

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

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23rd meeting of the Committee of the Whole

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provisions concerned and therefore fully supported a similar amendment in article 21. In fact, he had thought that that amendment would be made automatically as a consequence of the earlier decision.

66. While appreciating the concerns underlying the Austrian delegation's amendment, he believed that it should be considered in the light of both article 21 and article 20. Article 20 made it clear that the passing referred to in article 21 related to the passing of legal title to State archives from the predecessor to the successor State. After legal title had passed, the actual physical transfer should then, if possible, take place immediately. The Commission's commentary noted that in many cases such immediate transfer was in fact feasible, and no one disputed that every effort should be made to ensure that it was carried out with the least possible delay. However, he questioned whether it was appropriate or even prudent to provide specifically for the timing of that transfer; it would be preferable to leave the two States concerned free to determine appropriate arrangements in the light of circumstances.

67. Mr. PIRIS (France) said that he fully agreed with the intention behind the Austrian delegation's amendment and incidentally behind that of the International Law Commission, as shown in its commentary. It was inevitable that the physical transfer of archives should take a certain time, since it required the prior sorting and identification of the State archives which passed. The Austrian amendment was therefore useful, even if

it might be considered that the idea was already implicit in the International Law Commission's draft.

68. His delegation concurred with the representatives of the German Democratic Republic and Israel in considering the term "without delay" too categorical and in preferring a more flexible formula, such as "as soon as possible".

69. Lastly, it supported the amendment proposed by Egypt, in the interests of harmonizing article 21 with other articles of the draft convention. A corresponding change should also be made in article 22.

70. Mr. MEYER LONG (Uruguay) said that he also supported the amendment proposed orally by the representative of Egypt. He felt that, if that amendment was adopted, the Austrian delegation's amendment would no longer be necessary, for the text of article 21 as amended by Egypt would then dispose of the Austrian delegation's preoccupation and leave the parties free to determine the mode and timing of the transfer of archives.

71. Mrs. PAULI (Switzerland) said that her delegation considered the Commission's draft article adequate in itself, but regarded the new paragraph 2 proposed by Austria as a useful complement, as it provided a valuable clarification of the actual process of transfer of archives. Her delegation would therefore support that amendment. It could also accept the Egyptian delegation's proposal.

The meeting rose at 12.20 p.m.

23rd meeting

Friday, 18 March 1983, at 10.05 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]

New article 19 bis (Passing of State archives) (continued)

1. The CHAIRMAN suggested that, in view of the link existing between the proposed new article 19 *bis* and other articles on the draft, the Committee might save time, as well as giving itself an opportunity for reflection, by deferring a decision on the proposal until it was in a position to consider article 31, the corresponding provision on State debts in Part IV.

2. Mr. MEYER LONG (Uruguay) stressed that his delegation regarded the various Parts of the draft convention as autonomous and independent; even though they necessarily had certain common and parallel features, they might equally well have been drafted as separate conventions. Accordingly, he considered that the Committee was in no way bound to take ac-

count of the articles of other Parts when considering the provisions specific to one aspect of the subject matter.

3. Mr. LAMAMRA (Algeria) said that he agreed with the representative of Uruguay that the Parts of the draft convention were conceptually and organically independent of each other; it would be dangerous to attempt to create any artificial link among them. However, he had understood the Chairman's suggestion as relating only to the Committee's method of work and agreed that it would be useful to have further time to study the proposed new article. Rather than waiting until it was in a position to consider article 31, the Committee might postpone a decision on article 19 *bis* until it had completed its consideration of the remainder of the Part relating to State archives, so that the provisions on archives could be referred to the Drafting Committee as a coherent whole.

4. Mr. RASUL (Pakistan) said that he could not concur with the representatives of Algeria and Uruguay in their approach to the draft convention. In his view, the adoption of the new article 8 *bis* in Part I made it logically necessary to insert analogous articles in the following two Parts, and he would oppose the inclusion of any article in one Part which did not have its equivalent in the other Parts.

