

**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.7

7th 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)*

7th meeting

Monday, 7 March 1983, at 10.15 a.m.

Chairman: Mr. ŠAHOVIĆ (Yugoslavia)

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

[Agenda item 11]

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

1. Mr. ECONOMIDES (Greece), replying to critical comments made at the previous meeting on his delegation's amendment to article 9 (A/CONF.117/C.1/L.7), said that a remark made to the effect that the amendment was identical with the Austrian amendment (A/CONF.117/C.1/L.2) which had been withdrawn, had no doubt been meant to suggest that the Greek amendment should likewise be withdrawn. He pointed out that, as had been recognized by many speakers, his delegation's amendment in fact constituted a distinct improvement on the text suggested by Austria, and also that the Austrian delegation's decision to withdraw its amendment in no way implied an obligation for the Greek delegation to do likewise.

2. To the objection that his amendment reduced the succession of States to a simple operation of passing of property, he replied that article 9 as originally drafted was concerned only with the passing of rights from the predecessor State to the successor State. That much was clear both from the article's title and from its text. The characteristic feature of the Greek amendment was that it went straight to the heart of the matter without any preamble or preliminary statement of motives. It was his delegation's considered opinion that the crucial point of the article was that of the passing of property and that the concept of an extinction and arising of rights was neither necessary nor desirable in the context nor even legally correct.

3. In conclusion, he said that he was ready to accept the compromise idea put forward at the previous meeting by the delegation of Argentina.

4. Mr. RASSOL'KO (Byelorussian Soviet Socialist Republic) said that the International Law Commission's draft embodied two important provisions, one concerning the predecessor State and the other concerning the successor State. The provision that a succession of States entailed the extinction of the rights of the predecessor State and the arising of the rights of the successor State represented the main thesis of the article. The idea that a kind of vacuum might occur between the extinction of the rights of the predecessor State and the arising of those of the successor State was without substance, as the successor State's rights to State property arose immediately upon the extinction of the predecessor State's rights to such property.

5. Referring to the amendment submitted by the Federal Republic of Germany (A/CONF.117/C.1/L.3),

he agreed with previous speakers who had pointed out that the concept which it sought to introduce was unjustified and unnecessary. Only those rights which the predecessor State had owned could be extinguished and only those same rights could arise for the successor State. There was no such thing as half-rights and to speak of the extent to which rights were owned—as was proposed in the amendment—was wrong in law. For that reason his delegation was unable to support the amendment submitted by the Federal Republic of Germany.

6. As far as the Greek delegation's amendment was concerned he said that it altered the contents of the International Law Commission's draft by introducing a reference to article 8 and also by failing to refer to the extinction and arising of rights, which as he had pointed out, was the crux of the article. For those reasons, he was unable to accept either of the amendments and fully supported the Commission's text.

7. Mr. MONCEF BENOUNICHE (Algeria) proposed an oral amendment which, he hoped, would reconcile the International Law Commission's draft with the amendment proposed by Greece. The Algerian amendment, which would affect both the title and the text of article 9, would read:

“*Article 9 (Effects of the succession of States on State property)*

“1. A succession of States has the effect of making the property of the predecessor State pass to the successor State in accordance with the provisions of the present Part.

“2. A succession of States entails the extinction of the rights of the predecessor State and the arising of those of the successor State to such of the State property as passes to the successor State.”

8. The effects of the succession of States were twofold. First, there was the physical process of the passing of State property from the predecessor State to the successor State; and, second, there was the legal content of the passing of rights. Both aspects should be reflected in the proposed international convention, and that was what his amendment was designed to achieve. A further advantage of the suggested text was that it specified that the rights of the successor State were not conditioned by those of the predecessor State. Contrary to what some previous speakers had said, the point was not merely a metaphysical but also a practical one.

9. Mr. KOLOMA (Mozambique) said that although, according to generally accepted drafting rules, the title of an article did not form part of the law itself, it nevertheless showed the legislator's intention in connection with the article in question. The title of article 9 clearly showed that the International Law Commission intended the subject of the article to be the effects of the

passing of State property. The Greek amendment dealt with the substantially different matter of the effect of the succession of States on State property. According to the amendment, that effect consisted of the passing of the State property of the predecessor State to the successor State. That was, of course, entirely correct, but in his view it was not the point at issue in article 9, which was concerned, rather, with the “effects of the passing of State property” in the case of succession. Thus the Greek amendment was inconsistent with the title of the article and, consequently, with the intention of its drafters in the International Law Commission. Moreover, the legal effects of the passing of State property should be reflected on both sides to the process, meaning both the predecessor and the successor States. The Commission’s draft defined those effects with precision and accuracy. As for the principle of continuity which many previous speakers had mentioned and which he, too, was anxious to uphold, that principle was ensured by the fact that the object of both the rights that were extinguished and those that arose remained the same, namely, State property, which did not change in the process of passing.

