

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

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26th meeting of the Committee of the Whole

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ious languages, especially as the words “archive collection” were not an adequate translation of the French term “*fonds d’archives*”.

58. Mr. KADIRI (Morocco) proposed that the title and the last phrase of the French version of article 24 should be amended to read “*sauvegarde de l’intégrité des fonds d’archives d’Etat*”.

59. Mr. MNJAMA (Kenya) suggested that the words “of record classes or series” should be added before the words “of State archives”.

60. Mr. TÜRK (Austria) said that his delegation could accept both the Swiss and the Moroccan amendments, the latter being purely a drafting change.

61. Mrs. PAULI (Switzerland) recalled that she had endorsed the French representative’s proposal to change the word “shall” to “should” and omit the words “management and” in her delegation’s text.

62. Mr. ECONOMIDES (Greece) suggested that a vote should be taken on the Swiss delegation’s amendment, subamended as proposed by France, and that the Drafting Committee should be asked to consider whether “unity” or “integrity” was the better word.

63. Mr. LAMAMRA (Algeria) supported the Moroccan delegation’s oral amendment which would have the advantage of making the text of article 24 conform with the title.

64. Mr. HAWAS (Egypt) agreed with that view and suggested that the Committee should take a vote upon the Moroccan delegation’s oral amendment. The Kenyan representative’s suggestion should be referred to the Drafting Committee.

65. Mr. BA (Mauritania) considered that “integrity” was a more precise term than “unity”.

66. The CHAIRMAN called for a vote on the Swiss delegation’s revised amendment (A/CONF.117/C.1/L.29/Rev.2) as orally subamended in the last phrase to read: “. . . these States should be guided by the archival concept of joint heritage for the purpose of the utilization of such collections.”

The amendment was rejected by 32 votes to 17, with 14 abstentions.

67. Upon the proposal of Mrs. BOKOR-SZEGÖ (Hungary), a vote was taken on the Moroccan delegation’s oral amendment.

The Moroccan amendment was adopted by 54 votes to none, with 10 abstentions.

Article 24, as amended, was adopted by 65 votes to none, with 1 abstention.

68. The CHAIRMAN announced that the Drafting Committee would be requested to ensure the concordance of the text in the various languages.

69. Mrs. BOKOR-SZEGÖ (Hungary) said that her delegation had abstained in the vote on the Moroccan amendment because the expression “*fonds d’archives*” appeared nowhere in the convention, which spoke only of “*archives*”.

70. Mr. WHOMERSLEY (United Kingdom) explained that his delegation had abstained in the vote on the Moroccan amendment but had voted in favour of the article as a whole. It considered that “integrity” and “unity” were synonymous in English. Since the amendment had related to the French version, his delegation wished the question of the necessary changes in the English text to be considered by the Drafting Committee.

71. Mr. TÜRK (Austria) said that his delegation had voted in favour of article 24, a key provision of section 1 of Part III of the draft. It regretted the rejection of the Swiss amendment, which would have been a useful addition to the article.

72. He hoped that the Drafting Committee would pay special attention to the English version of the Moroccan amendment.

73. Mr. HAWAS (Egypt) said that his delegation had voted in favour of article 24 as amended by the Moroccan representative and hoped that the Drafting Committee would find suitable wording in English.

74. His delegation had voted against the Swiss delegation’s amendment despite its merits because it believed that the convention was not the right place for such a provision, which if adopted would have given rise to problems of interpretation.

The meeting rose at 1 p.m.

26th meeting

Monday, 21 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]

Article 24 (Preservation of the unity of State archives) (concluded)

1. Mr. RASUL (Pakistan) said that, at the previous meeting, his delegation had voted against the Swiss

amendment (A/CONF.117/C.1/L.29/Rev.2) for the reasons it had given in the course of the discussion. It had voted in favour of article 24, as proposed by the International Law Commission and amended by Morocco, in the light of the explanations given by the Expert Consultant and the points made by the representative of Egypt at the same meeting.

