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Comments and observations of Governments on the draft articles on succession of States in respect of matters other than treaties, adopted by the Commission at its thirty-first and thirty-second sessions

Topic:

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ANNEX I

Comments of Governments on the draft articles on succession of States in respect of matters other than treaties adopted by the International Law Commission at its thirty-first and thirty-second sessions*

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NOTE

For the text of the draft articles on succession of States in respect of matters other than treaties provisionally adopted by the Commission at its thirty-first and thirty-second sessions, and the commentaries thereto, see *Yearbook ... 1979*, vol. II (Part Two), pp. 15 *et seq.*, and *Yearbook ... 1980*, vol. II (Part Two), pp. 8 *et seq.* For the correspondence between those draft articles and the draft articles on succession of States in respect of State property, archives and debts as finally adopted by the Commission at its thirty-third session, see Annex III to the present report.

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Conventions referred to in this annex

	Source
Vienna Convention on the Law of Treaties (Vienna, 23 May 1969) Hereinafter called "1969 Vienna Convention"	*Official Records of the United Nations Conference on the Law of Treaties, Documents of the Conference* (United Nations publication, Sales No. E.70.V.5), p. 287.
Vienna Convention on Succession of States in Respect of Treaties (Vienna, 23 August 1978) Hereinafter called "1978 Vienna Convention"	*Official Records of the United Nations Conference on Succession of States in Respect of Treaties*, vol. III, *Documents of the Conference* (United Nations publication, Sales No. E.79.V.10), p. 185.

*Originally distributed in documents A/CN.4/338 and Add.1-4

1. Austria

[*Original: English*]
[*16 April 1981*]

1. The Commission itself observes[a] that the present title of the draft articles and, in conjunction with it, the wording of article 1, are no longer appropriate, since important "matters other than treaties" affected by a succession of States, as, for example, the issues of acquired rights (with the exception of those of third States, which are the subject of article 9) or of nationality are not dealt with by the draft. It would thus seem advisable to revise both the title and (article 1 accordingly. Of the suggestions offered by the Commission with a view to remedying this unsatisfactory situation, the title "Succession of States in respect of State property, State debts and State archives" (in case the latter provisions are retained in the draft) would seem more appropriate than "Succession of States in respect of certain matters other than treaties", because the vagueness of the latter working is hardly felicitous for the title of an international instrument. Moreover, it would again beg the question as to which "matters" were actually dealt with by the draft.

2. What is stated above, namely, the fact that it is necessary to bring the title and the wording of article 1 in line with the present scope of the draft articles, raises, however, the basic question of whether a draft dealing only with three aspects of State succession—and leaving aside a number of aspects of great importance—justifies the amount of thought, energy and time which the Commission and its Special Rapporteur have devoted to the subject over so many years. Although the Commission's decision to limit the scope of the draft would seem understandable in view of the controversies surrounding some other "matters" affected by a succession of States, the mere fact that it was found necessary to restrict the scope of the draft would suggest that subjects considered for codification should undergo an ever stricter screening as regards their suitability for codification before work commences on them. The establishment of working groups or sub-committees for the preliminary examination of new subjects, a procedure which the Commission has used effectively in recent years, should therefore become standing practice. Those working groups or sub-committees should not only determine the scope of a future draft and the main points which the draft would have to encompass but should also establish guidelines for the Special Rapporteur with a view to ensuring that his reports remain within the mainstream of thought of the Commission. This would surely allow for a more rapid progress of work.

3. Another aspect of the draft articles would seem to point in a similar direction. Many articles use language like "unless otherwise agree[d]" (arts. 7; 8; 13, para. 1; 22, para. 1; 23; E, para. 1; F, para. 1); "to be settled by agreement" (arts. 10, para. 1; 19, para. 1; C, para. 1); "agreements concluded between ... " (art. 11, para. 4); "determined by agreement" (art. B, para. 2). Such frequent reference to the freedom of States to deviate from the rules set forth in the draft articles would seem to call into question the notion of codification as such, and indeed raises doubt as to the appropriateness of codifying rules which obviously are meant to be only of a residual character. It is true that similar language is also used in existing instruments of codification, but in those cases such language is authorizing almost exclusively deviations in form or procedure, and not in substance. If, however, that reference has been inserted to satisfy the condition set by article 41, subparagraph 1 (*a*) of the 1969 Vienna Convention, it would rather seem preferable to omit such a blank check in an instrument of codification and have the States concerned comply with the limit established by subparagraph 1 (*b*), ii, of that Convention, if indeed States wish to deviate by agreement from the draft articles.

Moreover, even when the draft articles are apparently stating residual rules, they are in some cases referring, in fact, back to an agreement between the States concerned. Thus, some articles provide that State property shall, in the absence of specific agreement between the States concerned, pass to one of them who shall equitably compensate the other (arts. 13, para. 3; 14, subpara. 1 (*b*) and para. 2) or, in other cases, that it shall pass to the successor States in equitable proportion (art. 14, subpara. 1 (*d*)). Similar provision is made in some articles relating to the State debt (arts. 19, para. 2; 22, para. 1; 23). Given the reluctance of States to submit disputes between them to third-party settlement, and in the absence of a provision in the draft as to who shall determine what is equitable and what procedure ought to be followed in such cases, the implementation of the articles quoted would require an agreement between the States concerned even in the absence of an "agreement".

4. The draft articles incorporate in Part I (Introduction) only some of the general provisions of the 1978 Vienna Convention. While the reason for such omission is obvious in respect of articles 3, 4 and 5 of that Convention, no reason is offered nor can any reason be logically deduced for not including its article 7 (Temporal application). It would rather appear that the reasons invoked by the Commission for the reception of article 6 of the 1978 Vienna Convention into the draft articles as article 3 (see para. 4 of the commentary to art. 3) argue in favour of also including article 7 of the 1978 Convention, especially if article 20 of the draft articles is retained in its present form.

Specific articles

Article 6

5. The present wording of article 6 may easily give rise to misunderstandings. Title to State property is held by a State under its internal law and not under international law; international law only authorizes the State to claim it under its internal law. Thus, a succession of States—which is an operation under international law—entails the extinction of the predecessor's *claim* and the arising of the corresponding *claim* of the successor State, but does not cause the transfer of the right itself which is held under international law; an act of the successor State under its internal law is necessary to that effect. That the Commission recognizes this legal situation is evident from paragraph (4) of the commentary to article 6, where the Commission states that "the effect of the succession of States is essentially to change the *entitlement** to the right to the State property". The Commission has failed, however, to make this clear in the wording of the article, which should therefore be revised accordingly.

Article 16

6. Although the commentary to article 16 contains a lengthy dissertation on different categories of the State debt (paras. (13)-(40)), nothing of this is reflected in the wording of the article. Further, no explanation is given by the Commission in the commentary to that article (cf. paras. (44) and (45), which give the legislative history of the text).