10. Referring to the amendment proposed by the delegation of the Federal Republic of Germany, he agreed with the statement made by the representative of Algeria at the previous meeting to the effect that it implied the arising of property rights for the successor State and, at the same time, the prolongation of at least some property rights for the predecessor State. The proposed inclusion of the words “to the extent to which the predecessor State owned such rights” in article 9 might jeopardize the successor State’s exercise of its property rights. The complex legal and moral issues involved made it undesirable to incorporate such a provision in the proposed international convention. For all those reasons, his delegation could not accept either the Greek amendment or that proposed by the Federal Republic of Germany and fully supported the text drafted by the International Law Commission.

11. Mr. TEPAVITCHAROV (Bulgaria) said that, in his view, article 9 dealt only with the change in entitlement to State property which arose as the result of a succession of States and not with the passing of State property as such. It was quite obvious that a succession of States was not an ordinary transfer of rights or of State property. The wording proposed by the International Law Commission implied that what was involved was not a mere change of ownership but also an obligation on the predecessor State to transfer a clear title to such of the State property as passed to the successor State. Explanatory comments made by the Expert Consultant at the Committee’s 6th meeting appeared to confirm that such had been the intention of the International Law Commission. Both amendments at present before the Committee departed from that intention. It would be at variance with the objectives and purposes of the proposed convention to provide the predecessor State with an excuse to transfer title to State property together with charges or obligations from which the predecessor State had benefited.

12. As for the problem of continuity, he considered that that was not a matter to be settled in article 9 since, upon a succession, the regime and nature of State

property were to be determined by the domestic law of the successor State. The question as to what State property passed to the successor State, as well as that of the nature of the passing of such property, were dealt with elsewhere in the draft.

13. For all those reasons, he was unable to accept either of the amendments formally before the Committee and proposed that the International Law Commission’s text, which he supported, should be referred to the Drafting Committee.

14. With reference to the oral amendment proposed by Algeria, he said that he would withhold comment pending its circulation in writing.

15. Mr. ECONOMIDES (Greece) thanked the representative of Algeria for his compromise proposal and suggested that it might be referred to the Drafting Committee.

16. Mr. OESTERHELT (Federal Republic of Germany) noted with satisfaction that almost all previous speakers had agreed that rights attaching to the object with which they related—rights *in rem*—remained valid irrespective of any change in the ownership of the territory concerned. That was an accepted rule of international law and was, *inter alia*, embodied in the 1978 Vienna Convention on the Succession of States in Respect of Treaties. The rule was supported by innumerable cases in State practice relating to the building of railways, the joint management of railway stations, the right to lay telegraph cables, rights of transit and the like. Inasmuch as such rights were considered to attach to the territory in question, the successor State honoured the obligations of the predecessor State. Furthermore, there was the question of secured State debts, in particular those specially secured by specific property, the borrowing State having in a sense mortgaged certain national assets. He referred in that connection to paragraph (37) of the commentary of the International Law Commission on article 31.

17. Three conclusions could be drawn from the draft before the Committee. First, it was legitimate to consider that article 9 left undisturbed the rights of third States attaching to the property which passed from one State to another upon a succession of States. That seemed to be the view prevailing in many statements made concerning article 9 and the amendment to it submitted by his delegation. Second, according to article 12, rights of a third State situated in the territory of the predecessor State would in principle remain unaffected by the succession as such. Lastly, article 34—although containing an important exception which would have to be debated at a later stage—pointed in the same direction by providing that the rights of creditors were not affected by a succession of States as such.

18. In order to shorten the discussion in the Committee and in the light of the foregoing considerations, his delegation would not be opposed to recommending that the Drafting Committee should take its amendment into consideration, leaving it to the Drafting Committee to try to give explicit expression to the general thought behind the amendment, as well as behind the French amendment to article 8 (A/CONF.117/C.1/L.5), which seemed to reflect a general understanding.

