

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

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9th 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)*

9th meeting

Tuesday, 8 March 1983, at 10.10 a.m.

Chairman: Mr. ŠAHOVIĆ (Yugoslavia)

Organization of work

1. The CHAIRMAN drew attention to document A/CONF.117/9 and, in particular, to paragraph 17, which stated that the Committee would have at its disposal a maximum of 44 meetings to deal with the draft articles prepared by the International Law Commission, and to annex I.B of that document which outlined the schedule of work. The Committee had not as yet completed consideration of the first group of articles (articles 7 to 12), on which discussion was to have been concluded before 4 March. He urged the Committee to accelerate its progress in order to be sure of meeting the deadline of 31 March envisaged for the conclusion of its work. It was also essential that articles should be referred to the Drafting Committee with clear instructions.

2. Mr. NAHLIK (Poland) said that it would save time if the Chairman were to close the list of speakers on a particular topic when a situation arose in which many speakers had already raised much the same points.

3. The CHAIRMAN took note of the suggestion.

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) (concluded)

4. Mr. HAWAS (Egypt) said that his delegation had hoped that its proposed amendment, (A/CONF.117/C.1/L.17) would be adopted without a vote and referred to the Drafting Committee. However, after consultations with many delegations, he had decided to ask for a vote on the amendment, whose purpose was to make as clear as possible the necessary exception to the general rule contained in the draft article. The substance of the article was not in question.

5. Mr. MUCHUI (Kenya) said that his delegation wished to become a co-sponsor of the amendment proposed by Egypt. He did not feel that the exception thus provided for in any way altered the intended scope of the article.

6. Mr. SUCHARITKUL (Thailand) said that the Egyptian amendment had the disadvantage that it introduced elements of ambiguity into the text. The "States concerned", as referred to in the amendment, might be predecessor, successor or third States, a combination of such States, or even a single State: as the Expert Consultant had pointed out at the preceding meeting, it was extremely difficult to be precise when there were several possible cases of succession.

7. Similarly, if the amendment had referred simply to an "appropriate body" no ambiguity would have arisen but the introduction of the expression "an appropriate international body" left considerable room for interpretation. He noted that the Commission's draft articles on the law of treaties between States and international organizations or between international organizations,¹ in article 2 on use of terms, defined an "international organization" as an intergovernmental organization, thus excluding, for example, multinational corporations. However, if understood in that sense, the expression "appropriate international body" would also exclude such possible arbitrators as the Pope, a reigning monarch or the Permanent Court of Arbitration. The Egyptian amendment, by using the expression "States concerned", would have the further effect of failing to cover the case of the dissolution of a sovereign State as, for example, in the cases of the United Arab Republic or Malaya.

8. Obviously the draft articles could not cover every contingency and the Commission had clearly realized that fact when drafting article 10.

9. Mr. ECONOMIDES (Greece) said that he agreed with the views of the previous speaker and with those expressed by the Expert Consultant at the preceding meeting. He asked whether the term "an appropriate international body" was intended to mean a body competent under international law, a category which might, for example, include a Head of State acting in pursuance of international law.

10. Mr. A. BIN DAAR (United Arab Emirates) suggested that some difficulties might be eliminated if the representative of Egypt were prepared to revise his amendment so that the last phrase would read "unless otherwise agreed by the parties to the succession of States or decided by an appropriate national or international body".

11. Mr. HAWAS (Egypt), referring to the statement by the representative of Thailand, said that he had taken into account the possibility that the parties to a succession of States might resort to arbitration: in that event the arbitral award would be binding upon them.

12. In reply to other comments on his delegation's amendment he said that, while a national judicial body had competence in its own country, it was inconceivable that a unilateral court decision taken in a predecessor State could be binding on an independent successor State. It was important not to over-extend the scope of article 10.

13. In conclusion, he said that he could not accept the wording proposed by the delegation of the United Arab Emirates, which did not provide for the kind of limitation his amendment had been intended to introduce.

¹ See *Official Records of the General Assembly, Thirty-seventh session, Supplement No. 10 (A/37/10)*, chap. II, sect. D.

14. The CHAIRMAN invited the Committee to vote on the amendment proposed by Egypt and co-sponsored by the Netherlands and Kenya (A/CONF.117/C.1/L.17).

The amendment was adopted by 24 votes to 10, with 23 abstentions.

