

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

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**27th meeting of the Committee of the Whole**

Extract from Volume I of the *Official Records of the United Nations Conference on Succession of States in respect of State Property, Archives and Debts (Summary records of the plenary meetings and of the meetings of the Committee of the Whole)*

**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.

3. The Working Group was to be congratulated on its text which, even though it did not perhaps dispose of all the concerns mentioned, retained the substance of the article proposed by the International Law Commission. His delegation was inclined to view the phrases in square brackets in document A/CONF.117/C.1/L.45 as explanatory comments; they could not be regarded as superfluous but their inclusion in the article would give the impression that too much emphasis had been laid on descriptive matter. They could therefore be dispensed with. The concluding phrase “[for whatever purpose]” should however be retained, for it provided an additional safeguard against possibly wrongful unilateral interpretations.

4. Mr. IRA PLANA (Philippines) considered that the text of the Working Group was well balanced and represented a distinct improvement over the text of the International Law Commission. His delegation could accept the phrase “[in the exercise of its functions]” but considered that the phrases “[directly or under its control]” and “[for whatever purpose]” were unnecessary and might be dropped.

5. Mr. KOLOMA (Mozambique) said that the main objection of his delegation to the original text of the International Law Commission had been to the concluding phrase reading “and had been kept by it as archives”. That phrase added to the definition of “State archives” a subjective criterion, namely, the intention of the predecessor State to consider certain documents of whatever date and kind as archives. In the text suggested by the Working Group the phrase in question was simply replaced by another phrase with the same meaning, namely, “and were preserved by it as archives”. The suggested text did not, therefore, cure what his delegation considered the main defect of the original text. It was evident that “State archives” were objective in character, existed independently of the State’s will, and were determined by the intrinsic nature of the documents themselves. That being so, it was illogical to insist on including in the definition of “State archives” a reference to the will or intention of the State. His delegation considered therefore that it would be wiser to delete the words “[directly or under its control] as archives” from the Working Group’s text. If the subjective criterion was retained in the definition of State archives, his delegation would have serious difficulties in voting in its favour.

6. Mr. FAYAD (Syrian Arab Republic) said that his delegation appreciated the efforts made by the Working Group but considered nevertheless that the results of its work did not add to the International Law Commission’s text. In particular, the words “[in the exercise of its functions]” added nothing. His delegation therefore shared the views expressed by previous speakers and would prefer a text corresponding more closely to the general view.

7. Mr. A. BIN DAAR (United Arab Emirates) said that his delegation had misgivings about the phrase “[in the exercise of its functions]”, because it was possible that certain archives might have been collected otherwise than in the exercise of the predecessor State’s functions. In addition, the words “as archives”, at the end of the text should be deleted, because, read in

conjunction with the reference to the internal law of the predecessor State, they would give that State the right to determine what should be regarded as archives. The concluding phrase should therefore read: “preserved by it for whatever purpose”.

8. Mr. ROSENSTOCK (United States of America) said that the Working Group had included all delegations which had wished to make suggestions and had been given the task of producing a compromise text. It had fulfilled its mandate. His delegation was therefore distressed to note that some representatives seemed to be doing no more than repeat comments which had been made at an earlier stage in the Committee’s proceedings before the Working Group had been established.

9. Mr. TÜRK (Austria) said that his delegation had been a member of the Working Group and, together with the other members, had tried to reach a compromise text acceptable to all. The Working Group had gone as far as it could and it was for the Committee to take a decision. His delegation was not happy with all aspects of the compromise text, and had doubts particularly about the phrase “[directly or under its control]”, but would be prepared to accept the text, provided that it was not amended. He proposed that the Committee proceed to take a decision on the text of article 19 as suggested by the Working Group.

10. The CHAIRMAN said that he had been under the impression that all members of the Working Group had accepted the compromise text. The text was based on the draft of the International Law Commission but contained a number of additions. Some of those additions had been approved, but others, namely, those contained in brackets, had not been accepted by all members of the Working Group. The Committee might therefore wish to deal first with the phrases in brackets. If it was not ready to consider those phrases, there would be no alternative but to vote.

