

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

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**42nd meeting of the Committee of the Whole**

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## 42nd meeting

Thursday, 31 March 1983, at 10.25 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]

### REPORT OF THE WORKING GROUP ESTABLISHED AT THE 40TH MEETING

1. Mr. KADIRI (Morocco), Chairman of the Working Group, introducing the Working Group's report (A/CONF.117/C.1/L.62), said that the new text proposed for article 32 represented a compromise solution reached after extensive discussion. The replacement of the words "A succession of States entails" by the words "The passing of State debts entails" and the words "in accordance with" by the words "subject to" applied *mutatis mutandis* to articles 9 and 20.

2. The proposal implied the deletion of article 8 *bis* and the withdrawal of the proposed amendments concerning articles 19 *bis* and 31 *bis*, as well as the amendments to article 32 proposed by the Netherlands (A/CONF.117/C.1/L.48) and Kenya (A/CONF.117/C.1/L.55) respectively.

3. He expressed appreciation of the spirit of co-operation shown by the members of the Working Group which augured well for the success of the Conference.

4. The CHAIRMAN congratulated the Working Group on its achievement in reaching a compromise on a very important matter and thus providing a solution, not only to the problem of the text of article 32, but to several other matters as well. The result of the Working Group's work showed that a spirit of mutual understanding was prevailing, which was a good omen for the success of the Conference.

5. Mr. SHASH (Egypt) expressed appreciation of the considerable effort the Working Group had put into reaching a compromise proposal on a complex subject. The text proposed, being a compromise, was not ideal for all delegations. Thus, his delegation had hoped that the Kenyan amendment would have been sufficient to solve the problems of article 32, without any need for changes in articles 9 and 20.

6. Speaking also on behalf of the countries members of the Group of 77, he said that, although acceptance of the solution proposed by the Working Group represented a substantial compromise, those countries were prepared to approve the proposal in a spirit of accommodation and goodwill.

7. Mr. USHAKOV (Union of Soviet Socialist Republics) thanked the Working Group for its efforts and said that his delegation could accept without difficulty all the proposals made in its report. His delegation presumed that the title of article 32 would remain unchanged.

8. The CHAIRMAN confirmed that the title of article 32 would remain as in the International Law Commission's text.

9. He then invited the Committee to adopt the report of the Working Group, action which would entail the adoption of article 32, as proposed by the Group, as well as approval of the consequential changes and withdrawal of the amendments noted in the report. Any disparities between the English version, which was the text on which agreement had been reached in the Working Group, and the other language versions, could be dealt with in the Drafting Committee.

*The report of the Working Group was adopted and referred to the Drafting Committee.*

*Titles and texts of articles 15,\* 23\* and 27\* adopted by the Drafting Committee*

10. Mr. SUCHARITKUL (Thailand), Chairman of the Drafting Committee, recalled that the Committee of the Whole had addressed certain specific requests to the Drafting Committee in connection with articles 15, 23 and 27; the Drafting Committee's response was contained in document A/CONF.117/C.1/1.

11. With regard to articles 15 and 27, both of which concerned the uniting of States, the Drafting Committee had been requested to submit a recommendation as to whether paragraph 2 of each of those articles should be retained or deleted. The Drafting Committee had decided that it was not desirable to retain the paragraph in either article; accordingly it was recommending the deletion of paragraph 2 in both cases.

12. Pursuant to another request from the Committee of the Whole, the Drafting Committee recommended that the word "a", before "successor State", in the first phrase of article 15 and article 27 should be replaced by the word "one". A further drafting adjustment had been made in article 27, which now referred, in the plural, to "predecessor States".

13. So far as article 23 was concerned, the Drafting Committee had been requested to submit a recommendation on the use of the term "State archives", taking into account the definition of that term in article 19. The Drafting Committee had decided to recommend the deletion of the word "State" before the word "archives" in order to avoid ambiguity and possible erroneous interpretations.

