

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

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**A/CONF.117/C.1/SR.19**

**19th meeting of the Committee of the Whole**

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amendment be adopted, it proposed that the words “means all documents of whatever kind which . . .” should be replaced by “means documentary material of whatever kind amassed and deliberately preserved by State institutions in the course of their activities, which . . .”<sup>3</sup>

41. Mr. BEDJAOUI (Expert Consultant) said that the International Law Commission had had particular difficulty with the definition of State archives. The text proposed had been criticized as tautological. In article 8, dealing with the case of State property, the Commission had tried to meet that criticism by referring to “rights and interests”, as well as to “property”. In that article it had also referred to the date of the succession of States and the internal law of the predecessor State.

42. It had endeavoured to follow the same course in defining State archives, but it had been able to find only the word “documents” to describe the latter and that gave the impression of tautology. He was grateful for the suggestions which had been made with a view to improving the definition.

43. A question which had been raised was which body of rules should be determining—international law or internal law—and, if the latter, whether it should be the internal law of the predecessor State or that of the successor State. International law could not greatly help, since it contained no definition of archives except in conventional law, as for example in the Agreement of 23 December 1950 between Italy and Yugoslavia. It would be necessary to rely on agreement between the States concerned. It was not possible to leave the matter to international jurisdiction since that in turn would have to rely on the internal law of States in order to resolve the problem. The internal law of the predecessor State was certainly not always a satisfactory criterion, but it was difficult to do without it since the successor State could not unilaterally decide on the definition of State archives. The same problem had arisen with the definition of State property in article 8.

44. Since there was no criterion in international law for defining State archives, the International Law Com-

mission had been obliged to refer to the internal law of the predecessor State. As the discussion had shown, that reference was unsatisfactory but it was hard to avoid. As in the case of State property in article 8, a successor State could not unilaterally determine what were to be State archives. Some members of the International Law Commission had suggested omitting the definition or placing it in article 2, but that was no solution. A definition was needed. He felt, however, that to adopt the proposal made by the Lebanese representative would be to capitulate in advance.

45. As the UNESCO representative had pointed out, there was no internationally accepted definition of archives. It had been asked whether the term “archives” could cover works of art. In that connection, he pointed out that the commentary on article 19 made it clear that some works of art had indeed been treated as archives when accompanying archives. Also, an ancient manuscript could be part of historical archives and at the same time a work of art because, for example, of its illuminations.

46. Some national legislators were very specific as to the date on which a document became part of archives. Similarly, they gave the exact date on which those archives could be made public. However, under no circumstances should article 19 give the impression that all “living archives” that were essential for the running of a country were excluded from its scope. Besides, provision was made for administrative archives in specific cases in later articles.

47. Mr. MUCHUI (Kenya) thanked the Expert Consultant for his explanation. He confirmed that his delegation was prepared to give serious consideration to the Algerian amendment when it was circulated as a document, although it was not necessarily prepared to withdraw its own amendment. It was generally agreed that the International Law Commission’s definition was too broad, but he was not convinced that accepting the Algerian amendment would remedy that, for it did not seem to make clear what would be excluded from the definition.

<sup>3</sup> Subsequently issued under the symbol A/CONF.117/C.1/L.35.

*The meeting rose at 6 p.m.*

## 19th meeting

Tuesday, 15 March 1983, at 9.40 a.m.

Chairman: Mr. ŠAHOVIĆ (Yugoslavia)

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

[Agenda item 11]

*Article 19 (State archives) (continued)*

1. Mr. LAMAMRA (Algeria) noted that it was clear from the commentary that in its important pioneering

work in seeking a definition of “State archives” which would answer the specific needs of the process of succession the International Law Commission had encountered a number of difficulties. The principal defects of the resultant definition in article 19 were its circularity and the determining role given to the internal law of the predecessor State, prompting the fear that a sizeable category of State archives generally known as “living archives” might not be covered by the rule governing the passing of such archives to the successor State.

2. The amendment proposed by his delegation (A/CONF.117/C.1/L.34) had three main purposes: to avoid giving the impression of defining the meaning of "archives" by using the term "archives"; to make the definition more precise and to give it greater substance by referring to the purposes for which the documents in question had been kept by the predecessor State; and to limit as far as possible any potential misapplication of the provision in reliance on the pre-eminence accorded to the internal law of the predecessor State, since the wording proposed by the Commission tended to imply that that law might also be taken as a frame of reference for defining the nature and scope of "State archives" for the purposes of article 19. The amendment proposed by the United Kingdom delegation (A/CONF.117/C.1/L.20), incidentally, tended precisely to strengthen the basis for such misinterpretation.

