

Document:-
A/CN.4/L.328

Draft articles on succession of States in respect of State property, archives and debts. Texts proposed by the Drafting Committee: articles 1 to 3, 3 bis, 3 ter, 4 to 17, 17 bis, and 18 to 23 - reproduced in A/CN.4/SR.1692, paras. 50 et seq

Topic:
Succession of States in respect of matters other than treaties

Extract from the Yearbook of the International Law Commission:-
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45. Mr. DÍAZ GONZÁLEZ (Chairman of the Drafting Committee) said that no changes had been made in the titles of Part III or of Section 1 thereof, which remained identical to the corresponding titles appearing in the Vienna Convention, namely: "Part III. Observance, application and interpretation of treaties", and "Section 1. Observance of treaties".

The titles of Part III and of Part III, Section 1 were adopted.

ARTICLE 26¹⁵ (*Pacta sunt servanda*)

46. Mr. DÍAZ GONZÁLEZ (Chairman of the Drafting Committee) said that the Committee proposed no change to article 26, which read:

Article 26. Pacta sunt servanda

Every treaty in force is binding upon the parties to it and must be performed by them in good faith.

Article 26 was adopted.

Succession of States in respect of matters other than treaties (continued)* (A/CN.4/338 and Add.1-4, A/CN.4/345 and Add.1-3, A/CN.4/L.328)

[Item 2 of the agenda]

DRAFT ARTICLES PROPOSED BY THE DRAFTING COMMITTEE¹⁶

TITLE AND STRUCTURE OF THE DRAFT ARTICLES;
TITLES OF PARTS AND SECTIONS

47. Mr. DÍAZ GONZÁLEZ (Chairman of the Drafting Committee) said the Drafting Committee proposed that the title of the draft articles should read (A/CN.4/L.328):

*Draft articles on succession of States
in respect of State property, archives and debts*

The Committee had adopted the Special Rapporteur's proposal that the title of the draft should be made more specific by an express reference to the three matters with which it dealt.

48. For reasons of style, the word "State" appeared only once in the title, but it covered all three matters—property, archives and debts.

The title of the draft articles was adopted.

49. Mr. DÍAZ GONZÁLEZ (Chairman of the Drafting Committee) said that, in keeping with the wishes of the Commission, the articles on State archives formed a separate part, entitled "State

archives", which now became Part III of the draft, following the part relating to "State property". The original Part III therefore became Part IV of the draft and was entitled "State debts". Part I of the draft, adopted on first reading with the title "Introduction", had been entitled "General Provisions", and Section 1 of Parts II, III and IV had been entitled "Introduction", while Section 2 had been given the title "Provisions concerning specific categories of succession of States".

The structure of the draft articles and the titles of the Parts and sections were adopted.

ARTICLE 1¹⁷ (Scope of the present articles)

50. Mr. DÍAZ GONZÁLEZ (Chairman of the Drafting Committee) said that the Committee proposed the following text for article 1 (A/CN.4/L.328):

Article 1. Scope of the present articles

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

51. As a consequence of the change in the title of the draft, the expression "in respect of matters other than treaties", which appeared in the original text of the article, had been replaced by "in respect of State property, archives and debts".

Article 1 was adopted.

ARTICLE 2¹⁸ (Use of terms)

52. Mr. DÍAZ GONZÁLEZ (Chairman of the Drafting Committee) said that the Committee had made no change to article 2 as adopted on first reading.¹⁹

Article 2 was adopted.

ARTICLE 3²⁰ (Cases of succession of States covered by the present articles)

53. Mr. DÍAZ GONZÁLEZ (Chairman of the Drafting Committee) said that the Committee had made no change to article 3 as adopted on first reading.²¹

Article 3 was adopted.

ARTICLE 3 *bis* (Temporal application of the present articles)

54. Mr. DÍAZ GONZÁLEZ (Chairman of the Drafting Committee) said that the Committee pro-

* Resumed from the 1690th meeting.

