

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

Vienna, Austria  
1 March - 8 April 1983

Document:-  
**A/CONF.117/C.1/SR.29**

**29th 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)*

94. In paragraph 7, the International Law Commission's intention had been to develop co-operation between the predecessor and the newly independent State. All the emphasis was on the rights of the peoples of both States, so that the rights of one should not be sacrificed to those of the other. He therefore felt that

the International Law Commission should have been congratulated on emphasizing co-operation between States in ensuring the rights of both peoples.

*The meeting rose at 6.10 p.m.*

## 29th meeting

Tuesday, 22 March 1983, at 7 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) (*concluded*)

1. Mrs. TYCHUS-LAWSON (Nigeria) said that the trend of the discussion on article 26 had led her delegation to believe that the majority of the delegations at the Conference supported the formulation of a set of fair and equitable rules. The Nigerian delegation also noted with satisfaction the observation by the representative of the Federal Republic of Germany (28th meeting) that the Nigerian amendment to paragraph 7 (A/CONF.117/C.1/L.40) answered the question he had raised previously in connection with article 14. As the representative of the Netherlands had said, paragraph 7 as proposed by the International Law Commission gave guidance on international law and was not a programme of action. All that the Nigerian proposal sought to do was to find a basis for such a programme. She also agreed with the representative of Kenya that the idea underlying the Nigerian amendment was to render inviolable the rights mentioned in the paragraph, which should no longer be a matter of dispute. However, paragraph 27 as drafted did not explicitly state the possible result of infringement of those rights. The basic aim of the Nigerian proposal was to fill that gap to the benefit of both the predecessor State and the newly independent State.

2. However, in the light of the further explanation provided by the Expert Consultant and in view of its belief that the convention should aim at co-operation between all States in a spirit of compromise, the Nigerian delegation withdrew its amendment. It supported the amendment submitted by Egypt (A/CONF.117/C.1/L.46).

3. Mr. HAWAS (Egypt) considered that articles 26 and 14, taken together, constituted a real achievement, for which the International Law Commission deserved every congratulation. The discussion at the previous meeting had revealed broadly based support for the Egyptian amendment, but uncertainty had been expressed regarding its implications for paragraph 2 of article 26. That paragraph, as was perfectly normal,

was concerned with agreement on matters other than those covered by paragraph 1. The Egyptian proposal did no more than transfer the concept of article 25, paragraph 2(b), which the Committee had already approved, to the case of newly independent States. The amendment, if adopted, would form part of paragraph 1 and paragraph 2 would still refer to cases other than those mentioned in paragraph 1. Consequently, the Egyptian amendment would not affect paragraph 2.

4. With the regard to the question whether the Egyptian proposal would limit the scope of paragraph 2, the intention of the International Law Commission in drafting paragraph 2 had been, as the Expert Consultant had indicated (28th meeting), to provide a basis for agreement, co-operation and equity in matters not dealt with in paragraph 1. The Egyptian amendment would not conflict with that intention, for paragraph 2 would still leave room for reaching decisions by mutual agreement. It was unclear why an unrestricted attitude had been adopted in respect of the transfer of part of the territory of the State while a narrower view had prevailed on co-operation and agreement with newly independent States. It was difficult to explain why the concept of article 25, paragraph 3, had not been embodied in article 26. Some archives were of very ancient date and related exclusively to States affected by a succession. In view of the wide measure of support that the Egyptian amendment appeared to command, he believed that the simplest course would be to put it to the vote.

5. Mr. A. BIN DAAR (United Arab Emirates), referring to his delegation's oral proposal to amend paragraph 3 of article 26 (28th meeting), said that he withdrew that proposal, but reserved his delegation's right to resubmit it later.

6. Mr. TSYBOUKOV (Union of Soviet Socialist Republics) congratulated the Expert Consultant on his expert analysis of article 26 (*ibid.*), which his delegation fully supported. It took proper account of the legitimate interests of newly independent States and successor States and recognized that archives were an integral part of the development of those States. The article was well balanced and paragraph 7 took due account of the interests of the predecessor State.

7. Mrs. BOKOR-SZEGÖ (Hungary) considered that article 26 was entirely in the spirit of the various important resolutions adopted by the United Nations General

Assembly to ensure that the codification of international law relating to the succession of States took account of the needs of newly independent States. She supported paragraph 7, as proposed by the International Law Commission, because its content stemmed logically from a nation's right to self-determination. The 1978 Vienna Convention on Succession of States in Respect of Treaties<sup>1</sup> contained provisions referring to the right of peoples to self-determination, a right which was also recognized in the Charter of the United Nations and was of paramount interest at the present time. She therefore supported the adoption of article 26, as drafted.