2. Mr. MORSHED (Bangladesh) said that his delegation had voted against the Swiss amendment in the light of the explanations given by the Expert Consultant. It had voted in favour of the existing text of article 24, as amended by Morocco.

3. Mr. PIRIS (France) said that his delegation had voted in favour of the International Law Commission's text as amended by Morocco, because it embodied an essential principle. None of the provisions in Part III of the draft convention could impair the essential principle of indivisibility of State archive collections, a principle which should be preserved in all circumstances. The Swiss amendment had embodied a concept which was generally recognized by professionals, and its revised wording was flexible and imposed no obligation on the parties concerned but rather suggested a method of procedure. His delegation greatly regretted that that amendment had been rejected.

4. Mr. LAMAMRA (Algeria) said that his delegation had voted against the Swiss amendment because it was not convinced that that wording was compatible with the fundamental rule in article 20. The joint heritage concept was a useful approach but the reference to it would have been more appropriate in the form of a recommendation as to procedure. His delegation had voted in favour of the International Law Commission's text as amended by Morocco.

5. Mr. MUCHUI (Kenya) said that his delegation had voted against the Swiss amendment for reasons it had given earlier. It had abstained in the vote on the Moroccan amendment, not because it did not agree with the underlying idea, but because it was not fully convinced that the term "integrity" was more appropriate than the term "unity", or that the term "collections" was the best way of expressing what was intended. His delegation had suggested other, and in its view more appropriate, terms, which had not been taken up. It had voted in favour of article 24, as amended, in the belief that the Drafting Committee would not be precluded from looking again at the terms "integrity" and "collections" and deciding for itself whether or not they could be replaced by something more appropriate.

6. Mr. de OLIVEIRA (Angola) said that his delegation had abstained in the vote on the Swiss amendment, despite its merits, because of the difficulty of harmonizing the original text of the article with the new paragraph 2. His delegation had voted in favour of the text proposed by the International Law Commission, as amended by Morocco, in the light of the explanations given by the Expert Consultant, and in particular of the assurance that the safeguard clause could not block the normal operation of the mechanisms for the passing of archives.

7. Mr. CHO (Republic of Korea) said that his delegation had abstained in the voting on both the Moroccan amendment and article 24, as amended. His delegation was fully aware of the concern of many delegates to preserve the integrity of archive collections, but felt that the text of article 24 as amended by Morocco could still be open to subjective interpretation, since it did not state clearly who was to decide which archive collections were indivisible and which were not. Furthermore, his delegation was of the view that paragraphs 4 and 5 of article 25, paragraph 4 of article 28, and paragraph 5 of article 29 specifically stipulated the duties of the State which was the custodian of the State

archives concerned to provide the interested parties with appropriate reproductions of them. Those provisions might well solve any problems of integrity of archive collections that might arise as a result of a succession of States.

Article 25 (Transfer of part of the territory of a State)

8. Mr. SZATHMARY (Hungary), introducing his delegation's amendment to the article (A/CONF.117/C.1/L.30), said that, while it was important to preserve the unity of State archives, that principle should be implemented for the various categories of succession of States in the light of the various circumstances. In the case of newly independent States, what was involved was the formation of a State on the basis of the right of peoples to self-determination. All the provisions of article 26, therefore, corresponded to that principle. The situation was very different, however, in respect of article 25. As the Expert Consultant had explained, only a minor territorial change was involved and, in view of the specific nature of that change, it might be very difficult to determine which State archives exclusively or principally related to the territory in question in addition to those State archives which, for normal administration of the territory to which the succession of States related, should be at the disposal of the successor State.