¹⁵ *Idem*, 1673rd meeting, paras. 1-3.

¹⁶ For initial consideration of the draft articles at the current session, see 1658th to 1662nd, 1671st, 1672nd, 1675th and 1688th to 1690th meetings.

¹⁷ For initial consideration of the text at the current session, see 1658th meeting, paras. 5 *et seq.*, and 1659th meeting, paras. 1-24.

¹⁸ *Idem*, 1659th meeting, paras. 25-46.

¹⁹ For text, see 1659th meeting, para. 25.

²⁰ For initial consideration of the text at the current session, see 1659th meeting, paras. 47 *et seq.*, and 1660th meeting, paras. 1-15.

²¹ For text, see 1659th meeting, para. 47.

posed an article 3 *bis*, (A/CN.4/L.328), the text of which read:

Article 3 bis. Temporal application of the present articles

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

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

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

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

55. Article 3 *bis* was a new provision and reproduced, with the necessary adjustments, the text of article 7 of the 1978 Vienna Convention,²² which had been the subject of lengthy and delicate negotiations at the Conference responsible for drafting the Convention. The Drafting Committee had decided that the inclusion of such an article in the Commission's draft was necessary for reasons akin to those that had warranted the inclusion of article 7 in the 1978 Convention—reasons relating more particularly to the opportunity for a successor State of applying the draft articles to its own succession of States which occurred before their entry into force of the Convention.

Article 3 bis was adopted.

ARTICLE 3 *ter* (Succession in respect of other matters)

56. Mr. DÍAZ GONZÁLEZ (Chairman of the Drafting Committee) said that the Committee proposed an article 3 *ter* (A/CN.4/L.328), which read:

Article 3 ter. Succession in respect of other matters

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

57. Article 3 *ter* was new. The Drafting Committee had decided it was necessary to have such an article in view of the decision not to deal in the draft with the effects of succession of States in respect of all matters other than treaties and to confine the Commission's work to the three matters listed in the title of the draft. The wording of the proposed article followed that of article 14 of the 1978 Vienna Convention.

Article 3 ter was adopted.

ARTICLE 4²³ (Scope of the articles in the present Part)

58. Mr. DÍAZ GONZÁLEZ (Chairman of the Drafting Committee) said that the Committee had made no change to article 4 as adopted on first reading.²⁴

Article 4 was adopted.

ARTICLE 5²⁵ (State property)

59. Mr. DÍAZ GONZÁLEZ (Chairman of the Drafting Committee) said that the Committee had made no change to article 5 as adopted on first reading.²⁶

Article 5 was adopted.

ARTICLE 6²⁷ (Effects of the passing of State property)

60. Mr. DÍAZ GONZÁLEZ (Chairman of the Drafting Committee) said that the Committee proposed the following text for article 6 (A/CN.4/L.328).

Article 6. Effects of the passing of State property

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

61. The Drafting Committee had decided to amend the original title of the article ("Rights of the successor State to State property passing to it"), since it did not properly reflect the content of the article. Also, the new title was more in keeping with that of article 9.

Article 6 was adopted.

²³ For initial consideration of the text by the Commission at the current session, see 1660th meeting, paras. 17–63.

²⁴ For text, see 1660th meeting, para. 17.

²⁵ For initial consideration of the text by the Commission at the current session, see 1660th meeting, paras. 17–63.

²⁶ For text, see 1660th meeting, para. 17.

²⁷ For initial consideration of the text by the Commission at the current session, see 1660th meeting, paras. 64–69.

²² See 1658th meeting, footnote 2.

ARTICLE 7²⁸ (Date of the passing of State property)

62. Mr. DÍAZ GONZÁLEZ (Chairman of the Drafting Committee) said that the Committee had made no change to Article 7 as adopted on first reading.²⁹

Article 7 was adopted.

ARTICLE 8³⁰ (Passing of State property without compensation)

63. Mr. DÍAZ GONZÁLEZ (Chairman of the Drafting Committee) said that the Committee had made no change to article 8 as adopted on first reading.³¹

Article 8 was adopted.

