

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

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**A/CONF.117/C.1/SR.32**

**32nd meeting of the Committee of the Whole**

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for not being in touch with modern reality, where financial, commercial and economic considerations loomed large.

62. Referring to some of the points mentioned during the discussion, he said it was not correct to state that the International Law Commission text represented a consensus. There had in fact been a tied vote in the Commission on the subject. It was for that reason that his delegation had thought it important to raise the question again in the Committee of the Whole. The representative of India had referred to a procedural justification for the deletion of the earlier subparagraph (b), but it was equally possible to find a justification for the retention of that provision.

63. The comment had been made that the Brazilian amendment ran counter to the sovereign rights of successor States. On the contrary, in many cases a newly independent State preferred to go to private sources of credit and pay higher interest rates rather than suffer a heavy political burden which could in fact be a greater menace to its sovereignty.

64. While the position of his delegation remained flexible, bearing in mind that the consideration of article 6 had yet to take place, and that there had been considerable support for the Brazilian amendment, he did not propose at present to withdraw that proposal.

65. Mr. SKIBSTED (Denmark) said that his delegation attached the utmost importance to the balance and internal consistency of the future draft convention. The definition of State property in article 8 clearly extended to financial claims towards natural or juridical persons. He therefore had difficulty in understanding why the

International Law Commission had decided not to include in the definition of State debt reference to any financial obligation chargeable to a State other than those owed to another State, an international organization or any other subject of international law. His delegation was sympathetic to the Brazilian amendment, which it believed would make article 31 more balanced and logical.

66. So far as the amendment submitted by the Syrian Arab Republic was concerned, his delegation would be unable to support the addition of the phrase "arising in good faith", which it considered vague and imprecise.

67. Mr. SOKOLOVSKI (Byelorussian SSR) said that, in his delegation's view, the International Law Commission had been right to exclude financial obligations towards natural or juridical persons from the definition of State debt. That approach was in conformity with the Commission's mandate.

68. His delegation accordingly supported the text proposed by the International Law Commission and could not accept the Brazilian amendment, which sought to include in the definition of State debt matters which were not the subject of international law. Debts owed to private creditors, which should be settled in accordance with the internal law of the States concerned, were covered by article 6.

69. His delegation could support the amendment submitted by the Syrian Arab Republic, but considered the inclusion of the phrase "arising in good faith" to be unnecessary.

*The meeting rose at 6 p.m.*

## 32nd meeting

Thursday, 24 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 31 (State debt) (continued)*

1. Mr. ROSENSTOCK (United States of America), referring to the Syrian Arab Republic's amendment (A/CONF.117/C.1/L.37), said that the amendment was open to objection from a purely legal point of view, in that it referred to obligations which were binding only subject to certain conditions. An obligation that was defective was not an obligation. As the representative of Brazil had pointed out, the text of the draft convention was replete with references to agreements but nowhere was it specified that those agreements had to fulfil certain conditions in order not to be open to challenge on one or another ground of invalidity. The rep-

resentative of the Soviet Union had clearly outlined at the previous meeting the difficulties which would arise if the phrase "in good faith" were included in article 31, as was proposed in the Syrian amendment.

2. Turning to the question of debts to creditors other than States or international organizations, he said that such debts were of even greater importance than debts to States and that to omit mention of them would inevitably tend to trivialize the convention. The arguments advanced for excluding private debts from the scope of the definition were so unconvincing as to be transparent, and were full of inconsistencies. Reference had been made, for example, to paragraph 1(a) of article 2, with the suggestion that private debts did not relate to "the replacement of one State by another in the responsibility for the international relations of territory". If it were indeed the intention to limit the scope of the convention in that way, the effect would be to exclude from its ambit a good deal of State property, both movable and immovable, and also archives, which had little or no connection with "international rela-

tions". In his delegation's opinion such an interpretation would be absurd.

3. It had also been maintained that debts to creditors other than States or international organizations were outside the scope of international law. If that assertion were true, large areas of international law, including much of the law relating to State responsibility, would be invalidated.

4. In view of the inadequacy of the arguments put forward for excluding private debts from the scope of the draft, his delegation favoured the amendment submitted by Brazil (A/CONF.117/C.1/L.23). The Expert Consultant had rightly pointed out (31st meeting) that paragraph 1 of article 34 clearly established that private debts were not affected by a succession of States and that the paragraph covered not only debts to States, international organizations or other subjects of international law, but also "any other financial obligation chargeable to a State". That provision would mitigate any damage that would be caused by failure to adopt the Brazilian amendment. The fact remained, however, that the omission of a reference to private debts in a convention dealing with succession of States would render that convention inherently trivial.

