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

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17th meeting of the Committee of the Whole

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Committee's discussion of article 13 (*ibid.*), the doubtful nature of the requirement for consultation of the population, and had noted a minor boundary adjustment between France and Italy as an example. Consultation could therefore occur, not on the basis of international law, but on the basis of the internal law of the State or States involved, and particularly of their constitutional law. Political expediency might also dictate a need for consultation. He wondered therefore whether a lack of consultation would constitute a breach of the convention.

62. The Expert Consultant, on the other hand, had quoted, in connection with article 13 (*ibid.*), the case of a transfer of territory between Switzerland and France for the purpose of extension of Cointrin airport. However, there was a whole range of cases between that case and the theoretical case suggested by the International Law Commission of a territory of significant size, with a significant number of inhabitants and of a certain strategic and political importance, in which it would be difficult to decide whether article 13 or article 16, paragraph 2, should apply. Was the distinction to be on the basis of size of territory or number of inhabitants, and how was both the political and the strategic importance of the territory to be quantified? The Swiss delegation therefore saw very great practical difficulties in determining which situations were covered by which article.

63. Furthermore, even supposing that the differences indicated by the Commission were easily recognized, they would not qualify for separate legal provisions. The only criterion would be whether the detached territory constituted a new State or not. Such a distinction was neither justified nor necessary, could cause considerable difficulties in practice and would not contribute to international security, hence the Swiss delegation's suggestion that article 16, paragraph 2, should be deleted. His delegation did not put forward a formal proposal at present but reserved the right to revert to the matter later, depending on the progress made in the discussion of article 16 and the reaction of other delegations to the suggestion.

64. Mr. NATHAN (Israel) said that the observation which his delegation had made in connection with paragraph 2, subparagraph (*b*), of article 13 (*ibid.*) also applied to paragraph 1, subparagraph (*b*), of article 16. The phrase "connected with the activity of the predecessor State" was too vague and required further precision in the sense that the property should be principally connected with the activity of the predecessor State in respect of the territory to which the succession of States related. Similarly, the term "equitable proportion" in subparagraph (*c*) also required further precision and clarification. Flexibility had its advantages where it enabled decisions to be taken in accordance with the specific requirements of a specific situation, but excessive flexibility or inadequate precision in a legal text could lead to confusion and disputes. Suitable criteria were therefore required to govern the process of equitable apportionment of the property involved, such as, *inter alia*, the respective sizes of the territories concerned, the respective numbers of inhabitants and the respective economic resources, taking into account the extent of the property passing to the successor State under paragraph 1, subparagraph (*b*).

65. His delegation was unable to support the amendment of Pakistan because it saw no valid reason why the terms of paragraph 1, subparagraph (*b*) of article 16 should not be identical to the parallel paragraph 2, subparagraph (*b*) of article 13.

66. Mrs. THAKORE (India) said that article 16, as proposed by the International Law Commission, was basically acceptable to her delegation. While paragraph 1, subparagraph (*a*) of article 16 laid down a common rule relating to the passing of immovable State property, subparagraph (*b*) set forth the basic rule relating to movable State property which was applied consistently throughout section 2 of Part II of the draft.

67. The "equitable proportion" or "equitable compensation" rule laid down in paragraph 1, subparagraph (*c*), and paragraph 3 of article 16, which would apply in residual cases as a balancing factor, constituted a practical guideline. The Indian delegation was therefore unable to support the amendments submitted by Pakistan or the amendment suggested orally by the representative of Switzerland.

The meeting rose at 5.55 p.m.

17th meeting

Monday, 14 March 1983, at 10.05 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 16 (Separation of part or parts of the territory of a State) (*continued*)

1. Mr. ECONOMIDES (Greece) noted that article 16 contained as a central concept, which was also to be found in a number of other provisions, that of equity. Both the concept itself and the expressions "equitable proportion" and "equitable compensation" used in the article were very vague and likely to be difficult to apply in practice. It might even be questioned whether they had any legal meaning at all.