5. Mr. DELPECH (Argentina) supported the views of the representatives of Uruguay and Algeria. Each Part of the draft convention was independent and hence there was no valid reason for assuming that identical provisions had to be adopted in each.

6. Mr. ROSENSTOCK (United States of America) noted that his delegation's object in resubmitting as its own the earlier proposal for adding a new article 19 *bis* and suggesting that discussion of the article should be deferred for a time, to enable delegations to consider it carefully, had been precisely not to prejudge the question whether it was advisable also to incorporate such a provision in the other Parts of the draft convention. A decision on that point did not follow automatically and should not be taken hastily; it should be considered carefully at the appropriate time and in each distinct context.

7. The CHAIRMAN confirmed that his suggestion concerned purely the Committee's method of work. Although there were inevitably a number of similar and parallel provisions in the various Parts of the draft, because certain aspects of the process of succession were common to all three areas of the subject matter being covered, those areas were none the less distinct and independent and did not necessarily require identical rules.

8. He suggested that the discussion of the proposed new article 19 *bis* should be suspended to give delegations a further opportunity for reflection.

It was so decided.

Article 21 (Date of the passing of State archives) (concluded)

9. Mrs. TYCHUS-LAWSON (Nigeria) said that she understood the Austrian delegation's amendment (A/CONF.117/C.1/L.26) as implying that, although title to State archives might pass according to the rule established by article 20, a successor State might not actually take possession of the archives until a somewhat later date. She appreciated the reasons behind such a provision, especially in the light of the International Law Commission's commentary on the article.

10. However, there were certain types of State archives, such as those necessary to the successor State's administration of the territory, which ought to pass to that State immediately. Furthermore, in certain cases of succession of States, in particular those involving newly independent States, the succession would no doubt have been preceded by prolonged negotiations between the parties and, by the date of the succession, those documents which qualified as State archives should have been identified and be ready for immediate transfer to the successor State. Since the article as it stood left the parties concerned free to agree on a mutually convenient date, for the actual passing of the archives, later or, indeed, earlier than the date of succession, her delegation considered the article perfectly satisfactory, subject to the adoption of the amendment proposed by the Egyptian delegation (A/CONF.117/C.1/L.41).

11. Mr. OESTERHELT (Federal Republic of Germany) said that he endorsed the fundamental idea behind the Austrian delegation's amendment. Practice

indicated that the technical difficulties involved in transferring State archives to the successor State were rather complex, and he was ready to vote in favour of a rule which made allowance for that fact and provided a practical framework for actual transfer.

12. It would be preferable, however, to include the proposed provision as a separate article, in order to make clear that there were two distinct questions involved, the first being the date of passing, which was settled systematically by the régime established by the convention, and the second concerning the practical arrangements for physical transfer, which was to be settled by the parties in the course of the performance of their obligations under the convention.

13. Mr. WHOMERSLEY (United Kingdom) said that his delegation was in favour of the amendment proposed by Egypt which would bring article 21 into line with articles 10 and 11, as adopted.

14. He could also support the Austrian delegation's amendment, subject to some refinement of drafting, which might be left to the Drafting Committee. For example, the word "physical" would be preferable to "actual" in the proposed paragraph 2. He endorsed the suggestion made by the representatives of India and Israel that a word, perhaps "undue" should be inserted between the words "without" and "delay".

15. Mr. ENAYAT (Islamic Republic of Iran) said that his delegation had no difficulty in accepting the text of article 21 as it stood, whereas it considered the Austrian delegation's amendment as less than constructive for several reasons.