15. The CHAIRMAN invited the Committee to vote on article 10, as amended.

Article 10, as amended, was adopted by 44 votes to 4, with 12 abstentions, and referred to the Drafting Committee.

16. Mr. OESTERHELT (Federal Republic of Germany) said that, although he would have preferred the term "competent" to the term "appropriate", he had voted in favour of the amendment and of the text of article 10 as amended. He interpreted the amendment as referring to decisions which were binding upon the parties to the succession of States.

17. Mr. SUCHARIPA (Austria) said that he, too, had voted in favour of the amendment and of the article as amended, but would have preferred the use of the word "competent".

18. Mr. PIRIS (France) said that he had voted in favour of the amendment which, in his view, satisfied the points raised by the representatives of Greece, the United Arab Emirates and Thailand.

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

19. Mr. HALTTUNEN (Finland) proposed that the word "from" between the words "property" and "the" should be replaced by the word "of". The proposed amendment might be regarded as a drafting change, but he personally felt that a point of substance was involved. The purpose of the amendment was to make it clear that State property passing from the predecessor State to the successor State was indeed the property of the predecessor State and not of a third State.

20. Mr. HAWAS (Egypt), introducing his delegation's amendment (A/CONF.117/C.1/L.6), of which the Netherlands had become a co-sponsor, said that the amendment was in line with, and based on the same logic as, the amendment to article 10 which the Committee had just adopted.

21. Mr. do NASCIMENTO e SILVA (Brazil) said that, as he had stated at the Committee's 3rd meeting, he would prefer article 11 to remain as it stood. In view of the adoption of the amendment (A/CONF.117/C.1/L.17) to article 10, however, he now felt that article 11 should be amended in a similar manner.

22. With regard to the amendment just proposed orally by the representative of Finland, he said that he would have no objection to its being referred to the Drafting Committee, but so far as discussion in the Committee of the Whole was concerned, the provisions of rule 28 should apply.

23. Mr. USHAKOV (Union of Soviet Socialist Republics) said that the Committee's adoption of the

amendment to article 10 should be considered tantamount to the adoption of a like amendment to all other articles of the draft in which the phrase "unless otherwise agreed or decided" occurred. Inconsistency in that respect would disturb the structure of the draft as a whole. The precise rendering of the words "international body" in Russian and, possibly, also in French, might, however, require further thought.

24. Mr. MUCHUI (Kenya) agreed that the adoption of the amendment to article 10 would automatically entail a similar change in all other articles of the draft containing the words "unless otherwise agreed or decided". He announced that his delegation co-sponsored the amendment in document A/CONF.117/C.1/L.6.

25. Mr. MONNIER (Switzerland) pointed out that the oral amendment suggested by the representative of Finland, which did not affect the French text, involved only a drafting point and might be referred to the Drafting Committee.

26. With regard to the amendment co-sponsored by Egypt, the Netherlands and Kenya, he appreciated the point made by the representative of the Soviet Union but felt that an amendment which had been formally submitted called for a separate decision. In general, he was not in favour of incorporating the wording adopted in respect of article 10 automatically in all other articles of the draft which contained the phrase in question; the specific legal context should be taken into consideration in each case.

27. Mr. JOMARD (Iraq) said that he fully agreed with the last speaker that an automatic approach should be avoided. The issue might perhaps be referred to the Drafting Committee.

28. Mr. PIRIS (France) agreed with the representatives of Switzerland and Iraq that the amendment to article 11 should form the subject of a separate vote. He further agreed that the Finnish oral amendment should be referred to the Drafting Committee. So far as the application of rule 28 was concerned, he felt that a certain degree of flexibility was in order.

29. Mr. MONCEF BENOUNICHE (Algeria) said that he basically agreed with the Soviet representative. He suggested that the Secretariat might be requested to produce a paper identifying all those articles in the draft containing the phrase "unless otherwise agreed or decided".

30. Mr. HAWAS (Egypt) pointed out that the International Law Commission's commentary on articles 11, 21, 22 and 33 made it quite clear that the purpose of the phrase in question was identical with that of the corresponding clause in article 10.

31. Mr. OWOEYE (Nigeria), while agreeing with the idea underlying the amendment, was of the opinion that it should be considered on its own merits, as should be similar amendments to other articles in the draft. A comment by the Expert Consultant would be helpful in that connection.

