

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

Vienna, Austria
1 March - 8 April 1983

Document:-
A/CONF.117/C.1/SR.39

39th meeting of the Committee of the Whole

Extract from Volume I of the *Official Records of the United Nations Conference on Succession of States in respect of State Property, Archives and Debts (Summary records of the plenary meetings and of the meetings of the Committee of the Whole)*

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.

2. It had been suggested that the conjunction “or” in paragraph 2(a) might be deleted. He pointed out that the effects of such a change would be far-reaching, in that the conditions in both subparagraphs (a) and (b) would have to be satisfied, in other words, a third State creditor would be obliged to give its consent only in those cases in which the consequences of the agreement were in accordance with the provisions of Part IV. Such a provision would tend to limit the rights of third party creditors, in that they would be deprived of the right to consent to an agreement which was not in conformity with the convention, even though they might wish to consent to such an agreement.

3. Article 34 raised a number of issues, all of them difficult to resolve. The deletion of paragraph 2(a), for example, could pose greater problems than would the deletion of paragraph 2 as a whole.

4. Mr. FAYAD (Syrian Arab Republic) said that there seemed to be a large measure of agreement among delegations which had spoken at the previous meeting that paragraph 2 was not in fact essential for the purpose of safeguarding the rights of creditors. His delegation accordingly proposed that the paragraph should be deleted.

5. Mr. MIKULKA (Czechoslovakia) said that his delegation could not agree with the Expert Consultant’s interpretation of paragraph 1 of article 34. There were two contradictions in the draft. First, the text of article 34 was at variance with article 6, which stipulated that nothing in the articles should be considered as prejudging in any respect any question relating to the rights and obligations of natural or juridical persons. Second, paragraph (10) of the International Law Commission’s commentary to article 34 stated that the word “creditors” covered such owners of debt claims as fell within the scope of the articles in Part IV and should be interpreted to mean third creditors, thus excluding successor States or, when appropriate, physical or juridical persons under the jurisdiction of the predecessor or successor State. He wondered why the International Law Commission had chosen to omit any reference to physical or juridical persons belonging to a third State.

6. Mr. HAWAS (Egypt) said that, while it might have been possible to include a provision in paragraph 2 stating that a third party could not reject the consequences of an agreement if those consequences were in conformity with the provisions of Part IV, he felt that too many difficulties still remained with regard to the paragraph, and therefore supported the proposal to delete it.

7. Mr. BEDJAoui (Expert Consultant) said that in drafting article 34 the International Law Commission had hoped to provide a more positive safeguard clause than that contained in article 6, but that the wording chosen represented a compromise solution to the problem of safeguarding private creditors. He pointed out that paragraph (10) of the commentary on the article did not exclude foreign private creditors; only national private creditors were ruled out.

8. Mr. RASUL (Pakistan) said that, rather than delete paragraph 2, it would be more advisable to improve the

drafting in a way which would more adequately safeguard the rights of creditors under article 34.

9. The CHAIRMAN invited the Committee to vote on the Syrian Arab Republic’s oral proposal to delete paragraph 2.

10. Mr. NAHLIK (Poland), speaking on a point of order, said that it would be more appropriate to vote first on the deletion of subparagraph (a) of that paragraph, since for many delegations the outcome of that vote would affect their vote on the article as a whole.

11. Mrs. OLIVEROS (Argentina) said that her delegation wished to know, before the vote on the Syrian delegation’s proposal, whether paragraph 1 would remain as it stood, or whether it would be linked to another paragraph or to the safeguards in article 6.

12. Mr. HAWAS (Egypt), speaking on a point of order, said that, although the representative of Pakistan had suggested that the text of paragraph 2 might be improved, no amendment to that effect had been submitted. The Committee had therefore no option but to vote on the Syrian delegation’s proposal.

13. Mr. ROSENSTOCK (United States of America), speaking on a point of order, said that the Chairman had given a ruling and that the only procedurally correct course of action was either to vote on the Syrian delegation’s proposal or else to challenge the Chairman’s ruling formally.