This is all the more regrettable as the failure to distinguish between different categories of the State debt, such as national debt, local debt and localized debt, leads to the otherwise quite unnecessary introduction into some articles of the concept of equity, which has no generally accepted meaning in international law.

Article 20

7. The fact that no distinction is made between different categories of the State debt is apparently also the reason why a rule is being proposed in article 20 which goes beyond a reasonable protection of the interests of a newly independent State and, furthermore, is not at all confirmed by the practice of States over the last twenty years. To make the passing of a localized debt to a newly independent State dependent on an agreement between predecessor and successor State, and thus on a voluntary act of the newly independent State, is at variance with the principle *res transit cum suo onere*, quoted by the Commission in paragraph (18) of its commentary to article 16. None of the lengthy considerations set forth in paragraphs (2) to (58) of the commentary to article 20 are convincing, particularly not the reference to the weak "financial capacity" of newly independent States (para. (58)). Such considerations, which amount to a mandatory transfer of debt, pertain, and rightly so, to the realm of economic aid or of the new international economic order; in the context of the legal regime of State succession and as a principle for determining the passing on of obligations to the successor State, they seem rather out of place. If a weak "financial capacity" were to prevent the passing on of a State debt, why should that benefit be limited to "newly independent States"? Contrary to the present wording of article 20, and in ac-

[a] *Yearbook ... 1979*, vol. II (Part Two) p. 14, para. 49.

cordance with the principle of unjust enrichment, local or localized debts should in principle, pass on to the newly independent State and deviations from that principle, for whatever reason, should be left to arrangements between the predecessor and the successor State. For this reason, preference is given to paragraph 1 of the alternative text proposed by one member of the Commission and reproduced in footnote 355, relative to paragraph (64) of the commentary to article 20.

Addendum: articles A to F

8. The residual nature which characterizes the draft as a whole becomes particularly obvious in respect of draft articles A to F relating to State archives, constituting the addendum. In fact, with the exception of paragraph 1 of article B relating to the case of a newly independent State, no provision in the addendum envisages rules from which deviation by agreement between the States concerned would not be admissible. This approach, which, in view of the complexity of the problems involved, seems indeed to be the only practical solution, must, on the other hand, automatically raise the question whether it is necessary at all to include provisions on State archives in the present draft articles. It would seem that—with the possible exception of newly independent States—the inclusion of the articles contained in the addendum does not add much to the draft as a whole. Those articles should therefore simply be deleted.

If, however, the Commission were to deem it absolutely essential to retain provisions on State archives, the contents and wording of the provisions ought to be carefully reviewed. The definition of the term "State archives" contained in article A, while in principle acceptable for the purpose of the subsequent article B, seems inadequate for the suggested remaining articles. A thorough review of this definition, establishing, after all, the scope of the following provisions, would in that case be necessary. The language used in articles C, E and F for basically identical situations varies for no apparent reason and should be brought in line.

The solution adotped by the Commission for dealing in the draft with what the commentary calls the "archives-territory link" seems arbitrary and somewhat at variance with the established treaty practice in this field. In particular, thought must be given to the possibility of incorporating, in an appropriate way, *both* of the two main principles relating to the problem of the "archives-territory link" (see para. (15) of the commentary to article C). The option made by the Commission to the effect that only the principle of "territorial or functional connection" should be incorporated, without giving regard to the principle of "territorial origin", is indeed unsatisfactory.

2. Byelorussian Soviet Socialist Republic

[*Original: Russian*]
[*28 January 1981*]

1. The formulation by the International Law Commission of the draft articles on succession of States in respect of matters other than treaties is one of the most important areas of work in the field of the codification and progressive development of international law.

2. An analysis of the three parts of the draft on succession of States in respect of matters other than treaties prepared by the Commission ("Introduction", "State property", "State debts" shows that the existing text is, on the whole, satisfactory and may be used as a basis for the drafting of an international convention to supplement the 1978 Vienna Convention.

3. At the same time, some provisions in the draft articles require further elaboration, particularly the provisions of article 16 (*b*). This paragraph deals with "any other financial obligation chargeable to a State", which is totally unacceptable, since such obligations are governed not by international law but by the relevant provisions of municipal law. Paragraph (*b*) should accordingly be deleted from article 16.

4. The work of the Commission in formulating articles on succession to State archives seems important and necessary, since archives are a constituent part of State property and, because of their nature, contents and functions, are of great interest both to the predecessor State and to the successor State. In this connection, the question of defining the actual concept of "State archives" and all aspects of the problem which have a bearing on the possibility of transferring State archives in various cases of succession of States should be given particular attention.

5. Since the draft articles on succession of States in respect of matters other than treaties are not complete, the observations set forth above are of a preliminary nature. The Byelorussian SSR reserves the right to submit additional comments as work on the draft articles as a whole progresses.

3. Chile

[*Original: Spanish*]
[*12 May 1981*]

1. Although the Government of Chile has not focused its attention on detailed analysis of this matter, there being other questions which are currently of greater concern from the codification standpoint, it has noted with interest the work done by the International Law Commission in this area. It considers it acceptable that the wording of the draft articles should be in line with that of the 1978 Vienna Convention, subject to the appropriate adjustments, and that, in dealing with the draft articles, account has been taken of resolution 4.212 adopted by the UNESCO General Conference at its eighteenth session in Paris in 1974, on the transfer of documents from archives.

2. As to substance, Chile has expressed its agreement with the approach taken by the Commission in the draft articles. However, their title is of questionable legal clarity, since the draft articles deal solely with succession of States in respect of property, debts and archives, which can be summed up as the assets and liabilities of a State; the title of the draft convention, therefore, is not felicitous, since it bears no relation to the rules instituted. Furthermore, the phrase "matters other than treaties" is ineffective in the light of the principle that special provisions take precedence over general provisions: it is obvious that this draft convention deals with succession of States in respect of matters other than treaties, bearing in mind the existence of the 1978 Vienna Convention.

3. In this context, the provisions of draft article 1 seem repetitious and redundant in a modern set of legal rules. These provisions should be related to article 1 of the 1978 Vienna Convention, which is more specific than article 1 of the draft under consideration and which performs a definite function in that it provides that that Convention applies to the effects of a succession of States in respect of treaties "between States", which gives it some dispositive force. On the other hand, article 1 of the draft under consideration merely reproduces its infelicitous title.

4. Furthermore, the definition of "State debt" given in draft article 16 seems insufficiently clear, State debt being defined as a financial obligation of a State towards another State. Such an approach limits the scope of the concept of debt. In general, debt can be taken to mean contracted obligations arising from a legal connection between creditor and debtor with the effect that the latter performs the commitment based on the corresponding right. This concept does not lose its validity if applied by analogy to international law; in the light of the above, it is appropriate to suggest that the definition proposed in draft article 16 should be reconsidered, with a view to extending it to cover all commitments vis-à-vis another party which possesses the corresponding right, not limiting it to the performance of a financial obligation, or an obligation in kind, along with the obligations of giving, doing or not doing a particular thing, within the category of obligations.

