

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

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**3rd meeting of the Committee of the Whole**

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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-

sented the only option. The phrase “unless otherwise agreed or decided” left open the possibility of derogating from the rule laid down in the article. His delegation believed that the article should be approved by the Conference in its present form.

5. Mr. HAWAS (Egypt) agreed with the representative of Yugoslavia but stressed the importance of defining precisely what was meant by the words “agreed or decided”.

6. Mrs. THAKORE (India) said that, even if article 11 did state the obvious, it laid down a principle of cardinal importance, especially for newly independent countries, that was widely confirmed by practice. The phrase “unless otherwise agreed or decided” certainly provided the necessary flexibility and her delegation even wondered whether it did not unduly weaken the provision. She supported the retention of article 11 and noted that the provision had been widely supported by delegations in the Sixth Committee of the General Assembly.

7. Mr. LAMAMRA (Algeria) said that article 11 made it clear that, while specific arrangements could be decided by the parties concerned or by an appropriate body, the rule was that the passing of State property from the predecessor to the successor State should take place without compensation. His delegation therefore considered retention of the article essential.

8. Mr. do NASCIMENTO e SILVA (Brazil) believed that article 11 should be retained. He stressed that it was a residuary provision, subject both to the other articles in Part II and to any decision or agreement to the contrary which could be taken either by the parties concerned or by another body. The rights of the predecessor State were thus adequately protected. Moreover, that State was usually in the stronger position and would take the necessary precautions in order to safeguard its position.

9. Mr. MNJAMA (Kenya) said that, as the International Law Commission had pointed out in paragraph (1) of its commentary on article 11 (see A/CONF.117/4), that article was a necessary complement to article 9. The provision enunciated an important principle, based on practice, but provided nevertheless for exceptional cases where the passage of State property was not without compensation. His delegation fully supported the retention of article 11.

10. Mr. MIKULKA (Czechoslovakia) supported the retention of article 11 because the provision enshrined the important principle of non-compensation in the passing of State property yet also provided sufficient latitude for derogation from that rule. While specific arrangements could be made even if not expressly provided for in the text, it would be preferable to make explicit reference to them.

11. Mr. KEROUAZ (Algeria) said he was glad to note that most speakers favoured maintaining article 11.

12. As pointed out in the commentary, there were only a few exceptions to the rule that the passage of State property should take place without compensation. Even in those cases, the exception had been applied with only limited effect; thus, in the Treaty of Saint-Germain-en-Laye, the exception had been valid

only for certain types of property. The few exceptions cited, which were of limited applicability, were thus no obstacle to the recognition of a well-established general rule.

13. Even when there was no conventional norm to regulate the cession of property, there had been a natural tendency for payment not to be made. That was illustrated by the special arrangements made with a number of countries and territories which had gained independence after the Second World War.

14. The rule of the passing of State property from the predecessor to the successor State without compensation had certainly been viewed by the General Assembly as being not subject to appeal: the General Assembly had established a special tribunal to implement the provisions of General Assembly resolution 388 (V) of 15 December 1950.

15. Article 11 thus enshrined a rule, which had been virtually the norm for several decades, whereby the successor State could appropriate freely all State property of the predecessor State—including administrative assets—situated in the territory over which the successor State assumes jurisdiction.

16. The fact that there were two clauses in article 11 which could attach certain conditions to that rule did not present his delegation with any problems. His delegation therefore firmly supported the approval of article 11 in its present form.

17. Mr. KÖCK (Holy See) said that, while his delegation appreciated the points raised by the representative of Uruguay, it believed that article 11 should be retained. His delegation had no problems with the use of the word “decided” in the text, which it interpreted as meaning that, if a dispute arose between a predecessor State and a successor State as to whether or not compensation was due, the case might go to an international tribunal and the international tribunal could rule on the matter.

18. Mr. PHAM GIANG (Viet Nam) said that article 11 reflected faithfully the practice in respect of the passing of State property to newly independent States. It formed an inseparable whole with article 9 and the present wording should be retained.

19. Mr. OWOEYE (Nigeria) was also in favour of retaining the present text of article 11. The formulation was sufficiently flexible. He was convinced it was not the intention of the Conference that newly independent States should have to face paying for some of the State property passed to them.

20. Mr. TORNARITIS (Cyprus) also favoured the retention of article 11 in its present form. It reflected current international practice and the provision “unless otherwise agreed or decided” covered the many cases in which the predecessor State took some compensation or retained some rights. For example, under the treaty concerning the establishment of the Republic of Cyprus, the United Kingdom had retained certain rights.