32. Mr. BEDJAOUI (Expert Consultant) said that wherever the same expression appeared in the draft, consistency did indeed demand an amendment such as had been adopted in respect of article 10. However, that

* Resumed from the 6th meeting.

comment applied only to those articles where the form of words employed was exactly the same as in the original article 10.

33. The CHAIRMAN suggested that, in the absence of any objection, the amendment to article 11 contained in document A/CONF.117/C.1/L.6 should be considered adopted.

It was so decided.

Article 11, as amended, was adopted and referred to the Drafting Committee.

34. The CHAIRMAN suggested that the oral amendment proposed by Finland should be referred to the Drafting Committee.

It was so decided.

*Article 12 (Absence of effect of a succession of States on the property of a third State) (concluded)**

35. The CHAIRMAN suggested that, in the absence of further discussion, article 12 should be adopted without a vote and referred to the Drafting Committee.

It was so decided.

36. Mr. HAWAS (Egypt) said that his delegation had agreed to the adoption of article 12 in the light of the explanations given by the Expert Consultant, especially as regards the phrase "according to the internal law of the predecessor State".

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

New article 8 bis (Passing of State property)

37. The CHAIRMAN invited the Committee to consider, in addition to the International Law Commission's draft, the amendments to article 9 submitted by the Federal Republic of Germany (A/CONF.117/C.1/L.3), Greece (A/CONF.117/C.1/L.7) and France (A/CONF.117/C.1/L.21), as well as the amendment by Algeria involving the addition of a new article 8 *bis* (A/CONF.117/C.1/L.22).

38. Mr. PIRIS (France), introducing his delegation's amendment (A/CONF.117/C.1/L.21), said that it was exactly the same as the oral amendment submitted at the 7th meeting by Algeria, as orally subamended by the French delegation at the same meeting. The amendment reproduced those oral proposals and merged them. His only aim was to assist the Committee in its efforts to achieve a compromise. Paragraph 1 of the amendment just about corresponded to the text of the Greek delegation's amendment which was also reflected in the new article 8 *bis* proposed by Algeria. Paragraph 2, which was proposed in a spirit of compromise although the French delegation continued to be unconvinced of its necessity, reproduced the International Law Commission's draft with some slight additions, in particular the addition of the words "concomitant" and "identical", which were intended to make the text more explicit. If the Committee preferred, the word "concomitant" could be replaced by some other term such as "simultaneous" or "instantaneous", as

suggested by the Expert Consultant. Lastly, it was proposed that the title of article 9 should be amended to read "Effects of the succession of States on State property", as had been suggested by the Algerian delegation at the 7th meeting.

39. He pointed out that, in the Spanish version of paragraph 1 of his delegation's amendment, the words "*de Estado*" should be added after the word "*bienes*". The title of the amendment should also be corrected.

40. Mr. USHAKOV (Union of Soviet Socialist Republics) said he appreciated the efforts of the Algerian and French delegations, in proposing their respective amendments, to reconcile the divergent views within the Committee. However, in his view, both the Algerian proposal and paragraph 1 of the French amendment conflicted with the fundamental meaning of the text proposed by the International Law Commission for article 9.

41. As was clear from its title, the purport of article 9 in the Commission's draft was to spell out the effects of the passing of State property in the event of a succession of States. The need for such a definition was evident for, as the Expert Consultant had said, the terms "pass" and "passing" had no accepted juridical meaning. Their connotations were twofold: first, in a physical sense, the transfer or passing of certain material items, including immovable property with a fixed geographical location; and, second, the juridical consequences of that transfer, namely, the termination or extinction of the rights of the predecessor State to the property in question under international law and the simultaneous arising of identical rights for the successor State. That those two elements were of simultaneous effect was beyond question, for to envisage any delay occurring between them would be to place an absurd interpretation on the draft article. A further vital question arose: did the whole of the State property of the predecessor State pass, or only a part thereof? It was plain that what passed was only that property which passed in accordance with the provisions of the articles of Part II; only in the exceptional case provided for in article 15, where two or more States united, did the resultant successor State acquire the whole of the State property of the predecessor State.