5. Lastly, on the basis of an over-all examination of the draft article, some comments may be made on article A in the addendum, which defines, for the relevant purposes, the concept of "State archives". This definition is unduly broad, and hence insufficiently specific for a legal definition. The way in which the concept is dealt with can be criticized, since the succinct reference to the "collection of documents of all kinds" does not give a definite idea of the nature of the documents that comprise an archive and make it deserving of special treatment different from that accorded to other items of State property. On this point, it would be desirable for the definition in article A to take account of the concept embodied in the aforementioned UNESCO resolution 4.212, in which the General Conference declared

itself "mindful of the fact that archives are of great importance for the general, cultural, political and economic history of the countries concerned." It would therefore be preferable to state, for the purposes of the draft articles, that the term "State archives" means the collection of public or private documents which, by their selection and nature, constitute the general historical, political, economic and cultural record of the countries concerned.

6. These are the general, preliminary comments of the Government of Chile on the draft articles proposed by the Commission on succession of States in respect of matters other than treaties. The Government of Chile is interested in continuing to co-operate in the important and valuable codification work undertaken by the Commission.

4. Czechoslovakia

[Original: French]
[8 April 1981]

1. The Government of the Czechoslovak Socialist Republic pays a tribute to the excellent work done by the International Law Commission in the preparation of the articles on succession of States in respect of matters other than treaties and to the outstanding contribution of Mr. Bedjaoui, its Special Rapporteur.

The priority given by the Commission to the economic aspects of succession of States, i.e. to State property and State debts and questions relating to State archives, in the study of questions relating to succession of States in respect of matters other than treaties has proved useful. The articles prepared constitute a relatively complete and independent body of problems which can be codified without its being necessary to open up other questions of succession of States in respect of matters other than treaties which are not affected by the present draft articles. In view of the great diversity existing in international practice, it would be difficult to prepare a draft set of general rules governing those other problems.

Succession of States in respect of matters other than treaties constitues a very important but also very complex body of topics of international law. The international practice applied so far does not always permit the assumption of the existence of a generally valid rule, and, consequently, we see in the set of draft articles on succession of States in respect of matters other than treaties prepared by the Commission an inextricable interweaving of the progressive development and codification of international law. The approach adopted by the Commission, which has applied itself to finding a just and balanced solution to thorny problems, unquestionably merits approval.

2. We must commend the effort made by the Commission to ensure that the draft articles on succession of States in respect of matters other than treaties, as a part of the general codification of the law of succession of States, is harmonized with the 1978 Vienna Convention. For that reason the new structure of the draft, which brings the draft articles closer to that Convention, is ground for satisfaction.

It seems necessary, however, for the Commission to elucidate yet more closely the relationship between the 1978 Vienna Convention and the draft articles on State debts arising from international treaties.

3. With regard to the form which the draft articles should take in the final stage, as in the case of the codification of the law of succession of States in respect of treaties, the most appropriate form would be an international convention.

4. With regard to the title of the draft articles, Czechoslovakia recalls in this regard its position in the Sixth Committee of the United Nations General Assembly, where it declared itself in favour of changing it so as better to express the content of the draft articles, namely, "Succession of States in respect of State property, State debts and State archives".[b]

5. As well as the title, article 1 should also be changed. Its scope seems too broad in view of the actual content of the draft articles, which regulate only questions of succession of States in respect of State property, State debts and State archives. At the same time, articles 4 and 15 should be deleted, since they will become superfluous after article 1 is changed.

There is, however, another aspect which the Commission should study more closely if it should decide to replace in article 1 the expression "in respect of matters other than treaties" by the expression "in respect of State property, State debts and State archives". In the Sixth Committee of the General Assembly, several delegations expressed the wish that the draft articles on succession of States in respect of matters other than treaties should be harmonized with the 1978 Vienna Convention. The purpose of this request is not merely to have an analogous structure in the external form. The sphere of application of the articles on succession of States in respect of matters other than treaties should also be parallel to the sphere of application of the 1978 Vienna Convention.

Article 1 of the above-mentioned Convention limits the scope of the Convention to treaties between States. In the case of article 1, in view of the conception of debts contained in article 16, where State debts are defined much more widely than merely as debts between States, the parallel with the 1978 Vienna Convention disappears.

6. The Commission's intention of unifying as far as possible the terminology used in the 1978 Vienna Convention is commendable. We can thus approve the conception of article 2. Article 2 should, however, be completed by the definition of the terms "State property", "State debts" and "State archives", which are at present scattered throughout the various parts of the draft and to which we shall revert subsequently.

Similarly, the meaning of the term "third State", as defined in article 2, subparabraph 1 (*f*), is not entirely clear, and we shall refer to this below in connection with article 18.

7. The inclusion of article 3 in the draft articles is motivated not only by the fact that similar provisions are incorporated in the 1978 Vienna Convention, but also by the fact that the consequences of territorial changes made in contradiction with international law relate essentially to the topic of State responsibility. Czechoslovakia therefore approves the Commission's idea of not including these questions in the present codification.

Harmony must, however, be established between the provisions of article 3 and the commentary to certain other article. In the commentary to article 19, the Commission mentions the case of the participation of the Third Reich in the general debt of the Czechoslovak State after 1939. Although it is stated that there was no question in that case of a succession of States occurring in accordance with international law, the commentary cites this case in support of the provisions of draft article 19. The Czechoslovak Government considers that there is a contradiction in the Commission's mode of procedure. Inasmuch as, according to article 3, the provisions of the draft articles apply only to cases of a succession of States occurring in conformity with international law, the mode of procedure of a State which violated international law cannot, in any event, serve as an argument in support of the proposed legal rules. Czechoslovakia considers that this passage should be deleted in the Commission's commentary to article 19.

8. We can support the approach adopted by the Commission for the settlement of individual cases of succession of States in Part II, section 2, Part III, section 2, and articles B to F. The distinction drawn between cases of the transfer of part of the territory of a State, the birth of a newly independent State, the uniting of States, the separation of part or parts of the territory of a State and the dissolution of a State is fully justified. The reasons for which the Commission, when proceeding to the classification of particular types of succession of States, does not follow the model of the 1978 Vienna Convention are convincing.

The thorough analysis of international practice made by the Commission in order to elucidate the principles valid for each of the types of succession of States should be appreciated. The importance accorded by the draft articles to agreements between the predecessor State and the successor State or successor States, as the case may be, is fully justified.

9. With regard to article 5, which defines the concept of "State property", attention should be given to the criterion adopted in the definition of that concept, namely, the internal law of the predecessor

[b] See *Official Records of the General Assembly, Thirty-fourth Session, Sixth Committee*, 48th meeting, para. 50; and *ibid., Sessional fascicle*, corrigendum.