16. First, the question of the physical transfer of State archives lay outside the scope of the draft articles, which rightly did not seek to lay down a general rule for the technical modalities of the transfer, since *de facto* circumstances differed so greatly from case to case that any such rule would be certain to give rise to injustices. For instance, in Part II of the draft there had been no attempt to specify the practical arrangements for the physical transfer of movable property to the successor State. In the case of archives, particularly where a new State possibly lacking the appropriate technical facilities was concerned, there might be every reason for delaying the process. Secondly, the amendment proposed by Austria implied an obligation on the successor State to take delivery of the archives without delay, whereas the predecessor State would be able to rely on the phrase "if necessary upon previous specification" to justify a failure to deliver the archives in question immediately. Lastly, it was necessarily the successor State which would be required to bear the costs of such delay in the transfer of essential archives and any loss or deterioration caused to documentary material as a result of the delay.

17. In the light of those considerations his delegation could not therefore support the Austrian delegation's amendment and favoured adoption of the draft article as it stood.

18. Mr. LAMAMRA (Algeria) said that his delegation would also support the draft article as it stood.

19. While he sympathized with the motives of the Austrian delegation in proposing its amendment, he

endorsed the opposing arguments put forward by the representative of the Islamic Republic of Iran. In addition, he queried the appropriateness of the word "transfer" as used in the proposal, since it did not allow for the possibility that certain archives might in fact be situated in the territory affected by the succession and hence would come into the successor State's immediate possession on the date of succession, together with the State property in which they were held. The word "transfer" implied a removal or relocation, and was applicable only in cases where documents had to be repatriated.

20. His delegation's major reservation concerned the words "previous specification". If that expression referred to the everyday work of archivists, then in the context of the convention it had little meaning. However, if, as his delegation suspected, it was a qualification of the definition of archives provided by articles 19 and 20, it was dangerous in that it might undermine the legal force of those provisions by effectively reducing their scope.

21. His delegation could therefore not support the Austrian delegation's amendment in its present form.

22. Mr. TEPAVITCHAROV (Bulgaria) said that his delegation understood article 21 as laying down a general rule regarding the date of the passing of State archives but not as establishing any guidelines for the actual transfer of those archives; it left the practical arrangements to be agreed between the successor and predecessor States. Indeed, in the absence of such agreement, the transfer would hardly be feasible; because of the unique character of State archives, agreement on their actual transfer was bound to play a predominant role.

23. The Austrian delegation's amendment dealt with the transfer of those archives which had already been identified as State property under article 21 as it stood. His delegation believed that such an addition was not necessary because, once legal title had passed on the date of succession, the physical transfer of the items concerned should in normal circumstances, on the assumption that the parties acted in good faith, be effected immediately or without undue delay. His delegation therefore questioned whether there was any need for an express statement of the obvious. In any case, such a provision was probably outside the scope of the draft convention, the object of which was to codify general rules of international law; the actual physical transfer of archives, although a very important phase in the process, involved simply the practical implementation of those general rules.

24. For that reason, he considered that, if the amendment were to be adopted, the proposed provision should be included in the other Parts of the convention as well, since it was not relevant solely to Part III. If such a provision was finally included, it should be drafted in very general terms; as it stood, the use of the expression "if necessary upon previous specification" introduced an element of subjective assessment which should be better avoided, for it offered the predecessor State a pretext for deferring the transfer of archives unnecessarily.

25. Referring to the amendment proposed by Egypt, he said that the amendment raised a problem of concordance with other similar articles of the draft convention. He considered accordingly that it might be left to the discretion of the Drafting Committee, especially since he gathered that such was the understanding in the Committee of the Whole.

26. Mr. ABED (Tunisia) said that, in the light of the comments made during the discussion on article 21, his delegation felt confident that the article provided the necessary criterion of immediacy with respect to the passing of State archives. In addition, the article left the parties free to derogate by agreement from the principle laid down. The article was sufficiently flexible not to call for any amendment, but his delegation felt that the Egyptian proposal introduced a concept which had been introduced into article 11 as adopted and which might usefully also be introduced into article 21. It might happen, for example, that an international body, in adjudicating in a case referred to it, had to derogate from the principle that State archives should pass immediately. He suggested that the article, together with the Egyptian amendment, should be referred to the Drafting Committee with a view to harmonizing articles 11 and 21.