ARTICLE 9³² (Absence of effect of a succession of States on the property of a third State)

64. Mr. DÍAZ GONZÁLEZ (Chairman of the Drafting Committee) said that the Committee proposed the following text for article 9 (A/CN.4/L.328):

Article 9. Absence of effect of a succession of States on the property of a third State

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

65. The Drafting Committee had amended the title of article 9 in the English version by replacing the expression "third party State property" by "the property of a third State", so as to bring it into line with the French and Spanish versions, which were clearer.

66. Mr. ALDRICH said that, in view of the fact that the Commission had already adopted article 5, which defined State property as property which, at the date of the succession of States, was, according to the internal law of the predecessor State, owned by that State, there seemed to be little point in including article 9 in the draft. The only possible effect of the article was to suggest that the property, rights and interests of individuals might be prejudiced in some way. The article was unfortunate and should be deleted.

67. Mr. USHAKOV, supported by Mr. BEDJAOU (Special Rapporteur), said that article 9 did not have any direct connection as to succession of States as such. It was mainly concerned with protection of property which, under the internal law of the predecessor State, belonged to a third State. It would

²⁸ *Idem*, paras. 70–76.

²⁹ For text, see 1660th meeting, para. 70.

³⁰ For initial consideration of the text by the Commission at the current session, see 1660th meeting, paras. 77–78.

³¹ For text, see 1660th meeting, para. 77.

³² For initial consideration of the text by the Commission at the current session, see 1661st meeting, paras. 1–47.

apply, for instance, to consulate and embassy buildings which required protection in the event of State succession so as to safeguard the interests of third States.

Article 9 was adopted.

ARTICLE 10³³ (Transfer of part of the territory of a State)

68. Mr. DÍAZ GONZÁLEZ (Chairman of the Drafting Committee) said that the Committee proposed the following text for article 10 (A/CN.4/L.328):

Article 10. Transfer of part of the territory of a State

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

2. In the absence of an agreement:

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

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

69. For the sake of simplification, the Drafting Committee had replaced the words "between the predecessor and successor States", at the end of paragraph 1 as adopted on first reading, by "between them".

70. Mr. REUTER proposed that the opening words of paragraph 2, reading "In the absence of an agreement", should be replaced by "In the absence of such an agreement", so as to leave no doubt that the agreement referred to related to the property and not to the transfer.

Article 10, as amended, was adopted.

ARTICLE 11³⁴ (Newly independent State)

71. Mr. DÍAZ GONZÁLEZ (Chairman of the Drafting Committee) said that the Committee proposed the following text for article 11 (A/CN.4/L.328):

Article 11. Newly independent State

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

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

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

³³ *Idem*, paras. 48–58.

³⁴ *Idem*, paras. 59–94.

(c) immovable State property of the predecessor State other than that mentioned in subparagraph (b) and situated outside the territory to which the succession of States relates, to the creation of which the dependent territory has contributed, shall pass to the successor State in proportion to the contribution of the dependent territory;

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

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

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

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

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

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

72. The text of the article, the title of which had not been changed, was broadly the same as that adopted on first reading. To make it more comprehensive, certain additions had been made to paragraph 1. Also, the order of the subparagraphs to paragraph 1 had been rearranged to achieve a more consistent presentation. In the original version of paragraph 1, subparagraphs (a), (b) and (c) had dealt with three cases of the passing of movable State property, and subparagraph (d) with one case of the passing of immovable State property. The Drafting Committee had decided that there was no convincing reason why the two situations provided for under subparagraphs (a) and (c) of the earlier draft should not also be provided for in the case of the passing of immovable property. Accordingly, the text which it was proposing contained two new subparagraphs, (b) and (c). Subparagraph (a) of the new text therefore corresponded to subparagraph (d) of the original text: subparagraphs (b) and (c) were new, but were based on subparagraphs (a) and (c) of the earlier text, and subparagraphs (d), (e) and (f) of the new text corresponded to subparagraphs (b), (a) and (c) of the original text.