State. Logical as this criterion may appear, the fact that the same property may, according to the internal law of the predecessor State, be regarded as property belonging to that State, while, according to the internal law of another State or according to international law, it may be regarded as property belonging to a State other than the predecessor State, requires that this question be studied again by the Commission. It is desirable that, at least to some extent, international law should also be brought into the solution of this question.

The same problems arise with regard to the application of the internal law of the predecessor State in accordance with article 9; this article is, moreover, somewhat superfluous, because it is self-evident—and this follows, moreover, from the provisions of article 5—that the provisions of Part II will apply only to the property of the predecessor State and therefore under no circumstances to the property of third States. It should also be stressed that, just as the succession of States does not affect the property of third States, neither does it concern the property of nationals other than those of the predecessor State or ownerless property. Such property is not affected thereby, whether it is situated in the territory of the predecessor State or elsewhere. From this point of view, the present provisions of article 9 raise more problems than they resolve.

10. With regard to article 6, the question arises whether the terms "extinction" and "arising" of rights adequately express the fact that the rights "pass" from the predecessor State to the successor State. The element of the continuity of the legal relationship, in spite of the change occurring in one of its subjects, is extremely important, particularly in view of the interests of third subjects and questions of transitional periods. It would therefore be appropriate if the Commission replaced these expressions by terms better corresponding to the idea of the continuity of the legal relationship.

11. In Part II, section 2, the Commission has rightly devoted particular attention to cases involving the birth of a newly independent State. The Government of Czechoslovakia favours a codification of the provisions of the succession of States relating to newly independent States in such a way that it would take account of the need to create conditions which would enhance their independent political and economic advancement and would be based on the consistent application of the principle of the permanent sovereignty of every people over its wealth and natural resources. It therefore notes with satisfaction that this principle has been clearly enunciated in article 11, paragraph 4, as being one of the principles to which any agreement between the predecessor State and the newly independent State relating to the succession of the newly independent State to State property must be subordinated.

12. In the case of article 11, subparagraph 1 (*c*) and article 13, subparagraph 1 (*c*), the Commission has employed two different criteria for the determination of the proportion of the movable property of the predecessor State, other than the movable property specified in the preceding subparagraphs of the two articles, which should pass to the successor State, although the situations in both cases are quite similar. It would therefore be advisable to harmonize the working of the two provisions; the wording of article 11, subparagraph 1 (*c*) would be preferable.

13. Article 16, which defines the meaning of State debt for purposes of the draft articles, presents a difficult problem. In view of the basic difference of view on the question of the meaning of State debt, the Commission should give further consideration to the question.

The scope of the current definition of State debt is much too broad. It exceeds the system of legal relationships regulated by general principles of international law.

The general international law can regulate the succession of States only in respect of State debts which represent obligations of the State under international law. The legal basis of such international obligations may rest on an international agreement or on customary international law. Regulation of the succession of States in respect of debts which obligate the State under domestic law does not form part of international law. General international law certainly does not regulate legal succession in respect of debts of the predecessor State to individuals who, at the time of succession, were nationals of the predecessor State, nor to debts of the predecessor State in respect of its own legal entities, because at the time of the succession of States, there was no international obligation of the predecessor State on the subject. Nor does general international law regulate the succession of the successor State in respect of debts of the predecessor State owing to national, respectively legal entities of the successor State, because such legal relationships are an internal matter falling within the purview of the sovereign power of the successor. In that connection, only a special agreement can impose obligations of an international character on the successor.

Likewise, State debts to individuals and legal entities of third States do not represent international financial obligations. Such State debts cannot therefore of themselves be the object of State succession under international law. The legal succession of States in respect of such debts is only possible if, on the date of the succession of States, there existed an international obligation of the predecessor State in respect of the third State concerning payment. Such cases, to the extent that they affect the problem of State responsibility, do not fall within the scope of the present draft articles.

14. Article 18 needs further elucidation by the Commission. Since it is hardly possible to consider all the rules contained in the draft articles as established norms of general international law, the question arises as to whether the agreements specified in article 18, paragraph 2, can be enforced against third States or international organizations—even when the effects of such agreements are consistent with other applicable rules of the present draft articles as stipulated in article 18, subparagraph 2 (*a*)—to the extent that they are not bound by a future convention concluded pursuant to the present draft articles. The definition of third State contained in article 2, subparagraph 1 (*f*), is inadequate because it is possible in that connection to distinguish between two categories of third States—States which will be third States in respect of the agreement between the predecessor State and the successor State, or between the successor States, but will be bound by a future convention on succession of States in respect of matters other than treaties, and those States which will be third States with respect both to the agreement between the predecessor State and the successor State, or between the successor States, and to the convention on the succession of States in respect of matters other than treaties.

In view of the provisions of article 34 of the Vienna Convention, the provisions of article 18, subparagraph 2 (*a*) can apply only in respect of matters pertaining to the first category of third States.

15. The Government of Czechoslovakia supports draft article 20, according to which no State debt of the predecessor State shall pass automatically to the newly independent State. It fully supports the provisions of article 20, paragraph 2, according to which the agreement between the successor and the predecessor State should not infringe the principle of the permanent sovereignty of every people over its wealth and natural resources, nor should its implementation endanger the fundamental economic equilibria of the newly independent State.

16. In articles 22 and 23, the Commission draws a distinction between the separation of part or parts of the territory of a State and the dissolution of a State.

In the first case—separation of part or parts of the territory of a State—the predecessor State as an entity will continue to exist after the succession; in the second case, it ceases to exist as an entity at the time of dissolution. According to draft articles 21 and 22, the consequences in respect of State debts in each of the two cases are the same. In the two cases, the Commission stipulates the rule that an equitable proportion of the State debt of the predecessor State shall pass to the successor State, unless the predecessor and the successor otherwise agree (art. 22), or to the successor States (art. 23). The proportion must take all relevant circumstances into account.

There is a difference between the two cases, if the problems in connection with articles 22 and 23 are approached from the point of view of the creditor. While, in the case of article 23, the only method open to the creditor is to claim his debt from the successors, it might be possible, in the case of secession, to contemplate a solution whereby the creditor could claim the total debt from the original debtor while compensation between the original debtor (namely, the predecessor State) and the successor would be subject to mutual agreement. The

creditor would receive an equitable proportion of the original debt directly from the successor only if the predecessor and the successor had reached agreement on the issue and the creditor had accepted such agreement. Such is the principle of cumulative subrogation as known in domestic legal systems. The Commission has nevertheless proposed a solution which would contemplate in such cases—as in cases of the dissolution of States—the automatic division of the debt and the passing of an equitable proportion thereof to the successor. The question of the amount of such equitable share could, in the absence of agreement, lead to litigation between the parties. In such a situation, the position of the creditor is made more difficult even in relation to the original debtor, because his claim against the latter has become a matter of litigation in respect of the amount.

The wording of article 22, paragraph 1, and article 23, moreover, is open to the interpretation that the predecessor State and the successor State can conclude an agreement which need not necessarily correspond to an equitable division of the debt. The question arises as to whether such an agreement should apply in respect of a creditor.

