EXHIBIT B

A/CONF.117/16 (Vol. I)

UNITED NATIONS CONFERENCE ON SUCCESSION OF STATES IN RESPECT OF STATE PROPERTY, ARCHIVES AND DEBTS

Vienna, 1 March–8 April 1983

OFFICIAL RECORDS

Volume I

Summary records of the plenary meetings and of the meetings of the Committee of the Whole

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SUMMARY RECORDS OF THE PLENARY MEETINGS

1st TO 10th MEETINGS

2. If there was no objection, he would take it that the Conference approved the General Committee's recommendation.

It was so decided.

The meeting rose at 10.15 a.m.

6th plenary meeting

Tuesday, 5 April 1983, at 3.15 p.m.

President: Mr. SEIDL-HOHENFELDERN (Austria)

Consideration of the question of succession of States in respect of State property, archives and debts, in accordance with General Assembly resolutions 36/113 of 10 December 1981 and 37/11 of 15 November 1982
[Agenda item 11]

REPORTS OF THE DRAFTING COMMITTEE
(A/CONF.117/10 and Add.1-3)

REPORT OF THE COMMITTEE OF THE WHOLE
(A/CONF.117/11 and Add.1-12)

1. The PRESIDENT drew attention to the strict timetable which the Conference would have to follow if it was to conclude its work successfully on time. Accordingly he urged delegations to exercise self-restraint as regards the length and number of their statements.

2. He recalled that the Committee of the Whole, at its 12th meeting on 9 March 1983, had agreed, following the usual practice of codification conferences, to entrust to the Drafting Committee the task of preparing a draft preamble and draft final clauses and that such drafts should be reported directly to the Conference at a plenary meeting. In addition, the Committee of the Whole, at its 39th meeting held on 29 March 1983, had agreed that the Drafting Committee should submit directly to the Conference its reports on the articles referred to it by the Committee of the Whole, with the exception of three articles which had been the subject of specific requests addressed to the Drafting Committee requiring consideration by the Committee of the Whole. That procedure was in conformity with paragraph 2 of rule 47 of the rules of procedure which provided that the Drafting Committee should "report as appropriate either to the Conference or to the Committee of the Whole".

3. Thus, in the first report of the Drafting Committee (A/CONF.117/10), articles A to E constituted the final clauses adopted by the Drafting Committee and submitted to the plenary Conference in accordance with the usual practice and pursuant to the decision taken by the Committee of the Whole on 9 March. In addition, the report contained the titles and texts of articles 1 to 12, 12 *bis*, 13, 14, 16 to 22, 24, 24 *bis*, 25, 26 and 28 to 39 as adopted by the Drafting Committee and referred directly to the plenary pursuant to the above-mentioned decision of the Committee of the Whole,

4. As to the procedure to be followed, it was his intention to give the floor to the Rapporteur of the Committee of the Whole to introduce that Committee's report and then to the Chairman of the Drafting Committee to introduce the first report of the Drafting Committee. He would then submit each article to the Conference, in numerical order, for its decision. The articles retained their numbering for the moment, to facilitate their identification at the plenary stage, but it went without saying that such articles as article 12 *bis* and 24 *bis* would be numbered in the correct order in the final text of the convention, and other articles would be renumbered accordingly. The titles of the various Parts and sections of the convention, as well as the title of the convention, would not be submitted for decision until after all the articles and the preamble had been adopted.

5. The majorities required for decisions of the Conference were specified in rule 34 of the rules of procedure. Decisions of the Conference on all matters of substance would be taken by a two-thirds majority of the representatives present and voting; decisions of the Conference on matters of procedure would be taken by a majority of the representatives present and voting; and, if the question should arise as to whether a matter was one of procedure or one of substance, the President of the Conference would rule on the question. An appeal against such a ruling would be put to the vote immediately and the President's ruling would stand unless overruled by a majority of the representatives present and voting.

6. He invited the Rapporteur of the Committee of the Whole to introduce the report of that Committee.

7. Mrs. THAKORE (India), Rapporteur of the Committee of the Whole, said that the Committee's report (A/CONF.117/11 and Add.1-12) followed closely the pattern of the reports of previous codification conferences; it was a comprehensive document, containing a record of the discussions on the basic proposal, namely, the draft articles on succession of States in respect of State property, archives and debts adopted by the International Law Commission at its 33rd session (A/CONF.117/4).[1] The report reproduced the texts of all the amendments submitted to the draft articles and the Committee's final decisions thereon. The report showed that the Committee of the Whole had discussed the draft mainly article by article, in the numerical order of the articles and the related amendments. As a result of the Committee's decision to take up Part I (General provisions), namely articles 1 to 6,

[1] See sect. B of vol. II.

at the concluding stage of its work, the proceedings relating to those six articles were to be found at the end of chapter II (A/CONF.117/11/Add.10). For the rest, the report dealt with the articles in the order of numbering.

8. In accordance with the decision taken by the Committee of the Whole at its 39th meeting, the Drafting Committee would submit directly to the plenary its report on the articles referred to it, in conformity with rule 47 of the rules of procedure, with the exception of articles 15, 23 and 27, on which the Drafting Committee had already submitted its recommendations on specific drafting points; those recommendations had been approved by the Committee of the Whole at its 42nd meeting. The Drafting Committee would also submit to the plenary its report on the drafts of the preamble and the final clauses, the preparation of which had been entrusted to it by the Committee of the Whole at its 12th meeting on 9 March 1983. A checklist of the documents submitted to the Committee of the Whole would be included in the final version of the report, which would be reproduced in the printed official records of the Conference. She added that the report was to be read in conjunction with the corresponding summary records of the Committee of the Whole.

9. The PRESIDENT invited the Chairman of the Drafting Committee to introduce the report of that Committee.

10. Mr. SUCHARITKUL (Thailand), Chairman of the Drafting Committee, said that the first report of the Drafting Committee (A/CONF.117/10) contained the titles and texts adopted by that Committee for articles 1 to 12, 12 *bis*, 13, 14, 16 to 22, 24, 24 *bis*, 25, 26 and 28 to 39. In view of the specific request addressed to it by the Committee of the Whole with regard to articles 15, 23 and 27, the titles and texts adopted by the Drafting Committee for those three articles had been submitted to the Committee of the Whole and, as adopted by that Committee, were before the plenary (A/CONF.117/10/Add.1).

11. Document A/CONF.117/10 also contained the titles of the Parts of the draft and the sections thereof, as well as the title of the convention, as adopted by the Drafting Committee. In addition, it included the titles and texts adopted by the Drafting Committee for articles A to E (Final provisions), on which the Committee had been requested to report direct to the plenary by a decision of the Committee of the Whole taken at its 12th meeting.

12. Commenting on a question to which the Drafting Committee had paid particular attention and the resolution of which had implied consequential changes throughout the draft, he referred to the statement he had made at the 26th meeting of the Committee of the Whole, when he had drawn attention to the problem that had arisen during the Drafting Committee's consideration of article 13 concerning the relationship between the expression "State property of the predecessor State" and the definition of "State property" found in article 8; analogous questions had arisen in connection with other articles, particularly article 19 and article 31. Pursuant to the authorization given by the Committee of the Whole to the Drafting Committee to deal with those problems, the members of the Drafting Committee had found it possible to agree on a solution which consisted of making a change, strictly of a drafting nature, in both articles 8 and 19, so as to make more explicit the generally agreed meaning attributed to the definitions contained therein. That had been achieved by adding the words "of the predecessor State" after the expressions "State property" in article 8 and "State archives" in article 19, words which had already been used to qualify those two expressions in several other articles in each of Parts II and III. Such drafting precision had been generally found appropriate for articles 8 and 19 in view of the reference in both articles to the internal law of the predecessor State, a reference which did not however appear in article 31 concerning the definition of "State debt". In the event, the Drafting Committee had agreed that the general understanding of the meaning of the provision of article 31 could properly be made more explicit by simply adding the word "predecessor" between the indefinite article "a" and the noun "State" in the phrase "financial obligation of a State". In consequence of the drafting changes in those definitional articles, the words "of the predecessor State", already embodied in several articles, had been added to the text of individual articles throughout the draft, as and where appropriate, so as to ensure the harmonization of the corresponding provisions in the draft as a whole.

13. The PRESIDENT invited the Conference to consider the texts and titles of articles adopted by the Drafting Committee.

Article 1 (Scope of the present Convention)

14. Mr. SUCHARITKUL (Thailand), Chairman of the Drafting Committee, pointed out that, with the exception of the changes mentioned in his general remarks, no changes had been made to the title or text of article 1. The Drafting Committee wished, however, to confirm the generally held view that the phrase "State property, archives and debts" in the English text must be given its natural and grammatically logical interpretation, which was, that the phrase in question referred to State property, State archives and State debts, as was clear in the other language versions.

15. The PRESIDENT invited the Conference to vote on article 1 as proposed by the Drafting Committee.

16. Mr. TÜRK (Austria) suggested that the English text of article 1 would be clearer if the concluding phrase was amended to read "State property, State archives and State debts". The French and Spanish texts seemed more precise than the English text.

17. Mr. SHASH (Egypt) supported the proposal of the representative of Austria. In his view, the Arabic text reflected the meaning correctly.

18. Mr. GUILLAUME (France) said that the word *"Etat"* should be used in the singular in the French text of article 1.

19. Mr. SUCHARITKUL (Thailand), Chairman of the Drafting Committee, said that the typographical error pointed out by the representative of France would be corrected.

20. In reply to the representative of Austria, he said that the Drafting Committee had considered the pos-

sibility of adding "State" before both "archives" and "debts", but had concluded, in agreement with its English-speaking members, that it was sufficient to mention "State" only once. The article clearly referred to State property, State archives and State debts and there could be no possible misunderstanding.

21. Mr. TÜRK (Austria) said that he would defer to the English-speaking delegations on the point he had raised but would nevertheless appreciate an explanation from one of them.

22. Mr. MARCHAHA (Syrian Arab Republic) said that he wished to enter a formal reservation with respect to the Arabic term used to render the words "State property" which, in his delegation's view, was incorrect. The reservation applied to all those articles of the draft convention where the term appeared.

23. Mr. SUCHARITKUL (Thailand), Chairman of the Drafting Committee, said that, in dealing with the Arabic and Russian texts, the Drafting Committee had entrusted the task of making consequential changes to the representatives of Iraq and of the Union of Soviet Socialist Republics, respectively. In the absence of a Chinese-speaking representative, the Secretariat had been given exclusive responsibility for the Chinese text.

24. Mr. JOMARD (Iraq) said that the term referred to by the Syrian representative had been discussed at length among the Arabic-speaking delegations, all of whom, with the sole exception of the delegation of the Syrian Arab Republic, had agreed that the term in question was the most appropriate.

25. Mr. MARCHAHA (Syrian Arab Republic) said that he would not press the matter to a vote but wished to record his formal reservation.

26. Mr. EDWARDS (United Kingdom) said that the problem raised by the Austrian delegation had, of course, been discussed in the Drafting Committee. The possibility of employing the phrase "of the State" after the words "property, archives and debts", had been considered and eventually rejected as being somewhat clumsy. The meaning of the English text was quite clear and any possibility of misinterpretation would be dissipated by referring to the record of the current meeting and to the text of the International Law Commission's commentary.

The title and text of article 1 were adopted by 68 votes to none.

Article 2 (Use of terms)

27. Mr. SUCHARITKUL (Thailand), Chairman of the Drafting Committee, said that no changes had been made by the Drafting Committee in the title or text of the article as referred to the Committee. As requested by the Committee of the Whole, the desirability of including definitions of the terms "State property", "State archives"and "State debt" in article 2 had been considered. The Drafting Committee had decided that it was desirable to retain definitional articles on those concepts in the relevant Parts of the draft convention, considering it more appropriate to maintain each Part as a self-contained unit including an article defining the meaning to be given to the particular subject matter dealt with in the Part in question.

The title and text of article 2 were adopted by 64 votes to none, with 6 abstentions.

28. Mr. GUILLAUME (France) said that his delegation had abstained in the voting because, for reasons explained in the Committee of the Whole, it was not satisfied with the text of paragraph 1(*a*) and did not consider that the establishment of a special category of "newly independent State" in paragraph 1(*e*) was in conformity with international law.

29. Mr. EDWARDS (United Kingdom), explaining his delegation's abstention in the voting on article 2, referred to the amendment (A/CONF.117/C.1/L.56) which it had submitted to the Committee of the Whole and ultimately withdrawn after lengthy discussion. As he had said on that occasion, the definition of "predecessor State" failed to reflect his country's practice, and paragraph 2 of article 2 was also unsatisfactory in that it failed to cover the numerous possibilities of misunderstanding which arose as a result.

