 had their own internal logic and it would hardly be correct or consistent to enumerate the specific effects on property and related rights in all possible cases of succession with the sole exception of the most important. The provision should therefore be maintained. Her delegation was satisfied with the Commission's draft and could not support the United Kingdom delegation's redraft of paragraph 1.

43. Paragraph 4 and the Netherlands amendment thereto raised two issues. First, even if one assumed that the principle of permanent sovereignty over natural resources was not a generally accepted rule of international law, that should not prevent the consideration and adoption of a provision like that proposed by the International Law Commission; similar action had been taken, for example, in connection with the prohibition of aggression before the definition of aggression had been given formal status.

44. The second issue was whether the invalidity of agreements of the kind envisaged in paragraph 4 was to be established by action on the part of the States concerned or in a general way by international law. That was a question relating to the law of treaties and, although her delegation had no difficulties in that regard and believed that the provision proposed in paragraph 4 should be retained, it would be useful to hear the opinion of the Expert Consultant.

45. She could not concur in the view that article 14 failed to give sufficient prominence to the principle of agreement between States on property questions

arising from succession; the commentary indicated that that aspect had been treated as a major concern by the Commission.

46. Mr. PIRIS (France) noted that the draft Convention established a distinction between cases of succession involving newly independent States and other types of succession and that it sought to give more favourable treatment to newly independent States than that which would be accorded to other successor States. While his delegation well understood the Commission's reasons for proposing such discrimination, and his country was prepared, in the appropriate forums, to do everything possible to correct the inequalities resulting from underdevelopment, it considered that discussion of such matters was out of place at that Conference. The distinction proposed by the International Law Commission was based on political rather than juridical considerations and was not justified by international practice. The type of succession of States envisaged in draft article 14 had no existence in law. The French delegation would therefore support any proposal to delete the article.

47. However, if the Conference was determined to maintain a political criterion for distinguishing between different types of succession, at most that criterion should be not that of colonial dependence but rather of domination, which would take into account, for example, the situation of certain dependent territories of the former Austro-Hungarian or Ottoman Empires.

48. In any case, retaining a provision of the kind proposed in article 14 in the form proposed by the Commission would create major difficulties. Most of them could, however, be resolved by taking into account, on the one hand, the French delegation's comments on article 13 made at the two preceding meetings and, on the other, the amendments to paragraph 1 proposed by the United Kingdom and to paragraph 4 by the Netherlands. In the first place, it was essential, and in keeping with State practice, that such an article should state in its first paragraph the principle that the transfer of State property should be settled by agreement between the predecessor and successor States, by using similar wording to that of paragraph 1 of article 13.

49. As regards the provisions of paragraph 1 as they appeared in the text proposed by the Commission, subparagraphs (*a*), (*b*) and (*d*) were acceptable to his delegation subject to the following modifications: in subparagraph (*b*), the word "State" should be inserted between "immovable" and "property"; and in subparagraph (*d*) the words "which has a direct and necessary link with the management and administration of the territory", used in the United Kingdom's amendment, should replace the expression "connected with the activity of the predecessor State in respect of the territory", which was too vague.

50. The French delegation could not accept subparagraphs (*c*), (*e*) and (*f*) in their present form. As regards (*c*) and (*f*), it shared the view of the representative of Japan that the term "contribution" made by the dependent territory to the creation of the State property of the predecessor State lacked precision. It was essential to specify the nature of that contribution: that it had been a specific contribution to the budget of the predecessor State from the territory concerned as a legal entity, for instance.

51. At the end of paragraph 1, similar wording to that proposed by France for paragraph 2 of article 13 (A/CONF.117/C.1/L.16 and Corr.1) should be added as a new subparagraph (*g*).

52. Paragraph 4 as drafted by the International Law Commission was unacceptable to his delegation which, moreover, considered a provision of that type in the Convention unnecessary. If, however, it was agreed to maintain such a provision, it should be based on the amendment proposed by the delegation of the Netherlands, which seemed more appropriate.

53. While endorsing the principle of permanent sovereignty of peoples over their natural resources, his delegation maintained that that principle must be applied in accordance with international law and that it was, moreover, valid for all States without distinction. Furthermore, it must be phrased in a non-binding way for States parties to the Convention.

54. Thus his delegation would support a proposal for the deletion of article 14. Failing that, however, the United Kingdom and Netherlands amendments were preferable to paragraphs 1 and 4 in their present unacceptable form and his delegation would vote in favour of those amendments.

55. Mr. SHASH (Egypt) fully supported the text drafted by the International Law Commission, since it was based on equity and justice for States which attained independence and many of which had previously been deprived of all their rights. Moreover, that text was based on the rule of law accepted by the majority of States and embodied in international conventions. To amend it would be a retrograde step.

