

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

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**A/CONF.117/11**

**Report of the Committee of the Whole**

Extract from Volume II of the *Official Records of the United Nations Conference on Succession of States in respect of State Property, Archives and Debts (Documents of the Conference)*

**C. REPORT OF THE COMMITTEE OF THE WHOLE**  
**Documents A/CONF.117/11 and Add.1 to 12**

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**CONTENTS**

	<i>Paragraphs</i>	<i>Page</i>
[Background note] .....		98
<b>Chapter I. Introduction</b> .....	1-16	98
A. Opening of the Conference and election of officers .....	1-4	98
B. Basic proposal .....	5-6	98
C. Organization of work .....	7-12	99
D. Structure of the report .....	13-16	99
<b>Chapter II. Consideration by the Committee of the Whole of the draft articles on succession of States in respect of State property, archives and debts</b> .....	17-279	100
[Note concerning Part I. General provisions (Articles 1 to 6)] .....		100
<b>PART II. STATE PROPERTY</b> .....	17-87	100
<b>Article 7 (Scope of the articles in the present Part)</b> .....	17-21	100
A. International Law Commission text .....	17	100
B. Amendments .....	18	100
C. Proceedings of the Committee of the Whole .....	19-21	100
<b>Article 8 (State property)</b> .....	22-27	100
A. International Law Commission text .....	22	100
B. Amendments .....	23-24	100
C. Proceedings of the Committee of the Whole .....	25-27	100
<b>Article 9 (Effects of the passing of State property) and proposal for a new article 8 bis (Passing of State property)</b> .....	28-40	100
A. International Law Commission text of article 9 .....	28	100
B. Amendments .....	29-30	100
C. Proposal for a new <i>article 8 bis</i> .....	31-32	101
D. Proceedings of the Committee of the Whole .....	33-40	101
<b>Article 10 (Date of the passing of State property)</b> .....	41-46	101
A. International Law Commission text .....	41	101
B. Amendments .....	42-43	101
C. Proceedings of the Committee of the Whole .....	44-46	102
<b>Article 11 (Passing of State property without compensation)</b> .....	47-51	102
A. International Law Commission text .....	47	102
B. Amendments .....	48-49	102
C. Proceedings of the Committee of the Whole .....	50-51	102
<b>Article 12 (Absence of effect of a succession of States on the property of a third State)</b> .....	52-55	102
A. International Law Commission text .....	52	102
B. Amendments .....	53	102
C. Proceedings of the Committee of the Whole .....	54-55	102
<b>Article 12 bis (Preservation and safety of State property)</b> .....	56-58	102
A. Text of the proposed new article .....	56	102
B. Proceedings of the Committee of the Whole .....	57-58	102

## CONTENTS (continued)

	<i>Paragraphs</i>	<i>Page</i>
<i>Article 13</i> (Transfer of part of the territory of a State) .....	59-64	102
A. International Law Commission text .....	59	102
B. Amendments .....	60-61	103
C. Proceedings of the Committee of the Whole .....	62-64	103
<i>Article 14</i> (Newly independent State) .....	65-70	103
A. International Law Commission text .....	65	103
B. Amendments .....	66-67	103
C. Proceedings of the Committee of the Whole .....	68-70	103
<i>Article 15</i> (Uniting of States) .....	71-77	104
A. International Law Commission text .....	71	104
B. Amendments .....	72	104
C. Proceedings of the Committee of the Whole .....	73-76	104
D. Text adopted by the Committee of the Whole .....	77	104
<i>Article 16</i> (Separation of part or parts of the territory of a State) .....	78-83	104
A. International Law Commission text .....	78	104
B. Amendments .....	79-80	104
C. Proceedings of the Committee of the Whole .....	81-83	104
<i>Article 17</i> (Dissolution of a State) .....	84-87	105
A. International Law Commission text .....	84	105
B. Amendments .....	85	105
C. Proceedings of the Committee of the Whole .....	86-87	105
<b>PART III. STATE ARCHIVES</b> .....	88-173	105
<i>Article 18</i> (Scope of the articles in the present Part) .....	88-92	105
A. International Law Commission text .....	88	105
B. Amendments .....	89	105
C. Proceedings of the Committee of the Whole .....	90-92	105
<i>Article 19</i> (State archives) .....	93-99	105
A. International Law Commission text .....	93	105
B. Amendments .....	94-95	105
C. Proceedings of the Committee of the Whole .....	96-99	106
<i>Article 20</i> (Effects of the passing of State archives) and <i>proposals for a new article 19 bis</i> (Passing of State archives) .....	100-110	106
A. International Law Commission text of article 20 .....	100	106
B. Amendments .....	101-102	106
C. Proposal for a new <i>article 19 bis</i> .....	103	106
D. Proceedings of the Committee of the Whole .....	104-110	106
<i>Article 21</i> (Date of the passing of State archives) .....	111-116	107
A. International Law Commission text .....	111	107
B. Amendments .....	112-113	107
C. Proceedings of the Committee of the Whole .....	114-116	107
<i>Article 22</i> (Passing of State archives without compensation) .....	117-121	107
A. International Law Commission text .....	117	107
B. Amendments .....	118-119	107
C. Proceedings of the Committee of the Whole .....	120-121	107
<i>Article 23</i> (Absence of effect of a succession of States on the archives of a third State) .....	122-129	107
A. International Law Commission text .....	122	107
B. Amendments .....	123-124	107
C. Proceedings of the Committee of the Whole .....	125-128	108
D. Text adopted by the Committee of the Whole .....	129	108

## CONTENTS (continued)

	<i>Paragraphs</i>	<i>Page</i>
<i>Proposal for a new article 23 bis</i> (Preservation of rights in connection with a succession of States in respect of State archives) .....	130-133	108
A. Text of the proposed new article .....	130-131	108
B. Proceedings of the Committee of the Whole .....	132-133	108
<i>Article 24</i> (Preservation of the unity of State archives) .....	134-139	108
A. International Law Commission text .....	134	108
B. Amendments .....	135-136	108
C. Proceedings of the Committee of the Whole .....	137-139	108
<i>Proposal for a new article 24 bis</i> (Preservation and safety of State archives) .....	140-142	109
A. Text of the proposed new article .....	140	109
B. Proceedings of the Committee of the Whole .....	141-142	109
<i>Article 25</i> (Transfer of part of the territory of a State) .....	143-148	109
A. International Law Commission text .....	143	109
B. Amendments .....	144-145	109
C. Proceedings of the Committee of the Whole .....	146-148	109
<i>Article 26</i> (Newly independent State) .....	149-154	110
A. International Law Commission text .....	149	110
B. Amendments .....	150-151	110
C. Proceedings of the Committee of the Whole .....	152-154	110
<i>Article 27</i> (Uniting of States) .....	155-161	110
A. International Law Commission text .....	155	110
B. Amendments .....	156	110
C. Proceedings of the Committee of the Whole .....	157-160	110
D. Text adopted by the Committee of the Whole .....	161	111
<i>Article 28</i> (Separation of part or parts of the territory of a State) .....	162-167	111
A. International Law Commission text .....	162	111
B. Amendments .....	163-164	111
C. Proceedings of the Committee of the Whole .....	165-167	111
<i>Article 29</i> (Dissolution of a State) .....	168-173	111
A. International Law Commission text .....	168	111
B. Amendments .....	169-170	111
C. Proceedings of the Committee of the Whole .....	171-173	112
<b>PART IV. STATE DEBTS</b> .....	174-232	112
<i>Article 30</i> (Scope of the articles in the present Part) .....	174-178	112
A. International Law Commission text .....	174	112
B. Amendments .....	175	112
C. Proceedings of the Committee of the Whole .....	176-178	112
<i>Article 31</i> (State debt) .....	179-183	112
A. International Law Commission text .....	179	112
B. Amendments .....	180-181	112
C. Proceedings of the Committee of the Whole .....	182-183	112
<i>Article 32</i> (Effects of the passing of State debts) and <i>proposals for a new article 31 bis</i> (Passing of State debts) .....	184-191	112
A. International Law Commission text of article 32 .....	184	112
B. Amendments .....	185-186	112
C. Proposals for a new <i>article 31 bis</i> .....	187	113
D. Proceedings of the Committee of the Whole .....	188-191	113
<i>Article 33</i> (Date of the passing of State debts) .....	192-196	113
A. International Law Commission text .....	192	113
B. Amendments .....	193-194	113
C. Proceedings of the Committee of the Whole .....	195-196	113

CONTENTS (*continued*)

	<i>Paragraphs</i>	<i>Page</i>
<i>Article 34</i> (Effects of the passing of State debts with regard to creditors) .....	197-204	113
A. International Law Commission text .....	197	113
B. Amendments .....	198-199	114
C. Proceedings of the Committee of the Whole .....	200-204	114
<i>Article 35</i> (Transfer of part of the territory of a State) .....	205-210	114
A. International Law Commission text .....	205	114
B. Amendments .....	206-207	114
C. Proceedings of the Committee of the Whole .....	208-210	114
<i>Article 36</i> (Newly independent State) .....	211-216	114
A. International Law Commission text .....	211	114
B. Amendments .....	212-213	114
C. Proceedings of the Committee of the Whole .....	214-216	115
<i>Article 37</i> (Uniting of States) .....	217-220	115
A. International Law Commission text .....	217	115
B. Amendments .....	218	115
C. Proceedings of the Committee of the Whole .....	219-220	115
<i>Article 38</i> (Separation of part or parts of the territory of a State) .....	221-226	115
A. International Law Commission text .....	221	115
B. Amendments .....	222-223	115
C. Proceedings of the Committee of the Whole .....	224-226	115
<i>Article 39</i> (Dissolution of a State) .....	227-232	115
A. International Law Commission text .....	227	115
B. Amendments .....	228-229	115
C. Proceedings of the Committee of the Whole .....	230-232	115
<b>PART I. GENERAL PROVISIONS</b> .....	233-266	116
<i>Article 1</i> (Scope of the present articles) .....	233-237	116
A. International Law Commission text .....	233	116
B. Amendments .....	234	116
C. Proceedings of the Committee of the Whole .....	235-237	116
<i>Article 2</i> (Use of terms) .....	238-244	116
A. International Law Commission text .....	238	116
B. Amendments .....	239-240	116
C. Proceedings of the Committee of the Whole .....	241-244	116
<i>Article 3</i> (Cases of succession of States covered by the present articles) .....	245-248	116
A. International Law Commission text .....	245	116
B. Amendments .....	246	116
C. Proceedings of the Committee of the Whole .....	247-248	116
<i>Article 4</i> (Temporal application of the present articles) .....	249-252	117
A. International Law Commission text .....	249	117
B. Amendments .....	250	117
C. Proceedings of the Committee of the Whole .....	251-252	117
<i>Article 5</i> (Succession in respect of other matters) .....	253-256	117
A. International Law Commission text .....	253	117
B. Amendments .....	254	117
C. Proceedings of the Committee of the Whole .....	255-256	117
<i>Article 6</i> (Rights and obligations of natural or juridical persons) .....	257-262	117
A. International Law Commission text .....	257	117
B. Amendments .....	258-259	117
C. Proceedings of the Committee of the Whole .....	260-262	117

CONTENTS (*continued*)

	<i>Paragraphs</i>	<i>Page</i>
<i>Proposal for a new article 6 bis</i> (The present convention and permanent sovereignty over natural wealth and resources).....	263-266	117
A. Text of the proposed new article.....	263-264	117
B. Proceedings of the Committee of the Whole.....	265-266	117
<i>Proposal for a new article</i> (Rights of national organisations to request that safeguard measures be taken).....	267-270	118
A. Text of the proposed new article.....	267-268	118
B. Proceedings of the Committee of the Whole.....	269-270	118
<i>Proposals for new articles concerning the settlement of disputes arising from the interpretation or application of the future Convention</i> .....	271-276	118
A. Text of the proposals.....	271-273	118
B. Proceedings of the Committee of the Whole.....	274-276	119
<b>Chapter III. Final clauses</b> .....	277-279	120

## [BACKGROUND NOTE

By its resolution 36/113 of 10 December 1981, the General Assembly decided to convene a conference of plenipotentiaries in 1983 to consider the draft articles on succession of States in respect of State property, archives and debts, adopted by the International Law Commission at its thirty-third session, and to embody the results of its work in an international convention and such other instruments as it might deem appropriate. Subsequently, by its resolution 37/11 of 15 November 1982, the General Assembly decided that the United Nations Conference on Succession of States in Respect of State Property, Archives and Debts would be held from 1 March to 8 April 1983 at Vienna.]

*Chapter I*

## INTRODUCTION

**A. Opening of the Conference and election of officers**

1. The Conference opened on 1 March 1983 at the Neue Hofburg, Vienna. At its 1st plenary meeting, held on 1 March 1983, the Conference, *inter alia*, established a single Committee of the Whole to which it referred item 11 of the agenda adopted by the Conference (A/CONF.117/7), namely "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". The present document contains the report of the Committee of the Whole to the Conference on its consideration of that item.

2. At its 2nd plenary meeting, held on 1 March 1983, the Conference elected by acclamation Mr. Milan Šahović (Yugoslavia) to be Chairman of the Committee of the Whole.

3. At its 1st meeting, held on 2 March 1983, the Committee of the Whole elected by acclamation Mr. Moncef Benouniche (Algeria) as Vice-Chairman and Mrs. Kuljit Thakore (India) as Rapporteur.

4. The Secretariat was composed as follows: Representative of the Secretary-General of the United Nations, Under-Secretary-General, The Legal Counsel, Mr. Carl-August Fleischhauer; Executive Secretary of the Conference, Director of the Codification Division

of the Office of Legal Affairs of the United Nations, Mr. Valentin A. Romanov; Secretaries of the Committee of the Whole, Miss Jacqueline Dauchy and Mr. E. Valencia-Ospina; Assistant Secretaries of the Committee of the Whole, Mr. A. O. Adede, Mr. Larry D. Johnson and Mr. S. Shestakov; Secretary of the Drafting Committee, Mr. E. Valencia-Ospina; Assistant Secretary of the Drafting Committee, Mr. Larry D. Johnson.

