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38th meeting

Tuesday, 29 March 1983, at 10.40 a.m.

Chairman: Mr. ŠAHOVIĆ (Yugoslavia)

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

[Agenda item 11]

Article 34 (Effects of the passing of State debts with regard to creditors) (*continued*)*

1. The CHAIRMAN invited the Expert Consultant to reply to the questions which had been asked during the previous discussion of article 34.

2. Mr. BEDJAOUI (Expert Consultant) noted that certain delegations had indicated some reluctance to approve article 34, paragraph 2(*a*).

3. He wished to point out, first of all, that it might be the case that neither the predecessor nor the successor State nor the third creditor State were parties to the future convention. In that case, if the third State did not give its consent to any agreement reached between the predecessor State and the successor State in respect of State debts, the principle of *res inter alios acta* would apply; the rights of the creditor third State would not be affected and it would not be bound by the agreement, in conformity with article 34 of the 1969 Vienna Convention on the Law of Treaties,[1] although articles 35 to 38 of that Convention provided for various cases in which treaties did create rights and obligations for third States. Furthermore, general international law recognized that objective situations might be created by an agreement between sovereign States, for example, a treaty relating to waterways. He wondered if the change in the international personality of a State resulting from a succession of States was not such an objective situation.

4. In article 34, paragraph 2(*a*), the International Law Commission had been concerned, not with the agreement between the predecessor State and the successor State, but with any consequences of it which were in conformity with the rules of Part IV of the convention. He was aware that the question as to whether that resulted in the convention, rather than the agreement, being applicable to the third State might give rise to some difficulties. However, the reasoning of the International Law Commission had been that the primary rule of the draft convention was that an agreement should be concluded between the sovereign predecessor and successor States, no requirements being laid down for such agreements, except in the case of newly independent States. If, in making such an agreement, however, the States concerned moderated their respective claims in conformity with the substantive rules laid down by the convention, which would constitute the "common law", as it were, for succession, then in all equity, that should impose an obligation on the creditor third State.

5. From the practical viewpoint, in the triangular State debt relationship, the creditor third party had to be protected, but the International Law Commission regarded it as going too far to allow the third State to exercise a form of veto in relation to the succession; that expression had been used during the discussion of the point in the Commission. It had been considered reasonable to limit that veto so that, under the circumstances envisaged in paragraph 2(*a*), the third State should be required to give its consent to a change of debtor. The object was not, of course, to wipe out the debt but rather to ensure that it survived in the succession of States.

6. If an agreement was concluded between the predecessor and successor States and a provision such as that in paragraph 2(*a*) did not exist, the debt would remain the responsibility of the predecessor State, if the creditor third State did not agree to its passing to the successor State. That would not be equitable to the predecessor State which had transferred part of its territory, for the debt concerned might very well be associated with State property which was passing to the successor State. In the case of a newly independent State, the successor State would be in an advantageous position because it would have an agreement which respected the rules set out in the draft convention and the creditor third State would still hold the predecessor State responsible for the debts.

7. Mr. MURAKAMI (Japan) said that Part IV of the draft convention was of a special nature in that it involved a triangular relationship, whereas Parts II and III dealt mainly with the bilateral relationship between predecessor and successor States. Article 34 was the key article of Part IV, since it established the basic structure of that triangular relationship.

8. His delegation supported paragraph 1 of the draft article, but proposed the deletion of subparagraph (*a*) of paragraph 2: the exact meaning of that subparagraph and its relationship with paragraph 1 were not clear, despite the explanation given by the Expert Consultant. The subparagraph would appear to provide that an agreement between two States could bind a third party without the latter's consent, if the consequences of the agreement in question were in accordance with the provisions of Part IV. That was clearly not in conformity with the principles of general international law concerning agreements and their effects on third parties embodied, for example, in articles 34 to 38 of the 1969 Vienna Convention on the Law of Treaties.

