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

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14th meeting of the Committee of the Whole

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68. Mr. MASUD (Observer for the Asian-African Legal Consultative Committee) said that it was clear from the discussion that, in the opinion of most delegations, the Netherlands amendment would upset the balance of the article. Article 14 was intended to protect the interests of newly independent States, which were often in a weak bargaining position *vis-à-vis* predecessor States. Article 14 set forth a peremptory norm of international law, and the Netherlands amendment would have the effect of diluting its provisions.

69. The United Kingdom amendment was still more radical in its implications, in that it would virtually eliminate the principle of equity from the article.

70. Referring to subparagraphs (*c*) and (*f*) of paragraph 1, he said that clarification was required as to the criteria to be applied in determining the contribution of the successor State; in that respect the existing text was not sufficiently precise.

The meeting rose at 1 p.m.

14th meeting

Thursday, 10 March 1983, at 3.10 p.m.

Chairman: Mr. ŠAHOVIĆ (Yugoslavia)

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

[Agenda item 11]

Article 14 (Newly independent State) (*continued*)

1. Mr. IRA PLANA (Philippines) said that his delegation was opposed to the deletion or emasculation of the International Law Commission's text of article 14. The Commission had recognized the role of newly independent States in the present world order and the fact that such States were in a position of disadvantage compared with predecessor States. Its draft of article 14 met the requirements of equity.

2. Mr. LAMAMRA (Algeria) reiterated his delegation's support for the spirit and letter of the International Law Commission's text of article 14 and particularly for paragraph 4 of that text. Opposition to the principle of the permanent sovereignty of peoples over their wealth and natural resources was seemingly entrenched. Some delegations had favoured deletion of the reference to that principle on the ground that it was of no practical value since the process of decolonization was virtually complete. However, according to the Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples, many territories still did not enjoy the right of self-determination.

3. The United Kingdom amendment (A/CONF.117/C.1/L.19) sought to substitute for the coherent system of devolution worked out by the International Law Commission empirical formulations based on the inequitable arrangements which had sometimes been imposed in the past as a result of negotiations between a powerful predecessor State and a defenceless young State. It ignored the International Law Commission's concern with the viability of the territory of newly independent States and eliminated reference to the categories of State property mentioned in the subparagraphs of paragraph 1. That amendment embodied a fundamental difference of approach which delegations should bear in mind when taking a decision on article 14.

4. The Netherlands amendment (A/CONF.117/C.1/L.18) was no more felicitous. The expression "due regard" in that amendment suggested that the principle of permanent sovereignty was but one criterion among others and not really of major concern, whereas the International Law Commission's text treated the principle as being of cardinal importance. Furthermore, the concluding phrase in the Netherlands amendment, "in accordance with international law", revived the long-standing argument as to which international law was intended. There was the old international law, which protected privilege based on domination and conquest, and the new international law enshrining the principle of equity, which was affirmed by the International Law Commission. The Charter of the United Nations had notorious gaps in respect of economic co-operation and development co-operation and in 1980 the third world delegations to the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization had proposed that a reference to permanent sovereignty over natural resources should be incorporated in its text. International law was in fact constantly evolving and a general reference to it was incompatible with the precision desirable in paragraph 4. The Netherlands representative had asserted that a United Nations document had made the surprising claim that permanent sovereignty related to air and water but excluded oil. That ran counter to the Programme of Action on the Establishment of a New International Economic Order adopted by the General Assembly in its resolution 3202 (S-VI) at its sixth special session. In any case, if only the territorial dimension of sovereignty was taken into consideration, it was difficult to see how energy resources could be excluded.

5. The French representative had endeavoured to prove that newly independent States should not be regarded as a special category in the succession of States (13th meeting). That was an ideological approach alien to the Charter of the United Nations and to the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among

States in accordance with the Charter of the United Nations,[1] which specifically stated that a dependent or non-self-governing territory had a status separate and distinct from the territory of the State administering it until its people had exercised its right of self-determination.

6. In conclusion, he urged the Conference to ensure that the legal and political dialogues evolved together. The convention should enshrine the principle of the permanent sovereignty of every State over its natural wealth and resources, a principle already referred to in article 13 of the 1978 Vienna Convention on Succession of States in Respect of Treaties.[2]

7. Mr. BERNHARD (Denmark) said that, as in the case of the other types of succession, the main stress in article 14 should be on agreement between the parties. A number of the criteria set forth in the subparagraphs of paragraph 1 of the International Law Commission's text were too broad and vague and were inappropriate as legal criteria. His delegation therefore supported changes along the lines proposed in the United Kingdom amendment, although in that text the word "government" in subparagraph (*b*) should be replaced by a reference to the authority governing the dependent territory.