17. On the question of State archives, while such archives undoubtedly represent one of the categories of State property, they nevertheless constitute a sufficiently specific category for the draft articles to devote an autonomous chapter, or at least an autonomous part, to them. In some respects the rules applicable to the succession of States to State archives can be quite similar to those which apply in cases of the succession of States in respect of movable State property, although in other respects they may be different. The draft rules concerning State archives prepared by the Commission also go beyond the strict context of legal succession. The insertion into the text of the draft articles of the right of peoples to development and to information concerning their history and cultural heritage, places State archives in a different category from that of other material property which may be subject to succession.

The expression "documents of all kinds" employed in article A is too vague and requires more precise definition, if only because, in view of the diversity of rules contained in the draft articles and the addendum, it is necessary to draw a clear distinction between State archives and other categories of State property.

It will also be necessary during the second reading to draw a clearer distinction between two categories of documents which, together, constitute State archives in the broadest meaning of the term: namely, between documents of an administrative character—which are essential for the administration of the territory involved in the succession of States—and documents which are predominantly of cultural or historical value. In the case of the former category, it is possible to benefit substantially from modern reproduction techniques, which might influence the thrust of the pertinent rules, but such a possibility does not exist for the second category. So far as concerns documents of an administrative character, it will therefore be possible to extend to other articles the principle of the indivisibility of State archives which the Commission has stipulated in article F, paragraph 6.

5. German Democratic Republic

[Original: English]
[30 October 1980 and 12 March 1981]

1. The German Democratic Republic welcomes the draft articles on succession of States in respect of matters other than treaties as submitted by the International Law Commission in 1979, and believes the text to be a solid base for the second reading of the draft articles by the Commission.

The intentional reproduction of definitions, terms and denominations of the types of succession from the 1978 Vienna Convention is suited to preclude misunderstandings in the application and interpretation of basic notions.

2. In the present draft articles on succession of States in respect of matters other than treaties, the Commission has confined itself to regulating State property, State archives and State debts, and treated all three categories from international legal aspects as relatively independent matters. This approach is fundamentally important, since it respects, as in the case of succession of States in respect of treaties, the principle of sovereign equality of States and does not unduly encroach upon the domestic authority of States involved in succession. By the way, different definitions of the legal status of these matters in national jurisdictions set insurmountable limits to a universal regulation under international law. In this context, it is to be appreciated that the Commission defined State property only as a general category and did not try to regulate from an international legal aspect the status of State property, State archives and State debts as defined by domestic jurisdiction of local, provincial or communal entities.

Generally, the submitted draft represents a largely acceptable compromise, although a number of improvements and specifications will be required to be included in its second reading.

3. The German Democratic Republic supports what has been stated in Part I (arts.1-3) and welcomes the Commission's decision to seek, at the second reading, a more precise formulation of the field of application of article 1 and, hence, of the future convention's title. It would seem possible to make explicit reference to the matters which are the subject of the draft, i.e. State property, State archives and State debts.

4. The German Democratic Republic generally agrees to the definition of State property in Part II, section 1 (arts. 4-9) and to the rules to govern succession. It is particularly State property which constitutes a vital material base for establishing a State and ensuring its sovereignty. From this point of view it is to be welcomed that article 5 gives an all-embracing term to describe State property which is justifiable under international law. This allows a universal regulation which does not refer to the internal structures of individual countries' State property (for instance, the division of State property into public domain and private domain). Similarly important are the provisions that by a succession the predecessor State's titles to State property become extinct and the successor State acquires original rights thereto, and that State property shall pass to the successor State without indemnification or compensation. Finally, the German Democratic Republic supports the provision of article 9 that State succession shall in no way affect property owned by a third State.

With regard to the regulations to be applied to the various types of succession (arts. 10-14), it is to be welcomed that priority orientation is towards an agreement between the States concerned. Equally commendable is the differentiation between movable and immovable State property and the differentiated passing of such property.

5. The German Democratic Republic appreciated the comprehensive regulation concerning the passing of State archives in the case of State succession. The definition of State archives seems to be well considered so as to cover the large variety of archives, and is a fair compromise to permit equitable succession in respect of archives. In its respective provisions the draft takes account of the peculiar nature of State archives in so far as they are both an indispensable part of State property and a cultural asset. Because of that dual nature, State archives should form an independent Part III, to be inserted after article 14. This new Part III would then be followed by the regulations with regard to State debts, forming Part IV.

6. With regard to Part III, the German Democratic Republic feels urged to reaffirm the reservations which have been voiced by its representative in the Sixth Committee, particularly at the thirty-fourth session of the General Assembly, in regard to the definition of State debts in article 16.[c] Since succession to State debts is still a very controversial matter and the draft establishes, except for newly independent States, the obligation of succession—which would imply a progressive development of international law—the draft formula needs to be studied very thoroughly.

With that in view, it is to be welcomed that article 16 (*a*) confines itself to defining as State debts only financial obligations of States towards other subjects of international law.

On the other hand, it is highly objectionable that, despite the dissenting votes of several members, the majority of the Commission should, in article 16 (*b*), have abandoned its otherwise consistent orientation with regard to that question, and that it should have com-

[c] *Official Records of the General Assembly, Thirty-fourth Session, Sixth Committee*, 43rd meeting, para. 27, and *ibid., Sessional fascicle*, corrigendum.

pletely deviated from the provisional draft submitted in 1977. Article 16 (*b*) would result in an obligation for the successor State to continue without changes its predecessor's relations under private law towards foreign natural and juridical persons. The same would apply with all consequences also to its own citizens. Factually, article 16 (*b*) would obligate a new State to the domestic jurisdiction of its predecessor. This would constitute unacceptable interference in the successor State's sovereignty, and therefore is irreconcilable with the principles of sovereign equality of States and non-interference in other States' internal affairs. A successor State must have the inalienable right to establish its own constitutional and legal order, including the independent conduct of its relations under civil law with natural and juridical persons. When a State believes, for instance, that nationalizations or general expropriations affect the interests of its citizens with regard to their property in a way contrary to international law, this State may exercise protective rights on behalf of its citizens through diplomatic channels. This is the internationally accepted way of protecting the interests of citizens in foreign countries. It cannot be accepted, however, that an international convention would *a priori* obligate a new State to the unqualified continuation of its predecessor's relations under private law. Consequently, the German Democratic Republic holds that the matter to be regulated by the convention should, as a matter of principle, be confined to the debt relations of the predecessor State under international law, as is the case with regard to all other matters (treaties, State property, and State archives).

7. Another problem arises from the general obligation for the successor State (with certain exceptions in the case of a newly independent State) to succeed to the State debts of its predecessor, which is stipulated by article 17. Such a provision, though, can only be acceptable provided it is explicitly clarified that it applies only to State debts contracted in conformity with international law, so that debts contracted for a purpose not in conformity with international law would be excluded.