73. In addition, the Drafting Committee had decided, for the sake of consistency, to replace the term “newly independent State”, in new subparagraph (e), by “successor State”, which was used throughout the rest of the article.

74. New subparagraphs (b) and (c), which concerned immovable property, made express reference to property that was situated outside the territory to which the succession of States related. That reference, which was not necessary in the case of movable property, was essential in the case of immovable property because of the terms of subparagraph (a).

75. Lastly, to bring the French version of subparagraphs (c) and (f) of paragraph 1 of the new text into line with the English, the expression “*dans la proportion correspondant a sa part contributive*” had been replaced by “*en proportion de la contribution du territoire dépendant*”.

Article 11 was adopted.

ARTICLE 12³⁵ (Uniting of States)

76. Mr. DÍAZ GONZÁLEZ (Chairman of the Drafting Committee) said that the Committee proposed the following text for article 12 (A/CN.4/L.328):

Article 12. Uniting of States

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

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

Article 12 was adopted.

ARTICLE 13³⁶ (Separation of part or parts of the territory of a State)

77. Mr. DÍAZ GONZÁLEZ (Chairman of the Drafting Committee) said that the only change made to the article was in paragraph 3, where, for the sake of accuracy and clarity, the words “as between the predecessor State and the successor State” had been added after the words “equitable compensation”. The proposed text of the article (A/CN.4/L.328) therefore read:

Article 13. Separation of part or parts of the territory of a State

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

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

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

³⁵ *Idem*, paras. 95–98.

³⁶ For initial consideration of the text by the Commission at the current session, see 1662nd meeting.

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

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

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

78. Mr. USHAKOV, noting that the phrase "shall pass to the successor State in the territory of which it is situated" appeared in both article 14, subparagraph 1 (a) and article 13, subparagraph 1 (a), said that its inclusion in the latter provision was unwarranted. Article 14 dealt with the formation of at least two States, whereas article 13 was concerned with the formation of a single State. In article 13, therefore the phrase should be replaced by "situated in the territory to which the succession of States relates shall pass to the successor State", which was the wording used in article 11, subparagraph 1 (a).

79. He further noted that article 34 of the 1978 Vienna Convention was entitled "Succession of States in cases of separation of parts of a State". He therefore wondered whether the words "parts of the territory of a State" in the title of article 13 should not be replaced by "parts of a State".

80. Mr. REUTER said that he agreed with Mr. Ushakov's first comment, but would point out that article 13 could be interpreted as providing for the case in which several parts of the territory of a State separated from one another to form several States.

81. Mr. BEDJAOU (Special Rapporteur) said that, as he understood it, article 13 covered the particular case of the formation of a single State. Hence, Mr. Ushakov's suggestion seemed acceptable.

82. So far as the title was concerned, he would prefer it to remain unchanged, for the term "parts of a State" was obscure.

Article 13, as amended, was adopted.

ARTICLE 14³⁷ (Dissolution of a State)

83. Mr. DÍAZ GONZÁLEZ (Chairman of the Drafting Committee) said that article 14 as proposed by the Drafting Committee (A/CN.4/L.328) read:

Article 14. Dissolution of a State

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

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

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

³⁷ *Idem.*

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

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

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

84. The wording of the article, the title of which had not been modified, was broadly the same. After mature reflection, the Drafting Committee had decided, in regard to paragraph 1 (b), to replace the words "to one of the successor States, the other successor States being equitably compensated" by "to the successor States in equitable proportions". As a consequential change, the expression "in an equitable proportion", in paragraph 1 (d), had been replaced by "in equitable proportions". Lastly, for the same reasons of accuracy and clarity that had warranted the change in article 13, paragraph 3, the Drafting Committee had added the words "among the successor States" in article 14, paragraph 2, after the words "equitable compensation".

Article 14 was adopted.

