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

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10th plenary meeting

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)*

tlement of disputes, which had already been adopted by the Conference. If the Conference wished to reconsider that matter, it would, under rule 31 of the rules of procedure, have to decide to do so by a two-thirds majority of the representatives present and voting.

58. The PRESIDENT said that the Bulgarian representative's point of order would be dealt with at the beginning of the next meeting.

The meeting rose at 1.15 p.m.

10th plenary meeting

Thursday, 7 April 1983, at 2.45 p.m.

President: Mr. SEIDL-HOHENFELDERN (Austria)

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 (*concluded*)

[Agenda item 11]

REPORTS OF THE DRAFTING COMMITTEE (*concluded*) (A/CONF.117/10 and Add.1-3)

REPORT OF THE COMMITTEE OF THE WHOLE (*concluded*) (A/CONF.117/11 and Add.1-12)

Annex (Settlement of disputes) (*concluded*)

1. The PRESIDENT invited the Conference to resume its consideration of the text of the Annex proposed by the Drafting Committee (A/CONF.117/10/Add.2) and of the amendment proposed by Austria and Switzerland (A/CONF.117/L.2).

2. Mr. TEPAVITCHAROV (Bulgaria) recalled that, in raising a point of order at the end of the previous meeting, he had objected that the amendment proposed by Austria and Switzerland involved reconsideration of provisions which had already been adopted by the Committee of the Whole. In order to have a discussion on the amendment therefore the Conference must take a decision under rule 31 of the rules of procedure which, as was made clear by rule 50, was intended to apply to all decisions of committees, subcommittees and working groups. If such a decision was taken by the required two-thirds majority, his delegation would not oppose it.

3. Mr. MONNIER (Switzerland) pointed out that, although rule 31 applied to committees, thus including the Committee of the Whole, the plenary Conference was a quite different and autonomous forum which was entitled to consider any proposed amendment presented in any form. He could not accept that a decision under rule 31 was called for in the particular case; the amendment in A/CONF.117/L.2 had been submitted in the proper way, fully in accordance with the rules of procedure, and at the earliest possible moment, namely, as soon as the Drafting Committee's text (A/CONF.117/10/Add.2), the basic proposal on the question for the purposes of the plenary Conference, had been circulated. It was only right and proper that the Conference should have the opportunity to debate the proposed amendment.

4. After a brief procedural discussion, in which the PRESIDENT, Mr. Tepavitcharov (Bulgaria), Mr. ROSENSTOCK (United States of America) and Mr. MONCEF BENOUNICHE (Algeria) took part, the PRESIDENT ruled that the submission of the amendment in question by Austria and Switzerland did not call for the reconsideration of a proposal on which a decision had already been taken and that the Conference could thus consider the amendment.

5. Mr. MONCEF BENOUNICHE (Algeria) said that for the most part the amendment proposed by Austria and Switzerland did not pose any particular problems, with the exception of the penultimate sentence of paragraph 6, which stated that any party to the dispute might unilaterally declare that it would abide by the recommendations in the report of the conciliation commission. It was not clear whether that declaration was to be made before or after the report had been drawn up. That was an important point, since the possibility of making such a declaration after the preparation of the report by the conciliation commission might promote agreement among the parties, which was, after all, the purpose of conciliation.

6. Paragraph 8 of the amendment, under which publication of the conciliation commission's report could be requested unilaterally by one of the parties to the dispute, seemed to conflict with that purpose. He doubted whether such a one-sided arrangement would facilitate the preparation of acceptable terms for a settlement. It would be more desirable to maintain a balance between the parties and to permit action to be taken only at their joint request.

7. The PRESIDENT invited the Conference to vote on the amendment proposed by Austria and Switzerland (A/CONF.117/L.2).

The amendment was rejected by 40 votes to 22, with 8 abstentions.

8. The PRESIDENT invited the Conference to vote on the text of the Annex proposed by the Drafting Committee (A/CONF.117/10/Add.2).

The Annex was adopted by 56 votes to none, with 15 abstentions.

9. Mr. HAYASHI (Japan), speaking in explanation of vote, said his delegation had voted in favour of the Annex proposed by the Drafting Committee although it had abstained in the vote on the same proposal in the Committee of the Whole. Although the Annex was not entirely satisfactory, it was better to include it than to omit provisions on the settlement of disputes entirely.

Placement of the provisions on settlement of disputes

10. The PRESIDENT said that, unless he heard any objections, he would take it that the Conference agreed that, as recommended by the Chairman of the Drafting Committee, articles A to E on settlement of disputes should constitute Part V of the convention, the Annex being appended at the very end of the convention.

It was so decided.

Placement of the final provisions

11. The PRESIDENT said that, unless he heard any objections, he would take it that the Conference agreed with the recommendation of the Drafting Committee that articles A to E containing the final provisions of the future convention (A/CONF.117/10) should form a separate Part VI to be placed at the end of the convention.

It was so decided.

Titles of Parts I, II, III, IV, V and VI of the Convention

12. The PRESIDENT invited the Conference to take a decision on the titles of the Parts of the convention as proposed by the Drafting Committee.

Part I

The title "General provisions" was adopted.

Part II

The title "State property" was adopted.

Part III

The title "State archives" was adopted.

Part IV

The title "State debts" was adopted.

Part V

The title "Settlement of disputes" was adopted.

Part VI

The title "Final provisions" was adoptd.

Titles of sections 1 and 2 of Parts II, III and IV

13. The PRESIDENT invited the Conference to take a decision on the titles of the sections of Parts II, III and IV, as recommended by the Drafting Committee.

Section 1

The title "Introduction" was adopted.

Section 2

The title "Provisions concerning specific categories of succession of States" was adopted without a vote.

Title of the Convention

14. The PRESIDENT invited the Conference to take a decision on the title of the convention as proposed by the Drafting Committee.

The title "Vienna Convention on Succession of States in Respect of State Property, Archives and Debts" was adopted.

Final numbering of articles

15. The PRESIDENT noted that the articles provisionally designated by letters or bearing the indication *bis* would, in the final text of the convention, receive numbers corresponding to their placement therein.

The Conference took note of the President's statement.

Preamble of the Convention

16. Mr. SUCHARITKUL (Thailand), Chairman of the Drafting Committee, introducing the text of the preamble as adopted by that Committee (A/CONF.117/10/Add.3) pursuant to the decision taken at the 12th meeting of the Committee of the Whole, noted that the text had been adopted on the basis of the draft submitted to it by a working group set up for the purpose. For the most part, it reproduced the preamble to the 1978 Vienna Convention on Succession of States in respect of Treaties, with the necessary adaptations, except for the last paragraph, which repeated the text of the corresponding paragraph of the preamble to the United Nations Convention on the Law of the Sea.

17. He noted that, at the beginning of the tenth paragraph, the words "this Convention" should be amended to read "the present Convention".

The preamble of the Convention was adopted.

18. Mr. PIRIS (France) said that his delegation had not objected to the adoption of the preamble without a vote. However, had a vote been taken, his delegation would have abstained because the enumeration of the principles of international law in the seventh paragraph deviated from the wording of the Charter of the United Nations on certain significant points.

Adoption of a convention and other instruments deemed appropriate and of the Final Act of the Conference

[Agenda item 12]

ADOPTION OF THE CONVENTION

19. The PRESIDENT said that a number of delegations wished to make statements in explanation of vote before the vote on the draft convention as a whole.

20. Mr. ROSENSTOCK (United States of America) recalled that his delegation had voted against a number of articles of the draft convention and had abstained in the votes on certain others. He regretted that none of the articles which his delegation had found most unacceptable had been ameliorated. The fact that the most objectionable material was in fact irrelevant to the issue of succession of States made the inclusion of that material all the more disturbing. That remark applied particularly to the provisions of articles 14, 26, 28, 29 and 36.

21. The process of codification and progressive development of international law was difficult enough even when confined to relevant material. To treat the drafting of a convention as an opportunity to impose minority theories of no immediate relevance was a blow to the heart of the entire process. In that connection his delegation would like to express its gratitude to the delegation of Brazil for its efforts to assist the Conference to steer a middle course by including all that

was relevant and avoiding extreme treatment of that which was not.

22. Other aspects of the text causing his delegation serious problems related mostly to the extent and scale of the special treatment given to newly independent States and the unnecessary vagueness of the formulation of a number of provisions. The latter defect might have been cured or at least significantly corrected by including binding dispute settlement provisions. However, the same delegations which had insisted on the adoption of the formulations in question had refused to accept a binding procedure for the settlement of disputes.

