

**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.40

40th 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)*

of the Conference and the Chairman of the Drafting Committee that it would be preferable for the Drafting Committee to report directly to the Conference on the substantive provisions also. That procedure was fully in conformity with rule 47, paragraph 2 of the rules of procedure and would have the advantage of facilitating the work of the Rapporteur, who would if necessary be able to complete her draft report on the work of the Committee of the Whole and send it for translation and distribution before the Drafting Committee had finished its work.

91. That procedure would be without prejudice to the Committee of the Whole's decisions on articles 15, 23 and 27; in those cases, where the Drafting Committee had been requested to submit recommendations, the Drafting Committee would report to the Committee of the Whole.

92. If he heard no objections, he would take it that the Committee of the Whole agreed to that procedure.

It was so decided.

The meeting rose at 6.05 p.m.

40th meeting

Wednesday, 30 March 1983, at 10.20 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]

Appointment of a Working Group on article 32 and new articles 31 bis and 19 bis

1. The CHAIRMAN proposed, in the light of the discussion which had taken place at the previous meeting, that a working group should be established to consider article 32 and the amendments thereto, together with the proposed new articles 31 *bis* and 19 *bis*, and to report thereon to the Committee of the Whole.

2. He suggested that the group should be composed of representatives of all the delegations which had submitted proposals and amendments—including oral amendments—relating to those articles, namely Greece, Kenya, Morocco, Netherlands, Senegal, Switzerland and the United States of America, as well as the representatives of Algeria, Austria, the Federal Republic of Germany and France, who had shown a special interest in those articles during the debate. He further suggested that the working group should be open to any other interested delegation. Lastly, he proposed that Mr. Kadir (Morocco) should serve as Chairman of the proposed working group.

3. In the absence of comment, he would take it that the Committee agreed to adopt that proposal.

It was so decided.

Article 1 (Scope of the present articles)

4. The CHAIRMAN invited the Committee to begin consideration of Part I of the draft articles and to take up article 1 first of all. In accordance with the usual practice of codification conferences, article 2, dealing with the use of terms, would be discussed at the end of Part I.

5. Article 1, which indicated the scope of the draft articles as a whole, was related to articles 7, 18 and 30,

which indicated the scope of the articles in Parts II, III and IV, respectively.

6. Mr. ECONOMIDES (Greece) pointed out that article 1 was identical in its terms with article 7, article 18 and article 30. He therefore proposed, purely as a matter of drafting, that the four articles should be merged into one, drafted on the following lines:

“The present articles apply to the effects of a succession of States in respect of State property (articles 7 to 17), archives (articles 18 to 29) and debts (articles 30 to 39).”

7. Mrs. BOKOR-SZEGÖ (Hungary) said that the Greek representative's proposal could give rise to some difficulty with regard to interpretation, among other reasons because the term “State property” was used not only in Part II but also in Part IV. She was thinking in particular of articles 35 and 36.

8. Mr. SUCHARIPA (Austria) supported the proposal to merge articles 1, 7, 18 and 30. As a further drafting improvement, he suggested that the concluding words of article 1, as amended by that proposal, “in respect of State property, archives and debts”, should be expanded to read “in respect of State property, archives and State debts towards other subjects of international law”. He further suggested that the title of the draft convention should be amended to read: “Draft convention on succession of States in respect of State property, archives and State debts towards other subjects of international law”.

9. Mr. NATHAN (Israel) pointed out that the term “State debts” was defined in article 31. Consequently he was unable to support the change suggested by the Austrian representative. He suggested that the change should be limited to replacing in article 1 the last word, “debts”, by “State debts”, without adding any formula which might lead to difficulties of interpretation. He suggested the same approach with regard to the title of the draft convention.

10. Mr. GUILLAUME (France) welcomed the Greek proposal to merge articles 1, 7, 18 and 30 but suggested that the actual language to be used should be left to the Drafting Committee.