14. The CHAIRMAN said that, in the absence of objection, he would take it that the Committee agreed to adopt the titles and texts of articles 15, 23 and 27 as proposed by the Drafting Committee in document A/CONF.117/C.1/1.

*It was so decided.*

\* Conclusion of consideration at the 16th, 24th and 29th meetings, respectively.

*New articles 12 bis* (Preservation and safety of State property) (*concluded*)\* and *24 bis* (Preservation and safety of State archives) (*concluded*)\*

15. Mr. A. BIN DAAR (United Arab Emirates) said that, following consultations, his delegation had decided further to modify its proposal for a new article *24 bis* and to revert to the text submitted at the 39th meeting in document A/CONF.117/C.1/L.50/Rev.1, with some slight amendments. The proposed new article *24 bis* would read:

“For the purpose of the implementation of the provisions of the articles of the present Part, the predecessor State shall take all measures to prevent damage or destruction to archives which, according to the present Convention, pass to the successor State.”

16. The proposed article *12 bis* relating to State property, as submitted by his delegation in document A/CONF.117/C.1/L.59, should be reworded in the same manner.

17. Mr. KOLOMA (Mozambique) recalled that when the representative of the United Arab Emirates had, at the 39th meeting, amended orally the proposal contained in document A/CONF.117/C.1/L.50/Rev.1, his own delegation had stressed that the text thus proposed did not impose a formal legal duty upon the predecessor State not to damage or destroy the State archives.

18. Unfortunately, another delegation had, in the course of the debate, misinterpreted his statement with regard to the text proposed and subsequently distributed as document A/CONF.117/C.1/L.50/Rev.2. He wished to make it clear that his delegation had never denied that the text proposed in that last document imposed an obligation. What it had said was that that text did not impose a formal legal duty.

19. His delegation therefore welcomed the text now proposed by the delegation of the United Arab Emirates which did in fact impose upon the predecessor State a formal legal duty not to damage or destroy the State archives which, according to the present draft convention, passed to the successor State.

20. Mr. HALTTUNEN (Finland) suggested the deletion from the text now proposed for article *24 bis* of the concluding words “which, according to the present Convention, pass to the successor State”. The effect of that deletion would be to broaden the effect of the provision in article *24 bis* so as to cover the situation envisaged in paragraph 4 of article 25. That paragraph set forth the duty of the predecessor State to make available to the successor State, on the conditions stated therein, “appropriate reproductions of its State archives connected with the interests of the transferred territory”. That situation would not be covered by the text now proposed by the sponsor of article *24 bis*.

21. His delegation would not request a vote on its suggestion in the event of article *24 bis* being adopted by consensus.

22. Mr. USHAKOV (Union of Soviet Socialist Republics) pointed out that in article 32, as adopted by the Committee, the formula “subject to the provisions

of the articles in the present Part” had been used. He suggested that the same formula should be used in the proposed article *24 bis*. The same formula should be adopted as in the case of articles 9 and 32.

23. The CHAIRMAN said that the point raised by the representative of the Soviet Union would be referred to the Drafting Committee when consideration of article *24 bis* was over.

24. Mr. MAAS GEESTERANUS (Netherlands) said that he would not oppose the adoption by consensus of the revised text but he wished to reiterate his delegation’s view that the provision did not ensure protection for archives which did not pass to a successor State but from which that State might wish to obtain copies under paragraph 4 of article 25.

25. Nor did the provision make it the duty of the successor State to protect archives which passed to it, in the interest of their being copied for the benefit of the predecessor State.

26. Mr. PIRIS (France) expressed regret at the fact that the text in document A/CONF.117/C.1/L.50/Rev.2 should have been withdrawn by its sponsor in favour of a return to the earlier version—that in document A/CONF.117/C.1/L.50/Rev.1—which had caused his delegation and others considerable misgivings. His delegation would not oppose adoption of the proposed article *24 bis*, but it reiterated those misgivings.

