

**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.2**

**2nd 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)*

## 2nd meeting

Wednesday, 2 March 1983, at 3.15 p.m.

Chairman: Mr. ŠAHOVIĆ (Yugoslavia)

**Consideration of the question of succession of States in respect of State property, archives and debts, in accordance with General Assembly resolutions 36/113 of 10 December 1981 and 37/11 of 15 November 1982 (continued) (A/CONF.117/4, A/CONF.117/5 and Add.1, A/CONF.117/C.1/L.2)**

[Agenda item 11]

*Article 9 (Effects of the passing of State property) (continued)*

1. Mr. SUCHARIPA (Austria) said that while the text of article 9 as proposed by the international Law Commission raised a number of issues, his delegation had no objection to its content from the point of view of legal theory. In practice, however, it might give rise to some difficulties and his delegation accordingly proposed that the article should be amended to read:
 

“A succession of States has the effect that the rights of the predecessor State to State property pass to the successor State in accordance with the provisions of the articles in the present Part”.<sup>1</sup>
2. The amendment, whose main purpose was to stress the element of continuity in the passage of property from the predecessor to the successor State, would, he hoped, facilitate discussion of draft article 9.
3. Mr. ZSCHIEDRICH (German Democratic Republic) said that his delegation had no problems with article 9 as formulated by the International Law Commission since it reflected well-known customary rules of international law.
4. He agreed with the view, expressed by the representative of Brazil and others at the previous meeting, that it would be best to consider the Commission's draft article by article. He would not object if articles 7, 18 and 30 were discussed in conjunction with article 1 but thought that the question of the scope of the articles might best be considered by the Drafting Committee.
5. Mr. RASSOL'KO (Byelorussian Soviet Socialist Republic) said that draft article 9 was acceptable to his delegation, for its wording was consistent with the aims of the proposed international instrument.
6. He added that it seemed to have been the general consensus at the previous meeting that the articles of general application should be discussed first and that the discussion should follow the order of the articles as submitted by the International Law Commission.
7. Mr. GUILLAUME (France) said that article 9 as drafted referred to the “extinction” and the “arising” of rights, which tended to imply some discontinuity. His delegation preferred the wording suggested by the representative of Austria, which preserved the notion of transfer or continuity of rights and which corresponded more closely to the practice of international law. It was important to avoid any suggestion that there could be some kind of hiatus in the process of transfer of rights.
8. Mr. OESTERHELT (Federal Republic of Germany) said that the commentary to article 9 affirmed that, despite the break in continuity implied by the extinction and the arising of rights, the two events were to be regarded as simultaneous. In his delegation's view, however, a further clarification was required. Article 9 must not abrogate the principle that property rights and interests passed in conjunction with the obligations attached to those rights: *res transit cum onere suo*. Articles 6, 12 and 34 clearly supported that view. Similarly, property rights and interests could only pass to the extent that the predecessor State possessed such rights: *nemo plus juris transferre potest quam ipse habet*. The text eventually adopted should reflect those principles and his delegation regarded the Austrian proposal as an improvement in that respect.
9. Mr. NATHAN (Israel) said that article 9 failed to deal with the question whether the State property that was to pass to the successor State had been lawfully acquired by the predecessor State. There had been cases in which property had been acquired by a predecessor State in accordance with its internal law but as a result of measures taken in violation of the rules of international law and the principles of human rights.
10. It could hardly be the intention of the Commission that title to property that had been acquired wrongfully could pass to the successor State. His delegation believed that the article should specify that the passing of property under the article should not be deemed to confer a valid title to property wrongfully acquired by the predecessor State.
11. Mr. MONCEF BENOUCHE (Algeria) said that, during the debate in the Sixth Committee of the General Assembly, delegations of newly independent countries had pointed out that the concept of the “extinction” and the “arising” of rights did not do full justice to States which had for a time been administered by a colonial Power. What article 9 should stress was that in such cases there was not an “arising” of rights but rather a “renaissance” of rights.
12. He referred to the statements made by several representatives to the effect that the passage of rights also entailed the passage of obligations: that was not his delegation's view, nor did it appear to be that of the International Law Commission, which had concerned itself with the assets involved in the passing of State property and not with the liabilities, charges and obligations attaching to property to which a State succeeded. His delegation would return to the question after hearing the clarifications of the Expert Consultant.
13. Mr. EDWARDS (United Kingdom) said that article 9 contained only a description of what necessarily happened as a result of a succession of States which

<sup>1</sup> Subsequently issued under the symbol A/CONF.117/C.1/L.2.

took place by virtue of the articles that followed. That had led his delegation to wonder whether the draft article was necessary at all. However, having heard the comments of other delegations, his delegation would not oppose retention of the article, provided that the point made earlier by the French delegation concerning continuity between the extinction and the arising of transferred rights was retained. The text proposed by the Austrian delegation met that need and his delegation therefore supported it.