3. The definition of State archives as amended by his delegation took the form of an enumeration of "purposes" which was meant to be exhaustive; for that reason it included the words "and other", after listing five specific purposes. The adjective "official" was used in the Algerian amendment in preference to any other because it was broad enough to cover living archives and at the same time neutral enough not to prejudice the question of the transmissibility of certain archives, including, for example, those the passing of which might harm the security of the predecessor State.

4. By and large, the other adjectives were largely self-explanatory and corresponded to generally recognized fundamental rights. The word "practical", however, perhaps called for comment. It was intended to cover a variety of documents associated with everyday activities carried on by the predecessor State in the territory affected by the succession. In the case of a newly independent State, particularly one whose territory had been the scene of hostilities prior to the succession, such documents might, for instance, include maps of minefields laid by the predecessor State, thus enabling the successor State to deactivate them and so prevent civilian casualties.

5. The amendment retained the word "kept" used by the Commission, because it conveyed the idea of preservation, appropriate to the nature of archives.

6. It had been suggested in connection with the Kenyan amendment (A/CONF.117/C.1/L.27) that the deletion of the words "and had been kept by it as archives" implied that all documents of whatever description held by the predecessor State, whether archives or not, could be claimed by the successor State. That criticism was unfounded since the definition as amended was not a substitute for the complex machinery for the passing of archives, firmly rooted in equity, established by the draft articles for the different cases of succession. It was also understood that the documents which passed were those necessarily linked to the activity of the predecessor State in the territory in question; it was quite legitimate for the successor State to wish to possess those documents, since they would be as necessary to the latter as they had been to the predecessor State in discharging the identical responsibilities.

7. Mr. SUCHARIPA (Austria) said that, in proposing its amendment (A/CONF.117/C.1/L.35), his delegation had been motivated by three important considerations. First, it wished to avoid a circular definition; second, it wished to avoid a definition that would be so broad as to be almost useless; and third, wishing to employ language that was familiar to delegations, it had used the terminology of the first definition cited in paragraph (2) of the Commission's commentary to article 19.

8. Mrs. OLIVEROS (Argentina) said that her delegation endorsed the idea behind the draft article. The term "State archives" should be regarded as applying to all documents of whatever kind that fulfilled two conditions: they must have belonged to the predecessor State in accordance with its internal law and they must have been kept by that State as archives. She stressed, however, that the second condition was not subject to the qualification "in accordance with its internal law", so as to forestall any temptation on the part of the predecessor State to exclude all or some of the public documentary material from the scope of the article.

9. From that point of view the United Kingdom amendment was insufficiently clear and was not acceptable to the Argentine delegation. The Algerian amendment, on the other hand, was acceptable in that its more detailed description of the type of public document in question corresponded to her delegation's view of what constituted "archives".

10. Mr. ABED (Tunisia) suggested as a drafting change that, for the sake of consistency with other articles of the draft, in particular articles 8 and 31, the opening phrase of article 19 might be amended to read: "For the purposes of the articles in the present Part".

11. So far as substance was concerned, he shared the view of other delegations that the phrase "and had been kept by it as archives" was not particularly satisfactory.

12. He regarded the amendment proposed by the United Kingdom not merely as one of form but as affecting the essential substance of the draft article. As such, he could not support it and endorsed the reservations expressed by other delegations with respect to that amendment.

13. He believed that the amendment proposed orally by the representative of Lebanon at the previous meeting, that the words "unless otherwise agreed or decided" should be included, was inappropriate in the context of a defining clause. It was also undesirable because, as the Expert Consultant had said, it would represent a capitulation.

14. The Algerian delegation's amendment reflected an understandable concern to avoid circularity, but was no great improvement because any definition based on a list of cases could only be approximate and was also potentially dangerous, because any chance omission might be interpreted as an exemption.

15. The Austrian delegation's amendment had the advantage of clarifying the first part of the article but suffered from the defect of retaining the words "and had been kept by it as archives", which his delegation regarded as obscure and open to varying interpretations. The ideal solution would be to combine that

amendment with the Kenyan amendment so that the article would read: "For the purposes of the articles of the present Part, 'State archives' means documentary material of whatever kind amassed and deliberately preserved by State institutions in the course of their activities which, at the date of the succession of States, belonged to the predecessor State according to its internal law."