11. Mr. NAHLIK (Poland), speaking as Chairman of the Working Group, pointed out that the Working Group had been open-ended. He was surprised that delegations which were expressing objections to the text suggested by the Working Group had not troubled to participate in the Working Group. The members of the Working Group had worked hard to reach a compromise acceptable to all, but it must be recognized that it was not possible to satisfy everybody. He recommended the text to the Committee and saw no alternative to the Chairman’s suggestion that it should be put to the vote. He wondered if a vote should not first be taken on the phrases in brackets which had not met with general acceptance. All the rest of the text had been unanimously accepted by the Working Group after a lengthy discussion. To reopen the discussion would therefore be a waste of time.

12. Referring to the doubts expressed regarding the words “as archives”, he stressed that what was to be defined was the meaning of “State archives”, not merely “archives”. The reference to the internal law of the predecessor State was unavoidable, just as in article 8 it had been found unavoidable. A similar approach was necessary in the case of article 19, for the sake of homogeneity. In order to meet the objections of

some delegations, the words “of whatever date” had been added by the Working Group so as to emphasize that documents might be either historical or of very recent date. The phrase “of whatever date and kind” had been inserted in order to cover all types of documents without limitation; the only condition that had to be fulfilled was that the documents must have been kept as archives, in other words as a certain whole and not as isolated documents. Accordingly, he considered that those words should stand.

13. The CHAIRMAN stressed that article 19 was essential for the understanding of Part III of the future convention.

14. Mr. TEPAVITCHAROV (Bulgaria) said that the text suggested by the Working Group represented a serious attempt to improve the definition provided by the International Law Commission. The insertion of the word “date” in the revised definition removed any possible doubt as to the status of so-called “living” archives. His delegation was unconvinced of the necessity for including the three phrases appearing in square brackets and would, on the whole, prefer their deletion; in particular, the phrase “[directly or under its control]” was, on the one hand, unduly restrictive and, on the other hand, open to the interpretation that archives which belonged to the predecessor State but which, for some reason, were not under its control at the date of succession would not be subject to transfer. However, he would agree to the adoption of the Working Group’s text incorporating those phrases if a consensus to that effect became apparent in the Committee.

15. Mr. MORSHED (Bangladesh), while welcoming the Working Group’s text as a significant step towards a solution, remarked that no definition could be fool-proof or completely accurate. Although his delegation considered the phrase “[in the exercise of its functions]” to be unnecessary and would prefer it to be deleted, it was prepared to bow to the majority view and agree to dropping all three sets of square brackets appearing in the revised text.

16. Mr. ABED (Tunisia) said that he would likewise prefer the words “[in the exercise of its functions]” to be deleted for, in his delegation’s view, they might give rise to conflicting interpretations. However, he shared the views expressed by the Austrian representative and was prepared to accept the Working Group’s text in its entirety.

17. Mr. MNJAMA (Kenya) said that his delegation, which had been the first to propose the deletion of the words “and had been kept by it as archives” from the International Law Commission’s text, had nevertheless accepted the inclusion of a similar phrase in the Working Group’s text on the understanding that the incorporation of the new phrase “of whatever date and kind” would imply the inclusion of recent records (so-called “living” archives). Some words of explanation by the Expert Consultant would be welcome in that connection.

18. Mr. TÜRK (Austria) associated himself with the remarks made by the representative of Bangladesh. Separate voting on the phrases appearing in square brackets would jeopardize the balance of what was, in essence, a package deal. He was in favour of removing all three sets of square brackets.

19. Mr. HAWAS (Egypt) agreed with those previous speakers who had expressed a preference for the deletion of the phrase “[in the exercise of its functions]”, and associated himself with the views of the Bulgarian representative concerning a possible misinterpretation of the phrase “[directly or under its control]”. He also endorsed the suggestion made by the representative of Mozambique and, in that connection, reminded the Committee that he had originally been in favour of deleting the phrase “according to its internal law and . . . archives” from the International Law Commission’s text, agreeing to the maintenance of the phrase “according to its internal law” only in the light of the explanation supplied by the Expert Consultant at the 5th meeting in connection with article 12. Like other members of the Committee, he was prepared to go along with the majority view of the Working Group’s text, but would appreciate some further explanation by the Expert Consultant regarding the phrase “and were preserved by it . . . as archives”.

