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

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33rd meeting of the Committee of the Whole

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was no specific, generally agreed definition of subjects of international law other than a State or an international organization.

77. If the Committee insisted on maintaining the concept of subjects of international law, it should take up the Canadian representative's suggestion that the wording used should be that of article 3 of the 1978 Vienna Convention.

The meeting rose at 1 p.m.

33rd meeting

Thursday, 24 March 1983, at 3.35 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 31 (State debt) (*concluded*)

1. Mr. MUCHUI (Kenya) said that, in his delegation's view, those who urged that the International Law Commission's definition of State debt be extended to cover the case of private creditors appeared to base their case mainly on economic considerations. Those who argued for the retention of the Commission's definition, on the other hand, were guided by legal considerations. After careful analysis of the various arguments, his delegation had concluded that it should support the "legalists".

2. His delegation was fully prepared to endorse the amendment submitted by the Syrian Arab Republic (A/CONF.117/C.1/L.37), as orally revised, which had the virtue of stating explicitly an element that was no doubt implicit in the International Law Commission's text.

3. Mr. THIAM (Senegal) said that his delegation understood the intention of the Brazilian amendment (A/CONF.117/C.1/L.23) to have been to stimulate discussion on one of the most important articles of the draft convention. In that respect it had served a most useful function.

4. Important as it was for the members of the Committee to crystallize their thinking on the subject, the primary consideration was the adoption of a rule of international law which could deal adequately with the realities it was supposed to govern. Given the diverse, indeed contradictory, nature of State practice in respect of the succession of not only private but even public debts, it was extremely difficult to establish clear rules. His delegation believed that, in the circumstances, article 31, as proposed by the International Law Commission, struck the best possible balance between international law and State practice.

5. Several factors should be borne in mind. In the first place, the draft convention contained two safeguard clauses—article 6 and article 34—which were designed to protect private interests that might be involved in State succession. Second, the extension of the definition of State debt to cover "any other financial obligations chargeable to a State" would result in the inclusion of administrative debts, which were clearly not governed by the succession of States, unless by specific agreement between the States concerned. Third, the Brazilian amendment ran counter to the well-established principle of international law that a private person could not invoke international law for the direct protection of his own interests. Fourth, the successor State could in any event assume such interests by virtue of State succession in respect of treaties; thus, a contract concluded between a private person and a State could become subject to international law.

6. His delegation believed that the succession of States could not be construed as resulting in a surrender of sovereignty nor in the establishment of a novation, whereby the successor State would take over the private debts of the predecessor State. International law provided States with various possibilities for organizing their relations with another entity. That could be another reason for considering the text proposed by the International Law Commission as the best possible option.

7. In conclusion, he wondered whether, by adopting the Brazilian amendment, the Committee would not be engaging in the illusion of codification of progressive development of international law.

8. The draft article proposed by the International Law Commission should not be considered hostile to private interests; a State could establish its relations with other entities, whether public or private, on the basis of various types of agreement.

9. Mr. ROSPIGLIOSI (Peru) said that the International Law Commission's text of article 31 was an admirable provision which was difficult to improve upon. Nevertheless, his delegation supported the Brazilian amendment, for the reasons put forward by the representative of France at the previous meeting. Perhaps the most compelling argument was the fact that, if international law was not in line with reality, it ran the risk of being irrelevant, if not even harmful.

10. His delegation believed that more important than the protection of private interests was the need to safeguard the interests of poorer nations and encourage the solution of the urgent and vital problems that confronted them. To restrict their access to sources of capital would not be in their interest.

11. Mr. do NASCIMENTO e SILVA (Brazil) said that, having listened carefully to the debate, he believed it would be preferable to have a vote on the amendment submitted by his delegation.

12. The CHAIRMAN invited the Committee to vote first on the Brazilian amendment to article 31 (A/CONF.117/C.1/L.23) and then on the amendment submitted by the Syrian Arab Republic (A/CONF.117/C.1/L.37), as orally revised.