2. The International Law Commission was admittedly correct in its introduction to the draft articles in distinguishing equity from a proceeding *ex aequo et bono* (A/CONF.117/4, paras. 82 *et seq.*). When a rule of international law, whether customary or conventional, invoked equity, that concept was applied as a rule of

international law, whereas the principles of *ex aequo et bono* lay outside that law: in the rare instance in which a judge in an international court decided a case *ex aequo et bono*, he effectively became a legislator because he was applying not a general legal principle but a rule which he had subjectively identified as appropriate to determine a given legal relationship. It was for that reason that Article 38, paragraph 2, of the Statute of the International Court of Justice expressly stated that a decision *ex aequo et bono* was admissible only if the parties agreed thereto.

3. Yet even if the concept of equity was a general principle of international law, it was not sufficient in itself. It must always be accompanied by objective criteria capable of precise practical application; that had been the conclusion, for instance, of the International Court of Justice in the North Sea Continental Shelf cases.[1] Article 16 was thus defective and incomplete in that it invoked equity without the support of any such criteria and thus appeared to be based rather on the concept *ex aequo et bono* than on equity as properly understood. It was essential, especially in the context of paragraph 1(*c*), to make provision for such criteria, which should take into account—for the purpose of the apportionment of State property—such elements as the surface area of the territory concerned, the size of the population, its wealth and natural resources and its historical and cultural traditions.

4. His delegation found it difficult to support the first amendment, to paragraph 1(*b*), proposed by Pakistan (A/CONF.117/C.1/L.8), since the change would make the wording of article 16 inconsistent with that of related articles. The second proposal, for the deletion of subparagraph (*c*), was acceptable to the Greek delegation, especially in the absence of any clarification of the term "equitable proportion".

5. Mr. DELPECH (Argentina) said that his delegation endorsed the Commission's draft of articles 16 and 17, which it regarded as a unit in the overall structure of the draft articles. The régime proposed effectively provided for the disposition of immovable State property and of the two distinct categories of movable State property in the cases envisaged, while distinguishing the situation arising out of a separation of part or parts of the territory of a State from that of the dissolution of a State. He fully supported the introduction of the principle of equity in respect of all three cases of succession covered by the draft—State property, archives and debts—understanding that it was being used, in the modern interpretation given to it by the International Court of Justice in the North Sea Continental Shelf cases, as "part of the material content of specific provisions" (A/CONF.117/4, para. 85). He accepted that that formulation of equity strictly had no juridical standing, but felt that that need not deter the Conference from employing it; the United Nations in its codification work had introduced other useful concepts of similar paralegal status which had proved their value in reflecting the concerns of States in international relations, and that process would undoubtedly continue in the future.

6. Mr. PIRIS (France) said that his delegation's views on the most significant aspects of article 16 had been stated earlier in connection with the consideration of analogous provisions in article 13. His delegation was of the opinion that paragraph 2 of article 16 should be deleted; it supported the excellent arguments put forward by the representative of Switzerland at the previous meeting and reminded the Committee of the comments it had made during the discussion on article 13 (12th meeting).

7. Referring to paragraph 1(*b*), he agreed with the representative of Jordan that, in lieu of the extremely vague phrase "connected with the activity of the predecessor State in respect of", the expression "having a direct and necessary link with the administration and management of" should be used. That wording was based on the amendment proposed by France to article 13 (A/CONF.117/C.1/L.16 and Corr.1), which had in turn drawn on a formula cited by the Commission in its commentary (as for example in para. (11) of the commentary to article 12).

8. He would have preferred article 16, paragraph 1 to include a provision, also proposed by his delegation in its amendments to article 13, giving the predecessor State the possibility of retaining certain State property recognized as essential to it for the purpose of maintaining or establishing certain services, with the agreement of the successor State, in the separating territory, or at least stipulating that the passing of such property should be determined in accordance with the respective needs of the two States concerned.