11. He could not agree to the qualification of the word "debts" by the insertion before it of the word "State". As far as concerned the French version and, he believed, also the Spanish text, the word "State" already qualified not only "property" but "archives and debts" as well.

12. Mr. MIKULKA (Czechoslovakia) said that it had been suggested that the provisions concerning the use of the terms "State property", "State archives" and "State debts", in articles 8, 19 and 31 should be moved to article 2. However, the adoption of that course could lead to difficulties. Among other problems, the definition of State property might well conflict with that of State archives, since State property included, among other things, State archives.

13. The CHAIRMAN observed that those issues could be dealt with independently of article 1 and the Greek oral proposal to amend that article.

14. Mr. TÜRK (Austria) pointed out that none of the proposals so far made with regard to article 1 affected the substance; he therefore proposed that they should all be referred to the Drafting Committee.

15. Mr. CONSTANTIN (Romania) supported that proposal, but considered that the Committee should first have the benefit of the views of the Expert Consultant on the matter.

16. Mr. BEDJAOUI (Expert Consultant) said that there was some merit in the suggestion to merge articles 1, 7, 18 and 30. It had, however, the drawback of ignoring the fact that Parts II, III and IV of the draft articles each dealt with a separate and autonomous topic. It was worth recalling in that connection that there was yet another related topic, that of succession of States in respect of treaties, which had been made the subject of a separate Convention, namely, the 1978 Vienna Convention on Succession of States in Respect of Treaties.¹ In his view, the four different aspects of State succession should receive separate treatment and he accordingly doubted the wisdom of the proposed merger of articles 1, 7, 8 and 30.

17. Regarding the Austrian suggestion to insert the word "State" before the word "debts" in article 1 and in the title of the draft convention, he confirmed that, as far as the French version was concerned, no such insertion was necessary because the expression "*d'Etat*" qualified all three terms "*biens*", "*archives*" and "*dettes*". Should there be any problems of concordance with the other language versions, the matter should be left to the Drafting Committee.

18. Lastly, he saw no objection to the proposed insertion of the words "towards other subjects of international law" after the word "debts" in article 1 and in the title of the draft convention.

19. On the whole, however, he favoured retaining article 1 as proposed by the International Law Commission.

20. Mr. PHAM GIANG (Viet Nam) agreed with the Expert Consultant that it was necessary to preserve

the autonomy of the various parts of the convention. He therefore urged that articles 1, 7, 18 and 30 should be retained in their present form.

21. Mr. ROSENSTOCK (United States of America) supported the Greek proposal to merge articles 1, 7, 18 and 30 and urged that it should be put to the vote. The proposal involved a drafting improvement. In his delegation's view, article 1 was not absolutely essential but could be useful and there was merit in trying to improve it.

22. Should the Greek proposal be adopted, the actual wording of the revised article 1 should be left to the Drafting Committee. If the proposal was rejected, the opportunity to make a drafting improvement would have been lost but no grave consequences would follow.

23. Mr. SHASH (Egypt) said that, before voting on the proposal of the Greek delegation, he would wish to have before him the exact wording proposed for the consolidated article. The matter was not at all simple and the language adopted might well affect the application of the provisions of the various articles. He himself had attempted to draft such a consolidated article but had found it difficult to devise wording that would not affect the legal implications of a number of articles.

24. In conclusion, he urged that the various proposals made, all of which related to form rather than substance, be referred to the Drafting Committee.

25. The CHAIRMAN suggested that the Committee should take a vote solely on the principle of the merger proposed by the Greek delegation. If the proposal was accepted in principle, the question of the choice of wording would be left to the Drafting Committee. If the proposal was rejected, article 1 would be retained and Parts II, III and IV would each commence with an introductory article on the scope of their articles.

26. Mr. MEYER LONG (Uruguay) opposed the proposal to merge articles 1, 7, 18 and 30 and urged that the structure proposed by the International Law Commission should be retained. He counselled caution in attempting to shorten the draft convention by merging different provisions; something could easily be lost in the process and there was usually no harm in repetition.