20. Mr. MONNIER (Switzerland) associated himself with the Austrian representative’s earlier remarks. The fact that the suggested text was not universally accepted as fully satisfactory was, surely, the hallmark of a good compromise. The text represented a carefully woven fabric which should not be unravelled. He suggested that the revised version of article 19 should, like several articles previously disposed of, be adopted without a vote and referred to the Drafting Committee. If any delegation insisted on a vote being taken, the text should be voted upon as a whole and, if it was rejected, the Committee should fall back upon the original text drafted by the International Law Commission.

21. Mr. TSHITAMBWE (Zaire) endorsed the suggestions just made as well as the views expressed by the Austrian representative.

22. Mr. BEDJAoui (Expert Consultant) said that the Working Group’s text represented a most useful compromise which, without fully satisfying anyone, appeared to be acceptable to all. The newly added phrases and their precise position in the text were a matter of delicate balance and he felt that to comment on them separately would serve no useful purpose at that stage. The text as a whole was an acceptable piece of work which did honour to the Working Group and to the Committee itself.

23. The CHAIRMAN invited the Committee to agree, without a vote, to the deletion of the square brackets appearing in document A/CONF.117/C.1/L.45.

*It was so agreed.*

*The text of article 19 as suggested by the Working Group was adopted and referred to the Drafting Committee.*

24. Mr. RASUL (Pakistan) said his delegation had supported the text suggested by the Working Group, without the words in square brackets, as an improvement over the article proposed by the International Law Commission. His delegation understood the reference to the internal law of the predecessor State as relating only to the ownership of the State archives in question and not to their preservation. It understood the question of preservation in the light of the statement made by the United Kingdom representative at an

earlier point in the debate to the effect that a file became part of State archives immediately upon being opened.

25. Mr. HAWAS (Egypt) said that his delegation had been happy to join in the consensus on the Working Group's text of article 19 and to contribute to the compromise which that text represented.

26. He referred to the reservation formulated earlier by his delegation regarding the words "preserved by it . . . as archives". It was important that that phrase should not be used as a criterion for a subjective determination of which State archives passed to the successor State.

27. His acceptance of the words "according to its internal law" was based on the explanations previously provided by the Expert Consultant with regard to the analogous expression in article 12.

28. Mr. MURAKAMI (Japan) said that his delegation had joined in the consensus on the Working Group's text even though it did not find it fully acceptable. His delegation maintained its reservation with respect to the words "or under its control", which tended to expand the scope of the definition of State archives to an unreasonable degree.

29. Mr. OESTERHELT (Federal Republic of Germany) said that his delegation was glad that it had been possible to find common ground and to establish a generally acceptable form of article 19. That was a hopeful sign for the future real progress of the Conference.

30. His delegation understood the words "preserved by it . . . as archives" as referring, by juridical necessity, to the internal law of the predecessor State.

31. Ms. LUHULIMA (Indonesia) said that she had supported the Working Group's text in spite of her delegation's serious doubts regarding the retention of the words "as archives", which tended to imply that a sizeable category of recent State documentary material might not be covered by the provision. She welcomed the addition of the words "of whatever date", which she understood as including such documents, a point which had been clarified by the Chairman of the Working Group.

32. Mr. ENAYAT (Islamic Republic of Iran) said that his delegation could accept the text of article 19 as proposed by the Working Group with the exception of the words "as archives", which seemed to imply the indirect application of the internal law of the predecessor State.

33. Mr. LAMAMRA (Algeria) said that he was pleased that the Committee had been able to adopt the revised text of article 19 without a vote. His delegation had joined in the decision in a spirit of compromise. The text represented an improvement over the Commission's version. He particularly welcomed the words "of whatever date", which clarified the question of identifying which documents qualified as archives, and the phrases "produced or received by the predecessor State" and "directly or under its control". The reference to documents being kept as archives "for whatever purpose" was also useful.