9. There were many cases of a common cultural heritage shared by the successor and predecessor States and the importance of preserving that common heritage had been emphasized in many international fora, where it had generally been agreed that collections should be kept intact and could not be divided up without losing their value. The Director-General of UNESCO, in a report to the General Conference of that Organization in 1978,¹ had emphasized, without making any distinction between the various categories of succession, that archives amassed by an administrative authority should be maintained as an indivisible and organic unit and should be kept and administered by that authority or its legally constituted successor. In the particular case of succession in which a minor part of a territory passed from one State to another, it seemed only reasonable that the State which, up to the date of the succession of States, had kept and administered the State archives in question should continue to do so, while at the same time respecting the rights of the successor State.

10. The Hungarian delegation was confident that the amendments it proposed would bring article 25 fully into harmony with article 24, whose title referred to preservation of the unity of State archives.

11. Mr. TÜRK (Austria), introducing his delegation's amendment (A/CONF.117/C.1/L.31), said that article 25 should address itself to the functional connection between archives, the administrations producing them and the territories on which they were created, in other words, to the "archive-territory" link referred to in the International Law Commission's commentary. The essential point in the case of a succession of States was,

¹ See UNESCO, *General Conference, Twentieth Session, Paris, 1978*, document 20/C.102, para. 23.

therefore, that the archives should have been created by an administration or the representatives of the transferred territory, whether they were constituted within or outside the territory concerned. The fact that archives contained information relating to a transferred territory could not be regarded as legally relevant to the definition of ownership. Therefore the notion of the territory to which the archives related did not seem adequate to his delegation, because it could result in diplomatic archives, for example, being deemed to be the property of the State in which an embassy was established, and not of the State which the embassy represented. The same was true of consular archives or archives of administrations charged with international affairs.

12. The Committee of the Whole had recently discussed the concept of “belonging” or “having belonged” in relation to State property or archives belonging to the predecessor State according to its internal law. In the Austrian amendment, the idea of belonging was not linked to the internal law of a State. It was employed in the sense of being pertinent to a given territory, whether owned by it or not. The French word “*appartenant*” was perhaps more precise, but the English expressions “belonging” and “having belonged” had been used in a number of international treaties and were therefore amply supported by State practice.

13. The Austrian delegation had taken note of the Hungarian amendment and was prepared to withdraw its own amendment in favour of the Hungarian proposal, if the Committee thought the latter preferable. An important element in paragraph 1 of article 25, with which the Austrian delegation fully agreed, was the priority to be given to an agreement between the predecessor and successor States based on the principle of equity and concluded in the light of all relevant circumstances.

14. Mrs. THAKORE (India) said that article 25 as drafted by the International Law Commission was acceptable to her delegation in principle. The article dealt with a special kind of succession, namely the transfer of part of the territory of a State, a typical example of which was a boundary adjustment. That did not, as a rule, involve the transfer of a large amount of archives, but only the passing of a few administrative archives. The Commission’s text was flexible and well-balanced and provided equitable solutions. With regard to paragraph 5, it was her delegation’s understanding that the handing over of papers should not jeopardize the security or sovereignty of the successor State. It might perhaps have been preferable to provide for the possibility of the successor State obtaining reproductions from the predecessor State free of cost.

15. The Indian delegation appreciated the concern underlying the Hungarian and Austrian amendments to article 25.

16. Mr. JOMARD (Iraq) said that his delegation found the International Law Commission’s text balanced and quite acceptable, although it preferred the Hungarian delegation’s version of paragraph 2. It proposed, however, that the word “normal” should be deleted from both the Commission’s text and the Hungarian wording of that paragraph since it added nothing to the provision.

17. Mr. DJORDJEVIĆ (Yugoslavia) said that article 25, as proposed by the International Law Commission, was comprehensive enough to cover the various situations that could arise in the case of transfer of part of a territory. Notwithstanding the doubts expressed in the Commission during the drafting of article 25, the use of peace treaties as sources of law was fully justified, since treaties had provided solutions in many cases.

18. In view of the delicate nature of the matters covered in article 25, his delegation was not prepared to accept substantial changes to the International Law Commission’s text. The Hungarian amendment limited the scope of paragraph 2 by providing for the transfer only of the archives referred to in paragraph 2(a) of the Commission’s draft. His delegation could not accept such a restriction of the categories of archives which should pass to the successor State.