**B. Basic proposal**

5. In accordance with rule 27 of the rules of procedure (A/CONF.117/8) adopted by the Conference at its 1st plenary meeting, held on 1 March 1983, the Committee of the Whole had before it, as the basic proposal for discussion by the Conference, the draft articles on succession of States in respect of State property, archives and debts adopted by the International Law Commission at its thirty-third session (A/CONF.117/4).<sup>1</sup>

6. The Committee of the Whole, in addition to the relevant records of the International Law Commission and of the General Assembly, had available to it the following background documentation:

(a) An analytical compilation of comments of Governments on the final draft articles on succession of

<sup>1</sup> See sect. B of this volume.

States in respect of State property, archives and debts (A/CONF.117/5 and Add.1) prepared by the Codification Division, Office of Legal Affairs of the United Nations Secretariat;

(b) A guide for the draft articles on succession of States in respect of State property, archives and debts (ST/LEG/14), prepared by the Codification Division, Office of Legal Affairs of the United Nations Secretariat;

(c) Written comments and observations submitted by Governments pursuant to resolution 36/113, report of the Secretary-General (A/37/454 and Corr.1 and Add.1);

(d) A select bibliography on succession of States in respect of State property, archives and debts (ST/LIB/SER.B/39), prepared by the Dag Hammarskjöld Library of the United Nations.

### C. Organization of work

7. In accordance with the methods of work and procedures contained in the memorandum by the Secretary-General (A/CONF.117/3), which the Conference approved at its 2nd plenary meeting (A/CONF.117/9), held on 1 March 1983, and on the understanding that the Conference and its organs would have the necessary flexibility to adjust these methods and procedures to their needs, the Committee of the Whole decided to defer consideration of Part I (articles 1 to 6) until it had concluded its initial consideration of the remaining three parts and to start its work by considering Part II of the draft entitled "State property", article 7 being the first to be taken up.

8. The Committee of the Whole proceeded mainly by way of article-by-article discussion of the draft articles before it and related amendments. In most cases, after initial consideration by the Committee of the Whole of the draft article and the amendment or amendments thereto, as the case might be, the text of the article was referred to the Drafting Committee, sometimes with drafting suggestions and recommendations relating thereto.

9. In the case of articles 15, 23 and 27 the Committee of the Whole subsequently considered, on the basis of the corresponding report of the Drafting Committee (A/CONF.117/C.1/1), the drafting recommended by the Drafting Committee for the articles and pronounced itself on that drafting.<sup>2</sup> In some instances, the Committee of the Whole referred specific articles or proposed new articles and the amendments relating thereto to a working group.

10. At its 12th meeting, held on 9 March 1983, the Committee of the Whole entrusted the Drafting Com-

mittee with the preparation of drafts, for submission directly to the plenary, concerning the preamble and the final clauses of the future convention.

11. At its 39th meeting, held on 29 March 1983, the Committee of the Whole decided that the Drafting Committee should submit directly to the plenary of the Conference its report on the articles referred to it,<sup>3</sup> in conformity with rule 47 of the rules of procedure. This decision was taken without prejudice to previous decisions of the Committee of the Whole concerning articles 15, 23 and 27, whereby the Committee of the Whole had requested the Drafting Committee to submit to it a recommendation on specific drafting points relating to those three articles.

12. The report of the Drafting Committee submitted for articles 15, 23 and 27 (A/CONF.117/C.1/1) took the form of the texts adopted. The report did not elaborate upon particular points considered or the reasons why certain amendments which had been referred to the Drafting Committee as drafting points had, or had not, been adopted. The Chairman of the Drafting Committee explained the main considerations which had resulted in the recommendations concerned. This statement by the Chairman of the Drafting Committee is to be found in the summary record of the 42nd meeting of the Committee of the Whole.

### D. Structure of the report

13. The present report is organized as follows: Chapter I contains the "Introduction". Chapter II is entitled "Consideration by the Committee of the Whole of the draft articles on succession of States in respect of State property, archives and debts prepared by the International Law Commission". Chapter III of the report deals with the proposals submitted for the final clauses.

14. Chapter II describes the proceedings of the Committee of the Whole, article by article, in numerical order. In most cases, the articles in Chapter II are dealt with as follows: First, the text of the International Law Commission's draft article, or of the proposed new article, is set out; next come the texts of amendments, if any; the proceedings of the Committee of the Whole are then described.

15. Chapter II is designed to be read in conjunction with the summary records of the Committee of the Whole (A/CONF.117/C.1/SR.1 to 44).

16. The check-list of documents submitted to the Committee of the Whole by States participating in the Conference is contained in the Index to the documents of the Conference.

<sup>2</sup> The titles and texts of articles 15, 23 and 27 adopted by the Committee of the Whole are contained in document A/CONF.117/10/Add.1.

<sup>3</sup> The reports of the Drafting Committee took the form of the texts contained in documents A/CONF.117/10 and Add.2 and 3 and A/CONF.117/13.

*Chapter II***CONSIDERATION BY THE COMMITTEE OF THE WHOLE OF THE DRAFT ARTICLES ON SUCCESSION OF STATES IN RESPECT OF STATE PROPERTY, ARCHIVES AND DEBTS**

[Note concerning Part I. General provisions (Articles 1 to 6).

In view of the decision concerning these articles which is recorded in paragraph 7 above, the description of the proceedings concerning the articles in question appears at the end of chapter II.]

**PART II. STATE PROPERTY****ARTICLE 7****A. International Law Commission text**

17. The International Law Commission text provided as follows:

*Article 7. Scope of the articles in the present Part*

The articles in the present Part apply to the effects of a succession of States in respect of State property.

**B. Amendments**

18. No amendment was submitted to the article.

**C. Proceedings of the Committee of the Whole**

19. The Committee initially considered the article at its 1st and 40th meetings on 2 and 30 March 1983.

20. At its 1st meeting, the Committee decided to defer consideration of the article until it took up articles 1 to 6.

21. At its 40th meeting, the Committee considered the possibility, suggested by Greece, of merging articles 7, 18 and 30 with article 1. At the same meeting, it voted on the principle of such a merger, which it rejected by 42 votes to 20, with 3 abstentions. It then adopted the text of the International Law Commission for article 7 and referred it to the Drafting Committee.<sup>4</sup>

**ARTICLE 8****A. International Law Commission text**

22. The International Law Commission text provided as follows:

*Article 8. State property*

For the purposes of the articles in the present Part, "State property" means property, rights and interests which, at the date of the succession of States, were, according to the internal law of the predecessor State, owned by that State.

**B. Amendments**

23. Amendments were submitted to the article by Denmark and France.

24. These amendments were to the following effect:

(a) *Denmark (A/CONF.117/C.1/L.1)*

Redraft the article as follows:

For the purposes of the articles in the present Part, "State property" means all that is owned by the predecessor State, according to its internal law, at the date of the succession of States.

[Withdrawn; see para. 26 below.]

(b) *France (A/CONF.117/C.1/L.5)*

Redraft the article as follows:

For the purposes of the articles in the present Part, "State property" means property, rights and interests, including the obligations attaching to them, which, at the date of the succession of States, were, according to the internal law of the predecessor State, owned by that State.

*Commentary*

State property which is the object of the succession of States must pass from the predecessor State to the successor State with the obligations attaching to it (for example, charges or mortgages attaching to buildings).

This derives from the general principles of the law of property and obligations, and it holds good even in the absence of mention in article 8. However, it might be advisable to supplement the text by making the above drafting amendment.

[Withdrawn but brought to the attention of the Drafting Committee; see para. 27 below.]

**C. Proceedings of the Committee of the Whole**

25. The Committee considered the article and the amendments thereto at its 1st, 5th and 6th meetings on 2 and 4 March 1983.

26. At the 6th meeting of the Committee the amendments by Denmark and France were withdrawn.

27. At the same meeting, the Committee adopted the text of the International Law Commission for article 8 without a vote. It referred that text to the Drafting Committee and also drew the attention of the Drafting Committee to the amendment to article 8 submitted by France (see paragraph 24(b) above).<sup>4</sup>

**ARTICLE 9 AND PROPOSAL FOR A NEW ARTICLE 8 bis****A. International Law Commission text**

28. The International Law Commission text of article 9 provided as follows:

*Article 9. Effects of the passing of State property*

A succession of States entails the extinction of the rights of the predecessor State and the arising of the rights of the successor State to such of the State property as passes to the successor State in accordance with the provisions of the articles in the present Part.

**B. Amendments**

29. Amendments were submitted to the article by Austria, the Federal Republic of Germany, Greece and France.

<sup>4</sup> The report of the Drafting Committee on this article is contained in document A/CONF.117/10.



30. These amendments were to the following effect:

(a) *Austria* (A/CONF.117/C.1/L.2)

Redraft the article as follows:

A succession of States has the effect that the rights of the predecessor State to State property pass to the successor State in accordance with the provisions of the articles in the present Part.

[Withdrawn; see para. 34 below.]

(b) *Federal Republic of Germany* (A/CONF.117/C.1/L.3)

Redraft the article as follows:

A succession of States entails the extinction of the rights of the predecessor State and, to the extent to which the predecessor State owned such rights, the arising of the rights of the successor State to such of the State property as passes to the successor State in accordance with the provisions of the articles in the present Part.

[Withdrawn; see para. 35 below.]

(c) *Greece* (A/CONF.117/C.1/L.7)

Redraft the article as follows:

A succession of States has the effect of making the property of the predecessor State, as defined in article 8, pass to the successor State in accordance with the provisions of the articles in the present Part.

[Withdrawn; see para. 35 below.]

(d) *France* (A/CONF.117/C.1/L.21)

Redraft the article as follows:

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

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

[Rejected; see para. 35 below.]

### C. Proposal for a new article 8 bis

31. The Committee of the Whole also had before it an amendment submitted by Algeria (A/CONF.117/C.1/L.22) seeking to insert a new article 8 bis before article 9.

32. The proposed new article, as orally revised, read as follows:

#### *Article 8 bis. Passing of State property*

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

[Adopted but subsequently deleted following the report of the Working Group; see paras. 36 and 38 below.]

### D. Proceedings of the Committee of the Whole

33. The Committee considered article 9 and the amendments thereto, at its 1st, 2nd, 6th, 7th, 9th, and 10th meetings on 2, 4, 7, and 8 March 1983, as well as the proposal seeking to insert a new article 8 bis before article 9, at its 9th and 10th meetings, on 8 March of the same year.

34. At the 6th meeting the amendment submitted by Austria (A/CONF.117/C.1/L.2) was withdrawn and at the 9th meeting Greece withdrew its amendment (A/CONF.117/C.1/L.7).

35. At the 10th meeting the amendment submitted by the Federal Republic of Germany (A/CONF.117/C.1/L.3) was withdrawn and the amendment submitted by France (A/CONF.117/C.1/L.21) was rejected by 29 votes to 21, with 10 abstentions. Also at the 10th meeting, the Committee adopted the text of the International Law Commission for article 9, by 45 votes to none, with 18 abstentions, and referred it to the Drafting Committee.

36. At its 10th meeting the Committee of the Whole also adopted the amendment of Algeria (A/CONF.117/C.1/L.22, as orally revised), seeking to insert a new article 8 bis before article 9, by 35 votes to none, with 21 abstentions, and referred the text of the amendment to the Drafting Committee.

37. At its 42nd meeting, the Committee had before it the report of the Working Group (A/CONF.117/C.1/L.62)<sup>5</sup> which it had established at its 40th meeting under the chairmanship of the representative of Morocco.

38. At the same meeting, the Committee approved the above report and accordingly decided to delete article 8 bis.

39. In addition, under the above report, the text of article 9 was modified as follows: the words "A succession of States entails" were replaced by the words "The passing of State property entails" and the words "in accordance with" were replaced by the words "subject to".

40. The Committee of the Whole referred the text of article 9, thus amended, to the Drafting Committee.<sup>4</sup>

## ARTICLE 10

### A. International Law Commission text

41. The International Law Commission text provided as follows:

#### *Article 10. Date of the passing of State property*

Unless otherwise agreed or decided, the date of the passing of State property is that of the succession of States.

### B. Amendments

42. Amendments to article 10 were submitted by Egypt, later joined by Kenya and the Netherlands, and to articles 10, 21 and 33 by Greece.

43. The amendments were to the following effect:

(a) *Egypt* (A/CONF.117/C.1/L.17), later joined by *Kenya* and the *Netherlands*.

Replace the words "Unless otherwise agreed or decided" by the words "Unless otherwise agreed by the States concerned or decided by an appropriate international body".

[Adopted; see para. 46 below.]

(b) *Greece* (A/CONF.117/C.1/L.4)

Replace articles 10, 21 and 33 by the following article [to be inserted in Part I, General provisions]:

Except as otherwise determined, the date of the passing of State property, archives and debts is that of the succession of States.

[Withdrawn; see para. 45 below.]

<sup>5</sup> For the full text of the report of the Working Group see paragraph 190 below.

**C. Proceedings of the Committee of the Whole**

44. The Committee considered the article and the amendments thereto at its 2nd, 6th, 8th and 9th meetings on 2, 4, 7 and 8 March 1983.

45. At the 8th meeting the amendment submitted by Greece was withdrawn.

46. At the 9th meeting the amendment sponsored by Egypt, Kenya and the Netherlands was adopted by 24 votes to 10, with 23 abstentions. At the same meeting, the Committee adopted the text of the International Law Commission for article 10, as amended, by 44 votes to 4, with 12 abstentions, and referred it to the Drafting Committee.<sup>4</sup>

**ARTICLE 11****A. International Law Commission text**

47. The International Law Commission text provided as follows:

*Article 11. Passing of State property without compensation*

Subject to the provisions of the articles in the present Part and unless otherwise agreed or decided, the passing of State property from the predecessor State to the successor State shall take place without compensation.