16. Mr. NAHLIK (Poland) said that article 19 was a very important provision and must be made as clear as possible since, as part of the introduction to the section of the future convention relating to archives, it would apply to all cases of succession. State archives, as a part of the cultural property of a State, had an extremely rich history in terms of their status in international law; every peace treaty concluded since the middle of the seventeenth century had included a specific clause dealing with that aspect, although solutions had varied greatly from case to case.

17. A great deal of thought had been given to the definition proposed by the International Law Commission. There were also opposing and supporting arguments for each of the proposed amendments. Since it would be dangerous to take a premature and hasty decision on the question, in which certain delegations might be motivated by political considerations prompted by their particular circumstances, he suggested that it might be useful to form a working group to study the question carefully and to find a generally acceptable solution.

18. Mr. RASUL (Pakistan) said that he understood the intention behind the Algerian amendment but thought that, as it stood, it might give the impression that a document, in order to qualify as a State archive, must serve all the purposes listed. He suggested that the word "and" between the words "practical" and "other" should be replaced by the word "or". If that suggestion was acceptable to the Algerian delegation, the last part of the amendment might be further revised to read: "official, historical, economic, scientific, practical or any other purpose".

19. Mr. EDWARDS (United Kingdom) said that he understood the concern underlying the amendment proposed by Kenya but agreed with the Expert Consultant that it was far too imprecise and might lend itself to an infinite number of interpretations.

20. He was unable to support the proposal made by the Algerian delegation, for similar reasons; while giving the appearance of precision and comprehensiveness, it still left open the question what exactly was meant by the expression "and had been kept by it as archives".

21. The Austrian delegation's amendment at first sight offered a promising definition, and his delegation could support it, subject possibly to a few minor drafting modifications.

22. His delegation had listened carefully to the interesting debate on the draft article under consideration. It had been particularly struck by the intervention of the observer for UNESCO, which it believed contained some most interesting points and ideas.

23. Several speakers had characterized the United Kingdom's proposal as fundamentally a drafting

amendment. Since it was largely designed to avoid circularity in the definition, it was true that the amendment was largely technical. It was made in an effort to be helpful. However, his delegation had also wished to apply a test to the phrase "and had been kept by it as archives" which, in the Commission's draft article, seemed excessively vague and indefinite. As the Expert Consultant had said the day before, there were no international legal rules governing the complex subject of archives, and it was quite clear that practice varied from country to country. Accordingly, his delegation's proposal that the internal law of the predecessor State should apply to both the ownership and the "keeping" aspects seemed to be the only realistic solution.

24. One or two delegations had claimed that the United Kingdom proposal would leave out of the scope of the articles all "living" archives that had not yet found their way into the public domain and that it would therefore be necessary to wait for many years before such archives could be covered by the proposed convention. That in fact was a misconception. For official documents to be considered part of United Kingdom State archives it was not necessary that they should have entered the public domain; that was an entirely separate matter which had to do with access to such documents by members of the public. All government documents, as soon as they were created, formed part of the United Kingdom Government's archives.

25. In all the circumstances, he would not press his delegation's amendment to a vote, but suggested that, in view of the unsatisfactory features of the definition as proposed by the Commission, the Drafting Committee should be instructed to give advice concerning the drafting of a satisfactory provision and to co-ordinate and review the final drafting of whatever text was adopted by the Committee.

26. Mr. PHAM GIANG (Viet Nam) said that he interpreted the definition proposed by the International Law Commission as an attempt to cover the broadest possible range of documents relating to all fields of human activity, irrespective of their shape or form. The definition had three essential elements: the core definition of State archives as "documents of whatever kind"; the reference to the internal law of the predecessor State as determining, in the last instance, what constituted a State archive; and the existence of archives not classified as State archives in accordance with the internal law of the predecessor State but "kept as archives" by that State.

27. Some delegations, however, had objected that that definition was too vague and wished to add some more specific language. His delegation regarded the definition as very general and in the nature of a synthesis and could accept it in the absence of any more satisfactory version, while remaining ready to consider any proposals designed to improve it. The ideal definition should be both synthesis and analytical.

28. The Algerian amendment was a step in the right direction, although its formulation still had limitations. For the sake of greater precision, the word "cultural" should be added after the word "historical" and the word "administrative" should be inserted after the word "economic".

29. With regard to the amendment proposed by the United Kingdom, he agreed with the Expert Consultant that the proposal objectively reduced the scope of the definition of State archives.

30. The Kenyan amendment conflicted with the intention of the Commission to avoid creating a situation in which a predecessor State might withhold certain recently produced public papers.

31. His delegation would thus accept the Commission's draft article in the absence of any better proposal, while being ready to agree to the Algerian amendment. He sympathized with the suggestion of the representative of Poland that a working group should be set up to study the various proposals and devise a more fully satisfactory definition.

