

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

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**37th meeting of the Committee of the Whole**

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## 37th meeting

Monday, 28 March 1983, at 3.15 p.m.

Chairman: Mr. ŠAHOVIĆ (Yugoslavia)

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

[Agenda item 11]

*Article 36 (Newly independent State) (concluded)*

1. Mr. MAAS GEESTERANUS (Netherlands) said that his delegation accepted the idea behind the International Law Commission's draft article that a special régime should be applicable to State debts in cases where the successor State was a newly independent State. That régime would in principle favour the newly independent State. Nevertheless, it considered that the article as drafted might well create more problems than it solved, as other delegations had also pointed out.
2. The discussion had largely reflected the experience of the States represented at the Conference rather than future possibilities. Some 65 delegations represented States which, in principle, could never become newly independent States but might well become predecessor States or, in any case, third States.
3. Seen in that light, article 36 was one of the less important articles of the convention compared with, say, articles 35, 37, 38 and 39. Serious consideration should therefore be given to the appeals for compromise that had been made, in particular those of Switzerland and Austria. A majority vote would not help the Conference to progress.
4. Mr. TEPAVITCHAROV (Bulgaria) said that his delegation was surprised at the sharp division of opinion expressed during the debate on article 36, since paragraph (2) of the commentary clearly indicated that the provision regulated a distinct type of succession of States and should be considered as an exception to the general rule on succession. The distinction was linked with the process of decolonization which, by definition, meant that the two entities involved were *de jure* and *de facto* on an unequal footing. Nobody had objected to that premise. The International Law Commission's text was an attempt to remedy the legal and factual inequality.
5. One delegation had mentioned that decolonization was always a process of divorce between poor and rich, defined in terms of a State's level of economic development and not in terms of the existence or lack of natural resources. That argument in fact justified the approach adopted by the International Law Commission.
6. The text of article 36 was inspired by the world community's universally supported efforts to abolish colonial domination and create favourable conditions for the development of each nation on the basis of the principles of equality and sovereign independence. His delegation therefore approved of the general rule in article 36 that no State debt of the predecessor State should pass to the newly independent State.
7. The idea of granting a more favourable régime to a newly independent State had met with two kinds of objections. The first was based on the alleged need for balanced compromise in the text itself; he emphasized that his delegation had not been convinced of the need for such a balance. It was not clear which debts assumed by the predecessor State—a colonial Power—should pass to the newly independent State without its agreement and who as a creditor would accept such a passage. The passage of State property and State archives was assumed by the successor State, but in that case no third party would be affected.
8. The second category of objections was based on the argument that, by providing for different régimes, the Conference would be exceeding the process of codifying international law and that the International Law Commission's aim was the progressive development of international law. His delegation found it hard to understand why that should be considered as a defect.
9. The law of decolonization in respect of the succession of States from the point of view of a predecessor State was a contractual law reflecting the experience of former colonial Powers and not that of the majority of States represented at the Conference. His delegation agreed that there was no rule of *jus cogens* in that matter, which was why the International Law Commission had treated the particular case as a distinct type of succession of States likely to occur only in future colonial situations. The process of decolonization in itself was independent of the legal régime governing the passage of State debts to the newly independent State. Accession to independence by a State could not be subject to the acceptance by a colonial Power of the conventional régime of succession of States which the Conference was trying to establish.
10. His delegation did not see the connection between the viability of the convention and the process of decolonization. Since agreement on the passing of State debts would be the exception to the rule, but not necessarily the exception to the actual process of succession of States, it had difficulty in supporting any amendment emphasizing the exception and transforming it into a rule. Accordingly it supported the article as proposed by the International Law Commission.
11. Mr. GÜNEY (Turkey) said that his delegation was prepared to accept the rule providing a special régime for newly independent States in respect of the transmissibility of State debts. Article 36 as it stood was well-balanced and did not go beyond the idea of offering reasonable protection to newly independent States.
12. The International Law Commission had decided to adopt as a basic rule the non-transmissibility of debts from the predecessor State to the newly independent successor State but did not rule out the possibility of a

valid, freely concluded agreement between such States in the matter of State debts, on condition that there was a link between the debt connected with the activity of the predecessor State in the territory to which the succession of States related, and the property, rights and interests which passed to the newly independent State. Those two conditions had the advantage of encouraging the conclusion of agreements.