27. Mrs. OLIVEROS (Argentina) said that, while appreciating the good intentions behind the amendment proposed by Austria, her delegation felt that the particular concern it reflected was implicitly dealt with in the article as it stood. As was pointed out in the commentary to the article, there were frequent cases in which detailed and time-consuming work on the sorting of archives was required, a contingency which was provided for by the phrase "unless otherwise agreed or decided".

28. The Egyptian delegation's amendment was a positive contribution to the clarity of article 21 in that it distinguished between the actions of agreeing and deciding in the particular context of the article under discussion.

29. The Committee should however exercise caution in drawing parallels between articles in different Parts of the draft convention, since such parallels could be misleading.

30. Mr. KADIRI (Morocco) said that it was essential to affirm that State archives passed at the date of the succession, even if the schedules for such operations as reproduction of documents were agreed between the States parties to the succession. Even if there were delays, the successor State became the owner of the archives from the date of the succession. Should a further succession of States occur prior to the actual transfer of the archives, it was important to establish that those archives were excluded from the second succession. Article 21 was acceptable as it stood in that it would avoid difficulties arising from a second succession.

31. His delegation welcomed the explanations provided by the delegation of Austria on behalf of its amendment, but would not be able to support the amendment itself, which by using the phrase "if necessary upon previous specification" left the door open to disingenuous delaying tactics on the part of the pre-

decessor State. On the other hand, the Egyptian amendment was acceptable in that it spelt out an idea implied in paragraph (4) of the commentary.

32. Mr. SUCHARIPA (Austria) thanked delegations for their support for his proposed amendment. He noted that almost all delegations which had participated in the discussion on article 21 seemed to be of the view that the passing of the title to State archives and the actual transfer of those archives need not necessarily take place at the same time. His delegation had not initially been convinced that that view had the implicit support of article 21 as drafted by the Commission, but it had gathered from the discussion that there was a general understanding that the possibility of such a temporal discrepancy was not excluded by the article. His delegation accordingly withdrew its amendment.

33. Mr. BEDJAOUI (Expert Consultant) said that it was his impression from the discussion on article 21 that there was a large measure of support for the article as drafted by the International Law Commission. The commentary on the article made it clear that in practice there had been many occasions when States had dealt with the problem of a gap in time between the passing of State archives and their transfer by establishing time limits. The Egyptian amendment was of considerable value in that context and it should prove possible to incorporate it in the article. The amendment proposed by Austria reflected a legitimate concern but he felt that its substance was implicit in the International Law Commission's wording.

34. The practical problems involved in the transfer of archives were complex and difficult to solve, sometimes for technical reasons. In some cases, particularly those of a dissolution of States, time was required in order to sort out the archives. On the other hand, delays could occur when a predecessor State, perhaps for political reasons, might wish to hold on to archives. The purpose of the Austrian amendment was evidently to amplify the rules governing the passing of archives in cases where there might be technical reasons for a delay. The article made it quite clear, however, that the successor State became the owner of the State archives at the date of succession. In the event of a second or further succession of States, it was essential to determine what archives had legally passed under the previous succession.

35. Reference had been made to the possibility of the loss or deterioration of State archives occurring before they were actually transferred: responsibility in that case self-evidently rested with the predecessor State, whereas if the loss or deterioration occurred after the archives passed to the successor State the responsibility clearly lay with that State. It was not unknown for predecessor States to impose conditions for the transfer of archives on the grounds that the successor State did not have proper facilities or trained staff to ensure their safekeeping. Under article 21 such considerations were not permitted: any loss or deterioration should be the concern solely of the successor State, and could not be pleaded as grounds for justifying a refusal to transfer the archives.