27. Mrs. TYCHUS-LAWSON (Nigeria) also opposed the proposed merger. She failed to understand what it aimed to achieve. If accepted, it would have the unwelcome effect of removing a useful introductory article from Parts II, III and IV.

28. Mr. GÜNEY (Turkey) said that, following the explanation given by the Expert Consultant, his delegation opposed the Greek proposal.

29. Mr. A. BIN DAAR (United Arab Emirates) said that the Greek proposal did not involve any question of substance. He therefore saw no reason for the Committee to vote on it. He suggested that it should be referred to the Drafting Committee and that the Committee of the Whole should vote on the matter only after the Drafting Committee had reported back to it.

30. Mr. MEYER LONG (Uruguay) said that adoption of the Greek proposal would create difficulties in connection with articles 2 to 6; it would seem necessary to

¹ See *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.

mention those articles as well in some form in the proposed consolidated article.

31. Mr. ROSENSTOCK (United States of America) stressed that the Committee would be voting only on the principle of the merger proposed by the Greek delegation. There would be no question of committing the Drafting Committee to any particular form of words. In fact, the Drafting Committee might well find that little change of language was required in the text of article 1 in order to cover the contents of the three other articles as well.

32. Mrs. BOKOR-SZEGÖ (Hungary) said that it was difficult to take a vote on the proposed merger at a time when the Committee had not yet adopted the articles on the use of the three terms "State property", "State archives" and "State debts".

33. Mr. AL-KHASAWNEH (Jordan) said that, from a legal drafting standpoint, he was opposed to the Greek proposal, which would lead to the adoption of unsuitable wording.

34. Mr. KIRSCH (Canada) urged the Committee to take a vote on the question of the principle of the proposed merger and not dwell on questions of form, which should be left to the Drafting Committee.

35. Mr. GUILLAUME (France), supporting the previous speaker, said that, if the proposal to merge the four articles in question was rejected, he would be obliged to vote against article 1. His delegation considered it inappropriate to retain all four articles in the draft convention; there should be a single article on scope in Part I and no provision on the scope of the articles elsewhere or, alternatively, no article in Part I but separate articles in Parts II, III and IV.

36. The CHAIRMAN put to the vote the principle of the oral proposal of the Greek delegation to merge articles 1, 7, 18 and 30, on the understanding that it would be left to the Drafting Committee to formulate the actual wording of the consolidated article.

The principle of the Greek oral proposal to merge articles 1, 7, 18 and 30 was rejected by 42 votes to 20, with 3 abstentions.

37. Mr. TÜRK (Austria) said that, before a vote was taken on the International Law Commission's text of article 1, he wished to revise his delegation's drafting amendment. It concerned the English text, since there was no ambiguity in the French or Spanish versions.

38. He proposed that, in the English text, the word "State" should be added before both the words "archives" and "debts". He also thought that it might be useful to add, at the end of article 1, the following phrase: "as defined in articles 8, 9 and 31 respectively". He felt that his suggestion might be referred to the Drafting Committee without a vote in the Committee.

39. Mr. SHASH (Egypt), speaking in explanation of vote, said that his delegation had abstained in the vote on the principle of merging articles 7, 18 and 30 into article 1. Although it was an attractive proposal from the drafting standpoint, there was a possibility that it might have implications for the other general provisions and the final clauses.

40. With regard to the latest Austrian proposal, he was in favour of adding the word "State" but did not consider the additional concluding phrase to be necessary.

41. The CHAIRMAN invited the Committee to vote on article 1, as proposed by the International Law Commission.

Article 1, as proposed by the International Law Commission, was adopted by 51 votes to 3, with 14 abstentions, and referred to the Drafting Committee.