14. The CHAIRMAN, replying to the Hungarian delegation’s request for clarification, said that the Committee had before it three proposals: first, the proposal by the Syrian Arab Republic to delete paragraph 2 as a whole; second, the proposal made orally by Switzerland that subparagraph (a) of that paragraph should be deleted; and third, the request by France and the United Kingdom for separate votes on paragraphs 1 and 2. It seemed logical to vote first on the Syrian delegation’s proposal and he invited the Committee to do so.

The oral proposal of the Syrian Arab Republic was adopted by 38 votes to 6, with 28 abstentions.

15. The CHAIRMAN invited the Committee to vote on the text of article 34 proposed by the International Law Commission, as amended.

Article 34, as amended, was adopted by 61 votes to none, with 11 abstentions, and was referred to the Drafting Committee.

16. Mr. OESTERHELT (Federal Republic of Germany), speaking in explanation of vote, said that his delegation had voted in favour of the amendment proposed by the Syrian Arab Republic because of the consequences which paragraph 2(a) could have entailed; in the view of his delegation, such consequences would not have been in conformity with international law.

17. His delegation had also voted for the text of article 34 as amended, on the understanding that paragraph 1—the only remaining provision of the article—applied *a fortiori* to agreements between the parties to a succession of States.

18. Mr. NAHLIK (Poland) said that his delegation had abstained in the vote on the Syrian Arab Republic's proposal as it was not in agreement with the ruling that that proposal should be put to the vote first.

19. If a vote had been taken first on the amendment originally proposed by Pakistan (A/CONF.117/C.1/L.12), later reintroduced by the representative of Switzerland, the possible elimination of paragraph 2(a) as a consequence of such a vote would have so changed the substance of paragraph 2 that the votes of a number of delegations could have been changed. In the circumstances, his delegation had had no choice but to abstain.

20. Mr. HAWAS (Egypt) said that his delegation had voted for the Syrian Arab Republic's proposal as being the best alternative available to the Committee. It had also voted for article 34, as amended, which preserved the main principle embodied in Part IV and represented a safeguard for creditors.

21. His delegation's vote in favour of the article as amended did not change its conviction that the intentions of the International Law Commission in proposing paragraph 2 were already reflected in international law and practice.

22. Mr. MONNIER (Switzerland) said that his delegation had reintroduced the amendment of Pakistan because such an amendment would have eliminated the main point of disagreement on article 34. His delegation had been able to accept the amendment proposed by the Syrian Arab Republic and had voted for it. In his view, the Chairman's ruling that the Committee should vote first on that amendment had been sound.

23. Mr. YÉPEZ (Venezuela) said that his delegation had voted against the amendment proposed by the Syrian Arab Republic because it considered that the International Law Commission's original text established a harmonious balance between paragraphs 1 and 2. What remained was a provision without legal force, inasmuch as a safeguard clause was in any case provided in article 6.

24. Mr. PIRIS (France) said that his delegation had voted in the same way and for the same reasons as the Federal Republic of Germany.

25. Mr. TEPAVITCHAROV (Bulgaria) said that his delegation had abstained in the vote on the amendment proposed by the Syrian Arab Republic because it had felt that the Committee was not yet ready to vote on the issue; many questions remained pending and a better compromise could have been found if the Committee had not been pressed. His delegation had voted for the article as amended.

26. Mr. BEN SOLTANE (Tunisia) said that his delegation would have preferred the original text of the International Law Commission to stand. As a compromise, however, it had voted both for the amendment of the Syrian Arab Republic and for the article as amended.

27. Mr. A. BIN DAAR (United Arab Emirates) said that his delegation had abstained in the vote on the amendment of the Syrian Arab Republic because it considered it inappropriate that the Committee should have voted first on that amendment, bearing in mind that proposals had been submitted regarding subpara-

graphs (a) and (b) of paragraph 2 and should have been given priority in the vote.

28. Mr. KADIRI (Morocco) considered that creditors would always be protected under the terms of article 6. His delegation had, however, voted for the Syrian delegation's amendment and for article 34 as amended which was in close harmony with article 34 of the 1969 Vienna Convention on the Law of Treaties.¹

29. Mr. MAAS GEESTERANUS (Netherlands) said that his delegation had voted for the amendment of the Syrian Arab Republic for the sole reason that it was opposed to subparagraph (a) of paragraph 2.

