

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

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30th 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)*

30th meeting

Wednesday, 23 March 1983, at 10.20 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 28 (Separation of part or parts of the territory of a State) (concluded)

1. Mr. MONNIER (Switzerland) pointed out that the wording proposed by the International Law Commission for article 28, paragraph 1(b) was "... relates directly to the territory to which the succession of States relates", whereas the wording in article 25, paragraph 2(b) was "... relates exclusively or principally . . .". The commentary to article 28 in its paragraph (16), which cross-referred to paragraph (25) of the commentary to article 25, indicated that the reason for the different choice of words was that article 25 dealt with the case of the transfer of a small part of a State's territory. As in the case of the corresponding provisions concerning succession of State property, he wondered whether that subtle distinction was of any practical use and whether it would not result in difficulties.
2. He added that article 28, paragraph 3 caused his delegation the same difficulties of principle as paragraph 4 of article 14 and paragraph 7 of article 26. Owing to those difficulties, his delegation would be unable to support the article as a whole.
3. Mr. MAAS GEESTERANUS (Netherlands) said that his delegation could support the Pakistan amendment (A/CONF.117/C.1/L.10).
4. His delegation had the same difficulties with paragraph 3 of article 28 as with paragraph 7 of article 26. It would not propose a separate vote on paragraph 3 since an earlier proposal of that kind had not received the Committee's support, but as long as that paragraph with its reference to imaginary rules of *jus cogens* remained, his delegation would have to vote against the article.
5. Mr. FONT (Spain) said that his delegation did not understand the use of the expression "normal administration" in article 28 of paragraph 1(a), which, in its opinion, would be a potential source of disputes.
6. In connection with the words "relates directly to the territory to which the succession of State relates" in paragraph 1(b), he pointed out that nothing was said about what would happen if the documents, even though relating to the successor State, originated in the predecessor State. Moreover, there was no definition of the meaning of "directly".
7. His delegation also had difficulties with paragraph 3. The right to information had been recognized but the right to development was still under discussion in the Commission on Human Rights. Accordingly, his delegation considered that article 28 mentioned a right the content and very existence of which had not yet been confirmed.
8. In paragraph 4 of article 28 the expression "connected with" was ambiguous and might give rise to extensive claims on the part of the successor State.
9. His delegation was prepared to support the amendment of Pakistan to paragraph 4.
10. Mr. ECONOMIDES (Greece) said that his delegation could accept the Pakistan amendment, which added something useful to paragraph 4. It could also accept article 28, with the exception of paragraph 3 which was unacceptable to his delegation for the reasons given in connection with article 26, paragraph 7 (28th and 29th meetings).
11. Mr. MIKULKA (Czechoslovakia) said that his delegation supported article 28. However, he pointed out that, although paragraphs 2 and 4 of the article were drafted in the indicative in the French version, it was clear that the Commission intended them to be normative.
12. His delegation had problems with the Pakistan amendment, which, if adopted, would have to be interpreted as making the exchange mandatory; that would result in numerous legal problems.
13. He added that there was a clear inconsistency between the definition of "State archives" in article 19, where they were defined as archives belonging to the predecessor State, and the provision in article 28, paragraph 4, where the expression covered also State archives of the successor State.
14. Mrs. THAKORE (India) said that her delegation had no difficulty with article 28 as it stood.
15. With regard to the amendment by Pakistan to paragraph 4, her delegation proposed, as a subamendment, that the words "as appropriate" should be added after the words "on an exchange basis".
16. Mr. BEN SOLTANE (Tunisia) supported article 28, especially paragraph 3, for the basic rights that it mentioned were those of all peoples, both of predecessor and of successor States.
17. His delegation could accept the amendment of Pakistan.
18. Mr. MURAKAMI (Japan) said that his delegation had the same serious difficulties and reservations with regard to paragraph 3 of article 28 as those it had mentioned earlier with regard to paragraph 7 of article 26 (28th meeting). He added that the article contained some vague language and hoped that the Drafting Committee would be able to improve the formulation.
19. Mr. KOBIALKA (Poland) said that his delegation had no problems in accepting article 28, including paragraph 3.