42. Mr. LAMAMRA (Algeria) regretted that the Committee had been unable to follow the suggestion made by the delegation of Greece and other delegations, including his own, that a small group should be set up to consider the desirability of merging certain articles and to make appropriate recommendations to the Committee. At the current meeting, the Committee had been asked either to take a decision on the proposal, without an evaluation of its merits, or to refer a number of suggestions to the Drafting Committee and thus delay that Committee's work on the preamble and final clauses of the draft convention.

43. His delegation had therefore voted against the Greek proposal and in favour of the International Law Commission's text of article 1.

44. Mr. EDWARDS (United Kingdom) said that his delegation had voted in favour of the sensible drafting proposal made by the Greek representative. Since that proposal had been rejected, his delegation had voted against the International Law Commission's text of article 1 because there were three similar provisions already in the draft convention.

45. Mr. GUILLAUME (France) said that his delegation had also voted in favour of the Greek proposal and subsequently against the International Law Commission's text of article 1, for the reasons which had been given by the United Kingdom representative. The issue was purely a matter of drafting and his delegation was not opposed to article 1 as such.

46. Mr. A. BIN DAAR (United Arab Emirates) said that he had voted against the proposal to merge certain articles because he did not consider it appropriate to take a vote on the matter before having studied its technical and legal implications. The International Law Commission's proposal for the structure of the draft convention as a whole should also be taken into account. The matter could have been considered by the Drafting Committee.

47. His delegation had therefore voted in favour of article 1 as proposed by the International Law Commission.

48. Mr. AL-KHASAWNEH (Jordan) said that his delegation had voted against the Greek proposal, since it involved a matter of taste in a specific case of legal drafting rather than established drafting technique.

49. Mr. NDIAYE (Senegal) said that his delegation had been unable to vote in favour of the proposal to merge certain articles. That merger would have been an ideal way of avoiding repetition. However, the proposal had not been examined sufficiently to determine the possible difficulties it might entail.

*Articles 7, 18 and 30 (Scope of the articles in the present Part) (concluded)**

50. The CHAIRMAN said that, since the proposal to merge articles 1, 7, 18 and 30 had been rejected and the International Law Commission's text of article 1 had been adopted, he would take it that articles 7, 18 and 30 might also be considered adopted, and referred to the Drafting Committee.

It was so decided.

Article 3 (Cases of succession of States covered by the present articles)

51. Mr. ECONOMIDES (Greece) said that article 3, which expressly provided that the draft convention applied only to successions of States that were legitimate from the viewpoint of international law, was the most important article proposed by the International Law Commission. It responded to a fundamental international concern for morality and a manifest requirement of justice and international law. Cases of succession brought about illegally by pure force, by acts of aggression or by unilateral *faits accomplis*, in violation of international law and the principles of the Charter of the United Nations, could not have any legal effects. Illegal use of force and illegal military occupation could not give rise to a succession of States in conformity with international law.

52. The rule laid down in article 3 was the essential corollary of an important rule of general international law, namely, the non-recognition of illegal acquisition of territory. His delegation fully supported article 3 as proposed by the International Law Commission.

53. Mr. PAREDES (Ecuador) endorsed the remarks of the Greek representative. In the view of his delegation no legal effects must stem from the use of force.

54. Mr. ABED (Tunisia) also endorsed the Greek representative's statement.

55. Mr. LAMAMRA (Algeria) expressed his delegation's full support for the text of article 3, which he hoped the Committee might adopt by consensus.

Article 3, as proposed by the International Law Commission, was adopted and referred to the Drafting Committee.

Article 4 (Temporal application of the present articles)

Article 4, as proposed by the International Law Commission, was adopted and referred to the Drafting Committee.

Article 5 (Succession in respect of other matters)

56. Mrs. BOKOR-SZEGŐ (Hungary) requested the Expert Consultant to furnish an explanation of article 5. She did not understand what the relationship would be, on the basis of that article, between the present draft convention and the 1978 Vienna Convention on Succession of States in Respect of Treaties for a State which was a party to both instruments.

