

**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.6

6th 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)

6th meeting

Friday, 4 March 1983, at 3.10 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, A/CONF.117/C.1/L.1-L.7)

[Agenda item 11]

Article 8 (State property) (concluded)

1. The CHAIRMAN reminded the Committee that it had before it amendments submitted by Denmark (A/CONF.117/C.1/L.1) and France (A/CONF.117/C.1/L.5), as well as two oral amendments submitted by Finland.
2. Mr. DJORDJEVIĆ (Yugoslavia) said that his delegation found the Danish amendment unacceptable because its definition of State property was inadequate. He preferred the International Law Commission's draft, which contained all the elements that should be covered in the definition, including rights and interests.
3. The French amendment provided a certain clarification, but he wondered if it was necessary in view of the clear definition provided by the Commission.
4. Mr. POEGGEL (German Democratic Republic), expressing his delegation's support for the International Law Commission's draft, said that the French amendment would weaken the underlying concept as well as the text of the article. The International Law Commission's draft dealt with the legal consequences of the succession of States for State property from the standpoint of public international law, whereas the French amendment seemed designed to protect the rights and legal interests of private persons at the level of public international law. That was irrelevant to article 8 and, in any case, the rights and obligations of natural and juridical persons were covered by article 6. His delegation could not agree with any proposal which directly or indirectly introduced into the draft convention legal matters not regulated by international public law.
5. Mr. BEDJAOUÏ (Expert Consultant) said that in general the definition of State property in article 8 did not appear to be contested. The main problem was that raised by the French amendment.
6. He welcomed the Danish delegation's willingness not to press its amendment. It was true, as the representative of Denmark had pointed out at the previous meeting, that a parallel could be drawn between articles 8 and 19, but there was also a difference. Article 19, concerning State archives, defined a particular property *in concreto*, whereas article 8 defined property *in abstracto*. If State property were to be defined as "all that is owned by a state", that could include elements other than property. Concordance of the two articles was therefore not a valid argument in support of the Danish amendment.
7. The point raised by the French amendment was, he believed, resolved by the general understanding that when State property passed, obligations also passed. The amendment created a drafting problem, moreover, since the inclusion of a reference to obligations would complicate the future interpretation of article 8. The idea of obligations in respect of movable or immovable property was perfectly clear, but it was more difficult to comprehend charges or obligations in respect of rights and interests. The International Law Commission had therefore preferred to avoid overburdening a text that was quite clear. He trusted that the French delegation, too, would not press its amendment, in view of the general understanding to which he had referred.
8. Regarding certain doubts that had been expressed, in particular by the representative of Argentina, he assured those concerned that there was no question of article 8 containing merely a tautological definition. The article contained three qualifications in respect of the property in question: that it belonged to the predecessor State, that it so belonged according to a body of rules which was the internal law of the predecessor State, and that those rules were those which were in force on the date of the succession of States.
9. The International Law Commission had encountered the same difficulty with regard to the reference to the internal law of the predecessor State as had the participants in the Conference and had decided that it could not do otherwise than refer to that law.
10. Mr. SHASH (Egypt) said that, in the light of the Expert Consultant's explanation, he would accept the International Law Commission's text. The Danish amendment was not sufficiently precise; and the French amendment, while expressing a generally understood notion, would be out of place in a definition of State property, since an obligation was not property.
11. Mr. ECONOMIDES (Greece) said that his delegation supported the Danish amendment, which would simplify the text. It could also accept the International Law Commission's draft, which was based on the generally accepted distinction between property, rights and interests.
12. He agreed with the idea embodied in the French amendment, as one of the customary rules concerning succession of States was that both liabilities and assets should pass simultaneously from predecessor to successor State, and he endorsed the observations of the representative of Switzerland at the preceding meeting in that regard. He was satisfied with the statement made by the Expert Consultant, who had made it clear that the notion was generally accepted, either expressly or tacitly. He was inclined to agree, however, that the French amendment should not be included in article 8, the latter being concerned with State property, and considered that the Drafting Committee should find an appropriate place for it. In his delegation's view, the

best place would be article 11. Subject to two reservations—an explicit reservation concerning the actual articles of the draft convention and a reservation concerning what might be agreed by the States concerned or decided by other competent authorities—article 11 could read as it did at present, with the addition after “successor State” of a phrase such as “together with the obligations attaching to it”.