The Brazilian amendment was rejected by 35 votes to 23, with 5 abstentions.

The amendment submitted by the Syrian Arab Republic, as orally revised, was adopted by 43 votes to none, with 20 abstentions.

13. The CHAIRMAN invited the Committee to vote on draft article 31 as proposed by the International Law Commission, as amended.

Draft article 31, as proposed by the International Law Commission, as amended, was adopted by 40 votes to 17 with 6 abstentions, and referred to the Drafting Committee.

14. Mr. BOSCO (Italy), speaking in explanation of vote, said that his delegation had abstained in the vote on article 31 because it did not contain any provision relating to other financial obligations which might be chargeable to a State, particularly the debts of the predecessor State to foreign individuals. In his view, the absence of such a provision in no way affected existing customary international law on the subject and the important body of practice which had evolved, principally since the First World War. The principle that the successor State assumed responsibility for the debts of the predecessor State was generally recognized by writers and in State practice. The most recent State practice, for example the peace treaties concluded after the First World War, tended to establish as a rule of international law the duty of a successor State to respect the acquired rights of individuals, as was also evident, *inter alia*, from an advisory opinion of the Permanent Court of International Justice.[1] His delegation certainly did not propose to renounce that existing corpus of law.

15. Mr. OESTERHELT (Federal Republic of Germany) said that his delegation had voted in favour of the Brazilian amendment and, subsequently, against the International Law Commission's text of article 31, even though, in its view, private creditors were protected by general international law. Article 31 contained a basic imbalance, as had been stated at the 31st meeting. From the legal standpoint, a provision defining State debts should not leave out obligations which, as practice showed, constituted the main bulk of State debts in cases of succession.

16. His delegation's votes did not prejudge the question whether it would ultimately decide to subscribe to a rule which would subject private creditors to the provisions of Part IV of the draft convention. That decision would depend on whether Part IV as a whole was, in his delegation's view, satisfactory with regard to the protection of creditors in general.

17. His delegation had abstained in the vote on the Syrian amendment, less on account of the wording of that amendment than on account of the sponsor's explanation of the meaning to be attributed to it.

18. Mr. ROSENSTOCK (United States of America) said that his delegation had voted in favour of the Brazilian amendment and against the International Law Commission's text of article 31, for the reasons which he had stated at the 32nd meeting.

19. His delegation had abstained in the vote on the Syrian amendment because it was difficult to vote against a phrase such as "in conformity with international law". It had, however, been tempted to vote against the amendment in view of its absurd drafting. It was ridiculous to speak of legal or illegal obligations: obligations were by definition legal or they were not obligations. To insert such a reference in one place but not in others would result in a drafting monstrosity. His delegation had sympathy for some, but not all, of the reasons given for the submission of the amendment but considered that such casual statements could not have the effect of overturning decisions carefully arrived at by the International Law Commission.

20. Mr. MAAS GEESTERANUS (Netherlands) said that his delegation had regretfully been obliged to vote against the International Law Commission's text of article 31, because the Brazilian amendment had been rejected and consequently the definition of the expression "State debts" had thus become unduly restrictive.

21. Mr. DJORDJEVIĆ (Yugoslavia) said that his delegation had abstained in the vote on the Brazilian amendment because, in the present state of the development of international law and international economic relations, it was not possible to limit the financial obligations of a State to those relating to subjects of international law. The concept of State debts was much more complex than that, because not only States but also other legal personalities participated in international financial transactions. Consequently, it was impossible to establish a clear distinction between the various types of State debts.

22. On the other hand, although his delegation was not entirely satisfied with the definition of State debts in the draft article proposed by the International Law Commission because that definition was incomplete, it considered that that text contained a number of necessary elements of the definition. It had therefore decided to vote in favour of article 31 as a whole, as amended, as an indication of its readiness to accept the decision of the majority of the participants in the Conference.

