

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

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21st meeting of the Committee of the Whole

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tion. It was inappropriate to give the predecessor State the sole right to determine what constituted archives. Furthermore, that determination should not apply only to documents that belonged to the predecessor State at the date of the succession of States, since such a restriction could be used by the predecessor State to exclude documents which had been State archives before the date of succession.

28. His delegation also objected to qualifying as archives what the predecessor State had kept as archives. Leaving aside the question of abuse by the predecessor State, such a criterion could disqualify documents which at the date of succession happened to be in, or had been deliberately transferred to, another State.

29. The Austrian amendment constituted an improvement, but it did not take care of his delegation's principal concerns.

30. He supported the idea of establishing a small official working group to develop a common definition of archives. That group should take into account the proposal by the representative of Lebanon that the successor State should have an equal say in the matter of the transfer of archives to the successor State.

31. Mr. TÜRK (Austria), noting the considerable support expressed for the idea of establishing a working group on article 19, proposed that the Committee should now decide to set up such a group.

32. Following an exchange of views concerning the composition of the proposed working group, Mr. ROSENSTOCK (United States of America) moved the adjournment of the debate on the question of establishment of a working group to deal with article 19 and the amendments and sub-amendments thereto.

33. Mr. JOMARD (Iraq) and Mr. AL-KHASAWNEH (Jordan) supported the motion.

34. Mr. SHASH (Egypt) and Mr. MUCHUI (Kenya) considered that further discussion of the question was desirable.

The motion by the representative of the United States of America was rejected by 28 votes to 17, with 11 abstentions.

35. The CHAIRMAN suggested that the Committee should decide to establish a working group to review

article 19 and the written and oral amendments and sub-amendments thereto. The group's task would be to prepare a generally acceptable text for article 19 or, failing that, one or more possible texts, taking as the basis for discussion the text submitted by the International Law Commission. Since progress on the remainder of Part III of the draft articles hinged very largely on acceptance of a definition of the term "archives", he hoped that the working group would conclude its work with dispatch.

The suggestion of the Chairman was adopted.

Article 20 (Effects of the passing of State archives)

36. Mr. MAAS GEESTERANUS (Netherlands) said that article 20 resembled article 9 in that it posed the question of a possible interval in the passing of State archives from the predecessor to the successor State. In the case of article 9 the Committee had agreed to the insertion in the draft convention of an additional article which had been proposed by the delegation of Algeria. His delegation did not favour a similar solution in the present case, but thought it would be helpful to make it clear that, in the case of the passing of State archives, there was no extinction of the rights of the predecessor State without a simultaneous arising of the rights of the successor State. It had therefore submitted an amendment to article 20 (A/CONF.117/C.1/L.33) calling for the insertion of the word "simultaneous" between the words "the" and "arising" in that article.

37. Mr. LAMAMRA (Algeria) reminded the Committee that, upon the proposal of his delegation (A/CONF.117/C.1/L.22), it had adopted a new article 8 *bis* in connection with the passing of State property. For the sake of harmony a similar provision should be included in Part III as article 19 *bis*. The text might read as follows:

"A succession of States has the effect of making the State archives of the predecessor State pass to the successor State in accordance with the provisions of the present Part."²

The meeting rose at 6 p.m.

² Subsequently issued under the symbol A/CONF.117/C.1/L.39.

21st meeting

Wednesday, 16 March 1983, at 10.15 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 20 (Effects of the passing of State archives) (continued)

1. Mr. HOSSAIN (Bangladesh), after apologizing for his delegation's late arrival at the Conference, reit-

erated his Government's position as reflected in its statements in the Sixth Committee of the General Assembly and expressed general support for the articles under consideration.

2. Mr. ECONOMIDES (Greece) said that he supported the Netherlands amendment to article 20 (A/CONF.117/C.1/L.33). That the arising of the rights of the successor State was simultaneous with the extinction of the rights of the predecessor State was self-evident; however, it was preferable that it should be stated explicitly.

3. Mr. LAMAMRA (Algeria) said that, while hesitating to contribute towards a repetition of the earlier debate on article 9 and the amendments thereto, he felt that the proposition inherent in the Netherlands amendment was not as self-evident as might appear at first glance. While the concept of simultaneity indeed applied to the majority of cases of succession, it did not do full justice to successor States which had been in existence before the colonial era, States placed under a protectorate régime, or newly independent States whose succession to the colonial Power had occurred before the ending of military occupation of a part of their territory. In such cases, the notion of simultaneity was open to doubt from both theoretical and practical points of view. In that connection, he recalled that the very notion of the "arising" of rights had been criticized in the Sixth Committee by third world countries other than his own; some delegations had suggested that a term such as "recovery" or "renaissance" or even "confirmation" might be more appropriate. As the summary records of the International Law Commission's thirty-third session indicated, the Commission had been aware of the problem but had not been able to devise new formulas for dealing with it satisfactorily. His delegation accepted that situation and was prepared to support the International Law Commission's text of article 20, as it had supported that of article 9.