13. If the States concerned wished, by agreement, to provide otherwise, they could do so. In the absence of such agreement, the passing of property would imply the passing of both assets and liabilities.

14. Mr. LEHMANN (Denmark) said that, while he was not fully convinced by the arguments against his delegation’s amendment, he recognized that there was a consensus of the Committee in favour of maintaining article 8 as drafted by the International Law Commission. In order not to delay proceedings, his delegation therefore withdrew its amendment (A/CONF.117/C.1/L.1).

15. Mr. OBEID (Syrian Arab Republic) expressed support for article 8 as originally drafted.

16. Mrs. OLIVEROS (Argentina) said that she too could accept article 8 as drafted by the International Law Commission, in the light of the explanations given by the Expert Consultant and the interpretations given by various delegations.

17. She suggested that the Drafting Committee should be requested to ensure the concordance of terminology, particularly in respect of “State property” (“*bienes de Estado*” and “*biens d’Etat*”). Under her country’s legal system, the word “*bienes*” had a somewhat broader connotation than the word “*propiedad*”. If necessary, some definitions could be inserted in article 2, including those suggested by the representative of Greece.

18. Mr. HALTTUNEN (Finland) withdrew the oral amendments to draft articles 8 and 12 which his delegation had proposed. There had been no time to submit them in writing but they would presumably be reflected in the summary record of the 5th meeting and could be studied by those who were interested. He felt that they would have considerably improved the draft convention.

19. Mr. GUILLAUME (France) said he was glad to note from the Expert Consultant’s statement that there appeared to be a unanimous understanding that obligations were not separated from property, rights and interests and that article 8 must be understood in that sense. In the light of that understanding, he would not press for a vote on his delegation’s amendment and would be satisfied to have it sent to the Drafting Committee for the latter’s decision on the drafting of article 8, taking into account the discussion on articles 9 and 10 which might possibly have some bearing on the matter.

20. Mr. CONSTANTIN (Romania) said that, in the light of the explanations given by the Expert Consultant, his delegation was ready to support the retention of article 8 as drafted by the International Law Commission. With regard to the French amendment, he agreed with the Expert Consultant’s explanation of the general understanding on the matter.

21. Mr. KOBIALKA (Poland) said that, in view of the comments and explanations of the Expert Consultant, his delegation accepted the text of article 8 proposed by the International Law Commission. The French amendment was not a clarification: it introduced new elements in the article which were not consistent with property, rights and interests. He understood the idea underlying the French amendment but obligations meant debts and article 8 was not the proper place for them to be mentioned.

22. Mrs. BOKOR-SZEGÖ (Hungary) said that her delegation, too, supported the text of the article as drafted by the International Law Commission. As a definition, the provision should contain only elements concerning the concept defined and not elements concerning the opposite, as the French amendment did.

23. The inclusion of the latter in article 8 would cause confusion, in view of the provisions of Part IV, where the concept of State property was mentioned in articles 35 and 36. The Drafting Committee should perhaps take that fact into account.

24. Mr. RASUL (Pakistan) said that he had no difficulty in accepting the International Law Commission’s draft of article 8, particularly in view of the Expert Consultant’s explanation.

25. Mr. MIKULKA (Czechoslovakia) said that his delegation accepted article 8. Regarding the French amendment, he regretted that he could not agree that it was only a drafting matter. His delegation considered the question involved to be a matter of substance. Defining property and rights as including obligations would cause dangerous confusion, since there were two sides of a coin. An obligation was the reverse of a subjective right. He could not accept the definition of property and rights as obligations.

26. Mr. SAINT-MARTIN (Canada) said that his delegation had maintained from the start of the debate that a reference was needed in article 8 to obligations attaching to property, rights and interests passing to the successor State. His delegation had not changed its view and he therefore reaffirmed its position and supported the French amendment.

27. The CHAIRMAN, summing up, said that, in the light of the statements by the representatives of Denmark, Finland and France, the Committee now had before it only the International Law Commission’s draft. The representative of France had merely asked that his delegation’s amendment should be sent to the Drafting Committee which could consider the possibility of using the ideas contained in that amendment in the final formulation of article 8. He asked the Committee if it wished to refer the text of article 8 as drafted by the International Law Commission to the Drafting Committee and if it wished the text of the French amendment to be referred also to the Drafting Committee for possible use in the final formulation of the text.

It was so decided.