23. It had also voted in favour of the Syrian amendment, because the latter was fully consistent with the text drafted by the Commission.

24. Mr. EDWARDS (United Kingdom) said that his delegation had voted in favour of the Brazilian amendment for the reasons it had given in the course of the debate. Unfortunately, there seemed to have been a misunderstanding underlying much of the discussion on that amendment. Some delegations had said that one of the reasons why the draft convention should not cover debts owed to creditors which were alien individuals or corporations was because international law could not govern the legal relationship between such cred-

[1] *P.C.I.J., Series B, Advisory Opinion No. 6*, pp. 35-37.

itors and a State. That would not have been the effect of the Brazilian amendment. If that proposal had been accepted, the provisions of the draft convention would still have been limited to governing the effects of a succession of States on debts owed by States, although to a wider range of them. If, for example, a private bank lent money to a State, the legal relationship between the bank and the State would be governed, subject to the terms of the contract between them, by the internal law of the State concerned. The effect of the Brazilian amendment would have been to ensure that, when a succession of States affected the kind of private loans he had mentioned, the provisions of the convention would have governed the succession and the resulting inter-State relationship.

25. His delegation had abstained in the vote on the Syrian amendments, as orally revised. Had the reference to good faith not been removed from that text his delegation would have been obliged to vote against it. The inclusion in article 31 of the reference to international law was unnecessary, however. If it were inserted in that article, it should be inserted in various other articles also, if consistency was to be maintained. His delegation had found disturbing the statement made by the Syrian representative in explanation of the reasons for that amendment.

26. Since the Brazilian amendment had not been adopted, his delegation had found it necessary to vote against the text of article 31 produced by the International Law Commission, because it did not cover the necessary ground.

27. Ms. LUHULIMA (Indonesia) said that she had voted against the Brazilian amendment because the proposed subparagraph (*b*) was outside the scope of the draft convention. Her delegation was grateful to the Syrian delegation for having deleted the reference to good faith in its amendment. It had thus been able to support that amendment, which improved the International Law Commission's text.

28. Mr. RASUL (Pakistan) said that his delegation had abstained in the votes on the Brazilian and Syrian amendments because, in its view, even with the deletion of the reference to good faith, those amendments would have tended to create problems. His delegation would have voted in favour of the draft article proposed by the International Law Commission, especially in the light of the explanations given by the Expert Consultant, but had had to abstain because of the adoption of the Syrian amendment.

29. Mr. MURAKAMI (Japan) said that his delegation had been unable to vote in favour of article 31 because it considered it premature to do so before it had a clear picture of the other provisions of Part IV.

30. Mr. ECONOMIDES (Greece) said that he had voted in favour of the Brazilian amendment because it constituted an indispensable element of the draft article. He had also voted in favour of the Syrian amendment, but understood the phrase "in conformity with international law" purely in the sense required under international law.

31. He had abstained in the vote on article 31, as amended, because that definition did not cover private debts and also because article 31 should be read in close correlation with the other articles of Part IV. His delegation preferred not to adopt a definitive position until all those articles had been considered.

32. Mr. MONNIER (Switzerland) said that he had voted in favour of the Brazilian amendment. The rejection of that amendment had made it difficult for him to support draft article 31 as proposed by the International Law Commission, because of its ambiguous reference to creditors of State debts, especially the phrase "any other subject of international law". The draft article did not take into account the realities of international financial and economic relations. He agreed with other delegations which had argued that the definition of State debts proposed for the articles in Part IV could have no effect on the protection of acquired rights assured by general international law.

33. Mr. PIRIS (France) said that his delegation had voted in favour of the Brazilian amendment and, after that proposal had been rejected, had voted against the amended article 31 for the reasons he had given at the 32nd meeting. In that connection, he endorsed the views expressed by the representatives of Italy, the United Kingdom and Switzerland. The provision adopted obviously could have no effect on the protection of acquired rights of creditors assured by general international law.