56. His delegation found it difficult to approve any of the amendments in documents A/CONF.117/C.1/L.18 and L.19. It did not understand the meaning of the words "State property vested in the government of the territory to which the succession of States relates" in subparagraph (*b*) of A/CONF.117/C.1/L.19 and found subparagraph (*c*) of that amendment restrictive and unacceptable. The Netherlands amendment was unacceptable because it was insufficiently binding upon the predecessor State, whereas paragraph 4 as it stood was consistent with existing principles of international law.

57. He disagreed with those speakers who had suggested that article 14 should be deleted: the Conference could hardly adopt a convention on the succession of States without dealing with the very important question of the property, archives and debts of newly independent States. He agreed with the Commission's view that the article was necessary.

58. Mr. DJORDJEVIĆ (Yugoslavia) said that his delegation regarded the provisions of article 14 as being of crucial importance. They reflected the positive approach taken by the International Law Commission to the process of decolonization and were fully consistent with the principles of modern international law. Paragraph 1 was distinctive in that it did not insist on the primacy of agreement in the case of a succession involving a newly independent State, thus illustrating the Commission's awareness of the need to adhere to

the principles of equity and the viability of the territory under the new legal régime. His delegation was thus unable to accept the amendment proposed by the United Kingdom, which substantially changed the basic principles underlying paragraph 1. Nor could it endorse the proposal by the United States that the whole article should be deleted. However, it felt that the article could usefully be referred to the Drafting Committee with a view to improving the wording.

59. The provision in paragraph 4, which affirmed the principle of the permanent sovereignty of every people over its wealth and natural resources, was fully justified, not only in the light of the terms of the Charter of Economic Rights and Duties of States but also in the light of the current stage of development of international law in general. He drew attention to paragraph (32) of the Commission's commentary on article 14, which stated that, while the principle of permanent sovereignty over wealth and natural resources applied in the case of every people, it was necessary to include a provision affirming that principle in the context of succession of States involving newly independent States. His delegation felt that the original wording submitted by the International Law Commission was more explicit in that regard, and therefore preferable to that proposed by the representative of the Netherlands.

60. Mr. FISCHER (Holy See) said that his delegation had been surprised to hear one delegation opposing the inclusion of any reference to "international law" in article 14 on the grounds that such a reference would be restrictive. His own delegation firmly believed in the principle of the permanent sovereignty of every people over its wealth and natural resources, but took the view that any action taken by a State in the exercise of that sovereignty, such as nationalization of foreign property in its territory, must conform to international law. Since the lack of any reference to international law in paragraph 4 would open the door to arbitrary actions by States, his delegation strongly favoured the Netherlands amendment.

61. Mrs. VALDÉS (Cuba) said that article 14 as formulated by the International Law Commission took due account of the situation of States acceding to independence. Paragraph 1 in particular was both equitable and compatible with the rest of the draft and her delegation would oppose any amendments, such as those submitted by the Netherlands and the United Kingdom, which would have the effect of weakening the future international instrument.

62. Mr. POEGGEL (German Democratic Republic) said that article 14, like the corresponding articles 25 and 35, was a most impressive reflection of the progressive development of international law with regard to the legal effects of a succession of States. It was right that newly independent States should receive preferential treatment in the articles because of their need to achieve economic as well as political independence. In that connection, he considered that paragraph 4 of article 14 deserved special attention. The paragraph was indispensable because it affirmed the often disregarded right to self-determination and permanent sovereignty over natural resources. His delegation could not support the Netherlands amendment to paragraph 4, which tended to weaken the substance of the paragraph as drafted by the International Law Commission, first by replacing the phrase "shall not infringe" by the much weaker expression "shall pay due regard to", and secondly by omitting the phrase "of every people". Paragraph 4 as it stood was fully consonant with article 13 of the 1978 Vienna Convention.

63. His delegation felt that the amendment submitted by the United Kingdom changed the entire structure of article 14 and also its underlying concept. The amendment referred only to State property as such and did not pay due regard to the distinction between immovable and movable property, a distinction which was made quite clear in paragraph 1 of article 14 as drafted by the International Law Commission. His delegation would oppose the amendment and would support article 14 as it stood.

64. Mr. do NASCIMENTO e SILVA (Brazil) said that his delegation would vote in favour of article 14 as it stood. The object of the amendment of the United Kingdom was to transform the provisions of article 14 into residuary rules. He pointed out however that once a State was fully sovereign it was free to enter into agreements regarding the status of immovable and movable property, and indeed into agreements on co-operation with the predecessor State in the exploitation of its own natural resources.