8. In spite of the view of the International Law Commission as expressed in paragraph (25) of its commentary on article 14, he had difficulty in understanding the Commission's motives for the inclusion of paragraph 3 in that article. In the case envisaged, the economic and social circumstances were not necessarily similar to those of newly independent States. It might be a case of a territory joining a State larger and richer than the predecessor State.

9. However, it was paragraph 4 that presented the most serious problem. His delegation considered it unnecessary and unacceptable to restrict the freedom of the parties concerned in a way which was unusual in international law and which differentiated one specific type of succession of States from other categories. Furthermore, the formulation of paragraph 4 was unclear. Some delegations had suggested that it was in conformity with article 13 of the 1978 Vienna Convention but it differed from that text in four important particulars. Article 13 of the 1978 Convention placed no restriction on the freedom to conclude agreements; it was a general article valid for all States and all types of succession; it referred to "natural wealth" and not to "wealth"; and, finally, it referred simply to "the principles of international law".

10. If the principle of permanent sovereignty was to be mentioned at all, he would support the redrafting of paragraph 4 proposed in the Netherlands amendment. He had difficulty in understanding why some delegations objected to the reference to international law in that text.

11. Mr. BOCAR LY (Senegal) said that some delegations had criticized the International Law Commission's formulation of paragraph 1, subparagraphs (*b*) and (*e*), as being too imprecise. As he understood it, the Commission had intended to refer to property acquired by the predecessor State by procedures not legally recognized. He did not know whether any of the changes which had been suggested made that meaning more clear. With regard to paragraph 1, subparagraphs (*c*) and (*f*), of the International Law Commission's text, it was indisputable that the contribution of the dependent territory should be taken into account, in deference to the principle of equity, which had become an essential element of modern international law. However, it was not so much the principle as the criteria of apportionment which were the stumbling block. The Expert Consultant might be asked to give his views but it would be difficult to find criteria for inclusion in the proposed convention which would satisfy everyone. Paragraph 4 took due account of the possibility of agreement between the parties, subject to observance of the principle of permanent sovereignty, which must be regarded as accepted by the international community in the light of the various international instruments adopted on that subject. Paragraph 4 of the International Law Commission's text referred to newly independent States but it made clear that the principle to which it alluded applied to all States.

12. Mr. RASUL (Pakistan) said that his delegation supported the text of article 14 proposed by the International Law Commission. The United Kingdom amendments to paragraph 1 ran counter to the very spirit of that paragraph, while the Netherlands amendment to paragraph 4 reduced the principle affirmed in that paragraph to a matter of mere moral obligation by using the words "due regard". He shared the Indian representative's surprise at the Netherlands representative's observation (13th meeting) that the principle of permanent sovereignty over natural resources had not yet been recognized as a rule of international law but was a matter of international relations. The delegation of Pakistan understood that principle to be derived from—indeed, to form an integral part of—the fundamental principle of international law, namely, territorial sovereignty. That principle was as old as were established relationships between human communities. Consequently, the principle of permanent sovereignty over natural resources was not a twentieth-century innovation.

13. Mr. MONNIER (Switzerland) said that article 14 constituted an important exception to the other articles of the draft convention, which gave prominence to agreement between the States concerned. Article 14 mentioned agreement only in its paragraph 4. By instituting a special régime for one category of succession of States, article 14 gave the provisions of a multilateral instrument precedence over agreements between the predecessor State and the successor State. That not only resulted in restricting the freedom of action of States but also added an imprecise extra-legal dimension to the definition of State sovereignty in international law. In the last analysis, it actually seemed to restrict that concept. Furthermore, the very secondary role assigned by article 14 to agreement between the predecessor and successor State was further limited in paragraph 4, which provided that such agreements could not infringe the principle of perma-

[1] General Assembly resolution 2625 (XXV), annex.