5. Mr. BOSCO (Italy) said that he agreed with the Expert Consultant, the representative of the United States and others that the Syrian delegation's proposal for adding a reference to "good faith" in article 31 was unjustifiable. While the concept of good faith was long-established and had been embodied in numerous multilateral instruments such as the Charter of the United Nations and the 1969 Vienna Convention,<sup>1</sup> in the very different context of article 31 it would—if the Syrian delegation's proposal were approved—constitute the criterion for determining whether or not a State debt existed, with all the complexities of interpretation that such a criterion would entail. It would be very difficult, for example, to establish whether an agreement concluded many years previously had or had not been in good faith. In his delegation's opinion it was undesirable to encumber the text of the convention, which was difficult enough as it stood, with further complexities.

6. Mr. ENAYAT (Islamic Republic of Iran) said that his delegation had no difficulty in accepting the definition given in article 31 as proposed by the Commission. However, the Syrian delegation had explained (30th meeting) that its amendment related solely to contractual debts, as distinct from delictual or quasi-delictual debts which *ex hypothesi* were not governed by the criterion of good faith, and that odious debts, such as those arising from military expenditure incurred in a war, for the same reason, would not pass to a successor State. On that understanding, his delegation could support the Syrian amendment.

7. Citing paragraph (36) of the commentary, he added that, in his delegation's opinion, claims for reparation of war damage based on the principles of delictual responsibility passed to the successor State in respect of territory affected by the succession.

8. In conclusion, he said that his delegation could not accept the amendment proposed by Brazil because it exceeded the scope of the convention.

9. Mr. KIRSCH (Canada) said that, from a practical point of view, article 31 as it stood seemed to ignore the realities of international relations by failing to cover the financial obligations of States to private creditors, an omission which would seriously vitiate the effectiveness of the convention, since loans by States to other subjects of international law accounted for only a minority of all loans.

10. The definition of "State debt" also disturbed the balance and equity of the draft articles. There was a contradiction between article 31 and article 8, in that the latter defined State property without imposing comparable limitations: State property, rights and interests were to be transferred regardless of their origin.

11. One argument put forward in the course of the discussion on article 31 was that the convention applied solely to inter-State relations, thus excluding private debts. That argument was weakened by the fact that article 8 contained a much broader definition of property, and also by the fact that international financial obligations were subject, wholly or in part, to international law at some point during their existence. A second argument was that the article did not prejudice the rights of private creditors, who enjoyed general protection under article 6 and more specific safeguards in article 34.

12. While reserving its position on article 34, his delegation felt that under the convention private creditors should remain subject to the rules of general international law. The question raised by the Brazilian amendment, which his delegation supported, was whether or not the convention was intended to establish a régime generally applicable to all the situations arising from a succession of States. His delegation would be unable to accept article 31 unless the Brazilian amendment was adopted.

13. His delegation found the Syrian amendment acceptable in substance but felt that the wording might create more problems than it resolved.

14. His delegation would prefer the definition in article 31 to refer to "States and other subject of international law", which was the expression used in article 3 of the 1978 Vienna Convention on Succession of States in Respect of Treaties.<sup>2</sup> The formulation in article 31 as it stood was insufficiently comprehensive and could lead to major differences of interpretation.

15. Mr. PHAM GIANG (Viet Nam) said that the International Law Commission had examined all aspects of the problem of the definition of "State debt", and that it would be difficult to make substantive improvements to the text of article 31 as submitted. Within the Commission itself there had been two differing approaches to the issue. Some members had wanted a broad definition which would cover not only State debts but debts owed to other natural and juridical

<sup>1</sup> *Official Records of the United Nations Conference on the Law of Treaties, Documents of the Conference* (United Nations publication, Sales No. E.70.V.5), p. 287.

<sup>2</sup> *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.

persons. The reasons advanced were familiar, particularly the argument that guarantees should be provided to private creditors lending sums to developing countries. On the other hand, other members had thought it best to stay within a narrower conception of the scope of the future convention by limiting the definition of State debts to financial obligations arising between subjects of international law.