34. His delegation interpreted the reference to the internal law of the predecessor State as applying exclusively to the question of ownership of archives.

35. Mr. KIRK (United Kingdom) said that, while regretting that its own amendment (A/CONF.117/C.1/L.20) to article 19 had not been accepted, his delegation had supported the adoption of the Working Group's text for the sake of constructive compromise. He agreed with the point made by the representative of the Federal Republic of Germany that the phrase "preserved by it . . . as archives" must of course be interpreted in accordance with the internal law of the predecessor State.

36. Mr. MNJAMA (Kenya) said that his delegation had been happy to approve the adoption of the Working Group's draft of article 19 in the light of the explanation provided by the Expert Consultant at the 19th meeting and on the understanding that, as emphasized by the representative of the United Kingdom in an earlier statement, a file became a part of State archives on the date on which it was opened.

37. Mr. MIKULKA (Czechoslovakia) said that, for the sake of progress in the Committee's work, his delegation had not opposed the adoption of article 19 as drafted by the Working Group. However, it continued to find some of the wording of the article unsatisfactory. The passages which had been bracketed, far from improving the definition, would be likely to lead to future difficulties of interpretation. Nor did the definition dispose of the inconsistency, mentioned at the 23rd meeting by the representative of the Netherlands during the debate on article 23, between the general notion of State archives and the condition laid down in the definition that those archives must have belonged to a specific State, namely, the predecessor State. The definition in article 19 as adopted did not cover all archives in general but covered only that specific category, a serious limitation which would cause disputes whenever the article was applied to cases involving the State archives of a State other than the predecessor State, as in the case of those of a third State, covered by article 23, or by article 28, paragraph 4, which implicitly covered State archives of the successor State also.

38. Mr. FAYAD (Syrian Arab Republic) said that his delegation had accepted the Working Group's draft of article 19 because it wished to save the Committee's time. However it continued to consider the text proposed by the International Law Commission as more comprehensive and as providing a better and more readily usable definition of State archives.

39. Mr. PIRIS (France) welcomed the adoption of article 19 and expressed his thanks to the Working Group for its constructive efforts.

40. His delegation endorsed the interpretations placed on the provision by the representatives of the United Kingdom and the Federal Republic of Germany. The comments made by the representatives of Czechoslovakia and the Netherlands on article 23 at the 24th meeting might usefully be considered by the Drafting Committee.

41. Mr. MONNIER (Switzerland) said that, like other representatives, he would have preferred the text without the words contained within square brackets, especially those at the end of the article, since he took the view that those words obscured the clarity of the definition rather than adding anything constructive to

it. However, he was happy to endorse the work of the Working Group and to accept the article in a spirit of compromise and hoped that that spirit would continue to guide the work of the Conference on future matters.

42. Mr. NATHAN (Israel) said that his delegation accepted the Working Group's text as a compromise but would have preferred the phrase contained in the square brackets to be deleted, regarding them as either dangerously vague and therefore likely to lead to disputes in the future or superfluous because already implicit in the original article as drafted by the International Law Commission.

43. Mr. SKIBSTED (Denmark) said that his delegation regarded the text prepared by the Working Group as a satisfactory compromise. It was effective in serving what should be both the main purpose of the definition of "State archives" and the purpose of the draft convention as a whole, namely, that of protecting the interests of both predecessor and successor States.

44. Mrs. OLIVEROS (Argentina) commended the Working Group on its constructive efforts. Her delegation had joined in the consensus on the revised text in a spirit of compromise.

45. It was her delegation's understanding that the reference to documents "received" by the predecessor State included documents acquired by that State and that the words "preserved by it . . . as archives" meant that the predecessor State would in no circumstances be entitled to remove archives or documents which formed part of the so-called "living archives" and were necessary for the purpose of sound administration.

46. Mr. NARINTHRANGURA (Thailand) said that, in his delegation's view, the Working Group's version of the definition in article 19 embodied a sound principle and a generally acceptable compromise and applied to all Parts of the draft convention.

