

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

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24th meeting of the Committee of the Whole

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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.

Commission was being proposed in respect of one particular aspect of State succession.

7. Mr. POEGGEL (German Democratic Republic) said that his delegation had no quarrel with the idea behind the proposed new article, which was consistent with his own country's internal law. He believed, however, that the substance of the proposed article fell completely outside the scope of the draft convention. The important problems raised by the proposed article should be regulated first and foremost through the internal legislation of each State; another international instrument dealing with the rights of individuals could, if necessary, be drawn up later.

8. Mr. TÜRK (Austria) said that the sponsors of the proposed new article 23 *bis* had felt that there was a particular need to make specific reference to certain rights in connection with the effects of State succession on State archives. The article was designed to protect natural or juridical persons against discrimination in respect of their privacy or their legitimate right of access. It was particularly important that right of access should be ensured; a succession of States should not prejudice the position of the international scientific community. The proposal should be viewed as being in the general interest.

9. Mr. EVANS (Observer for the United Nations Educational, Scientific and Cultural Organization) said that State archives were a unique type of State property. Apart from the question of the right of the international community to have access to learning, it was important to remember that State archives frequently established the legal identity and rights of individuals. If generally recognized principles of access were ignored, such identity and rights would be jeopardized.

10. Mr. NATHAN (Israel) said that his delegation could support the proposal in document A/CONF.117/C.1/L.28, which had the merit of defining certain basic human rights that should not be overridden by the fact of State succession. It was true that article 6 of the draft articles was also relevant, but that article was a provision of a general nature whereas the proposed new article was designed to safeguard certain specific rights.

11. Mr. HOSSAIN (Bangladesh) said that, while his delegation appreciated the idea underlying the proposed new article 23 *bis*, it considered it a matter to be dealt with by the internal legislation of States. He was also concerned at the reference to certain rights, to the exclusion of others, and wondered what the relationship would be between the proposed new article and article 6.

12. Mr. LEITE (Portugal) said that his delegation believed the proposed new article 23 *bis* dealt with a matter of great importance. It therefore supported the proposal.

13. Mr. RASUL (Pakistan) asked whether it was the sponsors' understanding that an individual's right to protection of privacy, or right of access to State archives, could prevent the passing of State archives.

14. Mr. BERNHARD (Denmark) replied that the amendment was designed to deal with cases where some archives had passed and others had not, that was to say, where there was a division of State archives.

15. Mr. SHASH (Egypt) said that, notwithstanding the proposed new article's laudable objective, his delegation would have difficulty in approving it. He believed that article 6, which was a blanket provision applicable to the draft convention as a whole, was sufficient to meet the concern expressed by the sponsor. The proposed new article could present problems of application. First, there might be a conflict between the rights specified in subparagraph (a) on the one hand and in subparagraph (b) on the other. Secondly, by attempting to specify certain rights, one always ran the risk of omitting other important matters.

16. Mr. ABED (Tunisia) questioned whether the amendment was appropriate: it appeared to stray beyond the scope of the draft convention into the area of the sovereignty of States. The title of the proposed new article was vague: it referred to the preservation of rights, but it was not clear what those rights were. The introductory part of the article obliged the States concerned to respect certain matters: he wondered whether that meant that certain preconditions would be imposed on the successor State which was to receive the archives. The inability of a State, for technical reasons, to fulfill its obligation to transfer certain archives could thus have a suspensive effect on the transfer of all archives. Lastly, subparagraph (b) of the proposed new article seemed to imply absolute freedom of access: in most countries, State security considerations would necessitate some restrictions on access to State archives, particularly very recent ones.

17. Mr. ROSENSTOCK (United States of America) expressed the hope that the present concern with relevance would apply equally in the case of other provisions of the draft convention.

18. Many of the problems which had been raised in connection with the proposed new article 23 *bis* were puzzling: the article was designed to remove certain existing impediments to the orderly transfer of State archives, not to create new obstacles. The proposal referred to the preservation of rights which thus presumably already existed. Inasmuch as it sought to facilitate the purposes of the draft convention, the proposed new article could scarcely be more relevant.

