

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

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**9th 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)*

## 9th plenary meeting

Thursday, 7 April 1983, at 11.15 a.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 (continued)**

[Agenda item 11]

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

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

1. The PRESIDENT said that efforts which had been made by delegations with a view to reaching a compromise on certain draft articles had unfortunately proved unsuccessful. He expressed his gratitude to all those who had made commendable efforts in that direction.

2. He drew the attention of the Conference to the urgency of completing the consideration of the articles of the draft convention in time to enable the secretariat to produce the final text for the following day. In view of the time factor, he suggested that, until the draft convention as a whole was before the Conference for adoption, representatives should refrain from explaining their votes or their positions on individual articles. He proposed to allow such explanations only in the rare cases where a delegation had changed its opinion and voted otherwise than it had done in the Committee of the Whole. In the absence of objection, he would take it that the Conference decided to adopt that procedural suggestion.

*It was so decided.*

Article D (Entry into force) (concluded)

3. The PRESIDENT put to the vote the amendment to article D submitted by the Netherlands (A/CONF.117/L.4).

*The Netherlands amendment to article D (A/CONF.117/L.4) was rejected by 46 votes to 20, with 3 abstentions.*

*The title and text of article D were adopted by 54 votes to none, with 16 abstentions.*

4. Mr. DALTON (United States of America), speaking in explanation of vote, said that his delegation would have preferred the formula proposed in the Netherlands amendment. Nevertheless, it had voted in favour of article D as submitted by the Drafting Committee because, with the requirement of only 15 ratifications or accessions, the proposed convention would enter into force earlier and could then be applied by those parties which had ratified it or acceded to it. However, the fact of such a convention being in force for only 15 parties would not confer upon the rules embodied in it a sufficient degree of authority for them to be acknowledged as valid otherwise than strictly between the parties which had subscribed to the instrument.

Article 13 (Transfer of part of the territory of a State)

5. Mr. SUCHARITKUL (Thailand), Chairman of the Drafting Committee, introducing article 13, said that in the Spanish version it had been thought more appropriate to use in the title the word "*Transferencia*" and in the text of paragraph 1 "*transferida*" rather than, respectively, "*Traspaso*" and "*traspasada*".

6. In the French version, to align the text of paragraph 2 with the other language versions, the introductory phrase "*En l'absence d'un accord*" had been changed to read "*En l'absence d'un tel accord*".

7. Those changes were also reflected in the Spanish and French versions of later articles but he would refrain from drawing attention to them in the case of each article concerned.

8. Mr. BEN SOLTANE (Tunisia) pointed out that in the French versions of articles 25 and 35 the word "*tel*" already appeared before the word "*accord*".

9. Mr. SUCHARITKUL (Thailand), Chairman of the Drafting Committee, said that the word "*tel*" had been introduced by the Drafting Committee into the French version of paragraph 2, among other reasons, precisely in order to align article 13 with articles 25 and 35.

*The title and text of article 13 were adopted by 53 votes to none, with 16 abstentions.*

Article 14 (Newly independent State)

10. Mr. SUCHARITKUL (Thailand), Chairman of the Drafting Committee, said that article 14 remained as adopted by the Committee of the Whole, apart from the change consequent upon the drafting change made in the definition in article 8, to which he had already drawn attention.

11. Mr. MAAS GEESTERANUS (Netherlands) requested a separate vote on paragraph 4 of article 14. At the 13th meeting of the Committee of the Whole, his delegation had made a proposal designed to improve the text of that paragraph, but that proposal had not been adopted by the Committee. His delegation would vote against paragraph 4; if the paragraph was adopted by the Conference, it would regretfully vote against article 14 as a whole.

12. The PRESIDENT noted that there was no objection to the proposal that paragraph 4 be voted on separately. He accordingly invited the Conference to vote on that paragraph.

*The paragraph was adopted by 49 votes to 21, with 1 abstention.*

*The title and text of article 14 as a whole were adopted by 52 votes to 21.*

Article 15 (Uniting of States)

13. The PRESIDENT observed that article 15 (A/CONF.117/10/Add.1) had been approved by the

Committee of the Whole after the Drafting Committee had reported on it.

*The title and text of article 15 were adopted.*

**Article 16** (Separation of part or parts of the territory of a State)

14. Mr. SUCHARITKUL (Thailand), Chairman of the Drafting Committee, said that the Drafting Committee had drawn inspiration from the text of article 15 which referred to "two or more States" uniting and forming one successor State and had decided to replace the phrase "and form a State" in the introductory part of paragraph 1 of article 16 by the phrase "and form a successor State".