47. Mrs. TYCHUS-LAWSON (Nigeria) said that her delegation had acceded to the Committee's wish to adopt the definition produced by the Working Group in a spirit of compromise, while feeling that some of the words placed in brackets were undesirable. For example, the words "in the exercise of its functions" might be taken as excluding certain documents of historical value, and the expression "directly or under its control" was unnecessary, because the documents referred to would qualify as archives as soon as they were preserved by the predecessor State.

48. For reasons which it had stated at the 19th meeting during the debate before the article had been referred to the Working Group, her delegation regretted that the words "as archives" had been retained at the end of the definition.

49. Mr. ECONOMIDES (Greece) said that his delegation had originally wished to speak before the vote on article 19 in order to state its opposition to the inclusion of the phrases contained in square brackets. He considered that the definition ultimately adopted by the Committee was in effect that originally proposed by the International Law Commission, based on the concepts of ownership and the "keeping" of archives by the predecessor States.

50. Mr. BARRERO-STAHN (Mexico) said that his delegation had accepted the text as drafted by the

Working Group as a compromise but would have preferred the words contained in the first two sets of square brackets to be dropped. It had been in favour, however, of retaining the phrase "for whatever purpose" because it represented a safeguard for the right of peoples to keep or recover their cultural heritage; his delegation had already expressed its concern regarding the scope of the definition "all documents of whatever date and kind" (18th meeting).

51. Mr. A. BIN DAAR (United Arab Emirates) said that his delegation had joined in the consensus in a spirit of compromise, but reluctantly. He interpreted the phrase "in the exercise of its functions" to mean any functions whatsoever of the predecessor State and not only those related to the territory of the successor State before the succession took place. He interpreted the expression "according to its internal law" not as determining the nature of those archives which could be considered State archives but as referring solely to the ownership of the archives by the predecessor State.

52. Mr. CONSTANTIN (Romania) supported the views of the representative of Mexico; he would have preferred to see the text adopted without the phrases contained in the first and second sets of square brackets.

53. Mr. ROSPIGLIOSI (Peru) said that there appeared to have been a misunderstanding. At the time of the adoption of article 19 as suggested by the Working Group, he had understood that it had been the Committee's decision to delete not only the three sets of square brackets but also the words contained therein. Those words weakened the definition of "State archives", which was otherwise generally well presented in the Working Group's version.

54. Mr. PAREDES (Ecuador) said that he agreed with the representative of Peru that, at the time of the decision on article 19, there had been some confusion. He had understood that it had been the Committee's intention to delete the words in square brackets and not just the brackets themselves. It had been on that basis that his delegation had been prepared to accept the text.

55. Mr. RASUL (Pakistan) asked the Chairman to clarify the position. He also had understood the Chairman's proposal at the time of the decision on draft article 19 as meaning that the words in the square brackets would be deleted together with the brackets.

56. The CHAIRMAN said that he deeply regretted the misunderstanding but noted that it appeared clear from the comments of most delegations that the implications of the decision had been generally understood. He had suggested that a decision should be taken on the complete text as proposed by the Working Group, with the sole deletion of the three sets of square brackets. The words in the brackets had been retained, and it was on that basis that the Committee had taken its decision.

57. Mr. ECONOMIDES (Greece) observed that he had not understood the decision in that way but that he was still willing to concur in the adoption of article 19. However, he wished to explain his delegation's position on the three passages in brackets.

58. The phrase "in the exercise of its functions" was superfluous and might cast doubt on the very concept of

State archives. The idea behind the words “directly under its control” was, in his view, already implicit in the draft article and therefore those words merely added an unnecessary detail. Lastly, the intention behind the expression “for whatever purpose”, although largely implicit in the article, might in some extreme cases be at variance with State practice in the field.

59. Mr. BOSCO (Italy) said that his delegation had joined in the consensus even though it would have preferred only the first bracketed phrase to be retained; had a separate vote been taken on the three phrases in brackets, he would have voted in favour of the first and against the second and the third. He might also have been prepared to accept the text without any of the bracketed words or phrases.