23. In short, his delegation's position was that the draft convention contained much that was neither existing law nor acceptable as a formulation *de lege ferenda*. For those reasons his delegation intended to vote against the draft convention as a whole. In so doing, his country would be casting its first negative vote on a draft convention of such a nature. His delegation regretted that the inclusion of irrelevant material and the absence of a sufficiently widespread spirit of compromise had left it with no alternative.

24. His delegation hoped that, in the future, work of the same character would take sufficient account of the views of the international community as a whole, so that its vote on the present occasion would remain a unique experience.

25. Mr. OESTERHELT (Federal Republic of Germany), speaking on behalf of the ten States members of the European Communities, said that the delegations of those countries had actively participated in the debate and had contributed their share to the common endeavour to formulate generally acceptable texts. It was with great regret that, at the end of the work of the Conference, the ten countries members of the European Communities had to recognize that their contribution had not led to any significant changes in the parts of the convention which were of particular interest to them and that, on balance, the text of the convention was not acceptable to them as a whole, owing to its many deficiencies and even though some parts of it were not objectionable.

26. Those ten delegations would have greatly preferred that compromises could have been found that would have made it possible for them to vote in favour of the draft convention. As the text stood however they were not in a position to support it as a whole and would not vote in favour of its adoption.

27. Lastly, he wished to express their disappointment regarding the manner in which the Conference had carried out its work. A conference like the present one, which attempted to formulate existing rules of customary international law and to reach agreement about rules of contractual international law, had two very important tasks, neither of which could be fulfilled if it did not take into consideration the views of a substantial minority of States. If the way in which the Conference had proceeded were to set an example for future codification conferences, then the codification process as such might well suffer damage. The ten delegations wished to sound a warning against such a development.

28. He proceeded to state his own delegation's reasons for voting against the adoption of the convention as a whole. Those reasons were connected above all with the provisions in article 14, paragraph 4; article 36, paragraph 2; and article 26, paragraph 7. The legal content of those provisions was not clear. His delegation categorically rejected any allegation to the effect that any of the principles contained in those provisions was part of *jus cogens* in international law. He stressed that there was no unwillingness on his delegation's part to discuss the substance of those principles, or to negotiate on formulations that could give expression to the basic precepts underlying them. He emphasized however that, in his delegation's view, the questions dealt with in those provisions did not belong in a convention on State succession in respect of State property, archives and debts.

29. Another reason for his delegation's negative vote related to the multitude of rather vague terms used throughout the text of the convention and the absence of an adequate procedure for the settlement of disputes between the parties to the convention. His delegation did not wish to contribute to the adoption of a text which it feared might ultimately lead to protracted controversies about the interpretation and application of its rules without any provision enabling a third party —court or arbitral tribunal—to settle finally, and in a binding manner, disputes arising between parties.

30. Mr. MONCEF BENOUNICHE (Algeria) requested that a roll-call vote should be taken on the draft convention. His delegation would vote in favour of the draft.

31. It was a regrettable feature of the Conference that not all delegations had been responsive to the positive approach adopted by the Group of 77 and a number of other countries which had endeavoured to facilitate the work of the Conference. Those delegations which had chosen to obstruct the Conference and which were prepared to vote against the draft convention bore a heavy responsibility. Their negative attitudes to an instrument which was fully in conformity with trends in the international community paralleled the uncooperative approach which had led to difficulties in the negotiations on the new international economic order. Nevertheless the work of codification and progressive development of international law would continue and nothing could jeopardize the legal importance and value of the convention.

32. Mr. KIRSCH (Canada) said that Canada had a long-standing tradition of contributing to the progressive development of international law. His delegation however did not consider that the convention before the Conference represented a positive contribution to that development, for a number of reasons. First, some provisions, in particular articles 14, paragraph 4; 26, paragraph 7; 28, paragraph 3; 29, paragraph 4; and 36, paragraph 2, contained references to concepts, in the form of conditions surrounding the conclusion of agreements, that had no generally accepted meaning in international law. His delegation had been prepared to accept references to such concepts as general principles aimed at fostering the national development of States. It could not, however, accept any suggestion that they

were part of *jus cogens* in international law. References to those principles should not have been included in their present form in an instrument that purported to codify the rights and obligations of States. Secondly, numerous provisions in the convention lent themselves to differing interpretations and were unlikely to be of assistance to either predecessor or successor States facing the actual problems of succession. He referred to a number of statements made by his delegation in the Committee of the Whole. The general difficulty of interpretation was compounded by the absence in the convention of satisfactory provisions relating to the settlement of disputes by a compulsory third party procedure. In his delegation's view, the combination of unclear legal concepts, unclear drafting and unsatisfactory dispute settlement provisions would make the convention a factor of legal insecurity rather than of security in relations between predecessor and succcessor States.

33. Thirdly, it had been clear since the beginning of the Conference that the document which had served as a basis for its work had been a source of dissatisfaction to a number of delegations. The Conference could and should have attempted to improve the contents and drafting of the text and to ensure that the final document reflected general agreement among the participating States. His delegation had been prepared to make the necessary compromises to achieve such a result.

34. Individual efforts, much appreciated by his delegation, had been made to seek consensus solutions but they had remained the exception. The convention which ought to have embodied universally applicable rules had been treated as though it was a political statement aimed at reflecting the views of a particular group of States. All amendments or proposals that had not fully met the wishes of the majority of States, or merely had had the defect of being submitted by the minority, had been systematically rejected after a cursory examination.

35. His delegation deplored the Conference's working methods, in particular premature and inconsiderate resort to voting without regard to the likely consequences for the outcome of its work. Such methods were ill-adapted to a modern codification exercise and had not served the development of international law in general or the interest of the Conference in particular. It was to be hoped that future codification conferences would not follow the unfortunate example set at the present Conference.

36. The value of a treaty that did not codify customary or general international law but purported to create new rules, as was unquestionably the case with the new convention, depended entirely upon the degree of support that it was able to command, particularly among States with different interests in the subject matter of the treaty. In the absence of that support, the contribution of such a treaty was likely to remain purely theoretical.

37. For the reasons he had given, the Canadian delegation would, with regret, vote against the adoption of the convention.

38. Mr. SHASH (Egypt) said that his delegation would vote in favour of the draft convention. He expressed his delegation's gratitude to the International Law Commission for its valuable contribution in the form of the draft articles submitted to the Conference, and also for the commentary, which his delegation had read with great interest.

39. It was a matter of deep regret that some delegations opposed the draft articles on the grounds that the Conference had been endeavouring to arrive at a text which would favour a specific group of countries at the expense of the international community as a whole. Nothing could be further from the truth: the Group of 77 had been prepared to make concessions in order to improve the text, particularly in the case of articles 4, 6, 16, 19, 20, 32 and 34. Such concessions proved that the Group of 77 had indeed been acting in good faith. Consultations had been held, but some delegations had categorically rejected certain principles which enjoyed a large measure of support at the Conference, including such universally recognized principles as the sovereignty of every people over its wealth and natural resources, or the right of peoples to development.

40. The Conference had succeeded, despite obstructions, in arriving at a convention which would reflect international practice and which had a solid legal basis.

41. The achievement of generally acceptable rules of international law required a large measure of flexibility on the part of the individual members of the international community. He hoped that delegations which had decided to vote against the draft convention would reconsider their position and join with the majority in pursuing the goals of codification and progressive development of international law.

42. Mr. SQUILLANTE (Italy) said that, for numerous reasons related both to form and to substance, his delegation would vote against the convention as a whole. First, however, he wished to stress that at the outset the attitude of the Italian Government had been both positive and encouraging, as could be seen from document A/CN.4/338/Add.1 of April 1981. Nevertheless the hopes which it had entertained at that juncture had been frustrated by the manner in which the Conference had been conducted. Sound legal proposals by the group to which Italy belonged had been systematically rejected by the majority. The codification and progressive development of international law might be jeopardized if that kind of procedure continued. A draft of the scope and importance of the convention should not be adopted without at least some attempt to accommodate the viewpoints of the minority.