9. Subparagraph (*a*) of paragraph 2 did not, of course, codify an existing rule of general international law. It laid down a new rule of a purely contractual nature;

* Resumed from the 35th meeting.

[1] *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.

and, as between the parties to the future convention, the consent of the creditor State was secured when that State became a party to the convention and thus expressed its consent to be bound by the subparagraph.

10. The draft convention, however, also aimed at contributing to the progressive development of international law. For that purpose, it needed to be rational, realistic and flexible, and to pay due regard to the importance of the agreement of the parties involved, as well as to such principles as good faith, sovereign equality of States and self-determination of peoples. It was equally important to bear in mind the need to maintain legal order in the international community.

11. In matters of State succession, the consent of the parties concerned was of primary importance. In Part IV, that meant that the consent of the creditors must be ensured. His delegation considered that the draft convention should conform with the existing principles of general international law as far as possible, rather than introduce a new rule such as that proposed in article 34.

12. Another problem to be solved was that of the relationship between paragraph 2 of article 34 and article 12, which provided that a succession of States should not as such affect property, rights and interests owned by a third State. That provision apparently covered a debt claim by a third State towards the predecessor State.

13. His delegation had welcomed article 12 as a declaratory provision, and it now asked the Expert Consultant for his view as to whether article 34, paragraph 2, had some effect on article 12, and if so, what effect.

14. Mr. ROSENSTOCK (United States of America) said that he was convinced that something had gone wrong with the drafting of subparagraph (*a*), although the intention of its authors might well have been commendable.

15. If paragraph 1 did not govern paragraph 2, then the two were simply inconsistent. It was of no use imagining theoretical constructs. The case of dissolution of a State was covered by article 39 but the rule therein could not apply in other cases. The creditor third State had the right to retain its entitlement to repayment unaffected, in conformity with the rule both of law and of common sense. The predecessor and successor States could conclude an agreement between themselves. However, as far as the third State was concerned, the responsibility for repayment remained with the predecessor State. In effect, the creditor State did have a veto right. The best solution, therefore, would be to delete paragraph 2. A difficulty would arise only in the event of failure to repay the debt. In that case, the creditor State would fall back on the principle of *res inter alios acta*.

16. If there was nevertheless a strong desire to include in the convention some provision on the question, then a formulation might be adopted to the effect that nothing prevented the predecessor State and sovereign States from agreeing as between themselves on the allocation of State debts.

17. Mr. BEDJAOUI (Expert Consultant) said that he saw no need to refer to article 12. The International Law Commission had intended article 34 as a safeguard clause to protect the rights of creditors. However, some members of the Commission had wanted paragraph 1 to be slightly modified by means of paragraph 2. The Committee of the Whole could decide, if it so wished, to delete the whole of paragraph 2, without harming the article. The International Law Commission had formulated subparagraph (*a*) in order to preclude the right of veto.

18. Mr. KEROUAZ (Algeria) said that article 34 as proposed by the International Law Commission was in conformity with State practice; customary international law did not compel a successor State to assume the debts of the predecessor State.

19. In many cases, the rights and obligations of creditors were regulated by means of an agreement between the predecessor State and the successor State. Article 34 provided that such agreements could be invoked by the predecessor or the successor State only if they were in conformity with the provisions of Part IV of the draft convention or if they had been accepted by the third State or States. In subparagraph (*a*), the Commission had provided for the case of agreements between predecessor and successor States which might not be in accordance with the provisions of Part IV of the draft convention, and in particular with article 36, which was closely related to article 34, in its turn linked to articles 14 and 26.

20. His delegation considered those provisions to be the backbone of the draft convention. Agreements which were not in accordance with those provisions, whether or not they were governed by the general rules of international law, would automatically have illegal consequences. The International Law Commission, in its wisdom, had excluded the possibility of their being invoked against a third creditor State, unless one of the two conditions set out in subparagraphs (*a*) and (*b*) of paragraph 2 had been met. In subparagraph (*b*) the International Law Commission had foreseen the classic case of a third creditor State which had given its express or tacit consent to an agreement relating to the passing of State debts. If that consent had not been given, for any reason, it was only fair that the agreement between the predecessor State and the successor State should not be applicable to the third creditor State or States.