14. Mr. DALTON (United States of America) said that the wording proposed by the representative of Austria did not conflict with the purport of the draft as a whole and would help to clarify the issue to the national authorities which would be involved.

15. Mr. TSYBOUKOV (Union of Soviet Socialist Republics) said that his delegation had no objection to the text of article 9 as submitted by the International Law Commission; it would reserve its position on the Austrian amendment pending further study. At first glance, it was apparent that the amendment used new terminology. The articles following article 9 would refer to the "passing of State property" to the successor State, whereas the amendment spoke of the passing of rights to State property. While noting that the term "passing" as used in article 9 was not absolutely precise, his delegation felt that the Commission's text was on the whole preferable to the Austrian amendment.

16. Mr. SHASH (Egypt) said that his delegation preferred the text as submitted by the International Law Commission because of the vagueness of the term "pass" in the Austrian amendment. The term might be construed as allowing for a certain lapse of time. However, the Commission's wording was not wholly satisfactory either in that respect.

17. Mr. SUCHARITKUL (Thailand) said that the draft article 9 prepared by the International Law Commission did not answer the question whether the property rights extinguished and those arising upon a succession of States were identical. The Austrian amendment seemed to have the merit of settling the question, but more time was needed to consider its implications.

18. Mr. MAAS GEESTERANUS (Netherlands) said that his delegation welcomed the Austrian amendment, which was both clearer and simpler than the original draft.

19. Mr. MONNIER (Switzerland) noted that the International Law Commission's draft divided the process of passing of rights into two separate phases—that of the extinction of the rights of the predecessor State and that of the arising of the rights of the successor State. That was one of the possible theoretical definitions of the process. The merit of the Austrian amendment was that it clearly showed that there was a passing of rights, that was to say a change of ownership with continuity of rights. It was important that the rule should clearly state that principle of passing of rights.

20. Mr. LAMAMRA (Algeria) drew attention to a possible source of confusion in that the Austrian amendment spoke of "rights to State property" while draft article 8 defined State property as meaning

"property, rights and interests". A second and more serious objection to the Austrian amendment was that it spoke of the passing of rights to State property and not of that of the property itself. The experience of many States had shown that the enjoyment of a right was not necessarily synonymous with the exercise of that right.

21. Mr. SAINT-MARTIN (Canada), Mr. BOSCO (Italy) and Mr. de VIDTS (Belgium) expressed a preference for the Austrian amendment as being clearer and simpler than the original draft.

22. Mr. MURAKAMI (Japan) said that there was no difference of substance between the original text and the Austrian amendment, although the latter was clearer.

23. Mr. ECONOMIDES (Greece) considered that there was no difference of substance between the two texts. What mattered was the idea of continuity and that was preserved in both cases. However, the Austrian amendment was preferable on account of its simplicity and because it answered the question raised by the representative of Thailand as to the identity of the rights that were extinguished with those that arose as a result of a succession of States. So far as the point just raised by the representative of Algeria was concerned, he suggested that a reference to the definition of State property contained in draft article 8 might be added to the Austrian text.

24. Mr. OWOEYE (Nigeria), while agreeing that the language of the Austrian amendment was clearer, felt that it was important to maintain the notion of the extinction of the rights of the predecessor State.

25. Mr. ROSENSTOCK (United States of America) said that the Austrian amendment had the merit of stating in simpler terms what was the effect of a succession of States on property of the predecessor State. The notions of extinction and arising of rights were somewhat metaphysical in nature; he did not believe that anything would be lost by abandoning them. As regards the proposed reference to draft article 8, he remarked that a process of passage of rights at the end of which the successor had more rights than the predecessor was, in any case, unimaginable.

26. Mr. MUCHUI (Kenya) said that the Austrian amendment was only superficially clearer than the Commission's text. Because of the importance of the concept of succession, the Commission had felt the need to state expressly that succession entailed the extinction of the rights of the predecessor State and the arising of the rights of the successor State. His delegation was of the view that to incorporate that notion in the future convention could do no harm and, if anything, would add to the clarity of the whole. He greatly preferred the Commission's text.