19. Mr. WHOMERSLEY (United Kingdom) said that his delegation fully supported the proposal under consideration. The point made in subparagraph (a) of the proposed new article was a useful one which reflected normal practice in such matters. With regard to subparagraph (b), his delegation believed access to archives to be an important and necessary principle which should not in any way be abridged in the event of a succession of States.

20. It had been argued that the substance of the provision was outside the scope of the draft convention. His delegation could not agree with that view: it was important to specify that State succession did not affect the rights mentioned in the draft article. Those rights were so important that a specific reference to them should be included in the convention. They should not simply be covered by the general provisions of draft article 6.

21. Mr. JOMARD (Iraq) said he believed that the proposal impinged on the sovereignty of States in cases

of State succession. The State concerned should have the right to decide in such matters. His delegation was therefore unable to support the proposal.

22. Mr. BA (Mauritania) said that his delegation could not support the proposed new article 23 *bis*, because that provision challenged the rights of the States concerned to define and apply their own internal law. There was, moreover, a potential contradiction between subparagraph (a) and subparagraph (b): the right to privacy could jeopardize the right to access. The inclusion of a new article in the draft convention would only raise problems; article 6 was in his delegation's view entirely sufficient.

23. Mr. OESTERHELT (Federal Republic of Germany) said that the proposed new article 23 *bis* would not affect the actual passing of archives to successor States. It would impose an obligation on the successor State which he did not consider to be outside the scope of the present draft convention. It was true that the convention was generally restricted to the immediate effects of the passing of title in respect of State property, archives and debts. However, in the case of State archives, the draft convention imposed certain obligations on the States involved which applied after the date of succession. For example, the predecessor State had to provide evidence from State archives in certain cases and also to make available appropriate reproductions. Therefore, in view of the wide support which the principles enunciated in the proposed new article enjoyed, it would seem appropriate to include a provision of that type in the draft convention.

24. Mr. MUCHUI (Kenya) said that the proposed article 23 *bis* enunciated important principles which any State might be expected to respect. However, if its effect would be that, before certain types of archives were passed, the predecessor State could expect the successor State to give a guarantee with regard to those principles and demand proof of the latter State's intention to honour it, then the article bordered on infringement of the sovereignty of the successor State. The Kenyan delegation was therefore unable to support the proposed article.

25. Mr. YÉPEZ (Venezuela) said he did not doubt the good intentions of the sponsors of the proposed new article, but that text was an unnecessary addition to the draft convention since the safeguarding of the principles to which it referred clearly fell within the province of the internal law of the State concerned. Moreover, the new article appeared to impose obligations only on the successor State. His delegation could not therefore support its inclusion in the draft convention.

26. Mr. BERNHARD (Denmark), speaking on behalf of the sponsors of the proposed article 23 *bis*, said that some of the criticism which had been voiced might be due to drafting problems. There was no intention to impose an obligation only on the successor State or to impede the passing of State archives. On the contrary, the intention was to impose obligations on both States concerned in order to protect the legitimate interests of individuals in both territories. The typical situation which the article would cover was that where the archives were divided between the two States concerned. Some individuals might be affected by those archives

which were retained in the predecessor State. Article 6 was admittedly of relevance but it was merely a safeguard clause providing that the convention could not be interpreted in such a manner as to prejudice the rights to which it referred.

27. Mr. LAMAMRA (Algeria) said that he shared the objections to article 23 *bis* which had already been expressed. However commendable its aim, the new draft article did not fall within the scope of the draft convention, whose purpose was to codify the effects of a succession of States in respect of the rights and obligations of predecessor, successor and third States. The individual rights referred to in subparagraph (a) of article 23 *bis* were set out in national constitutions. Those mentioned in subparagraph (b) would be exercised in conformity with the internal law of the State concerned, which would impose such limits as were warranted by the need to safeguard individual rights to personal security, and by other considerations, such as State security. In his view, article 6 dealt effectively with the questions referred to in article 23 *bis*.