34. His delegation had abstained in the vote on the Syrian amendment because it considered a reference to international law unnecessary in the context of article 31. In any case, such a reference had been rejected in other articles where it would have been much more useful. Moreover, his delegation was unable to associate itself with the explanation of the Syrian amendment which had been given by the Syrian representative.

35. Mr. BEN SOLTANE (Tunisia) said that his delegation had voted against the Brazilian amendment because that proposal was outside the scope of the draft convention. It had voted in favour of the Syrian amendment because of the deletion from it of the reference to good faith and also because the addition it proposed improved the International Law Commission's text. His delegation had finally voted in favour of the latter text, as amended.

36. Mr. NATHAN (Israel) said that his delegation had voted in favour of the Brazilian amendment and, when that had been rejected, had voted against the draft article proposed by the International Law Commission. It considered that the limitation of State debts and financial obligations under that text to obligations arising under international law proper was self-defeating. In that context, his delegation reiterated its position that "financial obligations" included financial obligations arising *ex delicto* and *quasi ex delicto*, such as crimes against humanity, or violations of fundamental human rights and of the rules of international law by the predecessor State with regard to its own nationals, which might well give rise to obligations under international law which became of the greatest relevance in the relations of the successor State with other States. It would be inconceivable that such obligations should not be covered in a convention such as the one under consideration.

37. His delegation had abstained in the vote on the Syrian amendment because it considered it unnecessary. However, its abstention did not in any way imply agreement with the views put forward by the Syrian representative in support of his delegation's amendment.

38. Mr. MIKULKA (Czechoslovakia) said that his delegation had voted in favour of article 13 as proposed by the International Law Commission, as amended, and against the Brazilian amendment. In its view, the regulation of the effects of succession of States on State debts towards private creditors did not form part of general international law which the Conference was codifying, but was rather part of internal law, including private international law, or the subject of specific international agreements.

39. Mr. BROWN (Australia) said that his delegation had voted in favour of the Brazilian amendment, mainly for the reasons given in paragraph (46) of the International Law Commission's commentary on the article. In view of the rejection of that amendment, the text of the draft article, as amended by the Syrian proposal, on which his delegation had abstained, had become unacceptable to his delegation, which had voted against it.

40. Since a whole range of other financial obligations chargeable to a State were excluded from the definition of "State debts", the title of Part IV of the draft convention should be changed to read "Certain State debts". That matter should be referred to the Drafting Committee.

41. Mr. LAMAMRA (Algeria) said that his delegation had voted against the Brazilian amendment for the reason it had given at the preceding meeting. It had voted in favour of the Syrian amendment because it endorsed the explanation given by the Syrian representative concerning its scope, including the exclusion of odious debts from the concept of State debts.

42. Mr. SKIBSTED (Denmark) said that his delegation had voted against the text proposed by the International Law Commission because of the Committee's rejection of the Brazilian amendment. It would have voted against the Syrian amendment, but the deletion from it of the reference to good faith had made it possible for it simply to abstain.

43. Mr. RASUL (Pakistan) drew the Committee's attention to a drafting matter, namely, the absence of any reference in article 31 to the predecessor State, which had been mentioned in earlier articles. He would like to know what the intention of the Conference was in that respect.

New article 24 bis (Preservation and safety of State archives)

44. The CHAIRMAN drew attention to the new article 24 *bis* submitted by the representative of the United Arab Emirates (A/CONF.117/C.1/L.50).

45. Mr. A. BIN DAAR (United Arab Emirates), introducing the draft new article 24 *bis*, referred to the statement he had made at the Committee's 28th meeting during the discussion of article 26, concerning the safety of State archives belonging to the territory to which the succession of States related. The importance of that question had prompted his delegation to propose the insertion in the draft convention of a new draft article 24 *bis*. Deliberate damage or destruction of State archives by the predecessor State relating to its activities connected with the successor State could not be regarded as politically moral or legally justified. The predecessor State had a moral obligation to return either the original or at least reproductions of official, historical, cultural or other documents or materials of importance pertaining to the territory to which the succession of States related.

