

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

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**8th 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)*

## 8th meeting

Monday, 7 March 1983, at 3.05 p.m.

Chairman: Mr. ŠAHOVIĆ (Yugoslavia)

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

[Agenda item 11]

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

1. Mr. ECONOMIDES (Greece), introducing his delegation's amendment to articles 10, 21 and 33 (A/CONF.117/C.1/L.4), said that it related to the structure of the convention and not to the substantive contents of the articles, which were almost identical and concerned State property, archives and debts respectively. In order to simplify the text, his delegation proposed that the proposed convention should include a single article covering those three elements. That article should be placed in the general provisions which related to the whole convention. With regard to the opening phrase, his delegation proposed that the words "agreed or decided", which had been the subject of some criticism, should be replaced by the more general and non-specific word "determined", which would cover all situations.

2. He could accept the Egyptian amendment to article 10 provided it was made clear that the phrase "the States concerned" referred only to those States involved in the succession and that the word "appropriate" qualifying "international body" was replaced by the word "competent".

3. He suggested that all questions relating to the structure of the proposed convention should be referred to the Drafting Committee.

4. Mr. HAWAS (Egypt), introducing his delegation's amendment to article 10 (A/CONF.117/C.1/L.17), said that it applied also to article 11 and to the similar articles 21 and 22. His delegation supported the principle enunciated in those articles, namely that the date of passing of State property and of State archives should be that of the succession of States and that the passing should take place without compensation. It was not opposed to providing latitude in the text for the States concerned to reach some other arrangement but such exceptions should be clearly identified and limited. The existing text might give rise to uncertainty as to who was to agree or take the decision. It appeared from paragraphs (3) and (4) of the International Law Commission's commentary on article 10 that the Commission had considered amplifying the term "agreed" by making reference to the predecessor State and the successor State but had decided against that proposal because of the possibility of a third State also being involved. Similarly, the Commission had not wished to

specify by whom a decision might be taken. He believed that the Egyptian amendment dealt appropriately with both points, although the exact wording to be used might be left to the Drafting Committee. His delegation supported the Greek proposal to consolidate several more or less identical texts in a single article in Part I.

5. He drew attention to the fact that the situation might arise where one of the parties concerned was not a State but, for example, a national liberation movement. Without prejudice to the internationally recognized right of such a movement to negotiate the independence of a colonial territory, it would be necessary for the successor State to endorse the agreement reached. Failing that, as a safeguard for colonial countries, the general principle would apply.

6. Mr. MAAS GEESTERANUS (Netherlands) announced that his delegation had become a co-sponsor of the Egyptian amendment to articles 10 and 11 (A/CONF.117/C.1/L.17 and L.6), which limited the meaning of the phrase "agreed or decided" to those cases to which it was really intended to refer. As a matter of drafting, he suggested that the word "appropriate" in those amendments should be replaced by "competent". In his view, it would be preferable to take a decision on the Greek amendment at a later stage.

7. Mrs. THAKORE (India) said that the Greek proposal to consolidate articles 10, 21 and 33 in a single article in Part I was unacceptable to her delegation. The present arrangement had the advantage of making Parts II, III and IV of the convention self-contained and that would facilitate their practical application. Furthermore, the phrase "except as otherwise determined" was vague. The present expression, namely, "unless otherwise agreed or decided", was precise and underlined the residuary character of the provision in article 10.

8. The Egyptian amendment tended to make explicit what was implicit. It was of a drafting nature and could be referred to the Drafting Committee.

9. Mr. NATHAN (Israel) pointed out that articles 10, 21 and 33 were not the only group of articles with identical contents. Articles 9, 20 and 32 and articles 11 and 22 were in the same category. There was no reason for treating one group differently from the others and, if the Greek amendment was pressed to its logical conclusion, it would have the effect of overloading the general provisions. It would also have practical disadvantages; it was an elementary principle of treaty drafting that, in accordance with the 1969 Vienna Convention on the Law of Treaties,<sup>1</sup> a term should be inter-

\* Resumed from the 6th meeting.

<sup>1</sup> *Official Records of the United Nations Conference on the Law of Treaties, 1968 and 1969, Documents of the Conference* (United Nations publication, Sales No. E.70.V.5), p. 287.

preted in its context, which meant in the self-contained part in which it occurred. An identical term might have different implications in different parts. The present structure of the proposed convention should therefore be retained. However he had no objection to the Greek amendment being referred to the Drafting Committee, together with the Egyptian amendment.