16. In his delegation's view, the article as finally adopted by the Commission had the merit of avoiding ambiguity and should not lightly be amended. He pointed out that the draft provided safeguards for private creditors in articles 6 and 34, which should allay the concerns expressed by some delegations. His delegation could not therefore support the amendment proposed by Brazil.

17. While sympathizing with the motives of the Syrian delegation in submitting its amendment and agreeing that there was justification for including the phrase "in conformity with international law" in article 31, he felt that the term "good faith" might, as the Expert Consultant had said, lead to ambiguity.

18. Referring in conclusion to the question of odious debts, he said that his delegation regretted that articles C and D on the definition and non-transferability of such debts, which had at one time been proposed by the Special Rapporteur (see paras. (41) and (42) of the International Law Commission's commentary on article 31), could not have been included in the draft. Odious debts arose out of situations that contravened international law and the principle of the right to self-determination, and his delegation felt that there was widespread support for a provision on that subject.

19. Mr. TEPAVITCHAROV (Bulgaria) said that the definition in article 31 made it clear, first, that a State debt was an obligation of a monetary character and, second, that the parties to an international financial obligation must be subjects of international law. That approach was consistent with the scope of the future convention.

20. The International Law Commission had deliberately excluded from the definition debts owed by a State to private creditors, regarding them as extraneous to the scope of the draft. The question had evoked serious controversy and the Commission had evidently not felt able to recommend a codification of international law in the area of State debts to private creditors to the extent some members believed necessary. His delegation felt that there were no generally recognized rules of international law on the matter, and agreed with the Expert Consultant that private creditors were not left unprotected under the convention: in particular, it had been pointed out that articles 6 and 34 made provision for the rights and obligations of natural or juridical persons. Also, since a State's debt to a private creditor was always contractual, and since such contracts of necessity contained clauses on settlement of disputes and on the applicable law (which was normally the domestic law of a given State), international law could not be invoked in such cases. If the general rules of international law were to be applied to protect the rights of private creditors, they would apply in areas not covered by the contract, and only to the extent that international law was in fact applicable in those areas.

21. The draft convention introduced clarity and stability into the definition of State debt in the context of the topic of succession of States. Since the convention would not operate retroactively, private lenders would always take into account the realities of the legal situation and insist on adequate guarantees. His delegation could not see how the exclusion of debts owed by a State to private creditors from the scope of the convention would jeopardize the ability of newly independent States to enter into agreements with private creditors. It should also be borne in mind that, as the Expert Consultant had pointed out, the State debt referred to in the definition was that of the predecessor State. There was thus no legal vacuum.

22. There was nothing in the convention that would adversely affect the way in which the predecessor and successor States dealt with debts to private creditors, and his delegation believed that at least some such debts would be the subject of the agreements referred to in the relevant articles in Part IV. However, in the rare cases where there was no agreement, the private debts should not pass automatically to the successor State. For that reason, his delegation found it difficult to regard the Brazilian amendment merely as an attempt to remedy an omission in the draft.

23. Some delegations had argued that it was necessary to ensure internal consistency between the definition of State debt and that of State property. His delegation, however, felt that each Part was separate and that there might be differences of definition owing to the nature of the subject matter of the various Parts.

24. Turning in conclusion to the Syrian amendment, he said that while he appreciated the motive for the reference to the concept of "good faith", its inclusion in article 31 might not be appropriate. On the other hand, the reference to international law simply made explicit what had previously been implicit, and his delegation could see no objection to its inclusion.

25. Mr. PIRIS (France) said that his delegation had an open mind about article 31 and could accept any definition agreeable to the largest number of States, provided it was clear and logical.

26. His delegation thought that two solutions were possible: to limit the definition of "State debt" in article 31 to the financial obligations of one State towards another State or an international organization; or to widen the definition by including the debts of a State towards private natural and juridical persons. His delegation considered that whatever the solution adopted, article 31 would need to be redrafted.

27. Before he went on to analyse article 31, he wished to point out that since there was no generally accepted definition of the term "subject of international law" in international law, to adopt that term would lead to many difficulties. In that connection, he referred to the statements of the representatives of Switzerland [31st meeting] and Jordan [30th meeting] and noted that the Special Rapporteur of the International Law Commission had at one time considered deleting the term.