30. Mr. KOLOMA (Mozambique) said that his delegation had abstained in the vote both on the Syrian Arab Republic's amendment and on the article as amended. It considered that paragraph 2 represented one of the most important applications of the rule set out in paragraph 1. His delegation would have preferred subparagraph (a) to be amended in such a way as to indicate that it was applicable only if the third State was a party to the convention.

31. Mr. ECONOMIDES (Greece) said that his delegation had voted for the amendment proposed by the Syrian Arab Republic because it considered that paragraph 2(a) contravened the law of treaties. It had voted in favour of article 34 as amended in the belief that the remaining provision safeguarded the rights of creditors whether or not they were subjects of international law.

32. Mr. MOCHI ONORY DI SALUZZO (Italy) said that his delegation had voted for the amendment of the Syrian Arab Republic and for the text of article 34 as amended for the reasons outlined by the representative of Greece.

33. Mr. LAMAMRA (Algeria) said that his delegation had abstained in the votes both on the amendment of the Syrian Arab Republic and on the text of article 34 as amended. Those abstentions should not be regarded as inconsistent with the substance of the statement which his delegation had made at the previous meeting.

34. Mr. SKIBSTED (Denmark) said that his delegation had voted for the amendment of the Syrian Arab Republic because it considered that paragraph 2(a) was contrary to article 34 of the 1969 Vienna Convention on the Law of Treaties. Moreover, in its opinion, the notion of "the consequences of an agreement" contained in that subparagraph was too imprecise to be used as a legal term.

35. His delegation had voted for paragraph 1 because that paragraph reaffirmed a fundamental principle of general international law.

36. Mr. KOREF (Panama) said that his delegation had voted against the Syrian Arab Republic's amendment as it had hoped that, if paragraph 2 had been retained, the Swiss delegation's amendment might have been adopted. The result would have been a complete article 34 instead of a fragment. He had nevertheless voted in favour of paragraph 1 as he believed that such a provision was necessary.

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.

37. The CHAIRMAN announced that the Committee had completed its consideration of article 34.

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

38. The CHAIRMAN said that the Committee would resume its consideration of the proposed new article 24 *bis* and drew attention to the revised amendment proposed by the United Arab Emirates at the 37th meeting (A/CONF.117/C.1/L.50/Rev.1).

39. Mr. A. BIN DAAR (United Arab Emirates) said that his delegation had responded favourably to the request made by the representatives of Canada and the United Kingdom at the Committee's 35th meeting that a decision on his delegation's proposal for a new article 24 *bis* should be postponed so that delegations could consult with a view to working out an acceptable text.

40. After having exchanged ideas with the representatives of the United States and the United Kingdom, his delegation wished to submit a further revised text for consideration and adoption by the Committee as article 24 *bis*:

“For the purpose of the implementation of the provisions of this Convention, an obligation to the predecessor State to transfer State archives to the successor State entails the consequential obligation to take all measures to prevent damage or destruction to any part of State archives which, according to the provisions of the articles of the present Part, pass to the successor State.”²

41. His delegation had for the moment confined itself to drafting an article 24 *bis*, leaving open the option either to incorporate a similar text in another article in Part II regarding State property, or to include among the General provisions in Part I a single new article which would deal with the preservation and safety of both State property and State archives.

42. His delegation would prefer two separate articles to be inserted in the Parts covering State property and State archives respectively, solely for the reason that Part I (General provisions) contained articles and provisions which were applicable to the draft convention as a whole, while for the same reason the Part relating to State debts would not be covered. If, however, delegations felt strongly that such a provision should be included among the General provisions, his delegation would be prepared to agree, if the Committee so desired and if the revised text which he had just introduced as article 24 *bis* was acceptable.

43. The CHAIRMAN invited preliminary comments on the revised proposal of the United Arab Emirates which could not however be voted upon until its text had been circulated.

44. Mr. HAWAS (Egypt) said that his delegation would continue to support the proposal of the United Arab Emirates, which was both useful and relevant. The rule set out in the proposed new article should also apply to Part II regarding State property and the

Drafting Committee should therefore be invited to consider an appropriate text for that purpose.