9. While he appreciated the Pakistan delegation's motive in proposing its amendment to paragraph 1(*b*), the wording of which as it stood was far too imprecise, he could not fully support the use of the words "situated in", which might, according to circumstances, be construed either very narrowly or very broadly. It would hardly be just in the case, for instance, of a highly specialized and important national scientific installation, owned by the predecessor State and situated in the separating territory, that the whole of the State property relating to it should pass to the successor State. The amendment by Pakistan should therefore be modified as proposed by the representative of Jordan (16th meeting).

10. He supported Pakistan's second proposal, that paragraph 1(*c*) should be deleted. The result would be greater uniformity in the solutions provided in the different cases of succession and especially those treated in articles 13 and 16, where the distinction was not clear-cut.

11. Mr. ZSCHIEDRICH (German Democratic Republic) said that, in his delegation's view, article 16 as proposed by the International Law Commission was well balanced and the distinction between article 13 and paragraph 2 of article 16 clearly drawn.

12. The key point of article 13 was that a transfer of part or parts of the territory of a State in no way in-

[1] *North Sea Continental Shelf, Judgment, I.C.J. Reports 1969*, p. 3.

volved the right of self-determination of a given people, since, under the terms of article 13, only a very small part of the territory and a very few inhabitants were affected. That those inhabitants should be consulted was dictated not by the principle of self-determination but by the internal law of the predecessor State or possibly by a treaty between the two States concerned. The inhabitants were entitled under that fair and democratic procedure, first, to choose which citizenship they would adopt and, secondly, to have their say in the settlement of questions regarding their private property.

13. Certain delegations, including that of France, had made the point that paragraph 2 of article 16 covered a purely abstract, hypothetical case. It was possibly true that no such case had yet occurred. However, bearing in mind the fact that the Conference was drafting a convention for the future, it was legitimate and necessary to cover all theoretically possible cases of succession.

14. His delegation endorsed the provisions of article 16 on the division of State property. Although it had some reservations about the Commission's formulation, it was convinced that it would not be possible to find any definition of the situation which would take full account of all the specific circumstances of every case of State succession. The Commission had done the most which could be expected: it had worked out a general law applicable to most circumstances.

15. In connection with the principle of equity and the expressions "equitable proportion" and "equitable compensation", he said that some or all of the following elements should be taken into account in the apportionment of State property in the case covered by the article: the size of the territory; the size of the population; the contribution of the population of the territory to the creation of the immovable and movable State property situated inside and outside the territory; the national income or gross national product of that territory; the benefits actually accruing to the successor State and its population; and the need for a secure foundation for the existence of the predecessor and successor States. Such criteria might form guidelines for an agreement between the two States as well as general principles to be applied in the absence of such an agreement.

16. The amendment proposed by Pakistan to paragraph 1(*b*) of article 16 did not accord with the overall aim of article 16. It did not provide for the possibility of certain movable property being located outside the territory concerned, possibly in a third State. His delegation was thus in favour of the wording of the subparagraph proposed by the Commission.

17. The same comment applied to the proposed deletion of subparagraph (*c*). The subparagraph was a saving clause and hence should not be deleted.

18. Mr. TEPAVITCHAROV (Bulgaria) noted that article 16 dealt with two distinct and very important cases of succession in respect of State property: the case of the separation of part or parts of a territory of a State and the formation of a new State; and the case where part of a State's territory separated from that State and united with another State. His delegation considered those two cases as two options open to the territory separating from a given State, where its future was determined by the will of the people of the territory.

19. The text proposed by the International Law Commission was a necessary element of the draft and consistent with a well-balanced classification of the categories of State succession. The criterion applied throughout the Part in which article 16 appeared for determining the kinds of State property which were affected by succession was the distinction between immovable and movable property, justified both by the intrinsic nature of those kinds of property and by the long history of State practice, further criteria rightly being introduced for determining which of the movable property in question could be claimed by the successor State: the viability of the territory; the general principle of equity; and a connection with the activity of the predecessor State in the territory affected by the succession. He concurred in the Commission's view that to make geographical location the sole determining factor in the treatment of movable State property would be unfair; the specific circumstances under consideration were not sufficiently different from other cases to justify any major deviation in approach.