27. Mr. MOCHI ONORY di SALUZZO (Italy) asked the sponsor of the proposed article *24 bis* whether the new obligation set forth in the article was considered to arise, in point of time, upon the actual passing of the archives or before. His own opinion was that the operative moment was that of the passing of the archives, but he wished to hear the opinion of the sponsor on that point.

28. Mr. A. BIN DAAR (United Arab Emirates) said it was his understanding that the obligation of the predecessor State resulted naturally from a process which took place before the actual date of succession. The obligation in question would exist, in the case of a newly independent State, as soon as it became known that the new State was going to emerge.

29. Mr. THIAM (Senegal) drew attention to the need to introduce in the French version of the proposed new article *24 bis* the word “*ne*” before the words “*soient endommagées ou détruites*”.

30. The CHAIRMAN said that the point just raised, which might affect other language versions, would be referred to the Drafting Committee.

31. Mr. MONNIER (Switzerland) said that, if the proposed new articles were put to the vote, his delegation would have to abstain. It had serious doubts regarding the approach adopted, which seemed to presuppose illicit behaviour, and even malicious intent, on the part of the predecessor State.

32. Furthermore his delegation, like that of the Netherlands, objected to the lack of balance in a provision which imposed an obligation upon the predecessor State without imposing any corresponding obligation on the successor State.

\* Resumed from the 40th meeting.

33. Mr. SUCHARIPA (Austria) said that his delegation supported the general idea underlying the proposal under discussion. However, it had reservations regarding the wording now proposed. In that connection, he expressed regret at the cessation of the efforts which had been made to arrive at a more generally acceptable text.

34. It was his delegation's understanding that the obligation set forth in article 24 *bis* arose at the date of the succession of States. He was now confirmed in his view, expressed during the discussion on article 21 (23rd meeting) that in many cases of State succession some time elapsed between the date of the passing of the archives and the date of their actual transfer.

35. Mr. BARRETO (Portugal) said that his delegation supported the proposed article 24 *bis* but wished to place on record its understanding that the article did not prejudice in any way the predecessor State's right, until the time of the actual transfer of the archives which passed, to sort or to photocopy, microfilm or copy in any other way any documentation in its possession before disposing of it, in accordance with its own archival rules. That understanding applied *mutatis mutandis* to article 12 *bis* as well.

36. Mr. PIRIS (France) said that, were the proposed new articles to be put to the vote, his delegation would have to abstain, because of the legal and technical difficulties they presented.

37. It was his delegation's understanding that the new obligation imposed upon the predecessor State arose after the succession of States and became effective as from the moment when the predecessor and the successor States reached agreement on the determination of the property and archives which passed to the successor State.

38. Mr. NATHAN (Israel) said that his delegation would not dissociate itself from the consensus on the proposed article 24 *bis*, despite its doubts concerning that provision.

39. It was his delegation's understanding that the obligation referred to in the article related to the time following the succession of States and not to the time preceding it.

40. Mr. OESTERHELT (Federal Republic of Germany) said that his delegation would not oppose the adoption by consensus of the proposed new articles 12 *bis* and 24 *bis*.

41. While it had no objection to the substance of the rule contained in both those articles, his delegation nevertheless questioned the advisability of including in the draft convention such a singular rule, which made provision for an obligation upon the predecessor State without any corresponding obligation for the successor State.

42. Mr. EDWARDS (United Kingdom) said that his delegation, although prepared to join in a consensus, nevertheless had to state that it would abstain if a vote were to be taken, for the reasons it had given at the 33rd meeting when the new article 24 *bis* had been first proposed.

43. It was his delegation's understanding that the provisions of the two new articles proposed would not

stand in the way of the normal archival practice of destroying papers after a given period.

44. Mrs. TYCHUS-LAWSON (Nigeria) reiterated her delegation's view that, for article 24 *bis* to have the meaning intended by its sponsor, it would be necessary to amend the concluding words "pass to the successor State" to read: "should pass to the successor State". Since, however, the revised text now proposed constituted a compromise, her delegation would not press that point to a vote.