32. Mr. DJORDJEVIĆ (Yugoslavia) expressed the view that the International Law Commission had been fully justified in its decision to take the internal law of the predecessor State as an appropriate criterion for the purpose of determining what were State archives. As regards the second, equally necessary criterion—that the documents must have been kept as archives by the predecessor State—the Commission had refrained from qualifying it by any reference to the internal law of the predecessor State in order to avoid the risk that so-called “living” archives might be excluded from the scope of the convention simply because they were not designated as archives under the domestic laws of certain predecessor States. It should be noted that the Commission had intended the two criteria to be treated as separate and mutually independent. The amendment proposed by the United Kingdom, by making both criteria subject to the internal law of the predecessor State, substantially deviated from that intention and disturbed the balance which the Commission had sought to establish. For that reason, the United Kingdom amendment was not acceptable to his delegation. The Kenyan amendment, designed to eliminate the second criterion altogether, was likewise unacceptable to his delegation, principally because it deprived the successor State of an important additional guarantee.

33. His delegation was prepared to accept article 19 as it stood, but would consider the suggestions contained in both the Austrian and, particularly, the Algerian amendments if the Committee considered the International Law Commission's text to be unsatisfactory.

34. Mr. PIRIS (France) pointed out that the working out of a definition of State archives went considerably beyond the scope of the problem of the succession of States; it was a highly technical and specialized matter. His delegation was prepared to accept the International Law Commission's draft, subject to the amendment submitted by the United Kingdom, which added a welcome precision to the text, as the representatives of the United Kingdom, Austria and the Federal Republic of Germany had explained.

35. If there was any substantial departure from the International Law Commission's draft, many delegations would put forward their own views on the matter and it would be difficult to reach a solution. Moreover, the Committee of the Whole already had before it three written draft amendments by Kenya, Algeria and

Austria and a number of oral amendments. His delegation was opposed to the adoption of the Kenyan amendment which, as had been pointed out, would expand *ad infinitum* the meaning of State archives. The term would then apply to all papers, of whatever kind, which belonged to the State. That would be going far beyond what archivists and administrators understood by “State archives”.

36. In his delegation's view, the scope of the Algerian amendment would be the same as that of Kenya. It, too, was much wider than the definition recognized and accepted by professionals and State administrators. Such a definition had been worked out at numerous gatherings and congresses concerned with archives; reference might be made in that connection to the Warsaw Conference and, above all, to the definition given by Mr. Bautier at the Cagliari (Italy) meeting in 1977. In general, that definition covered all documents produced as a result of the functioning of the State, and not all documents belonging to the State.

37. On the other hand, his delegation found the amendment submitted by Austria interesting and would be prepared to consider it, despite its imperfections. It should be pointed out, however, that the Austrian delegation itself had stated that it was prepared to accept the International Law Commission's text. If the Committee wanted to work out a more precise definition, his delegation could propose a text based on the following ideas: “State archives” comprised all documents, of whatever form or material, which, emanating from the activity of the State, were produced and received by the State in the exercise of its functions, and the keeping of which was organized by the State with a view to the management of the territory and as historical documentation for research purposes. That meant, for example, as the International Law Commission had noted incidentally in its commentary, that not all documents belonging to the State were necessarily State archives. That was true, for example, of written documents kept in libraries, sound documents kept in sound libraries, filmed documents kept in film libraries, and of course objects kept in museums. The archives of those various institutions, which kept documents for historical, scientific, cultural and other purposes, were not State archives as such and should therefore not be covered by the definition in article 19.

38. The French delegation endorsed the Polish representative's view that the Committee should not lightly opt for one definition or another. There again, the matter under consideration was a technical definition of archives in international law, which would lead the discussion a long way from the sphere of international law on the succession of States. In that technical field, the basis should be the work of international experts on the subject, as the representative of UNESCO had already pointed out. It was perhaps not the moment, however, to embark on a search for a very precise definition, and it would therefore probably be wiser to retain the text drafted by the International Law Commission.

39. With regard to the point raised by one delegation concerning “living” archives, the French delegation considered that they were documents which were

directly necessary to the management and administration of the territory of the successor State and, as such, were transmitted to it by the predecessor State.

40. In any event, article 19 should preserve the two criteria adopted by the International Law Commission, namely, that they belonged to the predecessor State according to its internal law and that they had been kept by it as archives. As the possible transfer of certain State archives should take place, in principle, at the date of the succession of States (see article 21), it would be impossible to avoid a reference to the internal law of the predecessor State.