4. It would be recalled that a French amendment to article 9 (A/CONF.117/C.1/L.21) incorporating the word "concomitant" had been discussed at length and had eventually been rejected at the Committee's 10th meeting. Consequently, article 9 did not contain the word "concomitant" or any reference to simultaneity. Should the Netherlands amendment to article 20 be adopted in spite of his delegation's objections, he would strongly oppose any attempt to reintroduce such a reference in article 9 that might be made on the grounds of harmony, consistency or logic. The matter was not one of drafting, and any reconsideration of article 9 would have to be governed strictly by the rules of procedure.

5. Mr. MURAKAMI (Japan) said that, notwithstanding the arguments just advanced by the Algerian representative, he continued to think that the Netherlands amendment proposed a drafting change and should be referred to the Drafting Committee with the request to consider it as one of the drafting suggestions made in the course of the debate in the Committee of the Whole.

6. Mr. ROSENSTOCK (United States of America) said that the possibility of a gap occurring between the extinction of the rights of the predecessor State and the arising of the rights of the successor State had provoked a great deal of discussion in connection with article 9. All delegations had agreed, and the Expert Consultant had confirmed, that no such gap was envisaged in the International Law Commission's text and that the two events were, in fact, simultaneous and concomitant. The French delegation, in an effort to settle the issue once and for all, had introduced the word "concomitant" into its amendment to article 9, an amendment which the Committee had indeed rejected but on

grounds quite unconnected with the use of that word. Since then, the Drafting Committee had been held up in its work by the unresolved question whether it was entitled to incorporate the concept of simultaneity in the text of article 9 even though it had been rejected by the Committee of the Whole when it had considered the French delegation's amendment to that article. Some delegations, including his own, were in favour of including it, while others, for reasons which he failed to understand, objected to such a course. In his view, it was completely irrelevant whether the arising of the rights of the successor State took place for the first or second time. In that connection, he questioned the appropriateness of the English word "arising" as an equivalent of the French word *naissance*. Be that as it might, the matter was, of course, a drafting one and should be treated as such.

7. Mr. BROWN (Australia) said that he supported the Netherlands delegation's amendment, which merely spelt out a concept that was in any case implicit in the International Law Commission's draft. However, if that amendment were not adopted, his delegation would support article 20 as it stood.

8. Mr. PÉREZ GIRALDA (Spain) said that his delegation would support the Netherlands amendment to article 20, as it had supported the French delegation's amendment to article 9. He recollected that there had been a consensus within the Committee on the implicit recognition of the notion of simultaneity in article 9 and all other corresponding articles of the draft convention. The opposition of delegations to the French amendment had been based chiefly on the fact that it had included other possible changes to article 9, in particular the introduction of the word "identical" to describe rights. A lengthy discussion had taken place in the Drafting Committee on the question whether that Committee's terms of reference empowered it to insert the word "simultaneous" in the text of article 9. Now that the matter had come up once more in the Committee of the Whole there was no reason why that useful improvement should not be made.

9. Mr. de VIDTS (Belgium) said that he had no difficulty in supporting the Netherlands delegation's amendment, especially since in paragraph (1) of its commentary on article 9 the International Law Commission itself referred *expressis verbis* to the simultaneity of the extinction of the rights of the predecessor State and the arising of those of the successor State.

10. Mr. IRA PLANA (Philippines) said that, while agreeing with previous speakers that the insertion of the word "simultaneous" in article 20 would merely confirm the notion of continuity already implicit in the text, he had reservations as regards the Netherlands amendment because the presence of the word in article 20 and its absence in article 9 might give rise to confusion as to the validity of those provisions read in relation to each other.

11. Mr. PAREDES (Ecuador) said that his delegation had objected to the French delegation's amendment to article 9 for a number of reasons but had not opposed the inclusion of the word "concomitant", which, in

his view, would have enhanced the legal force of that article. For the same reasons of a legal nature, his delegation supported the Netherlands amendment to article 20.