28. Mr. IRA PLANA (Philippines) said it was necessary to bear in mind that the principal objective of the draft articles under discussion was the orderly and speedy transfer of State archives. Once that had taken place, the provisions of article 6 would apply in respect of natural or juridical persons. There was therefore no compelling necessity to insert the proposed new article in the draft convention.

29. Mr. PIRIS (France) said that one of the concerns of the sponsors of the proposal in document A/CONF.117/C.1/L.28 had been to avoid the possibility of conflict between the draft convention under consideration and the International Covenant on Civil and Political Rights, particularly article 9, paragraph 1, and article 17, paragraph 1, thereof. The question dealt with in the proposed new article was a matter which concerned both the predecessor and the successor State and no provision in Part III could derogate from the obligations of both States to uphold the rights of individuals. He had noted the view expressed that the matter was already covered by article 6 but, in view of the fundamental importance of the principles concerned—particularly the right to life, which his delegation regarded as sacred—some clarification was desirable.

30. Mr. MIKULKA (Czechoslovakia) said that the matter dealt with in the proposed article 23 *bis* was primarily the concern of the sovereign successor State. The draft article referred to particular aspects of a broader question—the rights of individuals in relation to the succession of States—which had not been studied by the International Law Commission. It was therefore not appropriate to include the proposed new article in the draft convention.

31. Mr. ECONOMIDES (Greece) considered that a provision along the lines of the proposed new article 23 *bis* would be a desirable addition to the draft convention. It was appropriate to make arrangements, when archives were passed, to protect the legitimate interests of individuals, who could suffer irreparable damage from the unrestricted divulgence of information. The proposed article seemed general and flexible enough for

the appropriate measures to be left to the State concerned. The two subparagraphs in the article were not in his view incompatible. Subparagraph (a) dealt with the confidentiality of information harmful to individuals, whereas subparagraph (b) dealt with access to archives for legitimate reasons not affecting the security of individuals or of the State, naturally in accordance with the internal law of the State concerned. Within the framework of the succession of States, obligations in regard to such matters were incumbent on both the predecessor State and the successor State. Article 6 did not provide protection in the specific cases covered by the proposed article 23 *bis*.

32. Mr. KOLOMA (Mozambique) said it seemed to his delegation that the proposed new article 23 *bis* would mean a prolongation of the rights of the predecessor State in respect of archives. That was contrary to article 20 which provided for extinction of such rights. His delegation was therefore unable to support the proposal to insert the article in the draft convention.

33. Mr. BEDJAOU (Expert Consultant) said that the purpose of the proposed article 23 *bis* was to deal with a matter whose importance everyone acknowledged. At present, however, subparagraphs (a) and (b) of the article referred to the rights of individuals and not to those of States. The International Law Commission had not had the mandate to deal with the problem of the rights of individuals in the succession of States; it had had neither the mandate nor the time to draft a parallel convention dealing with that aspect of such succession. It had felt that it could not do more than include article 6, drafted in very general terms, among the general provisions, as a safeguard.

34. Regarding the text of the proposed new article, he observed that subparagraph (a) raised problems in respect of potential or pending legal proceedings which the International Law Commission had been reluctant to tackle and which could be dealt with more appropriately in some other framework. Subparagraph (b) referred to "rights concerning access". He wondered what other rights, besides the right of access itself, were implied within the context of the convention. The proposed new article's use of the word "preservation" brought up the question of acquired rights. But the successor State had not succeeded to the legislation of the predecessor State, which was extinguished in respect of the State archives passed in accordance with article 20. The internal law of the successor State would regulate subsequent right of access. It had been stated that article 23 *bis* would apply particularly to cases where archives were divided. However, that idea was nowhere explicit in the text. But in any case that did not alter the relevance of the other points he had mentioned.