13. Paragraph 2 of article 36 met the concern of newly independent States. His delegation endorsed the point made in paragraph (39) of the commentary that international law could not be codified or progressively developed in isolation from the contemporary economic and political context.

14. His delegation had no difficulty in accepting article 36 as drafted by the International Law Commission.

15. Mr. NDIAYE (Senegal) said that his delegation was in favour of the text of article 36 as it stood. It did not require the predecessor State to be excessively generous to the successor State. Admittedly, the article stated, first, the principle of the non-transmissibility of debts from the predecessor to the newly independent successor State, but then it proceeded to provide for an exception to the principle if there was a link between the debts connected with the activity of the predecessor State in the territory in question and the property, rights and interests which passed to the successor State. Surely it was hardly conceivable that any other debts than those referred to could be transmitted. The predecessor State in such cases would inevitably be a colonial Power, and hence it was proper to require a link of the kind mentioned in the article. Without the safeguard clause stipulating such a link, the economic viability of the newly independent successor State would be gravely prejudiced.

16. The Italian delegation's amendment (A/CONF.117/C.1/L.52) was designed to give priority treatment to debts relating to public works; in the opinion of the Senegalese delegation the priority was not justified. Public works were not always easy to define or of benefit to the successor State. In any case, the provision concerning a link between State debts and activity in a given territory was applicable equally to debts arising out of the execution of public works. The International Law Commission's draft would apply to all State debts where such a link existed.

17. It had been argued that certain expressions used in paragraph 2 were not of a strictly juridical nature. In reply to that argument he said that the expressions in question were perfectly familiar to practitioners and undoubtedly carried a precise objective meaning.

18. Mr. ECONOMIDES (Greece) thanked those who had supported his delegation's amendment (A/CONF.117/C.1/L.51). He wished to make it quite clear that his delegation accepted the idea of a special régime for a newly independent State in the case of a succession of States, particularly where State debts were concerned; and also that it believed that permanent sovereignty over natural resources was part of the international legal order.

19. With respect to the objections raised to his delegation's amendment, some speakers had mentioned that it was similar to the Netherlands amendment to

paragraph 4 of article 14 (A/CONF.117/C.1/L.18) and open to the same objections as had been mentioned in the earlier discussion.

20. He pointed out that there were considerable differences between the two amendments, as several other speakers, including the representative of Tunisia (14th meeting), had noted. The Greek amendment was in fact identical to the first part of paragraph 2 of the International Law Commission's text, except that it replaced the words "shall not infringe the principle" by "shall pay regard to the principle", and added the words "in accordance with international law" at the end of the sentence. His delegation considered the latter words to be essential, for they would constitute a common denominator for the acceptance of the principle in question.

21. It considered the argument that international law should conform to the principle of permanent sovereignty over natural resources to be somewhat reminiscent of certain contentious arguments advanced before the Second World War with regard to the so-called "imperative of vital space".

22. There was no basis for the argument that the Greek amendment to article 36 would weaken the principle of *jus cogens* set forth therein. A rule of *jus cogens* could not be created using a set formula. Even an international convention could not engender such a rule; it always had to be derived from international custom recognized by the international community as a whole.

23. In reply to the arguments against his delegation's proposal that the final phrase of paragraph 2 of the International Law Commission's text should be omitted, he said that article 36 already provided sufficient, even excessive, protection for newly independent States and the phrase in question was not therefore indispensable. In that respect, he agreed with the comments of the representatives of Canada and Switzerland at the previous meeting.