The German Democratic Republic deems it necessary to include in the convention a provision on non-transferable debts and, consequently, clearly to define the term or "odious debts".

It would be desirable, therefore, if in the second reading the Commission would again consider the pertinent proposals which were submitted by the Special Rapporteur in 1977.[d] Article C could provide a good platform for the definition of such debts as are excluded from obligatory succession on grounds of their being inconsistent with international law.

8. In conclusion, the German Democratic Republic wishes to touch upon the problem of apportioning the State debts of a predecessor State to several obligated successor States. The provision for passing an equitable proportion of State debts in consideration of all relevant circumstances as set out in articles 19, 22 and 23 seems to be broad enough so as to cover all possible situations. In the final analysis, any passing of equitable proportions of the State debts that are subject to succession will always have to take account of the historical and national circumstances of each individual event of succession. Equitable apportionment will have to pay regard both to the capabilities of the successor State and to the real gain which would result for the successor State from assuming the debts contracted by its predecessor.

State archives

9. The German Democratic Republic welcomes the draft articles worked out by the Commission on the succession to State archives. They contribute no doubt towards completing the whole draft text concerning the succession of States in other matters than treaties. The German Democratic Republic holds the view that the wording of the individual articles constitutes a good basis for the further consideration of the subject of succession to State archives.

10. In view of the distinct nature of State archives which, on the one hand, form part of State property in general and, on the other, may also be national cultural property, the German Democratic Republic deems it appropriate that the provisions on State archives be inserted as Part III, after article 14. This part should then be followed by the regulations concerning State debts as Part IV.

11. In connection with the final clarification of the placing of archives in the whole draft text, it should also be decided whether State archives should be mentioned in the title of the convention, as a separate category, in addition to State property and State debts.

12. As far as the definition of the term "State archives" is concerned (art. A), we would wish that the Commission, in the second reading of the draft text, pay more regard to the fact that State archives can be both administrative and historical archives.

Administrative archives mostly contain information which is essential for an effective use of the entire [State] property by the successor State, whereas historical archives are collections of sources of historical and cultural significance which are chiefly used for scholarly purposes.

It would add to the value of the present draft articles if this important differentiation were made *expressis verbis* in the definition of the term "archives". That would also make it possible to establish greater conceptual clarity in article B, paragraph 1; article C, paragraph 2; article E, paragraph 1; and article F, paragraph 1, with regard to archives passing to the successor State.

13. The principle contained in articles C, E and F that the passing of archives should be settled by means of an agreement between the predecessor and the successor States is acceptable. In the view of the German Democratic Republic, such an approach is in harmony with the basic principles of international law, particularly the principle of the sovereign equality of States.

14. Pursuant to article F, paragraph 6, the provisions concerning succession to archives in no way prejudge any question relating to the preservation of the unity of State archives.

The German Democratic Republic would deem it desirable that similar provisions should be included also in articles C and E. This would take account of a legitimate concern of archival science and would, at the same time, confirm the principle discernible in the long-standing practice of States that historical archives should be preserved.

6. Greece

[*Original: English*]
[*11 February 1981*]

The Greek Government considers as satisfactory on the whole the four articles contained in chapter II of the Commission's report on its thirty-second session [arts. C, D, E and F] and has, therefore, no specific observation to submit.

7. Israel

[*Original: English*]
[*19 December 1980*]

1. In general, attention is drawn to the statements made by the delegation of Israel in the Sixth Committee of the General Assembly as this work progressed on the different parts of the draft articles in question, presented from 1973 to 1980.[e] It is noted with satisfaction that some of those observations have been taken into account by the Commission in the draft articles submitted in 1979. Apart from those observations, for the most part on matters of detail, two aspects call for some repetition and re-emphasis here.

2. The first relates to the implication of the factor "time" for the topic under examination, and the proper formulation of all the draft articles and their commentaries to encompass that element. In its work on State succession and the law of treaties, the Commission did make some references to that factor, notably in its report on its twenty-

[d] See *Yearbook ... 1977*, vol. II (Part One), p. 70, document A/CN.4/301 and Add.1 para. 140, and *ibid., Sessional fascicle*,corrigendum.

[e] See *Official Records of the General Assembly, Thirty-second Session, Sixth Committee*, paras. 38-39, and *ibid., Sessional fascicle*, corrigendum; *ibid., Thirty-third Session*, 41st meeting, paras. 29-30, and *ibid., Sessional fascicle*, corrigendum; *ibid., Thirty-fourth Session*, 46th meeting, paras. 1-14, and *ibid., Sessional fascicle*, corrigendum; *ibid., Thirty-fifth Session*, 44th meeting paras. 5-9, and *ibid., Sessional fascicle*, corrigendum.

fourth session and its report on its twenty-sixth session.[f] However, it is not considered that those comments deal adequately with the issue posed by the factor "time". To put it in its simplest form, the question that has to be answered is: "To what instances of State succession is it envisaged the draft articles will apply?" Unless that question is given a satisfactory answer, there is the risk that the work of the Commission will not meet any practical needs of the international community today.

3. The second relates to the addendum on State archives contained in the Commission's report on its thirty-first and thirty-second sessions. The Commission is to be congratulated on this important pioneering work, and in that connection attention is again called to the statements of the representative of Israel on this aspect in the Sixth Committee in 1979 and 1980.[g]

4. In articles B, paragraph 6, E, paragraph 4, and F, paragraph 4, references are made to the right of peoples of newly independent States—of which Israel is one—to information about their history and to their cultural heritage. In our view this is a major theme, only now in process of examination and stabilization in modern international law, and the Commission is to be encouraged to continue with its refining of this new aspect of the law—which, let it be added, may not be limited only to "Succession of States in matters other than treaties", even if that is a convenient place for the initial studies. In this connection, it is noted that article 149 of the Draft Convention on the Law of the Sea (Informal Text) of the Third United Nations Conference on the Law of the Sea[h] refers to the preferential rights *inter alia* of the State of cultural origin or the State of historical and archaeological origin of certain artifacts; and during the resumption of the ninth session of that Conference, article 303 was added, further clarifying and extending the application of that notion. The approach of the Commission thus complements similar activities being conducted in other branches of the law.

5. In that connection, the delegation of Israel expressed the view that all peoples have the right to the restoration of objects of their cultural heritage of which they have been despoiled and which, being of a particular character, have little or no value whatsoever in the places in which they happen to be situated as a result of the vicissitudes through which they have passed. That statement was made with particular reference to certain documents of the Hebrew and other Jewish cultural heritage scattered around the world, which do not form part of the cultural heritage of the countries in which they happen to be found and which, for the most part, are irrelevant to the cultural heritage of those countries. The minimum obligation of those countries is to ensure adequate protection of this material, much of which is delicate and deteriorating physically, as well as free access to it on the part of students and scholars; but that is a minimum obligation, and the real duty of those countries is to facilitate the restoration of those materials to the newly independent State which is the "State of cultural origin or the State of historical and archaeological origin". This would seem to be an obvious contribution to the age of decolonization.

