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

Report of the Secretary-General

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* A/37/150.

I. INTRODUCTION

1. The International Law Commission, in the report on the work of its thirty-third session, held from 4 May to 24 July 1981, 1/ submitted to the General Assembly at its thirty-sixth session its final set of draft articles on succession of States in respect of State property, archives and debts, 2/ in conformity with the recommendation made by the Assembly in resolutions 34/141 of 17 December 1979, and 35/163 of 15 December 1980.

2. The Commission, in accordance with article 23 of its Statute, decided to recommend that the General Assembly should convene an international conference of plenipotentiaries to study the draft articles, and to conclude a convention on the subject. 3/

3. At its thirty-sixth session, the General Assembly adopted resolution 36/113 of 10 December 1981 entitled "International Conference of Plenipotentiaries on Succession of States in respect of State Property, Archives and Debts". By paragraphs 2 and 3 of that resolution the General Assembly decided that an international conference of plenipotentiaries shall be convened to consider the draft articles on succession of States in respect of State property, archives and debts, and to embody the results of its work in an international convention and such other instruments as it may deem appropriate, and requested the Secretary-General to convene the United Nations Conference on Succession of States in respect of State Property, Archives and Debts early in 1983 at a place to be determined by the General Assembly at its thirty-seventh session".

4. The General Assembly, by paragraphs 4 and 5 of the same resolution, invited Member States to submit, not later than 1 July 1982, their written comments and observations on the final draft articles, and requested the Secretary-General to circulate such comments so as to facilitate the discussion on the subject at the thirty-seventh session of the General Assembly.

5. In pursuance of the above resolution, the Secretary-General by a letter dated 29 January 1982, signed by the Legal Counsel, extended an invitation to Member States to submit not later than 1 July 1982 the written comments and observations on the final draft articles.

6. By 16 September 1982, written comments and observations had been submitted, pursuant to resolution 36/113, by the Governments of Austria, Czechoslovakia, the Philippines and Venezuela. In addition, in reply to the Secretary-General's letter, the Government of the German Democratic Republic indicated that upon completion of the examination of the draft articles it "will state its comments at the United Nations Conference on Succession of States in respect of State Property, Archives and Debts". Also, the Government of Norway indicated that it is its intention "to be represented at the above-mentioned Conference".

7. The present document, which reproduces the comments and observations mentioned in paragraph 6 above, is submitted to the General Assembly by the Secretary-General pursuant to the request made in paragraph 5 of resolution 36/113. Further comments and observations that may be forthcoming will be issued as addenda to the present document.

II. COMMENTS RECEIVED FROM GOVERNMENTS

AUSTRIA

[Original: English]

[1 July 1982]

1. As to the over-all thrust of the draft articles on succession of States in respect of State property, archives and debts (final draft), Austria wishes to refer to its detailed comments given in 1981 and published in document A/CN.4/338/Add.3. 4/ Those comments have i.a. been referred to in the relevant debates of the General Assembly's Sixth Committee. It is a fact and it has been noted with satisfaction that two observations made by Austria in document A/CN.4/338/Add.3 have been taken into account for the final version of the draft articles as prepared by the ILC: the new title as well as the addition of a provision covering the temporal application of the draft articles (art. 4), do indeed reflect the basic idea underlying some comments expressed by Austria in the aforementioned document. In that respect, the final version of the draft is considered to be a step forward and the new formulations would seem to constitute a welcome improvement.

2. However, the concerns underlying Austria's observations on a number of other draft articles which were not modified, are fully maintained. Any further discussion of the draft articles should, therefore, focus also on the problems raised by Austria at an earlier stage.

CZECHOSLOVAKIA

[Original: English]

[26 July 1982]

1. The Czechoslovak Government supports the idea of convening an International Conference of Plenipotentiaries of Governments to consider the draft articles on succession of States in respect of State property, archives and debts worked out by the International Law Commission, as provided for by the United Nations General Assembly resolution 36/113 of 10 December 1981. It considers the draft articles on succession of States in respect of State property, archives and debts, as amended by the International Law Commission in the second reading at its thirty-third session in 1981, as a good basis for the negotiations of a diplomatic conference.

2. As to its comments on the draft articles, the Czechoslovak Government refers to its position published in United Nations document A/CN.4/338/Add.2 5/ and to the Czechoslovak position expressed in the Sixth Committee of the thirty-sixth session of the United Nations General Assembly in 1981 (A/C.6/36/SR.49).