45. It was significant that, even before the adoption of the future convention, differences had already emerged with regard to the interpretation to be given to various articles. Thus the sponsor of the proposal for the new articles 12 *bis* and 24 *bis* had indicated that the predecessor State's duty would arise before the succession of States actually took place. That view was not shared by a number of other delegations. The Nigerian delegation's understanding was that the duty of the predecessor State arose before the actual passing of State archives and continued after that passing; the same was true in respect of State property. The Drafting Committee might perhaps attempt to clarify that point.

46. Mr. RASUL (Pakistan) agreed with the previous speaker that it was necessary to insert the word "should" before the concluding words "pass to the successor State", in the proposed new article 24 *bis*, in order to give the meaning intended by the sponsor of the proposal.

47. It was his delegation's understanding that the verb "to pass" had to be given its legal significance. Accordingly, the text, as proposed, referred to the time following the occurrence of the succession of States. If, as explained by the sponsor, the intention was to cover certain situations before the succession of States, it would be necessary to use at the end of the article the formula "should pass to the successor State".

48. Mr. ROSENSTOCK (United States of America) expressed regret that the attempts to arrive at a more broadly acceptable formula had not been pursued.

49. As to the point raised by the delegation of Finland, it seemed to his delegation to be outside the scope of the present convention to enter into questions of general responsibility and due care.

50. As he saw it, the object of the proposed new articles was to create a good faith obligation incumbent upon the predecessor State when archives passed to a successor State. It would seem in fact to be a typical example of a good faith obligation under international law. According to his interpretation of the wording of the proposed new articles, the obligation existed as from the date of the succession of States and not before.

51. Mr. MURAKAMI (Japan) said that his delegation would not oppose the adoption of the new articles 24 *bis* and 12 *bis* by consensus, but would have to abstain if they were put to the vote.

52. Mr. HAWAS (Egypt) agreed with the representatives of Nigeria and Pakistan concerning the need to insert the word "should" before the words "pass to the successor State" at the end of the proposed articles.

53. The articles now proposed did not, in the view of his delegation, stand in the way of the routine destruc-

tion of unnecessary archives. The predecessor State could certainly, by virtue of its sovereign rights, carry out such routine operations in accordance with its archival practice.

54. Mr. MUCHUI (Kenya) reiterated the view, expressed by his delegation at the 33rd meeting, that the words "pass to the successor State", which did not clearly spell out the intended meaning, should be preceded by the word "should".

55. The usefulness of the proposed articles 12 *bis* and 24 *bis* would be greatly diminished if the interpretation placed upon them by the United States and a number of other delegations was accepted. According to those delegations, the predecessor State's duty to take care of the property and archives arose only after the succession of State had taken place.

56. That was particularly relevant with regard to property. For, while it was true that the physical transfer of archives might take some time or be delayed until well after the actual succession of States, the position was altogether different with regard to property. Title to property arose and the actual taking possession thereof necessarily had to occur on the date of the succession of States, namely, the date on which the flag of the predecessor State was lowered and the flag of the successor State was hoisted.

57. Mr. SKIBSTED (Denmark) said that his delegation agreed with the idea underlying the two articles and so was prepared to join in the consensus. However, it did not consider the inclusion of such provisions in the convention appropriate and would abstain in the event of a vote on them.

58. The CHAIRMAN said he took it that the Committee was prepared to adopt the proposed new articles 12 *bis* and 24 *bis* without a vote.

*The texts of new articles 12 bis and 24 bis, as orally amended, were adopted and referred to the Drafting Committee.*

59. Mr. A. BIN DAAR (United Arab Emirates) thanked delegations for the goodwill they had shown in adopting by consensus the new articles 12 *bis* and 24 *bis* proposed by his delegation.