46. Paragraph 4 of article 26 provided for co-operation by the predecessor State in efforts to recover any archives dispersed during the period of dependence for the purpose of their passing to the successor State. The principle of good faith implicit in that paragraph was expected to prevail, as in the case of the other articles of the proposed convention. However, experience had shown that there was always the possibility of deviation from the principle of good faith. Such deviations could recur under cover of legality through interpretations of the existing text. His delegation therefore saw a need for a clearly worded safeguard clause, not only to preserve the integrity of State archives but also to ensure that such archives were never under any circumstances deliberately damaged or destroyed. His delegation had proposed the new provision in article 24 *bis* in order to ensure that it would be applicable to all the appropriate categories of State succession in respect of the passing of State archives to the successor State.

47. Mr. ROSENSTOCK (United States of America) said that, while his delegation was not opposed to the principle underlying the new draft article, it did not think that such a provision should be included in a convention on the succession of States. Such a rule, if introduced, should apply also to State property. He did not consider that the new article improved the text and would therefore vote against the amendment.

48. Mr. MONNIER (Switzerland) said that the proposal before the Committee appeared simple and easy to adopt. However, for his delegation, it gave rise to problems of an exclusively juridical nature. The United States representative had already asked why the provision should be limited in its scope to State archives and not cover State property also. The proposal appeared legally dangerous because it assumed illicit behaviour on the part of the States concerned. Its assumptions were contrary to the provisions of international law which had been mentioned during the discussion of other articles and raised questions concerning such matters as good faith, abuse of right and the behaviour of States before the law. It would therefore be difficult for his delegation to support the amendment, however praiseworthy its purpose.

49. Mr. EDWARDS (United Kingdom) said that, in the case of any agreement, a certain level of good faith had to be assumed, but the amendment submitted by the United Arab Emirates assumed none. In his view a provision such as that proposed would fit uneasily into the draft convention under consideration. His delegation had no objection as far as the principle was concerned but it could not support that particular amendment.

50. Mr. OESTERHELT (Federal Republic of Germany) said that, generally speaking, a safeguard clause

should concern itself with the legal consequences which might be drawn from a text open to misinterpretation. His delegation saw nothing in the draft convention which could be construed as "permitting" deliberate damaging or destroying of any State archives. It was therefore unable to support the inclusion of such a clause in a convention on succession of States.

51. Mr. RASUL (Pakistan) inquired whether the International Law Commission had considered the subject of the proposed new article.

52. Mr. BEDJAOUI (Expert Consultant) said that, as far as he could recollect, the International Law Commission had never directly discussed the matter. The text of the proposal nowhere made reference to either the predecessor or the successor State, and the formulation, as he saw it, could apply equally to both. If the Committee of the Whole adopted such a provision, it would presumably be with the intention of promoting the preservation of archives, which could, in a certain sense, be described as the heritage of all mankind. Furthermore, the act of damaging or destroying need not be that of any State; it might be committed by some group or organization, even from a third State. In that case what would be involved would be the international responsibility of the State concerned for the illicit acts which had taken place.

53. He believed that the idea underlying the proposal had stemmed from the Committee's consideration of the question of the integrity and unity of archives. The text could be read in two complementary ways. Damage might imply physical destruction, for example by burning, but it might also mean dispersal of a collection of archives in a way which nullified their administrative or cultural value. He noted that the Committee had not considered such a provision in respect of State property.

54. Mr. PIRIS (France) said that his initial reaction to the idea behind the proposal submitted by the United Arab Emirates had been favourable but, on further reflection, he had found that he could not support it. The provision seemed useless, for none of the articles concerning State archives could be interpreted as allowing such archives to be damaged or destroyed. Clearly the archivist's work was to classify and sort documents, but also to destroy them. It was hard to make regulations for an activity commanded only by the internal law of the State where it was carried out. His delegation could not agree to the concept of "common heritage of mankind" mentioned by the Expert Consultant.