42. By contrast, both the French amendment to article 9 and the Algerian proposal for a new article 8 *bis* quite incorrectly implied that what passed was the whole of the State property of the predecessor State; the phrase "in accordance with the provisions of the articles in the present Part" in the Algerian text seemed not so much to limit the extent of the property concerned as to qualify the word "pass". He pointed out in that connection that the amendments used the definite article when referring to "*the* State property of the predecessor State". That wording appeared to be based on the amendment of Greece to article 9, but with the omission of the words "as defined in article 8" which, in the Greek amendment, qualified the property of the predecessor State. Even had that phrase been retained, however, the inference to be drawn from the Algerian and French amendments that they meant to refer to the whole of such property was almost inescapable, since article 8 gave only a general definition of the meaning of "State property".

* Resumed from the 5th meeting.

** Resumed from the 7th meeting.

43. Paragraph 2 of the French delegation's amendment likewise failed to specify exactly the scope of the expression "the State property". In addition, the stipulation that the rights acquired by the successor State were identical to those extinguished for the predecessor State was superfluous and inappropriate, since it was a principle exhaustively debated and unanimously accepted by the Committee that such property as passed did so with no loss of any of the charges and obligations attaching to it. It had been on that understanding, after all, that the same delegation had agreed, at the Committee's sixth meeting, not to insist on its amendment to similar effect in connection with article 8 (A/CONF.117/C.1/L.5).

44. For the reasons stated, the delegation of the USSR regarded both the French and the Algerian proposals as undesirable and would oppose them should they be put to a vote.

45. Mr. NATHAN (Israel) said that, with the exception of the provisions dealing with the specific case of newly independent States, where the draft applied the *tabula rasa* or "clean slate" rule, the operative provisions of all the relevant parts of the future convention as drafted by the Commission were based on the fundamental notion of continuity in a succession of States. He felt that in article 9 however the Commission had perhaps been less than fully faithful to that principle and he therefore welcomed the French amendment for the way in which it re-emphasized the element of continuity. The new title of the article, as proposed by France, also more accurately reflected the actual content and purport of the original draft. The amendment was therefore fully supported by his delegation.

46. Mrs. OLIVEROS (Argentina) said that, apart from the correction of the Spanish version of paragraph 1 of the French delegation's amendment, that amendment was acceptable to her delegation because it seemed to reflect the Commission's original thinking more faithfully than did the Commission's own draft article.

47. Mr. MONCEF BENOUNICHE (Algeria) said that his delegation's proposal for a new article 8 *bis* sought to introduce a logical element which was missing from the Commission's draft. It was based on the premise that there were two components to the phenomenon of passing, the first being that of transfer of property in a physical sense and the second the implications of that transfer, in terms of the extinction and arising of rights, for the predecessor and successor States. His delegation took the view that it was vital, as a first step, to establish the physical character of the passing of property, which would be the purpose of the new article 8 *bis*, and then to deduce the juridical effects of the passing in article 9.

48. The representative of the Soviet Union had raised the question whether all or part of the State property of the predecessor State was covered by the wording of the proposal. That point was in fact fully clarified by the proviso "in accordance with the provisions of the articles in the present Part", since articles 13 to 17 established a number of unambiguous criteria, such as the physical location of the property in the territory or the degree to which it was necessary to the administration

of the territory, to be used in determining the extent and scope of the property which passed.

49. Mr. RASUL (Pakistan) noted that draft article 9 contained two elements. It spoke first of the passing of property and, second, of the effects of such passing. Both the French and the Algerian amendments before the Committee had the merit of separating those two elements, while the Commission's draft article covered them in only one sentence. There were three possible options open to the Committee: a single article treating both points in one paragraph; a single article divided into two paragraphs; or two independent articles. The Committee should give more thought to the relative merits of the three options.

50. His delegation welcomed the inclusion, in paragraph 2 of the French delegation's amendment, of the two useful adjectives "concomitant" and "identical", and noted that the Expert Consultant seemed to find those two words acceptable.

51. Mr. HAWAS (Egypt) said that his delegation considered that the text of article 9 as drafted by the Commission was perfectly satisfactory and covered all the concerns which had been voiced in the debate and reflected in the proposed amendments. The Commission's language had been carefully chosen and dealt effectively with the idea of the passing of State property and its implications, especially as the article should be construed in the light of earlier articles, particularly articles 7 and 8. It was very important to retain the elements of "extinction" and "arising" of rights, and his delegation was convinced that there was absolutely no implication of any gap or discontinuity in the process in article 9 as it stood. The French delegation's amendment did little more than emphasize elements which were already clearly understood, while possibly disturbing the structure of the entire draft and introducing new wording which might give rise to difficulties of interpretation. He would therefore prefer article 9 to be maintained as it stood in the Commission's draft.