45. His delegation would, however, retain an open mind on any decision taken by the Drafting Committee as to whether there should be only one article in the General provisions covering both issues or two separate articles.

46. Mr. MIKULKA (Czechoslovakia) said that his delegation would require more time before it could express its views on the new proposal.

47. Mr. NAHLIK (Poland) said that the amendment was important and that a similar amendment should be added to Part II. He considered that the words “to any part” should be deleted in order to forestall an excessively strict interpretation of the provision; in any archival collection there were documents of a temporary or provisional nature which had to be eliminated.

48. Mr. MEYER LONG (Uruguay) wondered whether the obligation to take all measures to prevent damage or destruction to State archives which passed to the successor State was not already covered by the provision relating to the preservation of unity of State archives in article 24. The term “unity” lent itself to more than one interpretation; it could be understood to mean absence of destruction as well as indivisibility. If the term was interpreted in that sense, a new article 24 *bis* would be unnecessary.

49. Mr. KOLOMA (Mozambique) regretted that, unlike the earlier version of article 24 *bis*, the text of the revised new article as proposed by the United Arab Emirates was no longer couched in mandatory terms. According to the newly revised version, the predecessor State would merely assume an obligation instead of having that obligation imposed upon it.

50. Mr. MAAS GEESTERANUS (Netherlands) disagreed with that interpretation; in his view, a legal obligation was certainly stipulated by the newly revised text of the proposed article. His own delegation's reservations regarding the proposal concerned a different aspect. He wondered why the obligation to take all measures to prevent damage or destruction existed only in respect of those State archives which passed to the successor State and not also to those which remained the property of the predecessor State but had to be made available to the successor State under article 25, paragraph 4, or those which had already passed to the successor State and appropriate reproductions of which could be requested by the predecessor State under article 25, paragraph 5.

51. With that reservation, he was, however, prepared to accept the proposed new article if that was the wish of the Committee.

52. Mrs. TYCHUS-LAWSON (Nigeria) suggested that perhaps the word “should” might be added between the words “Part” and “pass to the successor State” near the end of the revised text. From the text as it stood it might be inferred that some parts of State archives might not pass to the successor State under the provisions of the articles of Part III.

53. Mr. BEN SOLTANE (Tunisia) said that the representative of the United Arab Emirates deserved the Committee's thanks for his painstaking efforts to prepare a generally acceptable draft.

* Resumed from the 37th meeting.

² Subsequently issued under the symbol A/CONF.117/C.1/L.50/Rev.2.

54. The Tunisian delegation considered that the new article should appear in the Part devoted to archives, and that a corresponding provision should be included in the Part dealing with State property; since the provision was not applicable to State debts, it should not be inserted under General provisions.

55. He wondered whether, in addition to damage and destruction, the new article should not also mention the disappearance of State archives, which was undoubtedly a possibility, and also whether the phrase "obligation to take all measures" made it sufficiently clear that the predecessor State was required to make the best possible use of all means available for preventing any harm that might befall the State archives concerned.

56. Mr. ROSENSTOCK (United States of America) expressed appreciation of the spirit of compromise in which the proposed new article had been prepared. His delegation had been among those which had initially found the proposal for a new article 24 *bis* unacceptable and unnecessary because it presupposed bad faith on the part of the predecessor State. However, he was now prepared to accept the revised proposal by the United Arab Emirates, subject possibly to the drafting suggestion made by the representative of Poland, in the hope that it would help to establish a more conciliatory atmosphere and thereby help to close some further gaps.

57. The CHAIRMAN said that the preliminary consideration of the revised proposal of the United Arab Emirates involving the addition of a new article 24 *bis* was concluded, and suggested that further consideration of the article should be deferred pending the distribution of the written text.

It was so agreed.

Article 32 (Effects of the passing of State debts) (*continued*)*

New article 31 *bis* (Passing of State debts) (*continued*)*

58. Mr. YÉPEZ (Venezuela) said that his delegation found the International Law Commission's text of article 32 perfectly acceptable and, for that reason, could not be in favour of any amendment or modification.