41. Mr. SUCHARIPA (Austria), replying to a point made by the representative of Tunisia, said that his delegation would be prepared to combine its amendment with that submitted by Kenya, so that the text of the article might read: “. . . means documentary material of whatever kind amassed and deliberately preserved by State institutions in the course of their activities which on the date of the succession of States belonged to the predecessor State according to its internal law”.

42. Mr. BROWN (Australia) said that his delegation supported the United Kingdom amendment, which expressed the principle inherent in article 19 more clearly than the existing draft. However, if that amendment was not put to the vote, his delegation would support the text as it stood. Referring to the Algerian and Austrian amendments, he said that since it was impossible to define the meaning of “archives” in terms that would cover all cases and since international law offered no guidance in the matter, the internal law of the predecessor State remained as the only workable criterion. That conclusion had already been reached with regard to article 8. As a former dependent territory of the United Kingdom, Australia had no objection to the choice of that criterion. The archives of the United Kingdom were well preserved and accessible to all, free of charge, in conditions of comfort and convenience. Any restrictions on access which might exist were merely temporary in nature. The arrangements made in the United Kingdom in respect of archives might, therefore, be cited in support of retaining the reference to the internal law of the predecessor State.

43. Mr. ECONOMIDES (Greece) associated himself with the views expressed by the French representative. Two main schools of thought on the matter of State archives appeared to be represented among members of the Committee. The first considered that the definition of “State archives” should rely principally on the internal law of the predecessor State, a view reflected in the International Law Commission’s draft and, still more explicitly, in the United Kingdom amendment. The other school favoured a definition of State archives without reference to internal law. For his part, he preferred the former approach and considered the text proposed by the United Kingdom to be the most satisfactory of all those before the Committee.

44. Mr. FAYAD (Syrian Arab Republic) said that the dissatisfaction with the text of article 19 expressed at the previous meeting—a dissatisfaction which had given rise to a plethora of amendments, both written and oral—seemed, after discussion, to have given place

to the view that the International Law Commission’s definition, brief as it was, might after all be acceptable. The criterion of the internal law of the predecessor State had already been adopted in articles relating to State property, so that its adoption in the provisions concerning State archives as well would be perfectly consistent. The other criterion employed by the International Law Commission, that the documents in question must have been kept by the predecessor State as archives, also seemed satisfactory, especially in the light of the French representative’s warning against excess of detail. He would support the International Law Commission’s draft in preference to any of the amendments thereto.

45. Mr. MUCHUI (Kenya), while welcoming the United Kingdom representative’s explanatory remark concerning the treatment of official documents under the law of the United Kingdom, said that what was true of the internal law of one predecessor State was not necessarily true of the law of all others. The Kenyan delegation’s amendment had not been directed specifically at the United Kingdom, and the problem which it was designed to resolve—that of the risk of “living” archives being excluded, wholly or in part, from the scope of the convention—had not been disposed of by the United Kingdom representative’s disclaimer. The Algerian amendment represented a commendable effort to solve that problem as well as to meet the criticism of some speakers that the Kenyan amendment was too sweeping. However, the Algerian text, like any enumeration, was not necessarily exhaustive and might inadvertently fail to cover some documents.

46. Although his delegation was not fully convinced that its amendment was indeed too wide and therefore unacceptable, it was prepared, in a spirit of compromise, to show some flexibility by combining that amendment with the Austrian text along the lines suggested by the Austrian representative. In that case, Kenya would wish to insert the word “all” before the words “documentary material of whatever kind” and would also suggest the deletion of the word “deliberately” before the words “preserved by State institutions”. In making those suggestions, he emphasized that they did not necessarily represent his delegation’s final position in the matter, and expressed sympathy with the Polish representative’s suggestion for further consultations of a formal or informal nature. Lastly, he agreed with the Australian representative that United Kingdom archives were well preserved and could be freely consulted, but drew attention to the fact that many problems remained unsolved as to the ownership of those archives and that retrieval programmes were, as a result, seriously hampered.

47. Mr. EVANS (Observer for the United Nations Educational, Scientific and Cultural Organization) said that UNESCO welcomed the elaboration of an international instrument on a topic of which the Organization had extensive experience. In attempting to define the nature of State archives it was important to bear in mind the distinction to be drawn between archives and other types of State property, on the one hand, and that between archives and cultural property, on the other. Archives were a unique category of State property in that they were essential both to a nation’s identity and

to the very sovereignty of the State itself. As such they were to be regarded, as several earlier speakers had pointed out, as inalienable. It was their relationship to the sovereignty of the State that distinguished archives from other forms of cultural property that a State might naturally wish to preserve.