20. It did have some difficulty in accepting the amendment of Pakistan while recognizing that exchanges of the kind contemplated in the amendment were common practice among States. He thought that the expression proposed by Pakistan was of technical rather than legal significance.

21. Mr. JOMARD (Iraq) said that his delegation had no objection to article 28 as it stood and could also accept the amendment of Pakistan, which would facilitate the exchange of information between predecessor States and successor States and create no new obligations.

22. Mr. AL-KHASAWNEH (Jordan) said that his delegation could accept article 28 as it stood, though it had some difficulty with the expression "normal administration", because of its ambiguity.

23. His delegation could support the amendment of Pakistan which it interpreted as not creating any new obligations.

24. Mr. BARRETO (Portugal) said that although his delegation could accept the Pakistan amendment, it was not in agreement with the spirit of article 28 and would have difficulty in supporting it.

25. His delegation could not accept paragraph 3 of article 28 for the reasons it had stated at the 28th meeting in connection with article 26, paragraph 7, although it was naturally interested in the rights of peoples to economic and cultural development.

26. Moreover, he considered that, as in the case of article 25, primacy should be given to agreement between States.

27. Mr. A. BIN DAAR (United Arab Emirates) said that his delegation had no problem in accepting the amendment of Pakistan, but he wondered whether the adjective "appropriate" qualifying the word "reproductions" in the International Law Commission's text would still be necessary if the words "as appropriate", proposed by the representative of India, were introduced in the text. It might be better to delete the second "appropriate".

28. Mr. MORSHED (Bangladesh) thought that it might be best to leave the amendment as originally proposed by the Pakistan delegation. In any case the Drafting Committee should be requested to look into the matter.

29. Mr. IRA PLANA (Philippines) said that his delegation could support both the amendment of Pakistan and article 28 as it stood. Paragraph 3 of the article mentioned certain fundamental rights of peoples to development, to information about their history and to their cultural heritage. No country would knowingly deny itself those three basic rights and hence his delegation felt it essential that the paragraph should form part of article 28.

30. Mr. BEDJAOUI (Expert Consultant) said that, since the International Law Commission had tried as far as possible to model the articles in section 2 of Part III, on State archives, on those in section 1 of Part II, on State property, he would not repeat the explanations he had given concerning the terms used in that section 1. In the case of section 2 of Part III there

were slight differences of meaning and stress which accounted for the different wording used.

31. The definition of "State archives", applied to article 28, paragraph 4, would create some difficulties, which were unfortunately inevitable and would arise throughout the draft convention. The International Law Commission, in drafting its definition of State property (article 8) and of State archives (article 19), had been unable to produce a better text than the one before the Committee. It had been unable to define property or archives and *a fortiori* State property or State archives. It had therefore mentioned only State property or archives of the predecessor State, since the archives affected by a succession of States could only be those of the predecessor State. In any case, the definition was valid only in the context of the draft convention.

32. Some drafting difficulties stemmed from the fact that, for the sake of convenience, the International Law Commission had in certain provisions referred to "State property" or "State archives" on the understanding that what was actually meant was State property or archives of the predecessor State. The Committee of the Whole had already discussed the matter at length and had been unable to better the original wording.

33. Referring to the statement by the representative of Czechoslovakia, he said it was true that the French text of paragraphs 2 and 4 of article 28 used verbs in the indicative, which might give the impression that the rules were merely indicative ones. Actually, the International Law Commission intended those rules to have an effective normative capacity.

34. There was a problem with the amendment of Pakistan: would the proposed exchange become mandatory because it was mentioned in a normative text? The proposals put forward by the representatives of India, the United Arab Emirates, Bangladesh and Pakistan would help the Drafting Committee to find an appropriate formula in that regard.