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

nent sovereignty over wealth and natural resources. The representative of the Federal Republic of Germany had put very pertinent questions to the Expert Consultant concerning the mandatory nature of paragraph 4 (13th meeting). Some delegations claimed that the principle of permanent sovereignty was *jus cogens*. If such was the case, according to a provision of the 1969 Vienna Convention on the Law of Treaties,[3] incompatibility with such a rule of general international law would void any agreement *ab initio*. But that provision was very far from being accepted by all members of the modern international community and indeed constituted for many States an obstacle to their accession to the 1969 Convention, notwithstanding the existence of provisions allowing recourse to the International Court of Justice or arbitration in cases where incompatibility with *jus cogens* was invoked.

14. The Netherlands amendment was a distinct improvement on the International Law Commission's text of paragraph 4 in that it limited the concept of permanent sovereignty and placed it on a more acceptable basis. He failed to understand those delegations which simultaneously held that the principle of permanent sovereignty was *jus cogens* and opposed the reference to international law in the Netherlands amendment. The presence of paragraph 4 as at present formulated made it impossible for his delegation to support article 14.

15. With regard to the Algerian representative's reference to the evolution of the legal and political dialogues, it was his view that the task of the delegations at the present Conference was to work out acceptable compromises with the practical aim of ensuring that the convention would be ratified by national parliaments and subsequently implemented.

16. Mr. TEPAVITCHAROV (Bulgaria) said that his delegation considered article 14, as proposed by the International Law Commission, as an important contribution to the work of the Conference. It was a necessary part of the régime of the succession of States concerning specific categories of succession included in Part II of the draft text. In its commentary the Commission had given much information concerning international practice in the field of succession which had developed as a result of decolonization. It had also provided detailed explanations of questions which had been raised during its deliberations. Those questions were similar to the ones which had been raised in the Committee of the Whole. The article had been criticized as unnecessary, unwise, irrelevant and unclear, and the main objections appeared to relate to the possibility, in the case covered by article 14, of agreements not provided for in the present draft. His delegation did not share those objections. It endorsed the explanation in paragraph (5) of the commentary of the reason why reference to an agreement was unnecessary in that particular case of succession. Article 14 as proposed by the International Law Commission did not exclude agreement, which always took precedence over other methods or recommended procedures for settling disputes or conflicts. Paragraph 4 of the article specifically referred to agreements whose validity depended only on recognition of the principle of permanent sovereignty of every people over its wealth and natural resources. By not referring expressly to the case of succession of States by agreement under the provisions of article 14, the International Law Commission had emphasized recognition of the very special circumstances which accompanied the birth of newly independent States and had refrained from making the agreement a condition for the application of the rules formulated in article 14.

17. The Bulgarian delegation felt that the concern which had been expressed regarding the viability of the newly independent State should find concrete expression in the text of the convention itself and not merely be reflected in the proceedings of the Conference. Support for the International Law Commission's text would go a long way towards alleviating those concerns.

18. In connection with paragraph 4, he shared the view of the representatives of India and Brazil that the principle of permanent sovereignty of every people over its wealth and natural resources was an established principle of international law and was not a new one. That principle was embodied in the 1958 Geneva Convention on the Continental Shelf,[4] in which the sovereignty of the coastal State over its resources on the shelf was recognized as absolute, regardless of *de facto* occupation or the ability of the coastal State to exploit those resources.

19. Paragraph 4, as proposed by the International Law Commission, was well balanced and non-discriminatory and had the approval of his delegation.

20. Mr. SUCHARITKUL (Thailand) said that his delegation supported article 14 as drafted by the International Law Commission. His Government attached particular importance to the particular type of State succession dealt with in the article and felt that it deserved special attention and special treatment. Parties to State succession under article 14 were free to negotiate and conclude agreements even outside the principles considered to be general norms and embodied in paragraphs 1 to 3 of the article. Whatever agreement might be concluded would be valid, and the general principles of the law of treaties applied. However, like every other treaty or agreement, it would be governed by the peremptory norm, referred to in paragraph 4, of the permanent sovereignty of every people over its wealth and natural resources. That included the people of the predecessor State, the successor State and third States. The provision had been included in that particular article of the proposed convention because specific reference and protection were deemed necessary in the case covered by the article. A newly born State was not the same as on old State: just as a child should be born free, a State, too, should be born free and unencumbered and therefore protected by paragraph 4.

21. Mr. MARCHAHA (Syrian Arab Republic) said that the difficulties of newly independent States were well known and required specific measures in international law which could be taken only by the estab-

[3] See *Official Records of the United Nations Conference on the Law of Treaties, 1968 and 1969, Documents of the Conference* (United Nations publication, Sales No. E.70.V.5), p. 287.