36. The Austrian amendment had raised a valid point in the case of a dissolution of States; archives might be

dispersed or in disarray and time might be needed to restore them to order. He pointed out that in State practice what happened quite usually was that a joint committee composed of representatives of both the predecessor and the successor State was set up in order to locate and identify the archives, to determine what should pass, and to supervise the transfer itself. The International Law Commission had borne those considerations in mind when drafting article 21, which, he felt, left sufficient latitude in that respect. Article 21 specifically stated that the date on which a successor State acquired ownership of the archives was the date of succession, but recognized that agreement between the predecessor and successor States might be required if technical reasons necessitated a delay in the actual transfer of the archives.

37. The CHAIRMAN said that it was his understanding that the Committee wished to adopt the amendment proposed by Egypt (A/CONF.117/C.1/L.41) without a vote.

The Egyptian delegation's amendment was adopted without a vote.

38. The CHAIRMAN said that, if he heard no objection, he would assume that the Committee wished to adopt article 21, as amended by Egypt, without a vote.

Article 21, as amended, was adopted and referred to the Drafting Committee.

39. Mr. OESTERHELT (Federal Republic of Germany) said that his delegation had joined in the consensus on article 21 on the understanding that the phrase "or decided by an appropriate international body" in the amended text just adopted should be taken as referring to decisions binding upon the parties to the succession.

40. Mrs. de MARGERIE (France) said that her delegation had been able to vote in favour of article 21 as contained in the draft convention. In fact, the discussion on article 21 had seemed to indicate that there was consensus within the Committee for the idea spelt out in the Austrian amendment, which affirmed that the passing of rights and the physical transfer of State archives constituted two stages of the same process, and that in most instances they did not occur at one and the same time.

Article 22 (Passing of State archives without compensation)

41. Mr. HAWAS (Egypt) said that his delegation's amendment to articles 10, 11 and 21 (A/CONF.117/C.1/L.17, L.6 and L.41, respectively) also applied to article 22; the words "unless otherwise agreed or decided" should be replaced by "unless otherwise agreed by the States concerned or decided by an appropriate international body".

42. Mr. HOSSAIN (Bangladesh) stressed that the various Parts of the convention should be internally consistent and suggested that article 22 and, at a later stage, article 33 should be referred to the Drafting Committee with a request for the incorporation of the same wording as that adopted for articles 10 and 11.

43. Mr. MEYER LONG (Uruguay) said that he supported the Egyptian delegation's amendment but did

not think that any text should be referred to the Drafting Committee until it had been adopted by the Committee of the Whole.

44. Mr. PHAM GIANG (Viet Nam) expressed support for the International Law Commission's text as amended by Egypt.

45. Mr. YÉPEZ (Venezuela) also supported the Egyptian amendment and submitted an oral amendment of his own to the effect that the words "Subject to the provisions of the article in the present Part and" at the beginning of the article should be deleted. In his opinion, the phrase was superfluous and might be understood to provide for the possibility of derogation from the non-compensation principle. He said that owing to his late arrival at the Conference he had been unable to make the same suggestion in connection with article 11.

46. Mr. PIRIS (France) said that he hesitated to endorse the oral amendment just made by the representative of Venezuela. As a matter of fact, the phrase appeared in article 11, which was the exact counterpart of article 22 and which had been adopted by the Committee. Without a cogent reason to the contrary, his delegation believed that the interests of harmony should prevail.

47. Mr. ROSENSTOCK (United States of America) suggested that the point raised by the Venezuelan oral amendment should be referred to the Drafting Committee.

48. Mr. HOSSAIN (Bangladesh) said that, for the same reasons as those given by the French representative, he was unable to support the amendment suggested by Venezuela.

49. Mr. PÉREZ GIRALDA (Spain) said that the phrase in question made sense when it was used in article 11, where it referred to article 16, paragraph 3. On the other hand, it was not clear what it meant in article 22.

50. Mr. MEYER LONG (Uruguay) and Mr. OESTERHELT (Federal Republic of Germany) said that some elucidation of the matter by the Expert Consultant would be helpful.