Article 3 (Cases of succession of States covered by the present Convention)

30. Mr. SUCHARITKUL (Thailand), Chairman of the Drafting Committee, said that no changes had been made in article 3 other than one to which he had alluded in his general remarks.

The title and text of article 3 were adopted without a vote.

31. Mr. GUILLAUME (France) said that he did not oppose the voting procedure adopted but wished it to be put on record that, had the article been put to the vote, his delegation would have abstained.

Article 4 (Temporal application of the present Convention)

32. Mr. SUCHARITKUL (Thailand), Chairman of the Drafting Committee, said that no changes had been introduced in article 4 by the Drafting Committee other than those required to ensure complete alignment with the corresponding provision of the 1978 Vienna Convention on Succession of States in Respect of Treaties.[2]

The title and text of article 4 were adopted without a vote.

33. Mr. GUILLAUME (France) said that, if article 4 had been put to the vote, he would have voted against it. The French delegation interpreted the text as meaning that the convention applied only to State successions which would occur after the entry into force of the convention and between States parties to it. The convention did not reflect any obligatory custom or, *a fortiori*, any peremptory and absolute rule of public international law, described by some as *jus cogens*, a concept which, incidentally, France had never accepted.

Article 5 (Succession in respect of other matters)

34. Mr. SUCHARITKUL (Thailand), Chairman of the Drafting Committee, said that no change had

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

9th plenary meeting

Thursday, 7 April 1983, at 11.15 a.m.

President: Mr. SEIDL-HOHENFELDERN (Austria)

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

[Agenda item 11]

REPORTS OF THE DRAFTING COMMITTEE (*continued*) (A/CONF.117/10 and Add.1-3)

REPORT OF THE COMMITTEE OF THE WHOLE (*continued*) (A/CONF.117/11 and Add.1-12)

1. The PRESIDENT said that efforts which had been made by delegations with a view to reaching a compromise on certain draft articles had unfortunately proved unsuccessful. He expressed his gratitude to all those who had made commendable efforts in that direction.

2. He drew the attention of the Conference to the urgency of completing the consideration of the articles of the draft convention in time to enable the secretariat to produce the final text for the following day. In view of the time factor, he suggested that, until the draft convention as a whole was before the Conference for adoption, representatives should refrain from explaining their votes or their positions on individual articles. He proposed to allow such explanations only in the rare cases where a delegation had changed its opinion and voted otherwise than it had done in the Committee of the Whole. In the absence of objection, he would take it that the Conference decided to adopt that procedural suggestion.

It was so decided.

Article D (Entry into force) (*concluded*)

3. The PRESIDENT put to the vote the amendment to article D submitted by the Netherlands (A/CONF.117/L.4).

The Netherlands amendment to article D (A/CONF.117/L.4) was rejected by 46 votes to 20, with 3 abstentions.

The title and text of article D were adopted by 54 votes to none, with 16 abstentions.

4. Mr. DALTON (United States of America), speaking in explanation of vote, said that his delegation would have preferred the formula proposed in the Netherlands amendment. Nevertheless, it had voted in favour of article D as submitted by the Drafting Committee because, with the requirement of only 15 ratifications or accessions, the proposed convention would enter into force earlier and could then be applied by those parties which had ratified it or acceded to it. However, the fact of such a convention being in force for only 15 parties would not confer upon the rules embodied in it a sufficient degree of authority for them to be acknowledged as valid otherwise than strictly between the parties which had subscribed to the instrument.

Article 13 (Transfer of part of the territory of a State)

5. Mr. SUCHARITKUL (Thailand), Chairman of the Drafting Committee, introducing article 13, said that in the Spanish version it had been thought more appropriate to use in the title the word *"Transferencia"* and in the text of paragraph 1 *"transferida"* rather than, respectively, *"Traspaso"* and *"traspasada"*.

6. In the French version, to align the text of paragraph 2 with the other language versions, the introductory phrase *"En l'absence d'un accord"* had been changed to read *"En l'absence d'un tel accord"*.

7. Those changes were also reflected in the Spanish and French versions of later articles but he would refrain from drawing attention to them in the case of each article concerned.

8. Mr. BEN SOLTANE (Tunisia) pointed out that in the French versions of articles 25 and 35 the word *"tel"* already appeared before the word *"accord"*.

9. Mr. SUCHARITKUL (Thailand), Chairman of the Drafting Committee, said that the word *"tel"* had been introduced by the Drafting Committee into the French version of paragraph 2, among other reasons, precisely in order to align article 13 with articles 25 and 35.

The title and text of article 13 were adopted by 53 votes to none, with 16 abstentions.

Article 14 (Newly independent State)

10. Mr. SUCHARITKUL (Thailand), Chairman of the Drafting Committee, said that article 14 remained as adopted by the Committee of the Whole, apart from the change consequent upon the drafting change made in the definition in article 8, to which he had already drawn attention.

11. Mr. MAAS GEESTERANUS (Netherlands) requested a separate vote on paragraph 4 of article 14. At the 13th meeting of the Committee of the Whole, his delegation had made a proposal designed to improve the text of that paragraph, but that proposal had not been adopted by the Committee. His delegation would vote against paragraph 4; if the paragraph was adopted by the Conference, it would regretfully vote against article 14 as a whole.

12. The PRESIDENT noted that there was no objection to the proposal that paragraph 4 be voted on separately. He accordingly invited the Conference to vote on that paragraph.

The paragraph was adopted by 49 votes to 21, with 1 abstention.

The title and text of article 14 as a whole were adopted by 52 votes to 21.

Article 15 (Uniting of States)

13. The PRESIDENT observed that article 15 (A/CONF.117/10/Add.1) had been approved by the

tlement of disputes, which had already been adopted by the Conference. If the Conference wished to reconsider that matter, it would, under rule 31 of the rules of procedure, have to decide to do so by a two-thirds majority of the representatives present and voting.

58. The PRESIDENT said that the Bulgarian representative's point of order would be dealt with at the beginning of the next meeting.

The meeting rose at 1.15 p.m.

10th plenary meeting

Thursday, 7 April 1983, at 2.45 p.m.

President: Mr. SEIDL-HOHENFELDERN (Austria)

Consideration of the question of succession of States in respect of State property, archives and debts, in accordance with General Assembly resolutions 36/113 of 10 December 1981 and 37/11 of 15 November 1982 (*concluded*)

[Agenda item 11]

REPORTS OF THE DRAFTING COMMITTEE (*concluded*) (A/CONF.117/10 and Add.1-3)

REPORT OF THE COMMITTEE OF THE WHOLE (*concluded*) (A/CONF.117/11 and Add.1-12)

Annex (Settlement of disputes) (*concluded*)

1. The PRESIDENT invited the Conference to resume its consideration of the text of the Annex proposed by the Drafting Committee (A/CONF.117/10/Add.2) and of the amendment proposed by Austria and Switzerland (A/CONF.117/L.2).

2. Mr. TEPAVITCHAROV (Bulgaria) recalled that, in raising a point of order at the end of the previous meeting, he had objected that the amendment proposed by Austria and Switzerland involved reconsideration of provisions which had already been adopted by the Committee of the Whole. In order to have a discussion on the amendment therefore the Conference must take a decision under rule 31 of the rules of procedure which, as was made clear by rule 50, was intended to apply to all decisions of committees, subcommittees and working groups. If such a decision was taken by the required two-thirds majority, his delegation would not oppose it.

3. Mr. MONNIER (Switzerland) pointed out that, although rule 31 applied to committees, thus including the Committee of the Whole, the plenary Conference was a quite different and autonomous forum which was entitled to consider any proposed amendment presented in any form. He could not accept that a decision under rule 31 was called for in the particular case; the amendment in A/CONF.117/L.2 had been submitted in the proper way, fully in accordance with the rules of procedure, and at the earliest possible moment, namely, as soon as the Drafting Committee's text (A/CONF.117/10/Add.2), the basic proposal on the question for the purposes of the plenary Conference, had been circulated. It was only right and proper that the Conference should have the opportunity to debate the proposed amendment.

4. After a brief procedural discussion, in which the PRESIDENT, Mr. Tepavitcharov (Bulgaria), Mr. ROSENSTOCK (United States of America) and Mr. MONCEF BENOUNICHE (Algeria) took part, the PRESIDENT ruled that the submission of the amendment in question by Austria and Switzerland did not call for the reconsideration of a proposal on which a decision had already been taken and that the Conference could thus consider the amendment.

5. Mr. MONCEF BENOUNICHE (Algeria) said that for the most part the amendment proposed by Austria and Switzerland did not pose any particular problems, with the exception of the penultimate sentence of paragraph 6, which stated that any party to the dispute might unilaterally declare that it would abide by the recommendations in the report of the conciliation commission. It was not clear whether that declaration was to be made before or after the report had been drawn up. That was an important point, since the possibility of making such a declaration after the preparation of the report by the conciliation commission might promote agreement among the parties, which was, after all, the purpose of conciliation.

6. Paragraph 8 of the amendment, under which publication of the conciliation commission's report could be requested unilaterally by one of the parties to the dispute, seemed to conflict with that purpose. He doubted whether such a one-sided arrangement would facilitate the preparation of acceptable terms for a settlement. It would be more desirable to maintain a balance between the parties and to permit action to be taken only at their joint request.

7. The PRESIDENT invited the Conference to vote on the amendment proposed by Austria and Switzerland (A/CONF.117/L.2).

The amendment was rejected by 40 votes to 22, with 8 abstentions.

8. The PRESIDENT invited the Conference to vote on the text of the Annex proposed by the Drafting Committee (A/CONF.117/10/Add.2).

The Annex was adopted by 56 votes to none, with 15 abstentions.

9. Mr. HAYASHI (Japan), speaking in explanation of vote, said his delegation had voted in favour of the Annex proposed by the Drafting Committee although it had abstained in the vote on the same proposal in the Committee of the Whole. Although the Annex was not entirely satisfactory, it was better to include it than to omit provisions on the settlement of disputes entirely.

Placement of the provisions on settlement of disputes

10. The PRESIDENT said that, unless he heard any objections, he would take it that the Conference agreed that, as recommended by the Chairman of the Drafting Committee, articles A to E on settlement of disputes should constitute Part V of the convention, the Annex being appended at the very end of the convention.

It was so decided.

Placement of the final provisions

11. The PRESIDENT said that, unless he heard any objections, he would take it that the Conference agreed with the recommendation of the Drafting Committee that articles A to E containing the final provisions of the future convention (A/CONF.117/10) should form a separate Part VI to be placed at the end of the convention.

It was so decided.

Titles of Parts I, II, III, IV, V and VI of the Convention

12. The PRESIDENT invited the Conference to take a decision on the titles of the Parts of the convention as proposed by the Drafting Committee.

Part I

The title "General provisions" was adopted.

Part II

The title "State property" was adopted.

Part III

The title "State archives" was adopted.

Part IV

The title "State debts" was adopted.

Part V

The title "Settlement of disputes" was adopted.

Part VI

The title "Final provisions" was adoptd.

Titles of sections 1 and 2 of Parts II, III and IV

13. The PRESIDENT invited the Conference to take a decision on the titles of the sections of Parts II, III and IV, as recommended by the Drafting Committee.

Section 1

The title "Introduction" was adopted.

Section 2

The title "Provisions concerning specific categories of succession of States" was adopted without a vote.

Title of the Convention

14. The PRESIDENT invited the Conference to take a decision on the title of the convention as proposed by the Drafting Committee.

The title "Vienna Convention on Succession of States in Respect of State Property, Archives and Debts" was adopted.

Final numbering of articles

15. The PRESIDENT noted that the articles provisionally designated by letters or bearing the indication *bis* would, in the final text of the convention, receive numbers corresponding to their placement therein.

The Conference took note of the President's statement.

Preamble of the Convention

16. Mr. SUCHARITKUL (Thailand), Chairman of the Drafting Committee, introducing the text of the preamble as adopted by that Committee (A/CONF.117/10/Add.3) pursuant to the decision taken at the 12th meeting of the Committee of the Whole, noted that the text had been adopted on the basis of the draft submitted to it by a working group set up for the purpose. For the most part, it reproduced the preamble to the 1978 Vienna Convention on Succession of States in respect of Treaties, with the necessary adaptations, except for the last paragraph, which repeated the text of the corresponding paragraph of the preamble to the United Nations Convention on the Law of the Sea.

17. He noted that, at the beginning of the tenth paragraph, the words "this Convention" should be amended to read "the present Convention".

The preamble of the Convention was adopted.