19. By employing the term “belonging or having belonged . . .”, the Austrian amendment clarified to some extent the “archives-territory” link, but it also limited the categories of the archives which should pass to the successor State.

20. The Yugoslav delegation therefore preferred the existing formulation of article 25 which made it quite clear that the successor State should receive all archives that related exclusively or principally to the transferred territory.

21. Mr. HAWAS (Egypt) said that his delegation supported the International Law Commission’s text of article 25 because it was well formulated and comprehensive in scope. Acceptance of either the Hungarian or the Austrian amendment would detract from the usefulness of the provision.

22. Mr. MORSHED (Bangladesh) also supported article 25 as proposed by the International Law Commission. It was evident that the Commission had gone to some pains to put forward the best possible solution.

23. Mr. BEDJAOU (Expert Consultant) stressed the importance of a clear understanding of the principles set forth in article 25 and of their phased application.

24. Paragraph 1 provided for the conclusion of agreements between the States concerned. Paragraph 2 set forth certain basic rules for dealing with situations where no agreement had been concluded. The International Law Commission had examined various criteria for establishing the “archives-territory” link, which accorded different weights to the fundamental principles that should govern the passing of archives (territorial or functional connection, territorial origin and respect for the unity of groups of archives). In diminishing order of importance, the first possible criterion was that of the archives belonging to the territory, as suggested in the Austrian amendment. But the Austrian amendment related to local archives of the territory, not State archives of the predecessor State in that territory. The former category was not concerned since in any case they already belonged to the territory. The second was that the archives related directly to the territory in question, while the third was that they related exclusively or principally to that territory. The fourth criterion was that the archives were linked to the interests of the transferred territory.

25. Taking all those possible factors into account, the International Law Commission had felt that the phrase “that relates exclusively or principally . . .” was the best available formula in that type of succession of States.

26. Referring to other points which had been raised, he observed that the reference to embassy archives was not really relevant, since an embassy was an extra-territorial entity.

27. Various questions had been raised concerning the use in paragraph 2, subparagraph (a), of the term “normal administration”: that term had been used in order to refer to the usual needs of an administration, while at the same time distinguishing between such archives and other types of archives referred to in subparagraph (b).

28. Mrs. BOKOR-SZEGÖ (Hungary) said that, having heard the observations of the Expert Consultant and in order to facilitate the discussion, her delegation had decided to withdraw its amendment. It nevertheless maintained its position concerning article 25 as proposed by the International Law Commission, as well as its view that the text it had proposed was in accord with article 24.

29. Mr. HAYASHI (Japan) expressed concern that neither of the two criteria contained in paragraph 2 of article 25 was sufficiently clear from the juridical point of view.

30. Paragraphs 3 to 5 of the article, as they stood, could have an unjustifiable effect on the legitimate interests of third States. His delegation believed that due regard should be paid to such interests in the application of rules governing the transfer of archives. The same held true for article 26, paragraph 3; article 28, paragraphs 2 and 4; and article 29, paragraphs 3 and 5.

31. He trusted that the Drafting Committee would clarify the wording of article 25, and also hoped that, by way of clarification, some protection of the interests of third States would be provided, for example by adding the words “as far as possible . . .” in paragraphs 3 to 5.

32. Mr. BROWN (Australia) expressed support for the International Law Commission’s text of article 25 but suggested that the words “to the territory” in paragraph 3 should be deleted, as they were superfluous.

33. Mr. PIRIS (France) said first of all that he felt it might be desirable to delete the words “by that State” in paragraph 1 of article 25, as well as paragraph 5 of article 28. He referred in that connection to the comments he had made on paragraph 1 of article 13 (11th meeting) and paragraph 2 of article 16 (17th meeting) of the draft convention. He next pointed out the vagueness of several of the terms used in article 25, such as “normal administration” (paragraph 2(a)), “exclusively or principally” (paragraph 2(b)), which could with advantage be replaced by “directly”, or “connected with the interests” (paragraph 4).