24. Mr. MOCHI ONORY DI SALUZZO (Italy) said that his delegation's amendment to article 36 was intended to make an improvement and provide a compromise solution to some of the problems arising from the article for the many delegations which, like his own, felt that the provisions of article 36 as drafted by the International Law Commission could represent a development of international law but were certainly not a codification of existing international law. However, in view of the opposition which the amendment had met in the Committee, he had decided to withdraw it. In doing so, he wished to make it clear that his delegation's concern to improve the article should on no account be construed, even *a contrario*, as acceptance of the text thereof.

25. The CHAIRMAN noted that the Italian delegation's amendment had been withdrawn and invited the Committee to vote on the Greek delegation's amendment.

*The amendment was rejected by 33 votes to 21, with 3 abstentions.*

*Article 36 as proposed by the International Law Commission was adopted by 39 votes to 21 and referred to the Drafting Committee.*

26. Mr. PIRIS (France), speaking in explanation of vote, said that his delegation had voted in favour of the Greek amendment and against the International Law Commission's draft for reasons explained in the course of the discussion on article 36 (36th meeting). He noted that, once again, no account had been taken of the views of a large minority of the States represented at the Conference and that, in spite of numerous appeals to the contrary, the Committee had continued, by majority vote, to adopt the International Law Commission's draft, article by article, without any attempt at negotiation or compromise.

27. Replying to the delegation which had cited paragraphs (32) to (37) of the commentary to article 36, he said that those paragraphs reflected the views of only one party to a succession of States and not those of the other.

28. Mr. MONNIER (Switzerland) said that, by listing numerous conditions of very wide scope which agreements between the predecessor State and the successor State had to satisfy in respect of the passing of debts, article 36 gave rise to legal difficulties. Those conditions, whose effect was practically to paralyse the contractual freedom of the States concerned, were not likely to encourage States to settle the matter by agreement, a result contrary to what he gathered was the International Law Commission's intention that they should be encouraged to do so.

29. Moreover, he could not agree to the principle of the permanent sovereignty of every people over its wealth and natural resources being presented or interpreted as a standard of the law of nations. Article 36 thus gave rise to fundamental objections of the same nature as articles 14, 26, 28 and 29, and he had therefore voted against it although, in principle, he considered a special régime for newly independent States in respect of State debts to be justified.

30. Mr. BROWN (Australia) said that his delegation had voted against article 36 because the expression "fundamental economic equilibria" in paragraph 2 was so uncertain of meaning that it made possible applications unacceptably wide.

31. Mr. KIRSCH (Canada) said that, although he agreed that special treatment in respect of the passing of State debts should be given to newly independent States, he had voted against article 36.

32. For reasons stated in connection with article 14 as well as in the discussion on article 36, the inclusion of a binding rule subordinating an agreement between States to recognition of the principle of sovereignty over wealth and natural resources was not acceptable to his delegation. Furthermore, the legal scope of the article and the precise meaning of several of the expressions employed remained unclear, and numerous requests for an explanation of their import had remained unanswered. Nor had he received a reply to the question which he had asked at the previous meeting, namely, what in article 36 could encourage a predecessor State succeeded by a newly independent State to become a party to the proposed convention rather than to proceed on the basis of general international law. In the absence of an answer to that question, he had been

obliged to conclude that the alleged balance in article 36 was purely theoretical.

33. Mr. ENAYAT (Islamic Republic of Iran) said that his delegation had supported without any reservations the article proposed by the International Law Commission, which was designed to harmonize international law with modern political reality.

34. After expressing full agreement with the four conditions which the article stipulated for the validity of the devolution agreement between the newly independent State and the former administering Power in the matter of the passing of State debts, he reiterated the statement he had made in connection with article 14 (16th meeting) to the effect that in his delegation's opinion the expression "newly independent State" meant not only a State that had been legally and institutionally dependent on a colonial Power, but also a newly independent State that had been controlled by a foreign Power and had acquired its sovereignty after the period of dependence.

35. Replying to a question by the representative of Viet Nam, he confirmed that, in his delegation's view, the expression should in future be applied to countries other than those emerging from colonial domination in the traditional sense.