60. With a view to ensuring that the substance and purpose of those articles were well understood and observed by predecessor States without any misinterpretation, he drew attention to the explanatory statement he had made in reply to the Italian representative before the adoption of those articles, in which he had indicated that the obligations they laid on predecessor States commenced prior to the date of succession.

*New article (A/CONF.117/C.1/L.60)*

61. Mr. MARCHAHA (Syrian Arab Republic), introducing his delegation's proposed new article entitled "Rights of national liberation movements to request that safeguard measures be taken" (A/CONF.117/C.1/L.60), said that the text submitted showed the concessions which had been made, during consultations, in order to satisfy the great majority of delegations.

62. He wished to point out that the proposal did not seek to impose any principle which had no direct connection with the subject matter of the Conference,

namely the succession of States. Its objective was not to have any particular social entity considered a subject of international law. A social entity could not become a subject of international law merely by virtue of an international treaty or convention, with the exception of treaties setting up international organizations whose purpose was precisely to establish new subjects of international law. However, a social entity acquired an international personality through transactions at the international level and indeed the existence of international relationships imposed on all parties thereto recognition of the international personality of the social entities involved.

63. All delegations had accepted the idea underlying the new articles 12 *bis* and 24 *bis*, which was similar to the concept underlying his delegation's proposal, since it related to measures to ensure the safety of property and archives passing to successor States.

64. The proposal could also be assimilated to those provisions, already incorporated in the draft convention, which related to third States and to private persons and were designed to protect the rights of such third parties. If the draft convention safeguarded those rights it should also safeguard the rights of national liberation movements, and particularly those movements which, in the view of the majority of delegations, were subjects of international law. It was obviously not within the competence of the Committee to determine the International legal status of national liberation movements and such was not the intention of his delegation's proposal, which was simply to ensure that the convention would not prejudice national liberation movements and the rights of the people they represented.

65. The text of the proposed new article imposed no obligation. It was concerned with national liberation movements which fulfilled the requirement of being recognized both by the United Nations and by any international regional organization. In accordance with the practice of the United Nations and the specialized agencies, those regional organizations were the Organization of African Unity, the Organization of American States and the Arab League. He accordingly requested that the text of document A/CONF.117/C.1/L.60 should be revised so as to mention those organizations explicitly.

66. His delegation had shown a spirit of co-operation and compromise throughout the Committee's deliberations. It had withdrawn its amendment to article 6 (A/CONF.117/C.1/L.36) and now submitted a proposal for a separate provision. As a further concession, it left it to the Committee to decide on the appropriate place in the draft convention for the new article it proposed, although it would prefer to see it inserted between articles 5 and 6.

67. Mr. HAWAS (Egypt) congratulated the delegation of the Syrian Arab Republic on its proposal, which was the outcome of consultations with many delegations and reflected an effort to accommodate all positions. The proposal was logical and constructive and conformed with the general trend of United Nations practice, international law and international practice in recent years, which had been to promote the par-

ticipation of national liberation movements in international activities and conferences, participation which was now a common occurrence. The proposal was also in harmony with the spirit of the draft convention and with the articles providing safeguards for normal subjects of international law. It was natural that safeguards should be provided also for national liberation movements.

68. There was general agreement on the principle of special treatment for newly independent States and he therefore appealed to all those who had accepted that principle to accept the proposal of the Syrian Arab Republic, since national liberation movements were the nuclei of newly independent States. Consonant with that reasoning and in view of the subject matter of the proposed article, the appropriate place for the latter was in Part I of the draft convention.

69. His delegation fully supported the Syrian proposal.

70. Mr. RASUL (Pakistan) said that his delegation supported the proposed new article which recognized existing United Nations practice. Certain national liberation movements which fulfilled the two conditions set forth in the provision had already been given observer status in the United Nations.

71. His delegation suggested that specific reference should not be made in the article to the Arab League, the Organization of African Unity and the Organization of American States, since the future convention would apply also to other geographical regions.