52. Mrs. BOKOR-SZEGÖ (Hungary) said that both the title and the text of the French delegation's amendment were incompatible with the very concept of succession of States as proposed by the International Law Commission and as embodied in the 1978 Vienna Convention on Succession of States in Respect of Treaties.² The specific effects on State property of different cases of succession of States would be dealt with in the articles of Part I of the draft. The title and wording of article 9 should therefore be kept neutral, while describing adequately, in a general way, the effects of the passing of State property. The article as drafted by the Commission satisfied both those requirements and should be maintained.

53. Mr. ECONOMIDES (Greece) said that, since the substance of his delegation's amendment to article 9 was admirably covered by the French and Algerian amendments, he withdrew his delegation's amendment.

54. He particularly shared the view of the Algerian representative that it was vital to include a separate

² *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.

provision on the primary effect of a succession of States on State property, namely, the physical phenomenon of passing. It would be a grave omission if the future convention failed to reflect that clearly.

55. With regard to the comments made by the representative of the Soviet Union, he felt it was clear that the amendments proposed by Algeria and France did not imply that the whole of the State property of the predecessor State would necessarily pass to the successor State, for those amendments contained the express stipulation "in accordance with the provisions of the articles in the present Part", and that Part included articles 13 to 17 which specified how and to what extent such property was affected in various different situations. He thought that merely a drafting point was involved which could be settled by the Drafting Committee.

56. Mr. OESTERHELT (Federal Republic of Germany) said that the French delegation's amendment was commendably clear, sound in law and necessary. Since it was based on the same thinking as his own delegation's amendment he was prepared to withdraw that amendment in the event that the French amendment carried.

57. Mr. MONNIER (Switzerland) said that, unlike the representative of Pakistan, he did not consider that the draft article, as prepared by the Commission, both laid down the rule and specified the effects of the passing of property. In his opinion, the rule as such was merely implicit in article 9; the term "passing" was used only in the title. The merit of the French and Algerian amendments was that they stated the rule expressly.

58. The arguments of the representative of the Soviet Union had not convinced him that there was any ambiguity in the way in which the expression "in accordance with the provisions of the articles in the present Part" was used in the French delegation's amendment; the expression had a generally understood meaning and the article as qualified by that expression could surely not be construed to mean that all the State property of the predecessor State invariably and necessarily passed to the successor State.

59. His delegation would therefore support the French delegation's amendment, which covered all the basic elements required and added a useful clarification in paragraph 2 through the use of the adjectives "concomitant" and "identical".

The meeting rose at 1 p.m.

10th meeting

Tuesday, 8 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 9 (Effects of the passing of State property) (concluded)

New article 8 bis (Passing of State property) (concluded)

1. Mr. POEGGEL (German Democratic Republic) said that, in his view, the French amendment (A/CONF.117/C.1/L.21) was not sufficiently precise with regard to the effects of State succession on State property. The legal consequence of a succession of States was that both the sovereignty and the internal law of the predecessor State ceased to exist. At the same time, the successor State established its own legal order in the territory concerned, in particular in respect of the State property that had been owned by the predecessor State. The new State acquired that property in its own name and without any formal or specific act of transfer being performed or required. Accordingly, the concepts of a transfer or passing of State property as such from one State to another or of the arising of identical rights of the successor State did not exist.

2. His delegation therefore preferred the text of draft article 9 submitted by the International Law Commission, although it was not opposed to the Drafting Committee studying proposals designed to improve the formulation of the article.

3. Mr. LAMAMRA (Algeria) said that the proposed text for a new article 8 *bis* submitted by his delegation (A/CONF.117/C.1/L.22) should not be viewed as having a structural link with article 9 as drafted by the International Law Commission, or the amendments submitted thereto.

4. In submitting its amendment, his delegation has been prompted by a desire to bring together two divergent points of view. It was therefore disturbing to note that paragraph 1 of the amendments to article 9 submitted by France, which was identical with the new article proposed by Algeria, was still before the Committee.

5. Referring to paragraph 2 of the French amendment, he questioned the relevance of the concept of identical rights of successor States, which acquired the property by virtue of their own sovereignty. A succession of States entailed the extinction of the rights of the predecessor State: the rights of the successor State that arose could be identical, but might also be different. The French text would open the door to efforts by predecessor States to recover national wealth in accordance with the concept of acquired rights. His del-