34. With regard to the Austrian amendment, he appreciated the idea behind it, namely, to replace the criterion of relating to a territory by the more precise one of belonging to a territory. That amendment seemed to him to improve the text drafted by the Inter-

national Law Commission and he would therefore support it.

35. The French delegation regretted the withdrawal of the Hungarian amendment, with which it had agreed as far as paragraph 2(b) was concerned.

36. Mr. ECONOMIDES (Greece), referring to paragraph 1, asked whether the reference to agreements between States also allowed for the possibility of referral to arbitration or to the International Court of Justice.

37. He would also be glad to learn why the phrase “should be at the disposal of the State . . .” was used in article 25, paragraph 2(a), whereas article 26, paragraph 1(b), which dealt with an analogous situation, employed the phrase “should be in that territory”.

38. His delegation could support the International Law Commission’s text of article 25, although it shared the view of other delegations that several of the terms used in the article were rather vague.

39. Mr. BEDJAOU (Expert Consultant) replied that paragraph 1 provided not only for the conclusion of agreements between States on the substance of the passing of State archives, but also for the referral of the matter to another body for settlement.

40. Mr. TÜRK (Austria) said that his delegation had already explained why it did not agree with the International Law Commission that the words “that relates exclusively or principally” in paragraph 2(b), reflected the most appropriate criterion for determining the passing of State archives. He wished also to point out that article 26, paragraph 1(a), dealing with newly independent States, referred to the same criterion as had the Austrian amendment, namely that the archives should belong to the territory in question. He could not understand why a distinction had been made between those two articles.

41. Mr. MIKULKA (Czechoslovakia) said that he wished to comment on a drafting problem to which he had already drawn the Committee’s attention in connection with article 13. It was possible to interpret the text of article 25, paragraph 1, as meaning that the predecessor and successor States were obliged to settle the passing of State archives by an agreement between them. That was not the International Law Commission’s interpretation, according to paragraph (6) of its commentary on the similar text in article 13 to which paragraph (24) of the Commission’s commentary on article 25, paragraph 1, referred. His delegation agreed with the International Law Commission’s interpretation and suggested that it would be useful to amend paragraph 1 to read:

“1. When part of the territory of the State is transferred by that State to another State and if the passing of State archives of the predecessor State to the successor State is not settled by agreement between them:”.

The text would then proceed directly to subparagraphs (a) and (b) of the existing paragraph 2. That wording would preserve the primacy of agreement between the States concerned, which the International Law Commission favoured in its commentary. He suggested that

the amendment suggested by his delegation should be referred to the Drafting Committee.

42. Mr. HAWAS (Egypt) pointed out, in connection with the Austrian amendment to paragraph 2(b) of article 25 that, although the criterion of belonging was applied in article 26, paragraph 1(a), the following subparagraph 1(b) reverted to the criterion referred to in article 25, paragraph 2(a). There was therefore no inconsistency between the formulation in the two articles.

43. If there was anything to be done in that connection, it was to add to article 26, paragraph 1, a new subparagraph similar to article 25, paragraph 2(b). His delegation would come back to the matter when article 26 was discussed.

44. Mr. HAYASHI (Japan) asked whether the Austrian amendment was intended to cover local archives.

45. Mr. TÜRK (Austria) said that his delegation's proposal did not aim to enlarge the scope of article 25. He concurred with the view of the International Law Commission that local archives were not included.

46. Mr. BA (Mauritania) cited the Expert Consultant's opinion that there were two possible criteria for determining which archives should pass, namely the fact of their belonging or the fact of their relating to the territory transferred. Article 25 dealt with the case of two States both of which continued to exist. There was no question of the extinction of one of them. Hence the idea of belonging was ambiguous and could be interpreted differently by the two countries concerned. The word "relates" was therefore more appropriate. The unhappy repetition of the word in paragraph 2(b) should be remedied, however. In the French text the words "*se rapportant*" might be replaced by the word "*afférent*" in the first place where they occurred.