60. Mr. MORSHED (Bangladesh) said that his delegation had clearly understood that it had been the wish of the Committee to delete only the square brackets and not the words contained in them. He had already made it plain that his delegation had serious reservations with regard to the bracketed phrases and would have welcomed a separate vote on them. However, for the sake of the spirit of unanimity, he had decided to accept the entire text.

61. Mr. JOMARD (Iraq) said that, since he had not been present at the time of the decision on article 19, he reserved his delegation’s right to submit further amendments and to call for a second vote on the article when it came to be considered by the plenary Conference.

#### Article 26 (Newly independent State)

62. The CHAIRMAN drew attention to amendments to article 26 submitted by Nigeria (A/CONF.117/C.1/L.40) and Egypt (A/CONF.117/C.1/L.46).

63. Mrs. TYCHUS-LAWSON (Nigeria) said that her delegation’s amendment to article 26 concerned only paragraph 7.

64. In her delegation’s view, article 26 was a very important article and the International Law Commission in its commentary had acknowledged its importance. A similarity existed between article 26 and article 14, which the Committee had adopted without amendment. Nevertheless, as was stressed in the commentary, particularly in paragraphs (3), (27) and (30), archives, unlike the material or physical State property which was the subject of article 14, constituted an essential element in the very existence of a people. The numerous resolutions adopted by the General Assembly of the United Nations, the General Conference of UNESCO and the summit conference of Heads of State or Government of Non-Aligned Countries cited in the commentary indicated the importance attached by the world community and especially by the newly independent States to the subject.

65. Paragraph 7 of article 26 in the Commission’s draft merely stated the undesirability of agreements concluded between the predecessor State and the newly independent State which infringed the right of peoples of newly independent States to development, to information about their history and to their cultural heritage. The question then arose what would happen if such agreements, often concluded even before the granting of independence, infringed the rights set out in

article 26. Would they be merely unenforceable, or would they be voidable, or void *ab initio*? In her delegation’s view such agreements should be regarded as void *ab initio*. Archives were a very important aspect of the national cultural heritage, and the international community should strengthen the rules of international law relating to the passage of what might be termed “cultural property” to national communities. In many cases such archives had existed before the colonial period and hence the predecessor State should not be given any excuse to deny the people of newly independent States their cultural property. Moral statements about the undesirability of agreements infringing the rights of the people were not enough: the Conference should clearly enunciate and strengthen the relevant rules of law.

66. It might be argued that the successor State should be allowed to choose whether or not to implement such an agreement after becoming a sovereign State and to rely on the terms of article 26 if the agreement in fact contravened the principle. However her delegation believed that in most cases of succession a newly independent State remained heavily dependent upon the predecessor State for economic reasons. It would therefore be difficult for the successor State to refuse or reject the agreement even if it contravened the principle set out in article 26, paragraph 7.

67. It might also be argued that article 26 ought not to be amended since article 14 had been adopted as proposed by the International Law Commission. However, the Commission itself had recognized the importance of article 26, which, although closely modelled on article 14, also contained some new elements. The fact that archives were covered by a separate part of the draft convention rather than treated as part and parcel of movable State property also reflected the significance accorded by the Commission to the subject. Archives indeed belonged to a special category of matters that passed in the event of a succession of States.

68. In proposing its amendment the Nigerian delegation had taken into consideration the fact that the whole of article 26 as drafted was founded on the time-honoured principles of equity and the universally recognized rights of a people to its cultural heritage. She appealed to the Committee to lend further weight to those principles by supporting her delegation’s amendment.

69. Mr. HAWAS (Egypt) said that the object of his delegation’s amendment to article 26 was to ensure that, in the absence of an agreement, a newly independent State should receive at least the same treatment as that provided for in article 25, paragraph 2(b) in the case of the transfer of part of the territory of a State. It was for that reason that his delegation proposed the text for a new subparagraph (c) to be inserted in paragraph 1 of article 26.

70. He added that his delegation supported the Nigerian amendment, which would clarify the text, and suggested that that amendment should be referred to the Drafting Committee.