35. Mr. RASUL (Pakistan) said that his delegation accepted the Indian representative's oral subamendment and agreed with the representative of Bangladesh and the Expert Consultant that the matter was one for the Drafting Committee.

36. The CHAIRMAN invited the Committee to vote on the amendment of Pakistan to article 28 (A/CONF.117/C.1/L.10).

The amendment was adopted by 45 votes to none, with 19 abstentions.

37. The CHAIRMAN invited the Committee to vote on article 28 as amended.

Article 28, as amended, was adopted by 43 votes to 21, with 1 abstention, and referred to the Drafting Committee.

38. Mr. KIRSCH (Canada), speaking in explanation of vote, said that his delegation had intended to submit suggestions and comments on various aspects of article 28 but had eventually taken the view that it would be pointless to do so in the light of the results of the vote on article 26. It had seemed a foregone conclusion that

paragraph 3 would stand as part of article 28 and hence that the Canadian delegation would be obliged to vote against article 28 as a whole for the same reasons which had led it to vote against article 26. In his delegation's opinion it was an illusion to believe that the affirmation of a right or rights represented a contribution to the progressive development of international law, in the manifest absence of agreement regarding the content of such a right or rights. The serious problem of the interpretation of the provisions in question by the parties that might be concerned had not been approached in a satisfactory manner during the discussion.

39. He added that in order not to waste the Committee's time, his delegation would not participate in the discussion on article 29. It was his hope that an effort would be made before the conclusion of the Conference to reach a generally acceptable solution.

40. Mr. EDWARDS (United Kingdom) said that his delegation had voted for the amendment of Pakistan which represented a useful addition to article 28, on the understanding that the State making the request for an exchange of reproductions would, in accordance with established international practice, defray the expenses involved.

Article 29 (Dissolution of a State)

41. Mr. ROSENSTOCK (United States of America) said that his delegation had difficulties with paragraph 4 of article 29 as drafted by the International Law Commission similar to those which it had had with articles 28 (29th meeting), 26 (28th meeting) and 14 (15th meeting); he requested that cross-references to the discussion on those articles should be included in the record of the meeting. Certain of the material contained in paragraph 4 of article 29 could be perceived as falling within the context of article 19 of the Universal Declaration of Human Rights¹ which provided for freedom of information and the free exchange of ideas. His delegation hoped that such an approach might provide an avenue through which difficulties might be resolved. His delegation could not support paragraph 4 or article 29 as a whole.

42. Mr. MURAKAMI (Japan) said that the comments and reservations which his delegation had made on paragraph 7 of article 26 at the 28th meeting applied with equal force to paragraph 4 of article 29. He also expressed his concern at the vagueness of the wording used in article 26.

43. The CHAIRMAN said that the problems of principle involved in article 29 were the same as those which had been raised during the debate on article 28. He suggested that the Committee should proceed to vote on the article, bearing in mind that no formal amendments had been submitted.

44. Mr. MORSHED (Bangladesh), supported by Mr. BEN SOLTANE (Tunisia), said that, in view of the amendment which had been adopted to paragraph 4 of article 28, it might be appropriate to make a similar amendment to paragraph 5 of article 29. He proposed therefore that the words "or on exchange basis" be

inserted in paragraph 5 between the words "State" and "appropriate", with a view to bringing article 29 into line with article 28.

45. Mr. MIKULKA (Czechoslovakia) requested that a vote be taken on the Bangladesh amendment to article 29.

46. The CHAIRMAN invited the Committee to vote on the oral amendment proposed by Bangladesh and Tunisia.

The amendment was adopted by 45 votes to none, with 18 abstentions.

Article 29, as amended orally, was adopted by 44 votes to 21, with no abstentions, and referred to the Drafting Committee.