20. Of particular interest to his delegation was the provision in paragraph 2 of article 16. There were several clear ways in which succession under article 13 differed from that covered by article 16. Article 13 provided for the transfer of a territory by a State, no other option being open to the transferred territory, whereas article 16, paragraph 2, provided for separation as a second option available to the population inhabiting the territory, the first being the formation of a separate State. Furthermore, in the process of the separation of territory, the determining factor was the will of the resident population, while under article 13 the inhabitants of the territory had no choice. In addition, in the case covered by paragraph 2 of article 16, agreement between the predecessor State and the successor State was not in itself sufficient to trigger the automatic operation of the provisions of article 9, for the consent of a third party, the population of a territory, must be obtained. Lastly, the consent of the people of the territory not only determined the nature of the territory's statehood after separation but also affected the type of movable property which would be subject to succession and provided for a second category of movable State property other than that connected with the activity of the predecessor State in respect of the territory. In his delegation's view, the contribution made thereto by the people of the territory must be accepted as the legal basis for any claim to an equitable proportion of that second category of movable property, as provided for in paragraph 1(*c*).

21. His delegation understood paragraph 3 of article 16 as meaning that, if a question regarding equitable compensation arising between the predecessor State and the successor State were not settled by specific agreement, then a settlement under paragraphs 1 and 2 of the article would not preclude a claim to certain State property on the grounds that the clauses of the agreement did not provide expressly for such a course of action. Paragraph 3 of article 16 itself was the basis for such a claim.

22. For all those reasons, his delegation supported the draft article without modification.

23. Mr. OESTERHELT (Federal Republic of Germany) noted that the salient feature of article 16 was the difference in the treatment of the movable property of the predecessor State by contrast with article 13. Under the latter, movable property passed only to the extent that it was connected with the activity of the predecessor State in respect of the territory, while under the terms of article 16 the passing to the successor State of a second category of movable property, namely an equitable proportion of all the rest of the movable property of the predecessor State, was provided for.

24. Although there were a number of good reasons why cases of separation of part of a State's territory should not be treated differently from cases of transfer of territory, he did not wish to reopen the debate on that issue. If such special treatment were to be accorded, however, it should be done in the most effective manner possible, and it was in that respect that his delegation had some doubts as to the appropriateness of the draft article.

25. On the premise that, in the final analysis, the reason for treating secession differently lay in the specific characteristics of the situation, it might be questioned whether it was really reasonable to assume that two States which had so recently separated, frequently against the will of one party, would come to terms on the question which of the movable property of the predecessor State was "connected" with its activity in respect of the separating part, quite apart from the question which portion of the rest of the movable property represented "an equitable proportion". The property claimed by the successor State might, after all, be situated in the surviving predecessor State or in a third State, a situation likely to lead to protracted disputes.

26. For that reason his delegation had serious doubts about the practical applicability of the formula "connected with the activity of the predecessor State in respect of the territory", even in relatively clear cases, and about the expression "equitable proportion". Thus the amendment proposed by Pakistan that paragraph 1(*c*) should be deleted seemed sensible.

27. The amendment proposed by Pakistan for paragraph 1(*b*) also had its merits. However, if the Committee adopted the implied "territorial approach", in preference to the "functional approach" of the Commission's text, then the amended article could be simplified still further. Paragraph 1 might simply read: "When part or parts of the territory of a State separate from that State to form a State, and unless the predecessor State and the successor otherwise agree, State property situated in the territory to which the succession of States relates shall pass to the successor State", no distinction being made between movable and immovable property. Nevertheless, as the representative of France had pointed out, such a rule would go in part too far and in part not far enough.

28. Mr. FAYAD (Syrian Arab Republic) said that in his delegation's opinion article 16 as drafted by the International Law Commission dealt effectively with the transfer of property in situations which arose upon the separation of part or parts of a State's territory. The deletion of paragraph 1(*c*) would deprive the text of the reference to equity, a concept which, though perhaps vague, was fundamental to the article as a whole.