59. With regard to the new article 31 *bis* (A/CONF.117/C.1/L.47) proposed by the United States delegation he said that he understood the good intentions of that delegation in submitting a proposal intended to rationalize the various Parts of the draft convention, but felt that the United States text was inconsistent with article 36, which expressly provided for an exception to the proposed rule. Furthermore, the International Law Commission's draft reflected a general intention to promote intensive co-operation between the States concerned with a view to eliminating any disagreements or discrepancies that might arise in connection with the passing of State debts. That whole philosophy would be weakened by the insertion of the new article proposed by the United States, and he would be regretfully obliged to oppose that proposal if it were put to the vote.

60. The Greek delegation's amendment (A/CONF.117/C.1/L.53) was likewise motivated by the best intentions and had the merit of avoiding the problem with regard to the exception provided for in article 36 which was inherent in the United States proposal. Unfortunately, the Greek amendment also weakened the possibility of positive co-operation being established between interested States, and for that reason his delegation would oppose that amendment as well, should it be put to the vote.

61. Mr. SUCHARIPA (Austria) referred to the statement he had made at the Committee's 6th meeting in connection with his delegation's amendment (A/CONF.117/C.1/L.2) to article 9. Because of the triangular situation arising in connection with State debts, article 32 appeared to his delegation to give rise to even greater problems than articles 9 and 20. While the Netherlands amendment (A/CONF.117/C.1/L.48) did not really improve the untenable construction of article 32, it at least aimed at limiting its damaging effects and he was therefore prepared to support it.

62. For the same reason, he would also support the United States amendment involving the addition of a new article 31 *bis*.

63. He could also agree to the simple deletion of article 32 and the withdrawal of the idea of a new article 31 *bis*, as indicated by the Expert Consultant (34th meeting), but only if the same decision were taken in respect of the corresponding provisions in Parts II and III. In that connection he stressed his disagreement with the theory that there was a qualitative difference between the rules of transfer set forth in the various Parts of the convention, although a quantitative difference might indeed exist.

64. The best solution would be to include a single new article in Part I specifying that a succession of States had the effect of making State property, State archives and State debts pass to the successor State to the extent that such passing was provided for in the substantive clauses of the draft convention. The Greek delegation's amendment was a step in that direction, but the Kenyan amendment to article 32 (A/CONF.117/C.1/L.55) was possibly preferable as making the position even clearer.

65. Mr. KIRSCH (Canada) remarked that the rather delicate problem raised by the Netherlands amendment to article 32 was in reality only a drafting matter; he was pleased to note that there appeared to be general agreement as to the substance of the provision. The article as drafted by the International Law Commission did not fully correspond to the Commission's intentions as explained in paragraph (2) of its commentary on article 32, and the merit of the Netherlands amendment was that it eliminated any uncertainty as to the scope of the rule set forth in the article.

66. He could not accept the view that there was any contradiction or lack of complementarity between articles 32 and 34; the latter article was sufficient in itself and should, like all other articles of the draft convention, be considered in its own context. Accordingly, he would support the Netherlands proposal for the reasons stated, but was also prepared to accept article 32 as it stood.

* Resumed from the 34th meeting.

67. Turning to the proposed new article 31 *bis*, he said that, for reasons of logic as explained by the Greek representative (34th meeting), there should be some correspondence between articles 8 *bis*, 19 *bis* and 31 *bis*. The fact that the passing of State property and State archives was governed by a rule of transmissibility and that of State debts by a rule of non-transmissibility was, in his view, irrelevant to the issue of correspondence, since article 31 *bis* did not deal with the quantity of State debts which passed but with the fact of their passing. However, he had no strong views on the form which the correspondence between the three articles should take, and was willing to consider the amendment proposed by Kenya.

68. The simplest solution would, of course, be to include a single article in Part I (General provisions) along the lines suggested by the representative of Austria.

69. Mr. MONNIER (Switzerland) noted that article 32 once again raised the question, discussed at length in the context of articles 9 (1st, 2nd and 6th meetings) and 20 (20th to 22nd meetings), of the value of including provisions which gave a theoretical explanation of the phenomenon of passing of property, archives and debts. His delegation had already stated that it doubted the desirability of including such provisions in view of the fact that passing, and the conditions governing passing, were provided for in a section of each Part of the draft convention.