28. If the restricted definition of the debt were to be adopted, the convention would in no way be concerned with the debts of private natural and juridical persons. During the discussion, it had been stated in that con-

nection that articles 6 and 34 were safeguard clauses. His delegation had noted those statements but nevertheless believed that on that assumption the convention should contain an article clearly stating that nothing in that convention affects the debts of private and natural or juridical persons. In addition, other elements in the convention would have to be redrafted in order to make it consistent; in the first place, the very title of the convention would have to be changed so as not to give the impression that it dealt with all State debts; the definition of State property in article 8 would have to be altered to exclude property, rights and interests due to a State by a private person.

29. The second solution would be to include the debts of a State towards private persons, as proposed in the Brazilian amendment, by including the expression "any other financial obligation chargeable to a State". That had the advantage of being clear and logical. There were many arguments in favour of including the expression: first of all, if article 31 in its current form were maintained, it would be inconsistent with the title of the convention, which referred to all State debts, and with article 8, already adopted by the Committee, which did not make it clear whether the debtors were subjects of international law or not. In that connection, he referred to paragraph (46) of the International Law Commission's commentary to article 31.

30. Moreover, as the representatives of Switzerland and Canada, *inter alia*, had pointed out, the convention had to take account of international reality. As the commentary stated, the volume of private debts owed by States was considerable. If such debts were not covered by the definition, that could have harmful effects upon States, particularly developing ones, which borrowed on the private financial market.

31. The discussions on article 8 had shown that there was a consensus on the fact that States could not give more than they possessed and that, as the Expert Consultant had pointed out, when State property was transferred it had to pass with any charge attached to it. He had also said that those matters should be dealt with under Part IV. It therefore seemed that the time had come to deal with them.

32. There was no sound argument against accepting the Brazilian amendment. The Soviet delegation had said that the draft should be limited to debts between subjects of international law. What then became of the definition of State property in Part II of the convention, which did not exclude property rights and interests owed by private persons who were not subjects of international law? No objections had been raised in that regard. Did the Committee of the Whole intend to revise article 8 in the light of its decision on article 31? In addition, the Swiss representative had very properly asked what treatment would be applicable to contracts between a State and a private person which were governed partly or wholly by international law? It was impossible to say that in general international law a State had no financial obligation in respect of private debts.

33. His delegation therefore associated itself with the Brazilian amendment and the second solution, which it considered to be clearest and most logical and which had been supported by half the members of the Inter-

national Law Commission. If the debts of private persons towards States were covered by the convention (article 8), the debts of States towards private persons could not be excluded from it. Nonetheless, his delegation did not exclude the first, restrictive solution, as long as it was clearly formulated and the title and article 8 of the convention were changed in consequence.

34. As far as the Syrian amendment was concerned, his delegation thought that the reference to good faith was superfluous. It was not against the reference to international law but was still concerned at the sponsor's explanation that that would reintroduce the notion of "odious debts". That was a difficult matter which should not, in his delegation's view, be dealt with in the convention. The International Law Commission had concurred in that view. His delegation could not therefore support the Syrian amendment.

35. Mr. HAWAS (Egypt) said that his delegation supported the International Law Commission's draft article 31 on the understanding that the words "subject of international law" had the meaning attributed to them by the Expert Consultant.

36. With regard to the Brazilian amendment, he pointed out that the definition in article 31 needed to be seen in the light of the words "for the purposes of the articles in the present Part" which prefaced the article. There had been a balanced argument on the subject and either approach could be defended.

37. He agreed with the first part of the French representative's analysis of article 31 but thought that there were already sufficient safeguards in the convention. Private debts were of course covered by private law, and articles 6 and 34, paragraph 1 offered additional safeguards.

38. The definition in article 31 was consistent with the International Law Commission's general policy, having regard to the special nature of each Part of the convention. Where State property was concerned, the convention provided for succession from a predecessor State to a successor State; archives also passed from a predecessor State to a successor State and, in connection with debts, the draft article spoke of "any other subject of international law". The same logic informed all the three Parts. The formulae differed in each but they were not contradictory.

39. He could not agree with the contention of the representative of France that there was a contradiction between article 8 and article 31, for article 8 spoke strictly of the property of the predecessor State. Just as in the discussion of the articles on archives, the Committee had been quite clear that those articles were not concerned with the archives of a private person or company, so likewise the expression "State property" could not possibly mean the property of a private company or person. Similarly, article 31 was concerned with "State debt" and to construe the definition as covering also private debts would introduce an extraneous element into the convention.