47. He urged the Austrian delegation to withdraw its amendment, which might be wrongly interpreted by some countries.

48. Mr. BEDJAOUI (Expert Consultant) said that the International Law Commission had decided not to become embroiled in the problem of local, provincial or other archives. It had addressed itself only to State archives, which might, however, be kept either centrally or regionally.

49. The Greek representative had inquired whether there was any distinction to be made between the phrase "should be at the disposal of the State" used in article 25, paragraph 2(a) and the phrase "should be in that territory" used in article 26, paragraph 1(b). The choice of wording was explained in paragraph (25) of the International Law Commission's commentary. Under article 25, paragraph 2(a), by agreement between the States concerned, the archives could pass whether or not they were physically located in the territory transferred.

50. Mr. TÜRK (Austria), replying to the representative of Mauritania, said that, in archival science, the term "belonging" had only one meaning. Documents belonged to the administration to whom they were addressed, even if the subject matter was wholly relating to a third party.

51. The CHAIRMAN put to the vote the Austrian amendment to article 25 (A/CONF.117/C.1/L.31).

The amendment was rejected by 21 votes to 12 with 35 abstentions.

52. The CHAIRMAN put to the vote article 25, as proposed by the International Law Commission.

Article 25, as proposed by the International Law Commission, was adopted by 59 votes to 1, with 9 abstentions, and referred to the Drafting Committee.

53. Mrs. BOKOR-SZEGÖ (Hungary), speaking in explanation of vote, said that her delegation had abstained in the vote on the International Law Commission's text of article 25. In its view paragraph 2(b) did not serve the interests of all the States concerned in those cases where there was a legacy of State archives which constituted a common cultural heritage. In such cases, the predecessor State should retain such archives and make appropriate reproductions available to the successor State.

54. Mr. KIRK (United Kingdom) said that his delegation had abstained in the vote on the Austrian amendment because, while sympathetic to the thought underlying it, it considered the formulation "belonging or having belonged" too vague. His delegation had voted in favour of the International Law Commission's draft of article 25 as representing a not unreasonable text to deal with that category of succession of States to archives. It was its understanding that paragraphs 3 and 4 would of course be interpreted in accordance with the internal law of the State concerned. Finally, it considered that the points of a drafting nature which had been raised should be examined by the Drafting Committee.

55. Mr. PIRIS (France) said that his delegation had voted in favour of the Austrian amendment, which had the merit of distancing itself from the principle of "territorial connection", although the drafting did not seem to it to be completely satisfactory. It had abstained on article 25, and it would point out that the "best available evidence" mentioned in paragraph 3 might of course consist of reproductions, as the International Law Commission had mentioned in paragraph (21) of its commentary on the article. The same observation applied to articles 26, 28 and 29. Paragraph 5 of article 25 contained a useful reference to reproductions of State archives of the successor State, and that might well be included also in article 26.

56. Mr. FONT (Spain) said that his delegation had abstained in the vote on article 25. It had done so partly for the reasons that had caused it to abstain in the vote on article 13. It also considered that the argument advanced by the International Law Commission in its commentary did not lead to the conclusions it had drawn in its formulation of paragraph 2(a). The Commission appeared to have based itself on peace treaties which were, in its own judgement, doubtful precedents. In paragraph (22) of its commentary the Commission had expressed the view that local archives were not State archives. That was an opinion which his delegation did not share. Whether they were or not depended on the internal law of the State concerned.

57. Mr. MORSHED (Bangladesh) said that his delegation had voted in favour of the International Law

Commission's text, which it regarded as the best option. It had abstained in the vote on the Austrian amendment, which would not, in its view, have improved the text.

58. Mr. AL-KHASAWNEH (Jordan) said that his delegation had voted in favour of the Austrian amendment, which employed more established terminology. However, it could also accept the International Law Commission's text of article 25. Nevertheless it hoped that that text would be made clear by the Drafting Committee.