[4] United Nations, *Treaty Series*, vol. 499, No. 7302, p. 312.

lishment of rules to assist and support the States concerned. The trend of modern international law was to establish special rules in favour of countries of the third world, and it was natural that the International Law Commission should follow that trend and create a new legal régime for the succession of States in that category. His delegation was therefore unable to support the Netherlands amendment, which tended to weaken the original paragraph. Newly independent States required the support and protection of international law through peremptory norms.

22. Mr. OWOEYE (Nigeria) said that his delegation disagreed entirely with the French representative's view that article 14 was unnecessary because newly independent States did not represent a case of State succession. It also disagreed vith the view of the representative of the United States of America that article 14 should be deleted (13th meeting). The General Assembly had given the International Law Commission a special mandate with regard to its work of codification and progressive development of rules of international law relating to the succession of States, which was to examine the problems of the succession of States with appropriate reference to the newly independent States. The 1978 Vienna Convention had reflected the need which had been felt to include in that instrument special provisions concerning newly independent States, and the same position had been taken by the International Law Commission in the case of article 14 of the present draft.

23. He did not share the view of the representative of France that the consideration of article 14 had developed into a political discussion. There was no divergence or clear distinction between the principle of State succession in respect of State property and the fundamental political and economic objectives of newly independent States, especially in the early stages of their independence when they needed to establish themselves firmly, both politically and economically. That applied particularly in the case of the succession of newly independent States to natural resources, which had a vital role to play in their economic survival.

24. The Nigerian delegation was in favour of retaining article 14 as drafted by the International Law Commission, because of its clarity, fairness and balance. Its clarity in differentiating between movable and immovable property and the reference in each case to an appropriate principle to determine the passing of property were commendable. In the case of immovable property, the Commission had established the criterion of linkage between property and the territory in which it was located, while in the case of movable property the principles of viability and equity had been established as the basic criteria for the passing of property. The Commission had gone further by making special provision, in paragraphs 2 and 3 of the article, for the different situations which might arise in the case of newly independent States. The text of paragraph 4 did not necessarily imply nullification or non-validity of previous agreements concluded between the predecessor State and the successor State. Rather it stated that such agreements, if and where they existed, should not infringe the principle of permanent sovereignty of every people over its wealth and natural resources. As his delegation understood it, only where such agreements violated that cardinal principle of contemporary international law should they be deemed null and void. Numerous General Assembly resolutions, including that on the Charter of Economic Rights and Duties of States,[5] had already firmly established that principle.

25. The amendments proposed by the United Kingdom and by the Netherlands negated principles established by international law. The United Kingdom amendment appeared to place emphasis on agreement between the predecessor State and the successor State, which presupposed an ideal situation in which succession took place in a predetermined form agreed to by both parties. Even in such a situation as that, the agreement might not be concluded on a basis of equality. Furthermore, not all cases of State succession took place in a predetermined manner capable of leading to an agreement between the two parties. The Netherlands amendment seemed to emphasize the goodwill and fairness of the predecessor State, which was mere assumption. The Nigerian delegation therefore rejected both amendments and supported article 14 as proposed by the International Law Commission.

26. Mr. ECONOMIDES (Greece) said that article 14 was the most difficult one to be considered by the Committee of the Whole. The difficulty stemmed from the fact that it was one of the most political provisions in the draft convention and it had already been politicized to such an extent that it now seemed to run counter to a basic principle of international law, the principle of the equality of States. He fully understood the reasons for the provision, particularly in the light of the precedent set by the 1978 Vienna Convention. However, in spite of the provision's commendable elements, his delegation had concluded that from the point of view of application, article 14 left much to be desired. He urged all delegations, when proposing textual amendments, to bear in mind the future application of the article and to be prepared to negotiate in good faith with a view to achieving a generally acceptable text.

27. The United Kingdom amendment contained a positive element but further efforts were required on both sides of the debate if better balance and clarity were to be achieved. It might even be desirable to suspend discussion of the article temporarily in order to allow all delegations time for further thought. His delegation had serious difficulties with paragraph 4 in particular and it could not accept the Brazilian representative's contention that international law did not apply to natural resources. While that might perhaps be true of those resources which were situated entirely within a single State and had no effect on any other State, international law applied directly and absolutely to those resources which were exploited by more than one State. The principles contained in paragraph 4 were so important that they should apply equally in all the cases covered by the draft convention.