21. His delegation considered article 34 satisfactory as it stood, but, in a constructive spirit, it was prepared to agree to the proposal made during informal consultations to combine articles 32 and 34.

22. Mr. EDWARDS (United Kingdom) said that the Expert Consultant's explanation had not dispelled the concerns of a technical nature which his delegation had expressed at the 35th meeting. The two conditions for the invoking of agreements against a third State, as set out in subparagraphs (*a*) and (*b*) of paragraph 2, contradicted one another, quite apart from having unacceptable legal consequences.

23. His delegation would be happy to see paragraph 2 deleted altogether. Alternatively, subparagraph (*a*) could be deleted, or, as his delegation had suggested earlier, subparagraphs (*a*) and (*b*) could be linked with the word "and" instead of the word "or". He re-

iterated that his delegation's concerns were of a technical and legal, and not of a political, nature.

24. Mr. RASUL (Pakistan) said that the explanation given by the Expert Consultant had fully dispelled his delegation's concerns in respect of subparagraph (*a*). His delegation therefore withdrew its amendment submitted in document A/CONF.117/C.1/L.12.

25. Mr. KIRSCH (Canada) said that, although the Expert Consultant had given a thorough explanation of a number of problems arising from article 34, there were a number of points which, to his delegation, were still unclear. The first of those points related to the parties against which the provisions of subparagraph (*a*) of paragraph 2 could be invoked. In his delegation's view, under the rules of international law, they could not be invoked against a creditor third State. If, instead of States which were not parties to the future convention, the International Law Commission had had in mind States parties which were able to accept an agreement implicitly, that should, from a drafting standpoint, have been stated expressly in the draft article. From the point of view of substance, however, that caused serious difficulties for his delegation. Furthermore, as the representative of Hungary had pointed out (35th meeting), it was difficult to see how the provisions of subparagraph (*a*) could apply to an international organization or other subject of international law.

26. The second point concerned the precise implications of the requirement of conformity with the other provisions of Part IV. There were two possibilities. The first was the case where an agreement had already been concluded between a predecessor State and a successor State, as provided in the opening clauses of most of the articles in the draft convention. Except in the case of newly independent States, no restrictions were placed on such agreements. The only agreements that could therefore be envisaged by subparagraph (*a*) were those relating to newly independent States, which must by definition be in accordance with Part IV of the draft convention. It was therefore difficult to see what subparagraph (*a*) added to the draft convention. The second possibility was the case where an agreement had been concluded because of the existence of a third party, which would be subject to other rules. The possible implication was that such an agreement would be subject not only to the rules of international law, but also to certain other rules referred to elsewhere in the draft convention.

27. His delegation would welcome clarification on those points.

28. Mr. PÉREZ GIRALDA (Spain) said that paragraph 2 of article 34 provided quite clearly that an agreement on the passing of State debts concluded between a predecessor and a successor State could, under certain conditions, be invoked against a third State. That rule was unacceptable to his delegation, since it ran counter to the 1969 Vienna Convention on the Law of Treaties, to which Spain was a party.

29. Various solutions to the problems posed by paragraph 2 had been suggested. In his delegation's view the best solution would be the deletion of paragraph 2, since it was superfluous in view of the existence of the 1969 Vienna Convention. Unless some solution were found, his delegation would not be able to vote in favour of article 34.

30. Mr. SUCHARIPA (Austria) said that, while his delegation welcomed paragraph 1 of article 34 as a clear restatement of a rule of general international law, it was unable to accept the rule stated in paragraph 2, which ran counter to the 1969 Vienna Convention and was contrary to general international law.