70. It had been suggested that article 32 should be deleted, while articles 9 and 20 were retained, on the grounds that the passing of debts, unlike that of property and archives, rested on a triangular relationship in which creditors played a part together with the predecessor and successor States. Although his delegation would be prepared to accept the deletion of all three articles, it did not consider that the difference in the situation with regard to debts was sufficient to justify deleting article 32 alone.

71. At the same time, that very difference made it imperative to adopt the Netherlands amendment. If all three articles—9, 20 and 32—were to be retained, it was essential in article 32 to make an express reference to article 34. There were no grounds for the fears expressed in the course of the debate that such a reference might give undue pre-eminence to one provision over another; all that was proposed was a simple but vital cross-reference to article 34, whose special importance, as the representative of Canada had observed, had been acknowledged by the International Law Commission in its commentary on article 32.

72. Furthermore, if articles 9, 20 and 32 were all retained, they ought to be accompanied by their logical complements, namely, articles 8 *bis*, 19 *bis* and 31 *bis*; it had become clear in the course of the debate that the scope of the former group was difficult to assess and that they needed the clarification provided by the proposed new articles.

73. The opposition which had been expressed to the United States proposal for a new article 31 *bis* was based essentially on the argument that, if adopted, that new article would tend to highlight the discrepancy between it and the rules laid down in other draft articles of section 2 of Part IV, in particular article 36, which

embodied the apparently conflicting rule concerning the non-transmissibility of State debts. That argument might have been valid had the United States draft ended with the words "pass to the successor State", but the inclusion of the proviso "in accordance with the provisions of the articles of the present Part" made it clear that such an article 31 *bis* could not have the effect, directly or indirectly, of forcing the passing of debts where that passing was not provided for, or was expressly excluded, by the provisions of the relevant section of Part IV.

74. The compromise proposal for article 31 *bis* put forward by Greece also contained that proviso and was perhaps a little more precise in drafting than the United States amendment. In the final analysis, there was in substance no real difference between the two proposals, and his delegation could support either of them, with a slight preference for the Greek proposal.

75. The amendment of Kenya was also acceptable, provided a similar modification was made to articles 9 and 20.

76. The representatives of Austria and Canada, however, had put forward an idea which his own delegation had been intending to raise and which might represent a genuine basis for a constructive compromise. Instead of including the proposed articles 8 *bis*, 19 *bis* and 31 *bis*, a separate provision might be inserted in Part I (General provisions) to the following effect:

"A succession of States has the effect of making the State property, archives and debts of the predecessor State pass to the successor State within the limits and in accordance with the conditions laid down by the provisions of the articles of the present Convention".

His delegation had prepared the text of such an amendment and was ready to submit it formally at any time the Committee considered appropriate.

77. Mr. MURAKAMI (Japan) recalled that his delegation had abstained in the vote on article 8 *bis* because, in its view, the contents of that new article were already implicit in the existing provision and its insertion was thus not really necessary.

78. However, since article 8 *bis* had been adopted in Part II, it was necessary to include corresponding provisions in Parts III and IV, in order to be consistent and, more importantly, to preclude an erroneous *a contrario* interpretation of those Parts. For that reason, his delegation supported articles 19 *bis* and 31 *bis* proposed by the United States (A/CONF.117/C.1/L.42 and L.47).

79. His delegation considered the amendment to article 32 proposed by the Netherlands as a useful clarification which at the same time did not change the substance of the article. It accordingly supported it.

80. Mr. KADIRI (Morocco) said that, in his delegation's view, the use of the term "arising" did not fully cover all the cases of succession of States which article 32 was intended to cover. It notably failed to allow for the situation of a territory which, before colonization, had possessed the structures of a State, with all the juridical implications of that fact in terms of rights and obligations which were enshrined in *jus gentium* and would subsist, though in abeyance, even during a per-

iod of colonial rule. It was doubtful whether, after such a country had regained its independence, it was correct to speak of an “arising” of rights; it might be more accurate to use a term such as “renascence” or “revival” to refer to existing rights frozen by a state of affairs which by its very nature was a negation of the rule of law.