43. With regard to the substance, his delegation had had occasion to make known its views on specific articles during the discussion in the Committee of the Whole. Nevertheless he wished to reaffirm the difficulties which his delegation had with clauses which not only restricted the freedom of States parties to conclude bilateral agreements on matters dealt with in the convention but also were likely to affect the rights and interests of third States that were not parties to the convention. Furthermore, the text contained provisions which were legally vague and imprecise. He cited, for example, the concept of "equitable proportions" which appeared in articles 17, 35, 38 and 39 and others such as "normal administration", "connected with the

activity" and "in respect of the territory". Furthermore, clauses had been inserted which were clearly of a political and not of a legal nature.

44. It would therefore have been all the more desirable to establish appropriate and effective machinery for the settlement of disputes which might arise and hence to approve rules for something more than a mere conciliation procedure. But the text finally adopted on that subject was too weak and would not make the effective contribution desired. It was in fact identical with that of articles 41 to 45 of the 1978 Vienna Convention on the Succession of States in Respect of Treaties.[1] A more refined system for settling disputes concerning the interpretation and application of the convention should have been devised: recourse to the procedure for the settlement of disputes should have been made obligatory and it should have been provided that the relevant decisions should be taken by an independent adjudicating body.

45. In conclusion he stated that, in his delegation's opinion, the convention was inconsistent with State practice and did not represent a codification of the existing general international law on the subject. His delegation hoped that in future the international community would once again demonstrate its cohesive force and formulate texts which, founded on the solid bases of law, practice, theory and jurisprudence, would be universally approved.

46. Mr. GÜNEY (Turkey) said that his delegation would vote in favour of the convention as a whole and that it was grateful to the International Law Commission for having provided a text which enabled the Conference to arrive at the draft currently before it. Unfortunately, the juridical scope of article 14, paragraph 4; of article 26, paragraph 7; and of article 36, paragraph 2, had given rise to controversy in the Committee of the Whole owing to their lack of clarity. His delegation was anxious to avoid any future misunderstanding concerning the interpretation or application of those provisions: in his delegation's view, there could be no question that they could constitute a general rule of international law to be applied automatically and independently of the convention as a whole.

47. Mr. SUÁREZ de PUGA (Spain) said that his delegation would regretfully abstain in the vote on the convention as a whole.

48. Spain had played an active part in the process of codification of international law under the auspices of the United Nations and was a party to most of the conventions which had been born of that process. For that reason, it had participated in the Conference with a lively interest. It had been specially concerned that the text produced should achieve the highest possible degree of technical perfection and, above all, that a spirit of compromise and the greatest possible harmony should prevail among the States represented.

49. It was from that motive that his delegation had supported the adoption of rules for dispute settlement broad enough to settle any disputes which might arise from the imprecise nature of certain expressions used in the convention to define the criteria determining the relationship between certain property, archives and debts and the States involved in a succession. It was also for that reason that his delegation had supported the efforts to find a compromise solution to the problems which the provisions of articles 14, paragraph 4; 26, paragraph 7; 28, paragraph 3; 29, paragraph 4; and 36, paragraph 2, posed for certain delegations. Those provisions departed from or in some cases conflicted with current State practice. They were based on the premise that certain rights were part of *jus cogens*, a view which had not been generally accepted by the international community. That fact made consensus among States doubly necessary in the adoption of such provisions and his delegation believed that most delegations had not shown sufficient readiness to compromise.

50. Thus his delegation's abstention reflected, first, its reservations regarding certain technical aspects of the text and, second and more significantly, its doubts whether the codification of international law under the auspices of the United Nations would be able to proceed with any chance of success if the spirit of compromise and understanding which had been present in other earlier undertakings of the same kind was not restored. His delegation had done all that it could to promote acceptable compromises which would reconcile divergent views but felt that it had not received sufficient support for its endeavours from other delegations.

51. Mr. KADIRI (Morocco) said that his delegation would vote in favour of the draft convention which it regarded as a decisive step forward in the codification and progressive development of international law, particularly in view of the complexity of the subject-matter covered by the articles. The Conference had been especially valuable in that it had succeeded in codifying such important rules of international conduct as good faith. Although some principles had been opposed by certain delegations on the grounds of their supposed ambiguity, in his delegation's view it was important to realize that the process of progressive development of international law was a continuing one and that the implications of such principles as equity would become clearer with the passage of time. In conclusion, he said that the convention was particularly significant from the standpoint of codification in that it had established legal guarantees in the settlement of disputes.

52. Mr. MARCHAHA (Syrian Arab Republic) said that his delegation would vote in favour of the draft convention and that it agreed with the views expressed by the representatives of Algeria and Morocco.

53. He felt it important to point out that the International Law Commission was a body composed of eminent international jurists who represented the world's principal legal systems. It could not be regarded as representing only the Group of 77. His delegation had come to the Conference prepared to discuss a draft which had been formulated over a long period of time and on which, it had assumed, there was some measure of preliminary agreement. From the outset, however, it had been surprised to note that some delegations did

[1] *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.

not share that constructive approach. In many cases the objections raised to the draft articles seemed to be based on an unrealistic expectation that the convention should serve the interests of certain countries exclusively and not those of the international community as a whole. As the representative of Egypt had pointed out, the members of the Group of 77 had shown willingness to compromise in the endeavour to arrive at a balanced draft and there could be no justification in the claim that they had inflexibly pursued their own interests. It was clear that the delegations which opposed the text did not wish to march with progress. His delegation would vote in favour of the draft convention notwithstanding all the concessions made by the Group of 77.

54. Mr. ŠAHOVIĆ (Yugoslavia) said that his delegation would vote in favour of the draft convention as a whole and welcomed the fact that the Conference had fulfilled its mandate under the terms of General Assembly resolution 37/11 of 15 November 1982. His delegation considered that all delegations were to be congratulated on the results of the Conference notwithstanding the differences which had arisen.

55. The draft convention expressed the intentions of the international community on the issue of succession of States in respect of State property, archives and debts. As a result of the Conference, the rules relating to a very important chapter of international law, which had not previously been clearly defined, had been codified. The Conference had faced a number of very difficult problems but there was no denying that the results achieved were valuable. While the text of the draft convention might not satisfy all delegations, it nevertheless reflected the intent of the international community. The progress which had been made on many articles demonstrated that the Conference had been able to conclude its work with success. Those who opposed the draft convention should reconsider their attitude in the light of historical and current trends.

56. Mr. GUILLAUME (France) said that France had always favoured the process of constructive dialogue between nations, including the North-South dialogue. The draft convention related to a highly technical field and it had been his delegation's hope that a dialogue would develop and that solutions acceptable to all would be reached. The results achieved, particularly the provisions of articles 14, paragraph 4; 26, paragraph 7; 28, paragraph 3; 29, paragraph 4; 31; 36, paragraph 2, and 39 were not satisfactory; his delegation would accordingly vote against the draft convention.

57. The text was not a codification of existing international law and, in many articles, went well beyond accepted practice. It would only bind those States which became parties to it. Issues relating to the succession of States in respect of State property, archives and debts were perhaps best handled bilaterally rather than through a broad convention. The draft contained many vague expressions; his delegation had attempted to devise more acceptable formulas but had been frustrated in those efforts and must register its disappointment at the way in which the convention had been drafted and discussed. It had come to the Conference ready to negotiate but negotiations had not been possible. The process which had been followed was fraught with risks for the whole future development of international law.

58. Mr. ASSI (Lebanon) said his delegation would vote in favour of the draft convention because it regarded it as an important contribution to international law and as an instrument based on the principles of justice and equity. The small States were those which required to be defended in the important field of the succession of States in respect of State property, archives and debts, and the main purpose of the draft convention had been to assure the dignity and sovereignty of all States. The draft convention did not favour one group of States only; the interests of all countries would be served if an atmosphere of good faith prevailed. In the past, the will of the strongest had prevailed and that had led to conflict. During the Conference, the codification process had had to surmount a series of obstacles and the alleged imprecision of some of the articles stemmed from the intentions of those who did not wish to see the issues clarified.

59. Mr. RASUL (Pakistan) said that his delegation had proposed a number of amendments, thus demonstrating that it was not fully satisfied with the draft articles as prepared by the International Law Commission. In a spirit of co-operation and compromise, and in the earnest hope that the convention would promote, rather than obstruct, the amicable resolution of conflicting views, his delegation would vote in favour of the draft convention as a whole, despite the fact that it continued to be dissatisfied with certain provisions on which its position had been made clear in the Committee of the Whole.