**B. Amendment**

48. An amendment was submitted to the article by *Egypt* (A/CONF.117/C.1/L.6), later joined by *Kenya* and the *Netherlands*.

49. The amendment was to the following effect:

Replace the opening phrase by: "Subject to the provisions of the articles in the present Part and unless otherwise agreed by the States concerned or decided by an appropriate international body . . ."

[Adopted; see para. 51 below.]

**C. Proceedings of the Committee of the Whole**

50. The Committee considered the article and the amendment thereto at its 2nd, 3rd, 6th and 9th meetings on 2, 3, 4 and 8 March 1983.

51. At its 9th meeting, the Committee adopted without a vote the amendment sponsored by *Egypt*, *Kenya* and the *Netherlands*. At the same meeting, it adopted the text of the International Law Commission for article 11, as amended, without a vote and referred it to the Drafting Committee, together with an oral drafting suggestion made by *Finland*.<sup>4</sup>

**ARTICLE 12****A. International Law Commission text**

52. The International Law Commission text provided as follows:

*Article 12. Absence of effect of a succession of States on the property of a third State*

A succession of States shall not as such affect property, rights and interests which, at the date of the succession of States, are situated in the territory of the predecessor State and which, at that date, are owned by a third State according to the internal law of the predecessor State.

**B. Amendments**

53. No amendment was submitted to the article.

**C. Proceedings of the Committee of the Whole**

54. The Committee of the Whole considered article 12 at its 3rd, 4th, 5th and 9th meetings on 3, 4 and 8 March 1983.

55. At its 9th meeting, the Committee adopted the text of the International Law Commission for article 12 without a vote, and referred it to the Drafting Committee.<sup>4</sup>

**ARTICLE 12 bis<sup>6</sup>****A. Text of the proposed new article**

56. An amendment seeking to insert a new article 12 bis was submitted by the United Arab Emirates (A/CONF.117/C.1/L.59). The text of the proposed new article, as orally revised,<sup>7</sup> read as follows:

*Article 12 bis. Preservation and safety of State property*

For the purpose of the implementation of the provisions of the articles of the present Part, the predecessor State shall take all measures to prevent damage or destruction to State property which, according to the provisions of the articles of the present Part, pass to the successor State.

[Adopted; see para. 58 below.]

**B. Proceedings of the Committee of the Whole**

57. The Committee of the Whole considered the proposed new article at its 40th and 42nd meetings held on 30 and 31 March 1983.

58. At its 42nd meeting, the Committee adopted by consensus the proposed new article as orally revised and referred it to the Drafting Committee.<sup>4</sup>

**ARTICLE 13<sup>8</sup>****A. International Law Commission text**

59. The International Law Commission text provided as follows:

*Article 13. Transfer of part of the territory of a State*

1. When part of the territory of a State is transferred by that State to another State, the passing of State property of the predecessor State to the successor State is to be settled by agreement between them.

2. In the absence of such an agreement:

(a) immovable State property of the predecessor State situated in the territory to which the succession of States relates shall pass to the successor State;

<sup>6</sup> Article 12 bis is numbered 13 in the Convention as adopted.

<sup>7</sup> In its original version, the amendment read as follows:

*Article 12 bis. Preservation and safety of State property*

For the purpose of the implementation of the provisions of this Convention, an obligation to the predecessor State to transfer State property to the successor State entails the consequential obligation to take all measures to prevent damage or destruction to any part of State property which, according to the provisions of the articles of the present Part, pass to the successor State.

<sup>8</sup> Article 13 is numbered 14 in the Convention as adopted.

(b) movable State property of the predecessor State connected with the activity of the predecessor State in respect of the territory to which the succession of States relates shall pass to the successor State.

### B. Amendments

60. Amendments were submitted to the article by *France* (A/CONF.117/C.1/L.16 and Corr.1).

61. These amendments were to the following effect:

(a) In paragraph 1, delete the words "by that State".

[Rejected; see para. 63(a) below.]

(b) Redraft paragraph 2(b) to read as follows:

(b) movable State property of the predecessor State having a direct and necessary connection with the administration and management of the territory to which the succession of States relates shall pass to the successor State;

[Rejected; see para. 63(b) below.]

(c) In paragraph 2, add a new subparagraph (c) reading as follows:

(c) the predecessor State shall, however, retain the property necessary for the functioning of those services which it maintains or establishes on the territory of the successor State with the agreement of the latter.

[Rejected; see para. 63(c) below.]

### C. Proceedings of the Committee of the Whole

62. The Committee of the Whole considered the article and the amendments thereto at its 11th and 12th meetings on 9 March 1983.

63. At its 12th meeting, the Committee voted on the amendments to article 13 as follows:

(a) It rejected the first amendment by 35 votes to 19, with 6 abstentions;

(b) It rejected the second amendment by 31 votes to 20, with 7 abstentions;

(c) It rejected the third amendment by 39 votes to 10, with 10 abstentions.

64. The Committee of the Whole then adopted the text of the International Law Commission for article 13 by 40 votes to none, with 18 abstentions, and referred it to the Drafting Committee.<sup>4</sup>

## ARTICLE 14<sup>9</sup>

### A. International Law Commission text

65. The International Law Commission text provided as follows:

#### *Article 14. Newly independent State*

1. When the successor State is a newly independent State:

(a) immovable State property of the predecessor State situated in the territory to which the succession of States relates shall pass to the successor State;

(b) immovable property having belonged to the territory to which the succession of States relates, situated outside it and having become State property of the predecessor State during the period of dependence, shall pass to the successor State;

(c) immovable State property of the predecessor State other than that mentioned in subparagraph (b) and situated outside the

territory to which the succession of States relates, to the creation of which the dependent territory has contributed, shall pass to the successor State in proportion to the contribution of the dependent territory;

(d) movable State property of the predecessor State connected with the activity of the predecessor State in respect of the territory to which the succession of States relates shall pass to the successor State;

(e) movable property having belonged to the territory to which the succession of States relates and having become State property of the predecessor State during the period of dependence, shall pass to the successor State;

(f) movable State property of the predecessor State other than the property mentioned in subparagraphs (d) and (e), to the creation of which the dependent territory has contributed, shall pass to the successor State in proportion to the contribution of the dependent territory.

2. When a newly independent State is formed from two or more dependent territories, the passing of the State property of the predecessor State or States to the newly independent State shall be determined in accordance with the provisions of paragraph 1.

3. When a dependent territory becomes part of the territory of a State, other than the State which was responsible for its international relations, the passing of the State property of the predecessor State to the successor State shall be determined in accordance with the provisions of paragraph 1.

4. Agreements concluded between the predecessor State and the newly independent State to determine succession to State property otherwise than by the application of paragraphs 1 to 3 shall not infringe the principle of the permanent sovereignty of every people over its wealth and natural resources.

### B. Amendments

66. Amendments were submitted to the article by the Netherlands and by the United Kingdom of Great Britain and Northern Ireland.

67. These amendments were to the following effect:

(a) *Netherlands* (A/CONF.117/C.1/L.18)

Redraft paragraph 4 to read as follows:

Any agreement concluded between the predecessor State and the newly independent State to determine succession to State property shall pay due regard to the newly independent State's permanent sovereignty over its natural resources in accordance with international law.

[Rejected; see para. 69(b) below.]

(b) *United Kingdom* (A/CONF.117/C.1/L.19)

Replace paragraph 1 by the following:

1. When the successor State is a newly independent State:

(a) State property of the predecessor State shall pass to the successor State to the extent so agreed between them;

(b) in the absence of such an agreement, State property vested in the government of the territory to which the succession of States relates shall pass to the successor State;

(c) where neither subparagraph (a) nor (b) applies, State property of the predecessor State, which has a direct and necessary link with the management and administration of the territory to which the succession of States relates, shall pass to the successor State.

[Rejected; see para. 69(a) below.]

### C. Proceedings of the Committee of the Whole

68. The Committee considered the article and the amendments thereto at its 13th, 14th, 15th and 16th meetings on 10 and 11 March 1983.

<sup>9</sup> Article 14 is numbered 15 in the Convention as adopted.

69. At the 16th meeting, the Committee voted on the amendments as follows:

(a) It rejected the amendment submitted by the United Kingdom by 41 votes to 19, with 2 abstentions;

(b) It rejected the amendment submitted by the Netherlands by 40 votes to 21, with 1 abstention.

70. The Committee then adopted the text of the International Law Commission for article 14 by 43 votes to 21, with no abstentions and referred it to the Drafting Committee.<sup>4</sup>

#### ARTICLE 15<sup>10</sup>

##### A. International Law Commission text

71. The International Law Commission text provided as follows:

###### *Article 15. Uniting of States*

1. When two or more States unite and so form a successor State, the State property of the predecessor States shall pass to the successor State.

2. Without prejudice to the provision of paragraph 1, the allocation of the State property of the predecessor States as belonging to the successor State or, as the case may be, to its component parts shall be governed by the internal law of the successor State.

##### B. Amendments

72. No amendment was submitted to the article.

##### C. Proceedings of the Committee of the Whole

73. The Committee considered the article at its 16th and 42nd meetings on 11 and 31 March 1983.

74. At its 16th meeting, the Committee adopted the text of the International Law Commission for article 15 without a vote, and referred it to the Drafting Committee.

75. The Committee further requested the Drafting Committee to submit to it, in conformity with rule 47, paragraph 2, of the rules of procedure, a recommendation on the desirability of retaining or deleting paragraph 2 of article 15 after having examined it in the context of that article and in relation to corresponding provisions in other parts of the draft articles. The Committee also referred to the drafting Committee a suggestion for the replacement, in the English text of the article, of "a" at the beginning of paragraph 1, by the word "one".

76. At its 42nd meeting, the Committee had before it the report of the Drafting Committee (A/CONF.117/C.1/1)<sup>11</sup> containing the text of article 15 adopted by the Drafting Committee. The Committee of the Whole adopted that text without a vote.

<sup>10</sup> Article 15 is numbered 16 in the Convention as adopted.

<sup>11</sup> The report of the Drafting Committee (A/CONF.117/C.1/1) took the form of the texts adopted by that Committee for articles 15, 23 and 27. These texts are identical with those contained in paragraphs 77, 129 and 161 respectively. For the titles and texts of articles 15, 23 and 27 as adopted by the Committee of the Whole, see document A/CONF.117/10/Add.1.

##### D. Text adopted by the Committee of the Whole

77. On the basis of the foregoing, the Committee of the Whole recommends to the Conference for adoption the following text of article 15:

###### *Article 15. Uniting of States*

When two or more States unite and so form one successor State, the State property of the predecessor States shall pass to the successor State.

#### ARTICLE 16<sup>12</sup>

##### A. International Law Commission text

78. The International Law Commission text provided as follows:

###### *Article 16. Separation of part or parts of the territory of a State*

1. When part or parts of the territory of a State separate from that State and form a State, and unless the predecessor State and the successor State otherwise agree:

(a) immovable State property of the predecessor State situated in the territory to which the succession of States relates shall pass to the successor State;

(b) movable State property of the predecessor State connected with the activity of the predecessor State in respect of the territory to which the succession of States relates shall pass to the successor State;

(c) movable State property of the predecessor State other than that mentioned in subparagraph (b) shall pass to the successor State in an equitable proportion.

2. Paragraph 1 applies when part of the territory of a State separates from that State and unites with another State.

3. The provisions of paragraphs 1 and 2 are without prejudice to any question of equitable compensation as between the predecessor State and the successor State that may arise as a result of a succession of States.

##### B. Amendments

79. Amendments were submitted to the article by Pakistan (A/CONF.117/C.1/L.8/Rev.1).

80. These amendments were to the following effect:

(a) Replace paragraph 1(b) by the following:

(b) movable State property of the predecessor State having a direct and necessary connection with the administration and management of the territory to which the succession of States relates shall pass to the successor State.<sup>13</sup>

[Rejected; see para. 82(a) below.]

(b) Delete paragraph 1(c)

[Rejected; see para. 82(b) below.]

##### C. Proceedings of the Committee of the Whole

81. The Committee considered article 16 and the amendments thereto submitted by Pakistan at its 16th, 17th and 19th meetings on 11, 14 and 15 March 1983.

<sup>12</sup> Article 16 is numbered 17 in the Convention as adopted.

<sup>13</sup> In its original version (A/CONF.117/C.1/L.8), the amendment to paragraph 1(b) read as follows:

The words "connected with the activity of the predecessor State in respect of" should be replaced by the words "situated in". The amended subparagraph would thus read: "(b) movable State property of the predecessor State situated in the territory to which the succession of States relates shall pass to the successor State."

82. At its 19th meeting, the Committee voted on those amendments as follows:

(a) It rejected the amendment to paragraph 1(b) by 30 votes to 18, with 12 abstentions;

(b) It rejected the amendment for the deletion of paragraph 1(c) by 37 votes to 13, with 12 abstentions.

83. The Committee then adopted the text of the International Law Commission for article 16 by 46 votes to none, with 17 abstentions, and referred it to the Drafting Committee.<sup>4</sup>

#### ARTICLE 17<sup>14</sup>

##### A. International Law Commission text

84. The International Law Commission text provided as follows:

###### *Article 17. Dissolution of a State*

1. When a predecessor State dissolves and ceases to exist and the parts of its territory form two or more States, and unless the successor States concerned otherwise agree:

(a) immovable State property of the predecessor State shall pass to the successor State in the territory of which it is situated;

(b) immovable State property of the predecessor State situated outside its territory shall pass to the successor States in equitable proportions;

(c) movable State property of the predecessor State connected with the activity of the predecessor State in respect of the territories to which the succession of States relates shall pass to the successor State concerned;

(d) movable State property of the predecessor State other than that mentioned in subparagraph (c) shall pass to the successor States in equitable proportions.