19. Mr. OBEID (Syrian Arab Republic) said that he would support the oral amendment submitted by the Algerian delegation.

20. Mr. PIRIS (France) welcomed the spirit of compromise at work in the Committee and, in particular, thanked the Algerian representative for his useful amendment. As a sub-amendment to paragraph 1 of that amendment, he suggested inserting the word "State" before the word "property". He also suggested amending paragraph 2 of the Algerian amendment to read:

"In consequence of this, a succession of States entails the extinction of the rights of the predecessor State to such of the State property as passes to the successor State and the concomitant arising of identical rights of the successor State to the said property."

21. The object of those suggestions was self-evident. The introduction of the word "concomitant" would reconcile his delegation, and no doubt others, to the maintenance of the concept of extinction and arising of rights, while the reference to "identical rights" confirmed the point made by the Expert Consultant that there could be no passing of rights except those that were owned.

22. The CHAIRMAN, while expressing appreciation of the efforts being made to achieve a compromise, appealed to delegations to submit their proposals in writing.

23. Mrs. OLIVEROS (Argentina) endorsed the proposals of the Algerian and French representatives.

24. Mr. HAWAS (Egypt) said that, while he was grateful to the Algerian representative for his efforts to draft a compromise formula, he supported article 9 as it stood, for it already contained all the necessary elements. Moreover, its scope was specified in article 7, which stated that "The articles in the present Part apply to the effects of a succession of States in respect of State property". The article should be adopted as it stood and the different formulations proposed should be referred to the Drafting Committee for consideration.

25. Mr. AL-NASER ALMUBARAK (Saudi Arabia) supported the Algerian proposal.

26. Mr. DJORDJEVIĆ (Yugoslavia) supported the Egyptian proposal.

27. Mr. BEDJAOUI (Expert Consultant) said that the intention of the International Law Commission in drafting article 9 had been to adopt a wording which conveyed well the automatic nature of the operation. That was what was reflected in its choice of the word "entails". The idea had been to indicate that State succession was a legal process without a pause in the titularity of a right to property.

28. The Commission had also discussed the question of continuity in connection with the rights of the successor State to property and whether the rights passed from the predecessor to the successor State. The legal nature of the succession of States in international law differed from the succession to rights in private law. In a sale, the purchaser replaced the seller and exercised the rights attaching to the property sold. There were two possible readings of the concept of the exercise of

a right by a successor in place of a predecessor State. The problem was whether the rights, even though they might have exactly the same content as those of the predecessor State, were proper to the successor State. The point was perhaps metaphysical, but successor States considered—which, moreover, was sound doctrine—that the rights to property that they exercised derived from their sovereignty, not from a transfer of the rights of the predecessor State. The latter became extinct. They did not pass to the successor State. At the same moment, those of the successor arose.

29. In a case where a successor State exercised wider rights over the property that opportunity would be given to it not by the succession of States as such but by another branch of international law. It was quite clear from article 9 that the successor State could not exercise more extensive rights than those previously vested in the predecessor State.

30. It had been pointed out that the words "arising" and "extinction" in connection with property might be contradictory, since the former evoked the idea of continuity and the latter that of discontinuity. To obviate any difficulty, he agreed with the suggestion that the word "arising" might be qualified by an adjective such as "concomitant", "instantaneous" or "simultaneous".

31. Many speakers had expressed the fear that a successor State might seize property other than that which had belonged to the predecessor State, for example, property of a third State or of private persons. He pointed out however that the definition in article 8 made it clear that the property of third States or of private persons was not covered by article 9, which dealt only with State property of the predecessor State. Moreover articles 6, 12 and 34 were safeguard clauses and would ensure that article 9 would not give rise to improper interpretations.

32. Finally he reminded the Committee that, if article 9 were to be changed, articles 20 and 32 would have to be amended consequentially.

33. The CHAIRMAN pointed out that, according to rule 47, paragraph 2, of the rules of procedure, it was the function of the Drafting Committee to co-ordinate and review the drafting of all texts adopted. Thus the Committee of the Whole would first have to adopt any texts it wished to refer to the Drafting Committee.

34. Mr. FREELAND (United Kingdom), in the light of the Algerian proposal and the explanations of the Expert Consultant, said that his delegation had been in favour of a much simpler approach to article 9, on the lines of the Greek amendment or, failing that, on those of the amendments proposed by the representative of the Federal Republic of Germany. However, the Algerian proposal, which was clearly intended as an effort to accommodate the views expressed, merited full consideration as a point of departure from which common ground might be reached.

35. His delegation agreed that the proposed change in the title of the article would bring it more closely into line with its content.