65. Referring to the amendment submitted by the Netherlands, he said that it had the merit of focusing attention on paragraph 4 of article 14. In drafting paragraph 4, the International Law Commission had taken into account the numerous relevant resolutions and declarations of the General Assembly, and the resulting article represented a peremptory norm of international law. The effect of the amendment would be to transform the article into a residuary rule. Actually, it was arguable that a treaty concluded prior to the independence of a State and affecting that State's sovereign rights over its own natural resources was of doubtful validity. Some members of the Commission and delegations in the Sixth Committee had even considered the article as embodying a rule of *jus cogens*.

66. In view of the paramount importance of the principle in paragraph 4, his delegation thought that it should not form the subject of merely one of the provisions of article 14, but that it should be incorporated in the draft as an independent article. At the current stage, however, his delegation felt that article 14 should be retained as drafted.

67. Mrs. BOKOR-SZEGÖ (Hungary) said that her delegation supported article 14 as it stood and was particularly opposed to any suggestion that it should be deleted. In its drafting the International Law Commission had responded to the wish of the General Assembly, expressed in numerous resolutions, that special treatment should be accorded to newly independent States in the codification of international law. The deletion of article 14 would clearly be contrary to that intention. Similarly, the amendment proposed by the United Kingdom would alter the essential structure of the article, while the Netherlands amendment would weaken respect for the principle of the permanent sovereignty of every people over its wealth and natural resources, which was a peremptory norm of international law admitting of no derogation.

68. Mr. MASUD (Observer for the Asian-African Legal Consultative Committee) said that it was clear from the discussion that, in the opinion of most delegations, the Netherlands amendment would upset the balance of the article. Article 14 was intended to protect the interests of newly independent States, which were often in a weak bargaining position *vis-à-vis* predecessor States. Article 14 set forth a peremptory norm of international law, and the Netherlands amendment would have the effect of diluting its provisions.

69. The United Kingdom amendment was still more radical in its implications, in that it would virtually eliminate the principle of equity from the article.

70. Referring to subparagraphs (*c*) and (*f*) of paragraph 1, he said that clarification was required as to the criteria to be applied in determining the contribution of the successor State; in that respect the existing text was not sufficiently precise.

The meeting rose at 1 p.m.

14th meeting

Thursday, 10 March 1983, at 3.10 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 14 (Newly independent State) (*continued*)

1. Mr. IRA PLANA (Philippines) said that his delegation was opposed to the deletion or emasculation of the International Law Commission's text of article 14. The Commission had recognized the role of newly independent States in the present world order and the fact that such States were in a position of disadvantage compared with predecessor States. Its draft of article 14 met the requirements of equity.

2. Mr. LAMAMRA (Algeria) reiterated his delegation's support for the spirit and letter of the International Law Commission's text of article 14 and particularly for paragraph 4 of that text. Opposition to the principle of the permanent sovereignty of peoples over their wealth and natural resources was seemingly entrenched. Some delegations had favoured deletion of the reference to that principle on the ground that it was of no practical value since the process of decolonization was virtually complete. However, according to the Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples, many territories still did not enjoy the right of self-determination.

3. The United Kingdom amendment (A/CONF.117/C.1/L.19) sought to substitute for the coherent system of devolution worked out by the International Law Commission empirical formulations based on the inequitable arrangements which had sometimes been imposed in the past as a result of negotiations between a powerful predecessor State and a defenceless young State. It ignored the International Law Commission's concern with the viability of the territory of newly independent States and eliminated reference to the categories of State property mentioned in the subparagraphs of paragraph 1. That amendment embodied a fundamental difference of approach which delegations should bear in mind when taking a decision on article 14.

4. The Netherlands amendment (A/CONF.117/C.1/L.18) was no more felicitous. The expression "due regard" in that amendment suggested that the principle of permanent sovereignty was but one criterion among others and not really of major concern, whereas the International Law Commission's text treated the principle as being of cardinal importance. Furthermore, the concluding phrase in the Netherlands amendment, "in accordance with international law", revived the long-standing argument as to which international law was intended. There was the old international law, which protected privilege based on domination and conquest, and the new international law enshrining the principle of equity, which was affirmed by the International Law Commission. The Charter of the United Nations had notorious gaps in respect of economic co-operation and development co-operation and in 1980 the third world delegations to the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization had proposed that a reference to permanent sovereignty over natural resources should be incorporated in its text. International law was in fact constantly evolving and a general reference to it was incompatible with the precision desirable in paragraph 4. The Netherlands representative had asserted that a United Nations document had made the surprising claim that permanent sovereignty related to air and water but excluded oil. That ran counter to the Programme of Action on the Establishment of a New International Economic Order adopted by the General Assembly in its resolution 3202 (S-VI) at its sixth special session. In any case, if only the territorial dimension of sovereignty was taken into consideration, it was difficult to see how energy resources could be excluded.

5. The French representative had endeavoured to prove that newly independent States should not be regarded as a special category in the succession of States (13th meeting). That was an ideological approach alien to the Charter of the United Nations and to the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among