72. His delegation also suggested that the words "the right of self-determination and" should be deleted, as they were out of context. The right of self-determination was the basis of national liberation movements and thus did not require specific mention. Furthermore, the words did not fit into the subject matter of the present draft convention relating to the succession of States in respect of State property, State archives and State debts.

73. Mr. EDWARDS (United Kingdom) said that the new article proposed by the Syrian delegation caused his delegation some concern, as that text contained elements which it found entirely unacceptable. His Government had no doubt of the importance of the principle of self-determination for peoples, as it had made clear on appropriate occasions. His delegation felt, however, that the present draft convention was not an appropriate place for the reaffirmation of such a principle.

74. His delegation was unaware of any other widely accepted multilateral convention that affirmed the rights of national liberation movements and it regretted the introduction of the idea at the present Conference. The question of the rights of national liberation movements and the principle of permanent sovereignty had only very marginal relevance to the subject matter of the draft convention and those concepts did not have sufficient meaning in international law to be introduced into a codification convention. It was not clear what the effect of the proposed article would be; it was unlikely to result in anything other than a series of disputes.

75. His delegation had been instructed to place on record its view that neither the United Nations nor any

other international organization could determine by resolution who were the authentic representatives of peoples concerned, since that contradicted the principle of self-determination. National liberation movements had no more and no less right to request that measures be taken than other bodies. The rights referred to did not need to be protected in the present convention. Their introduction appeared to his delegation to add irrelevant political elements into what was meant to be a convention codifying important questions of international law. His delegation noted with interest that the most recently negotiated relevant text, the Manila Declaration on the Peaceful Settlement of International Disputes,<sup>1</sup> which the United Kingdom Government supported and which was non-binding, contained no mention of the rights of national liberation movements.

76. There appeared to be a misapprehension underlying the arguments with which the Syrian representative had introduced his delegation's proposal. The "rights of national liberation movements", "the right of self-determination" and the "principle of permanent sovereignty" had not, so far as his delegation was aware, been affirmed in any document that constituted international law. General Assembly resolutions were not binding instruments.

77. Finally, the representative of the Syrian Arab Republic had indicated that extensive consultations had taken place on the text of the proposed new article and that certain accommodations had been made as a result. The Egyptian representative had supported that statement. He, himself, wished to place on record that his delegation had not at any point been consulted either in its capacity as delegation of the United Kingdom or in its capacity as Chairman of the Group of Western European and Other States.

78. Mr. OESTERHELT (Federal Republic of Germany) said that his delegation was opposed to the new article proposed by the delegation of the Syrian Arab Republic. He failed to see what connection there existed between the proposal and the present draft convention. In the view of his delegation, there was no place for the proposed article in that instrument. Furthermore, the substantive content of the rule contained in the proposed article was not at all clear. To what measures did it refer and who was to take them? Lastly, his delegation opposed the proposal because it tended to introduce into the Committee's debates a highly divisive element.

79. Mr. ENAYAT (Islamic Republic of Iran) said that his delegation fully supported the text of the proposed new article. However, it would prefer something more specific than the phrase "any international regional organization". In its view, the opinion of such a regional organization was valid only in so far as it reflected the will of the peoples of the region and not merely the opinion of the political leaders of countries members of the organization.

80. His delegation considered that the appropriate place for the proposed new article would be between the present articles 5 and 6.

<sup>1</sup> See General Assembly resolution 37/10, annex.

81. Mr. MAAS GEESTERANUS (Netherlands) said that his delegation found the idea underlying the Syrian proposal interesting and believed that, with some rewording, it might be incorporated in a resolution of the Conference rather than inserted as an article of the convention.

82. The text should perhaps be clarified in order to leave no doubt that it referred to the rights of a possible future government of an eventual successor State, in respect of matters covered by the proposed convention. Furthermore, while national liberation movements might be considered to have certain rights, there was no reason why such rights should be limited to movements recognized by the United Nations. Also, where rights existed, there had to be a corresponding obligation, and the person or body to whom that obligation was addressed should be made clear.