2. The provisions of paragraph 1 are without prejudice to any question of equitable compensation among the successor States that may arise as a result of a succession of States.

##### B. Amendments

85. No amendment was submitted to article 17.

##### C. Proceedings of the Committee of the Whole

86. The Committee considered article 17 at its 17th meeting on 14 March 1983.

87. At that meeting, the Committee adopted the text of the International Law Commission for article 17 without a vote, and referred it to the Drafting Committee.<sup>4</sup>

### PART III. STATE ARCHIVES

#### ARTICLE 18<sup>15</sup>

##### A. International Law Commission text

88. The International Law Commission text provided as follows:

###### *Article 18. Scope of the articles in the present Part*

The articles in the present Part apply to the effects of a succession of States in respect of State archives.

##### B. Amendments

89. No amendment was submitted.

##### C. Proceedings of the Committee of the Whole

90. The Committee considered article 18 at its 18th and 40th meetings on 14 and 30 March 1983.

91. At its 18th meeting, the Committee decided to defer consideration of article 18 until it took up articles 1 to 6.

92. At its 40th meeting, the Committee considered the possibility, suggested by Greece, of merging articles 7, 18 and 30 with article 1. At the same meeting, it voted on the principle of such a merger, which it rejected by 42 votes to 20, with 3 abstentions. It then adopted the text of the International Law Commission for article 18 and referred it to the Drafting Committee.<sup>4</sup>

#### ARTICLE 19<sup>16</sup>

##### A. International Law Commission text

93. The International Law Commission text provided as follows:

###### *Article 19. State archives*

For the purposes of the present articles, "State archives" means all documents of whatever kind which, at the date of the succession of States, belonged to the predecessor State according to its internal law and had been kept by it as archives.

##### B. Amendments

94. Amendments were submitted to the article by the United Kingdom of Great Britain and Northern Ireland, Kenya, Algeria and Austria.

95. These amendments were to the following effect:

(a) *United Kingdom* (A/CONF.117/C.1/L.20)

Delete the phrase "according to its internal law" and insert "and according to the internal law of the predecessor State" after "at the date of the succession of States". The article would then read:

For the purposes of the present articles, "State archives" means all documents of any kind which, at the date of the succession of States and according to the internal law of the predecessor State, belonged to the predecessor State and had been kept by it as archives.

[Referred to the Working Group; see para. 97 below.]

(b) *Kenya* (A/CONF.117/C.1/L.27)

Delete the words "and had been kept by it as archives."

[Referred to the Working Group; see para. 97 below.]

(c) *Algeria* (A/CONF.117/C.1/L.34/Rev.1)<sup>17</sup>

Replace the words "and had been kept by it as archives" by "and had been kept by it for official, historical, cultural, economic, scientific, practical or other purposes".

[Referred to the Working Group; see para. 97 below.]

<sup>16</sup> Article 19 is numbered 20 in the Convention as adopted.

<sup>17</sup> In the original version (A/CONF.117/C.1/L.34), the word "cultural" did not appear and the conjunction "and" was used before the word "other".

<sup>14</sup> Article 17 is numbered in the Convention as adopted.

<sup>15</sup> Article 18 is numbered in the Convention as adopted.

(d) *Austria* (A/CONF.117/C.1/L.35)

Replace the words "means all documents of whatever kind which . . ." by the words "means documentary material of whatever kind amassed and deliberately preserved by State institutions in the course of their activities which . . .".

[Referred to the Working Group; see para. 97 below.]

**C. Proceedings of the Committee of the Whole**

96. The Committee considered article 19 and the amendments thereto at its 18th, 19th, 20th, 26th and 27th meetings, on 14, 15, 21 and 22 March 1983.

97. At its 20th meeting, the Committee decided to set up a working group to deal with article 19 and the written and oral amendments and sub-amendments thereto, to be chaired by the representative of Poland.

98. At the 26th meeting the Chairman of the Working Group on article 19 introduced the text suggested by the Working Group for article 19 (A/CONF.117/C.1/L.45). This text reads as follows:

*Article 19. State archives*

For the purposes of the articles in the present Part, "State archives" means all documents of whatever date and kind, produced or received by the predecessor State [in the exercise of its functions] which, at the date of the succession of States, belonged to the predecessor State according to its internal law and were preserved by it [directly or under its control] as archives [for whatever purpose].

99. At its 27th meeting, the Committee adopted the above text, with the deletion of the square brackets, without a vote and referred it to the Drafting Committee.<sup>4</sup>

**ARTICLE 20<sup>18</sup> AND PROPOSALS FOR A NEW ARTICLE 19 bis****A. International Law Commission text**

100. The International Law Commission text of article 20 provided as follows:

*Article 20. Effects of the passing of State archives*

A succession of States entails the extinction of the rights of the predecessor State and the arising of the rights of the successor State to such of the State archives as pass to the successor State in accordance with the provisions of the articles in the present Part.

**B. Amendments**

101. An amendment was submitted to the article, in written form, by the Netherlands and a subamendment was submitted orally by Algeria at the 22nd meeting.

102. These amendments were to the following effect:

(a) *Netherlands* (A/CONF.117/C.1/L.33)

Insert the word "simultaneous" between the words "the" and "arising" in the second line.

[Rejected; see para. 105 below.]

(b) *Algeria* (Oral subamendment to the above amendment)

Insert the words " , simultaneous in appropriate cases of succession," after "arising".

[Withdrawn; see para. 105 below.]

**C. Proposals for a new article 19 bis**

103. In addition, the Committee had before it amendments seeking to insert a new article 19 bis before article 20 as follows:

(a) *Algeria* (A/CONF.117/C.1/L.39)*Article 19 bis. Passing of State archives*

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

[Withdrawn; see para. 105 below.]

(b) *United States of America* (A/CONF.117/C.1/L.42)*Article 19 bis. Passing of State archives*

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

[Withdrawn; see para. 108 below.]

(c) *Greece* (A/CONF.117/C.1/L.54)*Article 19 bis. Passing of State archives*

The provisions of article 8 bis concerning the passing of State property apply *mutatis mutandis* to State archives to the extent that such archives pass from the predecessor State to the successor State in accordance with the provisions of the present Part.

[Withdrawn; see para. 108 below.]

**D. Proceedings of the Committee of the Whole**

104. The Committee considered article 20 and the amendments thereto at its 20th, 21st and 22nd meetings, on 15, 16 and 17 March 1983. It considered the amendments seeking to insert a new article 19 bis between articles 19 and 20 at its 22nd, 23rd, 39th and 42nd meetings on 17, 18, 29 and 31 March 1983.

105. At the 22nd meeting of the Committee the oral subamendment to article 20 presented by Algeria was withdrawn. At the same meeting the Committee rejected the amendment submitted by the Netherlands (A/CONF.117/C.1/L.33) by 32 votes to 21, with 8 abstentions. It then adopted the text of the International Law Commission for article 20 by 47 votes to 4, with 13 abstentions, and referred it to the Drafting Committee. Also at the 22nd meeting, the amendment seeking to insert a new article 19 bis between articles 19 and 20 (A/CONF.117/C.1/L.39) was withdrawn by Algeria and reintroduced by the United States of America (A/CONF.117/C.1/L.42).

106. At its 23rd meeting, the Committee decided to defer consideration of the proposed new article 19 bis to a later stage.

107. At its 42nd meeting, the Committee had before it the report of the Working Group which it had established at its 40th meeting under the chairmanship of the representative of Morocco (A/CONF.117/C.1/L.62).<sup>19</sup>

<sup>18</sup> Article 20 is numbered 21 in the Convention as adopted.

<sup>19</sup> For the full text of the report of the Working Group, see para. 190 below.

108. At the same meeting, the Committee approved that report, under which the amendments submitted by the United States of America (A/CONF.117/C.1/L.42) and Greece (A/CONF.117/C.1/L.54) for an article 19 *bis* were to be considered withdrawn.

109. In addition, under the same report, the text of article 20 was modified as follows: the words "A succession of States entails" were replaced by the words "The passing of State archives entails" and the words "in accordance with" were replaced by the words "subject to".

110. The Committee referred the text of article 20, as thus amended, to the Drafting Committee.<sup>4</sup>

#### ARTICLE 21<sup>20</sup>

##### A. International Law Commission text

111. The International Law Commission text provided as follows:

###### *Article 21. Date of the passing of States archives*

Unless otherwise agreed or decided, the date of the passing of State archives is that of the succession of States.

##### B. Amendments

112. Amendments were submitted to the article by Austria and Egypt.

113. These amendments were to the following effect:

(a) *Austria* (A/CONF.117/C.1/L.26)

Add a second paragraph as follows:

2. The actual transfer of the State archives concerned shall take place without delay, if necessary upon previous specification, in accordance with the articles in the present Part.

[Withdrawn; see para. 115 below.]

(b) *Egypt* (A/CONF.117/C.1/L.41)

Replace the opening words by: "Unless otherwise agreed by the States concerned or decided by an appropriate international body".

[Adopted; see para. 116 below.]

##### C. Proceedings of the Committee of the Whole

114. The Committee considered article 21 and the amendments thereto at its 22nd and 23rd meetings on 17 and 18 March 1983.

115. At the 23rd meeting the amendment submitted by Austria was withdrawn.

116. At the same meeting, the Committee of the Whole adopted without a vote the amendment submitted by Egypt. It then adopted without a vote the text of the International Law Commission for article 21, as amended, and referred it to the Drafting Committee.<sup>4</sup>

#### ARTICLE 22<sup>21</sup>

##### A. International Law Commission text

117. The International Law Commission text provided as follows:

###### *Article 22. Passing of State archives without compensation*

Subject to the provisions of the articles in the present Part and unless otherwise agreed or decided, the passing of State archives from the predecessor State to the successor State shall take place without compensation.

##### B. Amendments

118. An oral amendment was submitted to article 22 by *Egypt* at the 23rd meeting.

119. The amendment was to the following effect:

Replace the words "unless otherwise agreed or decided" by the words "unless otherwise agreed by the States concerned or decided by an appropriate international body."

[Adopted; see para. 121 below.]

##### C. Proceedings of the Committee of the Whole

120. The Committee considered the article and the oral amendment thereto at its 23rd meeting on 18 March 1983.

121. At that meeting, the Committee adopted without a vote the oral amendment submitted by *Egypt*. At the same meeting, it adopted without a vote the text of the International Law Commission for article 22, as orally amended, and referred it to the Drafting Committee.<sup>4</sup>

#### ARTICLE 23<sup>22</sup>

##### A. International Law Commission text

122. The International Law Commission text provided as follows:

###### *Article 23. Absence of effect of a succession of States on the archives of a third State*

A succession of States shall not as such affect State archives which, at the date of the succession of States, are situated in the territory of the predecessor State and which, at that date, are owned by a third State according to the internal law of the predecessor State.

##### B. Amendments

123. Amendments were submitted to article 23 in writing by *Nigeria* and orally, at the 23rd meeting, by the *Netherlands* and *Greece*.

124. The amendments were as follows:

(a) *Nigeria* (A/CONF.117/C.1/L.44)

Delete the words "of the predecessor State" contained in the third line, and replace them by the words "to which the succession of States relates."

[Withdrawn; see para. 126 below.]

(b) *Netherlands* (oral amendment)

Delete "State" before "archives".

[Referred to the Drafting Committee; see para. 127 below.]

(c) *Greece* (oral amendment)

Delete "as such" in the opening phrase.

[Withdrawn; see para. 126 below.]

<sup>20</sup> Article 21 is numbered 22 in the Convention as adopted.

<sup>21</sup> Article 22 is numbered 23 in the Convention as adopted.

<sup>22</sup> Article 23 is numbered 24 in the Convention as adopted.

### C. Proceedings of the Committee of the Whole

125. The Committee considered the article and the amendments thereto at its 23rd, 24th and 42nd meetings, on 18 and 31 March 1983.

126. At the 24th meeting the amendments of Nigeria and Greece were withdrawn.

127. At the same meeting, the Committee adopted the text of the International Law Commission for article 23 without a vote and referred it to the Drafting Committee together with the oral drafting suggestion of the Netherlands. It requested the Drafting Committee to submit to it a recommendation on the use of the term "State archives" in article 23, taking into account the definition of that term in article 19.

128. At its 42nd meeting, the Committee had before it the report of the Drafting Committee (A/CONF.117/C.1/1)<sup>23</sup> containing the text of article 23 adopted by the Drafting Committee. The Committee of the Whole adopted that text without a vote.

### D. Text adopted by the Committee of the Whole

129. On the basis of the foregoing, the Committee recommends to the Conference for adoption the following text of article 23:

*Article 23. Absence of effect of a succession of States on the archives of a third State*

A succession of States shall not as such affect archives which, at the date of the succession of States, are situated in the territory of the predecessor State and which, at that date, are owned by a third State according to the internal law of the predecessor State.

#### PROPOSAL FOR A NEW ARTICLE 23 bis

##### A. Text of the proposed new article

130. An amendment for the insertion of a new article was submitted by *Austria, Denmark and France* (A/CONF.117/C.1/L.28).

131. The amendment was to the following effect:

Insert between articles 23 and 24 of the International Law Commission draft an article 23 bis, reading as follows:

*Article 23 bis. Preservation of rights in connection with a succession of States in respect of State archives*

In connection with a succession of States, the States concerned shall respect, in a non-discriminatory manner,

(a) the preservation of the right to privacy and personal security with regard to information contained in State archives; and

(b) the preservation of rights concerning access to State archives.

[Rejected; see para. 133 below.]