47. Mr. SUCHARIPA (Austria) said that his delegation had voted against draft article 29 because of the use of the word "relates" in paragraph 1(b) and because of the wording of paragraph 4. His delegation's reasons had been explained *in extenso* during the discussion on articles 25, 26 and 28 (25th and 29th meetings) and hence he would not repeat them.

48. Mr. PIRIS (France) said that his delegation had voted in favour of the oral amendment to paragraph 5 submitted by Bangladesh and Tunisia, which was based on the Pakistan amendment that had been adopted for paragraph 4 of article 28. His delegation had voted against article 29 as a whole, as it raised the same difficulties as articles 26 and 28. It could not accept the drafting of paragraph 4 and the vagueness of several of the expressions in the article.

49. Mr. ECONOMIDES (Greece) said that his delegation had voted against article 29 because of the content of paragraph 4, which was similar to paragraph 3 of article 28 and paragraph 7 of article 26 and could not be accepted for the reasons it had stated earlier. Moreover, the phrase "in an equitable manner", in paragraph 2, was imprecise.

50. Mr. EDWARDS (United Kingdom) said that his delegation had voted against article 29 at it could not accept paragraph 4 for the reasons which his delegation had explained during the discussion on article 14, paragraph 4, article 26, paragraph 7, and article 28, paragraph 3. His delegation also had difficulties with a number of vague expressions in other paragraphs, in particular in paragraph 2.

51. Mr. MONNIER (Switzerland) said that his delegation could not accept article 29 for the same reasons as those which had led it to reject article 28. Paragraph 4 of article 29 was similar to paragraph 3 of article 28.

52. Mr. de VIDTS (Belgium) said that he had voted for the oral amendment to article 29, which represented an improvement, but had voted against the article as a whole because of its reservations with respect to paragraph 4.

53. Mr. OESTERHELT (Federal Republic of Germany) said that his delegation had voted against article 29 for the same reasons as those which had led it to vote against article 26, paragraph 7 (28th meeting), and article 28, paragraph 3 (29th meeting).

¹ General Assembly resolution 217 A (III).

New article 19 bis (Passing of State archives) (*continued*)*

54. Mr. EERSEL (Suriname) reminded the Committee that the representative of Algeria had suggested that a decision on new article 19 *bis* should be deferred until after the end of the consideration of Part III of the draft convention so that all the articles contained in that Part could be submitted together to the Drafting Committee.

55. The CHAIRMAN said that there was a link between the proposed article 19 *bis* and article 31 and it might therefore be appropriate to wait until the Committee came to consider the latter article.

56. Mr. SUCHARIPA (Austria) proposed that the consideration of new article 19 *bis* should be postponed pending the discussion on article 31.

57. Mr. MIKULKA (Czechoslovakia) said that his delegation had no objection to a decision on the inclusion of the proposed new article 19 *bis* being delayed. That did not, however, imply that a rigid parallelism must be followed and that similar provisions must be included in every part of the convention. In that connection, he referred to the reasons which had been given by his delegation during the earlier discussion (22nd meeting) for opposing the inclusion of new article 19 *bis* and which were based on the specific character of State archives.

58. Mr. LAMAMRA (Algeria) agreed with the view just expressed by the representative of Czechoslovakia and pointed out that it was borne out by the decision taken at the 23rd meeting concerning the proposed new article 19 *bis*.

59. Mr. JOMARD (Iraq) also agreed with the Czechoslovak representative's interpretation of the situation but wondered whether article 19 *bis* might not be referred to the Drafting Committee.

60. Mr. ECONOMIDES (Greece) said that he disagreed with those speakers who had argued that the insertion of an article 19 *bis* in section 1 of Part III was not necessary; he pointed out that a new article 8 *bis* had been inserted in section 1 of Part II. Having adopted article 20, the Committee was, in his view, under a moral obligation to adopt article 19 *bis*. He would defer to the Chairman's decision as to the precise point in the proceedings when consideration of article 19 *bis* should be resumed.