40. His delegation could not agree that the extension of the definition to cover the claims of private creditors would benefit developing countries. Private creditors had sufficient guarantees and ways of claiming their

debts. In the light of those considerations his delegation could not support the Brazilian amendment.

41. With respect to the Syrian amendment, he said that his delegation could accept the addition of a reference to international law but thought that, since good faith was in any case implicit in all agreements, specific mention of it in one article might cause problems. Otherwise his delegation could support the amendment as a whole.

42. Finally, his country welcomed the fact that the liberation movements were recognized as subjects of international law.

43. Mr. KOLOMA (Mozambique) drew attention, in connection with the Brazilian amendment, to the provisions of article 2, paragraph 1(a) of the draft convention.

44. According to modern international law, the subjects of international relations were States and international organizations. The object of the convention was to regulate international relations in respect of State property, State archives and State debts in the case of a succession of States. In the context of State debts, that meant that the convention was intended to regulate only financial obligations arising at the international level, in other words between subjects of international law. That point was made clear in paragraph (46) of the International Law Commission's commentary to article 31.

45. The Brazilian amendment would obviously also cover subjects other than subjects of international law, in particular multinational corporations, whose rights were duly protected under article 6 of the draft. That amendment would in effect extend the scope of the draft convention to matters governed by domestic rather than by international law. Accordingly, his delegation could not support the Brazilian amendment.

46. His delegation would be prepared to support the Syrian amendment only if the words "in good faith" were deleted and the words "in conformity with international law" were retained.

47. Mr. MAAS GEESTERANUS (Netherlands) said that a number of speakers had drawn attention to the fact that, among the liabilities of States including predecessor States, the debts owed to other States or subjects of international law represented only a fraction of the total. To deal only with that fraction in developing rules on State succession would make neither legal nor economic sense. His delegation therefore believed that, as a matter of principle, the amendment proposed by Brazil merited support.

48. In that connection, the representative of Egypt had raised a question as to why, in Part IV, the Committee should depart from the general line followed in the Parts dealing with State property and State archives. The articles proposed in Part II did not concern themselves with private property and Part III did not cover private archives. The Netherlands delegation wished to point out that, even if the Brazilian proposal was accepted, Part IV would still not contain rules on private debts. Without the Brazilian amendment, there would be a serious imbalance in the convention. Whereas in Part II, State property was defined as including debt

claims against anybody, Part IV would deal only with a surprisingly narrow group of debts. Moreover, article 35, paragraph 2 and article 36, paragraph 1 recognized a link between State debts which passed to the successor State and "the property, rights and interests" which passed to the successor State. In those provisions such a link was clearly independent of the status of the creditor as a subject of international law or otherwise. The question therefore arose why the definition of "State debt" should exclude State debts owed to a creditor who was not a subject of international law. There was no legal or logical reason to make such a distinction between State debts.

49. Referring to the amendment proposed by the Syrian Arab Republic, he said that his delegation could approve of the idea that reference should be made to rules of international law. Such a reference would emphasize the need for a clause to be inserted in the convention relating to the settlement of disputes which might arise on the question whether or not certain obligations had indeed arisen in conformity with international law. The same amendment referred to good faith; as had been pointed out by the representative of Egypt, good faith was presumed to be a guiding principle relating to all articles and ought not to be specified in one only.

50. Mr. LAMAMRA (Algeria) said that the definition proposed in article 31 was clear and unambiguous. It made provision for an expansion of creditor categories to include both international organizations and other subjects of international law. The addition of the latter category had given rise to a request for clarification from the delegation of Pakistan (A/CONF.117/C.1/L.11) and, at the previous meeting, the Expert Consultant had replied in a manner which had satisfied the delegation of Algeria. In the light of that explanation as a whole, his delegation supported the retention of the last category of potential creditor. In that connection, it had been reassured by the harmony of views between the representative of the United Kingdom and the Expert Consultant regarding the exclusion of transnational corporations from the category of other subjects of international law. His delegation considered that the term "any other subject of international law" clearly covered entities such as national liberation movements.