8. Mr. TEPAVITCHAROV (Bulgaria) said that, while his delegation was sympathetic to the Nigerian amendment, it could not support it, because the final text adopted would need to command general approval. Paragraph 7 as drafted was well balanced and offered the best basis for a compromise solution. The legal concepts to which paragraph 7 referred were still under discussion but the main purpose of the paragraph was to develop co-operation between predecessor and successor States, something which would be impossible in a hostile atmosphere. Paragraph 7 could not codify; all it could do was to indicate the direction which international law should take. He supported the text of article 26 as proposed by the International Law Commission.

9. Mr. CHO (Republic of Korea) said that his delegation fully supported article 26 as drafted by the International Law Commission. As in article 14, special treatment for the category of newly independent States was needed, in particular to reflect the special nature of the process of independence. In its view paragraph 7 in particular could be commended as a step forward in the progressive development of international law.

10. Mr. MIKULKA (Czechoslovakia) expressed his satisfaction with article 26 as drafted. The process of decolonization had made codification of the rules governing succession of States a priority concern, and articles on the situation of newly independent States should therefore have a central place in the work.

11. His delegation would vote in favour of article 26 as drafted, including its paragraph 7, which was a contribution towards the progressive development of international law as defined by the Statute of the International Law Commission.

12. Mr. CONSTANTIN (Romania) said that his delegation fully approved of article 26 as drafted. The discussion at the current meeting had strengthened his delegation's support for that text, particularly after the explanation given by the Expert Consultant.

13. Mr. MORSHED (Bangladesh), also expressing full support for the International Law Commission's text, suggested that the Drafting Committee might wish to insert a comma after the words "that territory" in paragraph 1(b), in order to bring the text into line with article 25, paragraph 2(b).

14. The CHAIRMAN said he believed that the only matter before the Committee on which a vote had to be taken was the Egyptian amendment. He asked whether the delegation of the Netherlands still requested a separate vote on paragraph 7.

15. Mr. MAAS GEESTERANUS (Netherlands) said that his delegation would have preferred to amend its original request so that the vote on paragraph 7 would have been deferred until the Brazilian proposal for a new article came up for discussion. Such a procedure would be unduly complicated, however, and the Netherlands delegation therefore had to maintain its request for a separate vote on paragraph 7. Very regretfully, it would have to vote against that paragraph.

16. The CHAIRMAN invited the Committee to vote on the Egyptian amendment (A/CONF.117/C.1/L.46).

*The Egyptian amendment was adopted by 31 votes to 9, with 22 abstentions.*

17. The CHAIRMAN invited the Committee to vote on paragraph 7 of article 26.

*Paragraph 7 of article 26, as proposed by the International Law Commission, was adopted by 44 votes to 20.*

18. The CHAIRMAN invited the Committee to vote on draft article 26, as amended.

*Draft article 26, as amended, was adopted by 45 votes to 19, with 1 abstention, and referred to the Drafting Committee.*

19. Mr. ENAYAT (Islamic Republic of Iran), speaking in explanation of vote, said that his delegation had voted in favour of article 26 because it contributed to the development of international law. His delegation was still of the opinion that the article did imply nullity of agreements infringing the rights referred to.

20. Mr. ECONOMIDES (Greece) said that his delegation had voted against article 26 solely because of its paragraph 7, whose categorical and extremist wording would not contribute to the development of international law and might indeed hamper consolidation of the rights to which it referred. It was to be hoped that a more realistic and acceptable form of words would eventually be found.

21. Mr. SUCHARIPA (Austria) said that his delegation had voted against paragraph 7 and against article 26 as a whole for the reasons it had already stated in connection with article 14 (16th meeting). His delegation did not question the legitimacy of a separate article dealing with newly independent States. However, it had serious reservations with regard to paragraph 7 of the article. It seemed dangerous to set up a new *jus cogens* without consideration of the underlying concepts and without international consensus. The concept of a right to development needed further elaboration. Furthermore, his delegation could not accept the notion of "relating" to cover the archives-territory link as contained in the amended text.

22. The result of the vote just taken and of the vote on article 14 showed that, if the Committee of the Whole was to produce a realistic legal instrument, careful negotiation would be needed in the future and flexibility would have to be shown by all concerned.