##### B. Proceedings of the Committee of the Whole

132. The Committee considered article 23 bis at its 24th meeting on 18 March 1983.

133. At its 24th meeting, the Committee rejected the amendment submitted by *Austria, Denmark and France* for the proposed new article by 41 votes to 20, with 7 abstentions.

<sup>23</sup> See footnote 11 above.

### ARTICLE 24<sup>24</sup>

#### A. International Law Commission text

134. The International Law Commission text provided as follows:

*Article 24. Preservation of the unity of State archives*

Nothing in the present part shall be considered as prejudging in any respect any question that might arise by reason of the preservation of the unity of State archives.

#### B. Amendments

135. Amendments were submitted to the article, in writing, by *Pakistan and Switzerland* and, in oral form, at the 25th meeting, by *Morocco*.

136. These amendments were to the following effect:

(a) *Pakistan* (A/CONF.117/C.1/L.9)

Delete the article.

[Withdrawn; see para. 138 below.]

(b) *Switzerland* (A/CONF.117/C.1/L.29/Rev.2, as orally revised) by the representative of *France*<sup>25</sup> at the 25th meeting,

The present text should become paragraph 1.

Add the following paragraph:

2. In particular, in cases where archive collections are simultaneously part of the national heritage of the predecessor State and one or more successor States and cannot be divided up without substantial jeopardy to their legal, administrative or historical value, these States should be guided by the archival concept of joint heritage for the purpose of the utilization of such collections.

[Rejected; see para. 139 below.]

(c) *Morocco* (Oral amendment)

In the title and at the end of the text of the article, replace the words "unity of State archives" by the words "integrity of State archive collections".

[Adopted; see para. 139 below.]

#### C. Proceedings of the Committee of the Whole

137. The Committee considered article 24 at its 24th, 25th and 26th meetings on 18 and 21 March 1983.

138. At the 25th meeting the amendment submitted by *Pakistan* was withdrawn.

139. At the same meeting, the Committee rejected the amendment submitted by *Switzerland* as orally revised at the suggestion of the representative of *France*, by 32 votes to 17, with 14 abstentions. It adopted the oral amendment presented by *Morocco* by 54 votes to none, with 10 abstentions. It then adopted the International Law Commission text for article 24, as orally amended, by 65 votes to none, with 1 abstention, and referred it to the Drafting Committee.<sup>4</sup>

<sup>24</sup> Article 24 is numbered 25 in the Convention as adopted

<sup>25</sup> The oral revision by *France* of the amendment of *Switzerland* was to replace the word "shall" by "should" and to delete the words "management and" before "utilization" in the final phrase of the proposed new paragraph 2.



PROPOSAL FOR A NEW ARTICLE 24 *bis*<sup>26</sup>

## A. Text of the proposed new article

140. An amendment seeking to insert a new article 24 *bis* between articles 24 and 25 was submitted by the United Arab Emirates. The first revised version of the proposed new article (A/CONF.117/C.1/L.50/Rev.1,<sup>27</sup> as orally revised) read as follows:

*Article 24 bis. Preservation and safety of State archives*

For the purpose of the implementation of the provisions of the articles of the present Part, the predecessor State shall take all measures to prevent damage or destruction to State archives which, according to the present Convention, pass to the successor State.

[Adopted; see para. 142 below.]

## B. Proceedings of the Committee of the Whole

141. The Committee considered the proposed new article 24 *bis* at its 33rd, 35th, 37th, 39th, 40th and 42nd meetings on 24, 25, 28, 29, 30 and 31 March 1983.

142. At its 42nd meeting, the Committee adopted by consensus the proposed new article 24 *bis* (A/CONF.117/C.1/L.50/Rev.1, as orally revised) and referred it to the Drafting Committee.<sup>4</sup>

ARTICLE 25<sup>28</sup>

## A. International Law Commission text

143. The International Law Commission text provided as follows:

*Article 25. Transfer of part of the territory of a State*

1. When part of the territory of a State is transferred by that State to another State, the passing of State archives of the predecessor State to the successor State is to be settled by agreement between them.

2. In the absence of such an agreement:

(a) the part of State archives of the predecessor State which for normal administration of the territory to which the succession of States relates should be at the disposal of the State to which the territory concerned is transferred, shall pass to the successor State;

(b) the part of State archives of the predecessor State, other than the part mentioned in subparagraph (a), that relates exclusively or principally to the territory to which the succession of States relates, shall pass to the successor State.

3. The predecessor State shall provide the successor State with the best available evidence from its State archives which bears upon title to the territory of the transferred territory or its boundaries,

<sup>26</sup> Article 24 *bis* is numbered 26 in the Convention as adopted.

<sup>27</sup> As originally submitted (A/CONF.117/C.1/L.50), the text of the proposed new article read as follows:

*Article 24 bis. Preservation and safety of State archives*

Nothing in the present Part shall be considered as permitting in any way deliberate damaging or destroying of any State archives which, according to the provisions of the articles in the present Part, pass to the successor State.

A second revised version of the proposed new article (A/CONF.117/C.1/L.50/Rev.2) was circulated but not put to a decision. As orally revised, it read as follows:

*Article 24 bis. Preservation and safety of State archives*

For the purpose of the implementation of the provisions of the articles in the present Part, an obligation to the predecessor State to transfer State archives to the successor State entails the consequential obligation to take all measures to prevent damage or destruction to State archives which, according to the provisions of the articles of the present Part, pass to the successor State.

<sup>28</sup> Article 25 is numbered 27 in the Convention as adopted.

or which is necessary to clarify the meaning of documents of State archives which pass to the successor State pursuant to other provisions of the present article.

4. The predecessor State shall make available to the successor State, at the request and at the expense of that State, appropriate reproductions of its State archives connected with the interests of the transferred territory.

5. The successor State shall make available to the predecessor State, at the request and at the expense of that State, appropriate reproductions of State archives which have passed to the successor State in accordance with paragraph 1 or 2.

## B. Amendments

144. Amendments were submitted to the article by Hungary and Austria.

145. These amendments were to the following effect:

(a) *Hungary* (A/CONF.117/C.1/L.30)

1. Replace paragraph 2 by the following text:

2. In the absence of such an agreement the part of State archives of the predecessor State which for normal administration of the territory to which the succession of States relates should be at the disposal of the State to which the territory concerned is transferred shall pass to the successor State.

2. Paragraph 4 should become paragraph 3, reading as follows:

3. The predecessor State shall make available to the successor State, at the request and at the expense of that State, appropriate reproductions of that part of its State archives, other than the part mentioned in paragraph 2, which relates exclusively or principally to the territory to which the succession of States relates or is connected with the interests of the transferred territory.

3. Paragraph 3 should become paragraph 4, reading as follows:

4. The predecessor State shall provide the successor State with the best available evidence from its State archives which bears upon title to the territory of the transferred territory or its boundaries, or which is necessary to clarify the meaning of the relevant documents of State archives.

[All withdrawn; see para. 147 below.]

(b) *Austria* (A/CONF.117/C.1/L.31)

Paragraph 2(b)

Replace "that relates exclusively or principally" by "belonging or having belonged", so that the subparagraph would read:

(b) the part of State archives of the predecessor State, other than the part mentioned in subparagraph (a), belonging or having belonged to the territory to which the succession of States relates, shall pass to the successor State.

[Rejected; see para. 148 below.]

## C. Proceedings of the Committee of the Whole

146. The Committee considered article 25 and the amendments thereto at its 26th meeting, on 21 March 1983.

147. At the 26th meeting the amendments submitted by Hungary were withdrawn.

148. At the same meeting, the Committee rejected the amendment submitted by Austria by 21 votes to 12, with 35 abstentions. It then adopted the text of the International Law Commission for article 25 by 59 votes to 1, with 9 abstentions and referred it to the Drafting Committee.<sup>4</sup>

#### ARTICLE 26<sup>29</sup>

##### A. International Law Commission text

149. The International Law Commission text provided as follows:

###### *Article 26. Newly independent State*

###### 1. When the successor State is a newly independent State:

(a) archives having belonged to the territory to which the succession of States relates and having become State archives of the predecessor State during the period of dependence shall pass to the newly independent State;

(b) the part of State archives of the predecessor State which for normal administration of the territory to which the succession of States relates should be in that territory shall pass to the newly independent State;

2. The passing or the appropriate reproduction of parts of the State archives of the predecessor State other than those mentioned in paragraph 1, of interest to the territory to which the succession of States relates, shall be determined by agreement between the predecessor State and the newly independent State in such a manner that each of those States can benefit as widely and equitably as possible from those parts of the State archives.

3. The predecessor State shall provide the newly independent State with the best available evidence from its State archives which bears upon title to the territory of the newly independent State or its boundaries, or which is necessary to clarify the meaning of documents of State archives which pass to the newly independent State pursuant to other provisions of the present article.

4. The predecessor State shall co-operate with the successor State in efforts to recover any archives which, having belonged to the territory to which the succession of States relates, were dispersed during the period of dependence.

5. Paragraphs 1 to 4 apply when a newly independent State is formed from two or more dependent territories.

6. Paragraphs 1 to 4 apply when a dependent territory becomes part of the territory of a State other than the State which was responsible for its international relations.

7. Agreements concluded between the predecessor State and the newly independent State in regard to State archives of the predecessor State shall not infringe the right of the peoples of those States to development, to information about their history, and to their cultural heritage.

##### B. Amendments

150. Amendments were submitted to the article by Nigeria and Egypt.

151. These amendments were to the following effect:

###### (a) *Nigeria (A/CONF.117/C.1/L.40)*

In paragraph 7 delete the words "shall not" before the word "infringe" and replace with the word "that". Add the words "shall be void" at the end of the article after the word "heritage".

[Withdrawn; see para. 153 below.]

<sup>29</sup> Article 26 is numbered 28 in the Convention as adopted.

###### (b) *Egypt (A/CONF.117/C.1/L.46)*

In paragraph 1, insert a new subparagraph (c) reading as follows:

(c) The part of State archives of the predecessor State, other than the parts mentioned in subparagraphs (a) and (b), that relates exclusively or principally to the territory to which the succession of States relates, shall pass to the successor State.

[Adopted; see para. 154 below.]

##### C. Proceedings of the Committee of the Whole

152. The Committee initially considered the article at its 27th, 28th and 29th meetings on 22 March 1983.

153. At the 29th meeting the amendment submitted by Nigeria was withdrawn.

154. At the same meeting, the Committee adopted the amendment submitted by Egypt by 31 votes to 9, with 22 abstentions. It then took a separate vote, at the request of the Netherlands, on paragraph 7 of the text of the International Law Commission. It decided to retain that paragraph by 44 votes to 20, with no abstentions. It then adopted the text of the International Law Commission for article 26, as amended, by 45 votes to 19, with 1 abstention, and referred it to the Drafting Committee.<sup>4</sup>

#### ARTICLE 27<sup>30</sup>

##### A. International Law Commission text

155. The International Law Commission text provided as follows:

###### *Article 27. Uniting of States*

1. When two or more States unite and so form a successor State, the State archives of the predecessor State shall pass to the successor State.

2. Without prejudice to the provision of paragraph 1, the allocation of the State archives of the predecessor States as belonging to the successor State or to its component parts shall be governed by the internal law of the successor State.

##### B. Amendments

156. No amendment was submitted to article 27.

##### C. Proceedings of the Committee of the Whole

157. The Committee considered the article at its 29th and 42nd meetings on 22 and 31 March 1983.

158. At its 29th meeting, the Committee adopted the text of the International Law Commission for article 27 without a vote and referred it to the Drafting Committee.

159. The Committee further requested the Drafting Committee to submit to it, in conformity with rule 47, paragraph 2, of the rules of procedure, a recommendation on the desirability of retaining or deleting paragraph 2 of article 27 after having examined it in the context of that article and in relation to corresponding provisions in other parts of the draft articles. The Committee also referred to the Drafting Committee a suggestion for the replacement, in the English text, of "a" at the beginning of paragraph 1, by the word "one".

<sup>30</sup> Article 27 is numbered 29 in the Convention as adopted.

160. At its 42nd meeting, the Committee had before it the report of the Drafting Committee (A/CONF.117/C.1/1)<sup>31</sup> containing the text of article 27 adopted by the Drafting Committee. The Committee adopted that text without a vote.

#### D. Text adopted by the Committee of the Whole

161. On the basis of the foregoing, the Committee recommends to the Conference for adoption the following text of article 27:

##### *Article 27. Uniting of States*

When two or more States unite and so form one successor State, the State archives of the predecessor States shall pass to the successor State.

#### ARTICLE 28<sup>32</sup>

##### A. International Law Commission text

162. The International Law Commission text provided as follows:

##### *Article 28. Separation of part or parts of the territory of a State*

1. When part or parts of the territory of a State separate from that State and form a State, and unless the predecessor State and the successor otherwise agree:

(a) the part of State archives of the predecessor State, which for normal administration of the territory to which the succession of States relates should be in that territory, shall pass to the successor State;

(b) the part of State archives of the predecessor State, other than the part mentioned in subparagraph (a), that relates directly to the territory to which the succession of States relates, shall pass to the successor State.

2. The predecessor State shall provide the successor State with the best available evidence from its State archives which bears upon title to the territory of the successor State or its boundaries, or which is necessary to clarify the meaning of documents of State archives which pass to the successor State pursuant to other provisions of the present article.

3. Agreements concluded between the predecessor State and the successor State in regard to State archives of the predecessor State shall not infringe the right of the peoples of those States to development, to information about their history and to their cultural heritage.

4. The predecessor and successor States shall, at the request and at the expense of one of them, make available appropriate reproductions of their State archives connected with the interests of their respective territories.

5. The provisions of paragraphs 1 to 4 apply when part of the territory of a State separates from that State and unites with another State.

##### B. Amendments

163. Amendments were submitted by Pakistan and Austria.

164. These amendments were to the following effect:

(a) *Pakistan* (A/CONF.117/C.1/L.10)

In paragraph 4, insert the words "or on an exchange basis" after the word "them" and before the word "make".