51. His delegation was prepared to support the definition contained in article 31 as it stood. It could not however support subparagraph (b) of the Brazilian amendment and would vote against it, if it was put to the vote. In that connection, his delegation and others had noted that the International Law Commission had made specific and adequate provision to safeguard the rights and obligations of natural or juridical persons. There was no case for raising private creditors to the level of beneficiaries of a succession of States in the matter of State debts, even though such natural and juridical persons were protected in the matter of archives. Moreover, paralegal arguments had been used during the discussion, although such arguments had been considered inappropriate in other contexts. In that connection it had been suggested that the absence of protection for private debts in the convention would undermine the confidence of foreign investors; that was an

over-simplification, as the international movement of private capital followed rules which were quite outside the scope of the convention.

52. His delegation was prepared to support the amendment of the Syrian Arab Republic; the inclusion of the concept of good faith in the definition would not mean that good faith should not also apply in connection with the implementation of any international obligation.

53. Mr. MURAKAMI (Japan) said that, in cases where State debts arose from treaties, the transfer of such debts might be covered both by the convention under consideration and by the 1978 Vienna Convention on Succession of States in Respect of Treaties. In such cases, the question of applying the two conventions should be solved in accordance with article 30 and other relevant provisions of the 1969 Vienna Convention on the Law of Treaties.

54. His delegation would also like to place on record its understanding that, in the case of a transfer of any financial obligation owed to international organizations, the constituting instruments and legally binding internal rules of the organizations would prevail over the convention.

55. In the view of his delegation the term "financial obligation" was somewhat vague. It would be necessary to look at the provisions of Part IV as a whole before it would be possible to make a reasonable clarification.

56. The proposal of the Syrian Arab Republic to qualify the term "financial obligation" by adding the words "arising in good faith and in conformity with international law" made the term even more vague and imprecise instead of clarifying it; his delegation would not therefore be able to support the amendment.

57. His delegation shared the concern of the delegation of Pakistan expressed in document A/CONF.117/C.1/L.11, which called for clarification of the phrase "any other subject of international law". In that connection he said that his delegation was not satisfied with the explanation provided by the Expert Consultant.

58. Mrs. ULYANOVA (Ukrainian Soviet Socialist Republic) said that the discussion had shown clearly that the International Law Commission had adopted the best approach to the important and complicated issue of defining "State debt". All lawyers were aware that the definition of any concept presented difficulties. That was particularly so where the interests of a number of States were involved and the discussion had shown clearly that substantially differing views existed on the question.

59. The argument used to support the Brazilian amendment was basically that the text of the International Law Commission did not safeguard the debts of private natural or juridical persons. That argument was not valid as it was not possible to solve all problems by means of treaty law.

60. Article 31 defined "State debt" for the purposes of the articles in Part IV of the draft convention. The draft of Part IV had been carefully balanced with the preceding Parts. In particular, in the commentary on article 6, the International Law Commission explained

that it had decided not to include in the definition of State debt a reference to any financial obligation chargeable to a State other than those owed to another State, an international organization or any other subject of international law. It had however found it appropriate to insert in the draft the safeguard clause contained in article 6. The International Law Commission had therefore found a well-balanced solution to the problem; it had provided a guarantee for private debt in article 6 and a clear definition of State debt in article 31 which covered all the articles in Part IV.

61. Her delegation fully supported article 31 as it stood. It could not however support the amendment of Brazil for reasons of principle, bearing in mind the discussion which had taken place on that amendment.

62. The amendment of the Syrian Arab Republic was generally acceptable to her delegation; the addition of the words "good faith", although not necessary, was acceptable.

63. Mr. LEITE (Portugal) said that his delegation would support the Brazilian amendment which would resolve a contradiction between article 31 and article 8. The amendment, if adopted, would give coherence and balance to both articles and would avoid difficulties hindering the access of developing countries to private capital. In that connection, he stressed the importance of the safeguard clause contained in article 6.

64. His delegation would not be able to support the amendment of the Syrian Arab Republic, because it might raise the problem of odious debts which the International Law Commission, in its wisdom, had decided not to consider. His delegation had no objection to the introduction of the phrase "in conformity with international law", but considered that the expression "good faith" was superfluous and would give rise to different interpretations.

65. Mr. IRA PLANA (Philippines) said that article 31 was in line with the previous articles of the draft convention. The definition which it contained was limited in scope and referred only to financial obligations; it represented a step in the right direction, particularly for newly independent States. Such States should not be saddled with financial or other obligations which would make them sink into a morass. To burden a newly independent State with obligations would conflict with the responsibility of the international community towards such States. The International Law Commission had borne those considerations in mind in formulating article 31. In the absence of a better text, his delegation was inclined to support article 31 as it stood.