ARTICLE 15³⁸ (Scope of the articles in the present Part)

85. Mr. DÍAZ GONZÁLEZ (Chairman of the Drafting Committee) said that the Committee had made no change to article 15.³⁹

Article 15 was adopted.

ARTICLE 16⁴⁰ (State debt)

86. Mr. DÍAZ GONZÁLEZ (Chairman of the Drafting Committee) said that the Committee proposed the following text for article 16 (A/CN.4/L.328):

Article 16. State debt

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

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

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

87. Although the Committee had made no change to the title, the introductory phrase or subparagraph (a), it had, like the Commission, been unable to reach agreement on whether subparagraph (b) should be retained or deleted. It had therefore decided to refer the

³⁸ *Idem.* 1671st meeting, and 1672nd meeting, paras. 1-35.

³⁹ For text, see 1671st meeting, para. 1.

⁴⁰ For initial consideration of the text at the current session, see 1671st meeting and 1672nd meeting, paras. 1-35.

matter to the Commission, and subparagraph (b) had been placed in square brackets for that reason.

88. Mr. REUTER suggested that subparagraph (b) should be retained, but that the words "under international law" should be added at the end of the subparagraph.

89. Mr. ALDRICH said that, in the Commission and in the Drafting Committee, he had always resisted attempts to obscure the meaning of subparagraph (b), a provision that clearly raised the question whether, under international law, a succession of States involved succession to debts owed to private banks and private individuals. He did not understand the meaning of Mr. Reuter's suggestion, which was unacceptable because it simply confused the issue under discussion. In his view, subparagraph (b) should be retained, because it would be unfair for the Sixth Committee and any international conference that might discuss the draft articles for the purposes of adopting a convention not to have before them texts on which the Commission had not been able to agree.

90. Mr. NJENGA said it was his understanding that the commentary to article 16 would indicate, in a fair amount of detail, the reasons for the Commission's decision concerning subparagraph (b).

At the request of Mr. Ushakov, a vote was taken by roll-call on the retention of article 16, subparagraph (b).

Mr. Aldrich, having been drawn by lot by the Chairman, was called upon to vote first.

In favour: Mr. Aldrich, Mr. Calle y Calle, Mr. Francis, Mr. Quentin-Baxter, Mr. Reuter, Mr. Riphagen, Mr. Šahović, Mr. Verosta.

Against: Mr. Barboza, Mr. Bedjaoui, Mr. Díaz González, Mr. Njenga, Mr. Tabibi, Mr. Thiam, Mr. Ushakov, Mr. Yankov.

There were 8 votes in favour and 8 votes against.

Article 16, subparagraph (b), was not adopted.

The title, introductory phrase and subparagraph (a) of article 16 were adopted.

91. Mr. REUTER, speaking in explanation of vote, said that he had voted in favour of retention of subparagraph (b) because the question at issue was one of general international law and, from the point of view of general international law, it could not be said that no financial obligation was chargeable to a State by reason of debts owed to private persons.

92. Mr. CALLE Y CALLE said that he had voted in favour of retention of subparagraph (b) because the concept covered by that provision had been approved in the past, and general international law provided for the fulfilment of obligations, including the financial obligations owed by States to creditors other than States or international organizations.

93. Mr. RIPHAGEN said that he had voted in favour of retention of subparagraph (b) for the same reasons as Mr. Reuter.

94. Mr. FRANCIS said that he had voted in favour of retention of subparagraph (b) for the reasons he had explained during the Commission's discussions of article 16. Since the Commission's vote had resulted in a tie, he would have thought that subparagraph (b), without being adopted, would at least have been retained in square brackets.

95. Mr. BARBOZA said that he had voted against retention of subparagraph (b) because he was of the opinion that the kind of debts referred to in that provision came within the scope of the internal law of States and could not be said to be covered by international law.

96. Mr. USHAKOV said that he had voted against retention of subparagraph (b) because the only kind of rule that could be laid down in international law were the kind that concerned relations between subjects of international law. The law applicable to private debts was contract law.