29. Mr. TSYBOUKOV (Union of Soviet Socialist Republics) considered that the International Law Commission's draft of article 16 should be approved as it stood, for it gave a clear definition of the consequences of succession of States in the event of the separation of part or parts of a State's territory. Paragraph 1 was important in that it accorded priority to the agreement between the predecessor and successor States.

30. His delegation could not support the proposal by Pakistan for deleting paragraph 1(*c*) since it could not see why an equitable proportion of the movable property of the predecessor State should not be transferred to the successor State. Paragraph 1(*b*) covered only a part, possibly an insignificant part, of the movable property of the predecessor State. To delete paragraph 1(*c*) would be to deprive the new State of the financial resources it needed to survive.

31. Nor could his delegation agree with the criterion of location used in the amendment proposed by Pakistan. The essential feature of movable property, which consisted primarily of such elements as funds in cash, deposits in domestic and foreign banks, foreign currency, debt claims and gold reserves, was its territorial mobility. The successor State should receive the specified portion of the movable State property wherever that property might be situated, including property situated in territory within the jurisdiction of third States.

32. Mr. ASSI (Lebanon) said that his delegation supported the International Law Commission's draft of article 16, but agreed with the representative of Pakistan that paragraph 1(*c*) might be deleted.

33. The amended version of paragraph 1(*b*) was inequitable in that it would deprive the separated territory of virtually all movable property which was connected with its activity but which was situated in territory which remained part of the predecessor State. Paragraph 1(*b*) should cover all movable property and should exclude any possibility of ambiguity or subsequent interpretation.

34. In the case of paragraph 1(*c*), however, his delegation believed that the International Law Commission's text was either too vague or too restrictive and that it might be open to differing interpretations.

35. Mr. BEDJAOUI (Expert Consultant) said that article 16, like other subsequent articles, was based on the principle of equity in international law. The International Law Commission's object had been to arrive at wording which would be both compatible with that principle and applicable to the great diversity of cases of State succession. However, the affirmation of principle must be backed up by objective criteria which would provide guidance to an international judge or to the States involved in a succession. At the same time, the Commission had been aware of the difficulty involved in determining when a specific criterion, such as the size of the territory and its population, or its political, economic and strategic importance, should be invoked, and had accordingly adhered to the concept of "equitable compensation". It might prove difficult to

improve on that approach, but the Drafting Committee might be asked to give the matter its consideration.

36. Referring to the proposal by the representative of France that paragraph 2 of article 16 should be deleted, he said that the International Law Commission had felt it necessary to draw a distinction between "transfer" of territory as used in article 13 and "separation" in paragraph 2 of article 16. The crucial question was whether, in a particular case of succession, transfer or separation was involved; but it was only political reality that told us whether we were witnessing a secession (article 16) or a transfer (article 13), and the Commission had concluded that the two categories should be differentiated, and had drafted paragraph 2 accordingly.

37. The amendment proposed by Pakistan to paragraph 1(*b*) would, he thought, prove difficult to put into practice. The concept of "movable State property" would not be a reliable criterion in that the extent of the property concerned would still be open to dispute, while the possibility would remain that property could be moved by the predecessor State prior to the succession. In the case of railway property, for example, the effect of the amendment proposed by Pakistan would be that such property would have to be physically situated in the territory to which the succession of States related in order to pass to the successor State. Paragraph 1(*b*) was designed to avoid such a strict condition.

38. Commenting on the proposal for deleting paragraph 1(*c*), he thought that it was essential to include a provision which would ensure the viability of the successor State after separation. In that context, the reference to "equitable proportion" was both indispensable and sufficiently flexible.

39. Mr. AL-KHASAWNEH (Jordan) said that he did not see any contradiction between the text proposed by the representative of Pakistan for subparagraph (*b*) and the overall aim of the article as drafted by the International Law Commission. The objection to the amendment seemed to posit bad faith on the part both of the predecessor and of the successor State, an assumption which did not seem to his delegation a sound basis for drafting an international convention. However, to avoid any ambiguity the amendment might be reworded to refer to "movable State property situated before the date of succession in the territory to which the succession of States relates . . .".