*The title and text of article 16 were adopted by 58 votes to none, with 15 abstentions.*

**Article 17** (Dissolution of a State)

15. Mr. SUCHARITKUL (Thailand), Chairman of the Drafting Committee, said that in paragraph 1 of article 17, by analogy with paragraph 1 of article 16, the words "two or more States" had been replaced by the words "two or more successor States". In addition, it had been considered desirable to follow the example of previous articles and to refer to a State as being a predecessor State prior to the succession of States. That seemed particularly appropriate in the case of a State which subsequently ceased to exist. The word "predecessor" in the first line of paragraph 1 had therefore been deleted and the expression "its territory" had been altered to read "the territory of the predecessor State".

16. Mr. NATHAN (Israel) asked whether, in order to facilitate interpretation, the word "predecessor" should not be retained in the first line of paragraph 1, since otherwise there appeared to be a certain lack of coherence between that line and the remainder of the paragraph. He further asked whether the commas in subparagraph 1(d) were not superfluous. They had not appeared in the International Law Commission's text.

17. Mr. SUCHARITKUL (Thailand), Chairman of the Drafting Committee, said that after discussion, the Drafting Committee had taken the view that the opening of paragraph 1 was clearer in its revised form. There was no doubt as to the fact of the State having been a predecessor State after it had ceased to exist. The punctuation in subparagraph 1(d) had been adopted in order to harmonize with the text of other paragraphs.

18. Mr. YÉPEZ (Venezuela) asked whether, in the Spanish version, the end of subparagraph 1(c) should not read "*de que se trate*".

19. Mr. SUCHARITKUL (Thailand), Chairman of the Drafting Committee, concurred.

*The title and text of article 17 were adopted.*

20. Mr. ECONOMIDES (Greece) said that, if there had been a vote on the article, his delegation would have abstained.

**Article 25** (Transfer of part of the territory of a State)

21. Mr. SUCHARITKUL (Thailand), Chairman of the Drafting Committee, said that in the Spanish text, the formula used in paragraph 3 "*los medios de prueba*

*más fehacientes disponibles en sus archivos de Estado que guarden relación con títulos territoriales concernientes al*" had been replaced by the formula "*la mejor prueba disponible en sus archivos de Estado que guarde relación con títulos territoriales del*", which corresponded more closely to the English and French versions. That new formula had been used, where appropriate, throughout the Spanish version of the draft articles.

*The title and text of article 25 were adopted by 61 votes to 1, with 11 abstentions.*

**Article 26** (Newly independent State)

22. Mr. MAAS GEESTERANUS (Netherlands) requested a separate vote on paragraph 7 of article 25 for the reasons which he had explained in the Committee of the Whole at its 29th meeting.

23. Mr. KOLOMA (Mozambique) objected to that request under rule 39 of the rules of procedure.

*The request for a separate vote was rejected by 41 votes to 21, with 6 abstentions.*

*The title and text of article 26 were adopted by 53 votes to 21, with 1 abstention.*

**Article 27** (Uniting of States)

*The title and text of article 27 were adopted*

**Article 28** (Separation of part or parts of the territory of a State)

24. Mr. THIAM (Senegal) said that the Committee of the Whole had drawn the Drafting Committee's attention to the need to indicate clearly what was meant by "State archives", particularly in the context of article 23 and article 28, paragraph 4. He wondered why only article 23 had been amended.

25. Mr. SUCHARITKUL (Thailand), Chairman of the Drafting Committee, observed that article 23 referred to the archives of a third State and not to the state archives of the predecessor State. The Committee had therefore decided to delete the word "State" in that context, in order to avoid confusion with the "State archives of the predecessor State", the formula used elsewhere.

26. Mr. THIAM (Senegal) said that, in his view, paragraph 4 referred to the State archives of the successor State, which had not yet been defined.

27. Mr. SUCHARITKUL (Thailand), Chairman of the Drafting Committee, said that the meaning of paragraph 4, as drafted, had been quite clear to the Drafting Committee. He therefore suggested that it might facilitate the work of the Conference if the representative of Senegal were to discuss the matter in greater detail with a member of the Drafting Committee outside the meeting.

*The title and text of article 28 were adopted by 54 votes to 20, with 1 abstention.*

**Article 29** (Dissolution of a State)

28. Mr. SUCHARITKUL (Thailand), Chairman of the Drafting Committee, pointed out that the changes made in article 17, to which he had drawn attention, also applied to article 29.

*The title and text of article 29 were adopted by 54 votes to 21.*

*Article 31 (State debt)*

29. Mr. SUCHARITKUL (Thailand), Chairman of the Drafting Committee, reminded the Conference of his earlier observations concerning the changes made in article 31.