28. The Greek delegation would favour the addition, at the end of Part II, of a new article providing that all treaties or agreements concluded in accordance with the convention and resulting in the creation of a new

[5] General Assembly resolution 3281 (XXIX).

State must take fully into account the principle of permanent sovereignty over natural resources in accordance with international law. An express reference to international law in paragraph 4 was a safeguard and, as such, absolutely necessary.

29. Mr. MUCHUI (Kenya) said that his delegation could not agree that the International Law Commission had dealt with the question of newly independent States from a political rather than a juridical standpoint: the Commission's approach had been positive, objective and progressive, and supported by cogent and well-presented arguments. Any politicization of the subject had been the work of others than the International Law Commission.

30. His delegation was also unconvinced by the argument that article 14 might be redundant because the decolonization process was virtually complete. The proponents of that argument had completely overlooked the fact that even if decolonization were complete—which it was not—there would still be residual problems, particularly in respect of State property.

31. The United Kingdom amendment ran counter to both the spirit and letter of the proposed article 14, as well as to the generally accepted principle of fairness and equity in international relations. It failed, moreover, to take account of the arguments presented by the International Law Commission in paragraph (5) of its commentary on the article. His delegation was therefore quite unable to support that amendment.

32. The amendment submitted by the Netherlands attempted to dilute the principle of the permanent sovereignty of a people over its wealth and natural resources, since it postulated the premise that that principle was a norm of international relations rather than of international law. That amendment was therefore totally unacceptable to his delegation.

33. He emphasized his delegation's unqualified support for article 14 as proposed by the International Law Commission.

34. Mr. SAINT-MARTIN (Canada) said that, in his delegation's view, priority should be accorded in article 14 to agreements concluded between the predecessor and the successor State in respect of problems related to State succession. Paragraph 1 of the article, as proposed by the International Law Commission, should be revised accordingly. The concept of property "connected with the activity of the predecessor State", which was referred to in paragraph 1, subparagraph (*d*), was unduly vague. The contribution of the dependent territory to the creation of State property, to which reference was made in subparagraphs (*c*) and (*f*), was also a vague concept and reference to it was likely to cause more problems thant it would solve. The Canadian delegation was unable to accept the current wording of paragraph 4 of article 14. Moreover, some delegations had stated during the debate that paragraph 4 constituted or included an element of *jus cogens*, particularly as far as the concept of permanent sovereignty over wealth and natural resources was concerned. That was a concept which, as the representative of Switzerland had recalled, was far from being accepted as *jus cogens* by several countries, including Canada. The Canadian delegation reserved the right to revert to article 14 at a later stage in the discussion.

35. Mr. PAREDES (Ecuador) said that his delegation could not agree with the proposal that article 14 should be deleted. Neither could it accept the amendments to paragraphs 1 and 4 which had been submitted, as they would weaken the text. Paragraph 4 reflected one of the fundamental principles of the new international economic order, which had already been accepted by the international community.

36. His delegation supported the draft submitted by the International Law Commission, which was clear, logical and in accordance with the principle of equity in international relations.

37. Mr. RASSOL''KO (Byelorussian Soviet Socialist Republic) said that his delegation considered article 14 a key element of the draft convention. The International Law Commission's draft reflected the principle that every people possessed the attributes of national sovereignty inherent in its existence as a people and consequently enjoyed the right of permanent sovereignty over its wealth and natural resources.

38. The argument that article 14 was unnecessary was not convincing. First, since the 1978 Vienna Convention, which was closely linked with the draft convention under discussion, contained provisions relating to newly independent States, it would be anomalous if no such provision were included in the new instrument. Secondly, experience had shown that it was precisely in connection with the transfer of State property that newly independent States encountered most problems.

39. The amendment to article 14 submitted by the Netherlands delegation was not acceptable to his delegation, inasmuch as it proposed a limited interpretation of an accepted norm of international law. The United Kingdom amendment was likewise not acceptable.