31. Mr. MARCHAHA (Syrian Arab Republic) said that paragraph 2 of article 34 clearly posed legal problems for a number of delegations. One reason why the text was unclear was that it dealt only with cases where an agreement might have been concluded between a predecessor and a successor State and made no provision for cases where no such agreement had been concluded. The draft convention should either mention all contingencies specifically, or remain non-specific.

32. Paragraph 2(*b*) presented the additional difficulty that it was at variance with paragraph 2(*a*). His delegation believed that the problems created by article 34 could be overcome by deleting paragraph 2, and placing paragraph 1—which appeared to be broadly acceptable—as paragraph 2 of article 32.

33. In that context, his delegation could accept the Kenyan amendment to article 32 (A/CONF.117/C.1/L.55). Such a solution would have the merit of bringing the provisions relating to State debt into line with those dealing with State property (article 12) and State archives (article 23). His delegation proposed that solution in the hope that it could be accepted without a vote; it was not submitting a formal amendment.

34. Mr. OESTERHELT (Federal Republic of Germany) said that he had been surprised by the explanation given by the Expert Consultant. The intentions of the authors of paragraph 2(*a*) appeared to go even further than had at first seemed to be the case. The Expert Consultant had referred to objective régimes which could be invoked against a third State that had neither accepted the agreement between the predecessor and successor States that created that so-called "régime", nor acceded to the convention as a whole. That idea was totally unacceptable to his delegation within the framework of the draft convention. The rules laid down in articles 34, 35 and 36 of the 1969 Vienna Convention on the Law of Treaties were absolutely clear. Furthermore, both in 1968 and in 1969, when the 1969 Vienna Convention was being prepared, the idea of treaties "creating an objective legal régime" had been discussed but, for very good reasons, had not been incorporated into the Convention. It was an idea which could have very far-reaching consequences, could potentially affect the interests of all delegations, and should be limited to a very few and very clear cases such as territorial régimes.

35. His delegation therefore supported the proposals to delete paragraph 2(*a*), or to replace the word "or" at the end of the subparagraph by the word "and". If article 34 remained as drafted, it could be interpreted, for the legal reasons already expounded, only as a provision which had third party effects within the framework of the convention. His delegation's understanding would then be that unless the third State was a party to the convention, an agreement referred to in

paragraph 2(*a*) of article 34 would not be invoked by the predecessor or by the successor State against a third State, even if the consequences of that agreement were in accordance with the provisions of Part IV of the convention.

36. Mr. MONNIER (Switzerland) said that his delegation's objections to paragraph 2 of article 34 concerned the possibility that an agreement concluded between the predecessor State and the successor State could be invoked against a third State, when the latter had not accepted that agreement, provided that the consequences of the agreement were in accordance with the provisions of the convention.

37. Mention had been made of the fundamental principle of *res inter alios acta* which opposed such a situation, and the Expert Consultant had referred to articles of the 1969 Vienna Convention relating to cases where treaties could be binding on or give advantages to third States. Article 34 of the 1969 Vienna Convention in fact provided that a treaty did not create either obligations or rights for a third State without its consent, and article 35 required the express acceptance of the third State in writing. It had also been said that the possibility he had mentioned resulted from the fact that a succession of States created an objective situation.

38. However, an agreement between the predecessor and successor States that could be invoked against a third State without its consent was a very different matter. Such an agreement was a consequence of succession, but it covered a particular contractual relationship. An argument based on the existence of an objective situation could not be used to attempt to bind a third State which had not given its consent.

39. It had also been said that the substantive rules of the Convention would constitute the general law of succession, but such a comment was premature since the International Law Commission had indicated in its commentaries that the future convention might constitute accepted customary law if a number of conditions were fulfilled. A particularly important factor would be the interest which States showed in the future convention. In that connection, the status of signature of the 1978 Vienna Convention[2] indicated the need for a cautious approach.

40. The principle of *res inter alios acta* was such a basic principle that no exceptions to it were possible. Relevant in that regard was the decision of the Permanent Court of International Justice in the Case of the Free Zones of Upper Savoy and the District of Gex[3] that Switzerland, not being a party to the Treaty of Versailles, could not be bound by its provisions.