21. Mr. SUCHARITKUL (Thailand) supported article 11 as enunciating a general, but not an absolute, principle. In practice there had been many cases, particularly in Asia, in which compensation had been paid

for the passing of State property, with the consent of both States concerned. Such had been the case with regard to the final settlement agreed between Malaysia and Singapore in respect of Malay Airways. The formulation of article 11 would meet the requirements of modern States.

22. Mrs. OLIVEROS (Argentina) said that the passing of State property must be subject to rules, and the principle of non-compensation, which had been applied repeatedly throughout history, should be incorporated into the convention. Article 11 was sufficiently broad in scope to allow for other arrangements to be agreed upon. Her delegation was, however, concerned that the concept of "decision" should be clearly defined, since it might be interpreted as covering a judgment by a superior authority which was not in accord with the wishes of one or other of the States concerned. It must not be so construed.

23. Mr. ECONOMIDES (Greece) said that article 11 would be a useful guide for States, provided it was understood that its application was subject to the free will of the parties concerned.

24. The text of article 11 should clearly be read in conjunction with article 9. He was awaiting the comments of the Expert Consultant on the opening phrase of article 11. The distinction between the word "agreed" and "decided" should be made clearer.

25. Mr. HAWAS (Egypt) said that the phrase "unless otherwise agreed or decided", which occurred in both article 10 and article 11, was ambiguous and would cause difficulty in application. The Malay Airways case quoted by the Thai representative was a perfect example of what might happen. There had been an initial decision by the Malaysian Government to transfer part of the property with compensation. When the Government of Singapore had come into existence, a final agreement in that sense had ultimately been reached. It should be made clear that the decision should be made by an appropriate international body and not taken unilaterally by the government holding power at the date of the succession of States. It was also clear that an agreement reached between the occupying power and the local authorities of a colonial country would be invalid. The provision should be amended to read ". . . agreed by the States concerned or decided by an appropriate international body, . . ."

26. Mr. ROSPIGLIOSI (Peru) said that it was standard practice in drafting legal texts to state the basic principle first and any exceptions to that principle second. He therefore suggested that the order in article 11 should be reversed so that it would read:

"The passing of State property from the predecessor State to the successor State shall take place without compensation, subject to the provisions of the articles in the present Part and unless otherwise agreed or decided."

27. Mr. RASUL (Pakistan) said that, according to article 4, the proposed convention was not applicable retroactively. It was unlikely to enter into force before 1990 at the earliest and by that date there would be very few cases of newly independent States resulting

from decolonization. The most usual form of succession of States would be separation of part or parts of a State. That fact should be borne in mind in drafting the convention. He shared the views which had been expressed by the French representative at the Committee's second meeting and by the Greek representative at the current meeting. The opening phrase of article 11 was unclear and complicated and should be reviewed by the Drafting Committee.

28. Mr. LOZADA (Philippines) supported the retention of article 11, including the phrase "unless otherwise agreed or decided" which would be necessary in the event of any dispute. However, he agreed with the Egyptian representative that it should be stated who was to take a decision in the event of a disagreement.

29. Mr. OESTERHELT (Federal Republic of Germany) was in favour of retaining the present draft of article 11 which was oriented to future problems. He shared the views which had been expressed by the French representative regarding existing international law. With regard to the exact meaning of the opening phrase of article 11, he referred to article 16, paragraph 3, and article 17, paragraph 2, which provided for equitable compensation in certain cases.

30. Mr. DI BIASE (Uruguay) thanked delegations for their useful comments and particularly for their proposals to modify the present text in order to achieve greater clarity.

31. Mr. MNJAMA (Kenya) said that his delegation favoured retaining article 11, subject to clarification of the phrase "agreed or decided". Experience showed that the predecessor State had the upper hand at the time of succession.

32. Mr. GUILLAUME (France) accepted the gloss of the representative of the Federal Republic of Germany on the opening phrase of article 11, which might well be acceptable in its present form. It would be applicable among States parties to the Convention. There would be a great variety of situations, according to the type of succession of States and the nature of the property concerned. Bilateral agreements were virtually essential but, in their default, the text of article 11 could be applied.

33. Mr. A. BIN DAAR (United Arab Emirates) said that the provision "unless otherwise agreed or decided" gave an undue advantage to a colonialist Power and should be deleted. Article 11 should state unambiguously that the passing of State property should take place without compensation.

34. Ms. LUHULIMA (Indonesia) said that her delegation was in favour of retaining article 11, including the words "unless otherwise agreed". It reserved the right to refer to the matter again in connection with the word "decided", after hearing the comments of the Expert Consultant.

35. The CHAIRMAN, summing up, said that the Committee had succeeded in dealing with most of the substantial aspects of the article and its wording. Since the only outstanding questions were of a drafting nature and did not affect the substance, he proposed that article 11 should be referred to the Drafting Committee together with any formal amendments that might be submitted.