97. Mr. ŠAHOVIĆ said that he had voted in favour of retention of subparagraph (b) for the reasons of principle he had explained during the Commission's discussions of article 16, and because he considered that inclusion of that subparagraph would strengthen the draft and ensure its unanimous adoption.

98. Mr. DÍAZ GONZÁLEZ said that he had voted against retention of subparagraph (b) for the same reasons as Mr. Barboza. He might, however, have voted in favour of its retention if it had been worded differently.

99. Speaking as the Chairman of the Drafting Committee and referring to the point raised by Mr. Francis, he explained that subparagraph (b) had been placed in square brackets only to indicate that the Drafting Committee had not been able to agree on it and that the Commission should decide on the matter.

100. Mr. VEROSTA said that he had voted in favour of retention of subparagraph (b) for the same reasons as Mr. Reuter.

101. Mr. YANKOV said that he had voted against retention of subparagraph (b) not because the kind of obligation in question should not benefit from the protection of the law, but because it did not come within the scope of the draft as he understood it.

102. Mr. NJENGA said that he too had voted against retention of subparagraph (b) because the provision related to subjects other than subjects of international law. The debts referred to in the subparagraph were, of course, payable, but they simply were not governed by international law.

103. Mr. ALDRICH said that he could not accept the arguments put forward by the members of the Commission who had opposed retention of subparagraph (b) on the grounds that debts owed to private

individuals fell outside the scope of the draft articles. Those arguments were inconsistent because, when reference was made to State property, it was also understood to include debts owed to the State by private persons. He simply could not understand how debts owed to the State by private persons could be said to be subject to State succession, while debts owed to private persons by the State were excluded from State succession.

104. Mr. QUENTIN-BAXTER said that he had voted in favour of retention of subparagraph (b) because he thought that, if the draft articles were to have any chance of success, subparagraph (b) had to be included in article 16. He would have voted in favour of retention of the provision even if he had not agreed with its substance, because he believed it was the Commission's duty to place questions of that kind before the General Assembly and any diplomatic conference that might consider the draft articles. Indeed, he was of the opinion that the Commission had mistaken its role when it had voted on a matter of that kind, something shown by the fact that the vote had resulted in a tie.

ARTICLE 17⁴¹ (Effects of the passing of State debts)

105. Mr. DÍAZ GONZÁLEZ (Chairman of the Drafting Committee) said that the Committee proposed the following text for article 17 (A/CN.4/L.328):

Article 17. Effects of the passing of State debts

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

106. The title of article 17 had been brought into line with that of the corresponding article of Part II, namely, article 6, for the same reasons as had led to the change in the title of that article.

Article 17 was adopted.

ARTICLE 17 bis⁴² (Date of the passing of State debts)

107. Mr. DÍAZ GONZÁLEZ (Chairman of the Drafting Committee) said that the Committee proposed the following title and text for article 17 bis (A/CN.4/L.328):

Article 17 bis. Date of the passing of State debts

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

108. In the light of the Commission's discussions, the Drafting Committee had adopted the proposal made

by the Special Rapporteur in his thirteenth report for the inclusion of a new article 17 bis (A/CN.4/345 and Add.1-3, para. 164), the title and text of which corresponded to those of article 7.

Article 17 bis was adopted.

ARTICLE 18⁴³ (Effects of the passing of State debts with regard to creditors)

109. Mr. DÍAZ GONZÁLEZ (Chairman of the Drafting Committee) said that the Committee proposed the following text for article 18 (A/CN.4/L.328):

Article 18. Effects of the passing of State debts with regard to creditors

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

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

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

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

110. The Drafting Committee had made no change to the title of article 18 or to paragraph 1. In order to bring the wording of the end of paragraph 2 and of subparagraph (b) into line with that of article 16, it had added the words "or any other subject of international law" and the words "or other subject of international law". Moreover, in paragraph 2 (a), the word "provisions" had been substituted for the words "the other applicable rules of the articles" in order to avoid problems of interpretation. In the French and Spanish versions of paragraph 2, the words "*le cas échéant*" and the words "*en su caso*" had been replaced by "*selon le cas*" and "*según el caso*", respectively.