41. Furthermore, if the solution proposed by the International Law Commission was accepted, and an agreement between the predecessor and successor States could therefore be invoked against a third State without its consent, simply on the basis of its conformity with the provisions of the future convention, the Swiss delegation would have an objection of a different order. That objection related to the nature of the rules of the convention which such a solution implied. Those rules would in effect be mandatory and could not be waived by means of a convention.

42. For those reasons the Swiss delegation could not accept the proposed wording and found it difficult to accept the compromise solution involving replacement of the word "or" by the word "and". It therefore reintroduced the amendment calling for the deletion of paragraph 2(*a*) of article 34, originally proposed by Pakistan (A/CONF.117/C.1/L.12), but later withdrawn by its sponsor. His delegation could also support the proposal to delete the whole of paragraph 2.

43. Mr. NATHAN (Israel) said that paragraph 2(*a*) seemed to be in contradiction with the basic rule established in paragraph 1 that a succession of States did not as such affect the rights and obligations of creditors. Rules embodying the relevant norms of customary international law had been codified in articles 34 and 36 of the 1969 Vienna Convention. The contradiction arose because subparagraph (*a*) of paragraph 2 had been inserted disjunctively from subparagraph (*b*) which, as a consequence of the basic rule in paragraph 1 and in full conformity with it, referred to the case where the agreement between the predecessor and successor States had been accepted by a third party.

44. As well as being contradictory, subparagraph (*a*) also appeared to be largely meaningless in providing that the consequences of an agreement should be in accordance with the provisions of Part IV of the draft convention. An analysis of paragraph 2(*a*) in the light of the provisions of section 2, showed that as far as articles 35, 38 and 39 were concerned, the convention established the primacy of an agreement concluded between the predecessor and successor States. The rules established in those articles were residuary and provided for cases in which there was no agreement. In that context, articles 35, 38 and 39 did not impose any limitations on the freedom of contract of the predecessor and successor States. As far as article 37 was concerned, the question did not arise, since the predecessor State simply disappeared, leaving one unitary State.

45. The question could arise only where a newly independent State was involved under article 36. However, even within the context of that article it could hardly be envisaged, since paragraph 2 of article 36 was concerned with the invalidation of articles which infringed the principle of permanent sovereignty, whereas paragraph 1 laid down mandatory rules concerning the link between State debts and the activity of the predecessor State in the territory to which the succession related. Furthermore, paragraph 2(*a*) of article 34 was irrelevant or even meaningless in the context of that article, since the International Law Commission could not have intended that the rules in articles 34 and 36 should be violated.

46. It had been suggested that the whole of paragraph 2 of article 34 should be deleted. His delegation considered the proposal unsatisfactory because of the basic principle of *res inter alios acta* embodied in paragraph 1, of which the provisions in the first part of

[2] *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.

[3] *Free Zones of Upper Savoy and the District of Gex, Order of 19 August 1929, P.C.I.J., Series A*, No. 22, p. 17.

paragraph 2 and subparagraph (*b*) constituted a natural corollary. It could also be concluded that there was a possibility of novation.

47. From the point of view of drafting, the article showed a lack of symmetry which the Drafting Committee might see fit to remedy. Paragraph 1 referred to the rights and obligations of creditors, whereas paragraph 2, in referring to those same creditors, called them "a third State, an international organization or any other subject of international law". It might be more satisfactory to bring the two paragraphs into line by replacing the word "creditors", in paragraph 1, by the words "a third State, an international organization or any other subject of international law asserting a claim".

48. Mr. ABED (Tunisia) said that the explanations given by the Expert Consultant had clarified the intention of the International Law Commission and had enabled his delegation to understand the equitable solution which the Commission had proposed in order to protect the rights of creditors.