55. Mr. HAWAS (Egypt) said that his delegation fully supported the proposed new article. He would have thought that such a clear and relevant text might be adopted without a vote. It was in line with articles 3, 24 and others and also with established international law. The intention of the proposal—to preserve the historic and national value of archives for the successor State—was prompted by recent history. Questions which should perhaps be considered were whether it was necessary to state explicitly what was obvious and whether there should be a similar provision in respect of State property. If the proposal of the United Arab Emirates was put to the vote, his delegation would vote in favour of it.

56. Mr. JOMARD (Iraq) also supported the idea underlying the proposal under discussion, which combined two important elements: preservation of the historical heritage generally, regardless of its value, and preservation of the right of the successor State. However, the drafting of the first part of the text was cumbersome and ambiguous and that had perhaps prompted the representatives of France and the Federal Republic of Germany to withhold their support. He also had a criticism regarding the substance. The second part of the text was too restrictive. The provision should be made more general by substituting for the words "pass to the successor State" the phrase "relate to the successor State". That would force the predecessor State to preserve the archives in a proper manner prior to the succession of States and not only at the date of succession.

57. Mr. ECONOMIDES (Greece) said that there appeared to be general agreement on the idea underlying the proposal but the latter's drafting raised more questions than it solved. The crucial point was the date of succession. If the proposal referred to a period prior to that date, it ran counter to State sovereignty. Every State had the right to destroy some of its archives. If the proposal covered the period after the date of succession, when the archives concerned belonged to the successor State, it did not go far enough. The matter would then fall under the heading of State responsibility.

58. Mr. AL-MUBARAKI (Kuwait) said he believed that the proposed new article would protect the interests of successor States and their cultural heritage. His delegation would therefore support it. However, the text should be amended along the lines suggested by the representative of Iraq.

59. Mr. MUCHUI (Kenya) said that he was sympathetic to the intention of the proposal but he had some difficulty with its drafting. He agreed with the Greek representative's analysis of the legal position in the period preceding the succession of States. On the other hand, if the amendment referred to the period after succession, it would not serve any useful purpose, since the archives would have already passed to the successor State.

60. He imagined that the intention of the proposal was to preserve such archives just before the date of succession, when destruction or damage was most likely to take place. If that assumption was correct, some drafting changes would be required. The concluding phrase should read "should pass to the successor State". It was also important to make clear who should not destroy the State archives which, according to the compromise definition proposed for article 19, belonged to the predecessor State. He therefore suggested that the phrase "by the predecessor State" should be added in the second line of the amendment after the phrase "deliberately damaging or destroying".

61. Mrs. TYCHUS-LAWSON (Nigeria) said that, while none of the previous speakers had opposed the principles underlying the proposal of the United Arab Emirates, some of them had expressed doubt as to the desirability of including the proposed new article in the draft convention. Some delegations had suggested that

such a provision should be inserted in Part III rather than in Part II. The Nigerian delegation saw no harm in stating explicitly what was implicit in the draft. While therefore it supported the proposed new article, it wondered whether a similar provision might not be included in Part III. The principles underlying the proposal were important; damaging or destruction of archives had occurred in the past and the possibility of their recurring in the future could not be ruled out.

62. Mr. LAMAMRA (Algeria) said that his delegation fully supported the motives underlying the proposed new article 24 *bis*. The difficulties encountered by some delegations appeared to concern the wording rather than the underlying idea, and a number of suggestions had been made which had indicated that, if that idea was expressed more clearly, the draft article might be accepted without a vote.

63. He wondered therefore whether the delegation of the United Arab Emirates could perhaps reword its proposal. The text which that delegation had submitted was useful and it would be regrettable if it were rejected merely on drafting grounds. His delegation was prepared to support the text as it stood if the United Arab Emirates insisted on a vote at the current meeting, but he stressed that it was in the interest of all delegations to have it reworded.