[Adopted; see para. 167 below.]

<sup>31</sup> See footnote 11 above.

<sup>32</sup> Article 28 is numbered 30 in the Convention as adopted.

(b) *Austria* (A/CONF.117/C.1/L.32)

In paragraph 1(b), replace "that relates directly" by "belonging or having belonged".

[Withdrawn; see para. 166 below.]

#### C. Proceedings of the Committee of the Whole

165. The Committee considered article 28 at its 29th and 30th meetings on 22 and 23 March 1983.

166. At the 29th meeting the amendment submitted by Austria was withdrawn.

167. At its 30th meeting, the Committee adopted the amendment submitted by Pakistan by 45 votes to none, with 19 abstentions. It then adopted the text of the International Law Commission for article 28, as amended, by 43 votes to 21, with 1 abstention, and referred it to the Drafting Committee.<sup>4</sup>

#### ARTICLE 29<sup>33</sup>

##### A. International Law Commission text

168. The International Law Commission text provided as follows:

##### *Article 29. Dissolution of a State*

1. When a predecessor State dissolves and ceases to exist and the parts of its territory form two or more States, and unless the successor States concerned otherwise agree:

(a) the part of the State archives of the predecessor State which should be in the territory of a successor State for normal administration of its territory shall pass to that successor State;

(b) the part of the State archives of the predecessor State, other than the part mentioned in subparagraph (a), that relates directly to the territory of a successor State shall pass to that successor State.

2. The State archives of the predecessor State other than those mentioned in paragraph 1 shall pass to the successor States in an equitable manner, taking into account all relevant circumstances.

3. Each successor State shall provide the other successor State or States with the best available evidence from its part of the State archives of the predecessor State which bears upon title to the territories or boundaries of that other successor State or States, or which is necessary to clarify the meaning of documents of State archives which pass to that State or States pursuant to other provisions of the present article.

4. Agreements concluded between the successor States concerned in regard to State archives of the predecessor State shall not infringe the right of the peoples of those States to development, to information about their history and to their cultural heritage.

5. Each successor State shall make available to any other successor State, at the request and at the expense of that State, appropriate reproductions of its part of the State archives of the predecessor State connected with the interests of the territory of that other successor State.

##### B. Amendments

169. An oral amendment was submitted at the 30th meeting, on 23 March 1983, by *Bangladesh* and *Tunisia*.

170. This amendment was to the following effect:

In paragraph 5, add the words "or on an exchange basis" before the word "appropriate".

[Adopted; see para. 172 below.]

<sup>33</sup> Article 29 is numbered 31 in the Convention as adopted.

### C. Proceedings of the Committee of the Whole

171. The Committee considered the article at its 30th meeting.

172. At the same meeting, the Committee adopted the oral amendment by Bangladesh and Tunisia by 45 votes to none, with 18 abstentions.

173. The Committee then adopted the text of the International Law Commission for article 29, as amended, by 44 votes to 21, with no abstentions and referred it to the Drafting Committee.<sup>4</sup>

## PART IV. STATE DEBTS

### ARTICLE 30<sup>34</sup>

#### A. International Law Commission text

174. The International Law Commission text provided as follows:

*Article 30. Scope of the articles in the present Part*

The articles in the present Part apply to the effects of a succession of States in respect of State debts.

#### B. Amendments

175. No amendment was submitted to article 30.

### C. Proceedings of the Committee of the Whole

176. The Committee considered article 30 at its 30th and 40th meetings on 23 and 30 March 1983.

177. At its 30th meeting, the Committee decided to defer consideration of article 30 until it took up articles 1 to 6.

178. At its 40th meeting, the Committee considered the possibility, suggested by Greece, of merging articles 7, 18 and 30 with article 1. At the same meeting, it voted on the principle of such a merger, which it rejected by 42 votes to 20, with 3 abstentions. It then adopted the text of the International Law Commission for article 30 by 51 votes to 3, with 14 abstentions and referred it to the Drafting Committee.<sup>4</sup>

### ARTICLE 31<sup>35</sup>

#### A. International Law Commission text

179. The International Law Commission text provided as follows:

*Article 31. State debt*

For the purposes of the articles in the present Part, "State debt" means any financial obligation of a State towards another State, an international organization or any other subject of international law.

#### B. Amendments

180. Amendments were submitted by Brazil and the Syrian Arab Republic.<sup>36</sup>

181. These amendments were to the following effect:

(a) *Brazil (A/CONF.117/C.1/L.23)*

Redraft the article as follows:

For the purposes of the articles in the present Part, "State debt" means:

(a) any financial obligation of a State towards another State, an international organization or any other subject of international law;

(b) any other financial obligation chargeable to a State.

[Rejected; see para. 183 below.]

(b) *Syrian Arab Republic (A/CONF.117/C.1/L.37, as orally revised)*<sup>37</sup>

Redraft the text of the article as follows:

For the purposes of the articles in the present Part, "State debt" means any financial obligation of a State arising in conformity with international law towards another State, an international organization or any other subject of international law.

[Adopted; see para. 183 below.]

### C. Proceedings of the Committee of the Whole

182. The Committee considered article 31 at its 30th, 31st, 32nd and 33rd meetings on 23 and 24 March 1983.

183. At the 33rd meeting the amendment submitted by Brazil was rejected by 35 votes to 23, with 5 abstentions. The amendment submitted by the Syrian Arab Republic, as orally revised, was adopted by 43 votes to none, with 20 abstentions. The Committee of the Whole then adopted the International Law Commission text for article 31, as amended, by 40 votes to 17, with 6 abstentions, and referred it to the Drafting Committee.<sup>4</sup>

### ARTICLE 32<sup>38</sup> AND PROPOSALS FOR A NEW ARTICLE 31 *bis*

#### A. International Law Commission text

184. The International Law Commission text of article 32 provided as follows:

*Article 32. Effects of the passing of State debts*

A succession of States entails the extinction of the obligations of the predecessor State and the arising of the obligations of the successor State in respect of such State debts as pass to the successor State in accordance with the provisions of the articles in the present Part.

#### B. Amendments

185. Amendments were submitted to article 32 by the Netherlands and by Kenya.

186. These amendments were to the following effect:

(a) *Netherlands (A/CONF.117/C.1/L.48)*

<sup>34</sup> Article 30 is numbered 32 in the Convention as adopted.

<sup>35</sup> Article 31 is numbered 33 in the Convention as adopted.

<sup>36</sup> Pakistan submitted, in connection with article 31, a document (A/CONF.117/C.1/L.11) which read as follows:

The terminology "any other subject of international law" requires clarification.

<sup>37</sup> In the original version the words "in conformity with international law" were preceded by the words "in good faith and".

<sup>38</sup> Article 32 is numbered 34 in the Convention as adopted.

Add the words "Subject to the provisions of article 34", before the words "a succession of States entails . . .".

[Withdrawn; see para. 191 below.]

(b) *Kenya* (A/CONF.117/C.1/L.55)

Replace the words "A succession of States entails" by the words "The passing of State debts entails".

The rest of the article remains the same.

[Withdrawn; see para. 191 below.]

### C. Proposals for a new article 31 *bis*

187. In addition, the Committee had before it amendments seeking to insert a new article 31 *bis* before article 32 as follows:

(a) *United States of America* (A/CONF.117/C.1/L.47)

#### *Article 31 bis. Passing of State debts*

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

[Withdrawn; see para. 191 below.]

(b) *Greece* (A/CONF.117/C.1/L.53)

#### *Article 31 bis. Passing of State debts*

The provisions of article 8 *bis* concerning the passing of State property apply *mutatis mutandis* to State debts to the extent that such debts pass from the predecessor State to the successor State in accordance with the provisions of the present Part.

[Withdrawn; see para. 191 below.]

### D. Proceedings of the Committee of the Whole

188. The Committee considered article 32 and the amendments thereto, together with the proposed article 31 *bis*, at its 34th meeting on 25 March 1983, 39th meeting on 29 March 1983, 40th meeting on 30 March 1983 and 42nd meeting on 31 March 1983.

189. At its 40th meeting, the Committee established a Working Group to examine article 8 *bis*, article 32 and the amendments thereto, as well as proposed new articles 19 *bis* and 31 *bis*. This Working Group was chaired by the representative of Morocco and consisted of the sponsors of amendments and other interested delegations.

190. At its 42nd meeting, the Committee had before it the report of the Working Group (A/CONF.117/C.1/L.62) which read as follows:

Article 32 should be replaced by the following:

#### *Effects of the passing of State debts*

The passing of State debts entails the extinction of the obligations of the predecessor State and the arising of the obligations of the successor State in respect of such State debts as pass to the successor State subject to the provisions of the articles in the present Part.

The initial change, namely the replacement of the words "A succession of States entails" by the words "The passing of State debts entails" applies also to articles 9 and 20. Similarly, the replacement of the words "in accordance with" by the words "subject to" likewise applies to articles 9 and 20.

This proposal implies the deletion of article 8 *bis* and the withdrawal of the proposed amendments concerning articles 19 *bis* and 31 *bis* and the amendments to article 32 proposed by the Netherlands

(A/CONF.117/C.1/L.48) and Kenya (A/CONF.117/C.1/L.55) respectively.

191. At the same meeting, the Committee approved the above report, which implied the withdrawal of the amendments to article 32 submitted by the Netherlands (A/CONF.117/C.1/L.48) and Kenya (A/CONF.117/C.1/L.55) as well as the amendments seeking to insert a new article 31 *bis* submitted by the United States of America (A/CONF.117/C.1/L.47) and Greece (A/CONF.117/C.1/L.53). The Committee referred the text of article 32 to the Drafting Committee.<sup>39</sup>

### ARTICLE 33<sup>39</sup>

#### A. International Law Commission text

192. The International Law Commission text provided as follows:

#### *Article 33. Date of the passing of State debts*

Unless otherwise agreed or decided, the date of the passing of State debts is that of the succession of States.

#### B. Amendments

193. An amendment was submitted to the article by *Egypt, Kenya and the Netherlands* (A/CONF.117/C.1/L.49).

194. This amendment was to the following effect:

Replace the words "Unless otherwise agreed or decided" by the words "Unless otherwise agreed by the States concerned or decided by an appropriate international body . . .".

[Adopted; see para. 196 below.]

### C. Proceedings of the Committee of the Whole

195. The Committee considered the article at its 35th meeting on 25 March 1983.

196. At that meeting, the Committee adopted without a vote the amendment submitted by *Egypt, Kenya and the Netherlands*. It then adopted the text of the International Law Commission for article 33, as amended, and referred it to the Drafting Committee.<sup>40</sup>

### ARTICLE 34<sup>40</sup>

#### A. International Law Commission text

197. The International Law Commission text provided as follows:

#### *Article 34. Effects of the passing of State debts with regard to creditors*

1. A succession of States does not as such affect the rights and obligations of creditors.

2. An agreement between the predecessor State and the successor State or, as the case may be, between successor States, concerning the respective part or parts of the State debts of the predecessor State that pass, cannot be invoked by the predecessor State or by the successor State or States, as the case may be, against a third State, an international organization or any other subject of international law asserting a claim unless:

(a) the consequences of that agreement are in accordance with the provisions of the present Part; or

<sup>39</sup> Article 33 is numbered 35 in the Convention as adopted.

<sup>40</sup> Article 34 is numbered 36 in the Convention as adopted.

(b) the agreement has been accepted by that third State, international organization or other subject of international law.

### B. Amendments

198. An amendment to the article was submitted by *Pakistan* (A/CONF.117/C.1/L.12).

199. This amendment was to the following effect:  
Delete paragraph 2(a).

[Withdrawn; reintroduced by Switzerland but not put to the vote, see para. 203 below.]

### C. Proceedings of the Committee of the Whole

200. The Committee initially considered the article at its 35th, 38th and 39th meetings on 25 and 29 March 1983.

201. At the 38th meeting the amendment submitted by *Pakistan* was withdrawn by its sponsor and reintroduced orally by Switzerland.

202. At the 39th meeting an oral amendment seeking to delete paragraph 2 was submitted by the *Syrian Arab Republic*.

203. At the same meeting, the Committee adopted the oral amendment submitted by the *Syrian Arab Republic* by 38 votes to 6, with 28 abstentions. As a result, the oral amendment submitted by Switzerland was not put to the vote.

204. The Committee then adopted the International Law Commission text for article 34, as amended, by 61 votes to none, with 11 abstentions and referred it to the Drafting Committee.<sup>4</sup>

## ARTICLE 35<sup>41</sup>

### A. International Law Commission text

205. The International Law Commission text provided as follows:

#### *Article 35. Transfer of part of the territory of a State*

1. When part of the territory of a State is transferred by that State to another State, the passing of the State debt of the predecessor State to the successor State is to be settled by agreement between them.

2. In the absence of an agreement, the State debt of the predecessor State shall pass to the successor State in an equitable proportion, taking into account, *inter alia*, the property, rights and interests which pass to the successor State in relation to that State debt.

### B. Amendments

206. Amendments to the article were submitted by *Pakistan* and by the *Syrian Arab Republic*.

207. These amendments were to the following effect:

(a) *Pakistan* (A/CONF.117/C.1/L.13)

In paragraph 2, delete the words "in an equitable proportion".

[Rejected; see para. 210 below.]

(b) *Syrian Arab Republic* (A/CONF.117/C.1/L.38)

Add the following at the end of paragraph 2: "and the capacity of the newly independent successor State, but without encumbering it".

[Withdrawn; see para. 209 below.]