<sup>1</sup> Subsequently issued under the symbol A/CONF.117/C.1/L.6.

36. Mr. do NASCIMENTO e SILVA (Brazil) supported the Chairman's proposal. The amendments suggested in the course of discussion had been most useful and the representative of the Federal Republic of Germany had aptly clarified the first phrase of the draft article. However, in the absence of written amendments there remained only one text and he personally favoured its referral to the Drafting Committee forthwith.

37. Mr. SUCHARIPA (Austria) also supported the Chairman's proposal.

38. Mr. HAWAS (Egypt) said that he wished his delegation's oral amendment to be considered a formal one.

39. Mr. JOMARD (Iraq) asked whether it would be possible for a document containing all the amendments proposed in the course of the discussion to be circulated for consideration by the Committee of the Whole, which could then reduce them in number before referring them to the Drafting Committee. That would facilitate the latter's work.

40. Mr. MONNIER (Switzerland) drew attention to rule 47, paragraph 2 of the rules of procedure according to which the Drafting Committee was to review the drafting of all texts adopted. In the light of Egypt's formally proposed amendment the text of article 11 could not be regarded as adopted.

41. The CHAIRMAN agreed that the situation had been altered by the Egyptian delegation's latest statement. A decision to refer the text to the Drafting Committee could be taken only after due consideration of all formal amendments. He therefore withdrew his proposal and hoped that a written version of Egypt's proposed amendment would be available for consideration at the next meeting.

42. Mr. KÖCK (Holy See) supported that course of action.

43. The CHAIRMAN invited the Committee to begin consideration of article 12.

*Article 12 (Absence of effect of a succession of States on the property of a third State)*

44. Mr. OESTERHELT (Federal Republic of Germany) said that his delegation welcomed the useful clarification contained in the draft article. The latter was declaratory in nature and restated a principle of general international law, from which arguments *a contrario* could not be drawn. There was good reason to have that restatement in the draft, since the case it purported to regulate was one in which arguments were most likely to arise. His delegation had already drawn attention in the Sixth Committee of the General Assembly to the close relationship between article 12 and article 34. The guiding principle underlying article 12 was basic in its view and it therefore wished to comment at a later stage on certain aspects of article 34.

45. Mr. SUCHARIPA (Austria) said that his delegation approved of article 12 which it considered to be a very valuable restatement of a rule of international law specifically for the type of case most likely to occur.

46. Mr. ALSTER (Israel) endorsed the view of some members of the International Law Commission re-

flected in paragraph (5) of its commentary on article 12, that that article 12 was unnecessary. Article 8 stated that the determination of State property as such was to be in accordance with the internal law of the predecessor State. Although the formulation of article 8 had not yet been decided, most delegations appeared to approve the substance of that provision. The logical conclusion therefore was that the question of State property of third States was quite outside the scope of the present Convention and consequently would not require further clarification, which did not mean that the provision in article 12 did not correctly reflect the relevant rules of international law. On that point his delegation agreed with the French and Austrian delegations in particular. The same observation could also be made in respect of draft article 23. As the draft articles in Parts II and III dealt basically with the relations between the predecessor State and the successor State, property and archives of third parties were outside their scope. That did not apply, however, to Part IV, which dealt principally with the relations between the predecessor State and the successor State in respect of creditor third parties to whom State debts were owed. In that context the rights of third parties clearly had to be protected, whereas in the context of State property and archives the question of protection did not arise.

47. Mr. FREELAND (United Kingdom) said that his delegation found the text of article 12 as proposed by the International Law Commission acceptable, although initially it had questioned the need to state expressly a principle that seemed so obvious, namely that a succession of States could not affect the property of third States. On reflection, however, it understood why the Commission had deemed it desirable to say something specifically about a case where the question could arise in practice, namely where the property of a third State was situated in the territory of the predecessor State. As his delegation understood it, the same principle applied, and perhaps with even greater force, to the property of a third State situated elsewhere than in the territory of a predecessor State.

48. Mr. ECONOMIDES (Greece) said that article 12, which embodied a general principle of international law, was a useful safeguard clause analogous to the provisions contained in articles 5 and 6. Article 12 related to State property situated in the territory of the predecessor State and not to that situated in any third State.