64. Mr. SUCHARIPA (Austria) said that his delegation strongly supported the general idea underlying the proposed new article but, for purely legal reasons already explained by the Swiss and Greek delegations, his delegation could not support it in its present form. It agreed with the Algerian delegation that the idea merited redrafting in order to secure general acceptance by the Conference.

65. Mr. A. BIN DAAR (United Arab Emirates) thanked the Expert Consultant for his comments and also those delegations which had made suggestions aimed at improving the text of the draft new article. As there appeared to be an acceptance in principle of the idea contained in his delegation's proposal, he suggested that a decision on it should be postponed to allow his delegation time to improve the wording and satisfy those delegations which had expressed reservations.

66. The CHAIRMAN proposed that, in the circumstances, no decision should be taken on the proposed new article 24 *bis* until the Committee had before it a new version of that text.

It was so decided.

67. Mr. BEDJAOUI (Expert Consultant), replying to a question concerning works of art which had been raised by the Nigerian delegation, said that that question was dealt with in some of its aspects and in certain situations by the draft convention, but by its very nature the latter could not settle all problems involving works of art since its purpose was to solve the problems of the succession of States. If, however, a problem concerning works of art were to arise, then the draft convention would have to be interpreted from that standpoint.

68. Furthermore, the application of the convention was restricted to works of art belonging to the State. Within the limits of the scope of the draft convention, therefore, works of art were covered either by the provisions relating to State property or by the provisions relating to State archives. A picture, for example, was an item of property which could belong to a State and, in a case of succession, it would be covered by the provisions of the convention. An old manuscript on the history of a given country, for example, was both an archival item and a work of art and would fall within the scope of the provisions in respect of State archives or State property. The draft convention did not therefore cover all works of art or cultural items and, outside the phenomenon of succession of States, there were situations in which works of art had to be protected or restored to their country of origin. Legally such questions were very delicate and concerned the international private market dealing with works of art. That was really the province of the United Nations Educational, Scientific and Cultural Organization (UNESCO). That organization had appointed an intergovernmental committee to work on the subject and its Director-General had made a statement concerning the return of cultural items to their country of origin. UNESCO was also trying to find means of facilitating bilateral negotiations in that connection.

69. The Nigerian delegation had clearly felt that, after the draft convention had dealt with the question of State property *in abstracto*, it might have dealt with the question of works of art and cultural items in a more concrete fashion, as it had dealt with the question of archives. The Commission, however, had felt that such considerations were outside the scope of the draft convention and might involve technical aspects beyond its competence. It had therefore considered only certain problems relating to works of art. The draft convention did contain some provisions concerning the restitution of certain items relating to a country's cultural heritage, particularly in articles 14 and 26. Such provisions made it possible for items which had belonged to a territory before its loss of independence to be recovered by the newly independent State, thus enabling the latter to recover at least part of its cultural heritage. The draft convention also provided for co-operation between the predecessor and successor States in the recovery of certain items of works of art.

70. Mr. BOSCO (Italy) said that his delegation wished to confirm a comment made by the Italian Government in the International Law Commission's report on its thirty-third session,[2] namely, that a distinction had to be made between problems concerning archives in the traditional sense of the word and those concerning works of art. Paragraph (6) of the International Law Commission's commentary on article 19 of the draft convention also referred to that distinction, which his delegation intended to ensure was properly recognized.

71. Mr. OWOEYE (Nigeria) thanked the Expert Consultant for the reply to his delegation's question. His delegation agreed with the Expert Consultant's explanation, but hoped that the Conference would see fit to make special provision for works of art.

The meeting rose at 5.55 p.m.

[2] See *Official Records of the General Assembly, Thirty-sixth Session, Supplement No. 10* (A/36/10 and Corr.1), annex I, p. 411.