

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

Vienna, Austria  
1 March - 8 April 1983

Document:-  
**A/CONF.117/C.1/SR.4**

**4th meeting of the Committee of the Whole**

Extract from Volume I of the *Official Records of the United Nations Conference on Succession of States in respect of State Property, Archives and Debts (Summary records of the plenary meetings and of the meetings of the Committee of the Whole)*

## 4th meeting

Thursday, 3 March 1983, at 3.05 p.m.

Chairman: Mr. ŠAHOVIĆ (Yugoslavia)

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

[Agenda item 11]

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

1. Mr. MIKULKA (Czechoslovakia) said that the Special Rapporteur's thirteenth report<sup>1</sup> and the ideas put forward in the debate of the previous meeting had convinced him of the value of including a provision of the type of article 12. He continued, however, to have difficulty in accepting the reference to the internal law of the predecessor State as the criterion to be used in defining the property of a third State. Although such a criterion might be acceptable in determining which property was owned by the predecessor State as opposed to private persons, it was not necessarily appropriate with regard to the position of a third State. It would be better to avoid any mention of the internal law of the predecessor State and to reduce the article to a more general formula, such as "a succession of States shall not as such affect the property, rights and interests of a third State".
2. Mr. MUCHUI (Kenya) noted that article 12 merely restated a fully accepted norm of international law and as such was not strictly necessary. Indeed, it seemed to be stretching the context of the draft articles as a whole, whose main concern was the relationship, in a case of succession, between the predecessor and successor States, to introduce a provision concerning the treatment of property of third States in such an event. However, although his delegation would be happy to see the article removed, he would not formally propose that it should be deleted, in deference to the general feeling that the provision was important.
3. As far as the reference to the internal law of the predecessor State was concerned, he agreed with the representative of Czechoslovakia that it was not necessary and possibly not appropriate to specify that that law was the criterion for determining what was the property of a third State. The article would be fully adequate if it simply stated that the property of a third State was not affected by a succession of States. His delegation continued to have similar reservations with regard to the corresponding reference in article 8 and looked forward to hearing the opinion of the Expert Consultant.
4. Mr. MONCEF BENOUNICHE (Algeria) said that the reference to the internal law of the predecessor State was both self-evident and very important. It was vital that the future convention should establish a criterion for distinguishing that property which passed to the successor State from that which did not, and the only existing usable criterion was that of ownership as established by the internal law of the predecessor State.
5. Mr. de VIDTS (Belgium) said that his delegation welcomed article 12. It was obvious that in international law a succession of States could not affect the position of a third State. He understood that delegations might have some difficulty with the notion of determining a third State's property according to the internal law of the predecessor State; yet it was plain that if a third State had acquired State property in the territory of the predecessor State before the succession, that ownership must perforce be established by the predecessor State's internal law. Nevertheless, it would be possible to delete that part of the article without detriment to its scope or clarity.
6. Mr. GUILLAUME (France) said that, although the article would not be vital to a future convention, his delegation had no difficulty in accepting it, while noting the limitations on the application of a general principle of international law to the special case in question. His delegation would be equally ready to accept a more general formula of the type recommended by the representative of Czechoslovakia.
7. Mr. do NASCIMENTO e SILVA (Brazil) said that, in his view, the article as it stood was satisfactory and none of the suggestions made so far represented any improvement. Even if the reference to the internal law of the predecessor State were to be deleted, cases would inevitably arise in the future in which that internal law would automatically have to be applied, since it represented the only usable criterion. Thus the reference, although not indispensable, was useful in that it would avert controversy in the future.
8. Those who continued to have doubts regarding the status of the new State in that context might refer to paragraph (2) of the Commission's commentary on article 12, which made it quite clear that the successor State's full sovereignty would be unaffected.
9. The formula "property, rights and interests", about which reservations had at times been expressed, had been selected by the International Law Commission after lengthy discussion as covering all potential situations and corresponding to the terminology used in many international treaties.
10. Mr. LAMAMRA (United Nations Council for Namibia) said that, in the Council's view, article 12 was basically sound and reflected a clear and widely accepted norm. The inclusion of the words "as such" was particularly significant in that, as was indicated in paragraph (2) of the Commission's commentary, it anticipated the possibility of other juridical situations involving such property, rights and interests in relation to the rules of other branches of international law. Taking