71. Mrs. THAKORE (India) said that the International Law Commission was to be congratulated upon its treatment of newly independent States as a special



category in its draft. That approach was a major contribution to the progressive development of international law. Article 26 was closely modelled on article 14, on State property. In her delegation's view, it was a very important article.

72. Paragraph 7 of the article, which deserved special praise, laid down a peremptory rule that agreements concluded between the predecessor State and the newly independent State in regard to State archives of the predecessor State should not infringe the right of the peoples of those States to development, to information about their history, and to their cultural heritage.

73. The right to development referred to social, cultural, political and other aspects of development. The right to information denoted the right of peoples to be informed of their own history and existed *per se*, independently of the right of ownership of the archives. The right to cultural heritage referred to archives as constituting an essential part of the heritage of a national community.

74. The three major rights mentioned in paragraph 7 were of crucial importance to the newly independent States.

75. In its commentary to article 26, the Commission had commendably drawn attention to numerous resolutions on the subject adopted by UNESCO, the General

Assembly of the United Nations, the Conferences of Heads of State or Government of the Non-Aligned Countries, the Seventeenth International Round Table Conference on Archives and the plea of the Director-General of UNESCO, calling upon metropolitan Powers to return cultural property, objects of art, archives and other irreplaceable masterpieces to the countries of their origin and to conclude bilateral agreements or settle disputes by negotiation. The practical measures suggested by the Commission and the resolutions cited, if implemented in good faith, would go a long way to achieve that end.

76. Archives were the soul, the conscience and the memory of peoples and the foundation of the national identity. They constituted an important part of the cultural heritage of nations. Hence the imperative need to formalize the principle of restitution, pure and simple.

77. Her delegation supported in principle the text of article 26 as proposed by the Commission. Paragraphs 2, 4 and 7 of the article in particular would provide directions that would benefit newly independent States. Her delegation also viewed with favour the Nigerian amendment to paragraph 7 but was not very clear as to the scope of the new subparagraph (c) of paragraph 1 proposed by the Egyptian delegation.

*The meeting rose at 1 p.m.*

## 28th meeting

Tuesday, 22 March 1983, at 3.15 p.m.

Chairman: Mr. ŠAHOVIĆ (Yugoslavia)

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

[Agenda item 11]

*Article 26 (Newly independent State) (continued)*

1. Mr. MARCHAHA (Syrian Arab Republic) said that the comments made at the 14th and 16th meetings by his delegation in connection with article 14 concerning the necessity of formulating rules to be applied exclusively to newly independent States were also relevant to article 26. The International Law Commission's draft of article 26 had his delegation's support because it took into consideration all the requirements of such States. His delegation also supported the Nigerian amendment (A/CONF.117/C.1/L.40), which improved the clarity of paragraph 7 and strengthened the connection with *jus cogens*.

2. Mr. COUTINHO (Brazil) said that his delegation supported the International Law Commission's text of article 26. However, in its view, the reference in paragraph 7 to the right of people to information about their history and their cultural heritage should apply to all cases of succession of States and not only to the case of

newly independent States. Although the International Law Commission had pointed out in paragraph (32) of its commentary on article 14, paragraph 4, that the principle of permanent sovereignty over wealth and natural resources applied to every people, it had considered it particularly necessary to stress that principle in connection with newly independent States. The provisions contained in article 14, paragraph 4, and in article 26, paragraph 7, should, he felt, be included in a separate article among the General provisions of Part I. His delegation had submitted an amendment to that effect (A/CONF.117/C.1/L.43) regarding the insertion of a new article 6 *bis* after article 6 which it would introduce when the General provisions were examined.

3. Mr. EDWARDS (United Kingdom) said that the provisions for archives in article 26 were similar to those for property in article 14. It was therefore not surprising that his delegation experienced the same kind of difficulties with both articles. As it had explained at the 5th and 13th meetings during the discussion of articles 8 and 14, the International Law Commission's proposals simply did not fit the practice which the United Kingdom and, he believed, other countries had followed in such matters. As the government of a United Kingdom dependent territory proceeded towards independence, it kept its own archives, which never formed part of the public records of the