35. The CHAIRMAN put to the vote the proposed new article 23 *bis* (A/CONF.117/C.1/L.28).

The proposed new article 23 bis was rejected by 41 votes to 20 with 7 abstentions.

36. Mr. ASSI (Lebanon), speaking in explanation of vote, said that his delegation had voted against the proposed new article because it believed it was the responsibility of the free and sovereign successor State

to safeguard—just as the predecessor State had done—the highly important principle of the individual's right to privacy and personal security.

37. Mr. SHASH (Egypt) said that, although agreeing with the aims of its sponsors, he had voted against the proposed article 23 *bis*, because the draft convention under consideration dealt with the rights and duties of the predecessor and successor States.

38. Mr. PAREDES (Ecuador) said that his delegation had voted in favour of the proposed article 23 *bis*. In its view there was no harm in conforming explicitly what might be implicitly understood from article 6. That position was consistent with the general approach adopted by Ecuador.

39. Mr. BARTSCH (Chile) said that he had voted against the proposed article 23 *bis* because it was outside the scope of the draft convention.

40. Mr. AL-KHASAWNEH (Jordan) said that he had voted against the proposed article 23 *bis* because, in view of article 6, it was superfluous, and because there was no reason to lay special emphasis on the rights of individuals in Part III of the draft convention. That might lead to arguments *a contrario* in respect of the other Parts. Finally, the proposed new article went beyond the scope of the draft convention.

41. Mr. ENAYAT (Islamic Republic of Iran) said that he had abstained in the vote on the proposed article 23 *bis*. That provision embodied commendable principles which were guaranteed in the Iranian constitution, but he appreciated the fears expressed by some delegations that the article might have undesirable consequences in the future.

42. Mr. KADIRI (Morocco) said that while his delegation appreciated the initiative of the sponsors of the proposed new article, it had voted against the article because the matter it dealt with was covered by the safeguard clause in article 6 and because the question involved did not fall within the scope of the draft convention. Furthermore, the article appeared to conflict with the principle of non-intervention in the internal affairs of the successor State, and could give rise to conflict between the draft convention and the International Covenant on Civil and Political Rights. It might also raise problems in connection with acquired rights in respect of archives.

43. Mr. YÉPEZ (Venezuela) said that although his country was a strong defender of civil rights and was a signatory of the International Covenants on Human Rights, his delegation had voted against the proposed article 23 *bis* because in its view that provision had no place in the present draft convention.

44. Mr. CHO (Republic of Korea) said that, while his delegation fully appreciated the aims of the sponsors of the proposal, it had voted against article 23 *bis* because, in its view, article 6 effectively met their concerns.

45. Mr. ABED (Tunisia) said that his delegation had voted against the proposed article 23 *bis* for the reasons already given in its earlier statement and because the substance of the article went beyond the scope of the draft convention.

46. Mr. MIKULKA (Czechoslovakia) said that his delegation had voted against the proposed new article because it went beyond the scope of the convention.

47. Mr. A. BIN DAAR (United Arab Emirates) said that, while sympathizing with the ideas contained in the proposed article, his delegation, too, had voted against it because it went beyond the scope of the draft convention under consideration.

48. Mr. SUCHARITKUL (Thailand) said that, while his delegation appreciated the sponsors' ideas and the principles underlying their proposed new article, it had abstained in the vote because the question of preservation of the right to privacy and personal security and the right of access to State archives was covered by article 6.

49. The CHAIRMAN noted that the Committee of the Whole had concluded its consideration of the proposed new article 23 *bis*.

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

50. Mrs. TYCHUS-LAWSON (Nigeria), introducing her delegation's amendment to article 23 (A/CONF.117/C.1/L.44), said that it was basically of a drafting nature. The Nigerian delegation considered that the words "to which the succession of States relates" more clearly brought out the intention of the International Law Commission as explained in its commentary.

51. The CHAIRMAN drew the Committee's attention to two other drafting amendments proposed orally during the earlier discussion of article 23 by the delegations of the Netherlands and Greece, respectively (23rd meeting).