<sup>1</sup> *Official Records of the United Nations Conference on Succession of States in Respect of Treaties*, vol. III (United Nations publication, Sales No. E.79.V.10), p. 185.

23. Mr. MURAKAMI (Japan) said that he had voted against the International Law Commission's draft of article 26 for the reasons he had stated at the previous meeting. However, since article 26 had been adopted, the Japanese delegation wished to place on record its understanding that paragraph 7 was not to be interpreted as having the effect of nullifying any agreement concluded contrary to it.

24. Mr. MONNIER (Switzerland) said that he had been unable to support article 26 as a whole because his delegation had the same basic objection to it as to article 14. He endorsed the remarks of the Austrian representative.

25. Mr. ZSCHIEDRICH (German Democratic Republic) said that his delegation had voted in favour of draft article 26, as amended. The transfer of archives which had belonged to a formerly dependent territory and of administrative archives needed for normal administration was essential for a newly independent State. That need had to be recognized by the predecessor State. Paragraph 7 was a major advance in international law.

26. Mr. OLWAEUS (Sweden) said that his delegation shared the views of the representative of Switzerland.

27. Mrs. THAKORE (India) said that her delegation had previously found the scope of the Egyptian amendment unclear. The explanation given by the Expert Consultant had clarified that amendment and her delegation had therefore voted in favour of it.

28. Mr. HAWAS (Egypt), referring to the new subparagraph (c) just adopted for incorporation into article 26, suggested that the Drafting Committee should consider replacing the concluding words "the successor State" by the more appropriate expression: "the newly independent State".

29. His delegation welcomed the efforts which had been made to reach a generally acceptable solution to the problem raised by article 26. In particular, his delegation would examine with an open mind and at the appropriate time the proposal made by the Brazilian delegation.

#### *Article 27 (Uniting of States)*

30. Mr. CHO (Republic of Korea) said that he accepted the substance of article 27, the text of which was similar to that of article 15. He suggested, however, for the attention of the Drafting Committee, the advisability of replacing in the English text of paragraph 1 the words "and so form a successor State" by the more suitable phrase "and so form one successor State", in line with the wording of article 31, paragraph 1, of the 1978 Vienna Convention on Succession of States in Respect of Treaties.

31. Turning to paragraph 2, he recalled that, during the discussion of article 15, the issue of whether to maintain or delete paragraph 2 had been raised. The Committee had decided to refer that question to the Drafting Committee (16th meeting) with the request that it make a recommendation thereon. He suggested that the same course should now be adopted with respect to article 27.

32. Mr. MURAKAMI (Japan) said that his delegation had the same difficulties with paragraph 2 of article 27 as it had mentioned earlier in connection with article 15 (16th meeting). He accordingly suggested that article 27 also be referred to the Drafting Committee with the request to submit a recommendation on the desirability of retaining or deleting paragraph 2.

33. The CHAIRMAN proposed that the Committee should adopt the same course as it had done in the case of article 15. Without taking a vote, it would refer article 27 to the Drafting Committee, requesting it to submit to the Committee of the Whole, in conformity with rule 47, paragraph 2, of the rules of procedure, a recommendation on the desirability of retaining or deleting paragraph 2 of article 27, after having examined it in the context of that article and in relation to corresponding provisions in other parts of the draft article. The drafting suggestion made by the delegation of the Republic of Korea with respect to paragraph 1 would also be referred to the Drafting Committee.

34. In the absence of objection, he would take it that the Committee agreed to that course.

*It was so decided.*

#### *Article 28 (Separation of part or parts of the territory of a State)*

35. Mr. RASUL (Pakistan), introducing his delegation's amendment to paragraph 4 of article 28 (A/CONF.117/C.1/L.10), said that article 28, including its paragraph 4, was acceptable in principle. His delegation's proposal to insert the words "or on exchange basis" in that paragraph was intended simply as an acknowledgement of existing State practice. Those additional words in no way conflicted with the substance of paragraph 4; they merely elaborated its contents by giving recognition to existing practice.

36. Mr. ROSENSTOCK (United States of America) said that paragraph 3 of article 28 raised the same issue as paragraph 4 of article 14 and paragraph 7 of article 26. The language used in all those paragraphs attempted to impose upon States a restriction on their freedom to conclude international agreements; that restriction was grounded on an alleged principle which was not accepted by the international community as a principle of international law, and still less as a rule whose breach could possibly have the effect of making a treaty void.