18. Mr. PIRIS (France) said that his delegation had not objected to the adoption of the preamble without a vote. However, had a vote been taken, his delegation would have abstained because the enumeration of the principles of international law in the seventh paragraph deviated from the wording of the Charter of the United Nations on certain significant points.

Adoption of a convention and other instruments deemed appropriate and of the Final Act of the Conference

[Agenda item 12]

ADOPTION OF THE CONVENTION

19. The PRESIDENT said that a number of delegations wished to make statements in explanation of vote before the vote on the draft convention as a whole.

20. Mr. ROSENSTOCK (United States of America) recalled that his delegation had voted against a number of articles of the draft convention and had abstained in the votes on certain others. He regretted that none of the articles which his delegation had found most unacceptable had been ameliorated. The fact that the most objectionable material was in fact irrelevant to the issue of succession of States made the inclusion of that material all the more disturbing. That remark applied particularly to the provisions of articles 14, 26, 28, 29 and 36.

21. The process of codification and progressive development of international law was difficult enough even when confined to relevant material. To treat the drafting of a convention as an opportunity to impose minority theories of no immediate relevance was a blow to the heart of the entire process. In that connection his delegation would like to express its gratitude to the delegation of Brazil for its efforts to assist the Conference to steer a middle course by including all that

was relevant and avoiding extreme treatment of that which was not.

22. Other aspects of the text causing his delegation serious problems related mostly to the extent and scale of the special treatment given to newly independent States and the unnecessary vagueness of the formulation of a number of provisions. The latter defect might have been cured or at least significantly corrected by including binding dispute settlement provisions. However, the same delegations which had insisted on the adoption of the formulations in question had refused to accept a binding procedure for the settlement of disputes.

23. In short, his delegation's position was that the draft convention contained much that was neither existing law nor acceptable as a formulation *de lege ferenda*. For those reasons his delegation intended to vote against the draft convention as a whole. In so doing, his country would be casting its first negative vote on a draft convention of such a nature. His delegation regretted that the inclusion of irrelevant material and the absence of a sufficiently widespread spirit of compromise had left it with no alternative.

24. His delegation hoped that, in the future, work of the same character would take sufficient account of the views of the international community as a whole, so that its vote on the present occasion would remain a unique experience.

25. Mr. OESTERHELT (Federal Republic of Germany), speaking on behalf of the ten States members of the European Communities, said that the delegations of those countries had actively participated in the debate and had contributed their share to the common endeavour to formulate generally acceptable texts. It was with great regret that, at the end of the work of the Conference, the ten countries members of the European Communities had to recognize that their contribution had not led to any significant changes in the parts of the convention which were of particular interest to them and that, on balance, the text of the convention was not acceptable to them as a whole, owing to its many deficiencies and even though some parts of it were not objectionable.

26. Those ten delegations would have greatly preferred that compromises could have been found that would have made it possible for them to vote in favour of the draft convention. As the text stood however they were not in a position to support it as a whole and would not vote in favour of its adoption.

27. Lastly, he wished to express their disappointment regarding the manner in which the Conference had carried out its work. A conference like the present one, which attempted to formulate existing rules of customary international law and to reach agreement about rules of contractual international law, had two very important tasks, neither of which could be fulfilled if it did not take into consideration the views of a substantial minority of States. If the way in which the Conference had proceeded were to set an example for future codification conferences, then the codification process as such might well suffer damage. The ten delegations wished to sound a warning against such a development.

28. He proceeded to state his own delegation's reasons for voting against the adoption of the convention as a whole. Those reasons were connected above all with the provisions in article 14, paragraph 4; article 36, paragraph 2; and article 26, paragraph 7. The legal content of those provisions was not clear. His delegation categorically rejected any allegation to the effect that any of the principles contained in those provisions was part of *jus cogens* in international law. He stressed that there was no unwillingness on his delegation's part to discuss the substance of those principles, or to negotiate on formulations that could give expression to the basic precepts underlying them. He emphasized however that, in his delegation's view, the questions dealt with in those provisions did not belong in a convention on State succession in respect of State property, archives and debts.

29. Another reason for his delegation's negative vote related to the multitude of rather vague terms used throughout the text of the convention and the absence of an adequate procedure for the settlement of disputes between the parties to the convention. His delegation did not wish to contribute to the adoption of a text which it feared might ultimately lead to protracted controversies about the interpretation and application of its rules without any provision enabling a third party —court or arbitral tribunal—to settle finally, and in a binding manner, disputes arising between parties.

30. Mr. MONCEF BENOUNICHE (Algeria) requested that a roll-call vote should be taken on the draft convention. His delegation would vote in favour of the draft.

31. It was a regrettable feature of the Conference that not all delegations had been responsive to the positive approach adopted by the Group of 77 and a number of other countries which had endeavoured to facilitate the work of the Conference. Those delegations which had chosen to obstruct the Conference and which were prepared to vote against the draft convention bore a heavy responsibility. Their negative attitudes to an instrument which was fully in conformity with trends in the international community paralleled the uncooperative approach which had led to difficulties in the negotiations on the new international economic order. Nevertheless the work of codification and progressive development of international law would continue and nothing could jeopardize the legal importance and value of the convention.

32. Mr. KIRSCH (Canada) said that Canada had a long-standing tradition of contributing to the progressive development of international law. His delegation however did not consider that the convention before the Conference represented a positive contribution to that development, for a number of reasons. First, some provisions, in particular articles 14, paragraph 4; 26, paragraph 7; 28, paragraph 3; 29, paragraph 4; and 36, paragraph 2, contained references to concepts, in the form of conditions surrounding the conclusion of agreements, that had no generally accepted meaning in international law. His delegation had been prepared to accept references to such concepts as general principles aimed at fostering the national development of States. It could not, however, accept any suggestion that they

were part of *jus cogens* in international law. References to those principles should not have been included in their present form in an instrument that purported to codify the rights and obligations of States. Secondly, numerous provisions in the convention lent themselves to differing interpretations and were unlikely to be of assistance to either predecessor or successor States facing the actual problems of succession. He referred to a number of statements made by his delegation in the Committee of the Whole. The general difficulty of interpretation was compounded by the absence in the convention of satisfactory provisions relating to the settlement of disputes by a compulsory third party procedure. In his delegation's view, the combination of unclear legal concepts, unclear drafting and unsatisfactory dispute settlement provisions would make the convention a factor of legal insecurity rather than of security in relations between predecessor and succcessor States.

33. Thirdly, it had been clear since the beginning of the Conference that the document which had served as a basis for its work had been a source of dissatisfaction to a number of delegations. The Conference could and should have attempted to improve the contents and drafting of the text and to ensure that the final document reflected general agreement among the participating States. His delegation had been prepared to make the necessary compromises to achieve such a result.

34. Individual efforts, much appreciated by his delegation, had been made to seek consensus solutions but they had remained the exception. The convention which ought to have embodied universally applicable rules had been treated as though it was a political statement aimed at reflecting the views of a particular group of States. All amendments or proposals that had not fully met the wishes of the majority of States, or merely had had the defect of being submitted by the minority, had been systematically rejected after a cursory examination.

35. His delegation deplored the Conference's working methods, in particular premature and inconsiderate resort to voting without regard to the likely consequences for the outcome of its work. Such methods were ill-adapted to a modern codification exercise and had not served the development of international law in general or the interest of the Conference in particular. It was to be hoped that future codification conferences would not follow the unfortunate example set at the present Conference.

36. The value of a treaty that did not codify customary or general international law but purported to create new rules, as was unquestionably the case with the new convention, depended entirely upon the degree of support that it was able to command, particularly among States with different interests in the subject matter of the treaty. In the absence of that support, the contribution of such a treaty was likely to remain purely theoretical.

37. For the reasons he had given, the Canadian delegation would, with regret, vote against the adoption of the convention.

38. Mr. SHASH (Egypt) said that his delegation would vote in favour of the draft convention. He expressed his delegation's gratitude to the International Law Commission for its valuable contribution in the form of the draft articles submitted to the Conference, and also for the commentary, which his delegation had read with great interest.

39. It was a matter of deep regret that some delegations opposed the draft articles on the grounds that the Conference had been endeavouring to arrive at a text which would favour a specific group of countries at the expense of the international community as a whole. Nothing could be further from the truth: the Group of 77 had been prepared to make concessions in order to improve the text, particularly in the case of articles 4, 6, 16, 19, 20, 32 and 34. Such concessions proved that the Group of 77 had indeed been acting in good faith. Consultations had been held, but some delegations had categorically rejected certain principles which enjoyed a large measure of support at the Conference, including such universally recognized principles as the sovereignty of every people over its wealth and natural resources, or the right of peoples to development.

40. The Conference had succeeded, despite obstructions, in arriving at a convention which would reflect international practice and which had a solid legal basis.

41. The achievement of generally acceptable rules of international law required a large measure of flexibility on the part of the individual members of the international community. He hoped that delegations which had decided to vote against the draft convention would reconsider their position and join with the majority in pursuing the goals of codification and progressive development of international law.

42. Mr. SQUILLANTE (Italy) said that, for numerous reasons related both to form and to substance, his delegation would vote against the convention as a whole. First, however, he wished to stress that at the outset the attitude of the Italian Government had been both positive and encouraging, as could be seen from document A/CN.4/338/Add.1 of April 1981. Nevertheless the hopes which it had entertained at that juncture had been frustrated by the manner in which the Conference had been conducted. Sound legal proposals by the group to which Italy belonged had been systematically rejected by the majority. The codification and progressive development of international law might be jeopardized if that kind of procedure continued. A draft of the scope and importance of the convention should not be adopted without at least some attempt to accommodate the viewpoints of the minority.

43. With regard to the substance, his delegation had had occasion to make known its views on specific articles during the discussion in the Committee of the Whole. Nevertheless he wished to reaffirm the difficulties which his delegation had with clauses which not only restricted the freedom of States parties to conclude bilateral agreements on matters dealt with in the convention but also were likely to affect the rights and interests of third States that were not parties to the convention. Furthermore, the text contained provisions which were legally vague and imprecise. He cited, for example, the concept of "equitable proportions" which appeared in articles 17, 35, 38 and 39 and others such as "normal administration", "connected with the

activity" and "in respect of the territory". Furthermore, clauses had been inserted which were clearly of a political and not of a legal nature.

44. It would therefore have been all the more desirable to establish appropriate and effective machinery for the settlement of disputes which might arise and hence to approve rules for something more than a mere conciliation procedure. But the text finally adopted on that subject was too weak and would not make the effective contribution desired. It was in fact identical with that of articles 41 to 45 of the 1978 Vienna Convention on the Succession of States in Respect of Treaties.[1] A more refined system for settling disputes concerning the interpretation and application of the convention should have been devised: recourse to the procedure for the settlement of disputes should have been made obligatory and it should have been provided that the relevant decisions should be taken by an independent adjudicating body.

45. In conclusion he stated that, in his delegation's opinion, the convention was inconsistent with State practice and did not represent a codification of the existing general international law on the subject. His delegation hoped that in future the international community would once again demonstrate its cohesive force and formulate texts which, founded on the solid bases of law, practice, theory and jurisprudence, would be universally approved.

46. Mr. GÜNEY (Turkey) said that his delegation would vote in favour of the convention as a whole and that it was grateful to the International Law Commission for having provided a text which enabled the Conference to arrive at the draft currently before it. Unfortunately, the juridical scope of article 14, paragraph 4; of article 26, paragraph 7; and of article 36, paragraph 2, had given rise to controversy in the Committee of the Whole owing to their lack of clarity. His delegation was anxious to avoid any future misunderstanding concerning the interpretation or application of those provisions: in his delegation's view, there could be no question that they could constitute a general rule of international law to be applied automatically and independently of the convention as a whole.

47. Mr. SUÁREZ de PUGA (Spain) said that his delegation would regretfully abstain in the vote on the convention as a whole.

48. Spain had played an active part in the process of codification of international law under the auspices of the United Nations and was a party to most of the conventions which had been born of that process. For that reason, it had participated in the Conference with a lively interest. It had been specially concerned that the text produced should achieve the highest possible degree of technical perfection and, above all, that a spirit of compromise and the greatest possible harmony should prevail among the States represented.

49. It was from that motive that his delegation had supported the adoption of rules for dispute settlement broad enough to settle any disputes which might arise from the imprecise nature of certain expressions used in the convention to define the criteria determining the relationship between certain property, archives and debts and the States involved in a succession. It was also for that reason that his delegation had supported the efforts to find a compromise solution to the problems which the provisions of articles 14, paragraph 4; 26, paragraph 7; 28, paragraph 3; 29, paragraph 4; and 36, paragraph 2, posed for certain delegations. Those provisions departed from or in some cases conflicted with current State practice. They were based on the premise that certain rights were part of *jus cogens*, a view which had not been generally accepted by the international community. That fact made consensus among States doubly necessary in the adoption of such provisions and his delegation believed that most delegations had not shown sufficient readiness to compromise.