61. Mr. ROSENSTOCK (United States of America) agreed with the representative of Iraq that to refer the United States delegation's amendment involving the addition of a new article 19 *bis* to the Drafting Committee would be by far the best course. Failing a decision to that effect, he agreed that consideration of the amendment should be postponed until the Committee of the Whole had considered articles 31 and 32. In that connection, he asked whether his delegation would be expected to submit a formal amendment involving the addition of a new article 31 *bis*; the text of such an amendment would be identical, *mutatis mutandis*, with that of the proposed new article 19 *bis* submitted by his delegation in document A/CONF.117/C.1/L.42.

62. Replying to a question by Mr. PHAM GIANG (Viet Nam), he said that it was his delegation's wish to determine whether a provision similar to that adopted in respect of State property in article 8 *bis* was also to apply to State archives and State debts.

63. Mr. PHAM GIANG (Viet Nam) stressed that each Part of the draft convention dealt with a separate topic and had a unity of its own. The adoption of article 8 *bis* did not necessarily imply that analogous articles should be inserted in Parts III and IV.

64. The CHAIRMAN, replying to the question asked by the United States representative, said that, if the United States delegation wished to submit an amendment involving the addition of a new article in Part IV of the draft convention, it should submit the text of that amendment in writing.

65. Replying to a point raised by Mr. THIAM (Senegal), he said that postponement of further consideration of article 19 *bis* pending the discussion of articles 31 and 32 did not mean that a decision adopted in respect of one Part of the draft convention would be automatically adopted in respect of the other Parts. The proposal for the insertion of a new article 19 *bis* in Part III would be considered together with a possible new proposal concerning Part IV only for the sake of greater clarity and efficiency.

66. Mr. BRISTOL (Nigeria) said that the Committee was to be congratulated on having completed its work on Part III of the draft convention with the exception of a possible new article 19 *bis*. However, the status of works of art and art treasures in the event of a succession of States, a matter to which his delegation attached particular importance, had not been explicitly considered. He wondered whether the Expert Consultant would at some stage confirm his delegation's understanding, based on the International Law Commission's commentary on article 26, that works of art and art treasures, although not specifically mentioned, were in fact covered by the provisions relating to State property and State archives.

67. The CHAIRMAN suggested that further consideration of the proposed new article 19 *bis* should be deferred until after the Committee had considered articles 31 and 32.

It was so decided.

Article 30 (Scope of the articles in the present Part)

68. Mr. KIRSCH (Canada) suggested that, when considering Part IV (State debts) of the draft convention, the Committee should follow a somewhat different procedure from that adopted in respect of Parts II and III, by postponing the decision on each successive article until all articles in the Part had been discussed. Part IV was particularly complex because it dealt with triangular situations involving a third creditor State in addition to the predecessor and successor States. The suggestion, which was entirely motivated by a desire to facilitate the Committee's work, was, moreover, in the spirit of the decision just taken to defer consideration of article 19 *bis* until a suitable point had been reached in the consideration of Part IV. Furthermore, the suggested procedure would give delegations more time to concert their positions. While hoping that his sugges-

* Resumed from the 23rd meeting.

tion would meet the Committee's approval, he would not insist upon it if it gave rise to any opposition.

69. Mr. MURAKAMI (Japan) supported the suggestion and pointed out that, in addition to being more complex—for the reason given by the Canadian representative—the articles in Part IV were also more closely interrelated than those of the other Parts.

70. The CHAIRMAN thanked the Canadian representative for his endeavour to facilitate and accelerate the Committee's work, but remarked that the Committee of the Whole was required by the schedule of work to refer certain articles to the Drafting Committee within certain time limits. In order to do so, it had first to adopt those articles. That being so, the Canadian suggestion did not seem realistic.

71. Mr. ROSENSTOCK (United States of America) said that he sympathized with the Canadian suggestion. Although the Committee had undoubtedly done a great deal of work, it had failed to narrow any gaps between divergent views. To identify such gaps and try to narrow them was possibly no less important than to finish on time. He suggested that the procedure proposed by Canada should be followed for a day or so.