36. Mr. MURAKAMI (Japan) said that he had voted against article 36 because he strongly objected to its paragraph 2.

37. With regard to paragraph 1, he wished to put on record his delegation's understanding that the phrase beginning with the words "in view of the link" did not in any way affect the validity of an agreement concluded between a newly independent State and the predecessor State for which provision was made in that same paragraph.

38. Mr. OLWAEUS (Sweden) said that his delegation had regretfully voted against article 36 for the same reasons, and in the same spirit, as it had opposed articles 14 (16th meeting) and 26 (29th meeting). While having no objection to the general principles underlying those articles, it felt that the legal effects of including such imprecise provisions as those of article 36, paragraph 2, in a multilateral treaty on the succession of States were very doubtful to say the least, especially if they were to be considered peremptory rules of international law.

39. For the same reason, his delegation had voted in favour of the Greek amendment as being a useful compromise which would ultimately have been in the interests of all.

40. Mr. LEITE (Portugal) said that he had voted against article 36 as drafted by the International Law Commission, first, because it reflected an assumption that, in the process of succession, the predecessor State always took advantage of its superior economic situation to the detriment of the interests of the newly independent State, an assumption which Portugal knew from experience to be untrue and could not accept. Second, as his own delegation and others had explained in connection with articles 14, paragraph 4, and 26, paragraph 4, the provisions of article 36 were not in keeping with general practice and with many principles

of international law. He expressed the hope that the Conference would pay attention to the warnings about the value of the future convention voiced by the representatives of Canada and the Netherlands.

41. Mr. ECONOMIDES (Greece) said that he had regretfully voted against article 36 for the same reasons as he had opposed article 14 (16th meeting). Moreover, the new principles set forth in paragraph 2 of article 36, although designed to offer additional guarantees to newly independent States, were likely instead to cause serious confusion.

42. Mr. OESTERHELT (Federal Republic of Germany) said that, for reasons explained earlier in the debate (36th meeting), he had voted in favour of the Greek amendment and, after that amendment had been defeated, against the article as a whole. He regretted that no answer had been forthcoming to his questions concerning the juridical consequences flowing from the formulations appearing in both paragraphs of the article.

43. Mr. LAMAMRA (Algeria) said that he had voted in favour of the International Law Commission's draft and, with great regret, against the Greek amendment. For reasons already stated (36th meeting), his delegation attached particular importance to the reference to the fundamental economic equilibria of the newly independent State. Referring once more to paragraphs (32) to (37) of the commentary to article 36, he welcomed the attention given by the International Law Commission to his country's experience in the matter of succession to State debts.

44. Mr. SKIBSTED (Denmark) said that he had voted against article 36 for the same reasons for which he had opposed articles 14 and 26, and had voted in favour of the Greek amendment as being a useful compromise text.

45. Mr. BEDJAOU (Expert Consultant) said that members of the Committee were, of course, entitled to be dissatisfied or disappointed with the explanations he had supplied. For his part, he had endeavoured to answer to the best of his ability every point concerning the work of the International Law Commission on the subject under discussion.

#### *Article 37 (Uniting of States)*

46. Mr. MIKULKA (Czechoslovakia) inquired why the International Law Commission had omitted from article 37 a paragraph corresponding to paragraph 2 of the similar articles 15 and 27.

47. Mr. BEDJAOU (Expert Consultant) said that the International Law Commission had considered the legal position with regard to State debts to be sufficiently different from that with regard to State property and State archives to warrant the omission of such a paragraph. He added in that connection that articles 15 and 27 had been referred to the Drafting Committee with a request for a recommendation on the desirability of retaining or deleting paragraph 2 of those articles (see documents A/CONF.117/DC.4 and DC.11).

48. The CHAIRMAN said that, unless he heard any objections, he would take it that the Committee wished to adopt article 37 without a vote.