51. Mr. BEDJAOUÏ (Expert Consultant) said that, as in the case of article 11, the phrase "Subject to the provisions of the articles in the present Part" was intended to signify that the article should be read without prejudice to other provisions in the same Part of the draft convention. In the case of article 11, the relevant other provisions were those in articles 16, paragraph 4, and 17, paragraph 4; in the case of article 22 they were in article 29, paragraph 2. In both cases, the principle of equitable compensation might apply.

52. Mr. YÉPEZ (Venezuela) said that, in the light of the Expert Consultant's explanation and of views expressed by members of the Committee, he withdrew his oral amendment.

53. The CHAIRMAN suggested that, in the absence of objection, the Egyptian delegation's oral amendment to article 22, which was identical with its amendment to article 21 (A/CONF.117/C.1/L.41), should be considered adopted.

It was so decided.

Article 22, as amended, was adopted and referred to the Drafting Committee.

54. Mr. PÉREZ GIRALDA (Spain) hoped that the Drafting Committee would look into the possibility of deleting the phrase "Subject to the provisions of the articles in the present Part and" at the beginning of article 22, since the Expert Consultant's statement had confirmed that the Venezuelan delegation was correct and although the latter had withdrawn its amendment to that effect.

Article 23 (Absence of effect of a succession of States on the archives of a third State)

55. Mr. MAAS GEESTERANUS (Netherlands) proposed that in article 23 the word "State" which appeared after the word "affect" should be deleted. According to the definition in article 19, the term "State archives" was reserved, for the purposes of the draft convention, for archives owned by the predecessor State. To speak of State archives owned by a third State was therefore an inconsistency which had no doubt crept into the International Law Commission's text inadvertently. The deletion would, furthermore, bring the text of the article into line with its title.

56. Mr. HOSSAIN (Bangladesh) drew attention to the correspondence between article 23 and article 12 and expressed a preference for leaving the text of article 23 unchanged.

57. Mr. SUCHARITKUL (Thailand) said that the oral amendment of the Netherlands was perfectly justified and should be adopted precisely for the sake of preserving harmony between article 23 and article 12, in which the words "property, rights and interests" were not preceded by the word "State".

58. Mr. ECONOMIDES (Greece) suggested that the words "as such" should be deleted from the opening passage of article 23. In his opinion, the effect of article 23 would remain the same whether or not the words "as such" were maintained; however, their inclusion could give rise to arguments *a contrario* leading to incorrect conclusions.

59. Mr. MUCHUI (Kenya) associated himself with the representative of Thailand in supporting the oral amendment proposed by the Netherlands.

60. Mr. THIAM (Senegal) pointed out that the Working Group set up to consider article 19 might produce a text which had repercussions on the wording of article 23. He suggested that a decision on the article should be deferred pending the conclusion of the working group's work.

61. Mr. BEDJAOUÏ (Expert Consultant) said that in fact the International Law Commission had not been able to define either the idea of "property" or of "State property" but had defined State property as "State property of the predecessor State", the only property likely to be affected by a succession of States. As a result, provisions concerning State property belonging to a third State or to the successor State appeared to have no place in the draft convention. Article 12 avoided the difficulty by speaking of "property, rights and interests", rather than of "State property", of a

third State. It had not been possible to avoid the difficulty in the case of article 23, and the result was the inconsistency of language to which the Netherlands representative had rightly drawn attention. The problem could be solved either by deleting the word "State" before the word "archives", as suggested by the Netherlands, or by employing part of the text which the Working Group on article 19 was expected to recommend.

62. Mr. MURAKAMI (Japan) said that his delegation understood that article 23, like article 12, was a provision of a declaratory nature, that it could not, therefore, be the basis of an argument *a contrario* and that it in no way affected State archives not covered by the succession of States.