10. Mr. TÜRK (Austria) said that the Greek amendment would result in a consolidation which his delegation favoured. Nevertheless having regard to other views which had been expressed, further discussion of such consolidation should be deferred until the Drafting Committee had considered the matter. In general, he supported the Egyptian amendment, but thought that it should perhaps incorporate some language such as had been suggested by the Greek representative, so that it would read “. . . determined by the States concerned or a competent international body . . .”. That was a matter of drafting, however, which should be referred to the Drafting Committee.

11. Mr. do NASCIMENTO e SILVA (Brazil) said that his delegation would hesitate to accept either of the amendments submitted. He doubted whether the changes proposed were merely a matter of drafting and, unless the Committee of the Whole agreed that they were, they should not be referred to the Drafting Committee until the Committee of the Whole had taken a decision on them. The consolidation of several articles into a single article in Part I would run counter to the philosophy of the proposed convention, which called for each part to be self-contained. The other change suggested by the Greek amendment aimed at replacing a generally accepted phrase, “agreed or decided”, that appeared in the 1969 Vienna Convention on the Law of Treaties, an instrument which had entered into force. He took the same view regarding the Egyptian proposal to amplify that phrase. Such amplification was unnecessary for it was difficult to imagine that agreement could relate to States not concerned in the succession. The word “decided” was satisfactory without any qualification.

12. Mr. LEHMANN (Denmark) supported the Greek amendment with regard to the structure of the convention. The Drafting Committee might usefully consider a similar solution in other cases as well. He had no strong views regarding the language to be employed. The Egyptian amendment perhaps conveyed the meaning more precisely, but “competent” would be preferable to “appropriate”.

13. Mr. PIRIS (France) said that his delegation took a flexible position on the Greek proposal to consolidate several articles. It wished to ascertain the general view of the Committee of the Whole. It was inclined to favour the Egyptian amendment, which explicated the International Law Commission’s text. It interpreted “States concerned” to mean the predecessor State and the successor State. In his view it was obvious that the “appropriate” international body must be competent since it was a question of a body competent to hand down mandatory decisions for the parties concerned.

14. Mr. OESTERHELT (Federal Republic of Germany) said that, on the understanding that the word

“decided” implied a decision binding on the parties concerned, either as a result of the jurisdiction of the International Court of Justice or by virtue of bilateral or multilateral contractual obligations, his delegation would support the International Law Commission’s text. The Egyptian amendment brought the text closer to what his delegation felt the article should provide. However, his delegation would prefer the word “competent” to “appropriate”.

15. Mr. FREELAND (United Kingdom) said that it would be premature to take an immediate decision on the Greek proposal to consolidate into one single article articles appearing in three different parts of the proposed convention. His delegation hesitated to accept the word “determined”, which seemed more likely to refer to a decision by some international body than to agreement between the parties. Both cases should be clearly provided for in the text. The wording proposed in the Egyptian amendment was helpful, but it would be desirable to make the formulation still more precise by substituting “agreed by the predecessor and successor States” for “agreed by the States concerned” and the word “competent” for “appropriate”.

16. Mr. NAHLIK (Poland) said that approval of the consolidation proposed in the Greek amendment would necessitate taking a similar decision on at least three other groups of articles. That would have the effect of leaving very little in section 1 of Parts II, III and IV of the proposed convention. It would be premature to decide on such a course at the present stage. The word “determined” was ambiguous—care must be taken to select a term with the same implications in all languages. He could accept the Egyptian amendment which clarified the text.

17. Mr. ECONOMIDES (Greece) said that his delegation withdrew its amendment (A/CONF.117/C.1/L.4), which had been intended to draw attention to the fact that there were in the various parts of the proposed convention a number of more or less identical articles which should more properly appear in the general provisions. He hoped that that important question might be further considered at a later stage.

18. Mr. BINTOU’ A-TSHIABOLA (Zaire) wondered whether an “appropriate international body” had the same meaning in law as “a competent international body”. If it had, then he could support the Egyptian proposal.

19. Mr. TEPAVITCHAROV (Bulgaria) said that his delegation fully supported the International Law Commission’s draft. He wondered whether the representative of Egypt or the Expert Consultant could explain the intention behind Egypt’s proposed amendment. That the International Law Commission had been aware of the problems that Egypt appeared to be attempting to solve was quite clear from paragraph 3 of its commentary. Some members of the Commission had suggested the inclusion in the article of the words “between the predecessor State and the successor State” but the Commission had decided not to add those words. He wondered therefore whether a case might arise in which parties other than a predecessor and successor State might be involved, such as a third State on whose territory the State property in question was situated. With regard to the second part of the pro-

vision, he also wondered whether it would not be sufficient to refer simply to a “competent body” since a case could be envisaged in which another body, such as a national body, made the decision, as in the case of arbitration, for example.