50. Thus his delegation's abstention reflected, first, its reservations regarding certain technical aspects of the text and, second and more significantly, its doubts whether the codification of international law under the auspices of the United Nations would be able to proceed with any chance of success if the spirit of compromise and understanding which had been present in other earlier undertakings of the same kind was not restored. His delegation had done all that it could to promote acceptable compromises which would reconcile divergent views but felt that it had not received sufficient support for its endeavours from other delegations.

51. Mr. KADIRI (Morocco) said that his delegation would vote in favour of the draft convention which it regarded as a decisive step forward in the codification and progressive development of international law, particularly in view of the complexity of the subject-matter covered by the articles. The Conference had been especially valuable in that it had succeeded in codifying such important rules of international conduct as good faith. Although some principles had been opposed by certain delegations on the grounds of their supposed ambiguity, in his delegation's view it was important to realize that the process of progressive development of international law was a continuing one and that the implications of such principles as equity would become clearer with the passage of time. In conclusion, he said that the convention was particularly significant from the standpoint of codification in that it had established legal guarantees in the settlement of disputes.

52. Mr. MARCHAHA (Syrian Arab Republic) said that his delegation would vote in favour of the draft convention and that it agreed with the views expressed by the representatives of Algeria and Morocco.

53. He felt it important to point out that the International Law Commission was a body composed of eminent international jurists who represented the world's principal legal systems. It could not be regarded as representing only the Group of 77. His delegation had come to the Conference prepared to discuss a draft which had been formulated over a long period of time and on which, it had assumed, there was some measure of preliminary agreement. From the outset, however, it had been surprised to note that some delegations did

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

not share that constructive approach. In many cases the objections raised to the draft articles seemed to be based on an unrealistic expectation that the convention should serve the interests of certain countries exclusively and not those of the international community as a whole. As the representative of Egypt had pointed out, the members of the Group of 77 had shown willingness to compromise in the endeavour to arrive at a balanced draft and there could be no justification in the claim that they had inflexibly pursued their own interests. It was clear that the delegations which opposed the text did not wish to march with progress. His delegation would vote in favour of the draft convention notwithstanding all the concessions made by the Group of 77.

54. Mr. ŠAHOVIĆ (Yugoslavia) said that his delegation would vote in favour of the draft convention as a whole and welcomed the fact that the Conference had fulfilled its mandate under the terms of General Assembly resolution 37/11 of 15 November 1982. His delegation considered that all delegations were to be congratulated on the results of the Conference notwithstanding the differences which had arisen.

55. The draft convention expressed the intentions of the international community on the issue of succession of States in respect of State property, archives and debts. As a result of the Conference, the rules relating to a very important chapter of international law, which had not previously been clearly defined, had been codified. The Conference had faced a number of very difficult problems but there was no denying that the results achieved were valuable. While the text of the draft convention might not satisfy all delegations, it nevertheless reflected the intent of the international community. The progress which had been made on many articles demonstrated that the Conference had been able to conclude its work with success. Those who opposed the draft convention should reconsider their attitude in the light of historical and current trends.

56. Mr. GUILLAUME (France) said that France had always favoured the process of constructive dialogue between nations, including the North-South dialogue. The draft convention related to a highly technical field and it had been his delegation's hope that a dialogue would develop and that solutions acceptable to all would be reached. The results achieved, particularly the provisions of articles 14, paragraph 4; 26, paragraph 7; 28, paragraph 3; 29, paragraph 4; 31; 36, paragraph 2, and 39 were not satisfactory; his delegation would accordingly vote against the draft convention.

57. The text was not a codification of existing international law and, in many articles, went well beyond accepted practice. It would only bind those States which became parties to it. Issues relating to the succession of States in respect of State property, archives and debts were perhaps best handled bilaterally rather than through a broad convention. The draft contained many vague expressions; his delegation had attempted to devise more acceptable formulas but had been frustrated in those efforts and must register its disappointment at the way in which the convention had been drafted and discussed. It had come to the Conference ready to negotiate but negotiations had not been possible. The process which had been followed was fraught with risks for the whole future development of international law.

58. Mr. ASSI (Lebanon) said his delegation would vote in favour of the draft convention because it regarded it as an important contribution to international law and as an instrument based on the principles of justice and equity. The small States were those which required to be defended in the important field of the succession of States in respect of State property, archives and debts, and the main purpose of the draft convention had been to assure the dignity and sovereignty of all States. The draft convention did not favour one group of States only; the interests of all countries would be served if an atmosphere of good faith prevailed. In the past, the will of the strongest had prevailed and that had led to conflict. During the Conference, the codification process had had to surmount a series of obstacles and the alleged imprecision of some of the articles stemmed from the intentions of those who did not wish to see the issues clarified.

59. Mr. RASUL (Pakistan) said that his delegation had proposed a number of amendments, thus demonstrating that it was not fully satisfied with the draft articles as prepared by the International Law Commission. In a spirit of co-operation and compromise, and in the earnest hope that the convention would promote, rather than obstruct, the amicable resolution of conflicting views, his delegation would vote in favour of the draft convention as a whole, despite the fact that it continued to be dissatisfied with certain provisions on which its position had been made clear in the Committee of the Whole.

60. Mr. BEN SOLTANE (Tunisia) said that his delegation would vote in favour of the convention as a whole. It appreciated the considerable effort made by the International Law Commission in working out the draft convention. It regretted that the Commission's work and effort had been ill rewarded by a number of delegations. Their attitude was hardly likely to encourage a United Nations body composed of eminent jurists, whose integrity and independence were beyond question, to continue the efforts to codify international law.

61. Disagreeing with the views of certain representatives, he said that the spirit of compromise and co-operation had never been absent from the Conference. Nevertheless while it had been possible to find a compromise in respect of a large number of articles, his delegation thought that, on concepts relating to certain fundamental rights, there could be no compromise. Those concepts were often used in various international forums. Their inclusion in the convention merely confirmed the reality of the existence and basic rights of all peoples, without distinction.

62. Mr. TARCICI (Yemen) said that, since the Second World War, the world had taken substantial steps forward and the realities of political and economic life had been modified accordingly. It was essential that international law should develop and keep abreast of reality. The Conference had witnessed the insistence of certain groups on standing on traditional positions. His

delegation believed that the tide of events would persuade those groups to alter such positions in the field of international law as well as in other fields. Progress could not be stopped.

At the request of the representative of Algeria, a vote was taken by roll-call on the draft convention as a whole.

Morocco, having been drawn by lot by the President, was called upon to vote first.

In favour: Algeria, Angola, Argentina, Brazil, Bulgaria, Byelorussian SSR, Chile, Costa Rica, Cuba, Czechoslovakia, Democratic Yemen, Ecuador, Egypt, Gabon, German Democratic Republic, Guatemala, Hungary, India, Indonesia, Iran, Islamic Republic of, Iraq, Jordan, Kenya, Kuwait, Lebanon, Libyan Arab Jamahiriya, Mali, Mexico, Morocco, Mozambique, Namibia, Nigeria, Pakistan, Panama, Peru, Philippines, Poland, Republic of Korea, Romania, Senegal, Suriname, Syrian Arab Republic, Thailand, Tunisia, Turkey, Ukrainian SSR, USSR, United Arab Emirates, Uruguay, Venezuela, Viet Nam, Yemen, Yugoslavia, Zaire.

Against: Belgium, Canada, France, Germany, Federal Republic of, Israel, Italy, Luxembourg, Netherlands, Switzerland, United Kingdom of Great Britain and Northern Ireland, Unitd States of America.

Abstaining: Australia, Austria, Denmark, Finland, Greece, Ireland, Japan, Norway, Portugal, Spain, Sweden.

The result of the vote was 54 in favour and 11 against, with 11 abstentions.

The draft convention as a whole was adopted, having obtained the required two-thirds majority.

63. Mr. TÜRK (Austria), speaking in explanation of vote, said that his delegation greatly regretted that it had had to abstain in the final vote on the draft convention and had thus been unable to support the text which had been elaborated by the Conference. The decision to abstain had been taken not light-heartedly but only on the basis of a serious examination of the final text. The reasons for his delegation's position corresponded to the views it had expressed during the debate and in the various amendments which it had submitted. He proceeded to summarize those reasons.

64. In Part III, the convention invariably used the expression "relating to" to circumscribe the archives-territory link and, on that basis, stipulated the attribution of archives between the predecessor and the successor State. The expression was inappropriate as it could lead to absurd results. In the view of his delegation, the word "appertaining" should have been employed instead. Furthermore, the text of Part III did not incorporate important concepts such as the preservation of the right to privacy with regard to information contained in archives, the preservation of rights of access to archives and the archival concept of joint heritage.

65. Article 31 excluded from the scope of the Convention debts owed to private creditors by States and did not therefore deal with a topic which, in the view of his delegation, was relevant to a succession of States.

66. Despite very serious efforts, it had not been possible to arrive at a compromise solution for a procedure for the settlement of disputes; such a procedure would have been appropriate for the Convention.

67. Several articles of the Convention referred to the principle of permanent sovereignty over national wealth and resources but did not make it clear that that principle, which the Austrian delegation could support, must be applied in accordance with the relevant norms of international law.

68. In many cases the Convention used rather vague terms or made reference to the need for equitable solutions without providing adequate guidelines as to how such solutions should be reached. In the view of his delegation, it should have been possible to agree on a more precise formulation in a number of such cases; Austria had supported a number of amendments to that end.

69. A number of delegations had expressed scepticism regarding the possibility of making further progress in the process of codification and progressive development of international law. His delegation continued to believe however that the efforts made within the existing United Nations system, particularly through the International Law Commission, to codify international law in the interests of the international community as a whole and of the strengthening of peace and international co-operation, would produce positive results in the future. His delegation would continue to support that important process.

70. Mr. BROWN (Australia) said that, because of his country's long history of commitment to the process of codification and progressive development of international law, it was with great regret that his delegation had felt unable to support the adoption of the text of the draft convention.

71. Although the Conference had been convened to codify the law on succession of States in matters other than treaties, it had gone considerably beyond that. It was, of course, not always possible or even desirable to limit such conferences strictly to the codification of the rules of international law. Australia's concern was not that there had been a progressive development of international law in the convention but that some of its provisions went well beyond State practice, precedent and doctrine. As a result the Conference had adopted some articles which had made it impossible for Australia to support the adoption of the Convention.

72. In particular, his delegation considered that the principles reflected in article 14, paragraph 4; article 26, paragraph 7; article 28, paragraph 3; and article 29, paragraph 4, were not part of customary international law and certainly not recognized by the international community as constituting peremptory norms of general international law from which no derogation was permitted. The votes recorded on those draft articles during the Conference supplied ample justification for that view. His delegation was also concerned about a number of other provisions which contained vague or incomplete terminology, such as article 36. The same comment applied also to article 31, which his delegation felt did not adequately cover an important area of State

debts, namely the class of private debts chargeable to a State.

73. The negotiation of an international instrument, particularly one on such a complex subject as that before the Conference and reflecting such a wide diversity of interests, should, in his delegation's view, be characterized by a willingness by each participant to consider the points of view of other delegations and to reach a mutually acceptable compromise.

74. Australia had sought to work hard to find common ground which would be acceptable to all delegations, and it was a matter of special regret to his delegation that there had been inadequate evidence of a spirit of compromise during the Conference. Indeed the adoption of articles without serious consideration having been given to possible improvements denied the process of negotiation itself. The inevitable result was reflected in the vote on the Convention as a whole, namely, the probability that a convention had been adopted with a limited chance that it would receive sufficient ratifications required to make it a meaningful international instrument.

75. Should that probability be realized, his delegation wished to record its view that many of the articles in the Convention did not reflect either existing rules of customary international law or any degree of wide agreement as to what those rules should be. As a result, their incorporation into the convention could not itself be used as evidence of the rules of contemporary international law on the subject.

76. Mr. BERNHARD (Denmark), explaining his delegation's decision to abstain in the vote, said that Denmark traditionally attached great importance to the process of codification of international law within the United Nations. Many important conventions had been elaborated in the course of that process. The draft considered at the Conference had seemed to be an acceptable basis for negotiations with a view to reaching a balanced solution of the problems involved. His delegation had expected the Conference to take account of the various attitudes which had been reflected in discussions of the draft in the International Law Commission as well as in the Sixth Committee, and had hoped that a widely accepted result could be achieved. Those expectations, however, had not been fully met. As stated during earlier debates, his delegation's main concern related to the maintenance of a number of vague and imprecise concepts not sufficiently well-defined in contemporary international law to provide helpful legal criteria. To let such general principles take precedence over agreements concluded between independent States, as was the case in some articles, seemed problematic and might lead to disputes concerning the validity of the agreements concluded. In that connection, his delegation would have welcomed an efficient system for the settlement of disputes.