8. Italy

[Original: English]
[3 April 1981]

I.

1. The issue of the Succession of States is currently in a state of considerable flux, owing mainly to the notable evolution of international practice regarding instances of succession arising from decolonization. One evidence of this is the International Law Commission's draft articles, which deal with cases of succession resulting from decolonization separately, in *ad hoc* articles concerning newly independent countries.

2. Under the circumstances, it would appear difficult to define very general principles for such cases. It is possible that, once the decolonization process has been fully accomplished, practice may revert in part to the rules previously in force, so that excessively innovative general criteria would risk failing to serve the interests of the international community in the most useful way. On the other hand, it is important that any case of succession of States which may arise in the near future have access to normative schemes of reference.

3. With this in mind, the Italian Government favours the continuation and early conclusion of the Commission's work on the succession of States in the matter of State property, State debts and State archives. In regard to the question of which form the rules contained in the draft should most appropriately assume—treaty or other international instrument, model rules, etc.—Italy will reserve its opinion until after the Commission has finished its second reading of the draft.

4. It seems clear from what has just been stated, however, that it would not be useful to attribute too broad a scope to the articles proposed by the Commission—that is, a scope so general as to allow them to be applied to every aspect of succession in matters other than treaties. Topics such as the outcome of administrative concessions in the event of succession, or the nationality of individuals residing in the interested territory itself, require *ad hoc* rulings, and it would be inaccurate to extend, by analogy, to cases like these, the rules outlined by the Commission for other situations.

5. Since the Commission has decided to limit its work to the three items cited above—i.e. State property, State debts and State archives—(a decision supported by Italy), we believe it would be desirable for the title of the draft to bear reference to the specific matters treated in it; consequently, the text of article 1 should be amended accordingly. In fact, the Italian Government considers that the part of the draft on State archives should, because of its special nature, be distinct from the other two parts, and should constitute the object of an autonomous body of rules. This would require that the draft articles on State property be clarified to exclude archives from the general category of State property, for the purposes of the articles under discussion.

6. While duly acknowledging the problematic nature of the matter and the considerable controversy that continues to surround it, we cannot refrain from pointing out that on most points, the solutions proposed by the Commission are rather vague. For example, reference is made frequently to the concept of "equitable proportion" (arts. 14, 19, 22, 23). A solution of this kind may be inevitable, but if so, it becomes all the more important—as the Italian delegation has stated in its interventions in the Sixth Committee of the General Assembly—to provide the terms for an appropriate and effective mechanism for the settlement of disputes that might arise in the area of State debts, in particular. This would become essential, should the Commission recommend that such rules be incorporated into an international convention. A further general observation seems in order prior to a discussion of the merits of individual articles. While aware of the motives that may have induced the Commission to make a distinction between the case of *transfer* of part of the State's territory and that of *separation* of part of such territory followed by its union with another pre-existing State, the Italian Government is at pains to understand why the two cases—which are closely related, if not identical, conceptually—should be treated differently from one another (see art. 10 as compared to art. 13, para. 2; art. 19 as compared to art. 22, para. 1).

II.

Turning to the merit of the individual articles proposed by the Commission, the Italian Government wishes to limit its observations to certain questions of major importance.

7. On the subject of *State property*, the sense of article 11, paragraph 1, subparagraph (*a*), referring to the attribution of movable goods of a predecessor State to a successor State when the latter is a newly independent country, does not appear at all clear; specifically, the meaning of the expression "movable property, having belonged to the territory to which the succession of States relates" is inexact.

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[f] *Yearbook ... 1972*, vol. II, p. 228, document A/8710/Rev.1, para. 41; and *Yearbook ... 1974*, vol. II (Part One), pp. 169-170, document A/9610/Rev.1, para. 62.

[g] See *Official Records of the General Assembly, Thirty-fourth Session, Sixth Committee*, 46th meeting, para. 14, and *ibid., Sessional fascicle*, corrigendum; *ibid., Thirty-fifth Session, Sixth Committee*, 44th meeting, para. 6, and *ibid., Sessional fascicle*, corrigendum

[h] A/CONF.62/WP.10/Rev.3 and Corr.1 and 3.

8. In fact, it is not precise to speak of attribution of movable property to a territory; rather, such property should be referred to in terms of its attribution, on the basis of a given system of law, to this or that *subject*. Moreover, a movable property may have been attached to a territory at a given time for totally incidental reasons (as, for example, in the case of temporary location of a tangible property), while it may in fact have been created elsewhere, as in the case of a work of art. In relation to all this, and with particular regard to the fact that a movable property may have been legitimately acquired by the predecessor State following a legitimate purchase, and therefore would not necessarily have to be "returned", the Commission's draft ruling seems ambiguous and likely to generate serious interpretive difficulties. For this reasons, it would be advisable for the Commission to clarify this point in detail in an attempt to delineate all the possible cases that may emerge in reality, in order to adapt to such cases the rules to be drafted.

9. Again in article 11, the referent of the expression "contribution of the dependent territory", named as a criterion for partition in subparagraph 1 (*c*) is not at all clear to the Italian authorities. While in the English text this expression seems to refer, justly, to the contribution that the territory in question has made to the creation of the given property, its counterpart in the French text is structurally broader and vaguer.

10. With regard to article 14, which contemplates the possibility of the dissolution of a pre-existing State, the feasibility of the solution indicated in subparagraph 1 (*b*), raises problems for the case of property located outside the territory of the predecessor State. One may ask, indeed, what should determine in such a case the attribution of property to one successor State rather than another.

11. Concerning the articles on *State debts*, the basic question—on which opinion remains divided, even within the Commission—is to determine whether the draft should cover only debts among subjects of international law (debts between States or to international organizations) or also those owed to private, foreign subjects. The presence in the draft of subparagraph (*b*) of article 16 would suggest that the broadest possible approach was sought, but the logic of subsequent articles—especially articles 19 and 23—is that of inter-State relations.

12. In fact, the matter of succession of States also encompasses the question of the outcome of debts owed by the predecessor State to private foreign subjects, and it would be mistaken to claim that international laws do not already exist in this regard. The ample body of practice which has developed, especially since the First World War, shows the contrary.

13. However, the matter is highly controversial and does not lend itself readily to the formulation of a solution acceptable to the entire international community. Furthermore, the exploration of the subject in depth would run the risk of necessitating an extremely long and complex investigation, as well as the revision of several clauses of the draft articles.

14. For all these reasons, which are of political import, the Italian Government wishes to reiterate the opinion previously expressed by its delegation to the Sixth Committee of the General Assembly in 1977, i.e. that it would be wise to limit the draft articles under discussion to the topic of debts between subjects of international law.[i] But this should not be interpreted in any way as a negation of the international relevance of succession in the case of debts between States and private foreign subjects; to this end, we may stress the importance of article 18, paragraph 1, which, in the opinion of the Italian Government, should be clarified as a general safeguard clause. In conclusion, for these reasons, it proposes the deletion of subparagraph (*b*) of article 16, and the rewording of paragraph 1 of article 18 in order to transform it into a separate article.