81. That view seemed to be borne out by the choice of terms used in analogous contexts in the treaties cited in the commentary to article 9. By employing the notions of “acquisition” and “cession”, those instruments expressed the idea of the continuous existence of rights which merely underwent a transfer from one holder to another. That was reinforced by the concept of passing as incorporated in the latter part of articles 9, 20 and 32.

82. In order to reflect that idea of continuity of rights, it would be tempting to use the word “acquisition”, which implied the survival of pre-existing rights, were it not that that term was employed in private international law in order to distinguish the acquisition of nationality by, for instance, naturalization, from the attribution of nationality of origin *jure sanguinis* or *jure soli*; hence the word was not quite appropriate in the context of the provisions under discussion. It was worth recalling that the International Law Commission and the 1978 Vienna Conference on Succession of States in Respect of Treaties had not opted exclusively for the *tabula rasa* approach but had combined it with the requirement of continuity as an essential element in the legal certainty of international relations. In the same way, although succession of States in terms of the present draft convention entailed *de facto* and *de jure* the extinction of the rights and obligations of the predecessor State, it did not invariably lead to an “arising” of rights for the successor State in the sense of the Commission’s draft.

83. For those reasons, his delegation would prefer the word “emergence” to the word “arising”. That term had the merit of being very broad semantically, encompassing both a passive sense and the positive aspects illustrated by the common expression “the emergence of a newly independent State”. Furthermore, in the terminology of agronomic research the term “emergence” (“*obtention*” in French) meant the emergence of a genetically new plant variety as a result of the crossing of two existing varieties. In that sense emergence meant the acquisition of something new without implying discontinuity.

84. His delegation supported the amendment of Kenya which had the merit of being very clear and coherent. In view of all the compromise proposals and suggestions which had been offered, he suggested that an informal group should be established to consider all the problematical aspects of the proposed articles 8 *bis* and 31 *bis* and to find a generally acceptable compromise, preferably in the form of a kind of package deal. Such an outcome would be in the interests of all concerned.

85. Mr. NDIAYE (Senegal) said that his delegation had voted in favour of retaining paragraph 1 of article 34 because it provided necessary safeguards for creditors. His delegation would have preferred the whole of article 34 to be retained, but since it had now been reduced

to a very simple statement he suggested that it might be introduced slightly earlier as paragraph 2 of article 32. That seemed appropriate because article 32 dealt in a general way with the effect of the passing of State debts and the surviving paragraph of article 34 covered a specific aspect of that question. Thus paragraph 2 of article 32 might read: “However, a succession of States does not as such affect the rights and obligations of creditors”.

86. Mr. RASUL (Pakistan) suggested that the Committee should consider adopting the amendment of Kenya to article 32. That amendment would then necessitate corresponding drafting changes in articles 9 and 20. It was his delegation’s view that, as a result, the concerns underlying the three proposed new articles 8 *bis*, 19 *bis* and 31 *bis*, would be taken care of. That might be a generally acceptable compromise solution to a particularly delicate issue.

87. The CHAIRMAN observed that the Committee was engaged in debating one of the most difficult questions raised by the draft convention. Negotiations on the point were proceeding but had not yet reached the stage of producing any concrete proposals. In view of the pressure of time and the need to reach a conclusion as soon as possible, he suggested that the Committee should follow the procedure suggested by the representative of Morocco and establish an informal group, composed of the sponsors of amendments and other interested delegations, to consider the question with a view to producing a generally acceptable compromise. Further debate on proposed new article 31 *bis* and article 32 should accordingly be deferred until the work of that informal group produced some results.

It was so decided.

Organization of work

88. The CHAIRMAN noted that the Committee had still to consider the following major items: new article 24 *bis*, the articles relating to General provisions, the regrouping of articles 7, 18 and 30, and possible provisions on dispute settlement.

89. He suggested that at its next meeting the Committee should consider articles 1 to 6, together with new article 6 *bis* and the questions raised by articles 7, 18 and 30. At the same time, delegations might usefully be discussing informally the question of a reservation clause, which had already been raised in the Committee, so that when it came to be considered formally the Committee would start with a clear position.