*The title and text of article 31 were adopted by 53 votes to 5, with 18 abstentions.*

30. Mr. ZSCHIEDRICH (German Democratic Republic) said that his delegation had voted in favour of article 31 on the understanding, which it had already expressed in the Committee of the Whole at its 31st meeting, that one of its purposes was to exclude odious debts, since they were not in conformity with international law.

31. The PRESIDENT observed that it had earlier been agreed that representatives would not at the present stage repeat comments which they had made in the Committee of the Whole.

*Article 35 (Transfer of part of the territory of a State)*

32. Mr. SUCHARITKUL (Thailand), Chairman of the Drafting Committee, said that the Drafting Committee had considered it desirable to replace the expression “*inter alia*” in paragraph 2 of the English version by “in particular”, in order to achieve closer correspondence with the expressions “*notamment*” in the French text and “*en particular*” in the Spanish text. The same change had been made in articles 38 and 39. Furthermore, the word “such” had been inserted at the beginning of paragraph 2 in order to ensure harmony with other articles.

*The title and text of article 35 were adopted by 73 votes to none.*

*Article 36 (Newly independent State)*

33. Mr. SUCHARITKUL (Thailand), Chairman of the Drafting Committee, pointed out that in paragraph 1 the Drafting Committee had shortened the text by replacing the phrase “between the newly independent State and the predecessor State” by the phrase “between them”.

*The title and text of article 36 were adopted by 55 votes to 21, with 1 abstention.*

*Article 37 (Uniting of States)*

34. Mr. SUCHARITKUL (Thailand), Chairman of the Drafting Committee, said that, as in the case of articles 15 and 27 adopted by the Committee of the Whole, the Drafting Committee proposed that, in the English version, the words “a successor State” should be replaced by the words “one successor State”.

*The title and text of article 37 were adopted.*

*Article 38 (Separation of part or parts of the territory of a State)*

*The title and text of article 38 were adopted by 71 votes to none, with 1 abstention.*

*Article 39 (Dissolution of a State)*

35. Mr. SUCHARITKUL (Thailand), Chairman of the Drafting Committee, said that the changes made in

article 17 to which he had drawn attention, also applied to article 39.

*The title and text of article 39 were adopted by 74 votes to none.*

*ARTICLES A TO E AND ANNEX (Settlement of disputes)*

36. Mr. SUCHARITKUL (Thailand), Chairman of the Drafting Committee, introducing the second report of the Drafting Committee to the Conference (A/CONF.117/10/Add.2), said that, after careful consideration, the Drafting Committee had decided not to make any changes in the titles and texts of articles A to E and the Annex on settlement of disputes, as referred to it by the Committee of the Whole.

37. In the course of its consideration of article C, the Drafting Committee had agreed that it was understood that, if the parties to a dispute opted for the arbitration alternative, the procedures intended to set the arbitration in motion would have to be defined by agreement between the parties to the dispute themselves.

38. Basing itself on the 1978 Vienna Convention on Succession of States in Respect of Treaties,<sup>1</sup> the Drafting Committee proposed that articles A to E be incorporated in a separate part of the convention preceding the part on final provisions, as Part V of the convention, it being understood that the Annex would be placed at the very end of the convention.

*Article A (Consultation and negotiation)*

39. The PRESIDENT said that, if there was no objection, he would take it that the Conference agreed to adopt article A without a vote.

40. Mr. MAAS GEESTERANUS (Netherlands) requested a vote on article A.

*The title and text of article A were adopted by 66 votes to none, with 8 abstentions.*

*Article B (Conciliation)*

*The title and text of article B were adopted.*

41. Mr. MONNIER (Switzerland) said that, if article B had been put to the vote, his delegation would have abstained, because that article referred to the Annex, which was the subject of an amendment submitted by Austria and Switzerland (A/CONF.117/L.2).

*Article C (Judicial settlement and arbitration)*

*The title and text of article C were adopted.*

*Article D (Settlement by common consent)*

*The title and text of article D were adopted.*

*Article E (Other provisions in force for the settlement of disputes)*

*The title and text of article E were adopted.*

42. Mr. MAAS GEESTERANUS (Netherlands) said that his delegation had not insisted on a vote on articles B to E; it wished, however, to place on record its

<sup>1</sup> *Official Records of the United Nations Conference on Succession of States in Respect of Treaties*, vol. III (United Nations publication, Sales No. E.79.V.10), p. 185.

view that the system for the settlement of disputes provided for in the draft convention was inadequate and should not be cited by any future conference as the result of a compromise at the present Conference.