15. A final observation on the topic of State debts concerns article 21, which deals with the unification of States. The value of paragraph 2 is highly doubtful, as that paragraph seems to refer to a question of purely domestic (internal) law.

16. Regarding the article on *State archives*, aside from the observation already made above, as well as any general comments contained herein which may apply to them, they do not seem to raise large-scale problems. Viewed as a whole, these articles, pending further clarification, seem to offer very balanced solutions; in fact, they appear more suited than the other articles to be adopted as an international convention whose utility is most evident.

17. The Italian Government wishes merely to emphasize two factors in this connection: the first is that considerable attention should be given to distinguishing the problems of archives in the traditional sense of the term (that is, collections of documents) from those of works of art. This distinction, clear enough in itself, may in certain actual cases become problematical as regards the kind of documentation that the history of a given civilization has produced.

18. The second is that, given the acceptance of the principle that justly favours the greatest possible dissemination of the information collected in archives (considerably enhanced by modern means of document reproduction), we should seek to avoid as much as possible the dismantling of collections of documents whose existence as a unit is very often an essential condition for their effective use by scholars. The motivating principle here should not be a pedantic quest to assign documents to a precisely-determined site, but rather the realization that historical documentation constitutes the common heritage of mankind. In respect of this principle, free access to such documentation should be promoted by all available means.

9. Sweden

[Original: English]
[9 February 1981]

1. As regards article D ("Uniting of States"), paragraph 1 provides that the State archives of the predecessor State shall pass to the successor State, whereas it appears from paragraph 2 that the internal law of the successor State shall determine whether the archives shall belong to the successor State or to its component parts. It is noted that article 12 of the draft articles is worded in a similar manner.

It is true that the commentary to these articles gives some guidance as to their interpretation. The text itself of the articles makes it difficult, however, to understand the relations between paragraph 1 and paragraph 2, which may even appear to be contradictory. It is therefore suggested that the Commission should give some further consideration to the best way of drafting article D and article 12.

2. Articles E and F deal with the separation of part or parts of the territory of a State and with the dissolution of a State. The draft articles distinguish between these cases of State succession and the case of a newly independent State, which is dealt with in article B. Nevertheless, articles E and F seem to be based on largely the same principles as article B. In particular, the provisions of paragraphs 2 and 6 of article B have been extended to the said other cases of State succession (by paras. 2 and 4 of art. E and paras. 2 and 4 of art. F). These provisions restrict the freedom of the predecessor State and the successor State or of two successor States to conclude agreements with regard to archives of the predecessor State. According to paragraph 2 of articles B, E and F, an agreement between them regarding the passing (in arts. B and E, also the reproduction) of archives which are of interest to the territory in question but do not pass to the successor State under paragraph 1 of the said articles should regulate the matter "in such a manner that each of those States can benefit as widely and equitably as possible from those parts of the State archives". Furthermore, paragraph 6 of article B and paragraphs 4 of articles E and F provide that agreements between the States concerned "shall not infringe the right of the peoples of those States to development, to information about their history and to their cultural heritage".

3. This means that the validity of an agreement concluded between the predecessor State and the successor State in the case dealt with in article E or between the successor States concerned in the case dealt with in article F in regard to State archives of the predecessor State would depend on whether it conforms to certain principles, which are all of a very general nature. To let such general principles take precedence over agreements concluded between independent States can hardly be justified and might lead to unnecessary disputes regarding the validity of the agreements concluded. In the case of a State

[i] See *Official Records of the General Assembly, Thirty-second Session, Sixth Committee*, 31st meeting, para. 9, and *ibid., Sessional fascicle*, corrigendum.

succession which is not the result of decolonization, the contracting parties must be presumed to be independent States whose agreements about State archives should be given full legal effect. It is therefore suggested that the words "in such a manner that each of those States can benefit as widely and equitably as possible from those parts of the State archives" in paragraphs 2 of articles E and F as well as the whole paragraphs 4 of those two articles should be deleted.

4. As regards the articles previously adopted by the Commission on the topic of succession of States in respect of matters other than treaties, we refer to the comments of the Swedish representative in the Sixth Committee of the General Assembly of the United Nations on 21 November 1979.[j]

10. Ukrainian Soviet Socialist Republic

[Original: Russian]
[8 April 1981]

1. The patterns of world development are causing the entire system of international law to become more complex. This is reflected in the increased volume of international legal norms as a whole, the expansion of their range and the growing complexity of their contents: in other words, in the improvement of traditional and the development of new means of regulation under international law. The International Law Commission took all this duly into account in preparing its draft articles on the succession of States in respect of matters other than treaties.

2. The draft articles on the succession of States in respect of State property, State debts and State archives prepared by the Commission appear to be an entirely satisfactory basis for the formulation of the corresponding international agreement. The adoption of such an international legal instrument would be a new stage in the codification of the right of succession of States, and would supplement the 1978 Vienna Convention.

3. However, the advisability of retaining several provisions in the draft articles is doubtful. For instance, the draft mentions "any other financial obligation chargeable to a State" (art. 16, paragraph (*b*)), as distinct from a State's obligations towards the subjects of international law mentioned in paragraph (*a*) of that article. Essentially, this goes beyond the group of problems covered by the draft, and paragraph (*b*) of article 16 should accordingly be deleted.

4. With regard to draft articles C, D, E and F on succession in respect of State archives, the Ukrainian SSR believes that they should be supplemented by provisions on succession in connection with the emergence of newly independent States upon the accession to independence of the peoples of colonial and dependent territories, especially since such cases are already mentioned in article 2, paragraph (*e*), of the draft.

11. Union of Soviet Socialist Republics

[Original: Russian]
[19 February 1981]

1. The draft articles prepared by the International Law Commission on succession of States in respect of matters other than treaties and, specifically, the articles relating to State archives, can as a whole be used as an acceptable basis for drafting the corresponding international legal instrument.

2. At the same time, in the particular case of succession of States it would seem appropriate that the draft articles should reflect succession in connection with the emergence of newly independent States as a result of the achievement of independence by the peoples of colonial and dependent territories. It would be still more appropriate to include such a provision in the section on State archives, in that such cases of succession are provided for in the articles which the Commission has already agreed upon, specifically in article 2, which contains definitions of the terms used.

[j] See *Official Records of the General Assembly, Thirty-fourth Session, Sixth Committee*, 43rd meeting, paras. 35-42; and *ibid., Sessional fascicle*, corrigendum. See also "Topical summary, prepared by the Secretariat, of the discussion on the report of the International Law Commission in the Sixth Committee during the thirty-fourth session of the General Assembly" (A/CN.4/L.311), paras. 15 *et seq.*