52. Mr. ECONOMIDES (Greece), referring to his delegation's proposal to delete the words "as such", said that either they referred to a succession of States, in which case they were totally superfluous and should be deleted, or they indirectly introduced a concept outside that of the succession of States and in that case had no place in the convention. His delegation had listened carefully to the clarification furnished by the Expert Consultant at the previous meeting, however, and, in order to save time, would not press its amendment.

53. Mr. MEYER LONG (Uruguay) said that in his delegation's view the Nigerian amendment did not improve the text in any way. He did not fully understand the intention behind it and wondered if the Expert Consultant might give his views on its usefulness.

54. Mr. MUCHUI (Kenya) said that his delegation was prepared to accept article 23 in much the same way as it had accepted article 12. In its view there was no doubt at all as to which territory the International Law Commission had had in mind in drafting article 23, whether it was defined as that of the predecessor State or that to which the succession of States related. He therefore fully supported the Nigerian amendment and considered that the matter was one to be dealt with by the Drafting Committee.

55. Mrs. TYCHUS-LAWSON (Nigeria) said that, since the amendment proposed by her delegation ap-

peared to create difficulties for some delegations, she would withdraw it.

56. The CHAIRMAN, summing up, said that the Committee of the Whole now had before it only the text of article 23 as proposed by the International Law Commission. Since it was his impression that the members of the Committee had been in agreement on the content of the article at the end of the previous meeting, he proposed that article 23, as proposed by the International Law Commission, together with the comments made by the Netherlands delegation concerning the words "State archives" (*ibid.*), should be referred to the Drafting Committee.

57. Mr. MIKULKA (Czechoslovakia) said it was his impression that the delegation of the Netherlands had drawn attention to a problem arising in connection with article 19 and not with article 23. His delegation had no objection to article 23 being referred to the Drafting Committee. It wished, however, to draw the attention of the Working Group on article 19 to the problem raised by the possible interpretation of the term "State archives" as meaning "the State archives of the predecessor State".

58. Mr. MAAS GEESTERANUS (Netherlands) said that the problem appeared to be a drafting one. The Drafting Committee, on the basis of the proposal concerning article 19 which it would eventually receive from the Working Group on that article, could undoubtedly find a solution, either in article 19 or in article 23, to the problem of the definition of "State archives".

59. Mr. PIRIS (France) agreed that the problem was a drafting one and should be solved either by a slight change in article 19 or by the deletion of the word "State" in article 23.

60. The CHAIRMAN suggested that, since the Committee appeared to consider the problem to be of a drafting nature, it should adopt article 23, as proposed by the Commission, and refer it to the Drafting Committee, together with the oral drafting suggestion made by the Netherlands, for consideration in the light of the definition of "State archives" to be provided by the Working Group on article 19.

It was so decided.

61. The CHAIRMAN informed the Committee that he had received a letter from the Chairman of the Working Group on article 19, which had been requested to report on its progress on 18 March 1983. The letter indicated that, after three meetings, during which the Working Group had considered the text proposed by the International Law Commission, together with four written and 10 verbal amendments, the Group had reached agreement on a number of phrases but not on the text of the article as a whole. The Group would hold a Committee meeting on Monday, 21 March 1983, after which its Chairman hoped to be able to submit a compromise text to the Committee of the Whole.

Article 24 (Preservation of the unity of State archives)

62. Mr. RASUL (Pakistan), introducing the amendment submitted in document A/CONF.117/C.1/L.9 and explaining his delegation's reasons for wishing to delete article 24, said that because the article was placed at the

end of the introductory section 1 of Part III, but before section 2, it would be understood that section 2 (Provisions concerning specific categories of succession of States) was subject to section 1 (Introduction) and that the provisions of section 2 would be valid only to the extent of their consistency with the provisions of section 1. All the provisions concerning specific categories of State succession would therefore operate to the extent of their concordance with article 24, which provided for preservation of the unity of State archives. That understanding was corroborated by the International Law Commission's commentary, which concluded: "Article 24, therefore, provides for a safeguard in the application of the substantive rules stated in the articles constituting section 2 of the present part."