60. Mr. BEN SOLTANE (Tunisia) said that his delegation would vote in favour of the convention as a whole. It appreciated the considerable effort made by the International Law Commission in working out the draft convention. It regretted that the Commission's work and effort had been ill rewarded by a number of delegations. Their attitude was hardly likely to encourage a United Nations body composed of eminent jurists, whose integrity and independence were beyond question, to continue the efforts to codify international law.

61. Disagreeing with the views of certain representatives, he said that the spirit of compromise and co-operation had never been absent from the Conference. Nevertheless while it had been possible to find a compromise in respect of a large number of articles, his delegation thought that, on concepts relating to certain fundamental rights, there could be no compromise. Those concepts were often used in various international forums. Their inclusion in the convention merely confirmed the reality of the existence and basic rights of all peoples, without distinction.

62. Mr. TARCICI (Yemen) said that, since the Second World War, the world had taken substantial steps forward and the realities of political and economic life had been modified accordingly. It was essential that international law should develop and keep abreast of reality. The Conference had witnessed the insistence of certain groups on standing on traditional positions. His

delegation believed that the tide of events would persuade those groups to alter such positions in the field of international law as well as in other fields. Progress could not be stopped.

At the request of the representative of Algeria, a vote was taken by roll-call on the draft convention as a whole.

Morocco, having been drawn by lot by the President, was called upon to vote first.

In favour: Algeria, Angola, Argentina, Brazil, Bulgaria, Byelorussian SSR, Chile, Costa Rica, Cuba, Czechoslovakia, Democratic Yemen, Ecuador, Egypt, Gabon, German Democratic Republic, Guatemala, Hungary, India, Indonesia, Iran, Islamic Republic of, Iraq, Jordan, Kenya, Kuwait, Lebanon, Libyan Arab Jamahiriya, Mali, Mexico, Morocco, Mozambique, Namibia, Nigeria, Pakistan, Panama, Peru, Philippines, Poland, Republic of Korea, Romania, Senegal, Suriname, Syrian Arab Republic, Thailand, Tunisia, Turkey, Ukrainian SSR, USSR, United Arab Emirates, Uruguay, Venezuela, Viet Nam, Yemen, Yugoslavia, Zaire.

Against: Belgium, Canada, France, Germany, Federal Republic of, Israel, Italy, Luxembourg, Netherlands, Switzerland, United Kingdom of Great Britain and Northern Ireland, Unitd States of America.

Abstaining: Australia, Austria, Denmark, Finland, Greece, Ireland, Japan, Norway, Portugal, Spain, Sweden.

The result of the vote was 54 in favour and 11 against, with 11 abstentions.

The draft convention as a whole was adopted, having obtained the required two-thirds majority.

63. Mr. TÜRK (Austria), speaking in explanation of vote, said that his delegation greatly regretted that it had had to abstain in the final vote on the draft convention and had thus been unable to support the text which had been elaborated by the Conference. The decision to abstain had been taken not light-heartedly but only on the basis of a serious examination of the final text. The reasons for his delegation's position corresponded to the views it had expressed during the debate and in the various amendments which it had submitted. He proceeded to summarize those reasons.

64. In Part III, the convention invariably used the expression "relating to" to circumscribe the archives-territory link and, on that basis, stipulated the attribution of archives between the predecessor and the successor State. The expression was inappropriate as it could lead to absurd results. In the view of his delegation, the word "appertaining" should have been employed instead. Furthermore, the text of Part III did not incorporate important concepts such as the preservation of the right to privacy with regard to information contained in archives, the preservation of rights of access to archives and the archival concept of joint heritage.

65. Article 31 excluded from the scope of the Convention debts owed to private creditors by States and did not therefore deal with a topic which, in the view of his delegation, was relevant to a succession of States.

66. Despite very serious efforts, it had not been possible to arrive at a compromise solution for a procedure for the settlement of disputes; such a procedure would have been appropriate for the Convention.

67. Several articles of the Convention referred to the principle of permanent sovereignty over national wealth and resources but did not make it clear that that principle, which the Austrian delegation could support, must be applied in accordance with the relevant norms of international law.

68. In many cases the Convention used rather vague terms or made reference to the need for equitable solutions without providing adequate guidelines as to how such solutions should be reached. In the view of his delegation, it should have been possible to agree on a more precise formulation in a number of such cases; Austria had supported a number of amendments to that end.

69. A number of delegations had expressed scepticism regarding the possibility of making further progress in the process of codification and progressive development of international law. His delegation continued to believe however that the efforts made within the existing United Nations system, particularly through the International Law Commission, to codify international law in the interests of the international community as a whole and of the strengthening of peace and international co-operation, would produce positive results in the future. His delegation would continue to support that important process.

70. Mr. BROWN (Australia) said that, because of his country's long history of commitment to the process of codification and progressive development of international law, it was with great regret that his delegation had felt unable to support the adoption of the text of the draft convention.

71. Although the Conference had been convened to codify the law on succession of States in matters other than treaties, it had gone considerably beyond that. It was, of course, not always possible or even desirable to limit such conferences strictly to the codification of the rules of international law. Australia's concern was not that there had been a progressive development of international law in the convention but that some of its provisions went well beyond State practice, precedent and doctrine. As a result the Conference had adopted some articles which had made it impossible for Australia to support the adoption of the Convention.

72. In particular, his delegation considered that the principles reflected in article 14, paragraph 4; article 26, paragraph 7; article 28, paragraph 3; and article 29, paragraph 4, were not part of customary international law and certainly not recognized by the international community as constituting peremptory norms of general international law from which no derogation was permitted. The votes recorded on those draft articles during the Conference supplied ample justification for that view. His delegation was also concerned about a number of other provisions which contained vague or incomplete terminology, such as article 36. The same comment applied also to article 31, which his delegation felt did not adequately cover an important area of State

debts, namely the class of private debts chargeable to a State.

73. The negotiation of an international instrument, particularly one on such a complex subject as that before the Conference and reflecting such a wide diversity of interests, should, in his delegation's view, be characterized by a willingness by each participant to consider the points of view of other delegations and to reach a mutually acceptable compromise.

74. Australia had sought to work hard to find common ground which would be acceptable to all delegations, and it was a matter of special regret to his delegation that there had been inadequate evidence of a spirit of compromise during the Conference. Indeed the adoption of articles without serious consideration having been given to possible improvements denied the process of negotiation itself. The inevitable result was reflected in the vote on the Convention as a whole, namely, the probability that a convention had been adopted with a limited chance that it would receive sufficient ratifications required to make it a meaningful international instrument.

75. Should that probability be realized, his delegation wished to record its view that many of the articles in the Convention did not reflect either existing rules of customary international law or any degree of wide agreement as to what those rules should be. As a result, their incorporation into the convention could not itself be used as evidence of the rules of contemporary international law on the subject.

76. Mr. BERNHARD (Denmark), explaining his delegation's decision to abstain in the vote, said that Denmark traditionally attached great importance to the process of codification of international law within the United Nations. Many important conventions had been elaborated in the course of that process. The draft considered at the Conference had seemed to be an acceptable basis for negotiations with a view to reaching a balanced solution of the problems involved. His delegation had expected the Conference to take account of the various attitudes which had been reflected in discussions of the draft in the International Law Commission as well as in the Sixth Committee, and had hoped that a widely accepted result could be achieved. Those expectations, however, had not been fully met. As stated during earlier debates, his delegation's main concern related to the maintenance of a number of vague and imprecise concepts not sufficiently well-defined in contemporary international law to provide helpful legal criteria. To let such general principles take precedence over agreements concluded between independent States, as was the case in some articles, seemed problematic and might lead to disputes concerning the validity of the agreements concluded. In that connection, his delegation would have welcomed an efficient system for the settlement of disputes.

77. The text just adopted failed in several respects to reflect the views put forward by a number of delegations, including his own, and he had therefore felt unable to support it. Neveretheless in order not to prejudice future internal considerations regarding Denmark's final position with regard to the present Convention as well as to the 1978 Convention, his delegation had chosen to abstain in the vote on the Convention as a whole.

78. Mr. MUHONEN (Finland) said that Finland attached great importance to efforts to develop and codify international law within the United Nations and hoped that such work would continue in the future. The International Law Commission deserved thanks for the preparatory work it had done. Although not perfect, the draft articles had been acceptable to his delegation as a basis for further deliberations aiming at a balanced solution of the problems involved. A variety of views on the draft articles had been reflected in discussions in the International Law Commission and in the Sixth Committee as well as in written comments submitted by several States. Further views and proposals had been presented during the Conference. It had been his delegation's very sincere hope that the Conference would, through necessary compromises, arrive at a convention acceptable to all States. Regrettably that had not proved possible. The result was a text containing several provisions which his delegation could not find fully satisfactory. Its main concern related to the maintenance of a number of vague and imprecise concepts which were not clearly enough defined to be used as legal criteria. Furthermore Finland would have welcomed a more efficient system for the settlement of disputes. For those reasons in particular his delegation had been unable to vote in favour of the Convention.