57. Mr. BEDJAOUI (Expert Consultant) said that in article 5 the International Law Commission had not wished to pronounce either for or against any assumption which might arise on matters other than property, archives and debts. It had felt that other topics such as succession in respect of legislation and the problems of nationality did not fall entirely under public international law and it had not proposed to regulate them in the present draft convention. Throughout its work the International Law Commission had taken each State succession topic in turn; it had taken treaties as a topic without reference to their content, and it had then passed on to other topics. The question arose as to what should be done when reference was made to the contents of treaties, particularly in connection with State debts.

58. Article 5 appeared to indicate that the rules in the 1978 Vienna Convention had nothing to do with the present draft convention. That was indeed the case, but a bridge must nevertheless be constructed between the two instruments in respect of the contents of treaties to which successor States succeeded in application of the 1978 Convention. However it was perhaps better not to enter into the problem of the contents of treaties. There were rules providing for succession or non-succession to a treaty and each particular case involved its own consequences.

59. Mrs. BOKOR-SZEGŐ (Hungary) said that the Expert Consultant's statement had confirmed her doubts about article 5. Leaving open the matter to which she had referred could give rise to serious problems, especially in connection with the settlement of disputes. How would the International Court of Justice or any other arbitration body know whether it should take the present draft convention, or the 1978 Vienna Convention, as the basis for its decision?

60. Mr. KIRSCH (Canada) said that the representative of Hungary had raised a most important point on which the Committee should reflect before taking a decision on article 5.

61. Mr. MURAKAMI (Japan) said that during the discussion of article 31, at the 32nd meeting, his delegation had already indicated its position on the question just raised by the representative of Hungary. In its view, the matter should be resolved in accordance with article 30, paragraph 3, of the 1969 Vienna Convention on the Law of Treaties,² which provided that the earlier treaty applied only to the extent that its provisions were compatible with those of the latter treaty.

62. Mr. SHASH (Egypt) said that a solution could be found by reference to the 1969 Vienna Convention on the Law of Treaties, article 30 of which enunciated a general rule on the application of successive treaties relating to the same subject-matter. His delegation therefore had no difficulty in accepting article 5 as proposed by the International Law Commission.

63. Mr. LAMAMRA (Algeria) said that his delegation saw article 5 as being oriented towards the future; a reading of the International Law Commission's com-

* Resumed from the 1st, 18th and 30th meetings respectively.

² *Official Records of the United Nations Conference on the Law of Treaties, Documents of the Conference* (United Nations publication, Sales No. E.70.V.5), p. 287.

mentary on article 5 made it clear that the Commission had not wished to prejudge future decisions concerning State succession in respect of matters covered neither by the 1978 Vienna Convention, nor by the present draft convention, such as boundary and other territorial régimes. A similar precautionary provision had been included in the 1978 Convention because it had been known at that time that work was being undertaken by the Commission on the question of State property, archives and debts.

64. The point raised by the representative of Hungary was a valid one. Perhaps that representative could propose a formula that would provide the necessary bridge between the present draft convention and the 1978 Convention.

65. Mr. MIKULKA (Czechoslovakia) said that the provisions of the 1978 Vienna Convention relating to separation of part of the territory differed from article 35 of the present draft convention. In accordance with which convention, therefore, would an international debt claim be settled?

66. It was important, in his view, to reflect on the point raised by the representative of Hungary taking a decision on article 5. Clarification of the International Law Commission's text of article 5 was perhaps more important than the production of a new text.

67. Mr. GÜNEY (Turkey) said that the Committee would need more time to study the implications of the point raised by the representative of Hungary.

68. The CHAIRMAN suggested that further consideration of article 5 should be deferred until specific proposals were forthcoming for the solution of the problem raised by the representative of Hungary.

It was so decided.