*Article 37 was adopted without a vote and referred to the Drafting Committee.*

#### *Article 38 (Separation of part or parts of the territory of a State)*

49. Mr. RASUL (Pakistan) said that his delegation had decided to withdraw its proposed amendment to article 38 (A/CONF.117/C.1/L.14) with a view to expediting the Committee's work. However, he would be grateful if the Expert Consultant would explain the reasons behind the use in paragraph 1 of article 38 of criteria for determining "equitable proportion", which differed from those referred to in paragraph 2 of article 35.

50. His delegation would also wish to make a statement after a decision had been taken on the article.

51. Mr. BEDJAOU (Expert Consultant), in reply to the delegation of Pakistan, referred to his earlier explanations regarding the International Law Commission's view of the distinction between cases of succession arising from the transfer of a part of a territory and those involving a separation of territory.

52. Mrs. THAKORE (India) said that her delegation fully subscribed to article 38 as drafted. The fundamental rule laid down in paragraph 1 reflected State practice, as noted in the International Law Commission's commentary to article 38, particularly paragraphs (24) to (27) thereof, and thus had naturally not given rise to criticism in the Sixth Committee or in the written comments provided by governments. The only concern which had been expressed was that the reference to agreement between the predecessor State and the successor State might give the impression that the article authorized a derogation from the principle of equitable apportionment of debts.

53. Mr. ECONOMIDES (Greece) said that it was regrettable that articles 38 and 39, unlike articles 35 and 36, made no reference to any form of objective criteria for determining "equitable proportion". That omission left the notion of equity quite formless and indefinite and, in his delegation's view, vitiated the provisions in question.

54. Mr. NATHAN (Israel) said that he also found the expression "equitable proportion" excessively vague and likely to lead to disputes over its interpretation. He saw no compelling reason why article 35 should give some indication of criteria to be considered in determining that proportion while none whatsoever was mentioned in article 38.

55. The essential criterion should be the extent of the benefit derived by the successor State. From that proposition two conclusions followed: localized debts, those specifically attached to the territory concerned, should pass to the successor State in their entirety, whereas the public general debt of the predecessor State should be apportioned in conformity with criteria which accorded due weight to the extent of State property passing to the successor State.

56. Mr. PIRIS (France) noted that his delegation had already commented fully on the issues arising from article 38. He concurred with other speakers in finding the difference in wording between article 38, para-

graph 1 and article 35, paragraph 2, inexplicable. His delegation would prefer the final passage of paragraph 1 of article 38 to read "taking into account, *inter alia*, the property, rights and interests which pass to the successor State in relation to that State debt", thus making it identical to the passage at the end of paragraph 2 of article 35.

57. Mr. HAWAS (Egypt) said that the Committee of the Whole had discussed at considerable length the several differences between cases involving transfer of territory, dealt with in article 35, and those arising from a separation of territory, which were the subject matter of article 38. His delegation endorsed article 38 as it stood, believing that the criteria established by that article were adequate and more appropriate in that context than those used in article 35.

58. Mr. JOMARD (Iraq) supported the suggestion made by the representative of France that the words "taking into account all relevant circumstances" should be deleted and replaced by the wording used at the end of paragraph 2 of article 35.

59. Mr. MONNIER (Switzerland) said that his delegation's serious doubts regarding the subtle distinction apparently drawn between situations involving a transfer and those arising from a separation of territory were reinforced by the language used in paragraph 1 of article 38. In seeking to find a formulation different from that used in paragraph 1 of article 35, the International Law Commission had encountered difficulties both of drafting and of substance. By its very vague and general nature, the phrase "taking into account all relevant circumstances" was likely to create more problems than it resolved.

60. Mr. BEDJAOUI (Expert Consultant), referring to the criticisms of article 38 voiced by the representative of Pakistan, said that the article did not in any way exclude the possibility of using the same approach for the purpose of determining "equitable proportion" as in article 35; nowhere was it stated that the factors referred to in paragraph 2 of article 35 should not be taken into account.

61. In the case of a transfer of territory, the situation was clear-cut and was governed by agreement between the States concerned, whereas cases of separations of territory constituted a much broader and more disparate category. That was why article 38 had been drafted in flexible terms so as to cover all possible circumstances and factors, among which the property, rights and interests passing to the successor State might readily be included.