### C. Proceedings of the Committee of the Whole

208. The Committee considered the article at its 35th meeting on 25 March 1983.

209. At that meeting the amendment submitted by the *Syrian Arab Republic* was withdrawn.

210. At the same meeting, the Committee rejected the amendment submitted by *Pakistan* by 40 votes to 1, with 18 abstentions. It then adopted the text of the International Law Commission for article 35 by 57 votes to none, with 5 abstentions and referred it to the Drafting Committee.<sup>4</sup>

## ARTICLE 36<sup>42</sup>

### A. International Law Commission text

211. The International Law Commission text provided as follows:

#### *Article 36. Newly independent State*

1. When the successor State is a newly independent State, no State debt of the predecessor State shall pass to the newly independent State, unless an agreement between the newly independent State and the predecessor State provides otherwise in view of the link between the State debt of the predecessor State connected with its activity in the territory to which the succession of States relates and the property, rights and interests which pass to the newly independent State.

2. The agreement referred to in paragraph 1 shall not infringe the principle of the permanent sovereignty of every people over its wealth and natural resources, nor shall its implementation endanger the fundamental economic equilibria of the newly independent State.

### B. Amendments

212. Amendments were submitted to the article by *Greece* and *Italy*.

213. These amendments were to the following effect:

(a) *Greece* (A/CONF.117/C.1/L.51)

Replace paragraph 2 by the following:

2. The agreement referred to in paragraph 1 shall pay regard to the principle of the permanent sovereignty of every people and of every State over its wealth and natural resources in accordance with international law.

[Rejected; see para. 216 below.]

(b) *Italy* (A/CONF.117/C.1/L.52)

Redraft paragraph 1 as follows:

1. When the successor State is a newly independent State, no State debt of the predecessor State shall pass to the newly independent State, except those relating to public works in the process of execution in the territory of the successor State and any other debts passing to the successor State in virtue of an agreement between the newly independent State and the predecessor State, in view of the link between the State debt of the predecessor State connected with

<sup>41</sup> Article 35 is numbered 37 in the Convention as adopted.

<sup>42</sup> Article 36 is numbered 38 in the Convention as adopted.

its activity in the territory to which the succession of States relates and the property, rights and interests which pass to the newly independent State.

[Withdrawn; see para. 215 below.]

### C. Proceedings of the Committee of the Whole

214. The Committee considered the article at its 35th, 36th and 37th meetings, on 25 and 28 March 1983.

215. At the 37th meeting the amendment submitted by Italy was withdrawn.

216. At the same meeting, the Committee rejected the amendment submitted by Greece by 33 votes to 21, with 3 abstentions. It then adopted the text of the International Law Commission for article 36 by 39 votes to 21 with no abstentions, and referred it to the Drafting Committee.<sup>4</sup>

## ARTICLE 37<sup>43</sup>

### A. International Law Commission text

217. The International Law Commission text provided as follows:

#### *Article 37. Uniting of States*

When two or more States unite and so form a successor State, the State debt of the predecessor States shall pass to the successor State.

### B. Amendments

218. No amendment was submitted to the article.

### C. Proceedings of the Committee of the Whole

219. The Committee considered the article at its 37th meeting on 28 March 1983.

220. At that meeting, the Committee adopted the text of the International Law Commission for article 37 without a vote and referred it to the Drafting Committee.<sup>4</sup>

## ARTICLE 38<sup>44</sup>

### A. International Law Commission text

221. The International Law Commission text provided as follows:

#### *Article 38. Separation of part or parts of the territory of a State*

1. When part or parts of the territory of a State separate from that State and form a State, and unless the predecessor State and the successor State otherwise agree, the State debt of the predecessor State shall pass to the successor State in an equitable proportion, taking into account all relevant circumstances.

2. Paragraph 1 applies when part of the territory of a State separates from that State and unites with another State.

### B. Amendments

222. Amendments were submitted to the article, in written form, by Pakistan and, orally, by France.

223. These amendments were to the following effect:

- (a) *Pakistan (A/CONF.117/C.1/L.14)*

<sup>43</sup> Article 37 is numbered 39 in the Convention as adopted.

<sup>44</sup> Article 38 is numbered 40 in the Convention as adopted.

In paragraph 1, replace the last phrase, starting with the words "in an equitable proportion" by the phrase "taking into account, *inter alia*, the property, rights and interests [or State property as defined in article 8] which pass to the successor State in relation to that State debt."

[Withdrawn; see para. 225 below.]

- (b) *France (Oral amendment)*

In paragraph 1, replace the words "taking into account all relevant circumstances" by the words "taking into account, *inter alia*, the property, rights and interests which pass to the successor State in relation to that State debt".

[Adopted; see para. 226 below.]

### C. Proceedings of the Committee of the Whole

224. The Committee considered article 38 at its 37th meeting on 28 March 1983.

225. At that meeting the amendment submitted by Pakistan was withdrawn.

226. At the same meeting, the Committee adopted the oral amendment submitted by France by 29 votes to 9, with 26 abstentions. It then adopted the International Law Commission text for article 38, as amended, by 60 votes to none, with 2 abstentions and referred it to the Drafting Committee.<sup>4</sup>

## ARTICLE 39<sup>45</sup>

### A. International Law Commission text

227. The International Law Commission text provided as follows:

#### *Article 39. Dissolution of a State*

When a predecessor State dissolves and ceases to exist and the parts of its territory form two or more States, and unless the successor States otherwise agree, the State debt of the predecessor State shall pass to the successor States in equitable proportions, taking into account all relevant circumstances.

### B. Amendments

228. Amendments to the article were submitted, in writing, by Pakistan and, orally, by Switzerland.

229. These amendments were to the following effect:

- (a) *Pakistan (A/CONF.117/C.1/L.15)*

Delete the words "in equitable proportions,".

[Withdrawn; see para. 231 below.]

- (b) *Switzerland (Oral amendment)*

Replace the words "taking into account all relevant circumstances" by the words "taking into account, *inter alia*, the property, rights and interests which pass to the successor States in relation to that State debt."

[Adopted; see para. 232 below.]

### C. Proceedings of the Committee of the Whole

230. The Committee considered the article at its 37th meeting on 28 March 1983.

<sup>45</sup> Article 39 is numbered 41 in the Convention as adopted.

231. At that meeting the amendment submitted by Pakistan was withdrawn.

232. At the same meeting, the Committee adopted the oral amendment submitted by Switzerland by 25 votes to 17, with 20 abstentions. It then adopted the International Law Commission text for article 39, as amended, by 62 votes to none, with 2 abstentions, and referred it to the Drafting Committee.<sup>4</sup>

## PART I. GENERAL PROVISIONS<sup>46</sup>

### ARTICLE 1

#### A. International Law Commission text

233. The International Law Commission text provided as follows:

*Article 1. Scope of the present articles*

The present articles apply to the effects of a succession of States in respect of State property, archives and debts.

#### B. Amendments

234. No amendment was submitted to the article.

#### C. Proceedings of the Committee of the Whole

235. The Committee considered the article at its 40th meeting on 30 March 1983.

236. At that meeting, the Committee considered the possibility, suggested by the representative of Greece, of merging articles 7, 18 and 30 with article 1.

237. It voted on the principle of such a merger, which it rejected by 42 votes to 20, with 3 abstentions. It then adopted the text of the International Law Commission for article 1 by 51 votes to 3, with 14 abstentions and referred it to the Drafting Committee.<sup>4</sup>

### ARTICLE 2

#### A. International Law Commission text

238. The International Law Commission text provided as follows:

*Article 2. Use of terms*

1. For the purposes of the present articles:

(a) "succession of States" means the replacement of one State by another in the responsibility for the international relations of territory;

(b) "predecessor State" means the State which has been replaced by another State on the occurrence of a succession of States;

(c) "successor State" means the State which has replaced another State on the occurrence of a succession of States;

(d) "date of the succession of States" means the date upon which the successor State replaced the predecessor State in the responsibility for the international relations of the territory to which the succession of States relates;

(e) "newly independent State" means a successor State the territory of which, immediately before the date of the succession of States, was a dependent territory for the international relations of which the predecessor State was responsible;

(f) "third State" means any State other than the predecessor State or the successor State.

2 The provisions of paragraph 1 regarding the use of terms in the present articles are without prejudice to the use of those terms or to the meanings which may be given to them in the internal law of any State.

#### B. Amendment

239. An amendment to the article was submitted by the *United Kingdom of Great Britain and Northern Ireland* (A/CONF.117/C.1/L.56).

240. This amendment was to the following effect:  
Add the following at the end of paragraph 2:

In particular, where there exists, in accordance with established constitutional usages, a legally separate Government of the territory to which the succession of States relates, then that Government shall, to the extent that it has undertaken the functions regulated by the provisions of this Convention, be treated for the purposes of the present articles as if it were the predecessor State. To the extent that the State responsible for the international relations of the dependent territory has undertaken the functions regulated by the provisions of this Convention, it shall be treated as the predecessor State.

[Withdrawn; see para. 242 below.]

#### C. Proceedings of the Committee of the Whole

241. The Committee considered the article and the amendment thereto at its 41st meeting on 30 March 1983.

242. At the 41st meeting the amendment submitted by the United Kingdom was withdrawn.

243. At the same meeting, the Committee adopted the article by 59 votes to none, with 9 abstentions and referred it to the Drafting Committee.

244. The Committee also requested the Drafting Committee to consider the desirability of including in article 2 the definitions of State property, State archives and State debts, contained in articles 8, 19 and 31.<sup>4</sup>

### ARTICLE 3

#### A. International Law Commission text

245. The International Law Commission text provided as follows:

*Article 3. Cases of succession of States covered by the present articles*

The present articles apply only to the effects of a succession of States occurring in conformity with international law and, in particular, with the principles of international law embodied in the Charter of the United Nations.

#### B. Amendments

246. No amendment was submitted to the article.

#### C. Proceedings of the Committee of the Whole

247. The Committee considered the article at its 40th meeting on 30 March 1983.

248. At that meeting, it adopted the International Law Commission text for article 3 without a vote and referred it to the Drafting Committee.<sup>4</sup>

<sup>46</sup> See the editorial note at the beginning of chapter II.



## ARTICLE 4

## A. International Law Commission text

249. The International Law Commission text provided as follows:

*Article 4. Temporal application of the present articles*

1. Without prejudice to the application of any of the rules set forth in the present articles to which the effects of a succession of States would be subject under international law independently of these articles, the articles apply only in respect of a succession of States which has occurred after the entry into force of the articles except as may be otherwise agreed.

2. A successor State may, at the time of expressing its consent to be bound by the present articles or at any time thereafter, make a declaration that it will apply the provisions of the articles in respect of its own succession of States which has occurred before the entry into force of the articles in relation to any other contracting State or State Party to the articles which makes a declaration accepting the declaration of the successor State. Upon the entry into force of the articles as between the States making the declarations or upon the making of the declaration of acceptance, whichever occurs later, the provisions of the articles shall apply to the effects of the succession of States as from the date of that succession of States.

3. A successor State may at the time of signing or of expressing its consent to be bound by the present articles make a declaration that it will apply the provisions of the articles provisionally in respect of its own succession of States which has occurred before the entry into force of the articles in relation to any other signatory or contracting State which makes a declaration accepting the declaration of the successor State; upon the making of the declaration of acceptance, those provisions shall apply provisionally to the effects of the succession of States as between those two States as from the date of that succession of States.

4. Any declaration made in accordance with paragraph 2 or 3 shall be contained in a written notification communicated to the depositary, who shall inform the Parties and the States entitled to become Parties to the present articles of the communication to him of that notification and of its terms.

## B. Amendments

250. No amendment was submitted to the article.

## C. Proceedings of the Committee of the Whole

251. The Committee considered the article at its 40th meeting on 30 March 1983.

252. At that meeting, it adopted the International Law Commission text for article 4 without a vote and referred it to the Drafting Committee.<sup>4</sup>

## ARTICLE 5

## A. International Law Commission text

253. The International Law Commission text provided as follows:

*Article 5. Succession in respect of other matters*

Nothing in the present articles shall be considered as prejudging in any respect any question relating to the effects of a succession of States in respect of matters other than those provided for in the present articles.

## B. Amendments

254. No amendment was submitted to the article.

## C. Proceedings of the Committee of the Whole

255. The Committee considered the article at its 40th and 41st meetings on 30 March 1983.

256. At its 41st meeting, the Committee adopted the International Law Commission text for article 5 without a vote and referred it to the Drafting Committee.<sup>4</sup>

## ARTICLE 6

## A. International Law Commission text

257. The International Law Commission text provided as follows:

*Article 6. Rights and obligations of natural or juridical persons*

Nothing in the present articles shall be considered as prejudging in any respect any question relating to the rights and obligations of natural or juridical persons.

## B. Amendment

258. An amendment was submitted to the article by the *Syrian Arab Republic* (A/CONF.117/C.1/L.36).

259. This amendment was to the following effect:

Add the following at the end of article 6:

especially the rights of national liberation movements to request that measures be taken to safeguard the rights of the peoples they represent, in the light of the right of self-determination and the principle of permanent sovereignty of every people over its wealth and natural resources.

[Withdrawn; see para. 261 below.]

## C. Proceedings of the Committee of the Whole

260. The Committee considered the article at its 40th meeting on 30 March 1983.

261. At that meeting, the amendment submitted by the Syrian Arab Republic was withdrawn.

262. At the same meeting, the Committee adopted the International Law Commission text for the article without a vote and referred it to the Drafting Committee.<sup>4</sup>

## PROPOSAL FOR A NEW ARTICLE 6 bis

## A. Text of the proposed new article

263. An amendment seeking to insert a new article 6 bis after article 6 was submitted by *Brazil* (A/CONF.117/C.1/L.43).

264. The proposed new article read as follows:

*The present Convention and permanent sovereignty over natural wealth and resources*

Nothing in the present Convention shall affect the principles of international law affirming the permanent sovereignty of every people and every State over its natural wealth and resources and their inalienable right to information about their history and cultural heritage.

[Withdrawn; see para. 266 below.]