43. Mr. SKIBSTED (Denmark) associated himself with the remarks of the representative of the Netherlands.

*Annex (Settlement of disputes)*

44. Mr. MONNIER (Switzerland), introducing, on behalf of his own delegation and that of Austria, the amendment submitted in document A/CONF.117/L.2, said that the alternative text proposed for the Annex on conciliation should be regarded, not as a compromise text, but simply as an effort to introduce certain modest improvements into the conciliation procedure, which unfortunately remained the only means available under the draft convention for the settlement of disputes.

45. In drafting the amendment, the sponsors had drawn inspiration from the 1978 Vienna Convention, and also from certain procedures provided for in the 1975 Vienna Convention on the Representation of States in their Relations with International Organizations of a Universal Character<sup>2</sup> and in the 1982 United Nations Convention on the Law of the Sea.<sup>3</sup>

46. He wished to emphasize that the proposals did not affect the nature of the conciliation procedure, nor the task of the proposed conciliation commission, which was to facilitate agreement by the parties themselves. The few changes introduced were generally aimed at urging parties to comply with the conciliation commission's recommendations, with a view to bringing the dispute to an end.

47. Referring to the specific changes proposed, he said that, in paragraph 2, the time-limit for the appointment of the conciliators and the chairman had been reduced from two months to one month. The sponsors had felt that the time-limit set in the 1978 Convention could lead to undue delays. Otherwise, paragraphs 1 to 5 were the same as the corresponding annex in that Convention.

48. Paragraph 6 was based mainly on the provisions of the 1975 Convention; the penultimate sentence, in particular, was a verbatim quotation from article 85, paragraph 7, of that Convention. The last sentence of that paragraph was new. His own delegation's position in that connection was that the possible agreement of the parties to abide by the recommendations in the Commission's report did not give those recommendations a quasi-judicial status; legally, they remained recommendations. It should also be emphasized that the possibility of such agreement was merely an option.

49. Paragraph 7, which was also a new provision, was self-explanatory.

50. In paragraph 8, the time-limit of three months could be adjusted either way. He pointed out that the

publication of the reports of conciliation commissions was not a new idea; the 1982 United Nations Convention on the Law of the Sea,<sup>3</sup> in particular, provided for the automatic publication of the report of the Conciliation Commission under certain conditions.

51. He reiterated that the changes proposed in the amendment did not alter the nature of the conciliation procedure and were designed simply to facilitate its application.

52. Mr. TÜRK (Austria) said that his delegation wished to add a few observations to the statement just made by the representative of Switzerland in his introduction of document A/CONF.117/L.2.

53. Although the system of compulsory conciliation proposed by Kenya and Mozambique had not been the solution his delegation would have preferred, it had nonetheless voted in favour of that proposal in the Committee of the Whole since it appeared at the time to be the only widely acceptable system for the settlement of disputes. Nevertheless, it could and should be possible to improve upon that system without affecting its general acceptability; it was that concern that had prompted the submission of document A/CONF.117/L.2.

54. The question might be raised as to why the disputes settlement system in the present draft convention should be different from that set forth in the 1978 Convention. The 1978 Convention ruled on and thus formed part of the law of treaties. The present draft convention, on the other hand, was concerned with the distribution of goods and wealth in the form of property, archives and debts; it thus placed far greater emphasis on equity—a term which required appropriate procedures for the adaptation of general rules to specific cases. The amendments submitted, minor as they were, made the draft more responsive to those concerns.

55. Moreover the changes introduced did not place States under any additional obligations to abide by the recommendations of the conciliation commission; they rather opened up the possibility of providing for a binding recommendation. There was no reason, in his delegation's view, to forego such an option, which in any event did not represent an innovation in international law.

56. The amendment also required a party to a dispute which was not in a position to comply with the recommendation to justify its position. A State could, for various reasons, be obliged not to comply with the recommendations of the conciliation commission: in such a situation, it would be helpful to establish a channel of communication between the parties concerned, on the basis of which a final settlement of the dispute which was acceptable to both parties and met the requirements of the rule of law, was more likely to emerge. The obligation to make known the reasons for non-compliance would thus contribute to a mutual understanding of the needs and interests of the States involved in a dispute, in the interests of overall co-operation among States and the development of friendly relations between them.

57. Mr. TEPAVITCHAROV (Bulgaria), speaking on a point of order, said that his delegation viewed the Annex as an integral part of the section on the set-

<sup>2</sup> *Official Records of the United Nations Conference on the Representation of States in their Relations with International Organizations*, vol. II (United Nations publication, Sales No. E.75.V.12), document A/CONF.67/16.

<sup>3</sup> *Official Records of the Third United Nations Conference on the Law of the Sea*, vol. XVII, document A/CONF.62/122.

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.