62. Mr. PIRIS (France) thanked the Expert Consultant for his explanation but regretted that he did not find it satisfactory. His delegation continued to believe that the words "all relevant circumstances" in a binding legal text were far too vague.

63. He formally proposed that, in the event of a vote being taken on article 38, a vote should first be taken on the following amendment: the deletion of the words "all relevant circumstances" and the substitution for those words of the phrase "*inter alia*, the property rights and interests which pass to the successor State in relation to that State debt".

64. Mr. JOMARD (Iraq) seconded that proposal.

65. The CHAIRMAN invited the Committee to vote on the amendment to article 38 proposed orally by France and seconded by Iraq.

*The amendment was adopted by 29 votes to 9, with 26 abstentions.*

66. Mr. HAWAS (Egypt) said that he had voted twice in error, both for and against, because he had at first been under the impression that the voting related to article 38 itself. He had intended to vote against the French delegation's amendment.

67. Mr. NDIAYE (Senegal), speaking in explanation of vote, said that he had voted against the French amendment. Neither the amendment nor the text of article 38 itself was satisfactory. It would have been better to retain the words "all relevant circumstances" and then to append the French amendment. The combined form would then have covered all possible factors.

68. The CHAIRMAN invited the Committee to vote on article 38 as amended.

*Article 38, as amended, was adopted by 60 votes to none, with 2 abstentions, and referred to the Drafting Committee.*

69. The CHAIRMAN said that a number of delegations wished to explain their votes.

70. Mr. RASUL (Pakistan) said that his delegation had originally proposed in its amendment that the words "in an equitable proportion" should be deleted, for the reasons it had explained in connection with its amendment to article 35 (35th meeting). The second part of his delegation's amendment (the phrase beginning "*inter alia*"), which had just been adopted, was necessary from the point of view of drafting. His delegation had voted for the article as amended, since the principles it embodied were acceptable, but it continued to oppose the words "in an equitable proportion" as they would impede the settlement of disputes between States involved in a succession.

71. Mr. SUCHARITKUL (Thailand) and Mr. BEN SOLTANE (Tunisia) said that their delegations did not consider that the French delegation's amendment altered the substance of the article submitted by the International Law Commission; they had therefore abstained in the voting on the amendment, but had voted in favour of the article as amended.

72. Mr. MURAKAMI (Japan) said that the fact that his delegation had voted in favour of article 38, as amended, should not be taken as implying approval of the criterion of "equitable proportion" used in paragraph 1, which was too vague to permit of objective interpretation.

73. Mr. ECONOMIDES (Greece) said that his delegation had voted for the French delegation's amendment and for the article as amended. The reference to "equitable proportion" was most appropriate in the context of article 38, while the expression "*inter alia*" meant that other criteria, such as size of population, extent of territory and natural resources, could also be taken into account.

74. Mr. HAWAS (Egypt) said that his delegation had voted against the French amendment but in favour of the article as amended. It felt, however, that the original wording would have been preferable.

75. Mr. OESTERHELT (Federal Republic of Germany) said that his delegation had voted for the French delegation's amendment and for the article, as amended, although it did not see any compelling reason for employing the same formula in article 38 as in article 35. From the points of view of both substance and drafting, such a solution seemed questionable. His delegation also felt that article 38, like other articles in Part IV, was closely related to the general provisions in Part I, which had not yet been discussed.

76. His delegation's position would ultimately be governed by the way in which other articles in Part IV, particularly those containing provisions protecting the interests of third States, would be dealt with. Subject to that proviso, his delegation had voted in favour of the text as amended.

77. Mr. TSYBOUKOV (Union of Soviet Socialist Republics) said that his delegation had voted against the French delegation's amendment because it considered that in paragraph 1 of article 38 allowance should be made not only for the factors referred to in that amendment but also for others, such as size of population, extent of territory and natural resources. All those factors would have been adequately covered by the wording proposed by the International Law Commission.