37. For the reasons it had already indicated during the discussion of articles 14 (13th and 15th meetings) and 26 (28th meeting), his delegation could not accept any article containing language of that kind.

38. Mr. EDWARDS (United Kingdom) said that his delegation could not accept paragraph 3 of article 28 and would be obliged to vote against it, for the numerous reasons advanced in the statements of those delegations which had spoken against paragraph 4 of article 14 and paragraph 7 of article 26, including the statements made by his own delegation on those paragraphs (13th, 15th, 16th and 28th meetings).

39. Mr. MUCHUI (Kenya) said that his delegation was satisfied with article 28 and could also support the amendment submitted by Pakistan.

40. As a matter of drafting, he suggested that, in paragraph 4, the words "and at the expense of one of

them” should be replaced by “and at the expense of either one of them”.

41. Mr. MORSHED (Bangladesh) said that his delegation could accept draft article 28. He would like to have further clarification of the idea underlying the amendment of Pakistan. If that amendment was adopted, the same change would probably have to be made in paragraph 5 of article 29, which contained a similar provision.

42. Mr. PIRIS (France) said that his delegation could accept the amendment submitted by Pakistan but had a number of difficulties with article 28 in the form proposed by the International Law Commission.

43. In the first place, his delegation saw no reason not to begin the article by providing, as in paragraph 1 of article 25, that issues of succession should be settled by agreement between the States concerned.

44. Paragraph 1 contained vague and imprecise wording: “normal administration” in subparagraph (a); “that relates directly to the territory” in subparagraph (b). In the corresponding paragraph 2(b) of article 25, the language used was “that relates exclusively or principally” and no valid reason had been given for that change in language.

45. Paragraph 2 called for no comment except that the “best available evidence” could be copies, as explained in paragraphs (20) to (24) of the commentary to article 25, to which paragraph (17) of the commentary to article 28 referred.

46. The drafting of paragraph 3 was unacceptable to his delegation and he referred to his statements on paragraph 4 of article 11 (13th meeting) and paragraph 7 of article 26 (28th meeting).

47. The phrase “connected with the interests of their respective territories” in paragraph 4 was unduly vague. It would have been better to use the more appropriate formula used in paragraphs 4 and 5 of article 25.

48. Lastly, in his delegation’s view, there was no reason to differentiate between the case referred to in paragraph 5 and those dealt with in paragraph 1 of article 25 and paragraph 6 of article 26.

49. In conclusion, he announced that his delegation could not support article 28 in its current form.

50. Mr. SKIBSTED (Denmark) said that paragraph 1 of article 28, like paragraph 1 of article 29, reconfirmed the pre-eminence of agreement between the States concerned. He therefore had difficulty in understanding why paragraph 3 of article 28, like paragraph 4 of article 29, embodied a clause—to be found also in paragraph 7 of article 26—which would have the effect of imposing restrictions on the freedom of the States parties concerned to conclude agreements. That restriction—which was not to be found in the corresponding articles 16 and 17 in Part II of the draft convention—was unacceptable to his delegation, which could therefore not support articles 28 and 29 as proposed by the International Law Commission.

51. Mrs. TYCHUS-LAWSON (Nigeria) found the text of article 28 acceptable and welcomed the amendment submitted by Pakistan as a valuable improvement of the language of paragraph 4.

52. On a point of drafting, she suggested that, in paragraph 5, the opening words “The provisions of paragraphs 1 to 4 apply . . .” should be altered, for the sake of clarity, to read: “The provisions of paragraphs 1 to 4 shall also apply . . .”.

53. Mr. OESTERHELT (Federal Republic of Germany) said that his delegation regretted that it could not support article 28 because it objected to paragraph 3 for the reasons it had already given in detail in voting against paragraph 7 of article 26 (28th meeting).

54. Mr. SUCHARIPA (Austria) said that his delegation had withdrawn its amendment to article 28 (A/CONF.117/C.1/L.32) in order to expedite the proceedings of the Committee, as it had done earlier with its amendment to article 25 contained in document A/CONF.117/C.1/L.31. His delegation could not, however, vote in favour of a text containing the objectionable form of words “that relates directly to the territory”.

55. His delegation opposed paragraph 3 of article 28 for the reasons it had already indicated in voting against paragraph 7 of article 26. Furthermore, he pointed to the omission of the word “State” after the word “successor” in paragraph 1 of the English text, a problem which should be taken up by the Drafting Committee.

*The meeting rose at 8.30 p.m.*