Article 6 (Rights and obligations of natural or juridical persons)

69. Mr. FAYAD (Syrian Arab Republic) said that his delegation wished to withdraw its amendment (A/CONF.117/C.1/L.36), while reserving the right to submit another amendment in the form of a new article.

70. Mr. PIRIS (France) said that his delegation supported the substance of article 6. He recalled, however, that one of the major objections raised to the proposal to insert in the draft convention a new article 23 *bis*, (A/CONF.117/C.1/L.28), which had been rejected, had been that the substance of that proposal was contained in article 6. He wished therefore to place on record his delegation's understanding that article 6 contained all the elements of the proposed new article 23 *bis*.

71. Bearing in mind the basic purpose of article 6, he believed that the wording of the article might be improved by adding at the end the words ". . . other than the predecessor State and the successor State".

72. Mr. MIKULKA (Czechoslovakia) said that he could not support the suggestion of the representative of France, since it could lead to the conclusion that article 6 did not cover all categories of natural and juridical persons. That was surely contrary to the basic point of that provision.

73. Mr. THIAM (Senegal), associating himself with the remarks of the previous speaker, said that the

French proposal could open the door to the interpretation that the future convention could prejudge any other question affecting the predecessor and the successor States, which seemed to be quite at variance with the title of the draft convention.

74. Mr. PIRIS (France) observed that there was no contradiction in his delegation's proposal, the purpose of which was to indicate that the draft convention could affect only the rights and obligations of the predecessor State and the successor State. The point raised by the representative of Senegal could be answered by reference to article 5 which indicated that the draft convention related only to State property, archives and debts.

75. His delegation's proposal would therefore not prejudice the rights and obligations of any natural or juridical person, or of third States; that was entirely in conformity with the purpose of the draft convention, as his delegation understood it.

76. He failed to see how problems could be caused by what was in fact simply a drafting proposal.

77. Mr. FAYAD (Syrian Arab Republic) said that at first sight the amendment proposed by the French representative appeared to be in conflict with article 6, as proposed by the International Law Commission, whose commentary made it clear that the article referred to the rights and obligations of entities not subject to international law. The French amendment could lead to a contrary interpretation of article 6.

78. Mr. ROSENSTOCK (United States of America) said that the International Law Commission's commentary made it clear that article 6 did not and could not relate to predecessor and successor States; the draft convention would otherwise be virtually meaningless. The only point at issue was whether an element inherent in the text should be stated explicitly or whether the explanation in the International Law Commission's commentary was deemed sufficient.

79. The French proposal was therefore purely a drafting matter which should be referred to the Drafting Committee.

80. Mr. BEDJAOU (Expert Consultant) said that, if he understood the French proposal correctly, it could give rise to a *contrario* interpretations. The purpose of article 6 was not to prejudice the rights and obligations of private natural or juridical persons under the draft convention, whereas the French proposal would have the opposite effect.

81. Mr. ROSENSTOCK (United States of America) said that the Expert Consultant appeared to have missed the point. The issue could not be whether or not a natural or juridical person of the predecessor or the successor State was covered by article 6, because if they were not covered, there would be no point to the article. The problem was that the predecessor State and the successor State might be thought to be juridical persons, and the question then arose as to whether or not those States would be covered. There was no question of trying to cover the nationals or juridical entities of those States.

82. The problem would be solved either by adding to the article the words proposed by the French rep-

representative or by recognizing, in the light of the history of the text, the International Law Commission's commentary and the principle of effectiveness, that the predecessor and successor State as such were not included in the scope of article 6. The article did not relate in any way to non-State juridical entities or persons and it would make no sense if it did.

83. Mr. PIRIS (France) said that his proposal appeared to have been misunderstood. He had suggested adding the words "other than the predecessor State and the successor State" at the end of article 6. The purpose of the convention was to prejudge the rights and obligations of the predecessor and successor States which would ratify the proposed convention. The predecessor State would be obliged, under the convention, to relinquish certain rights for the benefit of the successor State. Those rights would therefore be affected by the convention. As article 6 was currently worded there was a risk that the opposite would be the case. The article did not affect the rights and obligations of all persons, but only the juridical persons of the predecessor and successor States.