77. The text just adopted failed in several respects to reflect the views put forward by a number of delegations, including his own, and he had therefore felt unable to support it. Neveretheless in order not to prejudice future internal considerations regarding Denmark's final position with regard to the present Convention as well as to the 1978 Convention, his delegation had chosen to abstain in the vote on the Convention as a whole.

78. Mr. MUHONEN (Finland) said that Finland attached great importance to efforts to develop and codify international law within the United Nations and hoped that such work would continue in the future. The International Law Commission deserved thanks for the preparatory work it had done. Although not perfect, the draft articles had been acceptable to his delegation as a basis for further deliberations aiming at a balanced solution of the problems involved. A variety of views on the draft articles had been reflected in discussions in the International Law Commission and in the Sixth Committee as well as in written comments submitted by several States. Further views and proposals had been presented during the Conference. It had been his delegation's very sincere hope that the Conference would, through necessary compromises, arrive at a convention acceptable to all States. Regrettably that had not proved possible. The result was a text containing several provisions which his delegation could not find fully satisfactory. Its main concern related to the maintenance of a number of vague and imprecise concepts which were not clearly enough defined to be used as legal criteria. Furthermore Finland would have welcomed a more efficient system for the settlement of disputes. For those reasons in particular his delegation had been unable to vote in favour of the Convention.

79. Mr. NATHAN (Israel) said that, after most careful consideration of the text, his delegation had been regretfully constrained to vote against the Convention as a whole for three main reasons.

80. First, it regretted that the Conference had retained the restrictive scope of the terms of article 31, which limited the definition of the term "financial obligations" to financial obligations arising under international law. That limitation was self-defeating and would probably exclude from the scope of the Convention the major part of the financial obligations of the predecessor State and also, in particular, those arising *ex delictu* and out of violations of fundamental human rights and rules of international law creating correlative rights of private individuals injured by those violations. In that context, he referred to his statements at the 31st and 33rd meetings of the Committee of the Whole.

81. Secondly, his delegation took exception to the far-reaching and extreme provisions contained in article 14, paragraph 4; article 26, paragraph 2; and article 36, paragraph 2. Those provisions went beyond the generally accepted norms of international law and were in no circumstances liable to invalidate the agreements referred to in the clauses in question. The positive contents of some of the principles referred to in those clauses might and should have been embodied in a general article, as had been proposed by the delegation of Brazil at the 33rd meeting of the Committee of the Whole.

82. Thirdly, many of the provisions and notions contained in the Convention were vague and extremely difficult to interpret. It was to be regretted that those deficiencies had not been rectified in the course of the proceedings of the Conference. His delegation did not consider the Convention likely to make the contribu-

tion to the codification and progressive development of international law which it had been intended to make.

83. In conclusion, he expressed his delegation's sincere appreciation of the considerable intellectual effort made by the International Law Commission in preparing the Convention and its regret that those efforts had failed to produce the consensus required in order to make the convention a proper instrument for the codification and progressive development of international law.

84. Mr. MONNIER (Switzerland) said that his delegation had voted against the Conveniton because it had serious objections to a number of provisions, and particularly article 14, paragraph 4; article 26, paragraph 7; article 28, paragraph 3; article 29, paragraph 4; and article 36, paragraph 2. Those objections, which were legal in nature, related to the restrictions upon the freedom of States to conclude agreements resulting from the necessary compatibility of agreements concluded between predecessor and successor States with certain concepts presented and interpreted as imperative norms of international law. Those concepts themselves, as well as their implementation, were liable to give rise to uncertainties prejudicial to the stability of contractual relations, uncertainties rendered all the more grave by the fact that the concepts in question were not clearly defined and did not enjoy general recognition within the contemporary international community. The Convention would have needed a satisfactory system for settlement of disputes that was capable of providing solutions consistent with and based on the rules of international law; but the conciliation procedure adopted by the Conference, which was identical in all respects to that provided in the 1978 Convention, hardly met those requirements.

85. Switzerland, a country dedicated to respect for law, in which it saw the best guarantee of its interests and to the cause of codification and development of international law, regretted having been unable to support the convention. It also deplored the absence of a genuine dialogue between the various States represented at the Conference and the lack of will for compromise, since the general agreement upon which an instrument of codification and development of international law had to be based, could not be only that of the largest number.

86. While it was doubtless too early to raise the question of the future scope of a convention which so considerable a minority had been unable to support, it was altogether possible and, indeed, necessary to entertain fears as to the future of the very process of codification and development of international law if conferences to come were to be marked by the same conflicts and divisions as, unfortunately, had been the case with the present Conference.

87. Mr. MURAKAMI (Japan) said that in the opinion of his delegation there were only a few established rules of general international law in the area of succession of States in respect of State property, archives and debts. Consequently, although some provisions of the present Convention were of a declaratory nature, many did not reflect existing rules of general international law but were rather new rules of a purely contractual nature which were binding only on those States which would become parties to the convention.

88. At the same time, considerable effort had been put into preparing a convention which could contribute to the progressive development of international law but, to make such a contribution, a convention had to be rational, realistic and flexible and anticipate the general acceptance of the international community as a whole.

89. As the Japanese delegation had stressed at the 13th meeting of the Committee of the Whole, due regard had to be paid in the convention to the importance of agreement between the parties involved, as well as to such principles as good faith, sovereign equality of States and self-determination of peoples. It was equally important to bear in mind the need to maintain legal order and stability in the international community. It was most regrettable that some provisions of the present Convention did not fulfil those essential conditions.

90. The Japanese delegation was particularly concerned about the disregard, in several articles of the Convention, for the importance of agreement between the parties although one of the most serious questions which had existed in the draft in that respect had rightly been solved by the deletion of paragraph 2 of article 34 as proposed by the International Law Commission.

91. The Japanese delegation also regretted the erroneous interpretation given by some delegations to article 14, paragraph 4; article 26, paragraph 7; article 36, paragraph 2; and other similar provisions. Those delegations had argued that the principles or conditions set forth in those paragraphs would have the effect of nullifying any agreement contrary to them, that was concluded between the predecessor and successor States which were parties to the Convention. On that account the Japanese delegation had felt compelled to re-state its view whenever those paragraphs has been discussed in the Committee of the Whole. Some delegations had even stated that they regarded the principle of the permanent sovereignty of every people over its wealth and natural resources as *jus cogens*. The Japanese delegation could not accept that view.

92. The frequent use of vague and imprecise phrases in the Convention, most inappropriate in a legal instrument, was another cause for concern, and one which had been deepened by the failure to adopt an effective mechanism for the settlement of disputes.

93. Even more damaging to the efforts towards progressive development of international law however had been the general atmosphere of politicization and the method of work of the Conference, which had been characterized by resort to voting without sufficient effort to accommodate the views of an important minority through negotiation. Such a method was really a step backwards in the process of progressive development of international law and its codification as a whole.

94. For all of those reasons, the Japanese delegation had serious concerns about a number of provisions of the Convention and strong doubts about its general acceptability and validity as something which contributed to the progressive development of international law. It had therefore been unable to vote in favour of the Convention as a whole. It was his delegation's under-

standing that many of the provisions of the Convention were binding only on the parties thereto.

95. It was to be hoped that the method of work and the negotiating pattern of the Conference would not become a precedent for future conferences of a similar nature. A truly effective convention purporting progressively to develop international law had to reflect a broad consensus of views of States with differing interests so that it would become widely accepted in the international community. Without such consensus-building, any future efforts aimed at the progressive development of international law would be futile, and any legal instrument emanating from such an exercise would merely be a non-working document.

96. Mr. FREELAND (United Kingdom) said that his delegation fully reconcurred with the statement made by the representative of the Federal Republic of Germany on behalf of the 10 member States of the European Communities.

97. However his delegation also considered it important to place on record its own position on the adoption of the text of the Convention as a whole, since his country had a number of particular concerns in relation to the draft text which had regrettably not been met.

98. His delegation had already explained United Kingdom practice in relation to its dependent territories, particularly in the statements which it had made when the Committee of the Whole, at its 41st meeting, had considered its amendment to article 2 (A/CONF.117/C.1/L.56). That practice was the one adopted when nearly one-third of the present members of the Unitd Nations had achieved independence. The United Kingdom continued to regard the practice as a sensible, convenient and successful one but, to his delegation's regret, the draft text before the Conference took no adequate account of it. That was a regrettable gap in the provisions of the text of the Convention.

99. For the reasons which it had already given, his delegation could not accept the references in articles 14, 26, 28, 29 and 36 of the draft text to "the principle of permanent sovereignty over wealth and natural resources" and to certain other so-called rights. It did not accept that those principles and rights had the force of *jus cogens*. To suggest that bilateral agreements might be invalidated by virtue of those vaguely-formulated principles and rights would, in its view, be a very dangerous path to follow, because it would lead to the undermining of stability in international relations and even to the undermining of the rule *pacta sunt servanda*.

100. His delegation had made clear that it had difficulties with a number of the articles of the draft text. In particular it found quite unacceptable the rule set out in article 36, paragraph 1. That rule was not supported by State practice and, in his delegation's view, was an unreasonable one. Indeed Part IV of the draft text dealing with State debts was wholly inadequate. In particular, following the refusal of the Committee of the Whole to include the words "other financial obligations chargeable to a State" in article 31, it seemed to his delegation that there was a very serious gap in the draft text.

101. There had also been some suggestion that States not parties to the Convention whose debtors were subjects of a succession of States would be bound by the rules laid down in the Convention. In his delegation's view there was no foundation for that suggestion, particularly given the terms of former article 34.

102. The representatives of the Netherlands and Denmark had submitted to the Committee of the Whole a very reasonable proposal (A/CONF.117/C.1/L.25/Rev.1/Corr.1) for provisions for the settlement of disputes. Since the text before the Conference had included, perhaps of necessity, a number of phrases such as "in equitable proportions", which were vague and even subjective in meaning, his delegation had thought it even more necessary that the instrument adopted should include provisions to ensure that disputes were settled through compulsory recourse to arbitration. It was therefore disappointed that the Convention, as adopted, did not include any requirement for the compulsory arbitration of disputes. Even the relatively moderate proposals made by the representatives of Austria and Switzerland had been rejected.

103. His delegation had been unable to support a substantial number of the articles of the text before the Conference. Furthermore, it agreed with the representative of the Federal Republic of Germany in considering the way in which the Conference had carried out its work to be unsatisfactory. Some light might have been thrown on the reasons for that state of affairs by a representative who, speaking before the vote, had referred to the new international economic order and related matters. The search, already difficult enough, for solutions to issues with which the Conference was properly concerned had been made much harder, or even impossible, by the desire of some to score points on issues which were not the true concern of the Conference and which were matters for negotiation elsewhere, negotiation in which his country was playing its part. He refuted the suggestion that it was those who cast negative votes who prejudiced the progress of codification. If blame had to be attributed, it should, in his delegation's view, rest squarely with those who, despite protestations to the contrary, had failed to accommodate the legitimate difficulties, carefully and frequently explained, of others. His delegation had not fallen short in its efforts to help find common ground.

104. He regretted that his delegation could not regard the text before the Conference as representing either a codification of existing international law or as representing emerging rules of customary international law. It would have no legal force except as between the eventual parties to it. Accordingly his delegation could not support the text and had found itself obliged to vote against its adoption. In view of his country's record of support for the process of codification and the work of the International Law Commission, he hoped very much that that experience would not be repeated.

105. Mr. ANDRESEN (Portugal) said that his delegation regretted not having been able to join the majority in the Conference. There were two reasons for its abstention in the vote. The first was a substantive reason related to the contents of certain provisions

which had been adopted. His delegation had had occasion in the course of the work of the Committee of the Whole to explain the reasons which had led it to vote against articles 14, 26 and 36, which in its view ran counter to legal values and principles. Secondly, there was the equally important question of procedure, since his delegation attached considerable importance to the codification of international law. In its view such codification must respect the legal interests and values of the international community and also reflect international practice generally accepted as law. The interests of the international community had not been weighed in an equitable fashion. The positions of a substantial number of delegations had not been taken into account. A United Nations convention of universal scale which was designed to become *jus cogens* should not be negotiated in such a fashion.