28. Mr. OWOEYE (Nigeria) said that the definition of State property proposed in article 8 was not entirely satisfactory. As the Commission’s commentary had pointed out, customary international law had not established any autonomous criterion for determining

what constituted State property. What then would occur if the internal law of the predecessor State were silent on the vital point in question? It was also not clear what procedure could be followed in the event of a dispute between the predecessor and the successor States over the ownership of certain property; a settlement in accordance solely with the internal law of the predecessor State would be of doubtful validity in an international dispute of the kind, especially as that internal law might be actively detrimental to the interests of the successor State. There was also a need for clarification with regard to the status of property, for example antiquities and works of art, removed from the territory of the predecessor State prior to the succession but which should rightly be regarded as part of the national heritage of the successor State and thus subject to passing.

29. With respect to the amendment proposed by France, his delegation shared the view of some previous speakers and the Expert Consultant that the question of obligations was out of place in the context of article 8 and would be more appropriately dealt with in Part IV of the draft articles.

30. Mr. MIKULKA (Czechoslovakia), speaking on a point of order, said that he did not understand the purpose of referring the French delegation's amendment to the Drafting Committee when it had not been adopted by the Committee of the Whole.

31. Mr. JOMARD (Iraq) said that it had been his understanding that the idea underlying the French amendment had the general support of the Committee. If, however, as the representative of Czechoslovakia had implied, that was not the case, the Drafting Committee would be placed in a very awkward situation in not knowing what approach to take to the amendment.

32. Mr. ASSI (Lebanon) said that he also failed to see the point of referring the French amendment to the Drafting Committee since it had, together with all other proposals and suggestions, been taken into account during the debate which had led to the adoption of the original draft article; it was therefore no longer a matter for consideration.

33. Mr. ROSENSTOCK (United States of America) recalled that the Expert Consultant had already clarified the relationship between the French amendment and the Commission's draft article; he had noted that the fundamental idea that property, on passing, remained subject to earlier obligations was quite correct and sound but that it posed a drafting problem because of the juxtaposition of "obligations" and "interests" and the doubtful nature of any relationship between them. It was on that basis that the representative of France had withdrawn his amendment, but it was only right that the Drafting Committee should have the opportunity to attempt to incorporate the underlying idea, which had been generally endorsed by the Committee of the Whole. In doing so it should be free to consult the text of the French amendment as a possible source of guidance and ideas.

34. Mr. MONCEF BENOUNICHE (Algeria) said it was his understanding that the French amendment was being referred informally to the Drafting Committee for information and reference, without any implication that

it should necessarily be incorporated in the final text of the article. It might be more appropriate to include the reference to obligations in another part of the future convention and the Drafting Committee would take that into consideration.

35. The CHAIRMAN noted that the representative of France had withdrawn his delegation's amendment on the understanding that it would go forward to the Drafting Committee, along with the draft article as adopted, as material for discussion without any formal status. It was his understanding that such had been the Committee's decision.

*Article 9 (Effects of the passing of State property) (continued)**

36. The CHAIRMAN drew the Committee's attention to three amendments to article 9: A/CONF.117/C.1/L.2, L.3, and L.7, proposed respectively by Austria, the Federal Republic of Germany and Greece.

37. Mrs. THAKORE (India) said that the Austrian amendment, while admirably brief and clear, was nevertheless not adequate in that, by doing away with the idea of the simultaneous extinction and arising of rights, it failed to reflect all the essential elements of the juridical effects of the phenomenon. That comment also applied to the Greek amendment. The amendment proposed by the Federal Republic of Germany contributed nothing vital to the article. On the contrary, it might lead to confusion and ambiguity. Her delegation would therefore prefer to see article 9 adopted as drafted by the International Law Commission.

38. Mr. SUCHARIPA (Austria) said that his delegation's purpose in proposing its amendment had been to offer one possible solution to the difficulty of harmonizing the theoretical concept, accurately reflected in the Commission's draft article, with its practical implications. The idea of the extinction and arising of rights implied a break in continuity and a degree of uncertainty as to the exact quality and scope of the rights passing to the successor State. While his delegation continued to believe that the article called for improvement so as to place greater emphasis on the idea of continuity, it was prepared to withdraw its amendment and lend its support to that proposed by the Federal Republic of Germany.