84. Mrs. BOKOR-SZEGŐ (Hungary) said that the concerns of the French delegation were groundless. The entire convention dealt with States as subjects of international law and not as juridical persons, as subparagraph 1(a) of article 2 confirmed, since a juridical person could clearly not be responsible for the international relations of a territory.

85. She therefore supported article 6 as it stood.

86. Mr. BEDJAOUI (Expert Consultant) said that he had understood the French amendment to be "other than those of the predecessor State and the successor State". If, however, the amendment was "other than the predecessor State and the successor State" the question was quite different. The predecessor and successor States were both exclusively considered as subjects of international law as defined in article 2, and not as juridical persons. As far as he was concerned, therefore, the ambiguity was resolved and article 6 could remain as drafted.

87. Mr. PIRIS (France) said that, if the interpretation given by the representative of Hungary and the Expert Consultant were to be accepted, there was another *a contrario* in article 6 as drafted by the International Law Commission, under which the convention could prejudge the rights and obligations of subjects of international law which were not the predecessor or the successor States. In its present form article 6 covered all natural or juridical persons whether they were subjects of international law or not.

88. Mr. LAMAMRA (Algeria) said that his delegation was not convinced by the usefulness of the French proposal. Article 6 as it stood was clear, and any addition would create restrictions or give rise to interpretations which had not been the intention of the International Law Commission.

89. Mr. NDIAYE (Senegal) said that the additional wording proposed by France had confirmed his view that the interpretation of the existing text was to exclude the predecessor and successor States as possible juridical persons. However there was still a prob-

lem with the word "any" which could not be solved by a reference to article 5.

90. The CHAIRMAN suggested that the Committee should vote on article 6 as proposed by the International Law Commission.

91. Mr. KIRSCH (Canada), speaking on a point of order, said he believed the Committee could adopt the text without a vote.

Article 6, as proposed by the International Law Commission, was adopted and referred to the Drafting Committee.

92. Mr. PIRIS (France) said that his delegation had been happy to approve article 6 without a vote in the light of the Committee's interpretation of the principles embodied in the proposed new article 23 *bis* (A/CONF.117/C.1/L.28) and the interpretation that article 6 clearly and fully covered the rights of all third parties, including third States.

New article 6 bis (The present convention and permanent sovereignty over natural wealth and resources)

93. Mr. ROSENSTOCK (United States of America) suggested that consideration of the new article 6 *bis* proposed by Brazil (A/CONF.117/C.1/L.43) should be deferred for the time being, since it would undoubtedly be lengthy and delay other work.

94. Mr. COUTINHO (Brazil) said that the aim of his delegation in submitting its proposal had been to include in the draft convention a provision applicable to all the cases of succession of States under consideration. That provision dealt with a matter already covered in the 1978 Vienna Convention. However, in view of the Committee's acceptance of article 1, paragraph 4, article 26, paragraph 7, and article 36, paragraph 2, his delegation believed that the proposal for a new article 6 *bis*, which had been submitted in a spirit of compromise, might now be superfluous. It accordingly withdrew the proposal.

New articles 12 bis (Preservation and safety of State property) *and 24 bis* (Preservation and safety of State archives) (*continued*)*

95. Mr. A. BIN DAAR (United Arab Emirates) said that it would be preferable to consider the proposed new articles 12 *bis* (A/CONF.117/C.1/L.59) and 24 *bis* (A/CONF.117/C.1/L.50/Rev.1) together, since the texts were basically the same, one referring to State property and the other to State archives.

96. He pointed out that the following changes should be made in the text of the two articles: the words "this convention" should be replaced by "the articles of the present Part" and the preposition "to" in the phrase "an obligation to the predecessor State" should be replaced by a more suitable preposition, such as "of" or "upon".