Article 18 was adopted.

ARTICLE 19⁴⁴ (Transfer of part of the territory of a State)

111. Mr. DÍAZ GONZÁLEZ (Chairman of the Drafting Committee) pointed out that the Committee had made a change in article 19, paragraph 1, similar to that made in article 10, which was the corresponding article in Part II; the words "between the predecessor and successor States" had been replaced by "between them". The text of article 19 proposed by the Drafting Committee (A/CN.4/L.328) therefore read:

⁴¹ *Idem*, 1672nd meeting, paras. 36-60.

⁴² *Idem*.

⁴³ *Idem*, paras. 36 *et seq.*, and 1675th meeting, paras. 33-48.

⁴⁴ *Idem*, 1672nd meeting, paras. 36 *et seq.*, and 1675th meeting, paras. 33 *et seq.*

Article 19. Transfer of part of the territory of a State

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

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

Article 19 was adopted.

ARTICLE 20⁴⁵ (Newly independent State)

112. Mr. DÍAZ GONZÁLEZ (Chairman of the Drafting Committee) said that the Committee had simply brought the English and Spanish versions of paragraph 2 into line with the French version of that paragraph and of paragraph 4 of article 11, which was the corresponding article in Part II. The proposed text (A/CN.4/L.328) read:

Article 20. Newly independent State

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

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

Article 20 was adopted.

ARTICLE 21⁴⁶ (Uniting of States)

113. Mr. DÍAZ GONZÁLEZ (Chairman of the Drafting Committee) said that, in the light of the Commission's wishes, the Committee had decided to delete paragraph 2, and the article therefore read (A/CN.4/L.328):

Article 21. Uniting of States

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

Article 21 was adopted.

ARTICLE 22⁴⁷ (Separation of part or parts of the territory of a State)

114. Mr. DÍAZ GONZÁLEZ (Chairman of the Drafting Committee) said that the Committee had made no change to the article as adopted on first reading.⁴⁸

Article 22 was adopted.

ARTICLE 23⁴⁹ (Dissolution of a State)

115. Mr. DÍAZ GONZÁLEZ (Chairman of the Drafting Committee) said that, for the same reasons as in the case of article 14, which was the corresponding article in Part II, the words "an equitable proportion of the State debt of the predecessor State shall pass to each successor State" had been replaced by "the State debt of the predecessor State shall pass to the successor States in equitable proportions". The text of article 23 as proposed by the Drafting Committee (A/CN.4/L.328) therefore read:

Article 23. Dissolution of a State

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

Article 23 was adopted.

The meeting rose at 1.10 p.m.

⁴⁸ For text, see 1688th meeting, para. 3.

⁴⁹ For initial consideration of the text by the Commission at the current session, see 1688th meeting, paras. 3–32.

1693rd MEETING

Friday, 17 July 1981, at 10.30 a.m.

Chairman: Mr. Doudou THIAM

Present: Mr. Aldrich, Mr. Barboza, Mr. Bedjaoui, Mr. Calle y Calle, Mr. Dadzie, Mr. Francis, Mr. Njenga, Mr. Quentin-Baxter, Mr. Reuter, Mr. Riphagen, Mr. Šahović, Mr. Tabibi, Mr. Ushakov, Sir Francis Vallat, Mr. Verosta, Mr. Yankov.

Status of the diplomatic courier and the diplomatic bag not accompanied by diplomatic courier (*continued*)*
(A/CN.4/347 and Add.1 and 2)

[Item 8 of the agenda]

DRAFT ARTICLES SUBMITTED BY THE
SPECIAL RAPPORTEUR (*continued*)

ARTICLE I (Scope of the present articles),

* Resumed from the 1691st meeting.

⁴⁵ *Idem*, 1688th meeting, paras. 3–32.

⁴⁶ *Idem*.

⁴⁷ *Idem*.