72. Mr. EDWARDS (United Kingdom) agreed. It would not be very businesslike to adopt a decision on, say, article 31 (on definition of debts) before seeing what was to happen to State debts in specific situations.

73. Mr. USHAKOV (Union of Soviet Socialist Republics) endorsed the Chairman's view that the Canadian suggestion was unrealistic and added that, if the suggested procedure was followed, the work of the Conference and, in particular, of the Drafting Committee might suffer delay.

74. The CHAIRMAN pointed out that all previous codification conferences had disposed of the draft provisions before them one by one.

75. Mr. KIRSCH (Canada), withdrawing his suggestion, said that it had been designed to avoid a situation in which the Conference appeared to move forward without in fact progressing towards the elaboration of a convention commanding a wide measure of support.

76. The CHAIRMAN said that, if he heard no objection, he would assume that the Committee wished to defer a decision on article 30, and also on the corresponding articles 7 and 18, pending consideration of the general provisions in Part I (articles 1 to 6).

It was so decided.

Article 31 (State debt)

77. Mr. AL-KHASAWNEH (Jordan), speaking on behalf of the representative of Pakistan, who was unable to be present, said that document A/CONF.117/C.1/L.11 had been submitted by the Pakistan delegation not as a proposed amendment to the text of article 31 but as a request for clarification of the phrase "any other subject of international law". The meaning of the expression was not clear in the context of the article and was not elucidated in the commentary.

78. Mr. do NASCIMENTO e SILVA (Brazil), introducing his delegation's amendment (A/CONF.117/C.1/L.23), recalled that, at the International Law Com-

mission's 1981 session, a proposed subparagraph (b) to article 31 reading "any other financial obligations chargeable to a State" had been rejected, although opinions on its merits had been equally divided. In his delegation's view, the subparagraph should have been included, in square brackets, in the draft of article 31.

79. When the subject had been raised at the Commission's 1671st meeting on 15 June 1981, the Special Rapporteur had pointed out that the problem could be resolved in a procedural manner, without raising the substantive issue, simply by deleting the subparagraph. He had said that such a course of action would not mean that the Commission was disregarding the problem of debts, but would show its concern to seek the minimum bases for an agreement, the lowest common denominator within the Commission.² The Special Rapporteur had admitted, however, that the Conference might decide to enlarge the scope of the future instrument in that respect.³

80. None of the members of the Commission who had spoken in explanation of their vote against the proposed subparagraph had admitted the possibility of non-payment of debt. The arguments advanced had been that the provision came within the scope of the internal law of the State that the law applicable to private debts was the law of contract and that such debts did not come within the scope of the draft convention.

81. In his delegation's view, the issues raised by article 31 were extremely serious and could not be resolved on a merely theoretical basis. They called for a pragmatic approach, particularly in view of the current economic and financial crisis. Many individual countries, in addition to such international institutions as the International Monetary Fund, the World Bank and the Organization of Petroleum Exporting Countries (OPEC) Fund, had been generous in according loans to newly independent and developing countries, but there were many cases in which the latter had been obliged to borrow from private external sources. The rejection of subparagraph (b) might have given the impression to banks and other similar bodies that it was inadvisable to lend to any State likely to be involved in a case of succession. In his delegation's view, it was thus in the interests of the developing countries and would enhance their creditworthiness to reassure such banks. From that standpoint it might even have been preferable to delete what would have become subparagraph (a), since subparagraph (b) would have covered every issue.

82. Mr. MARCHAHA (Syrian Arab Republic), introducing his delegation's amendment (A/CONF.117/C.1/L.37), said its object was to improve the text of article 31 by introducing two specific clarifications. First, the amendment stipulated that the obligation must have arisen in good faith and hence would exclude "odious debts", namely debts contracted by the predecessor State to the detriment of the successor State. Because a succession was not a sudden or fortuitous event, a predecessor State would have had ample op-

² *Yearbook of the International Law Commission, 1981*, vol. I (United Nations publication, Sales No. E.82.V.3), 1671st meeting, para. 6.