49. Mr. ZSCHIEDRICH (German Democratic Republic) said that his delegation supported the clarification provided by article 12 to the effect that a succession of States could not as such affect the legal status of the State property of third States which was situated in the territory affected by the succession. The article codified what was probably an undisputed rule of customary law. His delegation welcomed the clear statement that the creation of its own legal system by the successor State would not affect or prejudice the legal status of the State property owned by a third State. That concept stemmed from the basic international principles of sovereign equality of States, non-interference in internal affairs and the duty to co-operate peacefully in matters concerning State property. Article 12 also reiterated that the immunity of State property existed by

virtue of the generally recognized norms of international law and that events of State succession did not affect it. It also signified in terms of international law that the inviolability of State property constituted the material basis upon which a third State could exercise sovereign powers in the host country.

50. Article 12 was important for another reason. Since a considerable time might elapse between the date of State succession and the international recognition of the new State, it was necessary to provide clearly that State property must remain inviolable, whether the States concerned had already recognized each other or not.

51. Problems might arise in the course of discussion with regard to the relationship between the definition of State property, as contained in article 8, and the concept of State property of a third State as dealt with in article 12. In his delegation's view the definition as such was applicable to both situations, the main difference being the legal fate of the different types of State property. Whereas under the conditions set forth in articles 9 to 11 the State property of the predecessor State passed automatically to the successor State without compensation, and the latter State, on the basis of its sovereignty, had the right to use it and even to change its legal status, the same did not apply to State property owned by a third State, covered by article 12.

52. Whether or not a State succession had occurred, the third State retained ownership of its property, just as its claim to immunity with regard to such property would remain unchanged.

53. Mr. SUCHARITKUL (Thailand) said that his Government attached great importance to the content of article 12 and to the principles it embodied. Having been a third State in many cases of State succession, Thailand considered it of the greatest importance to enunciate in the clearest possible terms the general principle that the property of a third State situated in the territory of the predecessor State at the time of State succession was not affected by such succession. His Government approved of the qualification introduced at the end of the article by the use of the words "according to the internal law of the predecessor State".

54. He was not prepared to go further than the question of title with respect to the property of a third State. His delegation largely agreed with the remarks of the United Kingdom representative, but felt, with reference to the observation of the representative of the Federal Republic of Germany, that matters other than the actual ownership of State property of the third State might be affected by State succession. An obvious example was the Thai embassy premises in Saigon, now Ho Chi Minhville, which were no longer regarded as an embassy. They were the property of Thailand and recognized as such by the Government of Viet Nam, but diplomatic protection and inviolability were no longer accorded, the Thai embassy having moved to Hanoi. The text of the article should therefore be retained in order to maintain respect for property, the rights to which were unaffected, but other interests beyond those rights would not be subject to regulation by the draft article.

55. Mr. MONNIER (Switzerland) said it was not surprising that some members of the Commission should have questioned the need to include article 12 in the draft convention, since it was a general principle of international law. However, a reminder of the rule was not entirely superfluous. The article referred to the property of a third State situated in a predecessor State, the most frequent case which might arise. However on the basis of a formal interpretation and *a contrario* it should not be concluded that the property of a third State situated elsewhere than in the territory of the predecessor State might be affected by succession of States. The scope of the rule should be quite clear, namely that the succession of States could not have any effect on the property of the third State, wherever that property was located. Referring to the Thai representative's statement, he said that article 12 could relate only to the ownership of property and not, as the representative of the German Democratic Republic had suggested, to other questions such as inviolability or immunity of State property.

56. Mr. MOCHI ONORY DI SALUZZO (Italy) fully supported the views expressed by the representative of Switzerland. The article was actually declaratory of the general norm of international law that a succession of States had no effect on the property of third States, wherever in the territory that property might be situated, and whether that territory remained with the predecessor State or passed to the successor State. As far as ownership by the third State was concerned, and for qualification for such a right, he thought that it was necessary to make reference to the internal law of the predecessor State.

57. Mr. MURAKAMI (Japan) supported the views expressed by the representative of the Federal Republic of Germany and others concerning the declaratory nature of article 12. The article had a possible implication for articles 33 and 34 and his delegation might refer to the subject again when article 33 was discussed.

58. Mr. RASUL (Pakistan) said that his delegation had no difficulty in accepting the principle enunciated in the article since it understood it to be of a declaratory nature. The drafting of the article might however be improved and, without in any way wishing to make a formal proposal, but as a possible improvement for consideration by the Drafting Committee alone, he suggested that the text might be reworded as follows: "The succession of States shall not as such affect State property of a third State situated in the territory of the predecessor State at the time of succession of States or at the date of succession of States".

59. Mr. BROWN (Australia) said that his delegation found the drafting of article 12 clear and acceptable and a correct statement of customary international law.

60. Mr. MAAS GEESTERANUS (Netherlands) pointed out that, if the amendment suggested by the representative of Pakistan was approved, article 8 would have to be similarly amended in order to bring it into line with article 12.

*The meeting rose at 1 p.m.*