48. Mr. TARCICI (Yemen) said that his delegation supported the Algerian delegation's amendment to article 19 and suggested as a minor drafting change that in that text the words "and other purposes" should be replaced by "or other purposes".

49. Mr. BRISTOL (Nigeria) said that his delegation supported the Tunisian suggestion for amalgamating the amendments proposed by Kenya and Austria, and suggested the deletion in the Austrian amendment of the words "amassed and deliberately" so that the text would read: "For the purposes of the articles in the present Part, 'State archives' means documentary material of whatever kind preserved by State institutions in the course of their activities which, at the date of the succession of States, belonged to the predecessor State according to its internal law." In that way it would be internal law which qualified ownership.

50. Mr. TEPAVITCHAROV (Bulgaria) said that the definition in article 19 as proposed by the International Law Commission contained three main elements. First, the concept "State archives", which was adequately explained in the commentary and with which his delegation fully agreed, although it had some doubts concerning the status of material of historic and cultural heritage considered to be archives but not kept as such; second, the requirement that such documents must have belonged to the predecessor State according to its internal law, which was quite logical; and third, the requirement that the documents must have been kept as archives, that requirement not being qualified by the words "according to its internal law". In that connection he said that he interpreted the amendment proposed by the United Kingdom to mean that both of those requirements would be qualified by the reference to internal law. In his opinion such an amendment was not a mere drafting change but would involve a change of substance. The second requirement, in the article as it stood, was not qualified by a reference to internal law; he took the view that ample guidance on that point was offered by international practice, which should be taken into account in any description of archival documents, whatever might be the institution or the premises holding such documents. The definition proposed by the International Law Commission was therefore both broad and flexible enough to allow both predecessor and successor States to present solid arguments in support of any claims or counter-claims as appropriate. His delegation fully appreciated the reasons, explained by the Expert Consultant, why the International Law Commission had detached the second requirement from the scope of internal law.

51. The attempt by Algeria in its proposed amendment to give specific meaning to the concept of archives by using the enumeration "for official, historical, economic, scientific, practical and other purposes", while avoiding the somewhat circular definition of the article as it stood, none the less gave rise to a definition within

a definition as well as introducing an internal contradiction in the definition of "State archives". If the amendment were adopted, the article as so amended would refer at the beginning to archives as "documents of whatever kind" and at the end would attempt to define restrictively the purposes for which such documents had been kept. In effect, therefore, the article would contain a rather open-ended definition. To introduce the notion of "purpose" might create difficulties of interpretation, since it would not be clear, for example, what would be the precise legal meaning of "practical" purposes.

52. The definition proposed by the International Law Commission was acceptable to his delegation. The Algerian proposal went some way towards attempting to provide objective criteria, although it might be improved by the omission of some of the terms that had no generally or legally accepted meaning. A rule of international law like that under consideration should endeavour to cover whatever cases might arise in future. Because it wished the provision in question to cover living archives, his delegation would not like the definition to be narrower than the broad definition proposed by the International Law Commission.

53. His delegation had no comment on the Austrian amendment or the combined Austrian-Kenyan-Tunisian suggestion at that time. The drafting change suggested by Tunisia for the opening phrase of the article seemed to be quite acceptable and, as a drafting matter, would require no vote.

54. In conclusion he said it was clear from the debate that detailing and specifying the meaning of "State archives" was not an easy task, and his delegation therefore supported the suggestion that a working group should be formed to seek a solution acceptable to all delegations.

55. Mr. ROSENSTOCK (United States of America) said that it might be useful to allow time for informal discussion among those delegations which had proposed amendments and the representative of UNESCO, as it might be possible to prepare a more acceptable defining clause. His delegation supported the amendment proposed by the United Kingdom for the same reasons as those given by the delegation of Greece. It also believed that the Austrian amendment might provide a basis for further clarification and that the remarks of the observer for UNESCO should be taken into account. The comments by the delegation of Bulgaria concerning the proposed Algerian text should also be borne in mind, particularly the criticism of the rather open-ended nature of the Algerian definition, a criticism which might be equally applicable to the Kenyan amendment.

*Article 16* (Separation of part or parts of the territory of a State) (*concluded*)\*

56. The CHAIRMAN said that the Committee had concluded its debate on the article and he therefore invited it to vote on the revised amendments proposed by Pakistan (A/CONF.117/C.1/L.8/Rev.1).