106. Mr. MAAS GEESTERANUS (Netherlands) said that, at all stages of the Conference, his delegation had consistently pleaded and actively sought, in co-operation with other delegations from all regions, to find generally acceptable texts for a number of articles. While thanking those delegations which had supported those endeavours, it deplored the fact that a will for serious negotiation and a spirit of compromise had manifested themselves only to a limited extent in the Conference and that the combined efforts of a number of delegations had failed to convince the majority and, on points of real importance to his country, had remained largely without success. In addition to concurring with the statement already made by the delegation of the Federal Republic of Germany on behalf of the member States of the European Communities, his delegation wished, in particular, to refer to the fact that the text of the Convention just adopted contained, in a number of clauses, concepts which seemed to suggest the existence, outside the Convention itself, of certain principles or norms of international law that could limit the freedom of States to conclude treaties among themselves. His delegation, confirming the views it had already expressed on each of those clauses in the Committee of the Whole, wished to repeat that it did not recognize that the principles or norms of international law in question existed, or at least that they already existed, in general international law. Neither were such principles or norms defined in any precise manner in the articles of the present Convention. It was specifically with regard to those clauses that his delegation had felt regretfully compelled to cast a negative vote on the convention as a whole. It had done so in order to avoid the erroneous assumption which might otherwise have arisen that his Government accepted that the concepts in question reflected existing principles or norms of international law. In addition, he felt obliged to remark that, aside from the concepts just mentioned, the text of the Convention used expressions such as "equity" and "equitable proportions" which, in practice, would be very difficult to apply in the absence of new machinery for compulsory adjudication, or at least arbitration, in disputes concerning the interpretation and application of the Convention.

107. Mr. OLWAEUS (Sweden) expressed his delegation's regret at having had to abstain in the vote on the convention as a whole and associated himself with the explanatory statements made by the representatives of Denmark and Finland.

108. Mrs. OLIVEROS (Argentina) said that her delegation had voted in favour of the convention. She regretted that there had been so many votes against it and so many abstentions. The law could not turn its back on reality and, in her delegation's view, the Convention answered a real need. Her delegation welcomed the Convention's recognition of the importance to peoples of their right to permanent sovereignty over their natural resources. It also appreciated the place given in each of the five Parts of the Convention to negotiation and agreement between the parties. Nothing was more constructive than dialogue in good faith which always led to progress in friendly relations among States.

109. The convention was the outcome of many years of work and it was to be hoped that the International Law Commission would continue its labours for the benefit of the international community. Her delegation was grateful to all the distinguished scholars who had been concerned in the preparation of the text, especially the Special Rapporteur. She also wished to thank the Codification Division of the Office of Legal Affairs of the United Nations, the Legal Counsel, the President of the Conference, the Chairmen of the Committee of the Whole and of the Drafting Committee and Austria, the host country.

110. Mr. ECONOMIDES (Greece) said that his delegation had, with regret, abstained in the vote on the draft convention. It had done so for three main reasons, in addition to those given by the representative of the Federal Republic of Germany. In the first place, article 14, paragraph 4; article 26, paragraph 7; article 28, paragraph 3; article 29, paragraph 4; and article 36, paragraph 2, had been drafted in a manner which was legally unusual and inappropriate. It appeared moreover from the wording of those provisions that it had been desired to produce certain effects which could not be achieved by an international convention. A rule of *jus cogens* in international law could only be the outcome of international practice which was virtually accepted as an imperative norm, and not otherwise. Furthermore, all the provisions he had mentioned and particularly article 14, paragraph 4, and article 36, paragraph 3, should contain an express reference to international law.

111. Secondly, there was a reference in certain provisions to equity, either without explanation—which was the case in articles 16, 17 and 21—or with insufficient explanation—as was the case in articles 38 and 39. He conceded that equity could constitute a rule of law, but in order to do so it had to be legally constructed and rest upon an adequately developed foundation. Without that foundation and objective criteria for its application, equity was not a legal norm but an *ex aequo et bono* solution which required the consent of the parties concerned. His delegation was not prepared to give its unconditional consent to formulations which were currently without content or which were insufficiently explicated.

112. The third reason for his delegation's abstention was the fashion in which the Conference had been

conducted. Instead of providing, as it should have done, a framework for negotiations undertaken in the spirit of constructive dialogue and mutual understanding, it had played the ungrateful part of rubber stamping decisions already taken by the International Law Commission, all of whose recommendations his delegation did not approve. His delegation sincerely regretted that method of proceeding. The Conference constituted a bad precedent for the success of codification and the progressive development of international law, which required goodwill in order to produce a text acceptable to all. It was to be hoped that that example would not be followed in the future.

113. Mr. DONS (Norway) said that his delegation had abstained in the vote on the convention as a whole for the same reasons as the delegations of Denmark, Finland and Sweden.

114. Mr. FARES (Democratic Yemen) said that his delegation had voted in favour of the Convention because it was convinced that the progressive development and codification of international law were matters of the utmost importance. Notwithstanding the many criticisms addressed to the International Law Commission and to the text just adopted by speakers both before and after the vote, he felt that the success of the Convention was assured. None of the arguments advanced by the opponents of the Convention could reverse the course of history, halt the progressive development of international law or reduce the juridical value of the Convention. The International Law Commission and, in particular, the Expert Consultant were to be thanked for their invaluable efforts.

115. Mr. AKA (Ivory Coast) said that, for reasons beyond its control, his delegation had been absent from the conference room during the voting. He wished to put it on record that, had it been present, his delegation would have voted in favour of the convention.

116. Mr. YÉPEZ (Venezuela) said that his delegation had voted in favour of the convention, which it believed to represent a substantial contribution to the process of codification and progressive development of international law.

117. The draft prepared by the International Law Commission over a period of years—which, incidentally, took full account of opinions expressed in the Sixth Committee of the General Assembly—had not needed modification. The Commission and, in particular, the Expert Consultant deserved the Conference's thanks, as also did the host country and the President of the Conference. If the text just adopted was not satisfactory to all delegations, that was certainly not the fault of the Group of 77, which had made many constructive and positive efforts and had reached a number of useful compromises. His delegation had noted with surprise, concern and some apprehension that the developed countries, possessing the largest capacity for the use of force, were radically opposed to recognized principles such as that of equity and of the permanent sovereignty of peoples over their wealth and natural resources.

118. In conclusion, he reiterated his delegation's view that the Convention, as adopted, satisfied the interests of the majority of the international community. He thanked the Chairmen of the Committee of the Whole and of the Drafting Committee for their excellent work.

Adoption of the Report of the Committee of the Whole (A/CONF.117/11 and Add.1-12)

The report of the Committee of the Whole was adopted.

Adoption of the Report of the Credentials Committee (A/CONF.117/12)

119. Mr. do NASCIMENTO e SILVA (Brazil), Chairman of the Credentials Committee, introducing the report of that Committee (A/CONF.117/12), informed the Conference that subsequent to the Committee's meeting on 6 April 1983, credentials complying with the requirements of rule 3 of the rules of procedure of the Conference had been received in respect of the representatives of Democratic Yemen, the Libyan Arab Jamahiriya and Spain. Consequently, the credentials from those States should be reflected under subparagraph 4(*a*) instead of subparagraph 4(*c*) of the report. The secretariat had also received a note verbale issued by the Permanent Mission of Uruguay in Vienna, and consequently that State's credentials should be reflected in subparagraph 4(*c*) instead of subparagraph 4(*d*).

120. Finally, he drew the attention of the Conference to the draft resolution contained in paragraph 8 of the report, which the Committee recommended for adoption.

121. Mr. BEN SOLTANE (Tunisia), speaking on behalf of the States members of the League of Arab States, expressed their reservation in respect of Israel's attendance at the Conference, which they wished to be reflected in the summary records. That reservation did not, however, mean that they opposed the adoption of the report of the Credentials Committee as a whole.

122. Mr. NATHAN (Israel) pointed out that, as stated in subparagraph 4(*a*) of the report, credentials in respect of the representative of Israel had been received and duly examined by the Credentials Committee in accordance with rule 3 of the rules of procedure. His delegation had been invited to attend the Conference by the Secretary-General of the United Nations, pursuant to General Assembly resolutions 36/113 and 37/11. Moreover, once those credentials had been accepted by the Credentials Committee, they could no longer be questioned by representatives of other delegations.

123. Mr. KOLOMA (Mozambique) explained that he, the only representative of Mozambique at the Conference, had not come direct to Vienna from his country but from Geneva, where he had been attending another conference. The telex message that he had received in Geneva requesting him to represent his country at the Vienna Conference had stated that the problem of his credentials had been settled directly with the Secretary-General of the United Nations by means of a telex sent by the Mozambique Ministry of Foreign Affairs on 24 February 1983. Since, on his arrival in Vienna on

SUMMARY RECORDS OF MEETINGS OF THE COMMITTEE OF THE WHOLE

1st TO 44th MEETINGS

Preparation of a draft preamble and draft final clauses

30. The CHAIRMAN drew attention to the question of preparing a draft preamble and draft final clauses for the future convention. In accordance with the practice of previous codification conferences, as suggested in paragraph 19 of the document on methods of work (A/CONF.117/9), that task might be entrusted to the Drafting Committee. All delegations were free to submit proposals on the subject to the Committee of the Whole. However, if the Conference followed previous practice, such proposals would automatically be referred to the Drafting Committee. Subsequently, the draft preamble and draft final clauses prepared by the Drafting Committee would be submitted direct to the Conference at a plenary meeting. He asked whether the Committee agreed to adopt that traditional procedure for preparing the draft preamble and draft final clauses.

31. Mr. SHASH (Egypt) said that before taking a decision, the Committee must decide whether or not the final clauses would make provision for reservations regarding certain articles of the future convention.

32. Mr. MAAS GEESTERANUS (Netherlands) supported that view.

33. Mr. MONNIER (Switzerland) said that the Chairman's suggestion was acceptable as it was in conformity with previous practice. The final clauses were normally of a technical nature and did not cover the question of reservations. That question could be discussed by the Conference in plenary meeting at an appropriate stage.

34. Mr. LAMAMRA (Algeria) observed that the question of reservations should be the subject of consultations among the regional groups. However, that did not preclude the preparation of draft final clauses by the Drafting Committee in accordance with past practice.

The Committee of the Whole agreed to entrust to the Drafting Committee the task of preparing a draft preamble and draft final clauses.

The meeting rose at 4.40 p.m.

13th meeting

Thursday, 10 March 1983, at 10.10 a.m.

Chairman: Mr. ŠAHOVIĆ (Yugoslavia)

In the absence of the Chairman, Mr. Moncef Benouniche (Algeria), Vice-Chairman, took the Chair.

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

[Agenda item 11]

Article 14 (Newly independent State)

1. The CHAIRMAN invited the Committee to consider article 14 and the amendments thereto proposed by the Netherlands (A/CONF.117/C.1/L.18) and the United Kingdom (A/CONF.117/C.1/L.19).

2. Mr. ROSENSTOCK (United States of America) said that in his delegation's opinion article 14 was both unnecessary and unwise. The article created distinctions which were not well founded in logic, law or inherent justice. In urging the deletion of the notion of a special régime for newly independent States from the draft convention under consideration and, consequently, the deletion of article 14, his delegation was guided neither by self-interest nor by ideological motives. Although the United States had at one time been a newly independent State and had acquired substantial territory by purchase, it had not recently been meaningfully involved in any relevant situations either as a predecessor or as a successor State and did not expect to be involved in any substantial successions in the foreseeable future. Neither was it opposed in principle to elaborating a special régime for newly independent States where it was possible or opportune to do so. For example, in the matter of succession of States in respect of treaties the United States had supported such a special régime and the application of the so-called *tabula rasa* principle, which in that context accurately reflected existing law and corresponded to a just view of the volitional and sovereign act of undertaking a treaty obligation. Nothing in the material before the Committee, however, indicated that article 14 was an accurate statement of existing law or that its provisions should be accepted as progressive development of international law. Moreover, in the light, *inter alia*, of article 4 of the draft, it appeared unlikely that the particular situations covered by article 14 would ever be of substantial importance in the future. In that respect, he completely agreed with the views expressed by the representative of Pakistan at the Committee's 3rd meeting; it was not only the United States but the developed States in general, as well as others with century-old traditions, that were least likely to be party to such situations in the future. Accordingly, the United States delegation believed that article 14 was not required by law, logic or justice, did not deal with subjects likely to be of great future importance and would hardly prove to be a stabilizing factor.

3. It might be thought that, since his delegation did not consider the area covered by the article to be a vital one, it should acquiesce in the wishes of others. The difficulty was that article 14 focused on some highly controversial issues which were not essential to the draft convention and which were, in any event, being dealt with elsewhere. In particular, differences arising over matters raised in paragraph 4 of the article would

hardly be resolved in the current Conference, and any language that might emerge was hardly likely to contribute to the creation of a world-wide legal framework acceptable to the developed and developing countries alike.