66. Mr. NAHLIK (Poland) expressed his surprise at the French delegation's position, which combined support for the Brazilian proposal for adding a reference to "any other financial obligation chargeable to a State" with opposition to the inclusion of the words "or any other subject of international law". The existence of subjects of international law other than States or international organizations could hardly be denied; in addition to the examples given by the Expert Consultant, many countries in the group to which France belonged recognized certain international entities, such as the Order of the Knights of Malta, the International Committee of the Red Cross or, indeed, the Holy See, as

subjects of international law *sui generis*. The concept of subjects of international law other than States was a fairly recent one but it was still evolving and would perhaps continue to evolve in the future; it seemed rather strange to object to it while at the same time wanting to introduce the concept of debts to private creditors into the text of article 31.

67. He had every sympathy with the Syrian amendment, but feared that the inclusion of the phrase "in good faith" in only one article of the draft convention might give rise to misleading interpretations *a contrario*; it would perhaps be more appropriate to include the phrase in article 3, among the "General provisions" of the draft convention.

68. Commenting more generally on the progress of the Committee's work, he noted with concern that the Drafting Committee had interrupted its work some days earlier; he feared that it would be difficult to make up the delay during the following week, which would consist of only four working days.

69. Mr. TARCICI (Yemen) said that his delegation had been satisfied with the International Law Commission's text all along and continued to support it. It also considered the Syrian amendment to be a constructive contribution which strengthened and clarified the meaning of article 31. However, in view of the apprehensions expressed by a number of previous speakers who, while sympathizing with the Syrian amendment, saw a possible source of misinterpretation in the phrase "in good faith", he wondered whether the representative of the Syrian Arab Republic might agree to delete the reference to good faith. The remainder of the amendment would then stand a good chance of being accepted by a consensus, which his own delegation would be happy to join.

70. Mr. MIKULKA (Czechoslovakia) said that his delegation supported article 31 as it stood. General international law, in the codification of which the Conference was engaged, could not regulate all aspects of a problem as complex as that of the succession of States. It could not possibly deal with all the political, legal, financial and other consequences of territorial changes, which fell either within the scope of internal law, including private international law, or else outside the scope of legal regulations altogether. General international law could not regulate the succession to debts of the predecessor State towards natural or juridical persons who, at the time of the succession, were nationals of the predecessor State or of third States; those debts were not international financial obligations, which alone would be liable to be transmitted under the norms of general international law. For those reasons, the Brazilian amendment was not acceptable to his delegation.

71. With regard to the Syrian amendment, he agreed with the comments made by the Polish representative and recalled that a similar amendment had been rejected as superfluous by the 1977-1978 United Nations Conference on Succession of States in Respect of Treaties.

72. Commenting on the French representative's reference to an imbalance between article 31 and article 8, he recalled that, during the discussion on article 8,

the Czechoslovak delegation had expressed doubts concerning the possibility of invoking the internal law of the predecessor State for the purpose of determining what constituted "State property". The reference to internal law in article 8 excluded from the definition of State property the credits given by the predecessor State to another subject of international law under international treaties which, in his delegation's view, were not part of internal law in all national legal systems. That was yet another imbalance in addition to the one already mentioned, since international State credits were a counterpart to State debts as defined in article 31. In order to harmonize the articles, it would be better to revise article 8 than to enlarge the scope of article 31 to include State debts towards private creditors.

73. Mr. CHO (Republic of Korea) said that he sympathized with the intention and purpose of the Brazilian amendment and shared the view that private creditors should be given full protection in international economic transactions. Nevertheless, he was inclined to favour the more limitative text proposed by the International Law Commission, for it defined "State debt" for the purposes of the articles of a specific convention whose purpose, in turn, was to codify the public international law concerned principally with subjects of international law. Moreover, the rights of private creditors were, in his view, sufficiently guaranteed by articles 6 and 34 of the convention.

74. Referring to the Syrian amendment, he expressed the view that the inclusion of the phrase "in conformity with international law" would significantly improve the text by excluding odious debts from the scope of the definition. In his view, non-transferability of odious debts in cases of State succession was a principle of international law which had already been established. His delegation would therefore support the International Law Commission's draft as amended by the Syrian Arab Republic, subject to some reservations concerning the phrase "in good faith".