39. Mr. OESTERHELT (Federal Republic of Germany) said that the Commission's article was in substance acceptable to his delegation. However he felt that the article would be incomplete or open to misunderstanding if it did not make clear that the passing of state property could not lead to the disappearance of charges attaching to such property. That was a problem which his delegation's amendment sought to resolve. Since it seemed to be the general feeling of the Committee that that underlying idea was sound, a view which had been confirmed by the Expert Consultant, he hoped that the amendment would be supported.

40. Mr. BEDJAOUÏ (Expert Consultant) said that, while sympathizing with the concern that had prompted the amendment proposed by the Federal Republic of Germany, he feared that the phrase to be added might

* Resumed from the 2nd meeting.

lead to confusion and ambiguity. The addition of the words "to the extent to which the predecessor State owned such rights" suggested the possibility of a situation in which the predecessor State did not in fact own the rights in question. Such a situation would be quite irregular, and indeed there would then be no basis for a succession at all. In another potential situation possibly envisaged by the amendment, in which all other conditions for a succession were fulfilled, but in which there were doubts as to certain of the property rights claimed by the predecessor State, it was in any event only the internal law of the predecessor State itself which could determine the issue. Such a lack of certainty in the article was likely to lead to misinterpretations. In any event, it was already plain that a predecessor State could in no circumstances pass on either rights that it had not possessed or more rights than it had possessed. The amendment proposed by the Federal Republic of Germany was therefore not necessary.

41. The theoretical basis of the amendment proposed by Greece was sound. However he felt that the proposed wording, viewed out of context by a reader unfamiliar with the underlying issues, would give the erroneous impression that the effect of a succession of States was exclusively the passing of property.

42. Mr. MONCEF BENOUNICHE (Algeria) said that in the amendment proposed by the Federal Republic of Germany there seemed to be a contradiction between the basic principle of the article, which was that all the rights of the predecessor State were extinguished, and the proposed restrictive clause, which implied that in certain circumstances only a part of the rights of the predecessor State might be subject to passing. That raised the problem of how that part was to be determined.

43. The amendment of the delegation of Greece was commendable in its simplicity but it did not fully reflect all aspects of the process of succession. In particular, the rupture, precisely limited in time, which occurred between the extinction of the rights of the predecessor State and the arising of the rights of the successor State must be reflected, for it was precisely in the effects of that phenomenon that the passing of property consisted. The Algerian delegation found the International Law Commission's draft article more convincing.

44. Mr. ECONOMIDES (Greece) said that the purpose of his delegation's amendment to article 9 was twofold: to enhance the clarity of the article by deleting the reference to "rights" and referring directly to the property of the predecessor State, and to bring out more clearly the close link between article 9 and article 8.

45. Mr. MONNIER (Switzerland) observed that the idea behind the amendment proposed by the Federal Republic of Germany was no different from that which had already been generally accepted in the consideration of the French amendment to article 8, namely, that obligations and charges attaching to property automatically passed with that property. Since there was no dissent regarding the substance of that idea, it was essential for the Drafting Committee to decide where it could best be reflected. In his view article 9 would be the most appropriate context.

46. For the purpose of the proposed convention the prime requirement was to affirm a rule of conduct on the passing of State property rather than to provide a theoretical justification for such a rule. Noting that articles 10 and 11 and the articles in section 2 of Part II were all concerned with the passing of State property, he wondered whether article 9, which offered an explanation of what occurred in the operation of passing, did not in fact encumber a rule which was not in itself open to question. In that regard the amendment proposed by Greece seemed merely to provide an alternative theoretical approach.

47. Mr. PHAM GIANG (Viet Nam) said that the explanation provided by the Expert Consultant concerning the text of article 9 and his comments on the proposed amendments let his delegation to prefer the wording put forward by the International Law Commission, which defined the phenomenon of the passing of State property in carefully chosen terms.

48. Mr. RASUL (Pakistan) said that, as the Expert Consultant had pointed out, the principle that a State could not pass on rights it did not possess, or better rights than it possessed, applied in the case of article 9. That underlying principle, in his delegation's view, seemed to take care of the concern reflected in the amendment proposed by the Federal Republic of Germany.

49. Mr. ROSENSTOCK (United States of America) said that his delegation could accept the amendment proposed by Greece but regarded the matter involved as one which could safely be left to the Drafting Committee. The Greek proposal was more a description than an explanation of the process of the passing of State property. It was important to avoid the implication that any volitional act was involved and also to avoid any discontinuity. He therefore suggested that the article might be redrafted to read: "A succession of States entails the property of the predecessor State, as defined in article 8, passing to the successor State . . .". Such a wording would correspond to the approach taken by the International Law Commission in its commentary on the draft article.