4. All in all, article 14 was a substantial obstacle to the prospects for a widely acceptable convention and an impediment to the success desired by all, and he therefore urged its deletion.

5. Mr. MAAS GEESTERANUS (Netherlands) said that, while agreeing with the International Law Commission's conclusions as stated in paragraph (32) of its commentary on article 14, he was confused by the way in which the principle of permanent sovereignty over natural resources was dealt with in paragraph 4 of the article under consideration and found it difficult to imagine the possible legal effects of that paragraph. In the first place, the text referred to the sovereignty of peoples, which was not a legal concept. States, not populations, were sovereign under international law. Secondly, the text referred to "sovereignty over wealth". In that connection, he remarked in passing that in the French and Spanish texts the adjective *naturelles* (*naturales*) appeared to qualify both wealth and resources, whereas in the English version of both the draft article and the Commission's commentary the adjective "natural" referred only to resources and not to wealth, with the implication that sovereignty extended over all types of wealth. Be that as it might, the concept of sovereignty over any form of wealth was difficult to understand, unlike that of sovereignty over natural resources which was recognized as a guiding principle in international relations. Even that principle, however, was difficult to define in formal legal terms or to translate into actual legal norms. For example, in certain United Nations studies and at certain United Nations conferences, it appeared to be still a moot point whether petroleum should be regarded as a natural resource in the same way as water and air.

6. Unlike certain other delegations, such as that of the United States of America, his delegation held the view that, notwithstanding the hesitations and uncertainties connected with the use of the term "permanent sovereignty", the deletion of any reference to that principle would fail to reflect the reality of modern international relations. A possible way of dealing with the problem would be to supplement the draft convention with a provision concerning the interpretation of the articles in case of dispute. Another solution, which was that proposed in the Netherlands amendment, might be to draft legal norms which could be applied by courts in case of need.

7. Mr. FREELAND (United Kingdom) said that he shared the United States representative's view of article 14 as an unnecessary and perhaps somewhat distracting provision in a convention like that which the Conference was attempting to draft. Being well placed to understand the importance of the process which formed the subject of the article, the United Kingdom delegation believed that the problems dealt with were not likely to be of central importance in modern times and felt that the best course would be to delete the article altogether. Should the Committee not be prepared to adopt that course, he suggested, while acknowledging the Netherlands delegation's efforts, that paragraph 4 at least should be deleted.

8. Introducing his delegation's amendment (A/CONF.117/C.1/L.19), he referred to his remarks at the 1st meeting of the Committee in connection with article 8 concerning the United Kingdom's practice in the granting of independence to former dependent territories. The system had worked well in the past and he felt that it should be reflected in paragraph 1 of article 14 which, as it stood, appeared to be based on an entirely different concept. He could not agree with the assertion in paragraph (13) of the International Law Commission's commentary on article 14 that the provisions of that article were not intended to apply to property belonging to Non-Self-Governing Territories as that property was not affected by the succession of States.

9. Nor did he accept the statement in paragraph (9) of the commentary that "the Constitution of the Federation of Malaya (1957) provided that all property and assets in the Federation or one of the colonies which were vested in Her Majesty should on the date of proclamation of independence vest in the Federation or one of its States". On the contrary, that Constitution expressly referred to all property and assets which were vested in Her Majesty for the purposes of the Federation or of the colony or Settlement of Malacca or the colony or Settlement of Penang, or, in other words, to property vested in the government of the territory concerned. A similar misunderstanding appeared to have arisen in the mind of the commentary's drafters when preparing footnote 154 (paragraph (9)) referring to the Constitution of the Independent State of Western Samoa (1962), where an important phrase, specifying that the property to be vested in Western Samoa on Independence Day was vested in Her Majesty "in right of the Trust Territory of Western Samoa", was indicated only by omission marks.

10. Quite apart from that important flaw, paragraph 1 of article 14 was full of obscurities and difficulties only too prone to give rise to future disputes. The phrase "having belonged to the territory" occurring in subparagraphs (*b*) and (*e*) was clearly not used in terms of strict legal ownership but in some vaguer sense. The phrase "in proportion to the contribution of the dependent territory" in subparagraphs (*c*) and (*f*) seemed to require mathematical calculations that were practically impossible to carry out. Subparagraph (*d*) included the notion of connection with the activity of the predecessor State, which, as the debate on article 13 had shown, gave rise to considerable disagreement. In brief, far from decisively regulating the matter under consideration, the provisions of article 14, paragraph 1, bore the seeds of extensive controversy.

11. The object of the United Kingdom amendment was, in the first place, to encourage agreement between the predecessor and successor States and subsequently to provide residual rules in the event that no agreement was reached. Subparagraph (*b*) of the amendment made it clear that the basic rule should be that followed in the past by the United Kingdom. In that connection, he said that if the words "government of the territory" were unacceptable, he would be prepared to replace them by some other suitable phrase. Lastly, the proposed subparagraph (*c*) provided the ultimate residual

A/CONF.117/16 (Vol. II)

UNITED NATIONS CONFERENCE ON SUCCESSION OF STATES IN RESPECT OF STATE PROPERTY, ARCHIVES AND DEBTS

Vienna, 1 March–8 April 1983

OFFICIAL RECORDS

Volume II

Summary records of the plenary meetings and of the meetings of the Committee of the Whole

UNITED NATIONS

B. DRAFT ARTICLES ON SUCCESSION OF STATES IN RESPECT OF STATE PROPERTY, ARCHIVES AND DEBTS ADOPTED BY THE INTERNATIONAL LAW COMMISSION AT ITS THIRTY-THIRD SESSION

Document A/CONF.117/4

[Section D only*]

Note. This text is reproduced as it appears in section D of chapter II of the report of the International Law Commission on the work of its thirty-third session**

PART I
GENERAL PROVISIONS

Commentary

Part I, following the model of the 1969 Vienna Convention[76] and the 1978 Vienna Convention,[77] contains certain general provisions which relate to the present draft articles as a whole. Its title reproduces that of Part I of the 1978 Vienna Convention. Also, in order to maintain structural conformity with the corresponding parts of those Conventions, the order of articles 1 to 3 follows that of the articles dealing with the same subject-matter in those conventions.

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.

Commentary

(1) This article corresponds to article 1 of the 1978 Vienna Convention. Its purpose is to limit the scope of the present draft articles in two important respects.

(2) First, article 1 takes account of the decision by the General Assembly that the topic under consideration should be entitled: "Succession of States in respect of matters other than treaties".[78] In incorporating the words "of States" in article 1, the Commission intended to exclude from the field of application of the present draft articles the succession of Governments and the succession of subjects of international law other than States, an exclusion which also results from article 2, subparagraph 1(*a*). The Commission also intended to limit the field of application of the draft articles to certain "matters other than treaties".

(3) In view of General Assembly resolution 33/139 of 19 December 1978, recommending that the Commission should aim at completing at its thirty-first session the first reading of "the draft articles on succession of States in respect of State property and State debts", the Commission considered at that session the question of reviewing the words "matters other than treaties", which appeared both in the title of the draft articles and in the text of article 1, to reflect that further limitation in scope. It decided, however, to do so at its second reading of the draft, so as to take into account observations of Governments. The Commission nevertheless decided, at the thirty-first session, to change the article *"les"* before *"matières"* to *"des"* in the French version of the title of the topic, and consequently of the title of the draft articles, as well as in the text of article 1, in order to align it with the other language versions. As explained above,[79] at its present session the Commission decided, on the basis of governmental observations, to entitle the final draft: "Draft articles on succession of States in respect of State property, archives and debts". The present text of article 1 is a reflection of that decision. Although the word "State" appears only once, for reasons of style, it must be understood that it is intended to qualify all the three matters described.

(4) The second limitation is that of the field of application of the draft articles to the *effects* of succession of States in respect of State property, archives and debts. Article 2, subparagraph 1(*a*), specifies that "*succession of States* means the replacement of one State by another in the responsibility for the international relations of territory". In using the term *"effects"* in article 1, the Commission wished to indicate that the provisions included in the draft concern not the replacement itself but its legal effects, i.e., the rights and obligations deriving from it.

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* For sections A to C, see mimeographed version of document A/CONF.117/4. For references to paragraphs 13 to 87 and footnotes 1 to 75 in this text, see those sections.

** *Official Records of the General Assembly, Thirty-sixth Session, Supplement No. 10* (A/36/10 and Corr.1), chap. II, sect. D. A typeset version of the report of the Commission is included in the *Yearbook of the International Law Commission 1981*, vol. II (Part Two) (United Nations publication, Sales No. E.82.V.4 (Part II)).

[76] See footnote 63 above.

[77] See footnote 16 above.

[78] See para. 30 above.

[79] See paras. 67 and 68 above.

1978 Vienna Convention, and is designed to safeguard in matters of terminology the position of States in regard to their internal law and usages.

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

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

Commentary

(1) This provision reproduces *mutatis mutandis* the terms of article 6 of the 1978 Vienna Convention, which is based on article 6 of the draft articles on the topic prepared by the Commission.

(2) As it stated in the report on its twenty-fourth session, the Commission, in preparing draft articles for the codification of general international law, normally assumes that these articles are to apply to facts occurring or situations established in conformity with international law. Accordingly, it does not as a rule state that their application is so limited. Thus, when the Commission, at its twenty-fourth session, was preparing its draft articles on succession of States in respect of treaties, several members considered that it was unnecessary to specify in the draft that its provisions would apply only to the effects of a succession of States occurring in conformity with international law.[83]

(3) Other members, however, pointed out that when matters not in conformity with international law called for specific treatment the Commission had expressly so noted. They cited as examples the provisions of the draft articles on the law of treaties concerning treaties procured by coercion, treaties which conflict with norms of *jus cogens*, and various situations which might imply a breach of an international obligation. Accordingly, those members were of the opinion that, particularly in regard to transfers of territory, it should be expressly stipulated that only transfers occurring in conformity with international law would fall within the concept of "succession of States" for the purposes of the draft articles being prepared. The Commission adopted that view. However, in its report it noted that:

> Since to specify the element of conformity with international law with reference to one category of succession of States might give rise to misunderstandings as to the position regarding that element in other categories of succession of States, the Commission decided to include amongst the general articles a provision safeguarding the question of the lawfulness of the succession of States dealt with in the present articles. Accordingly, article 6 provides that the present articles relate only to the effects of a succession of States occurring in conformity with international law.[84]

(4) At its twenty-fifth session, the Commission decided to include in what was then the introduction to the draft articles on succession of States in respect of matters other than treaties a provision identical with that of article 6 of the draft articles on succession of States in respect of treaties. It took the view that there was now an important argument to be added to those which had been put forward at the twenty-fourth session in favour of article 6: the absence from the present draft articles of the provision contained in article 6 of the draft articles on succession of States in respect of treaties might give rise to doubts as to the applicability to the present draft of the general presumption that the texts prepared by the Commission relate to facts occurring or situations established in conformity with international law.[85]

Article 4. Temporal application of the present articles

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

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

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

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

Commentary

(1) The Commission, having recommended to the General Assembly that the present draft articles be studied by a conference of plenipotentiaries with a view to the conclusion of a convention on the subject,[86] rec-

[83] *Yearbook . . . 1972*, vol. II, p. 236, document A/8710/Rev.1, chap. II, sect. C, paras. (1) and (2) of the commentary to art. 6.

[84] *Ibid.*, para. (2) of the commentary.

[85] *Yearbook . . . 1973*, vol. II, pp. 203-204, document A/9010/Rev.1, chap. III, sect. B, para. (4) of the commentary to art. 2.

[86] See para. 86 and footnote 75 above.

ognized that participation by successor States in the future convention would involve problems relating to the method of giving consent to be bound by the convention expressed by the successor State, and the retroactive effect of such consent. In fact, under the general law of treaties, a convention is not binding upon a State unless and until it is a party to the convention. Moroever, under a general rule now codified in article 28 of the 1969 Vienna Convention, the provisions of a treaty, in the absence of a contrary intention "do not bind a party in relation to any act or fact which took place . . . before the date of the entry into force of the treaty with respect to that party". Since a succession of States in most cases brings into being a new State, a convention on the law of succession in respect of State property, archives and debts would *ex hypothesi* not be binding on the successor State unless and until it took steps to become a party to that convention; and even then the convention would not be binding upon it in respect of any act or fact which took place before the date on which it became a party. Nor would other States be bound by the convention in relation to the new State until the latter had become a party.