63. Mr. PIRIS (France) was of the opinion that the article should be referred to the Drafting Committee or that a decision should be taken at that stage to make the body of the article consistent with its title by deleting the word "State" before "archives" in the opening passage. The French delegation further suggested that the words "situated in the territory of the predecessor State" should be deleted since it was clear that the whereabouts of archives owned by a third State were immaterial for the purposes of the article. Such a deletion would be a purely drafting change.

64. Mr. LAMAMRA (Algeria) said that in the interests of speedy progress his delegation would have no objection to the article being referred to the Drafting Committee. It was, however, in favour of retaining the words "as such", since it considered that their deletion might affect substance.

65. Mr. KADIRI (Morocco) said that in his delegation's opinion article 23 was in the nature of a saving clause to protect the interests of a third State. He stressed that articles 12 and 23 codified a fundamental principle of international law concerning the effect of a succession of States.

66. His delegation considered that the words "as such" and the words "situated in the territory of the predecessor State" should stand. The third State might, for some reason, have entrusted certain of its archives to the predecessor State for safekeeping or for restoration and repair, or for display in a cultural exhibition. Moreover, in the case of a double succession, the successor State in the first succession would in effect be a "third State" in the second succession, and its archives located in the predecessor State's territory and not yet transferred should not be affected. In the light of those considerations, his delegation felt that the words in question should stand.

67. The Moroccan delegation endorsed the suggestion made by the delegation of Senegal for ensuring consistency between articles 19 and 23 and agreed that article 23 should be referred to the Drafting Committee.

68. Mr. OESTERHELT (Federal Republic of Germany) said that his delegation considered article 23, like article 12, as being declaratory of a general principle of international law and that consequently no argument *a contrario* might be inferred from it.

69. Ms. LUHULIMA (Indonesia) said that her delegation shared the view of the Netherlands delegation that the word "State" in the opening passage of article 23 was misleading and should be deleted. However, it could not accept the suggestion made by the French delegation that the words "situated in the territory of the predecessor State" should be deleted, for without those words article 23 would lose any connection with the subject matter of the draft convention.

70. Mr. THIAM (Senegal) considered that the words "situated in the territory of the predecessor State" were in their proper place in article 23 and that the International Law Commission had been quite correct in providing the safeguard which those words implied.

71. Mr. ECONOMIDES (Greece), in reply to a question by the CHAIRMAN, said that his delegation was still of the opinion that the words "as such" introduced an element extraneous to the topic of succession of States. However, if during discussion it became clear that the trend was to oppose his delegation's suggestion that those words should be omitted, it would be prepared to withdraw the suggestion.

72. Mr. PIRIS (France), also in reply to the CHAIRMAN, repeated that his suggestion for the deletion of the words "situated in the territory of the predecessor State" was a purely drafting suggestion and stated the obvious. His delegation understood article 23 to be declaratory of a general principle of international law and that therefore an argument *a contrario* could not be justified. His delegation would not therefore insist on its drafting amendment.

73. Mrs. TYCHUS-LAWSON (Nigeria) said that the words "situated in the territory of the predecessor State" were very important in the context of article 23. In a case where archives of a third State were not situated in the territory in question, that provision would not of course operate.

74. In the context of the article under consideration, and possibly elsewhere, a problem relating to the definition of "predecessor State" was likely to arise. The predecessor State might be considered as either the country which had been in effective control of the affairs of the territory concerned prior to succession or as the authority responsible for the administration of the territory itself at the time. In the first case, the archives concerned might not in effect be situated in the territory, and in the second case article 23 would relate only to archives physically situated in the territory. Her delegation was therefore of the opinion that it would be appropriate to replace the words "situated in the territory of the predecessor State" by "situated in the territory to which the succession of States relates", which would clarify the matter and which would at the same time accord with the intention expressed in the International Law Commission's commentary.