79. Mr. NATHAN (Israel) said that, after most careful consideration of the text, his delegation had been regretfully constrained to vote against the Convention as a whole for three main reasons.

80. First, it regretted that the Conference had retained the restrictive scope of the terms of article 31, which limited the definition of the term "financial obligations" to financial obligations arising under international law. That limitation was self-defeating and would probably exclude from the scope of the Convention the major part of the financial obligations of the predecessor State and also, in particular, those arising *ex delictu* and out of violations of fundamental human rights and rules of international law creating correlative rights of private individuals injured by those violations. In that context, he referred to his statements at the 31st and 33rd meetings of the Committee of the Whole.

81. Secondly, his delegation took exception to the far-reaching and extreme provisions contained in article 14, paragraph 4; article 26, paragraph 2; and article 36, paragraph 2. Those provisions went beyond the generally accepted norms of international law and were in no circumstances liable to invalidate the agreements referred to in the clauses in question. The positive contents of some of the principles referred to in those clauses might and should have been embodied in a general article, as had been proposed by the delegation of Brazil at the 33rd meeting of the Committee of the Whole.

82. Thirdly, many of the provisions and notions contained in the Convention were vague and extremely difficult to interpret. It was to be regretted that those deficiencies had not been rectified in the course of the proceedings of the Conference. His delegation did not consider the Convention likely to make the contribu-

tion to the codification and progressive development of international law which it had been intended to make.

83. In conclusion, he expressed his delegation's sincere appreciation of the considerable intellectual effort made by the International Law Commission in preparing the Convention and its regret that those efforts had failed to produce the consensus required in order to make the convention a proper instrument for the codification and progressive development of international law.

84. Mr. MONNIER (Switzerland) said that his delegation had voted against the Conveniton because it had serious objections to a number of provisions, and particularly article 14, paragraph 4; article 26, paragraph 7; article 28, paragraph 3; article 29, paragraph 4; and article 36, paragraph 2. Those objections, which were legal in nature, related to the restrictions upon the freedom of States to conclude agreements resulting from the necessary compatibility of agreements concluded between predecessor and successor States with certain concepts presented and interpreted as imperative norms of international law. Those concepts themselves, as well as their implementation, were liable to give rise to uncertainties prejudicial to the stability of contractual relations, uncertainties rendered all the more grave by the fact that the concepts in question were not clearly defined and did not enjoy general recognition within the contemporary international community. The Convention would have needed a satisfactory system for settlement of disputes that was capable of providing solutions consistent with and based on the rules of international law; but the conciliation procedure adopted by the Conference, which was identical in all respects to that provided in the 1978 Convention, hardly met those requirements.

85. Switzerland, a country dedicated to respect for law, in which it saw the best guarantee of its interests and to the cause of codification and development of international law, regretted having been unable to support the convention. It also deplored the absence of a genuine dialogue between the various States represented at the Conference and the lack of will for compromise, since the general agreement upon which an instrument of codification and development of international law had to be based, could not be only that of the largest number.

86. While it was doubtless too early to raise the question of the future scope of a convention which so considerable a minority had been unable to support, it was altogether possible and, indeed, necessary to entertain fears as to the future of the very process of codification and development of international law if conferences to come were to be marked by the same conflicts and divisions as, unfortunately, had been the case with the present Conference.

87. Mr. MURAKAMI (Japan) said that in the opinion of his delegation there were only a few established rules of general international law in the area of succession of States in respect of State property, archives and debts. Consequently, although some provisions of the present Convention were of a declaratory nature, many did not reflect existing rules of general international law but were rather new rules of a purely contractual nature which were binding only on those States which would become parties to the convention.

88. At the same time, considerable effort had been put into preparing a convention which could contribute to the progressive development of international law but, to make such a contribution, a convention had to be rational, realistic and flexible and anticipate the general acceptance of the international community as a whole.

89. As the Japanese delegation had stressed at the 13th meeting of the Committee of the Whole, due regard had to be paid in the convention to the importance of agreement between the parties involved, as well as to such principles as good faith, sovereign equality of States and self-determination of peoples. It was equally important to bear in mind the need to maintain legal order and stability in the international community. It was most regrettable that some provisions of the present Convention did not fulfil those essential conditions.

90. The Japanese delegation was particularly concerned about the disregard, in several articles of the Convention, for the importance of agreement between the parties although one of the most serious questions which had existed in the draft in that respect had rightly been solved by the deletion of paragraph 2 of article 34 as proposed by the International Law Commission.

91. The Japanese delegation also regretted the erroneous interpretation given by some delegations to article 14, paragraph 4; article 26, paragraph 7; article 36, paragraph 2; and other similar provisions. Those delegations had argued that the principles or conditions set forth in those paragraphs would have the effect of nullifying any agreement contrary to them, that was concluded between the predecessor and successor States which were parties to the Convention. On that account the Japanese delegation had felt compelled to re-state its view whenever those paragraphs has been discussed in the Committee of the Whole. Some delegations had even stated that they regarded the principle of the permanent sovereignty of every people over its wealth and natural resources as *jus cogens*. The Japanese delegation could not accept that view.

92. The frequent use of vague and imprecise phrases in the Convention, most inappropriate in a legal instrument, was another cause for concern, and one which had been deepened by the failure to adopt an effective mechanism for the settlement of disputes.

93. Even more damaging to the efforts towards progressive development of international law however had been the general atmosphere of politicization and the method of work of the Conference, which had been characterized by resort to voting without sufficient effort to accommodate the views of an important minority through negotiation. Such a method was really a step backwards in the process of progressive development of international law and its codification as a whole.

94. For all of those reasons, the Japanese delegation had serious concerns about a number of provisions of the Convention and strong doubts about its general acceptability and validity as something which contributed to the progressive development of international law. It had therefore been unable to vote in favour of the Convention as a whole. It was his delegation's under-

standing that many of the provisions of the Convention were binding only on the parties thereto.

95. It was to be hoped that the method of work and the negotiating pattern of the Conference would not become a precedent for future conferences of a similar nature. A truly effective convention purporting progressively to develop international law had to reflect a broad consensus of views of States with differing interests so that it would become widely accepted in the international community. Without such consensus-building, any future efforts aimed at the progressive development of international law would be futile, and any legal instrument emanating from such an exercise would merely be a non-working document.

96. Mr. FREELAND (United Kingdom) said that his delegation fully reconcurred with the statement made by the representative of the Federal Republic of Germany on behalf of the 10 member States of the European Communities.

97. However his delegation also considered it important to place on record its own position on the adoption of the text of the Convention as a whole, since his country had a number of particular concerns in relation to the draft text which had regrettably not been met.

98. His delegation had already explained United Kingdom practice in relation to its dependent territories, particularly in the statements which it had made when the Committee of the Whole, at its 41st meeting, had considered its amendment to article 2 (A/CONF.117/C.1/L.56). That practice was the one adopted when nearly one-third of the present members of the Unitd Nations had achieved independence. The United Kingdom continued to regard the practice as a sensible, convenient and successful one but, to his delegation's regret, the draft text before the Conference took no adequate account of it. That was a regrettable gap in the provisions of the text of the Convention.

99. For the reasons which it had already given, his delegation could not accept the references in articles 14, 26, 28, 29 and 36 of the draft text to "the principle of permanent sovereignty over wealth and natural resources" and to certain other so-called rights. It did not accept that those principles and rights had the force of *jus cogens*. To suggest that bilateral agreements might be invalidated by virtue of those vaguely-formulated principles and rights would, in its view, be a very dangerous path to follow, because it would lead to the undermining of stability in international relations and even to the undermining of the rule *pacta sunt servanda*.

100. His delegation had made clear that it had difficulties with a number of the articles of the draft text. In particular it found quite unacceptable the rule set out in article 36, paragraph 1. That rule was not supported by State practice and, in his delegation's view, was an unreasonable one. Indeed Part IV of the draft text dealing with State debts was wholly inadequate. In particular, following the refusal of the Committee of the Whole to include the words "other financial obligations chargeable to a State" in article 31, it seemed to his delegation that there was a very serious gap in the draft text.