49. In the view of his delegation, paragraph 2(*a*) strengthened the basic principle enunciated in paragraph 1 which precluded any infringement of the rights and obligations of creditors. There was nothing to be afraid of in such a provision: the question of extinguishing debts or affecting the rights of creditors did not arise, since a clause so providing would be null and void and therefore could not be invoked. It would also be contrary to the spirit and letter of the future convention in that it would affect the rights of creditors. As the Expert Consultant had pointed out, the debt had to be maintained. From the legal standpoint the only interest which a third State might have in rejecting the agreement between the predecessor and successor States would be in order to place the burden of debt on the predecessor State, particularly when the consequences of that agreement were in accordance with the provisions of the convention.

50. For those reasons the Tunisian delegation fully supported article 34 as it stood and hoped that it would be in no way amended. It could, however, support the deletion of the whole of paragraph 2, as a compromise solution.

51. Mr. HAWAS (Egypt) said that, having listened to the explanations given by the Expert Consultant, his delegation considered article 34 to be of vital importance inasmuch as it embodied, in paragraph 1, the safeguard clause that a succession of States as such did not affect the rights and obligations of creditors. That paragraph established a fundamental rule for Part IV of the convention. Paragraph 1 could not properly be compared with articles 12 or 23 since the cases covered by those articles were of a subsidiary nature and arose only exceptionally.

52. The problems posed by paragraph 2 of article 34 could possibly be solved by means of a rewording. In his delegation's view, paragraph 2 was concerned solely with the consequences of an agreement between the predecessor and successor States and meant that only those consequences could be invoked. While his delegation believed that an agreement between two parties could not be invoked against a third, it also believed that an agreement could not be imposed on them. Moreover, it was the right of the predecessor and successor States to conclude any agreements provided that such agreements did not affect the rights of the creditor.

53. In the light of that interpretation his delegation could accept the substance of article 34, provided a distinction was made between an agreement to which a third party had had access or had accepted, and which therefore could be invoked, and an agreement between the predecessor and successor States to which the creditor was not a party and by whose consequences it was not affected.

54. Mr. MIKULKA (Czechoslovakia) said that his delegation had no difficulty in accepting paragraph 1 of article 34, which contained a useful safeguard clause. As for paragraph 2, its subparagraph (*b*) was fully in conformity with the rule laid down in article 34 of the 1969 Vienna Convention, according to which a treaty did not create either obligations or rights for a third State without its consent.

55. The problem which had arisen therefore concerned only paragraph 2(*a*). In his view, the provisions of that subparagraph could only purport to apply to a third State which became a party to the future convention. It would of course in no case apply to international organizations or other subjects of international law, which could not become parties to the convention.

56. The purpose of the draft convention was to codify existing customary international law, the rules of which were binding upon States even in the absence of agreement on their part. The draft convention contained, however, a number of new rules which would be binding only upon States which became parties to it. For other subjects of international law, the convention would represent *res inter alios acta*. Consequently, an agreement between predecessor and successor States, even if its terms were in conformity with the provisions of the draft convention, could not be invoked against a third party creditor who was not a party to the convention.

57. Nevertheless, his delegation did not favour the complete deletion of subparagraph (*a*). Its provisions were useful to cover the case of a creditor State which became a party to the future convention, provided, of course, the agreement between the predecessor and successor States was in conformity with the provisions thereof.

58. His delegation therefore proposed that paragraph 2 should be reworded as follows:

> "An agreement between the predecessor State and the successor State or, as the case may be, between successor States, concerning the respective part or parts of the State debts of the predecessor State that pass, cannot be invoked by the predecessor State or by the successor State or States, as the case may be:
>
> "(*a*) against a third State party to the present Convention asserting a claim, unless the consequences of that agreement are in accordance with the provisions of the present Part; or
>
> "(*b*) against a third State, an international organization or any subject of international law asserting a

claim, unless the agreement has been accepted by that third State, international organization or other subject of international law."