75. Mr. MUCHUI (Kenya) said that there might indeed be cases in which it was possible that "territory of the predecessor State" might not necessarily be synonymous with the territory affected by the succession. Clarification was therefore required. For that reason his delegation welcomed the point made by the

delegation of Nigeria and believed that the wording it had suggested might resolve the matter.

76. Mr. HAWAS (Egypt) said that his delegation had considered that article 12, the terms of which had a bearing on the drafting of article 23, was unnecessary but in deference to the general sentiment had been willing to include it in the draft. Consequently, in the case of article 23, it considered that the words "situated in the territory of the predecessor State" must be included since they were in effect the *raison d'être* for the article. As regards the words "as such", he said his delegation had fully appreciated the explanation given by the Expert Consultant at the Committee's 5th meeting in connection with article 12, and for that

reason found that they were equally appropriate in article 23.

77. Mr. HOSSAIN (Bangladesh) suggested that in the interests of clarity it might be desirable to consider and decide on each proposal and suggestion made in relation to article 23 separately, one after the other.

78. Mr. ROSENSTOCK (United States of America) said that, for the sake of speedy progress in the Committee of the Whole, it was advisable to refer proposals to the Drafting Committee at that stage and, if necessary, to give consideration to any points of substance which might arise subsequently.

The meeting rose at 12.55 p.m.

24th meeting

Friday, 18 March 1983, at 3.10 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]

New article 23 bis (Preservation of rights in connection with a succession of States in respect of State archives)

1. Mr. BERNHARD (Denmark), introducing the proposal in document A/CONF.117/C.1/L.28, said that the purpose of that proposal was to take account of certain important questions which were not covered in the draft articles proposed by the International Law Commission. In almost all cases of succession, a division of State archives occurred, which could affect individuals, both natural and juridical, in the States concerned. Such could be the case either because the privacy and personal security of individuals could be affected by the treatment of information contained in the archives, or because an individual or institution had an obvious interest in access to archives, for example for research or study purposes.

2. Subparagraph (a) of the proposed new article was inspired by generally accepted human rights concepts, particularly those set forth in the 1966 International Covenant on Civil and Political Rights.¹ With regard to subparagraph (b), he noted that most States had rules governing access to State archives, mainly designed to set time limits and to protect State security and the privacy of individuals. The rights referred to in subparagraph (b) were not to be construed as absolute. The aim had been to accord a reasonable and customary measure of rights to the individuals concerned.

3. The effect of the division of State archives was usually a matter of interest only to the two States di-

rectly involved, a fact recognized by the reference to non-discrimination in the introductory part of the proposed article. The rights referred to in the proposed article were, however, by practice and analogy with international human rights principles, often accorded also to nationals of third States. For that reason, no reference had been made to nationality. He trusted that the proposal in document A/CONF.117/C.1/L.28, which should be of common interest, would meet with broad support. Its sponsors were of course flexible as to the final wording of the proposed article.

4. Mr. SHASH (Egypt) asked what was meant by the preservation of rights; what were the rights in question, who decided whether or not they were applicable, and why had reference not been made to other important rights?

5. Mr. BERNHARD (Denmark) replied that the rights concerned were, on the one hand, the right of individuals, either natural or juridical, to protection against, for example, the publication of material that could infringe their privacy, and, on the other, the right of persons or institutions, in either State, to have access to material in which they had a legitimate interest. Those rights had been singled out as being the most relevant to the matter under consideration, namely the division of State archives. A decision concerning access to State archives would be made in accordance with the internal law of the State concerned; the purpose of the amendment was to ensure that certain minimum rights, which were customary in many countries and were included in many bilateral agreements, would be protected under such a decision.

6. Mr. RASUL (Pakistan) was not convinced that the proposed new article was necessary; article 6 proposed by the International Law Commission already dealt with the rights and obligations of natural or juridical persons. The draft articles as a whole were otherwise concerned with the rights and obligations of States, not those of individuals. He could not see why such a major departure from the approach of the International Law

¹ General Assembly resolution 2200A (XXI), annex.