36. Paragraph 1 as proposed by Algeria, as amended by the French representative, was acceptable to his delegation.

37. As to paragraph 2, his delegation saw the reasons why the International Law Commission had preferred not to speak of a "transfer" and why it had tried to formulate the provision in neutral terms. However, his delegation doubted whether the Commission had succeeded and felt that the use of the word "entails" did not of itself meet the objective. If what was to be "entailed" was the extinction and arising of rights, the question arose whether the content of what was extinguished and what arose was exactly the same. His delegation's doubts were not fully allayed by the Algerian amendment because it retained the concept of the extinction and arising of rights. Perhaps a formulation such as "relinquishment" of rights and "vesting" or "assumption" of rights might be more genuinely neutral. His delegation had noted that the Expert Consultant would not be averse to the inclusion of a word such as "concomitant", and it saw merit in the word "identical" as suggested by the French delegation.

38. Article 9 was essentially concerned with proprietary rights on either side in the event of succession, but it had nothing to do with sovereign rights and their exercise by a successor State after the succession. In relation to the property that passed to the successor State, as indeed in relation to other property in the successor State, that State had sovereign rights that it could exercise in accordance with the relevant rules of international law; but article 9 did not deal with such rights.

39. Mr. MONNIER (Switzerland) said that the oral amendment proposed by Algeria, together with the French subamendment, appeared to cover the various concerns raised by delegations. Paragraph 1 of the amendment followed on the whole the amendment proposed by Greece whereas paragraph 2, as amended by France, echoed the provisions of the Commission's draft article 9 with the addition of the words "In consequence of this", "concomitant" and "identical". His delegation would be prepared, by way of compromise, to accept the proposal as contained in the Algerian amendment and improved by the French subamendment.

40. Mrs. BOKOR-SZOGÖ (Hungary) said that her delegation considered that article 9 did not require rewording and supported the original draft. She added that proposals and amendments should be dealt with in accordance with rules 28 and 47 in particular.

41. Mr. CHO (Republic of Korea) said that his delegation supported draft article 9 as it stood as being the most appropriate of the proposals before the Committee.

42. Mr. SUCHARIPA (Austria) said that the lengthy discussion to which article 9 had given rise was evidence of its importance, from both the theoretical and

practical points of view. His delegation was able to support the Algerian oral amendment, especially as further amended by France.

43. Mr. MONCEF BENOUCHE (Algeria), in reply to a request for clarification by Mr. TEPAVITCHAROV (Bulgaria), said that, in view of support expressed for its oral amendment, his delegation would submit it in writing. As the representative for Switzerland had pointed out, paragraph 2 of the amendment was based largely on existing article 9, and it might therefore be possible to reach an immediate decision on that provision. His delegation would submit a formal amendment on the basis of paragraph 1 of its oral proposal, in the form of a new article to be inserted immediately before existing article 9.¹

44. Mr. DALTON (United States of America) said that his delegation could accept the oral amendment proposed by Algeria, though it would prefer to see it in writing before coming to a decision.

45. The CHAIRMAN said that it should be borne in mind that, in addition to the draft article as it stood and the oral amendment proposed by Algeria as subamended by the French delegation, there were also proposals by the delegations of the Federal Republic of Germany and Greece to be considered.

46. Mr. MONNIER (Switzerland) proposed that no immediate decision should be taken on article 9 but that the Algerian and French delegations should be requested to submit the oral amendment and subamendment in writing and that a decision should then be reached without re-opening the discussion.

47. Mr. PIRIS (France) said that it was his understanding that the Algerian delegation had decided not to submit its amendment formally in the form in which it had been delivered orally. For its part, the French delegation, in a spirit of compromise, proposed to re-submit the text of the Algerian amendment as it had been subamended orally by France. It would submit that text in writing immediately.

48. Mr. NAHLIK (Poland) pointed out that any modification affecting article 9 would also have repercussions on proposed articles 20 and 32, which had virtually identical wording in respect of archives and debts. The Committee should make every effort to facilitate the task of the Drafting Committee by giving that Committee very clear directions.

49. After a procedural discussion in which Mr. MIKULKA (Czechoslovakia), Mr. MONCEF BENOUCHE (Algeria), Mr. PIRIS (France), Mr. MAAS GEESTERANUS (Netherlands) and Mr. JOMARD (Iraq) took part, the CHAIRMAN proposed that further discussion on article 9 should be deferred pending the distribution in writing of the amendments proposed.

It was so agreed.

The meeting rose at 12.55 p.m.

¹ Subsequently issued under the symbol A/CONF.117/C.1/L.22.