59. The Czechoslovak delegation did not favour the proposal to replace the word "or" by the word "and" at the end of paragraph 2(*a*), because that change would have the effect of rendering cumulative the conditions set forth in subparagraphs (*a*) and (*b*). The result would be to restrict unduly the sovereign right of States that were not parties to the convention to accept an agreement between a predecessor and a successor State which might be favourable to them, even if not in conformity with the provisions of the convention.

60. Mrs. THAKORE (India) said that her delegation found article 34 satisfactory. While restricting the topic of State debts, it served to safeguard the interests of creditors by means of a special provision. Those interests were thus adequately protected, as her delegation had pointed out in its statement during the consideration of article 31 (31st meeting).

61. The Indian delegation opposed the revived proposal to delete paragraph 2(*a*) and favoured the retention of article 34 as it stood. The rationale for paragraph 2(*a*) was given in paragraphs (11) and (12) of the International Law Commission's commentary on article 34 supplemented by the explanations furnished by the Expert Consultant at the present meeting—explanations which fully satisfied her delegation.

62. Mr. PIRIS (France) thanked the Expert Consultant for his explanations, which indicated clearly the intention of the authors of paragraph 2 of article 34. That intention had obviously been to bring about a major modification of existing international law.

63. The French delegation opposed such a departure from the existing international law on the succession of States. It also believed that the inclusion of article 34, paragraph 2, in the draft articles would jeopardize the future of the draft convention. That paragraph ran counter to the fundamental principle of international law on the subject of third States, as codified in articles 34 to 38 of the 1969 Vienna Convention. Article 34 of the present draft articles purported to impose upon a third State an agreement concluded between two other States which the third State had not accepted either by subscribing expressly to it or by signing the proposed convention.

64. The problem was not one of different political approaches; it was a strictly legal issue, as was shown by the statement just made by the Czechoslovak delegation and also by the very useful comments submitted by Hungary (A/CONF.117/5/Add.1).

65. Clearly, the best and the simplest solution was to delete paragraph 2 altogether, as the Expert Consultant himself had suggested. Unless that were done, the French delegation would request a separate vote on each of the two paragraphs of article 34 and, if paragraph 2 was adopted, it would endorse the interpretation of that paragraph given by the representative of the Federal Republic of Germany.

66. Mr. BARRETO (Portugal) said that the provisions of article 34, paragraph 2(*a*), might well be favourable to Portugal both as a predecessor State and as a debtor State. Nevertheless, his delegation could not accept the concept of a novation of obligations operating against the will of a creditor State, apart, of course, from the case of the disappearance of the original debtor State.

67. His delegation accordingly had reservations concerning the subparagraph and favoured its deletion or, alternatively, the substitution of the word "and" for the word "or" at the end of the subparagraph. It could even accept the deletion of paragraph 2 as a whole.

68. Mrs. BOKOR-SZEGÖ (Hungary), speaking on a point of order, said that the difficulty which had arisen in connection with article 34, paragraph 2(*a*), involved a very difficult problem of international law, and not a difference of opinion between different groups of States. Under rule 26(*a*) of the rules of procedure, therefore, she proposed that consultations should be held to enable the members of the Committee to reach agreement on a satisfactory solution.

69. The CHAIRMAN put the motion of the representative of Hungary to the vote.

The motion was carried by 51 votes to none, with 7 abstentions.

The meeting rose at 12.45 p.m.

39th meeting

Tuesday, 29 March 1983, at 3.25 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 34 (Effects of the passing of State debts with regard to creditors) (*concluded*)

1. Mr. BEDJAOUI (Expert Consultant), replying to requests for clarification made at the previous meeting, said he had been asked whether article 34 contained a drafting error, in that paragraphs 1 and 2 appeared to adopt different approaches with regard to creditors. He explained that in fact the International Law Commission's intention was to safeguard all possible creditors and it had accordingly referred to the rights and obligations of creditors in general in paragraph 1, and to subjects of international law as creditors in paragraph 2. The creditors referred to in paragraph 1 might be creditors under international or private law. The drafting of the article was thus not fortuitous.