\* Resumed from the 17th meeting.

57. Mr. KEROUAZ (Algeria), speaking in explanation of vote before the vote, said that his delegation welcomed the effort made by the representative of Pakistan to clarify the text of paragraph 1(b) of article 16, but felt unable to support the amendment proposed. The wording of article 16 was linked to that of other articles, in particular article 13. He recalled that the French delegation's similar amendment to paragraph 2(b) of article 13 (A/CONF.117/C.1/L.16 and Corr.1) had been rejected by the Committee. He felt, therefore, that the Committee would run the risk, if it adopted the changes proposed by Pakistan, of disturbing the balance and harmony of the draft as a whole. For that reason his delegation would vote against the Pakistani amendment to paragraph 1(b).

58. The CHAIRMAN invited the Committee to vote on the amendment proposed by Pakistan to paragraph 1(b) of article 16 (A/CONF.117/C.1/L.8/Rev.1).

*The amendment to paragraph 1(b) was rejected by 30 votes to 18, with 12 abstentions.*

59. The CHAIRMAN invited the Committee to vote on Pakistan's proposal that paragraph 1(c) should be deleted.

*The proposal to delete paragraph 1(c) was rejected by 37 votes to 13, with 12 abstentions.*

60. The CHAIRMAN said that, the amendment having been rejected, he would invite the Committee to vote on article 16 as proposed by the International Law Commission.

*Article 16 as proposed by the International Law Commission was adopted by 46 votes to none, with 17 abstentions.*

61. The CHAIRMAN said that a number of delegations wished to speak in explanation of vote.

62. Mr. EDWARDS (United Kingdom) said that his delegation had voted in favour of the Pakistani amendment to paragraph 1(b) because of its objection to the phrase "connected with the activity of the predecessor State" used in the International Law Commission's text. It had explained the grounds for its objection to that phrase in the discussion on paragraph 2(b) of article 13 (11th meeting). His delegation had also voted in favour of the deletion of paragraph 1(c), because it regarded the criterion of "equitable proportion" used in the original text as unsatisfactory. His delegation had, however, abstained in the vote on the article as a whole.

63. Mr. BRISTOL (Nigeria) said that his delegation had voted against the proposed amendment to paragraph 1(b) because the wording used recalled that proposed by France in connection with paragraph 2(b) of article 13, an amendment which had been rejected. It had also voted against the proposal to delete paragraph 1(c): that provision as it stood was based on the principle of equity and provided for situations which might not be covered by the preceding subparagraphs. His delegation had accordingly voted in favour of the article as proposed by the International Law Commission.

64. Mr. MURAKAMI (Japan) said that he had found the phrase "connected with the activity of the pre-

decessor State" in paragraph 1(b) vague, and felt that it would be difficult to apply in practice. Because the Pakistani amendment would have improved the text, his delegation had voted for that amendment. His delegation had also voted in favour of the deletion of paragraph 1(c); despite the explanations offered by the Expert Consultant, it felt that the concept of "equitable proportion" was too imprecise to be used in specific instances of succession of States upon the separation of part or parts of the territory of a State.

65. Mr. ECONOMIDES (Greece) said that his delegation had been in favour of article 16 as drafted, but that it continued to regard the provisions of that article as being in some way incomplete. He thought that there was still time to review the problems created by the wording of the article, and he suggested that a working group might be established to discuss the issues involved.

66. Mr. DJORDJEVIĆ (Yugoslavia) said that his delegation had voted against the Pakistani amendments and in favour of article 16 as it stood. In the situations envisaged by article 16 it was not possible to establish more precise criteria and the broad formula proposed by the Commission was therefore more appropriate. In the case of paragraph 1(c), his delegation had felt that the criterion of "equitable proportion" was essential to the article as a whole and that subparagraph (c) should not be deleted.

67. Mr. DALTON (United States of America) said that the concept of "equitable proportion" lacked precision, and his delegation had therefore voted in favour of the proposal to delete the subparagraph in which it occurred. The subparagraph did not provide adequate guidance and might lead to increased possibilities of tension between the predecessor and successor States, together with a risk of confusion as to whether article 13 or article 16 applied in a given situation. He suggested that, for the purpose of dealing with possible controversies, an article concerning the settlement of disputes might usefully be added to the convention on the lines of the new article proposed by Denmark and the Netherlands (A/CONF.117/C.1/L.25/Rev.1 and Corr.1).

68. Mr. MIKULKA (Czechoslovakia) said that his delegation had voted in favour of the International Law Commission's balanced draft of article 16. The amendments proposed by Pakistan would impose undue restrictions on the successor State and were not justified either on grounds of equity or by international practice.