101. There had also been some suggestion that States not parties to the Convention whose debtors were subjects of a succession of States would be bound by the rules laid down in the Convention. In his delegation's view there was no foundation for that suggestion, particularly given the terms of former article 34.

102. The representatives of the Netherlands and Denmark had submitted to the Committee of the Whole a very reasonable proposal (A/CONF.117/C.1/L.25/Rev.1/Corr.1) for provisions for the settlement of disputes. Since the text before the Conference had included, perhaps of necessity, a number of phrases such as "in equitable proportions", which were vague and even subjective in meaning, his delegation had thought it even more necessary that the instrument adopted should include provisions to ensure that disputes were settled through compulsory recourse to arbitration. It was therefore disappointed that the Convention, as adopted, did not include any requirement for the compulsory arbitration of disputes. Even the relatively moderate proposals made by the representatives of Austria and Switzerland had been rejected.

103. His delegation had been unable to support a substantial number of the articles of the text before the Conference. Furthermore, it agreed with the representative of the Federal Republic of Germany in considering the way in which the Conference had carried out its work to be unsatisfactory. Some light might have been thrown on the reasons for that state of affairs by a representative who, speaking before the vote, had referred to the new international economic order and related matters. The search, already difficult enough, for solutions to issues with which the Conference was properly concerned had been made much harder, or even impossible, by the desire of some to score points on issues which were not the true concern of the Conference and which were matters for negotiation elsewhere, negotiation in which his country was playing its part. He refuted the suggestion that it was those who cast negative votes who prejudiced the progress of codification. If blame had to be attributed, it should, in his delegation's view, rest squarely with those who, despite protestations to the contrary, had failed to accommodate the legitimate difficulties, carefully and frequently explained, of others. His delegation had not fallen short in its efforts to help find common ground.

104. He regretted that his delegation could not regard the text before the Conference as representing either a codification of existing international law or as representing emerging rules of customary international law. It would have no legal force except as between the eventual parties to it. Accordingly his delegation could not support the text and had found itself obliged to vote against its adoption. In view of his country's record of support for the process of codification and the work of the International Law Commission, he hoped very much that that experience would not be repeated.

105. Mr. ANDRESEN (Portugal) said that his delegation regretted not having been able to join the majority in the Conference. There were two reasons for its abstention in the vote. The first was a substantive reason related to the contents of certain provisions

which had been adopted. His delegation had had occasion in the course of the work of the Committee of the Whole to explain the reasons which had led it to vote against articles 14, 26 and 36, which in its view ran counter to legal values and principles. Secondly, there was the equally important question of procedure, since his delegation attached considerable importance to the codification of international law. In its view such codification must respect the legal interests and values of the international community and also reflect international practice generally accepted as law. The interests of the international community had not been weighed in an equitable fashion. The positions of a substantial number of delegations had not been taken into account. A United Nations convention of universal scale which was designed to become *jus cogens* should not be negotiated in such a fashion.

106. Mr. MAAS GEESTERANUS (Netherlands) said that, at all stages of the Conference, his delegation had consistently pleaded and actively sought, in co-operation with other delegations from all regions, to find generally acceptable texts for a number of articles. While thanking those delegations which had supported those endeavours, it deplored the fact that a will for serious negotiation and a spirit of compromise had manifested themselves only to a limited extent in the Conference and that the combined efforts of a number of delegations had failed to convince the majority and, on points of real importance to his country, had remained largely without success. In addition to concurring with the statement already made by the delegation of the Federal Republic of Germany on behalf of the member States of the European Communities, his delegation wished, in particular, to refer to the fact that the text of the Convention just adopted contained, in a number of clauses, concepts which seemed to suggest the existence, outside the Convention itself, of certain principles or norms of international law that could limit the freedom of States to conclude treaties among themselves. His delegation, confirming the views it had already expressed on each of those clauses in the Committee of the Whole, wished to repeat that it did not recognize that the principles or norms of international law in question existed, or at least that they already existed, in general international law. Neither were such principles or norms defined in any precise manner in the articles of the present Convention. It was specifically with regard to those clauses that his delegation had felt regretfully compelled to cast a negative vote on the convention as a whole. It had done so in order to avoid the erroneous assumption which might otherwise have arisen that his Government accepted that the concepts in question reflected existing principles or norms of international law. In addition, he felt obliged to remark that, aside from the concepts just mentioned, the text of the Convention used expressions such as "equity" and "equitable proportions" which, in practice, would be very difficult to apply in the absence of new machinery for compulsory adjudication, or at least arbitration, in disputes concerning the interpretation and application of the Convention.

107. Mr. OLWAEUS (Sweden) expressed his delegation's regret at having had to abstain in the vote on the convention as a whole and associated himself with the explanatory statements made by the representatives of Denmark and Finland.

108. Mrs. OLIVEROS (Argentina) said that her delegation had voted in favour of the convention. She regretted that there had been so many votes against it and so many abstentions. The law could not turn its back on reality and, in her delegation's view, the Convention answered a real need. Her delegation welcomed the Convention's recognition of the importance to peoples of their right to permanent sovereignty over their natural resources. It also appreciated the place given in each of the five Parts of the Convention to negotiation and agreement between the parties. Nothing was more constructive than dialogue in good faith which always led to progress in friendly relations among States.

109. The convention was the outcome of many years of work and it was to be hoped that the International Law Commission would continue its labours for the benefit of the international community. Her delegation was grateful to all the distinguished scholars who had been concerned in the preparation of the text, especially the Special Rapporteur. She also wished to thank the Codification Division of the Office of Legal Affairs of the United Nations, the Legal Counsel, the President of the Conference, the Chairmen of the Committee of the Whole and of the Drafting Committee and Austria, the host country.

110. Mr. ECONOMIDES (Greece) said that his delegation had, with regret, abstained in the vote on the draft convention. It had done so for three main reasons, in addition to those given by the representative of the Federal Republic of Germany. In the first place, article 14, paragraph 4; article 26, paragraph 7; article 28, paragraph 3; article 29, paragraph 4; and article 36, paragraph 2, had been drafted in a manner which was legally unusual and inappropriate. It appeared moreover from the wording of those provisions that it had been desired to produce certain effects which could not be achieved by an international convention. A rule of *jus cogens* in international law could only be the outcome of international practice which was virtually accepted as an imperative norm, and not otherwise. Furthermore, all the provisions he had mentioned and particularly article 14, paragraph 4, and article 36, paragraph 3, should contain an express reference to international law.

111. Secondly, there was a reference in certain provisions to equity, either without explanation—which was the case in articles 16, 17 and 21—or with insufficient explanation—as was the case in articles 38 and 39. He conceded that equity could constitute a rule of law, but in order to do so it had to be legally constructed and rest upon an adequately developed foundation. Without that foundation and objective criteria for its application, equity was not a legal norm but an *ex aequo et bono* solution which required the consent of the parties concerned. His delegation was not prepared to give its unconditional consent to formulations which were currently without content or which were insufficiently explicated.

112. The third reason for his delegation's abstention was the fashion in which the Conference had been

conducted. Instead of providing, as it should have done, a framework for negotiations undertaken in the spirit of constructive dialogue and mutual understanding, it had played the ungrateful part of rubber stamping decisions already taken by the International Law Commission, all of whose recommendations his delegation did not approve. His delegation sincerely regretted that method of proceeding. The Conference constituted a bad precedent for the success of codification and the progressive development of international law, which required goodwill in order to produce a text acceptable to all. It was to be hoped that that example would not be followed in the future.

113. Mr. DONS (Norway) said that his delegation had abstained in the vote on the convention as a whole for the same reasons as the delegations of Denmark, Finland and Sweden.

114. Mr. FARES (Democratic Yemen) said that his delegation had voted in favour of the Convention because it was convinced that the progressive development and codification of international law were matters of the utmost importance. Notwithstanding the many criticisms addressed to the International Law Commission and to the text just adopted by speakers both before and after the vote, he felt that the success of the Convention was assured. None of the arguments advanced by the opponents of the Convention could reverse the course of history, halt the progressive development of international law or reduce the juridical value of the Convention. The International Law Commission and, in particular, the Expert Consultant were to be thanked for their invaluable efforts.