40. In general, his delegation felt that, while the era of decolonization might be drawing to a close, there was every reason to suppose that article 16 would prove to be of great importance in a world in which fragmentation of States was a continuing and by no means uncommon occurrence.

41. Mr. MONNIER (Switzerland) noted that the Expert Consultant appeared to concur with his own view as to the difficulty of measuring or quantifying the criteria on which the distinction between the case envisaged in article 16, paragraph 2, and that envisaged in article 13 was founded. In order to justify that distinction, the Expert Consultant had seemed to depart from the criteria listed in paragraph (16) of the commentary —the size of the territory and of its population and its political, economic and strategic importance—and to have concentrated on two cases very obviously different from one another, that of an agreed transfer of part of the territory of a State, for example, the often-quoted extension of the Geneva-Cointrin airport into what was formerly French territory, and that of a situation implying a political break between the predecessor and successor States. Most situations occurring in real life, however, fell between those two extremes, and hence to determine whether article 13 or article 16, paragraph 2, should apply would, in practice, be rather more difficult than the Expert Consultant had implied. He therefore continued to feel that the distinction should not be maintained and that paragraph 2 of article 16 should be deleted. However, as already stated, he was not submitting a formal amendment to that effect and would not insist upon a vote on his suggestion.

42. Mr. RASUL (Pakistan), replying to the comments made on his delegation's amendments, said that he failed to see any direct link between the cases envisaged in articles 16 and 14, respectively. According to the definition of a "newly independent State" in article 2, such a State was, in effect, a former colony; yet even a newly independent State, thus defined, might well be a predecessor State in the situation envisaged in article 16. His delegation's motive in submitting the amendment was rooted in the belief that an important legal instrument such as that under consideration should provide guidelines for the solution of problems rather than create situations that could give rise to controversy. The existing text of article 16, paragraph 1(*b*), was considered highly ambiguous by many delegations and that was why he wanted to see it amended. However, since it appeared to be generally felt that his delegation's amendment to paragraph 1(*b*) was too restrictive as it stood, he suggested that some such phrase as "having a direct and necessary link" should be added.

43. With regard to his delegation's proposal for the deletion of paragraph 1(*c*), he said that he found it surprising that the International Law Commission should have concerned itself with only one side to the situation and ignored the other. In many cases, a seceding State, far from being weaker or poorer than its predecessor, was in fact richer and more developed; that, indeed, was often the reason for the secession. The question of economic viability or survival for the predecessor State was then extremely acute. He maintained the amendment to paragraph 1(*c*) and requested that it should be put to a vote.

44. While having no strong feelings as to whether paragraph 2 should be maintained or deleted, he suggested that, if the clause was retained, the word "also" might be inserted between the words "Paragraph 1" and "applies". In conclusion, he associated himself with the remarks just made by the representative of Jordan, and reserved the right to comment on the principle of equitable proportion when introducing his delegation's amendment to article 35 (A/CONF.117/C.1/L.13).

45. Mr. KADIRI (Morocco) said that he was fully satisfied with the explanations given by the Expert

Consultant and supported article 16 as it stood. He opposed the amendment by Pakistan to paragraph 1(*b*) because the phrase "situated in the territory to which the succession of States relates" was normally associated with immovable State property only; he was strongly in favour of maintaining paragraph 1(*c*) because the principle of equitable compensation was a keystone of the whole edifice of the convention.

46. The CHAIRMAN suggested that the Committee should vote on the amendment by Pakistan to paragraph 1(*b*) of article 16 as orally amended by the representative of Pakistan.

47. Mrs. BOKOR-SZEGÖ (Hungary) considered that the revised amendment should be submitted in writing.

48. Mr. TSYBUKOV (Union of Soviet Socialist Republics) referred to rule 28 of the rules of procedure, according to which, as a general rule, no proposal was to be discussed or put to the vote unless copies of it had been circulated to all delegations not later than the day preceding the meeting. To vote on an amendment which had only just been moved in oral form would create a precedent which might complicate the subsequent course of the Conference.