20. Mr. MIKULKA (Czechoslovakia) said that his delegation appreciated the withdrawal of the Greek amendment, because it was, in its view, somewhat premature to decide to combine several articles into one. His delegation welcomed Egypt’s efforts to clarify the text, but wondered whether the changes proposed by that delegation were really necessary. It seemed to be generally agreed that the date of the passing of State property was a matter for agreement between the States concerned and he doubted that it was necessary to be more specific. Some delegations had favoured a specific reference to agreement between the predecessor and the successor States, but there were also cases where only successor States were concerned. Furthermore, it seemed to be agreed that the word “decided” would generally refer to a decision by a competent international body but again he wondered whether it was necessary to say so explicitly. It might be useful for the Committee to have an explanation as to why the International Law Commission had not used the same expression as it had done in the 1978 Vienna Convention on Succession of States in Respect of Treaties<sup>2</sup> in a similar case, where one found the expression “unless . . . otherwise agree”, or the expression “or . . . it . . . is otherwise established”.

21. Mr. BEDJAOUI (Expert Consultant) said that article 10 was one of a number of articles containing the phrase under discussion. The International Law Commission had intended to include in article 10 a rule, which was basically a residuary provision, that would allow States themselves to settle that aspect of the succession of States to which the article referred, leaving the possibility open for other forms of settlement by agreement. The Commission had in fact used several different expressions, as the representative of Czechoslovakia had observed, but the cases concerned were not the same and the Commission had varied its wording according to the degree of precision it had considered possible.

22. He saw difficulty in being more precise than the Commission had been in its text by referring to “an appropriate international body”. He personally favoured the Commission’s policy of providing for every possible type of agreement or decision without going into specifics.

23. Mr. HAWAS (Egypt) thanked the Greek delegation for having withdrawn its proposal.

24. His delegation emphasized that the amendment it had proposed was in line with the general thinking of the International Law Commission. It has merely sought to improve the Commission’s text by adding what it considered to be lacking. With regard to the first part of its proposal, “unless agreed by the States concerned . . .”, paragraph (3) of the International Law

Commission’s commentary mentioned that in practice the States concerned sometimes agreed to choose a date for the passing of State property other than that of the succession of States. His delegation’s proposal in no way conflicted with that idea. It provided a form of wording which made it unnecessary to specify that the agreement should be between the predecessor and the successor States and opened the way for a number of States, if necessary, to agree. The provision would then be strengthened by other articles in the proposed convention, such as articles 16 and 17. His delegation did not favour providing for the case of an agreement between a State, on the one hand, and a different kind of entity, such as a local government or a liberation movement, on the other. Its main concern had been to make that clear in the text.

25. As for the phrase “decided by an appropriate international body”, the intention there had been to eliminate any idea that a unilateral decision as to the date of the succession or on the matter of compensation could be imposed by the predecessor State. If disputes were to be avoided, the decision should be taken by an appropriate international body. No attempt had been made to list obvious examples, since the choice of that body would be a matter for future generations. The text as drafted by the International Law Commission could only give rise to uncertainty and even to serious complications in the future.

26. Mr. SUCHARITKUL (Thailand) said that his delegation welcomed the Egyptian amendment and the explanations given by the Expert Consultant. Like the Expert Consultant, he believed that the International Law Commission’s formula provided maximum flexibility and a balanced approach, since it covered many different situations and varying circumstances.

27. Mr. LAMAMRA (Algeria) said that at the outset his delegation had had no definitive view on the significance and scope of the Egyptian proposal but the discussion and the useful explanation by the representative of Egypt had led it to conclude that the amendment presented few advantages.

28. Paragraphs 3 and 4 of the International Law Commission’s commentary on article 10 were useful in explaining the reasons which had led the Commission to draft the text as it had done. Having weighed all the arguments, his delegation had concluded that the Commission’s decision had been a wise one and that any addition to the article would only lead to conflicting interpretations. The Commission’s wording had a further advantage which would be lost if the Egyptian amendment were adopted, namely flexibility, since Egypt’s intention was to exclude agreements between international liberation movements and predecessor States. His delegation saw no reason for such a restriction, particularly as the likelihood of such a case arising was considerable.

29. He hoped, therefore, that the Egyptian delegation would reconsider its proposal. His delegation greatly appreciated the Egyptian delegation’s efforts, however, as well as those of the Greek delegation, whose main concern had been the structure of the convention. That concern was quite justified and he hoped that the Drafting Committee or a small group appointed by the

<sup>2</sup> *Official Records of the United Nations Conference on Succession of States in Respect of Treaties*, vol. III (United Nations publication, Sales No. E.79.V.10), p. 185.

Chairman might consider the structure of the convention and make suitable recommendations to the Committee of the Whole at a later stage. Prolonged discussion of questions of presentation could thus be avoided.