115. Mr. AKA (Ivory Coast) said that, for reasons beyond its control, his delegation had been absent from the conference room during the voting. He wished to put it on record that, had it been present, his delegation would have voted in favour of the convention.

116. Mr. YÉPEZ (Venezuela) said that his delegation had voted in favour of the convention, which it believed to represent a substantial contribution to the process of codification and progressive development of international law.

117. The draft prepared by the International Law Commission over a period of years—which, incidentally, took full account of opinions expressed in the Sixth Committee of the General Assembly—had not needed modification. The Commission and, in particular, the Expert Consultant deserved the Conference's thanks, as also did the host country and the President of the Conference. If the text just adopted was not satisfactory to all delegations, that was certainly not the fault of the Group of 77, which had made many constructive and positive efforts and had reached a number of useful compromises. His delegation had noted with surprise, concern and some apprehension that the developed countries, possessing the largest capacity for the use of force, were radically opposed to recognized principles such as that of equity and of the permanent sovereignty of peoples over their wealth and natural resources.

118. In conclusion, he reiterated his delegation's view that the Convention, as adopted, satisfied the interests of the majority of the international community. He thanked the Chairmen of the Committee of the Whole and of the Drafting Committee for their excellent work.

Adoption of the Report of the Committee of the Whole (A/CONF.117/11 and Add.1-12)

The report of the Committee of the Whole was adopted.

Adoption of the Report of the Credentials Committee (A/CONF.117/12)

119. Mr. do NASCIMENTO e SILVA (Brazil), Chairman of the Credentials Committee, introducing the report of that Committee (A/CONF.117/12), informed the Conference that subsequent to the Committee's meeting on 6 April 1983, credentials complying with the requirements of rule 3 of the rules of procedure of the Conference had been received in respect of the representatives of Democratic Yemen, the Libyan Arab Jamahiriya and Spain. Consequently, the credentials from those States should be reflected under subparagraph 4(*a*) instead of subparagraph 4(*c*) of the report. The secretariat had also received a note verbale issued by the Permanent Mission of Uruguay in Vienna, and consequently that State's credentials should be reflected in subparagraph 4(*c*) instead of subparagraph 4(*d*).

120. Finally, he drew the attention of the Conference to the draft resolution contained in paragraph 8 of the report, which the Committee recommended for adoption.

121. Mr. BEN SOLTANE (Tunisia), speaking on behalf of the States members of the League of Arab States, expressed their reservation in respect of Israel's attendance at the Conference, which they wished to be reflected in the summary records. That reservation did not, however, mean that they opposed the adoption of the report of the Credentials Committee as a whole.

122. Mr. NATHAN (Israel) pointed out that, as stated in subparagraph 4(*a*) of the report, credentials in respect of the representative of Israel had been received and duly examined by the Credentials Committee in accordance with rule 3 of the rules of procedure. His delegation had been invited to attend the Conference by the Secretary-General of the United Nations, pursuant to General Assembly resolutions 36/113 and 37/11. Moreover, once those credentials had been accepted by the Credentials Committee, they could no longer be questioned by representatives of other delegations.

123. Mr. KOLOMA (Mozambique) explained that he, the only representative of Mozambique at the Conference, had not come direct to Vienna from his country but from Geneva, where he had been attending another conference. The telex message that he had received in Geneva requesting him to represent his country at the Vienna Conference had stated that the problem of his credentials had been settled directly with the Secretary-General of the United Nations by means of a telex sent by the Mozambique Ministry of Foreign Affairs on 24 February 1983. Since, on his arrival in Vienna on

3 March 1983, he had found his name on the list of participants, he had thought that his credentials were in order. He very much regretted that he had not been informed that there was a problem about them until he had read subparagraph 4(*d*) of the report of the Credentials Committee.

124. Mr. do NASCIMENTO e SILVA (Brazil), Chairman of the Credentials Commitee, apologized to the representative of Mozambique and said that, as soon as the Secretariat located a copy of the telex, the name of Mozambique would be inserted in subparagraph 4(*b*) of the report.

125. Mr. JOMARD (Iraq) asked if the Credentials Committee had in fact examined the credentials one by one, as was customary.

126. Mr. do NASCIMENTO e SILVA (Brazil), Chairman of the Credentials Committee, said that the Committee had followed the normal procedure in that the credentials documents had been carefully scrutinized by the secretariat which had made a résumé of their contents for the Committee.

127. Mr. JOMARD (Iraq) and Mr. AL-KHASAWNEH (Jordan) said that, since the work of the Credentials Committee had not been properly performed, their delegations felt obliged to express reservations on the report of that Committee, which they wished to be reflected in the summary record.

128. Mr. do NASCIMENTO e SILVA (Brazil), Chairman of the Credentials Committee, said that the membership of the Committee had included a representative of the League of Arab States who could have raised the matter during a meeting of the Committee.

129. Mr. DI BIASE (Uruguay) explained that the Permanent Mission of Uruguay in Vienna had sent to the secretariat the note verbale mentioned by the Chairman of the Credentials Committee because he had been informed that the credentials of his delegation were not in order, even though the correct names had been included in the list of participants.

130. The PRESIDENT said that, in the absence of any objection, he took it that the Conference now wished to adopt the report of the Credentials Committee (A/CONF.117/12), subject to the reservations expressed by certain delegations.

It was so decided.

Draft resolution submitted by the Syrian Arab Republic (A/CONF.117/L.1)

131. Mr. MARCHAHA (Syrian Arab Republic), introducing draft resolution A/CONF.117/L.1, said that the preambular part was based on the Charter of the United Nations and the Convention just adopted by the Conference. Paragraph 1 was taken from General Assembly resolution 3166 (XXVIII), paragraph 2 referred to a principle with which the majority of the participants in the Conference agreed, and paragraph 3 linked the draft resolution with the Convention just adopted by the Conference. He hoped that the draft resolution would be adopted without a vote.

132. Mr. ROSENSTOCK (United States of America) said that, since he regarded the resolution as irrelevant to the work of the Conference, he would abstain in the vote upon it. If, on the other hand, it had represented business properly before the Conference, his delegation would have felt constrained to raise objections to the draft resolutions focusing on the right to self-determination of only certain people. It should be remembered that the Charter of the United Nations was based on the principle of equal rights and self-determination for all and it would be unwise and improper to suggest that that principle was applicable to some and not to others. Moreover, had the draft resolution been relevant to the matter being studied by the Conference, his delegation would have felt impelled to object to the language used with respect to permanent sovereignty over wealth and natural resources.

133. Mr. NATHAN (Israel) said that his delegation would vote against the draft resolution because it considered it unnecessary and irrelevant and because it introduced political elements not pertinent to a legal convention.

134. The PRESIDENT invited the Conference to vote on the draft resolution.

The result of the vote was 45 in favour and 1 against, with 25 abstentions.

The draft resolution was adopted having obtained the required two-thirds majority.

135. Mr. OESTERHELT (Federal Republic of Germany) said that his delegation had abstained in the vote on the draft resolution because the principles enunciated therein were not consistent with the scope of the Convention and the resolution as a whole appeared to bear no real relevance to the subject matter of the Convention.

136. His delegation had repeatedly stated its Government's position with regard to the principle of permanent sovereignty of peoples over their natural resources. His Government recognized that right but considered that it could be exercised only in accordance with international law. The statements made by his delegation at the 15th and 36th meetings of the Committee of the Whole on 11 March and 28 March 1983 were relevant in that connection.

137. With regard to the right of self-determination, the Government of the Federal Republic of Germany considered that that right, as enshrined in the Charter of the United Nations and embodied in the International Convenants on Human Rights, applied to all peoples and not only to particular categories[2] of peoples.

138. Mr. ECONOMIDES (Greece) said that his delegation had voted in favour of the draft resolution on the understanding that the principles set forth in paragraph 2 were interpreted in accordance with international law.

139. Mr. GUILLAUME (France) said that his delegation had abstained in the vote on the draft resolution for the same reason as had been given by the representative of the Federal Republic of Germany.

[2] See General Assembly resolution 2200 A (XXI), annex.

Draft resolution submitted by Egypt (on behalf of the Group of 77) (A/CONF.117/L.3)

140. Mr. SHASH (Egypt), introducing draft resolution A/CONF.117/L.3 on behalf of the Group of 77, said that the Conference was fully aware of the background to the draft resolution and the need for a succession of States with respect to Namibia. A draft resolution on the subject adopted by the Conference would make a positive contribution to the efforts being undertaken by the United Nations to ensure the independence of that Territory. The preamble and paragraph 1 of the draft resolution were similar to those of the resolution on the same subject adopted by the 1978 Vienna Conference on Succession of States in Respect of Treaties.[1] Operative paragraph 2 was self-explanatory. In view of the general agreement on the situation in Namibia, he hoped that the draft resolution would be adopted without a vote.