69. Mr. RASUL (Pakistan) said that his delegation had abstained in the voting on the text of the article as drafted by the International Law Commission. Its reasons for doing so were self-evidently the same as those which had prompted it to propose the amendments in the first place. None the less, because the Commission's draft contained a number of acceptable features, his delegation had abstained and had not voted against the Commission's text.

70. Mr. OESTERHELT (Federal Republic of Germany) said that his delegation had voted for both the amendments proposed by Pakistan. Its reasons for doing so had been explained in an earlier statement (17th meeting). The revised amendment to para-

graph 1(b) was a considerable improvement on the earlier version proposed by Pakistan. In the voting on article 16 as proposed by the International Law Commission his delegation had abstained because it did not consider the text completely satisfactory.

71. Mr. MUCHUI (Kenya) said that, while he appreciated the reasons why Pakistan had proposed its amendments, he was not convinced that they were

sufficiently weighty to warrant the adoption of a text which would have disturbed the balance and consistency of the draft as a whole. He had therefore voted against the amendments.

72. The CHAIRMAN said that the text of article 16, as adopted, would be referred to the Drafting Committee.

*The meeting rose at 1 p.m.*

## 20th meeting

Tuesday, 15 March 1983, at 3.15 p.m.

Chairman: Mr. ŠAHOVIĆ (Yugoslavia)

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

[Agenda item 11]

*Article 19 (State archives) (continued)*

1. Mr. BEDJAOU (Expert Consultant), commenting on proposals which had been made for amendment of article 19, said that the Algerian amendment (A/CONF.117/C.1/L.34) and the Austrian amendment (A/CONF.117/C.1/L.35) were based on paragraphs (2) and (3) respectively of the International Law Commission's commentary on the article (A/CONF.117/4). The Algerian amendment suffered from the drawbacks inherent in any enumeration, which always tended to be interpreted restrictively. It was therefore not surprising that the representatives of Viet Nam and Yemen had proposed to add other qualifiers to the list in that amendment.

2. The Austrian amendment was interesting, but the term "State institutions" was liable to be interpreted in different ways by States. It was open to question, for example, whether the definition would include the private papers of royal families or the archives of State economic institutions. In fact, it was difficult to equate "State archives" with "the archives of State institutions". The primary criterion for State archives was that they should indeed belong to the State, not to individuals, institutions or collectivities other than the State. There must be a common understanding on that point. The definition must be further refined by reference to the internal law of the predecessor State. There appeared to be some disagreement on whether or not the definition should make reference to internal law, but both the Algerian and Austrian amendments contained such a reference and it could not easily be excluded. The Austrian delegation had further explained that its amendment had subsumed the Kenyan amendment (A/CONF.117/C.1/L.27).

3. He welcomed the Tunisian oral amendment, submitted at the previous meeting, to replace the opening phrase of article 19 by the words "For the purposes of

the articles in the present Part"; that constituted a distinct improvement.

4. In conclusion, he observed that his remarks at the eighteenth meeting of the Committee had not been intended to imply that a sufficiently broad definition would enable all archives coming under it to pass automatically to the successor State. The passing of archives was regulated by the specific articles containing provisions on that subject.

5. Mr. LAMAMRA (Algeria) said that his delegation was prepared to accept in its amendment the insertion of the word "cultural" after "historical", as proposed by the Vietnamese representative, and the proposal of the representative of Pakistan to substitute the word "or" for "and" before "other purposes". It was not necessary to add the word "administrative" to his delegation's amendment, as had also been proposed by the Vietnamese representative, since that concept was already covered by the words "official" and "practical".

6. Speakers who had not agreed with his delegation's amendment were divided into those who thought its definition too broad and those who considered its enumeration insufficiently exhaustive. In his view the six qualifiers in the amendment, supplemented by the words "or other purposes", were sufficiently exhaustive to meet all requirements. On the other hand, the definition should be as complete as possible, in view of the fact that the rules relating to the passing of State archives had yet to be discussed. The text his delegation proposed was based on a desire to maintain a balance between the internal legislation of the predecessor State and that of the successor State. It had been suggested that that definition would encompass museums, libraries and other institutions. Such was not the case. Although those bodies belonged to the State, they would naturally be subject to the provisions in Part II of the draft convention, which related to State property. In view of the fact that there was no universally accepted definition of State archives, the Conference should endeavour to find a definition adapted to the exclusive requirements of the proposed convention which dealt with some specific aspects of the succession of States.