78. Mr. LAMAMRA (Algeria) said that his delegation had felt itself obliged to oppose the French amendment because it was not convinced that it was appropriate to transplant the wording used in article 35 to the different context of article 38. However, it had voted in favour of the article as a whole on the grounds that the wording adopted would not imply that "all relevant circumstances" would not be taken into account.

#### Article 39 (Dissolution of a State)

79. Mr. RASUL (Pakistan) said that, in a spirit of compromise, his delegation was prepared to withdraw its amendment to article 39 (A/CONF.117/C.1/L.15). He proposed, however, that the wording just adopted in respect of article 38 should be incorporated into article 39, which would thus read: "taking into account, *inter alia*, the property, rights and interests which pass to the successor State in relation to that State debt."

80. Mr. JOMARD (Iraq) said that, while the circumstances envisaged in article 38 were well defined, those attending the dissolution of a State, as in article 39, were more complex and would require a less restrictive wording. For that reason, his delegation favoured the text of the article as it stood.

81. Mr. PIRIS (France) and Mr. GÜNEY (Turkey) said that their delegations supported the amendment proposed orally by Pakistan.

82. Mr. RASUL (Pakistan) said that, while grateful for the support his oral amendment had received, he would not press for a vote on it since the representative of Iraq had indicated that there might be a substantive difference between the situations covered by articles 38 and 39, respectively.

83. Mr. BEDJAoui (Expert Consultant) said that the oral amendment proposed by Pakistan might, if approved, have the effect of eliminating the important principle of equity in article 39. In the case of the dissolution of a State the predecessor State disappeared, an event which gave rise to a host of problems quite distinct from those which arose on the separation of part or parts of a State's territory. In his opinion it would be unwise to try to establish too close a formal correspondence between articles 38 and 39.

84. Mr. ECONOMIDES (Greece) said that the Expert Consultant had indicated that articles 38 and 39 dealt with different situations. The Greek delegation wished to point out, however, that the International Law Commission had drafted both articles in virtually identical terms. In view of the fact that the Committee of the Whole had adopted article 38 as orally amended by France, the most suitable course might be to incorporate the relevant wording in article 39 but to ask the Drafting Committee to consider whether it was in fact appropriate to use that wording.

85. Mrs. OLIVEROS (Argentina) said that it would not be correct to ask the Drafting Committee to incorporate certain changes in a draft article when the Committee of the Whole had not itself taken a decision on those changes.

86. Mr. GÜNEY (Turkey) and Mr. COUTINHO (Brazil) said that they agreed with the representative of Argentina.

87. Mr. TEPAVITCHAROV (Bulgaria) said that the proposed amendment involved more than a mere drafting point and that the Committee of the Whole should take a decision on article 39 as proposed by the International Law Commission.

88. Mr. MUCHUI (Kenya) said that he agreed with the representative of Bulgaria. He was not convinced by the argument that the French delegation's oral amendment adopted with respect to article 38 should automatically be incorporated in article 39. The situation envisaged in the latter article was, as had been pointed out, more complex than that covered by article 38.

89. Mr. OESTERHELT (Federal Republic of Germany) said that in the case of the dissolution of a State, all property, and also debts, must be apportioned equitably, and that it would therefore be appropriate to incorporate in article 39 the amendment already adopted in the case of articles 35 and 38.

90. Mr. MONNIER (Switzerland), agreeing with the previous speaker, said that the important element in article 39 was not the disappearance of the State in a case of dissolution but the fact that State debts, like property rights and interests, passed to the successor States in equitable proportions. In such a context the phrase "all relevant circumstances" was much too vague to be of use.

91. Although the representative of Pakistan had said that he would not press for a vote on his oral amendment, the Swiss delegation considered that the issue was an important one and that the Committee should take a decision on it.

92. Mr. NDIAYE (Senegal) said that he had abstained in the voting on the oral amendment to article 38, but that he would not object if similar wording were included in article 39.