/...

PHILIPPINES

[Original: English]

[23 August 1982]

1. Articles 1 to 6 constitute part I (General Provisions) of the projected convention on succession of States in respect of State property, archives and debts. Previous to this, there were two other related conventions on the subject of State succession, namely, the Vienna Conventions on the Law of Treaties and on Succession of States in respect of Treaties.
2. These final draft articles (arts. 1 to 6) are the preliminary articles of the projected convention on succession of States in respect of State property, archives and debts. Thus, article 1 deals with the scope of the projected convention, article 2 with the use or definition of terms, article 3 with the coverage of the projected convention; and article 4 with the date of effectivity of said convention; article 5 clarifies succession in respect of matters other than State property, archives and debts; and article 6 stipulates that nothing contained in the projected conventions shall be considered as prejudging the rights and obligations of natural or juridical persons.
3. Article 1 should be read in conjunction with article 5, which makes it clear that the projected convention will apply only to "the effects of succession of States in respect of State property archives and debts", and not to the broader spectrum of "succession of States in respect of matters other than treaties". The International Law Commission based this limitation on the scope of the projected convention upon General Assembly resolution 33/139, which specifically mentions "the draft articles on succession of States in respect of State property and State debts". The Commission should probably verify from the General Assembly, however, if said body does not actually want a broader application of the projected convention so as to include all matters other than treaties. This would seem advisable because in its report, the Commission mentions "the decision of the General Assembly that the topic under consideration should be entitled: Succession of States in respect of matters other than treaties".
4. Article 2 which embodies the definition of terms consists chiefly of definitions already accepted universally and as appearing in the 1978 Vienna Convention.
5. Article 3 limits the application of the projected convention 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". Hence, no rules would seem to cover the succession of States occurring in violation of international law (e.g. conquest). Perhaps this matter could be further explored with the end in view of formulating the rules that should govern such a situation, i.e., in the event of lawlessness of the succession.

6. Article 4 limits the application of the projected convention to the succession of States "which has occurred after the entry into force of the articles", which is but a restatement of the non-retroactivity principle of treaties. The exception is, of course, in case a State agrees to be bound by the articles even in respect of succession which occurred before the articles came into effect.

VENEZUELA

[Original: Spanish]

[5 August 1982]

1. The Government of Venezuela welcomes the work done by the International Law Commission in preparing the draft articles on succession of States in respect of State property, archives and debts. The draft articles represent a valuable and comprehensive piece of work likely to satisfy the international community's aspirations for the adoption of an international convention on the subject, a convention that would codify the generally accepted norms of international law.
2. The International Law Commission's examination of the question of succession of States in respect of matters other than treaties has culminated in the text of draft articles which have undeniable legal value and testify to the profound wisdom and dedication characterizing the members of the Commission. Venezuela believes, however, that the title of the draft articles, which will take the form of an international convention, could be made more precise during the deliberations of the International Conference of Plenipotentiaries to be convened. The reason is that archives are part of the property of a State and the terms "State property" and "State debts" could be merged under a single concept. For the rest, Venezuela considers the division and the substantive part of the draft articles to be appropriate.
3. Venezuela also believes that paragraph 5 of draft article 25 is unnecessary; it can think of no good reason why the successor State should make available to the predecessor State, under the conditions laid down in the paragraph, appropriate reproductions of State archives which have passed to the successor State in accordance with paragraph 1 or 2 of article 25; it may well not be of fundamental interest to the predecessor State to have access to those archives. The provision envisaged in article 25, paragraph 4, does appear necessary and useful, because it is indeed worth while for the successor State to have at its disposal appropriate reproductions of the State archives of the predecessor State which are connected with the interests of the transferred territory.
4. Finally, it may be advisable to request the Secretary-General of the United Nations to make available to the Conference of Plenipotentiaries draft articles for the final part of the convention, which should contain what are known as final clauses or final provisions. These draft articles could be based on the final clauses of the Convention on Succession of States in respect of Treaties; the plenipotentiaries would make such amendments as they may deem appropriate.

Notes

1/ Official Records of the General Assembly, Thirty-sixth Session, Supplement No. 10 (A/36/10 and Corr.1)

2/ Ibid., chap. II.

3/ Ibid., para. 86.

4/ Ibid., annex I.

5/ Ibid., annex I.