<sup>1</sup> *Yearbook of the International Law Commission, 1981*, vol. II, Part One, doc. A/CN.4/345 and Add.1-3.

the case of Namibia as an example, he said it was clear that article 12 could not prejudice the right of an independent Namibian Government to take whatever measures it deemed appropriate to establish its permanent sovereignty over its natural resources and to preserve the fundamental economic equilibrium of the country. An independent Namibia would also be entitled to draw the legal consequences of the presence on its territory of property, rights and interests belonging to third States, for a third State's ownership of property, rights and interests in Namibia was not incompatible with the letter or spirit of Council Decree No. 1 for the protection of the Natural Resources of Namibia.<sup>2</sup>

11. Mr. KÖCK (Holy See) referred to the footnote in paragraph (4) of the Commission's commentary on article 12 to the effect that the words "according to the internal law of the predecessor State" had been taken from article 8. He felt that the two contexts were in fact quite different, for whereas article 8 dealt with the distinction between State property and privately-held property, article 12 sought to distinguish the State property held by each of two States. He was not sure that in the latter case it was justifiable to use the internal law of only one of those two States as the exclusive criterion. In view of the conflicting views which had been expressed on that point, he supported the proposal made by the representative of Czechoslovakia that that particular phrase should be eliminated and a new formula sought.

12. Mr. JOMARD (Iraq) said that the comments made by the representative of the Holy See were very pertinent. It would be useful to make perfectly clear what was meant by "State" property, since in international law the term "State" covered the government, the population and all other constituent elements of a State, while the more usual definition of State property in domestic law covered that property which was held by the public sector, a notion which differed in internal law and practice from one State to another.

13. Mr. SUCHARITKUL (Thailand) said that article 12 was not concerned fundamentally with defining the nature of State property as distinct from private property but with distinguishing between the property of one State and that of another, irrespective of the criteria originally used to determine its State character. A sound principle of international law governing the question of proprietary rights was that of *situs*, meaning the fact of the property concerned being physically situated in the territory of a sovereign State, in the particular case the territory of the predecessor State. It was therefore the internal law of the predecessor State which was necessarily decisive on that issue. In the various legal systems of the world there were a number of different régimes and degrees of ownership and thus a reference to conformity with the internal law of the predecessor State was not only useful but indispensable.

14. The concept of the absence of effect of a succession of States on the property of a third State was basically correct, but only in so far as the fact of the

succession itself was concerned. The consequences of such a succession might potentially affect the special status of the property of a third State, as had happened, for example, upon the attainment of independence by Singapore, when the position of the Consulate-General of Thailand had undergone a change, acquiring the status of an Embassy. Although such an alteration was not a direct result of the actual succession, it was a necessary and natural consequence of the succession.

15. Mr. SHASH (Egypt) said that the phrase "according to the internal law of the predecessor State" in article 12 had objectionable political connotations and that the question which law should apply should be left open.

16. Mr. KÖCK (Holy See) said that his delegation would prefer to postpone a decision on article 12 but, if a vote were taken, the phrase "according to the internal law of the predecessor State" should be the subject of a separate vote.

17. Mr. do NASCIMENTO e SILVA (Brazil) said that his delegation would oppose the idea of taking separate votes on individual phrases of the draft article, but that it would not object to postponing a decision until the views of the Expert Consultant had been heard, in view of the special circumstances attending the initial stages of the Conference. In general, however, he opposed such postponements and thought the rules of procedure should be strictly adhered to. He pointed out that the articles would be the subject of a second reading in the plenary of the Conference and that further discussion would be possible at that time.

18. Mr. MIKULKA (Czechoslovakia), Mrs. BOKOR-SZEGÖ (Hungary) and Mr. RASSOL'KO (Byelorussian SSR) said that, as in the case of other articles discussed earlier, it would be appropriate to defer a decision on article 12 pending clarification by the Expert Consultant.

19. Mr. MONNIER (Switzerland) said that, while he agreed with the representative of Brazil that the rules of procedure should be followed strictly, it was important to realize that there was no first or second reading *per se* at the Conference, unlike the procedure followed in the International Law Commission. Although decisions taken in the Committee of the Whole would be submitted to the plenary Conference for approval—if put to the vote, by the requisite two-thirds majority—it should be borne in mind that there would be no second reading of the articles in the Committee itself.