141. Mr. FREELAND (United Kingdom), speaking on behalf of the delegations of Canada, the Federal Republic of Germany, France, the United States of America and the United Kingdom—the five countries members of the contact group concerned with the question of Namibia—said that, in the view of those delegations, it was not within the competence of the Conference to adopt the draft resolution submitted by Egypt on behalf of the Group of 77 (A/CONF.117/L.3). The delegations of those five countries had taken the same position with respect to the comparable resolution adopted by the 1978 Conference on Succession of States in Respect of Treaties.[3]

142. As was clear from its terms of reference, the present Conference should properly be concerned, not with individual cases of succession, but with the drafting of a convention on the question generally. In the light of that consideration, the delegations of the five countries he had mentioned would abstain in the vote on the draft resolution before the Conference.

143. He added that the draft resolution contained terminology, such as the word "Decides" in paragraph 1, which seemed to be open to objection on legal grounds and which reinforced the view of the five delegations on whose behalf he was speaking that, in adopting the draft resolution, the Conference would be exceeding its competence.

144. An additional reason for their abstention was that the five delegations concerned could not see how the adoption of the draft resolution would contribute in any way to the solution—which all desired—of the remaining problems that were still delaying a Namibian settlement. In view of the role which the five countries members of the Contact Group continued to play in the search for such a solution, that was a consideration to which they were bound to give weight.

145. He stressed that his indication of the attitude of the five Governments concerned should not be taken as implying any change in their positions with respect to the various resolutions of the Security Council and the General Assembly referred to in the draft resolution; nor should it be taken as involving any weakening of their determination to do what they could to facilitate a Namibian settlement.

146. Mr. TÜRK (Austria) expressed his delegation's basic agreement with the idea contained in the draft resolution but wished to make a few suggestions for improvement of the text. First of all, the preamble, although similar to that in the previous resolution, was not identical. As a lawyer, he believed that, if a General Assembly resolution was quoted, it should be quoted correctly. Secondly, he felt that the word "Decides" in paragraph 1 was not appropriate, especially since the previous resolution had used the word "Resolves". Thirdly, he did not consider that the present Conference could reserve the rights of the future independent State of Namibia. That should be left to a more appropriate body such as the General Assembly of the United Nations.

147. Mr. SHASH (Egypt) agreed that the preambular paragraphs should be amended in order to ensure conformity with the preceding resolutions. In paragraph 2, his delegation was prepared to amend the wording to read "*Resolves* that, in consequence, all rights of the future independent State of Namibia should be reserved".

148. The PRESIDENT invited the Conference to vote on the draft resolution, as orally amended.

The result of the vote was 55 in favour and none against, with 12 abstentions.

The draft resolution, as orally amended, was adopted, having obtained the required two-thirds majority.

149. Mr. KIRSCH (Canada) inquired whether the resolution just adopted included the oral amendments proposed by Austria and accepted by Egypt.

150. The PRESIDENT replied that the Austrian amendments were included.

151. Mr. TÜRK (Austria) pointed out that the Egyptian delegation had accepted all his proposed amendments except those relating to paragraph 2. The Austrian delegation considered that reservation of the rights of Namibia should be left to a more appropriate body, such as the General Assembly of the United Nations, and that the Conference should merely make a recommendation to that effect.

152. Mr. SHASH (Egypt) apologized for any misunderstanding. With regard to the preambular paragraphs, he was prepared to accept the wording of the parallel resolution adopted by the 1978 Conference on Succession of States in Respect of Treaties. Paragraph 2, on the other hand, would read: "2. *Resolves* that in consequence all the rights of the future independent State of Namibia should be reserved".

153. Mr. LAMAMRA (United Nations Council for Namibia) thanked the Conference for its adoption of the resolution referring to Namibia. He was grateful to the Egyptian delegation which had submitted the resolution on behalf of the Group of 77, to all those who had supported it and to those who had abstained in preference to voting against it. The resolution represented a

[3] See *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), document A/CONF.80/32, annex, p. 183.

valuable contribution of the international community in support of Namibia's sovereignty. He was pleased by the successful outcome of the Conference and by the development of international law which it represented.

Adoption of the Final Act of the Conference (A/CONF.117/13)

154. Mr. SUCHARITKUL (Thailand), Chairman of the Drafting Committee, introduced the draft final act of the Conference (A/CONF.117/13) which, *mutatis mutandis*, reproduced the Final Act of the 1978 United Nations Conference on Succession of States in Respect of Treaties. It also included as an annex the texts of three draft resolutions which it was customary for codification conferences to adopt in connection with the final act.

155. The Drafting Committee recommended the draft final act for unanimous adoption by the Conference.

Draft resolutions of tribute (A/CONF.117/13, annex)

156. The PRESIDENT read out the titles of the draft resolutions (A/CONF.117/13, annex).

157. Mr. TARCICI (Yemen) proposed that a fourth draft resolution to be adopted should be inserted after the "Tribute to the International Law Commission". That fourth draft resolution would read:

"*Tribute to the President of the Conference and to the Chairman of the Committee of the Whole*

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

"*Having adopted* the Vienna Convention on Succession of States in Respect of State Property, Archives and Debts on the basis of the draft articles prepared by the International Law Commission,

"*Expresses its deep appreciation and gratitude* to Dr. J. Seidl-Hohenveldern, President of the Conference and to Dr. Milan Šahović, Chairman of the Committee of the Whole, who, thanks to their sagacity and wisdom in directing the deliberations, together contributed to the success of the Conference."

158. The PRESIDENT thanked the representative of Yemen for his kind proposal.

The four draft resolutions were adopted unanimously.

159. Mr. NATHAN (Israel) said that, were a vote to have been taken on the final act including the resolutions (A/CONF.117/L.1 and L.3) adopted earlier in the meeting, his delegation would have voted against.

160. Mr. BEDJAOUI (Expert Consultant) expressed his gratitude to the participants in the Conference for their appreciative resolution. The Conference had been a great experience for him. He had greatly appreciated the relevant comments made on a subject of great complexity by representatives in whom legal knowledge and diplomatic skills were combined. He was grateful for the improvements they had made to the draft submitted by the International Law Commission, whose members had striven devotedly for so many years to develop a text in furtherance of the codification and progressive development of international law. He wished to share with all the members of the Commission the thanks expressed to him personally.

161. He hoped that the dissatisfaction felt by some delegations with the final text would be finally overcome in a spirit of understanding. That would be the Commission's best recompense for its work.

162. Mr. ŠAHOVIĆ (Yugoslavia), Chairman of the Committee of the Whole, also thanked the representative of Yemen and the Conference for the resolution it had just adopted. He, and all who had held office during the Conference, had done their best to contribute to the preparation of the Convention, whose final conclusion had been immeasurably facilitated by the work of all members of the Secretariat, with whom he shared the appreciation expressed.

163. The PRESIDENT called on the Conference to vote on the final act, apart from the resolutions annexed thereto.

164. Mr. FREELAND (United Kingdom) proposed that the final act be adopted by acclamation and without a vote.

165. Mr. ŠAHOVIĆ (Yugoslavia) seconded that proposal.

The Final Act of the Conference was adopted by acclamation.

166. Mr. NATHAN (Israel) said that his approval of the Final Act was subject to the reservations he had expressed earlier. He wondered whether paragraph 20 of the document should not be amended to indicate that the resolutions had been adopted separately.

167. The PRESIDENT said that there appeared to be no need to amend the paragraph, which stated correctly that the Conference "also adopted" the resolutions.

CLOSURE OF THE CONFERENCE

168. Mr. ROMANOV (Executive Secretary of the Conference) said that the ceremony of signature of the Final Act of the Conference would take place on Friday, 8 April 1983, at 7 p.m. in the Festsaal of the Hofburg.

169. The PRESIDENT thanked all who had participated in the Conference, whose successful outcome was a matter of great satisfaction to him. The Austrian Government had been proud to have acted as host to the Conference in Vienna and he, personally, had been pleased to make the acquaintance of so many distinguished lawyers from so many countries.

170. He then declared the Conference closed.

The meeting rose at 7.30 p.m.