(2) At its present session the Commission, conscious that in the absence of a provision in these draft articles concerning their temporal application, article 28 of the 1969 Vienna Convention would apply, concluded that it was necessary to include the present article 4 in order to avoid the problems referred to in the preceding paragraph. As in the case of article 3, this article reproduces, *mutatis mutandis*, the corresponding provision (art. 7) of the 1978 Vienna Convention, which is intended to solve in the context of the law of succession of States in respect of treaties as codified in that convention problems similar to those which arise in the case of the present draft, as explained above.

(3) Article 7 of the 1978 Vienna Convention was adopted by the United Nations Conference on Succession of States in Respect of Treaties after long and careful consideration at both the first and resumed sessions of the Conference, with the help of an Informal Consultations Group set up to consider, *inter alia*, its subject-matter.[87] Paragraph 1 of article 7 reproduces without change the text of the only paragraph constituting draft article 7 of the final draft on succession of States in respect of treaties adopted by the Commission in 1974.[88] Paragraphs 2 to 4 of article 7 of the 1978 Vienna Convention were elaborated by the Conference as a mechanism intended to enable successor States to apply the provisions of the Convention, or to apply them provisionally, in respect of their own succession which had occurred before the entry into force of the Convention. Article 4 aims at achieving similar results in the case of a future convention embodying rules applicable to a succession of States in respect of State property, archives and debts.

(4) In its commentary to draft article 7 of the final draft on succession of States in respect of treaties adopted in 1974, the Commission stated, *inter alia*, the following:

> Article 7 is modelled on article 4 of the [1969] Vienna Convention but is drafted having regard to the provisions on the non-retroactivity of treaties in article 28 of that Convention. The article has two parts. The first, corresponding to the first part of article 4 of the Vienna Convention, is a saving clause which makes clear that the non-retroactivity of the present articles will be without prejudice to the application of any of the rules set forth in the articles to which the effects of a succession of States would be subject under international law independently of the articles. The second part limits the application of the present articles to cases of succession of States which occur after the entry into force of the articles except as may be otherwise agreed. The second part speaks only of "a succession of States", because it is possible that the effects of a succession of States which occurred before the entry into force of the articles might continue after their entry into force and this possibility might cause confusion in the application of the article. The expression "entry into force" refers to the general entry into force of the articles rather than the entry into force for the individual State, because a successor State could not become a party to a convention embodying the articles until after the date of succession of States. Accordingly, a provision which provided for non-retroactivity with respect to "any act or fact . . . which took place before the *date of the entry into force of the treaty with respect to that part*,"* as in article 28 of the 1969 Vienna Convention, would, if read literally, prevent the application of the articles to any successor State on the basis of its participation in the convention. The words "except as may be otherwise agreed" are included to provide a measure of flexibility and reflect the sense of the introductory words to article 28 of the [1969] Vienna Convention.[89]

The foregoing passage, which is applicable to paragraph 1 of article 4 of the present draft, is to be read, for the purposes of this draft, keeping in mind the provisions contained in paragraphs 2 to 4 of the article.

Article 5. Succession in respect of other matters

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

Commentary

In view of the fact that the present draft articles do not deal with succession of States in respect of all matters other than treaties but are, rather, limited in scope to State property, archives and debts, the Commission, in second reading, deemed it appropriate to include this safeguard clause relating to the effects of a succession of States in respect of matters other than the three to which the draft applies. The wording of article 5 is modelled on that of article 14 of the 1978 Vienna Convention.

Article 6. Rights and obligations of natural or juridical persons

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

Commentary

As is explained below in the commentary to article 31, the Commission, at its present session, decided

[87] For the summary records of the plenary meetings and of the meetings of the Committee of the Whole held during the first (1977) and resumed (1978) sessions of the Conference, see *Official Records of the United Nations Conference on Succession of States in Respect of Treaties*, vols. I and II respectively (United Nations publications, Sales Nos. E.78.V.8 and E.79.V.9).

[88] *Yearbook . . . 1974*, vol. II (Part One), pp. 181-182, document A/9610/Rev.1.

[89] *Ibid.*, p. 182, para. (3) of the commentary to art. 7.

"without payment" ("*sans paiement*"[120] or "*gratuitement*"[121]).

(3) The first subsidiary clause of article 11 ("Subject to the provisions of the articles in the present Part") is intended to reserve the effects of other provisions in part II. One notable example of such provisions is that of article 12, regarding the absence of effect of a succession of States on the property of a third State.

(4) The purpose of the second subsidiary clause of article 11 ("unless otherwise agreed or decided") is to provide expressly for the possibility of derogating from the rule in this article. It is identical with the clause in article 10 on which the Commission has already commented.[122]

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

A succession of State 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.

Commentary

(1) The rule formulated in article 12 stems from the fact that a succession of States, that is, the replacement of one State by another in the responsibility for the international relations of territory, can have no legal effect with respect to the property of a third State. At the outset, the Commission wishes to point out that the article has been placed in part II of the draft, which is concerned exclusively with succession with respect to State property. Consequently, no argument *a contrario* can be drawn from the absence from article 12 of any reference to private property, rights and interests.

(2) As emphasized by the words "as such" appearing after the words "a succession of States shall not", article 12 deals solely with succession of States. It in no way prejudices any measures that the successor State, as a sovereign State, might adopt subsequently to the succession of States with respect to the property of a third State, in conformity with the rules of other branches of international law.

(3) The words "property, rights and interests" have been borrowed from article 8, where they form part of the definition of the term "State property". In article 12 they are followed by the qualifying clause "which, at the date of the succession of States, are situated in the territory of the predecessor State". The Commission regarded it as obvious that a succession of States could have no effect on the property, rights and interests of a third State situated outside the territory affected by the succession, and that the scope of the present article should therefore be limited to such territory.

(4) The words "according to the internal law of the predecessor State" are also borrowed from article 8. The Commission wishes to refer to observations previously expressed in this connection.[123]

(5) Certain members of the Commission considered this article unnecessary.

SECTION 2. PROVISIONS CONCERNING SPECIFIC CATEGORIES OF SUCCESSION OF STATES

Commentary

(1) In section 1 of the present part, the draft articles dealt with various questions relating to succession of States in respect of State property applicable generally to all categories of succession. Articles 13 to 17 comprise section 2, and deal with the question of the passing of State property from the predecessor State to the successor State separately for each category of succession. This method was deemed to be the most appropriate for section 2 of part II of the draft, as it was for section 2 in parts III and IV as well, in view of the obvious differences existing between various categories of succession, owing to the political environment in each of the cases where there is a change of sovereignty over or a change in the responsibility for the international relations of the territory to which the succession of States relates. In addition, it is justified in the case of part II by the various constraints which the movable nature of certain kinds of property places on the quest for solutions. Before going into the individual draft articles, the Commission wishes to make the following general observations concerning certain salient aspects of the provisions in the present section.

Choice betwen general rules and rules relating to property regarded in concreto

(2) On the basis of the reports submitted by the Special Rapporteur, the Commission considered which of three possible methods might be followed for determining the kind of rules that should be formulated for each category of succession. The first method consisted in adopting, for each category of succession, special provisions for each of those kinds of State property affected by a succession of States which are most essential and most widespread, so much so that they can be said to derive from the very existence of the State and represent the common denominators, so to speak, of all States, such as currency, treasury and State funds. The second method involved drafting, for each type of succession, more general provisions, not relating *in concreto* to each of these kinds of State property. A third possible method consisted in combining the first two and formulating, for each type of succession, one or two articles of a general character, adding perhaps one or two articles, where appropriate, relating to specific kinds of State property.

(3) The Commission decided to adopt the method to which the Special Rapporteur had reverted in his eighth

[120] Annex X, para. 1 and Annex XIV, para. 1 of the Treaty of Peace with Italy (United Nations, *Treaties Series*, vol. 49, pp. 209 and 225); and United Nations General Assembly resolutions 388 (V), of 15 December 1950, entitled "Economic and financial provisions relating to Libya" (art. 1, para. 1) and 530 (VI), of 29 January 1972, entitled "Economic and financial provisions relating to Eritrea" (art. 1, para. 1).

[121] Art. 60 of the Treaty of Lausanne (League of Nations, *Treaty Series*, vol. XXVIII, p. 53).

[122] See above, paras. (2)-(4) of the commentary to art. 10.

[123] See above, para. (11) of the commentary to art. 8.

report,[124] namely, that of formulating, for each type of succession, general provisions applicable to all kinds of State property. The Commission decided not to follow the first method, which was the basis of the Special Rapporteur's seventh report and which it had discussed at the twenty-seventh session (1975), not so much because a choice based on property regarded *in concreto* might be considered as being artificial, arbitrary or inappropriate as because of the extremely technical character of the provisions it would have been obliged to draft for such complex matters as currency, treasury and State funds.

Distinction between immovable and movable property

(4) In formulating, for each category of succession, general provisions applicable to all kinds of State property, the Commission found it necessary to introduce a distinction between immovable and movable State property, since these two categories of property cannot be given identical treatment and, in the case of succession to State property, must be considered separately, irrespective of the legal systems of the predecessor State and the successor State. The distinction, known to the main legal systems of the world, corresponds primarily to a physical criterion for differentiation, arising out of the very nature of things. Some property is physically linked to territory, so that it cannot be moved; this is immovable property. Then there are other kinds of property which are capable of being moved, so that they can be taken out of the territory; these constitute movable property. However, it seems desirable to make it clear that in adopting this terminology the Commission is not leaning towards the universal application of the laws of a particular system, especially those that derive purely from Roman law, because, as is the case with the distinction between public domain and private domain, a notion of internal law should not be referred to when it does not exist in all the main legal systems. The distinction made thus differs from the rigid legal categories found, for example, in French law. It is simply that the terms "movable" and "immovable" seem most appropriate for designating, for the purposes of succession to State property, property which can be moved or which is immobilized.

(5) Referring both categories of State property to "territory" is simply a reflection of the historical fact that State sovereignty developed over land. Whoever possessed land possessed economic and political power, and this is bound to have a far-reaching effect on present-day law. Modern State sovereignty is based primarily on a tangible element: territory. It can, therefore, be concluded that everything linked to territory, in any way, is a base without which a State cannot exist, whatever its political or legal system.

Criteria of linkage of the property to the territory

(6) Succession of States in respect of State property is governed, irrespective of the specific category of succession, by one key criterion applied throughout section 2 of part II of the draft: the linkage of such property to the territory. Applying this criterion, the basic principle may be stated that, in general, State property passes from the predecessor State to the successor State. It is through the application of a material criterion, namely, the relation which exists between the territory and the property by reason of the nature of the property or where it is situated, that the existence of the principle of the passing of State property can be deduced. Moreover, behind this principle lies the further principle of the actual viability of the territory to which the succession of States relates.

(7) As regards immovable State property, the principle of the linkage of such property to the territory finds concrete application by reference to the geographical situation of the State property concerned. Consequently, for the types of succession dealt with in section 2 of the present Part, as appropriate, the rule regarding the passing of immovable State property from the predecessor to the successor State is couched in the following terms, used in subparagraphs 2(*a*) of article 13 and 1(*a*) of articles 14 and 16:

> . . . immovable State property of the predecessor State situated in the territory to which the succession of States relates shall pass to the successor State.

or in the somewhat different form used in subparagraph 1(*a*) of article 17:

> . . . immovable State property of the predecessor State shall pass to the successor State in the territory of which it is situated.

As adopted by the Commission, the rule relating to the passing of immovable State property does not apply to such property when it is situated outside the territory to which the succession of States relates, except in the cases of the newly independent State and of dissolution of a State, as is explained in the commentary to articles 14 and 17.

Special aspects due to the mobility of the property

(8) As regards movable State property, the specific aspects which are due to the movable nature or mobility of State property add a special difficulty to the problem of the succession of States in this sphere. Above all, the fact that the property is movable, and can therefore be moved at any time, makes it easy to change the control over the property. In the Commission's view, the mere fact that movable State property is situated in the territory to which the succession of States relates should not automatically entitle the successor State to claim such property, nor should the mere fact that the property is situated outside the territory automatically entitle the predecessor State to retain it. For the predecessor State to retain or the successor State to receive such property, other conditions must be fulfilled. Those conditions are not unrelated to the general conditions concerning viability, both of the territory to which the succession of States relates and of the predecessor State. They are closely linked to the general principle of equity, which should never be lost from view and which, in such cases, enjoins apportionment of the property between the successor State or States and the predecessor State, or among the successor States if there is more than one and the predecessor States ceases to exist. The predecessor State must not unduly exploit the mobility of the State property in question, to the point of seriously disorganizing the territory to

[124] *Yearbook . . . 1976*, vol. II (Part One), pp. 55 *et seq.*, document A/CN.4/292.