63. Article 24 thus relegated the provisions of section 2 of Part II to the status of mere guidelines and would afford ample opportunity for either of the States concerned to disregard those provisions in the name of preservation of the unity of archives which, in the language of the Commission's commentary, reflected "the principle of indivisibility of archives".

64. The articles in Part III, section 1, were all concerned with the occurrence of succession of States and the consequential extinction and arising of rights to State archives. They thus related to the fact that the rights to State archives had to be extinguished and to arise whenever State succession occurred. The transfer, that was to say the division of State archives, was the logical conclusion of the whole process.

65. Article 24 negated that transfer in the name of unity of archives. By reversing the process one could conclude that article 24 in fact negated the very occurrence of succession of States, and the presence of the article in section 1 as a general rule contradicted the whole of Part III. The Committee would therefore have to decide between the article and Part III.

66. Whenever a dispute concerning the interpretation of Part III arose it would be natural for the States concerned to look into the records of the International Law Commission to establish the correct meaning and import of article 24. His delegation had sought to do so. The records of the Commission showed that the text of the present article 24 had originally formed part of paragraph 6 of draft article F, which dealt with the dissolution of States. At the 1690th meeting of the Commission, in reply to a suggestion that paragraph 6 should be made a separate article, the then Special Rapporteur, now the Expert Consultant, had observed: "Consequently it would be dangerous to generalize the use of a provision which would allow for evasion of the rules which the Commission had laid down."²

67. A member of the Commission had replied that the article "embodied a simple safeguard clause, not a rule, and there was therefore no reason why that clause should not apply to all that part of the draft which dealt with State archives".³

68. What had happened later was a mystery. A separate article had suddenly appeared in the final set of draft articles. No elaboration was provided and the commentary on the article hardly explained the reasons for the change.

69. His delegation fully shared the apprehensions of the Special Rapporteur and was not convinced that the articles was merely a safeguard of no practical utility. It viewed the article as one of preponderant importance which in fact negated the whole of Part III.

70. Mrs. PAULI (Switzerland) said that following consultations with other delegations and the observer for the United Nations Educational, Scientific and Cultural Organization (UNESCO), her delegation had revised its original amendment to article 24 and had submitted the revised amendment in document A/CONF.117/C.1/L.29/Rev.2. The aim of the amendment was to reinforce the principle of unity and integrity as enunciated in article 24 as proposed by the International Law Commission.

71. The proposal of Pakistan to delete article 24 ran counter to that principle, and her delegation could therefore not support it.

72. The Swiss amendment was designed to supplement article 24 by introducing the archival concept of joint heritage into the convention. In order to avoid any possible confusion, it should be made clear that it did not involve the idea of the common heritage of mankind applicable to the sea-bed and its resources, but a concept exclusively concerned with archival science.

73. That concept stemmed largely from work done by the International Council of Archives at UNESCO's request and that had formed the basis of a report by the Director-General of UNESCO on problems involved in the transfer of documents from archives in the territory of certain countries to the country of their origin.⁴ Referring to section 25 of that document, she described the concept as stemming from two requirements: the need to guarantee the security of archives of common interest and the need to guarantee the rights of other States participating in the common heritage.

74. The Swiss proposal was designed to guide States in finding a solution to archival difficulties that might arise, and she believed that it deserved a place in the future convention.

75. Mr. SHASH (Egypt) asked for some clarification of the principle of indivisibility of archives.

76. Mr. BEDJAoui (Expert Consultant) said that he was unable to shed any light on the question of archival science from a technical standpoint, and the International Law Commission itself, in its discussion on article 24, had also felt it was tackling something outside its purview. The concept of the unity or indivisibility of State archives was clear in cases of collections by subject matter or sections of history. It might have been easier to refer to "the unity of archive groups" than to "the unity of all State archives". As worded, the article was a safeguard by which the International Law Com-

² *Yearbook of the International Law Commission, 1981, vol. I* (United Nations publication, Sales No. E.82.V.3), 1690th meeting, para. 27.