27. Mr. SUCHARIPA (Austria), replying to the suggestion made by the Greek representative, said that he would have no objection to adding a reference to draft article 8 in the text of his amendment. Replying to the point raised by the Nigerian representative, he said that he would be prepared to add a phrase such as ". . . thus entailing the extinction of the rights of the predecessor State" if it was considered necessary.

28. Ms. LUHULIMA (Indonesia) associated herself with the views expressed by the Nigerian represen-

tative and expressed a preference for the Commission's text.

29. Mr. LAMAMRA (Algeria) said that the Commission's text brought out more clearly that a succession of States entailed not only a transfer of sovereignty but a substitution of sovereignty through the process of extinction and arising of rights.

30. Mr. GUILLAUME (France) shared the United States representative's view that the point under discussion was a metaphysical one and therefore of rather limited interest. The Austrian proposal avoided it altogether and was to be welcomed for that reason.

31. The CHAIRMAN suggested that further consideration of article 9 should be deferred until the following meeting.

*It was so decided.*

*Article 10 (Date of the passing of State property)*

32. Mrs. BOKOR-SZEGÖ (Hungary), referring to the expression "unless otherwise agreed or decided" at the beginning of the article, considered that the words "or decided" should be deleted. It was difficult to see what body could take a decision if no agreement existed between the parties. Even the International Court of Justice could not adjudicate in a case without the agreement of the parties.

33. Mr. NATHAN (Israel) said that the difficulty might be overcome by replacing the word "decided" by the word "determined".

34. Mr. ECONOMIDES (Greece) agreed with the Hungarian representative that a new form of words appeared to be needed at the beginning of the article. In addition, he suggested that draft article 10 might be merged with draft articles 21 and 33 dealing with the date of the passing of State archives and with that of the passing of State debts, respectively.

35. Mr. LEHMANN (Denmark) agreed. In order to avoid overloading the substantive part of the convention, draft articles 10, 21 and 33 might be merged into one and transferred to the "General provisions", possibly under draft article 2, paragraph 1(d).

36. Mr. MONCEF BENOUNICHE (Algeria) said that by using the phrase "unless otherwise agreed or decided" the International Law Commission had tried to cover every eventuality that might arise. The possibility that an international body might make decisions concerning the passing of State property was not merely hypothetical: the United Nations Council for Namibia had made such a decision. In his view, the article could be made clearer by the addition of some explanatory words but the words "or decided" should not be deleted.

37. Mr. GUILLAUME (France) said that the point raised by the representative of Hungary deserved to be taken into consideration. He thought that the Israeli representative's suggestion might be referred to the Drafting Committee. He reserved his delegation's position on draft article 10 as a whole, pending the consideration of draft article 2, paragraph 1.

38. Mr. MAAS GEESTERANUS (Netherlands) said that he found the arguments put forward by the rep-

resentatives of Algeria convincing. A decision taken by an international court did not always have to be based on acceptance of its jurisdiction by direct and specific agreement between two States; quite possibly the court's jurisdiction had been accepted in a more general way. That situation would not be covered by a reference to agreement alone in article 10, and the Commission's original wording should therefore be retained.

39. Mr. BROWN (Australia) endorsed the views of the representative of France. Although he had no difficulty with the present wording of the article, he noted that it was tied to the definition of succession of States in article 2, paragraph 1(a) and he therefore wished to reserve his delegation's position on draft article 10 until its doubts with regard to that paragraph had been resolved.

40. Mr. SHASH (Egypt) said that the expression "unless otherwise agreed or decided" in article 10 was too vague. The intended meaning should be spelt out more clearly and perhaps supplemented by some such phrase as "in conformity with the Charter of the United Nations".

41. Mr. MONNIER (Switzerland) said that, as far as his delegation was concerned, the phrase under consideration was acceptable as it stood. The words "or decided" were useful, for they covered not only possible rulings by a judicial body but also, as the representative of Algeria had pointed out, decisions taken by some other international body. In view of the close link between article 10 and article 2 with regard to the date of the passing, his delegation did not want to take a definitive position until article 2 had been considered, because although the date in question was adequate in respect of treaties, it was not necessarily so in respect of other matters.

42. Mr. do NASCIMENTO e SILVA (Brazil) said that the arguments put forward by the representative of Algeria had convinced him that the words "or decided" should stand. It was important to cover cases in which the predecessor and successor States were unable to reach agreement and in which, therefore, a decision had to be taken in some other way. The wording of the Commission's draft should therefore be retained.