12. Mr. EDWARDS (United Kingdom) said that he supported the Netherlands amendment. Without wishing to reiterate all the arguments advanced in connection with article 9, he recalled that his delegation had expressed dissatisfaction with the terms "extinction" and "arising" used in that article and would have preferred them to be replaced by others; however, if those words had to be maintained, it regarded the addition of the word "simultaneous" as essential.

13. Mr. DELPECH (Argentina) said that he supported the International Law Commission's draft with its implicit recognition of the principle of simultaneity in the passing of rights upon a succession of States. He added that the Drafting Committee's task was strictly limited to improving the language of texts referred to; changes of substance should be discussed only in the Committee of the Whole.

14. Mr. SUCHARIPA (Austria) said that his delegation had hoped that article 20 would not give rise to lengthy discussion, since all arguments had been sufficiently expounded and debated in connection with article 9. Since, however, the debate was taking place, he wished to place it on record that, as the sponsor of an amendment, subsequently withdrawn, to article 9 (A/CONF.117/C.1/L.2), his delegation naturally supported the Netherlands amendment to article 20 and invoked the same grounds as those stated by the Belgian delegation. If the amendment was not accepted, his delegation would be unable to support the article as drafted by the International Law Commission.

15. Mr. BEN SOLTANE (Tunisia) said that the fact that agreement had been reached on the wording of article 9 to be forwarded to the Drafting Committee should not be taken as implying that other subsequent articles should not be adequately discussed: each article had its own specific features and underlying logic.

16. His delegation felt obliged to support the text of article 20 as it stood, although for mainly historical reasons it found the text less than wholly satisfactory. The Netherlands amendment would tend to make the article too specific, an approach which would, if applied throughout the draft articles, result in a convention which was unwieldy and difficult to apply in practice.

17. Mr. OESTERHELT (Federal Republic of Germany) said that his delegation supported the Netherlands amendment for reasons it had outlined in its statements in the debate on article 9. The amendment provided a useful clarification of the understanding achieved in the discussion on that article and of the true meaning of the "passing" of rights. His delegation had stressed that there was no gap between the "extinction" and the "arising" of rights and had proposed an amendment clarifying the point (A/CONF.117/C.1/L.3), which it had subsequently withdrawn in the light of the understanding that seemed to have materialized concerning the real meaning of article 9. He had therefore been surprised when the representative of Algeria had suggested that there could be exceptional cases in which the "extinction" and "arising" of rights could be

other than simultaneous or concomitant. It was not clear to his delegation what those exceptions were and how they could exist.

18. Mr. MAAS GEESTERANUS (Netherlands) said that he could not accept any imputation that his delegation's purpose in proposing its amendment was to initiate a futile debate. On the contrary, its aim had been to find a satisfactory compromise and, ultimately, to arrive at a convention whose text would be acceptable to all States.

19. Mr. LAMAMRA (Algeria) said that the summing up of the situation with regard to articles 9 and 20 provided by the representative of the United States did not fully accord with the Algerian delegation's assessment of that situation. In particular, it did not agree that it could be inferred from the earlier debate that a certain consensus had been reached on the issue of the simultaneity of the passing of rights from the predecessor to the successor State.

20. The Algerian delegation had not intended to disparage the intentions of the representative of the Netherlands; it had merely wished to avoid an unnecessary recapitulation of the earlier debate on article 9. As to the proposed amendment to article 20, his delegation was not convinced of the need to add the word "simultaneous" to the draft, and would vote against it if it was put to the vote. However, he suggested that, if the amendment should be adopted, the text should be modified to read "a succession of States entails the extinction of the rights of the predecessor State and the simultaneous arising, in appropriate cases of succession, of the rights of the successor State . . .". The point of his suggestion was that, while simultaneity was acceptable in many cases of succession, there were some cases in which it could not be justified from a juridical or theoretical standpoint. He stressed that the amendment was intended to be complementary to the Netherlands amendment, but that his delegation would prefer the original draft proposed by the International Law Commission.

21. Mr. ROSPIGLIOSI (Peru) said that in both the Committee of the Whole and the Drafting Committee there was a general agreement that there must be as much uniformity as possible in the criteria on which the articles were to be based. In that respect the Commission's text was for the most part admirable, but room for improvement remained. In the case of article 20, it was clear that its content was very similar to that of article 9, and that the introduction of the word "simultaneous" in article 20 would lead to asymmetry in the draft. He considered that in both articles the concept of simultaneity was implicit.

22. Mr. MONNIER (Switzerland) said that his delegation supported the Netherlands amendment and believed that it introduced a degree of precision currently lacking in article 20 and also in article 9. As to the suggestion that the amendment was unnecessary because there was general agreement that the idea of simultaneity was implicit in both articles, he said that it was important to make clear the nature of the agreement achieved to those who would eventually implement the convention. The text should be as specific as possible.