50. Mr. BOCAR LY (Senegal) said that the Expert Consultant's explanation resolved the difficulties which article 9 seemed to create for the delegation of the Federal Republic of Germany. The Greek amendment appeared to imply that the only effect of a succession of States would be the passing of State property: it was thus less precise than the International Law Commission's text, which covered both the passing of State property and the legal effects of that passage.

51. Mr. OESTERHELT (Federal Republic of Germany) said that the International Law Commission's text did not fully correspond to his delegation's concept of the passing of State property. The discontinuity implied by the terms "extinction" and "arising" would create a logical and juridical vacuum into which the rights concerned—rights which related to such concrete matters as mortgages—might fall.

52. At the Committee's 2nd meeting, the Expert Consultant had drawn attention to the principle that *nemo plus iuris transferre potest quam ipse habet*; his

delegation had submitted its amendment with the aim of affirming that principle.

53. Mrs. OLIVEROS (Argentina) agreed with the previous speaker that it was essential to avoid any possibility of a vacuum or gap, and pointed out that in private law unpleasant circumstances could arise between the death of an owner of property and the transfer of the deceased's property rights. Accordingly, it should be clear that no vacuum existed between "extinction" and "arising". Moreover, she suggested that the text of the article should be brought into line with its title. With that consideration in mind her delegation was prepared to accept the amendment proposed by Greece.

54. Mr. GUILLAUME (France) said that, while the International Law Commission had evidently aimed at a compromise in its formulation of article 9, the actual result was a contradiction between the reference to "passing" in the title and the use of "extinction" and "arising" in the text. He agreed with the representative of Switzerland that there was no need to provide a "metaphysical" justification for the term "passing", which corresponded to the realities of international practice.

55. His delegation had been prepared to support the Austrian amendment which had now been withdrawn in response to criticism. The Greek amendment represented an acceptable compromise. The amendment proposed by the representative of the Federal Republic of Germany was in line with the amendment to article 8 which the French delegation had proposed and it was therefore also acceptable.

56. Mrs. ULYANOVA (Ukrainian SSR) said that she was unable to discern any "black hole" or void into which property rights could somehow vanish. She found the International Law Commission's text satisfactory, particularly in the light of the Commission's commentary on the article.

57. She agreed with the representative of India that the Greek amendment did not result in any improvement to the text: all the articles following article 8 were based on the definition of State property given in that article, and there was therefore no need to refer to article 8 in article 9. Nor did the amendment of the Federal Republic of Germany add anything of substance to the existing draft article.

58. Mr. HAWAS (Egypt) agreed that the amendment proposed by the Federal Republic of Germany was

unnecessary. In his view, the omission from the Greek amendment of a reference to the "extinction" and the "arising" of rights vitiated the usefulness of that amendment. The underlying idea was that of the passing of existing rights: there was no question of new rights arising, and the International Law Commission's text left no room for ambiguity in that regard.

59. While he favoured adoption of the Commission's text, he thought that the best solution might be to refer the amendments of Greece and the Federal Republic of Germany to Drafting Committee.

60. Mr. MEYER LONG (Uruguay) said that the Committee should follow the recommendations of the Expert Consultant with regard to article 9. He agreed however with the representative of Egypt that the two amendments should be referred to the Drafting Committee.

61. Mr. OBEID (Syrian Arab Republic) said that his delegation could detect no trace of any gap, vacuum or ambiguity in the text as formulated in the draft article submitted by the International Law Commission. The process of the passing of rights to State property took place naturally, without any discontinuity, and there was therefore no need for the amendments submitted by the Federal Republic of Germany and Greece.

*Article 10 (Date of the passing of State property) (continued)**

*Article 11 (Passing of State property without compensation) (continued)***

62. Mr. HAWAS (Egypt) said that the draft amendment which his delegation had transmitted to the secretariat that afternoon in connection with article 11¹ was also intended to apply to article 10.

63. Mr. OWOEYE (Nigeria) said that his delegation supported the amendment to article 11 proposed by Egypt and recommended that it should be referred to the Drafting Committee, on the understanding that the words "an appropriate international body" also covered regional and subregional arrangements.

The meeting rose at 6 p.m.

* Resumed from the 2nd meeting.

** Resumed from the 3rd meeting.

¹ Subsequently issued under the symbol A/CONF.117/C.1/L.17.