59. Mr. OESTERHELT (Federal Republic of Germany) said that his delegation had abstained in the vote on article 25 as proposed by the International Law Commission, because it was not convinced that the rules enunciated in that text were sufficiently clear for practical application. It had also abstained in the vote on the Austrian amendment, in spite of its greater clarity, because it had doubts about a rule based exclusively on the archival concept of "belonging".

60. Mr. LAMAMRA (Algeria) said that he had with regret voted against the Austrian amendment because the use in article 25 of the terminology it employed, read in conjunction with its more pertinent use in article 26, which had a more solid legal basis, might prove a source of confusion.

61. Mrs. TYCHUS-LAWSON (Nigeria) said that her delegation had voted against the Austrian amendment and in favour of the International Law Commission's text of article 25. The principal reason for its taking that position was that, if only archives that had belonged or still belonged to the territory passed, certain important archives might be excluded. The International Law Commission's text would include administrative archives relating principally or exclusively to the territory being transferred. That was desirable because in most cases the territory, having been part of the predecessor State, might not have owned archives as such, since all the constituent territories of a State owned the State archives jointly.

62. Mr. SUCHARITKUL (Thailand) said it was apparent that, whatever the precise definition of State archives eventually adopted in article 19, an essential element would be that they were the State archives of the predecessor State. There was thus in the English text of article 25, paragraph 1, an awkward tautology that had been avoided in a similar case in article 11 by referring to the "passing of State property from the predecessor State". The same change should be made in article 25, paragraph 1, with consequential changes in paragraph 2(a) and (b). The changes were purely a matter of drafting.

63. The CHAIRMAN noted that the Committee of the Whole had concluded its consideration of article 25.

Report by the Chairman of the Working Group on article 19

64. Mr. NAHLIK (Poland), Chairman of the Working Group on article 19, said that the Group had held four meetings, during which it had considered the basic text

prepared by the International Law Commission, four written and ten oral amendments and sub-amendments submitted to the Committee of the Whole, as well as a number of amendments proposed during the discussion in the Working Group itself.

65. Most of the wording of the text finally produced by the Group (A/CONF.117/C.1/L.45) had been agreed to by all its members, with the exception of three phrases which had the support of some members only and had therefore been placed between square brackets.

66. Commenting on the text submitted by the Working Group, he said that the first phrase, "For the purposes of the articles of the present Part," presented no difficulty and that the Drafting Committee should ensure that the final wording conformed to the similar definitions contained in articles 8 and 31.

67. After some discussion, the members of the Working Group had agreed to retain the word "documents" contained in the International Law Commission's draft as the essential element of the definition of "State archives". The Group had, like the Commission, considered that the phrase "of whatever kind" covered both the form and the content of the documents, but most members had thought it necessary to refer also to the date of the documents, in order more clearly to indicate that the latter could be both old and recent. The words "produced or received" had been included to show that the article referred both to documents emanating from the activities of any State body and to those produced outside such activities but which were contained in the State archives of the predecessor State. Certain members of the Group, however, had considered the phrase "in the exercise of its functions" superfluous. It had therefore been placed in square brackets in the text. No opposition had been expressed to the words "which, at the date of the succession of States, belonged to the predecessor State according to its internal law". On the other hand, the word "kept" in the original text had been replaced by "preserved", which seemed to be the word used in the terminology relating to archives. The words "directly or under its control" had been placed in square brackets because they had been supported only by a minority of the members of the Group, the others considering them liable to present difficulties of interpretation. The words "as archives" contained in the Commission's text had finally been retained, after an interesting discussion, so as to constitute some limitation, the only one, of the notion to be defined. Finally, even the representatives who had been in favour of an enumeration, whether exhaustive or exemplary, of the purposes to be served by the archives had agreed to replace any such enumeration by the phrase "for whatever purpose" which, however, had been placed between square brackets because some members of the Working Group had maintained that the various purposes to be served by the archives were implicit in the very concept of archives.