23. His delegation felt that the fact that the debate on an earlier article had been lengthy and detailed should not preclude thorough discussion of a subsequent article which might raise analogous but not identical issues. Views might, after all, change in the course of the Conference in response to statements made by participants. It was in the interests of both the Conference itself and the convention that proposals should be considered solely on their own merits and not those of their sponsors.

24. Mr. ECONOMIDES (Greece) said that the statement made by the representative of Algeria had added a quite new dimension to the debate. The suggestion that there might be cases in which the extinction of the predecessor State's rights was not followed automatically and immediately by the arising of the successor State's rights—that there might be a juridical gap or rupture in the process—was out of keeping with the general feeling in the Committee, as reflected in the debate on article 9, that the process was completely continuous. The suggestion conflicted also with the approach of the International Law Commission itself, which regarded the principle of simultaneity as implicit in the wording of the draft article. It was, in addition, inconsistent with juridical logic; in the process of codification and the progressive development of international law it made no sense to base provisions of a future convention on exceptions, for such provisions must lay down a generally applicable rule. If provision was made for exceptions, it would be necessary to reconsider the whole approach to the topic and, in particular, to provide a rule protecting the rights of third States. Indeed, in his delegation's opinion the introduction of the word "simultaneous" as proposed by the Netherlands would have to be considered also in the context of article 9.

25. He proposed that the Drafting Committee should be invited to make a careful and detailed study of the terms used in article 20, in particular "extinction" and "arising", which had occasioned such heated debate, and endeavour to find other terms having equal juridical value but less charged politically.

26. Mr. THIAM (Senegal) said that his delegation regarded the idea underlying the amendment proposed by the Netherlands as quite sound. It might be a useful clarification both of the provisions of the specific article under consideration and for the purposes of the future interpretation of the convention as a whole.

27. He was surprised that the Committee should once again be debating issues which had been raised by the French amendment to article 9, ultimately rejected. The draft convention must be seen as an indivisible whole. To adopt the Netherlands amendment, however, would be to take a different approach to two virtually identical provisions, thus sowing the seeds of considerable difficulties of interpretation in the future. Article 9 had been adopted unamended and unopposed in the light of the convincing explanations given by the Expert Consultant, who had made it plainly understood that the simultaneity of the extinction and arising of rights was not only perfectly clear in the article but also a logical necessity. It had been on that general understanding that the French amendment had been withdrawn. The Committee should take the same approach to article 20.

28. Mr. RASUL (Pakistan) noted that, in the light of the explanations given by the Expert Consultant, his delegation had understood that the concomitant passing and identical nature of the rights extinguished and arising were implicit in article 9. The Netherlands amendment to article 20, an almost identical provision, was therefore only a drafting change.

29. The Algerian delegation's oral amendment, on the other hand, touched the substance of the article, in that the words "in appropriate cases" would affect the application of article 20 and would reduce its scope. Instead of being applicable to all cases covered by that Part of the convention, the article would become restrictive and selective. In his view, therefore, the Algerian oral amendment was independent of the Netherlands proposal and should be submitted in writing and considered separately.

30. Mr. PIRIS (France) welcomed the Netherlands amendment, which clarified the text in line with the interpretation given both by the International Law Commission and by the Expert Consultant, namely, that it was self-evident that the extinction and arising of rights referred to in article 20 were concomitant and simultaneous. It had appeared from the earlier debate on his delegation's proposed amendments to article 9 that the Committee of the Whole was unanimously in favour of the concept of simultaneity. If that consensus still prevailed, the Netherlands amendment could be adopted. His delegation could then vote in favour of article 20 as amended, on the understanding that the Drafting Committee would be free to find more suitable terms in place of "extinction" and "arising".

31. However, the representative of Algeria had seemed to challenge that consensus. Accordingly, if the Netherlands amendment was rejected, the French delegation could not be content to abstain in the vote on article 20 as it had done in the case of article 9. In the light of the Algerian amendment, it would no longer be possible to regard the absence or presence of the word "simultaneous" as merely a drafting question. He did not interpret the Algerian amendment in the same way as the Greek delegation. In his delegation's view, the Algerian amendment did not provide for an exception but postulated non-simultaneity as the rule and treated cases in which the extinction and arising of rights occurred simultaneously as exceptions. That was a radical substantive change.