83. The Syrian Arab Republic had suggested that the obligation should be addressed to the United Nations, and consequently its text defended the rights of national liberation movements to request that the United Nations take certain measures. However, neither the present Conference nor the present draft convention was the place to remind persons or bodies outside the United Nations of that obligation. His delegation would welcome further clarification of that point by the representative of the Secretary-General of the United Nations or by the representative of the Syrian Arab Republic.

84. Mr. AMANULLAH (Indonesia) said that his delegation could accept the proposed new article but would like to see the words "any international regional organization" replaced by "the appropriate regional organization".

85. Mr. ROSENSTOCK (United States of America) said that the title of the Conference itself provided adequate proof that the Syrian proposal was irrelevant to the Conference's work and, while some delegations could doubtless support the substance of the proposal in a relevant context, other delegations, his own among them, had substantive problems with the text.

86. The United States delegation could not agree that General Assembly resolutions provided a legal basis for such a proposal or that such a proposal had any value as *lex ferenda*; nor did it believe that the convention affected any fundamental human rights, including the rights of all peoples to equal rights and self-determination.

87. The Syrian proposal was politically divisive and, while its introduction in a relevant context might be tolerated, it was an extremely disturbing matter for it to be introduced where it was so clearly irrelevant. Any decision to adopt the Syrian proposal in any form would be a decision to abandon *in toto* all pretence that the Conference was engaged in serious codification or progressive development.

88. Mr. NATHAN (Israel) pointed out that the Syrian amendment was almost identical in its terms and object to that submitted by the same delegation in document A/CONF.117/C.1/L.36 which had been withdrawn the previous day.

89. The proceedings of the present Conference had on the whole been characterized by a general desire to

refrain from introducing amendments of a manifestly political nature. The amendment now before the Committee was the first one which had an overt and avowed political purpose, but it was without any concrete legal content or meaning.

90. His Government's views on the question of the right of self-determination and the status of national liberation movements had been clearly stated in the appropriate fora and did not require repetition at the present Conference. He would only emphasize that the status of those movements and the rights in question had not so far been given legal recognition and that General Assembly resolutions were recommendations which had no binding legal effect.

91. That the Syrian amendment was irrelevant and outside the scope and context of the present draft Convention was clear from article 1 and article 2—particularly its paragraph 1(a)—and paragraph (2) of the International Law Commission's commentary on article 1 which stated that, in incorporating the words "of States" in article 1, the Commission had intended to exclude from the field of application of the present draft articles the succession of Governments and the succession of subjects of international law other than States, an exclusion which also resulted from article 2, paragraph 1(a).

92. Paragraph (4) of the commentary on article 1 also indicated that the field of application of the draft articles was limited to the effects of succession of States in respect of State property, archives and debts. The Commission had emphasized the words "effects" in order to indicate that the provisions of the draft convention concerned not the replacement of one State by another but its legal effects, namely, the rights and obligations deriving from the replacement. Those effects were set out in articles 9, 20 and 32.

93. Two basic conclusions could therefore be drawn. First, like that of the 1978 Vienna Convention, the scope of the present draft convention was limited to the succession of States, and of States only. Second, the scope of the convention was limited to the legal consequences of such succession. In its scope, the draft convention did not have the remotest connection with liberation movements or with any developments or measures which might ultimately result in a succession of States, because such developments or measures were not connected with the effects of the succession of States but preceded the succession. The measures referred to in the Syrian amendment did not have the slightest connection with the effects of a succession of States as set out in the convention, any more than liberation movements were involved in a succession of States, for the simple reason that they were not States.