93. The CHAIRMAN invited the Committee to vote on the oral amendment to the effect that the words "all relevant circumstances" should be replaced by the phrase "*inter alia*, the property, rights and interests which pass to the successor State in relation to that State debt".

*The amendment was adopted by 25 votes to 17, with 20 abstentions.*

94. The CHAIRMAN invited the Committee to vote on article 39 as a whole, as orally amended.

*Article 39, as orally amended, was adopted by 62 votes to none, with 2 abstentions, and referred to the Drafting Committee.*

95. The CHAIRMAN said that a number of delegations wished to explain their votes.

96. Mr. HAWAS (Egypt) said that his delegation had voted against the amendment for the same reasons that had led it to vote against the French amendment to article 38. However, although it preferred the original text submitted by the International Law Commission, it had voted in favour of article 39 as a whole as amended.

97. Mr. A. BIN DAAR (United Arab Emirates) said that his delegation had abstained in the voting on the amendment, which it regarded as unnecessary. However, it had voted in favour of article 39, as amended, believing that the amendment would not affect the substance of the article as drafted by the International Law Commission.

98. Mr. MURAKAMI (Japan) said that his delegation had the same doubts about the phrase "in equitable proportion" as it had expressed with respect to the analogous phrase in article 38. It had nevertheless voted for the article as orally amended.

99. Mr. LEITE (Portugal) said that his delegation had voted in favour of the oral amendment and also for the article as amended. He welcomed the amendment because he believed it was not appropriate to use such vague terms as "equitable proportion" and "all relevant circumstances" without qualification.

100. Mr. SUCHARITKUL (Thailand) said that his delegation had abstained in the voting on the oral amendment and had voted for article 39 as amended for the reasons which had guided its voting in connection with article 38.

101. Mr. ECONOMIDES (Greece) said that he had voted for both the oral amendment and for article 39 as amended. The acceptance of the amendment would ensure that all pertinent factors would be covered in each particular case.

102. Mr. SUCHARIPA (Austria) said that his delegation had some difficulty with the wording of article 39 as adopted; the terms used were so vague that, if applied to specific cases, they might give rise to disputes between States. The oral amendment improved the text to some extent but was still insufficiently precise. However, his delegation had voted in favour of article 39 as amended since it did not seem practical to introduce major changes at the present stage in the Committee's work.

103. Mr. OESTERHELT (Federal Republic of Germany) said that his delegation had voted for the oral amendment and for article 39 as amended for the reasons stated in connection with its vote on article 38.

104. Mr. LAMAMRA (Algeria) said that he had voted against the oral amendment because he considered it undesirable to place emphasis on the passing of property, rights and interests in the context of article 39. He was also not convinced that it was advisable automatically to re-use a certain wording simply because it had been adopted in a different article. However, his delegation had been able to vote in favour of article 39 as amended because it understood that to stress one factor did not mean the exclusion of others.

105. Mr. MIKULKA (Czechoslovakia) said that his delegation had voted against the oral amendment because it overemphasized the property, rights and interests which passed as criteria for the apportionment of the State debt. The dissolution of a State was a very complex case of succession and there were other equally important factors to be considered. His delegation had accordingly abstained in the voting on article 39 as amended, feeling that although the initial text might have been too vague, the amended form, although more precise, was incorrect.

106. Mr. ZSCHIEDRICH (German Democratic Republic) said that he had voted against the oral amendment because it gave undue prominence to one specific factor for determining the apportionment of the State debt. However, since a specific reference to the passing of property, rights and interests did not exclude other relevant circumstances, he had been able to vote for article 39 in its amended form.

*New article 24 bis (Preservation and safety of State archives) (continued)\**

107. Mr. A. BIN DAAR (United Arab Emirates) announced that his delegation would introduce a revised version of its amendment involving the addition of a new article 24 *bis*.<sup>1</sup>

*The meeting rose at 6 p.m.*

\* Resumed from the 33rd meeting.

<sup>1</sup> Subsequently issued under the symbol A/CONF.117/C.1/L.50/Rev.1.