75. Mr. MARCHAHA (Syrian Arab Republic) reiterated the statement he had made at the 30th meeting when introducing his delegation's amendment to the effect that the purpose of the amendment was to enrich the article and remove any ambiguity it might contain. With all due respect to the arguments advanced by the Expert Consultant, he continued to believe that good faith could be objectively determined and that a reference to it would improve the text of the article. However, he was prepared to bow to the majority view by withdrawing the words "in good faith and", so that the text of his amendment would read:

"For the purposes of the articles in the present Part, 'State debt' means any financial obligation of a State arising in conformity with international law towards another State, an international organization or any other subject of international law".

76. Mr. PIRIS (France), speaking in exercise of the right of reply, said that he did not accept the charge of inconsistency levelled at his delegation's position by the representative of Poland. There was no contradiction between favouring the inclusion of a reference to private debts and noting that in international law there



was no specific, generally agreed definition of subjects of international law other than a State or an international organization.

77. If the Committee insisted on maintaining the concept of subjects of international law, it should take

up the Canadian representative's suggestion that the wording used should be that of article 3 of the 1978 Vienna Convention.

*The meeting rose at 1 p.m.*

## 33rd meeting

Thursday, 24 March 1983, at 3.35 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) (concluded)*

1. Mr. MUCHUI (Kenya) said that, in his delegation's view, those who urged that the International Law Commission's definition of State debt be extended to cover the case of private creditors appeared to base their case mainly on economic considerations. Those who argued for the retention of the Commission's definition, on the other hand, were guided by legal considerations. After careful analysis of the various arguments, his delegation had concluded that it should support the "legalists".

2. His delegation was fully prepared to endorse the amendment submitted by the Syrian Arab Republic (A/CONF.117/C.1/L.37), as orally revised, which had the virtue of stating explicitly an element that was no doubt implicit in the International Law Commission's text.

3. Mr. THIAM (Senegal) said that his delegation understood the intention of the Brazilian amendment (A/CONF.117/C.1/L.23) to have been to stimulate discussion on one of the most important articles of the draft convention. In that respect it had served a most useful function.

4. Important as it was for the members of the Committee to crystallize their thinking on the subject, the primary consideration was the adoption of a rule of international law which could deal adequately with the realities it was supposed to govern. Given the diverse, indeed contradictory, nature of State practice in respect of the succession of not only private but even public debts, it was extremely difficult to establish clear rules. His delegation believed that, in the circumstances, article 31, as proposed by the International Law Commission, struck the best possible balance between international law and State practice.

5. Several factors should be borne in mind. In the first place, the draft convention contained two safeguard clauses—article 6 and article 34—which were designed to protect private interests that might be involved in State succession. Second, the extension of the defini-

tion of State debt to cover "any other financial obligations chargeable to a State" would result in the inclusion of administrative debts, which were clearly not governed by the succession of States, unless by specific agreement between the States concerned. Third, the Brazilian amendment ran counter to the well-established principle of international law that a private person could not invoke international law for the direct protection of his own interests. Fourth, the successor State could in any event assume such interests by virtue of State succession in respect of treaties; thus, a contract concluded between a private person and a State could become subject to international law.

6. His delegation believed that the succession of States could not be construed as resulting in a surrender of sovereignty nor in the establishment of a novation, whereby the successor State would take over the private debts of the predecessor State. International law provided States with various possibilities for organizing their relations with another entity. That could be another reason for considering the text proposed by the International Law Commission as the best possible option.

7. In conclusion, he wondered whether, by adopting the Brazilian amendment, the Committee would not be engaging in the illusion of codification of progressive development of international law.

8. The draft article proposed by the International Law Commission should not be considered hostile to private interests; a State could establish its relations with other entities, whether public or private, on the basis of various types of agreement.

9. Mr. ROSPIGLIOSI (Peru) said that the International Law Commission's text of article 31 was an admirable provision which was difficult to improve upon. Nevertheless, his delegation supported the Brazilian amendment, for the reasons put forward by the representative of France at the previous meeting. Perhaps the most compelling argument was the fact that, if international law was not in line with reality, it ran the risk of being irrelevant, if not even harmful.

10. His delegation believed that more important than the protection of private interests was the need to safeguard the interests of poorer nations and encourage the solution of the urgent and vital problems that confronted them. To restrict their access to sources of capital would not be in their interest.