94. The representative of the Syrian Arab Republic had referred to the safeguard provision in article 6 relating to the rights of natural or juridical persons and had asked why the rights of liberation movements should not be similarly protected. In that connection, the International Law Commission's commentary on article 6 indicated that the intention of the safeguard clause was to avoid any implication that the effects of a succession of States in respect of State property, archives and debts, could in any respect prejudice any

question relating to the rights and obligations of individuals, whether natural or juridical persons. There was therefore a direct link between the objects of article 6 and the effects of State succession, whereas no such link existed in the case of the new article proposed by the Syrian Arab Republic.

95. Mr. PIRIS (France) said that the Syrian proposal presented problems of both a legal and a technical nature for his delegation. In the first place, there was no doubt whatsoever that, in the light of articles 1 and 2, the Syrian proposal fell outside the scope of the draft convention. Furthermore, while his delegation recognized the right of peoples to self-determination, it could not see what recognition of that right contributed to the convention.

96. The French delegation also supported the principle of permanent sovereignty of every people over its wealth and natural resources, provided that such sovereignty was exercised in accordance with international law. In that connection, he referred to the relevant provisions of the International Covenants on Human Rights adopted in 1966.<sup>2</sup>

97. A number of the expressions used in the proposed new article were vague and ambiguous. Examples were the word "request", and the "measures" that were to be taken, which had not been specified in any way. The text also provided that none of the provisions in the present convention should be considered as affecting the rights of certain people, but his delegation failed to see how they could do so.

98. For all those reasons, therefore, the French delegation could not accept the Syrian proposal.

99. In conclusion, he pointed out that, while reference had been made to extensive consultations on the pro-

posed new article, the French delegation had not been invited to any such consultations and had heard nothing about them.

100. Mr. LAMAMRA (Algeria) said that his delegation had no doubt as to the scope and appropriateness of the ideas contained in the Syrian proposal. The intent of the provision was quite clear, namely, that national liberation movements, as representatives of their peoples and in their struggle to assert their rights to self-determination, had the right to request international organizations and States receptive to their aspirations to assist them in safeguarding the rights of their peoples, in accordance with the principles embodied in the Charter of the United Nations. The right of national liberation movements as described in the Syrian proposal were incontestable, as was the fact that such movements exercised such rights. The Syrian delegation sought only to affirm those rights, as was quite normal, in the context of a convention on the succession of States.

101. The requirement of recognition of the national liberation movements concerned by the United Nations and by any international regional organizations could not be interpreted as a precondition for the existence of such a movement or of its right to represent its peoples.

102. It had been suggested that the Syrian proposal was outside the scope of the convention, but, since the latter dealt with the effects of succession of States, it was precisely by including in it an article such as that proposed that such succession would have no negative effects with regard to the right to self-determination.

103. One delegation had stated that the Manila Declaration made no reference to national liberation movements. As he recalled, they had been referred to more than once, although not expressly by name.

<sup>2</sup> See General Assembly resolution 2200 A (XXI).

*The meeting rose at 1 p.m.*

## 43rd meeting

Thursday, 31 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]

*New article (A/CONF.117/C.1/L.60) (continued)*

1. Mr. PHAM GIANG (Viet Nam) said that his delegation, with its long experience of wars of national liberation and of devastation left behind by predecessor States, considered the Syrian Arab Republic's proposal for a new article on the right of national liberation movements to request that safeguard measures be taken (A/CONF.117/C.1/L.60) to be legitimate and well-founded. National liberation movements were

subjects of international law recognized by numerous States, by many regional and world-wide intergovernmental organizations including the non-aligned movement, and by the United Nations itself. If it meant to carry out its mandate in an equitable manner, the Conference could not remain indifferent to the rights of national liberation movements and had to find a judicious solution to the problem raised in the Syrian proposal, which enjoyed the support of many members of the Group of 77, including his own delegation.

2. However, if the proposal for including such an article in the draft convention should present insuperable difficulties to certain delegations, his delegation thought that consideration might be given to the compromise solution suggested by the Netherlands at the previous meeting, namely, that the Syrian delegation's text should be adopted in the form of a resolution of the