49. Mr. do NASCIMENTO e SILVA (Brazil), while agreeing that the amendment should not be voted upon until it had been circulated in writing, doubted whether it was in order to submit a text which had already been rejected in connection with another article. When the Committee had adopted the Egyptian amendment to article 11 (A/CONF.117/C.1/L.6), it had agreed that the same text should be inserted where appropriate throughout the text of the convention. In his view, the same principle should apply, *contrario sensu*, to the French delegation's amendment to article 8 (A/CONF.117/C.1/L.5).

50. Mr. A. BIN DAAR (United Arab Emirates) agreed with the Soviet representative that consideration of the amendment by Pakistan in its revised form should be deferred pending its circulation in writing.

51. Mr. OESTERHELT (Federal Republic of Germany), replying to the point just raised by the representative of Brazil, said that in his view it was perfectly in order to discuss a formula which had been rejected in the context of another article.

52. Mr. JOMARD (Iraq) concurred.

53. The CHAIRMAN suggested that the vote on both the amendments by Pakistan to article 16 should be deferred and requested the representative of Pakistan to submit the text of his revised amendment to paragraph 1(*b*) in writing.[2]

Article 17 (Dissolution of a State)

54. Mr. MARCHAHA (Syrian Arab Republic) said that his delegation could support article 17 in the form in which it stood. He suggested a minor change in the order, so that existing subparagraph (*c*) would come between subparagraphs (*a*) and (*b*).

55. Mr. MAAS GEESTERANUS (Netherlands) said that his delegation could support article 17 as it stood, although he wished to comment on the drafting of paragraph 1. Bearing in mind article 8, which defined "State property", and that State property was governed by the internal law of the predecessor State, it might be considered that the words "State property of the predecessor State" contained a superfluous element, while on the other hand, in general, no immovable State property could exist outside the territory of the predecessor State. He therefore suggested the deletion of the word "State" in the phrase "immovable State property" in paragraph 1(*b*) and "of the predecessor State" in the phrase "State property of the predecessor State" in subparagraphs (*a*), (*c*) and (*d*). His delegation supported paragraph 2, albeit with some hesitation, for the exact meaning of "equitable" was not clear. He suggested that the draft convention might be supplemented by an article to cover the settlement of disputes concerning the interpretation of such words.

56. Mr. ECONOMIDES (Greece), referring to his delegation's comments concerning the word "equitable" in article 16, said that those comments were also applicable in the case of article 17, paragraphs 1(*b*), 1(*d*) and 2. In his delegation's opinion the concept should be made more explicit by means of objective criteria. He supported the suggestion by the Netherlands delegation that it might be useful to establish machinery for settlement of disputes.

57. Mr. RASUL (Pakistan) said that his delegation could accept article 17 as it stood. However, it reserved the right to comment on the terminology, in particular on the use of the word "equitable", when introducing its proposed amendment to article 39 (A/CONF.117/C.1/L.15).

58. Mr. AL-KHASAWNEH (Jordan) said that, although his delegation had expressed doubts concerning the words "activity of the predecessor State" in articles 13 and 16, it none the less found the formula somewhat more acceptable in paragraph 1(*c*) of article 17, since in the case of the dissolution of a State the criteria to be applied were less strict.

59. Mr. IRA PLANA (Philippines) said that, on the whole, the provisions of article 17 were adequate and his delegation could accept the article although it might require some minor drafting changes which could be left to the Drafting Committee.

60. Mr. BEDJAOUI (Expert Consultant) said that there might be some danger in deleting the word "State" from paragraph 1(*b*), as suggested by the Netherlands delegation. The draft convention dealt throughout with State property, State archives and State debts and it might therefore be preferable to retain the word "State", even at the risk of being repetitious, in order to avoid confusion and make it clear that the property referred to was property in the public and not in the private sector. It might also be preferable to retain the words "of the predecessor State" in subparagraphs (*a*), (*c*) and (*d*), again in order to avoid confusion, since otherwise there might be cases where, for example, the article might be taken to cover property belonging to a third State and located in the territory of the successor State. Consideration of machinery on the settlement of disputes could only be beneficial.