20. The CHAIRMAN said that, if he heard no objection, he would assume that the Committee wished to postpone taking a vote on article 12 until the Expert Consultant had had the opportunity to provide additional clarifications and that it would take note of the proposal of the representative of the Holy See for a separate vote on the phrase "according to the internal law of the predecessor State".

*It was so decided.*

21. The CHAIRMAN welcomed Mr. Mohammed Bedjaoui, the Expert Consultant, who had just arrived in Vienna and from whose advice the Conference and the Committee would undoubtedly benefit, for he had

<sup>2</sup> Official Records of the General Assembly, Thirty-fifth Session, Supplement No. 24 (A/35/24), vol. I, annex II.

been the Special Rapporteur on the subject for the International Law Commission.

22. Mr. BEDJAOUI (Expert Consultant), after paying a tribute to the President of the Conference, the Chairman of the Committee of the Whole and all other members of the General Committee as well as to the Secretary of the Conference and his staff, reviewed the history of the International Law Commission's work on the topic of the succession of States, first in respect of treaties and, more recently, in respect of matters other than treaties. The very fact that it had taken 13 years to produce the text now before the Conference was a measure of the complexity of the subject matter. Moreover, unlike most other topics in international law, the question of the succession of States in respect of State property, archives and debts had never before formed the subject of any attempt at codification by learned societies or individual experts, and hence in undertaking the task the International Law Commission had broken completely new ground. As the former Special Rapporteur, he assumed responsibility for any imperfections of the text; however, the Conference would surely bear in mind the great difficulties of the task and the efforts that had been made to arrive at

compromise solutions capable of satisfying the whole of the international community. While looking forward to a full and thorough discussion leading to the adoption of a text that would supplement and enrich the existing body of international law in an important area, he hoped that the Conference would deal gently with a text which, as it were, had been held over the baptismal font for a period of 13 years.

#### Organization of work

23. The CHAIRMAN, responding to a request by Mrs. BOKOR-SZEGŐ (Hungary) to indicate what stage had been reached in the consideration of articles 7 to 12, said that the Committee had decided to defer examination of article 7 pending consideration of articles 1 to 6. So far as articles 8 to 12 were concerned, it had been thought desirable to await the arrival of the Expert Consultant, who would doubtless clarify the numerous points raised in connection with each article. Those articles would then be considered together with the amendments proposed by various delegations.

*The meeting rose at 5.40 p.m.*

## 5th meeting

Friday, 4 March 1983, at 10.20 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 12 (Absence of effect of a succession of States on the property of a third State) (continued)\**

*Article 8 (State property) (continued)\**

1. The CHAIRMAN said that the Expert Consultant was ready to answer questions on points raised in the course of earlier discussions.

2. Mr. FISCHER (Holy See) said that, on reflection, his delegation had decided to withdraw its proposal for a separate vote on the phrase "according to the internal law of the predecessor State" in article 12.

3. Mr. SHASH (Egypt) asked the Expert Consultant what would be the effect of the operation of the phrase "according to the internal law of the predecessor State" in article 12.

4. Mr. BEDJAOUI (Expert Consultant) said that there appeared to be no major difficulties with article 12 except for the reference to the internal law of the predecessor State. The same reference also occurred in other provisions in Part II of the draft convention and

he felt it would be preferable to discuss it in greater depth when considering the definition of State property in article 8. Article 12 was a general safeguard clause intended to ensure that a succession of States could not have any negative effect on a third State. As a succession of States concerned the predecessor and successor States as such and could not therefore affect the property, rights and interests of third states, the International Law Commission had considered it preferable to include the phrase in question.

5. Mr. ASSI (Lebanon) said that, while appreciating the motive for the inclusion of a safeguard clause to protect third States, he considered that the vital question in that context was how and when the third State had acquired the property concerned. Either it should be made quite clear in the text that the property had been acquired lawfully or the article should be amended in some other way.

6. Mr. MOCHI ONORY DI SALUZZO (Italy) asked the Expert Consultant what was intended by the phrase "situated in the territory of the predecessor State". His delegation felt that "territory" in that particular article should be understood to be the entire territory actually involved in the succession.

7. Mr. MONCEF BENOUNICHE (Algeria) said that article 12 as drafted by the International Law Commission was acceptable. However, his delegation wondered whether the idea of a critical period immediately prior to succession, during which a certain amount of State property might be passed to a third State by the

\* Resumed from the 1st meeting.