90. He had been consulting with the President of the Conference and the Chairman of the Drafting Committee concerning the manner in which the Drafting Committee should report on the results of its work. The Committee of the Whole had requested the Drafting Committee to report directly to the plenary Conference on its preparation of the preamble and final clauses. In the case of the substantive provisions, on the other hand, the practice of earlier codification conferences had been to consider the Drafting Committee’s report first in the Committee of the Whole and transmit it subsequently to the Conference. In view of the pressure of time, however, he had agreed with the President

of the Conference and the Chairman of the Drafting Committee that it would be preferable for the Drafting Committee to report directly to the Conference on the substantive provisions also. That procedure was fully in conformity with rule 47, paragraph 2 of the rules of procedure and would have the advantage of facilitating the work of the Rapporteur, who would if necessary be able to complete her draft report on the work of the Committee of the Whole and send it for translation and distribution before the Drafting Committee had finished its work.

91. That procedure would be without prejudice to the Committee of the Whole's decisions on articles 15, 23 and 27; in those cases, where the Drafting Committee had been requested to submit recommendations, the Drafting Committee would report to the Committee of the Whole.

92. If he heard no objections, he would take it that the Committee of the Whole agreed to that procedure.

It was so decided.

The meeting rose at 6.05 p.m.

40th meeting

Wednesday, 30 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]

Appointment of a Working Group on article 32 and new articles 31 bis and 19 bis

1. The CHAIRMAN proposed, in the light of the discussion which had taken place at the previous meeting, that a working group should be established to consider article 32 and the amendments thereto, together with the proposed new articles 31 *bis* and 19 *bis*, and to report thereon to the Committee of the Whole.

2. He suggested that the group should be composed of representatives of all the delegations which had submitted proposals and amendments—including oral amendments—relating to those articles, namely Greece, Kenya, Morocco, Netherlands, Senegal, Switzerland and the United States of America, as well as the representatives of Algeria, Austria, the Federal Republic of Germany and France, who had shown a special interest in those articles during the debate. He further suggested that the working group should be open to any other interested delegation. Lastly, he proposed that Mr. Kadir (Morocco) should serve as Chairman of the proposed working group.

3. In the absence of comment, he would take it that the Committee agreed to adopt that proposal.

It was so decided.

Article 1 (Scope of the present articles)

4. The CHAIRMAN invited the Committee to begin consideration of Part I of the draft articles and to take up article 1 first of all. In accordance with the usual practice of codification conferences, article 2, dealing with the use of terms, would be discussed at the end of Part I.

5. Article 1, which indicated the scope of the draft articles as a whole, was related to articles 7, 18 and 30,

which indicated the scope of the articles in Parts II, III and IV, respectively.

6. Mr. ECONOMIDES (Greece) pointed out that article 1 was identical in its terms with article 7, article 18 and article 30. He therefore proposed, purely as a matter of drafting, that the four articles should be merged into one, drafted on the following lines:

“The present articles apply to the effects of a succession of States in respect of State property (articles 7 to 17), archives (articles 18 to 29) and debts (articles 30 to 39).”

7. Mrs. BOKOR-SZEGÖ (Hungary) said that the Greek representative's proposal could give rise to some difficulty with regard to interpretation, among other reasons because the term “State property” was used not only in Part II but also in Part IV. She was thinking in particular of articles 35 and 36.

8. Mr. SUCHARIPA (Austria) supported the proposal to merge articles 1, 7, 18 and 30. As a further drafting improvement, he suggested that the concluding words of article 1, as amended by that proposal, “in respect of State property, archives and debts”, should be expanded to read “in respect of State property, archives and State debts towards other subjects of international law”. He further suggested that the title of the draft convention should be amended to read: “Draft convention on succession of States in respect of State property, archives and State debts towards other subjects of international law”.

9. Mr. NATHAN (Israel) pointed out that the term “State debts” was defined in article 31. Consequently he was unable to support the change suggested by the Austrian representative. He suggested that the change should be limited to replacing in article 1 the last word, “debts”, by “State debts”, without adding any formula which might lead to difficulties of interpretation. He suggested the same approach with regard to the title of the draft convention.

10. Mr. GUILLAUME (France) welcomed the Greek proposal to merge articles 1, 7, 18 and 30 but suggested that the actual language to be used should be left to the Drafting Committee.