[2] Subsequently issued under the symbol A/CONF.117/C.1/L.8/Rev.1.

61. After a discussion on procedure in which Mr. ROSENSTOCK (United States of America), Mr. DELPECH (Argentina) and Mr. LAMAMRA (Algeria) took part, the CHAIRMAN said that he would take it, in the absence of objection, that the Committee of the Whole wished to adopt article 17 as proposed by the International Law Commission without a vote and refer it to the Drafting Committee.

It was so decided.

The meeting rose at 1 p.m.

18th meeting

Monday, 14 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 18 (Scope of the articles in the present Part)

1. Mr. ECONOMIDES (Greece) said he believed the feeling in the Committee was that article 18 should be considered in conjunction with similar articles appearing elsewhere in the draft convention. His delegation had already requested that such identical provisions be considered together in greater depth, in line with an earlier suggestion by the Algerian delegation. He wished finally to propose that a working group be established to review all provisions that were of a similar nature and to make recommendations to the Committee of the Whole regarding the placing of those provisions in the draft convention.

2. Mr. NAHLIK (Poland), supporting that proposal, said that the working group should comprise representatives from all groups of countries.

3. Mr. PIRIS (France) said that his delegation had no objection to the Greek representative's proposal. He wished only to remind the Committee that it had decided to defer its consideration of article 7 pending its consideration of article 1. Furthermore, since the scope of the articles in Part III depended on the definitions in Part I, the Committee should take the same course of action in respect of article 18 as it had already done in respect of article 7.

4. Ms. BOKOR-SZEGÖ (Hungary) questioned the need to establish a working group; she could not see what its mandate might be.

5. The CHAIRMAN proposed, in the light of the statements made, that the Committee should defer its consideration of article 18 until it took up articles 1 to 6.

It was so decided.

6. The CHAIRMAN further proposed that the proposal of the representative of Greece that a working group be established should be considered after informal discussions had taken place between delegations and between the Chairman and the various regional groups concerning the mandate for the working group.

It was so decided.

Article 19 (State archives)

7. Mr. EDWARDS (United Kingdom), introducing his delegation's amendment (A/CONF.117/C.1/L.20), said that the definition of "State archives" in article 19, as proposed by the International Law Commission, was circular. In effect, it said that State archives meant documents kept by a State as archives. The definition contained three crucial elements: that archives encompassed all documents of whatever kind, including engravings, drawings, plans, etc.; that they had belonged to the predecessor State according to its internal law; and that they had been kept by the predecessor State as its archives. It was worth noting that the last element was not qualified by the words "according to its internal law". His delegation had carefully considered the points made in the second part of paragraph (1) of the International Law Commission's commentary on the article but did not agree that there were practical difficulties because such protection as was needed by States was already well accepted in international practice and related to such matters as State security or the proper protection of the privacy of private individuals. His delegation believed that the practice of States in the keeping of documents needed to be qualified by the term "according to its internal law". His delegation's proposal provided a much clearer definition. In commending its amendment to the Committee, his delegation reserved the right to comment at a later stage on the Kenyan delegation's proposal (A/CONF.117/C.1/L.27) and on the question generally.

8. Mr. MUCHUI (Kenya), introducing his delegation's amendment (A/CONF.117/C.1/L.27), said that, as drafted by the International Law Commission, article 19 was neither satisfactory nor convincing. He could only assume that the Commission had wished to include in the definition all the documents relating to a territory which had been used for administrative purposes, whether they were active, dormant or placed in a repository. Unfortunately, however, the text of the definition covered only documents kept as archives. His delegation believed that the definition should also include documents still in registries or attics awaiting attention, since it was well known that the United Kingdom, for example, regarded as archives only documents that were 30 years old, which excluded those still kept in registries. The United Kingdom amendment did not, in his view, deal convincingly with the question. His delegation had therefore proposed the deletion of