³ *Ibid.*, para. 29.

⁴ UNESCO, *General Conference, Twentieth Session, Paris, 1978*, document 20C/102.

mission had been neither for nor against any question which might arise because of the preservation of the unity of State archives. But it was apparent that the Commission had drafted and included the text of article 24 as a safeguard, therefore, without implying that it should be interpreted in such a way as to constitute a blocking of any succession of archives. The Drafting Committee should therefore examine the wording of the article to ensure that the unity intended did not refer to all State archives, but to each of the groups comprising them.

77. Mr. EVANS (Observer for the United Nations Educational, Scientific and Cultural Organization) said that, although the scope of State archives varied from country to country, the common denominator was the natural accumulation of documents created and maintained.

78. The principle of provenance was an extremely important one and had to be respected. Paragraph 23 of the UNESCO document mentioned by the representative of Switzerland referred to the question of provenance in the following terms: "It is equally essential that to the fullest possible extent the archival principle of provenance or respect for the integrity of archives groups should be observed in all proposed transfers of archives. In accordance with this principle all archives accumulated by an administrative authority should be maintained as a single, indivisible, and organic unity in the custody of that authority or its legally designated successor. This is necessary to preserve the integrity and value of archives as titles, as proofs, and as both legal and historical evidence."

79. Archivists avoided the use of the term "collections", which they regarded as items from a variety of provenances and periods. They considered archives as being a natural, organic accumulation. It was ironic that the representative of Pakistan had given an example of a hiatus in records. That was exactly the sort of thing that archivists wished to avoid. If records were rearranged and redistributed, their value was diminished.

80. Mrs. THAKORE (India) said that archives, unlike property of other kinds, might by virtue of their physical nature be of interest both to the predecessor and to the successor State. They might not easily be susceptible of division. The special characteristics of archives were necessity, arising out of the need to provide effective administrative continuity and ensure the viability of the new State, and sentimental value arising from history and culture. Moreover, the unity of archives needed to be maintained in order to protect the interests

of historical research and science. It might not be convenient or even desirable to separate a chapter or a section of a collection and distribute it between the successor and the predecessor States. It should be transferred to the new State as an organic whole, where relevant.

81. In principle, therefore, her delegation supported article 24. Since the safeguard clause in article 24 was relevant to all categories of State succession covered by articles 25 to 29, the International Law Commission, at its second reading, had decided to embody in a separate article what had formerly been paragraph 6 of article F dealing with the dissolution of States, thus according the provision on preservation of the unity of State archives the pre-eminent position which it deserved. Article 24 was couched in general terms and was included in section 1 of Part III to indicate that it was applicable to section 2 of Part III as a whole.

82. The reference to the preservation of the unity of State archives reflected the principle of indivisibility of archives underlying the question of succession to documents of whatever kind constituting such archives, irrespective of the specific category of succession of States involved. Article 24 therefore provided a safeguard in the application of the substantive rules set out in article 25 to 29. It dealt with a very important aspect of succession of States and was based on recognition of the fact that many of the situations that might arise in connection with State archives were of a sensitive nature which could not easily be resolved through the application of uniform rules.

83. The principle of preservation of the unity of State archives could not, however, be invoked to evade the rules laid down in articles 25 to 29 of the Commission's draft, since that would rob those articles of all effect.

84. She therefore believed that the proposal of the delegation of Pakistan to delete article 24 was unnecessary and that the concern expressed by that delegation would be better met by retaining the article.

85. With regard to the Swiss amendment, her delegation thought that the phrase "archival concept of joint heritage" was too vague. Its meaning was not clear, despite the explanation given by the sponsor of the amendment and the observer for UNESCO. At least the concept had not developed to such an extent that it was generally understood and recognized as meriting mention in the draft convention. She supported, in principle, article 24 as proposed by the International Law Commission.

The meeting rose at 6 p.m.