30. Mr. HAWAS (Egypt) confirmed that the purpose of his delegation's amendment to article 10 was to introduce an element of restriction into what were, after all, exceptions. His delegation still felt that the wording in the International Law Commission's draft article was too broad. If, however, having heard the explanation given by the Expert Consultant, the Committee was satisfied that the Commission's draft article excluded the possibility of a decision being taken unilaterally or agreement being reached between parties other than the States concerned, his delegation would not press for a vote on its amendment. It would instead request that that proposal be referred to the Drafting Committee. He noted that, in his explanation, the Expert Consultant had made it clear that the International Law Commission was not opposed to the substance of the Egyptian amendment.

31. Mr. MAAS GEESTERANUS (Netherlands) observed that general appreciation had been expressed for the amendment to article 10 proposed by the delegations of Egypt and the Netherlands. Indeed, the tenor of the suggestion made by the United Kingdom delegation had been that the working of article 10 should be tightened up even further. Given the general agreement on the need to amend article 10, the only point at issue was the exact formulation of such an amendment. He therefore agreed with the representative of Egypt that the matter should be referred to the Drafting Committee.

32. Mrs. OLIVEROS (Argentina) agreed with the thrust of the amendment submitted by Egypt and the Netherlands and also supported the idea advanced by the United Kingdom delegation. The amendment should be referred to the Drafting Committee which should also take into account the desirability of reversing the order of the elements in the draft article. Thus, the rule that the date of the passing of State property was that of the succession of States, should precede the exception to that rule.

33. Mr. DALTON (United States of America) said that his delegation viewed the proposal in document A/CONF.117/C.1/L.17 as a clear drafting improvement which should be sent to the Drafting Committee for possible reformulation.

34. Mr. MONCEF BENOUCHE (Algeria) said that the Committee of the Whole should take a decision on the substance of the proposal before referring it to the Drafting Committee.

35. Mr. ASSI (Lebanon) supported that view.

36. Mr. JOMARD (Iraq) said that the first step to be taken, before deciding how to proceed further, was to determine whether or not there was consensus on the substance of the proposal.

37. The CHAIRMAN said that there did not appear to be a consensus in the Committee on referral of the proposal to the Drafting Committee. He therefore be-

lieved that a vote should be taken on the matter in order to ascertain whether there was agreement on the substance. He drew attention to the fact that, under rule 47, paragraph 2, of the rules of procedure of the Conference, the Drafting Committee was responsible for co-ordinating and reviewing the drafting of texts once they had been adopted.

38. Mr. MURAKAMI (Japan) considered that a vote on each article would be premature at the current stage, when the general picture of the convention as a whole was not yet clear.

39. Mr. ECONOMIDES (Greece) supported by Mr. LEHMANN (Denmark) and Mrs. BOKOR-SZEGÖ (Hungary), proposed that the Committee should first decide whether the amendment concerned a point of drafting or one of substance.

40. Mr. BEDJAOU (Expert Consultant) said that, if the Committee were to vote on the proposal, it would be pertinent to bear in mind that cases had occurred where national courts had ruled in respect of property located outside the successor State and where their ruling had been accepted by the successor State. The possible involvement of national bodies should therefore also be borne in mind.

41. Mr. MONNIER (Switzerland) noted that the sponsors of the amendment were not pressing for a vote and that the Argentine representative's proposal was purely a matter of drafting which could be taken up by the Drafting Committee. The Committee of the Whole should therefore take a decision on the draft submitted by the International Law Commission and refer it, if adopted, to the Drafting Committee, leaving it to that Committee to take into account the views expressed.

42. Mr. HAWAS (Egypt), referring to the explanation just given by the Expert Consultant, said that his delegation did not agree with the concept of rulings by foreign courts being covered by article 10. The Expert Consultant's statement reinforced his delegation's concern that article 10 as it stood was too broad and thus gave rise to differing interpretations.

43. Mr. MURAKAMI (Japan) recalled that a similar case had arisen during the United Nations Conference on Succession of States in Respect of Treaties. On that occasion the Committee of the Whole had decided to refer a draft article of the International Law Commission to the Drafting Committee, together with an amendment to the article as a drafting suggestion. He proposed that that precedent should be followed in the present instance.

44. The CHAIRMAN invited the Committee to vote on article 10.

45. Mrs. BOKOR-SZEGÖ (Hungary), supported by Mr. JOMARD (Iraq), pointed out that a vote had already been requested on whether the amendment in document A/CONF.117/C.1/L.17 was a matter of drafting or one of substance; in accordance with the rules of procedure that question should in their view be voted upon first.

*The meeting rose at 6.05 p.m.*