## B. Proceedings of the Committee of the Whole

265. The Committee considered the amendment at its 40th meeting on 30 March 1983.

266. At that meeting, the amendment was withdrawn.

**PROPOSAL FOR A NEW ARTICLE ENTITLED "RIGHTS OF NATIONAL ORGANIZATIONS TO REQUEST THAT SAFEGUARD MEASURES BE TAKEN"**

**A. Text of the proposed new article**

267. A proposal for a new article entitled "Rights of national organizations to request that safeguard measures be taken" was submitted by the Syrian Arab Republic (A/CONF.117/C.1/L.60/Rev.1).<sup>47</sup>

268. The proposed new article read as follows:

*Rights of national organizations to request that safeguard measures be taken*

No provision in the present Convention is considered as affecting the right of any people represented by an organization recognized by the United Nations and any international regional organization to request measures to safeguard their rights in the light of the right of self-determination and the principle of permanent sovereignty of every people over its wealth and natural resources.

[Not put to the vote; see para. 270 below.]

**B. Proceedings of the Committee of the Whole**

269. The Committee considered the proposed new article at its 42nd, 43rd and 44th meetings held on 31 March and 5 April 1983.

270. The proposed new article was not put to a vote.<sup>48</sup>

**PROPOSALS FOR NEW ARTICLES CONCERNING THE SETTLEMENT OF DISPUTES ARISING FROM THE INTERPRETATION OR APPLICATION OF THE FUTURE CONVENTION<sup>49</sup>**

**A. Text of the proposals**

271. Proposals for new articles concerning the settlement of disputes arising from the interpretation or application of the future convention were submitted by Denmark and the Netherlands and by Kenya and Mozambique.

272. The proposals submitted by *Denmark* and the *Netherlands* read as follows:

*Proposal for a new article  
(A/CONF.117/C.1/L.25/Rev.1/Corr.1)  
(Settlement of disputes)*

1. If a dispute arises regarding the interpretation or application of this Convention, the parties to the dispute shall seek to resolve it

<sup>47</sup> As originally submitted (A/CONF.117/C.1/L.60), the proposed new article read as follows:

*Rights of national liberation movements to request that safeguard measures be taken*

No provision in the present Convention shall be considered as affecting the right of national liberation movements recognized by the United Nations and any international regional organization to request that measures be taken to safeguard the rights of the peoples they represent, in the light of the right of self-determination and the principle of permanent sovereignty of every people over its wealth and natural resources.

<sup>48</sup> A draft resolution on the question (A/CONF.117/L.1) was submitted to the Conference at its 10th plenary meeting on 7 April 1983 and was adopted by 45 votes to 1, with 25 abstentions. For the text of the draft resolution, see section F of this volume.

<sup>49</sup> At its 10th plenary meeting on 7 April 1983 the Conference decided that articles A to E on the settlement of disputes should constitute Part V of the future Convention, the Annex being appended at the very end of the Convention. Articles A, B, C, D and E on the settlement of disputes accordingly became articles 42, 43, 44, 45 and 46 respectively of the Convention as adopted.

by a process of consultation and negotiation upon the request of any of them.

2. If the dispute is not resolved as a result of the process of consultation and negotiation referred to in paragraph 1 within [three months] of its inception, any State participating in the process may, by a written application, submit it to the International Court of Justice for a decision unless the parties by common consent agree upon other means of settlement.

3. Each State may, at the time of signature or ratification of this Convention or accession thereto, declare that it does not consider itself bound by paragraph 2. The other States shall not be bound by paragraph 2 with respect to any State which has made such a declaration.

4. When a dispute regarding the interpretation or application of this Convention includes a State which has made a declaration under paragraph 3, if the dispute is not settled by negotiation or by other agreed means, any one of the parties to the dispute may, by a request addressed to the other party, submit it to arbitration in conformity with the Annex to this Convention.

5. Any State which has made a declaration in accordance with paragraph 3 may at any time withdraw that declaration by notification to the depositary.

[Rejected; see para. 275 below.]

*Proposal for an Annex to the Convention  
(A/CONF.117/C.1/L.57)*

(Arbitration)

1. Arbitration procedure, unless the parties to the dispute decide otherwise, shall be in accordance with the rules set out in this Annex.

2. The arbitration tribunal shall consist of three members: one arbitrator nominated by each of the parties to the dispute, and a third arbitrator who shall be nominated by agreement between the two first-named, and shall act as its chairman.

3. If, at the end of a period of 60 days from the nomination of the second arbitrator, the chairman of the tribunal has not been nominated, the Secretary-General of the United Nations upon request of either party to the dispute shall proceed to such nomination.

4. If, at the end of a period of 60 days from the date of the receipt of the request for arbitration, one of the parties to the dispute has not nominated the member of the tribunal for whose designation it is responsible, the other party may directly inform the Secretary-General of the United Nations who shall nominate the chairman of the tribunal.

5. The chairman of the tribunal shall, upon nomination in accordance with paragraph 4, request the party which has not provided an arbitrator, to do so within a period of 60 days. If the party does not make the required nomination, the chairman of the tribunal shall so inform the Secretary-General of the United Nations who shall make the nomination.

6. The chairman of the tribunal, if nominated under the provisions of paragraph 3 or 4, shall not be or have been a national of one of the parties to the dispute, except with the consent of the other party.

7. In the case of the decease or default of an arbitrator for whose nomination one of the parties is responsible, the said party shall nominate a replacement within a period of 60 days from the date of decease or default. Should the said party not make the nomination, the arbitration shall continue under the remaining arbitrators. In the case of decease or default of the chairman of the tribunal, a replacement shall be nominated in accordance with the provisions of paragraph 2 above or, in the absence of agreement between the members of the tribunal within a period of 60 days of the decease or default, according to the provisions of paragraph 3. The arbitration is continued as soon as the new chairman has been nominated.

8. If a procedure has been initiated between two parties to a dispute, any other Contracting State the interests of which are affected may join in the arbitration procedure by giving written notice to the parties which have originally initiated the procedure unless either of the latter parties object to such joinder.

9. An arbitration tribunal established under the provisions of the present Annex shall decide its own rules of procedure.

10. Decisions of the tribunal both as to its procedure and its place of meeting as to any controversy laid before it, shall be taken by majority vote of its members; the absence or abstention of one of the members for whose nomination the parties to the dispute were responsible shall not constitute an impediment to the tribunal reaching a decision. In cases of equal voting, the chairman shall cast the deciding vote.

11. Absence or default of one party to the dispute shall not constitute an impediment to the procedure.

12. The award of the tribunal shall be final and binding on the parties to the dispute.

13. Any controversy which may arise between the parties to the dispute as regards interpretation and execution of the award may be submitted by either party for judgement to the tribunal which made the award, or, if it is not available, to another tribunal constituted for this purpose in the same manner as the original tribunal.

[Not put to the vote; see para. 275 below.]

273. The proposal submitted by Kenya and Mozambique read as follows:

*Proposal for new articles  
(A/CONF.117/C.1/L.58)<sup>49</sup>*

*Article A. Consultation and negotiation*

If a dispute regarding the interpretation or application of the present Convention arises between two or more Parties to the Convention, they shall, upon the request of any of them, seek to resolve it by a process of consultation and negotiation.

*Article B. Conciliation*

If the dispute is not resolved within six months of the date on which the request referred to in article A has been made, any party to the dispute may submit it to the conciliation procedure specified in the Annex to the present Convention by submitting a request to that effect to the Secretary-General of the United Nations and informing the other party or parties to the dispute of the request.

*Article C. Judicial settlement and arbitration*

Any State at the time of signature or ratification of the present Convention or accession thereto or at any time thereafter, may, by notification to the depositary, declare that, where a dispute has not been resolved by the application of the procedures referred to in articles A and B, that dispute may be submitted for a decision to the International Court of Justice by a written application of any party to the dispute, or in the alternative to arbitration, provided that the other party to the dispute has made a like declaration.

*Article D. Settlement by common consent*

Notwithstanding articles A, B and C, if a dispute regarding the interpretation or application of the present Convention arises between two or more Parties to the Convention, they may by common consent agree to submit it to the International Court of Justice, or to arbitration, or to any other appropriate procedure for the settlement of disputes.

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

Nothing in articles A to D shall affect the rights or obligations of the Parties to the present Convention under any provisions in force binding them with regard to the settlement of disputes.

**ANNEX**

1. A list of conciliators consisting of qualified jurists shall be drawn up and maintained by the Secretary-General of the United Nations. To this end, every State which is a Member of the United Nations or a Party to the present Convention shall be invited to nominate two conciliators, and the names of the persons so nominated shall constitute the list. The term of a conciliator, including that of any conciliator nominated to fill a casual vacancy, shall be five years and may be renewed. A conciliator whose term expires shall continue to fulfil any function for which he shall have been chosen under the following paragraph.

2. When a request has been made to the Secretary-General under article B, the Secretary-General shall bring the dispute before a conciliation commission constituted as follows:

The State or States constituting one of the parties to the dispute shall appoint:

(a) one conciliator of the nationality of that State or of one of those States, who may or may not be chosen from the list referred to in paragraph 1; and

(b) one conciliator not of the nationality of that State or of any of those States, who shall be chosen from the list.

The State or States constituting the other party to the dispute shall appoint two conciliators in the same way. The four conciliators chosen by the parties shall be appointed within sixty days following the date on which the Secretary-General receives the request.

The four conciliators shall, within sixty days following the date of the appointment of the last of them, appoint a fifth conciliator chosen from the list, who shall be chairman.

If the appointment of the chairman or of any of the other conciliators has not been made within the period prescribed above for such appointment, it shall be made by the Secretary-General within sixty days following the expiry of that period. The appointment of the chairman may be made by the Secretary-General either from the list or from the membership of the International Law Commission. Any of the periods within which appointments must be made may be extended by agreement between the parties to the dispute.

Any vacancy shall be filled in the manner prescribed for the initial appointment.

3. The Conciliation Commission shall decide its own procedure. The Commission, with the consent of the parties to the dispute, may invite any Party to the present Convention to submit to it its views orally or in writing. Decisions and recommendations of the Commission shall be made by a majority vote of the five members.

4. The Commission may draw the attention of the parties to the dispute to any measures which might facilitate an amicable settlement.

5. The Commission shall hear the parties, examine the claims and objections, and make proposals to the parties with a view to reaching an amicable settlement of the dispute.

6. The Commission shall report within twelve months of its constitution. Its report shall be deposited with the Secretary-General and transmitted to the parties to the dispute. The report of the Commission, including any conclusions stated therein regarding the facts or questions of law, shall not be binding upon the parties and it shall have no other character than that of recommendations submitted for the consideration of the parties in order to facilitate an amicable settlement of the dispute.

7. The Secretary-General shall provide the Commission with such assistance and facilities as it may require. The expenses of the Commission shall be borne by the United Nations.

[Adopted; see para. 276 below.]

**B. Proceedings of the Committee of the Whole**

274. The Committee considered the proposals submitted by Denmark and the Netherlands (A/CONF.117/C.1/L.25/Rev.1/Corr.1 and A/CONF.117/C.1/L.57) and by Kenya and Mozambique (A/CONF.117/C.1/L.58) at its 43rd and 44th meetings on 31 March and 5 April 1983.

275. At its 44th meeting, the Committee rejected the proposal for a new article submitted by Denmark and the Netherlands by 36 votes to 21, with 10 abstentions. As a result, the proposal for an Annex submitted by those countries was not put to the vote.

276. At the same meeting, the Committee adopted the proposal for new articles submitted by Kenya and Mozambique by 50 votes to 2, with 13 abstentions, and referred it to the Drafting Committee.<sup>50</sup>

<sup>50</sup> The report of the Drafting Committee on this proposal is contained in document A/CONF.117/10/Add.2.

*Chapter III*FINAL CLAUSES<sup>51</sup>

277. A proposal for the final articles of the future Convention was submitted by *Brazil* (A/CONF.117/C.1/L.24).

278. The proposal read as follows:

## PART . . .

## FINAL CLAUSES

*Article A. Signature*

The present Convention shall be open for signature by all States until 31 December 1983 at the Federal Ministry for Foreign Affairs of the Republic of Austria, and subsequently, until 30 June 1984, at United Nations Headquarters in New York.

*Article B. Ratification*

The present Convention is subject to ratification. The instruments of ratification shall be deposited with the Secretary-General of the United Nations.

*Article C. Accession*

The present Convention shall remain open for accession by any State. The instruments of accession shall be deposited with the Secretary-General of the United Nations.

<sup>51</sup> At its 10th plenary meeting, on 7 April 1983, the Conference decided that articles A to E containing the final provisions of the future Convention should form a separate Part VI to be placed at the end of the Convention. Articles A, B, C, D and E accordingly became articles 47, 48, 49, 50 and 51 respectively of the Convention as adopted.

*Article D. Entry into force*

1. The present Convention shall enter into force on the thirtieth day following the date of deposit of the fifteenth instrument of ratification or accession.

2. For each State ratifying or acceding to the Convention after the deposit of the fifteenth instrument of ratification or accession, the Convention shall enter into force on the thirtieth day after deposit by such State of its instrument of ratification or accession.

*Article E. Authentic texts*

The original of the present Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

IN WITNESS WHEREOF the undersigned Plenipotentiaries, being duly authorized thereto by their respective Governments, have signed the present Convention.

DONE at Vienna this . . . day of April, one thousand nine hundred and eighty-three.

279. As indicated in paragraph 10 of this report, the Committee of the Whole entrusted the Drafting Committee with the preparation of drafts, for submission directly to the Conference in plenary meeting, concerning the preamble and the final clauses of the future Convention. In accordance with that decision, the above proposal submitted by Brazil was considered by the Drafting Committee.<sup>52</sup>

<sup>52</sup> For the report of the Drafting Committee on this proposal, see document A/CONF.117/10.