97. Mr. ROSENSTOCK (United States of America) said that those changes would be appropriate if the two articles were to be inserted in the places proposed. However, it would be just as simple to have one such article covering both Parts II and III of the draft con-

* Consideration of article 24 *bis* was resumed from the 39th meeting.

vention. That was a matter which the Drafting Committee could deal with, together with the question of the most suitable preposition to use.

98. Mr. PIRIS (France) said that the Drafting Committee might also review the French translation of the proposed new articles, and particularly of the expressions “consequential obligation” and “take all measures”.

99. Mr. TEPAVITCHAROV (Bulgaria) said that his delegation supported the aim of the amendments under consideration. It favoured inclusion of such a provision in the draft convention, but with a more general wording. The way in which the duty of the State to be a good caretaker of State property and State archives was expressed caused his delegation some difficulty.

100. If there was to be only one article in the general part of the convention, his delegation would prefer its opening phrase to read “For the purpose of the implementation of the relevant provisions of this convention”.

101. The corrections made in the text proposed by the United Arab Emirates appeared to have introduced new concepts of obligation and transfer. He was not certain whether the idea of obligation exactly corresponded to and implied the consequences of the rights referred to in article 20. There were, of course, obligations which corresponded to such rights, but they were more concerned with timing. His delegation’s doubts were increased by the concentration on the consequential obligation to prevent damage or destruc-

tion. The words “any part of” were vague and could give rise to unnecessary misunderstandings. They should therefore be deleted.

102. Mr. A. BIN DAAR (United Arab Emirates) said that, as far as the idea of obligation was concerned, the draft convention itself dealt with obligations. His delegation therefore saw no contradiction in the provisions it had proposed. It had no objection to the deletion of the words “any part of” if that could result in his delegation’s proposal being adopted by consensus.

103. His delegation would prefer to have the provision in two separate articles, rather than in a single article in Part I.

104. Mrs. TYCHUS-LAWSON (Nigeria) said that her delegation agreed with the general purpose of the proposed new articles, but had difficulties with some of the wording. It would welcome the deletion of the words “any part of”. It had doubts about the time element embodied in the proposal. The intention of the sponsor was obviously to protect the State property and archives while they were still in the possession and under the control of the predecessor State but, as the article was constructed, it appeared that protection was required only after the State property and archives had passed to the successor State. That problem might be solved if the words “pass to the successor State” at the end of the paragraph were replaced by “should pass to the successor State”.

The meeting rose at 1 p.m.

41st meeting

Wednesday, 30 March 1983, at 3.20 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 5 (Succession in respect of other matters) (concluded)

1. The CHAIRMAN invited the Committee to adopt article 5, as proposed by the International Law Commission, without a vote.

It was so decided.

2. Mrs. BOKOR-SZEGŐ (Hungary) said that she wished to place on record that her delegation found the wording of article 5 as adopted unclear in terms of its relationship to the 1978 Vienna Convention on Succession of States in respect of Treaties¹ and to reserve

¹ See *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.

the right of her Government to reach its own conclusion on the question in a given case.

3. The CHAIRMAN noted that the Committee had concluded its consideration of article 5.

Article 2 (Use of terms)

4. The CHAIRMAN noted that, in addition to the basic proposal of the International Law Commission, the Committee had before it an amendment proposed by the United Kingdom (A/CONF.117/C.1/L.56).

5. Mr. EDWARDS (United Kingdom), introducing his delegation’s amendment, recalled that his delegation had already explained on a number of occasions that it had technical problems with a number of the articles of the draft convention as proposed by the International Law Commission. Those problems were associated with the practice followed by the United Kingdom in relation to its dependent territories.

6. The Government of the United Kingdom and each of the governments of the dependent territories had an entirely separate juridical status. Thus, the government of a dependent territory owned its own property, held