32. Consequently, if the Netherlands amendment was rejected, the concept of simultaneity could no longer be regarded as implicit. The French delegation considered the Algerian amendment unacceptable; it continued to believe, like most delegations, that simultaneity existed in all cases without exception. The Netherlands amendment should be incorporated in article 20, and article 9 should in due course be reconsidered with a view to introducing a similar amendment, which would likewise expressly embody the concept of simultaneity.

33. Mr. HOSSAIN (Bangladesh) said that he understood the concerns of those delegations which supported the inclusion of the word "simultaneous". However, since a similar amendment in the case of article 9 had been rejected, and since article 20 as it stood was

fairly satisfactory, he suggested that the Committee should not linger over the question but proceed to a vote on the amendments as soon as possible.

34. Mr. CHO (Republic of Korea) said that he fully understood and accepted the idea that the extinction and arising of rights mentioned in article 20 were simultaneous and believed that the article already implicitly embodied that idea. He was inclined to favour retaining the article as it stood, especially for the sake of consistency with article 9, already adopted.

35. Mr. NATHAN (Israel) said that he supported the Netherlands amendment as a necessary clarification of the principle that no break occurred between the extinction of the rights of the predecessor State and the arising of rights for the successor State. Since the withdrawn French amendment to article 9 had been very much wider in scope and more complex than the Netherlands amendment to article 20, its rejection could not be regarded as setting a precedent. The introduction of the word "simultaneous" in article 20 would admittedly mean that that article and article 9 would not be perfectly balanced, but in his opinion that was not in itself a reason for rejecting the Netherlands amendment. As the representative of France had pointed out, the proper course would be to consider the Netherlands amendment on its merits and to review article 9 as appropriate to ensure that the two provisions were in harmony.

36. Mr. LAMAMRA (Algeria) said that he wished to correct the erroneous interpretations of his delega-

tion's oral amendment put forward by the representatives of Greece and France. Although they were mutually contradictory, each had been equally far removed from the true thinking behind the proposal.

37. The purpose of the proposed amendment was certainly not, as the representative of Greece had suggested, to imply that some kind of juridical gap or rupture occurred, even exceptionally, in the passing of rights. On the contrary, the passing of rights was fully continuous, so much so that there might even be concurrent possession of identical rights and identical archives on the part of the two States concerned.

38. He stressed that the true intention of the amendment was to establish absolute simultaneity as the rule and to regard any other situation as irregular. That was the reverse of the construction placed on the Algerian amendment by the representative of France.

39. After a procedural discussion, in which Mr. LAMAMRA (Algeria), Mr. MONNIER (Switzerland), Mr. PIRIS (France), Mr. TEPAVITCHAROV (Bulgaria), Mr. ROSENSTOCK (United States of America) and Mr. ASSI (Lebanon) took part, the CHAIRMAN suggested that a decision on article 20 and the proposed amendments thereto should be deferred pending the circulation of the Algerian delegation's amendment in written form.

It was so decided.

The meeting rose at 1.05 p.m.

22nd meeting

Thursday, 17 March 1983, at 10.15 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 20 (Effects of the passing of State archives) (concluded)

1. The CHAIRMAN said that the Committee had completed its consideration of article 20, and he hoped that it could proceed to take a decision on the amendment proposed by the Netherlands (A/CONF.117/C.1/L.33) and on the draft article as a whole.

2. Mr. LAMAMRA (Algeria) said that, as the Committee had relatively little time left in which to finish its work, and taking into account the need to maintain the logical consistency of the draft as a whole, his delegation withdrew the sub-amendment it had submitted orally at the 21st meeting with respect to the Netherlands amendment.

3. Mr. THIAM (Senegal) said that he welcomed the spirit of compromise shown by the delegation of Algeria

in withdrawing its sub-amendment. He believed that the withdrawal could be interpreted both as a gesture intended to dispel any fears of a protracted procedural debate and also as an acknowledgement of the clarifications provided in the course of the discussion by the Expert Consultant. He hoped that the Committee would now be in a position to restore the consensus it had achieved in regard to article 9.

4. The CHAIRMAN invited the Committee to vote on the amendment submitted by the Netherlands.

The amendment was rejected by 32 votes to 21, with 8 abstentions.

5. The CHAIRMAN invited the Committee to proceed to a vote on the text of draft article 20 as submitted by the International Law Commission.

Draft article 20, as proposed by the International Law Commission, was adopted by 47 votes to 4, with 13 abstentions, and referred to the Drafting Committee.

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

7. Mr. MAAS GEESTERANUS (Netherlands) said that he had hoped to be given the opportunity to speak