³ *Ibid.*, para. 7.

portunity to contract fictitious debts which would pass to the successor State unless the qualification "arising in good faith" was incorporated in the wording of article 31. The second condition, that financial obligations incurred by a State must be in conformity with international law, was a logical extension of the requirement of good faith. The definition proposed in his delegation's amendment would cover all financial obligations of a State, whether contractual or non-contractual, but would exclude any obligations which were not in conformity with international law.

83. Mr. MORSHED (Bangladesh) said that a definition of "State debt" must take into account the need to ensure that a successor State did not find itself encumbered by debts incurred by a predecessor State from which the successor State had not derived benefit. He appreciated the efforts made by the International Law Commission to arrive at a generally acceptable definition but reserved the right to comment on article 31 in greater depth at a later stage.

The meeting rose at 12.50 p.m.

31st meeting

Wednesday, 23 March 1983, at 3.20 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 31 (State debt) (continued)

1. Mr. NAHLIK (Poland), referring to the amendment submitted by Pakistan (A/CONF.117/C.1/L.11), said that it was, in fact, a request for clarification. He agreed that the phrase "any other subject of international law" presented problems both in the science of international law and in State practice in international relations. Before the Second World War it had been the almost universally accepted view that only States could be subjects of international law. Since then, however, with the proliferation of international organizations, the view had gradually been accepted that some major intergovernmental organizations could be considered subjects of international law, although their rights and obligations were not identical to those of States.

2. The question had then arisen whether there could be yet other subjects of international law. Views on that point were divergent. It was his view, however, that in a convention of a codificatory nature which was to have a longer life than a mere bilateral agreement, the way should be left open for future developments. That possibility had been reflected in many international instruments, including the 1978 Vienna Convention on Succession of States in Respect of Treaties,¹ article 3 of which explicitly mentioned agreements concluded between States and other subjects of international law. In view of such precedents, he considered that the possibility of there being "other subjects of international law" should be envisaged in the draft convention under discussion.

3. Mr. BEDJAOUI (Expert Consultant) said that whereas the definitions of State property and of State archives adopted by the International Law Commission served the aims or objectives of the draft convention without really defining the concepts, because they defined them only in relation to the predecessor State, the Commission had been more successful in defining State debt, because it had succeeded in defining it without any specific reference to the predecessor State.

4. He understood the Syrian Arab Republic's delegation's desire to clarify, through its amendment (A/CONF.117/C.1/L.37), the concept of State debt. The concept of good faith was commonly referred to in international instruments, one instance being article 2, paragraph 2, of the Charter of the United Nations. In such a sensitive convention as the one under discussion, a reference to good faith was even more necessary. However, he was afraid that the introduction of that concept might lead to difficulties. For example, a predecessor State might in good faith contract a debt which it considered necessary to its survival, whereas the successor State might in equally good faith consider such a debt odious.

5. Another problem which had been raised at the preceding meeting was that of categories of creditors. As indicated in paragraph 46 of its commentary on article 31, the International Law Commission had considered at length the advisability of retaining a subparagraph (b) which extended at the same time the definition of State debt to cover "any other financial obligation chargeable to a State", which was intended to cover State debts to private creditors, whether natural or juridical persons. However, the definition of succession of States in article 2 referred to the replacement of one State by another in the responsibility for the international relations of territory. That involved a juridical relationship governed by public international law and therefore excluded debts owed by the predecessor State to private creditors. Consequently, the International Law Commission had deleted the subparagraph (b) concerned. Being nevertheless concerned with the problem of private creditors, it had included certain safeguard clauses in the draft con-

¹ *Official Records of the United Nations Conference on Succession of States in Respect of Treaties*, vol. III (United Nations publication, Sales No. E.79.V.10), p. 185.