68. The CHAIRMAN announced that, in order to allow delegations time to study it, the draft text of article 19 submitted by the Working Group would be discussed at the next meeting.

**Statement by the Chairman of the
Drafting Committee**

69. Mr. SUCHARITKUL (Thailand), Chairman of the Drafting Committee, said that it was as yet too early for that Committee to submit even an interim report in writing, but he wished to report orally on the work it had done so far and to seek further instructions from the Committee of the Whole. That Committee had specifically requested the Drafting Committee to submit a recommendation on the use of the term "State archives" in article 23, taking into account the definition of that term in article 19. A similar problem had not arisen concerning the definition of the term "State property" in article 8, because the International Law Commission's text of article 12 had been carefully prepared so as to avoid use of the term "State property". At the 9th meeting, during the discussion of article 11, the representative of Finland had proposed that the word "from" in the English text should be changed to "of" to bring it into line with the French and Spanish texts. After careful consideration, the Drafting Committee had decided to maintain the word "from", which referred to the movement of the passing of State property from the predecessor State rather than to its possession by that State, which was clearly defined in article 8. The maintenance of the word "from" would involve no change in the French and Spanish texts since the word "*de*" could mean both "from" and "of".

70. A similar problem had arisen during the Drafting Committee's consideration of article 13 regarding the appropriateness of using the expression "State property of the predecessor State" in view of the definition of "State property" which had been adopted in article 8. That question had also arisen in the context of various other draft articles. According to many members of the Drafting Committee, the qualifying phrase "of the predecessor State" could be amended to read

"from the predecessor State" and be moved towards the end of the provision as appropriate. Other members of the Drafting Committee had considered such an amendment to be substantive and consequently outside the competence of the Drafting Committee. He therefore requested the Committee of the Whole to authorize the Drafting Committee to submit recommendations on analogous questions involving not only article 13 but also other relevant articles.

71. The CHAIRMAN invited members of the Committee of the Whole to express their views on that matter.

72. Mr. MAAS GEESTERANUS (Netherlands) said that it was the normal task of a drafting committee to check that definitions in a draft convention were used in the correct legal sense throughout the articles. He took the absence of comment in the Committee of the Whole to mean that its members supported the request by the Chairman of the Drafting Committee.

73. Mr. SUCHARIPA (Austria) thanked the Chairman of the Drafting Committee for his valuable report, expressing at the same time his surprise that proceedings in that Committee made it necessary to request special authorization from the Committee of the Whole to consider what he felt to be a typical case of a problem which should be dealt with by a drafting committee.

74. The CHAIRMAN said that, in the absence of objection, he would take it that the Committee of the Whole wished to authorize the Drafting Committee to deal with the problems which had been mentioned by its Chairman.

It was so decided.

The meeting rose at 5.45 p.m.

27th meeting

Tuesday, 22 March 1983, at 10.30 a.m.

Chairman: Mr. ŠAHOVIĆ (Yugoslavia)

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

[Agenda item 11]

*Article 19 (State archives) (concluded)**

1. The CHAIRMAN said that, without wishing to prejudge the outcome of the Committee's further consideration of article 19, he had the impression that the text suggested by the Working Group (A/CONF.117/C.1/L.45) should meet all the concerns which had been

voiced by delegations. The suggested text was consistent with the International Law Commission's text which had however been refined to take account of points raised during the discussion both in the Committee of the Whole and in the Working Group.

2. Mr. de OLIVEIRA (Angola) said that in the earlier discussion on article 19 many delegations had expressed concern lest the primacy of the internal law or the unilateral judgement of the predecessor State limit the meaning of "State archives". His delegation shared that concern. In the absence of a specific rule of international law, it might have been best to define the meaning by using some such formula as "in accordance with the normal practice of States". Even that wording might be too vague and would doubtless open the door to undesirable disputes between States.

* Resumed from the 20th meeting.