43. Mr. GROZA (Romania) said that his delegation approved in principle of the wording used in the Commission's draft article. It was primarily the responsibility of the two States concerned to settle the question of the date of passing of State property by agreement, but the possibility of a decision in one form or another should not be precluded.

44. Mrs. ULYANOVA (Ukrainian Soviet Socialist Republic) said that her delegation considered that the draft article was satisfactory as it stood, without amendment. The future convention should cover all conceivable situations and hence the expression "unless otherwise agreed or decided" should be retained.

45. Mr. RASUL (Pakistan) said that he did not regard the words "or decided" as necessary or applicable in the context of article 10.

46. Mr. ROSENSTOCK (United States of America) observed that, although the words "or decided" might

be regarded as useful in that they would cover a decision taken by a body such as the Security Council, a reference to agreement alone was probably sufficient, since even a decision by a third party would imply the prior consent of the States concerned to be bound by that decision. In any event, he regarded the question as one of mere form which could be left to the Drafting Committee.

47. Mr. SUCHARITKUL (Thailand) noted that the phrase “unless otherwise agreed or decided” was repeated in identical form in articles 21 and 33, which dealt with the passing of State archives and State debts respectively. The formula was useful in that it covered a multiplicity of potential circumstances in which the passing of property was deferred beyond the date of succession of States, including agreements involving a State or States other than the predecessor and successor States, decisions by competent national or international organs, not necessarily judicial in character, and even a unilateral decision such as had been applied by Malaysia at the time of the creation of the State of Singapore.

48. Mrs. BOKOR-SZEGÖ (Hungary) said that it seemed clear that in drafting the article the Commission had not in fact envisaged all possible cases, since the commentary referred only to a ruling by an international court. She proposed that the Committee should defer further debate on the particular point until it could benefit from the opinion of Judge Bedjaoui of the International Court of Justice in his capacity as Expert Consultant.

*It was so decided.*

*Article 11* (Passing of State property without compensation)

49. Mrs. BOKOR-SZEGÖ (Hungary) observed that the difficulty affecting article 10 also applied to article 11, since the phrase “unless otherwise agreed or decided” was used in an identical way.

50. The CHAIRMAN noted that the decision which would eventually be taken on the use of that phrase in the first article in which it appeared would be valid for all other articles in which it recurred.

51. Mr. GUILLAUME (France) said that he was not clear as to the value of the proviso “subject to the provisions of the articles in the present Part”, and found paragraph (3) of the Commission’s commentary less than helpful in defining its scope. It was already made abundantly plain in several other contexts of the draft articles that third States were excluded from the effects of a succession.

52. He could not agree with the Commission’s assertion that the main provision of article 11 reflected established practice. While the article was in substance acceptable, it should be recognized as a change in existing international law.

53. Mr. SHASH (Egypt) said that draft article 11 was acceptable to his delegation, subject to the reservation expressed earlier regarding the phrase “unless otherwise agreed or decided”.

54. Mr. BROWN (Australia) said that his delegation endorsed article 11 as it stood.

55. The CHAIRMAN noted that the discussion of article 11 would be continued at the following meeting.

*The meeting rose at 5.45 p.m.*

## 3rd meeting

Thursday, 3 March 1983, at 10.40 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 11* (Passing of State property without compensation) (continued)

1. Mr. DIBIASE (Uruguay), referring to the written comments submitted by his Government as reproduced in document A/37/454/Add.1, said that while Uruguay appreciated the intent of article 11, it felt that the provision could be either superfluous or excessive. If confined to making explicit the implicit intent of the States, based on practice, the provision would be unnecessary. On the other hand, the provision could go too far if the interpretation of the will of the parties, which it derived from their silence, was not correct. Thus, if some item were accidentally omitted from a list of State property

in respect of which compensation was to be paid by the successor State, that State would, under the proposed article, owe no compensation to the predecessor State for that item of property. That obviously was not consistent with the will of the parties.

2. The effect of the proposed provision was thus to sanction the principle of non-compensation in the matter of succession to State property. His delegation knew of no legal system that sanctioned such a principle.

3. For those reasons, his delegation proposed that article 11 should be deleted.

4. Mr. DJORDJEVIĆ (Yugoslavia) said that article 11 enunciated the fundamental principle that the passage of State property to a successor State should be without compensation. The provision, which was based on clearly established practice, was particularly important for newly independent States. At the current stage of development of international law, article 11 repre-