40. His delegation fully supported article 14 as proposed by the International Law Commission.

41. Mr. FONT (Spain) said that, although article 14 appeared to be a bone of contention, a careful consideration of the views which had been expressed led to the conclusion that the divergencies were not so great as they appeared. He gave two examples affording proof. In the first place, the degree of priority that should be accorded to agreements concluded between the predecessor and the successor State was a point at issue. But the International Law Commission's draft text referred expressly in paragraph 4 to agreements concluded between the predecessor State and the successor State to determine succession otherwise than by the application of paragraphs 1 to 3. There therefore appeared to be no reason why bilateral agreements should not be referred to earlier in the article.

42. A second example was connected with the difficulties being experienced with the last phrase of paragraph 4. Similar problems that had arisen in connection with the 1978 Vienna Convention on the Succession of States in Respect of Treaties had been resolved through negotiations resulting in article 13 of that Convention, which had been adopted by consensus. In view of those considerations, he appealed for a new spirit of co-operation in order to solve the problems facing the Committee.

43. The Spanish delegation, for its part, would have no objection to an article dealing with the questions raised in article 14 appearing in the future convention.

44. Mr. CHO (Republic of Korea) emphasized the need for separate provisions to deal with the special circumstances attending the succession of newly independent States and to meet the requirement of the principle of equity. Paragraph 4 was one of the International Law Commission's most commendable contributions to the progressive development of international law. The principle of the permanent sovereignty of every people over its wealth and natural resources was a widely accepted norm of international law which had been reaffirmed in many resolutions and instruments.

45. His delegation did not agree with the view that paragraph 4 deprived the parties concerned of the right to conclude agreements; it merely emphasized that such agreements should not infringe the principle of permanent sovereignty over wealth and natural resources. Accordingly, his delegation supported the draft of article 14 as proposed by the International Law Commission and opposed the amendments submitted by the Netherlands and the United Kingdom.

46. Mr. A. BIN DAAR (United Arab Emirates) said that the widely accepted principle of the permanent sovereignty of every people over its wealth and natural resources, which was at the forefront of United Nations doctrine, should not be compromised in an international convention, considering that that principle was in conformity with the actual practice of the vast majority of States, thereby establishing it as a customary rule of international law.

47. As the International Law Commission had noted in its commentary, it had been fully conscious, when drafting article 14, of the precise mandate it had received from the General Assembly to examine the problems of State succession with appropriate reference to the views of States that had achieved independence since the Second World War. That position was clearly reflected in paragraph 4.

48. His delegation was unable to accept the United Kingdom amendment for reasons of principle, and found the Netherlands amendment to be too imprecise. It accordingly fully supported article 14 as drafted by the International Law Commission.

49. Mr. LEITE (Portugal) said that in his delegation's view paragraph 4 should have no place in a legal convention, since it was based on ideological and political considerations.

50. His delegation supported the principle of the permanent sovereignty of every people—and not only of newly independent States—over its wealth and natural resources. It could not accept a provision that made a limited attribution of what was a general right.

51. He emphasized that his delegation's position was based on legal considerations rather than arguments of a political or emotional nature, and he echoed the appeal for compromise made by the representative of Spain.

The meeting rose at 5.50 p.m.

15th meeting

Friday, 11 March 1983, at 10.10 a.m.

Chairman: Mr. ŠAHOVIĆ (Yugoslavia)

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

[Agenda item 11]

Article 14 (Newly independent State) (*continued*)

1. Mr. BEDJAOUI (Expert Consultant) said that he would confine his comments to the more salient points raised during the discussion at the previous two meetings and would try to clarify the intentions of the International Law Commission in drafting article 14.

2. A radical solution had been proposed—to delete the article—and the Conference was of course fully entitled to do so if it wished. However, he pointed out that the General Assembly had given the International Law Commission a mandate to take into account the experience of the newly independent States and to accord them special treatment in the succession of States in order to further the codification and progressive development of international law. In drafting article 14 the Commission had endeavoured to comply with that mandate.

3. The deletion of the article, and of the corresponding articles 26 and 36, would cause a major element of the proposed convention to disappear, and hence its usefulness as an international instrument would be questionable. If that deletion were to be made, serious problems of interpretation would result when drawing parallels with the 1978 Vienna Convention on Succession of States in Respect of Treaties,[1] which contained special provisions to cover the case of newly independent States. In his view the question of the succession of States after decolonization was of such importance to the modern world that it could be ignored in the convention only at the risk of gravely undermining the scope and integrity of the draft.

4. It had been suggested that the process of decolonization was virtually complete and that the provisions of article 14 were accordingly redundant. He could not

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