

**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.41

41st 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)*

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

its own archives and contracted its own debts. Those were entirely separate from the property, archives and debts of the Government of the United Kingdom. It followed that when a United Kingdom dependent territory attained independence it simply continued to own its own property, to manage its own archives and to be responsible for its own debts. The fact of the attainment of independence did not as such affect that situation in any way.

7. In a number of important respects, the draft articles already adopted by the Committee did not adequately reflect that practice. For example, if article 14, paragraph 1(a) was to work properly in practice, the predecessor State referred to in that provision would be the government of the territory concerned rather than the Government of the United Kingdom. On the other hand, the predecessor State referred to in article 36, paragraph 1, would have to be the Government of the United Kingdom.

8. The International Law Commission's commentary on the article did not give a clear idea of the intention of the Commission in that regard. From paragraph (13) of the commentary to article 14 it appeared that the intention was that property belonging to the government of the territory concerned should not be covered by the draft articles. At the same time, in paragraph (38) of the commentary to article 36 there seemed to be some doubt as to whether debts contracted by the governments of British dependent territories were covered by the draft articles; the last sentence of that paragraph stated that they "might be outside the scope of the draft articles".

9. His delegation considered it important that those problems should be faced and resolved in as clear a manner as possible. It was for that reason that it had proposed its amendment to article 2. The amendment provided that, to the extent that the functions relating to a matter regulated by the convention were undertaken by the government of the territory concerned, that government should be regarded as the predecessor State for the purposes of the convention; however, to the extent that the government of a metropolitan territory undertook those functions, that government should be treated as the predecessor State. In that way the amendment would remove the anomalies which he had described.

10. Some delegations might argue that the purpose of the Conference was to produce a convention which would apply for the future and not to the past and that hence it would be pointless to attempt to amend the draft in order to reflect United Kingdom practice. His delegation could not accept that argument because, first, the practice described had been applied to almost 40 countries which had formerly been dependent territories of the United Kingdom and, in his delegation's view, any draft convention which was not exclusively intended to represent a progressive development of international law would be defective if it failed to reflect that practice. Second, his delegation considered the practice to be a natural and sensible one to follow in such matters; it had been found to be successful in the past and was thus very likely to be followed in the few cases remaining to be dealt with in the future.

11. His delegation remained flexible with respect to the precise wording to be used in the proposed amendment and would welcome the views of delegations and any suggestions for improvements.

12. Mr. TSYBOUKOV (Union of Soviet Socialist Republics) said that his delegation was unable to agree to the United Kingdom amendment on many grounds. The amendment referred to the use of terms in the internal law of certain States and was therefore completely out of place in an article defining the use of terms in an international convention. The amendment was also incorrect in referring to the functions regulated by the provisions of the convention, since the draft under consideration determined the consequences of the succession of States but in no sense regulated functions. Lastly, the amendment envisaged a situation in which the State responsible for the international relations of a dependent territory undertook certain functions of the newly independent State. Such a situation was obviously inconceivable, for when the newly independent State came into existence as a sovereign State it assumed its own functions, rights and obligations in accordance with international law.

13. For those reasons, his delegation considered the United Kingdom amendment completely unacceptable and supported the basic draft.

14. Mrs. BOKOR-SZEGÖ (Hungary) said that most of the reasons which made it impossible for her delegation to support the United Kingdom amendment had been given in the statement just made by the representative of the Soviet Union. The amendment was not acceptable and would appear to conflict with the definition of succession of States as given in article 2.

15. She asked the Expert Consultant a question relating to article 2 as a whole. Should not the meaning of "State property", "States archives" and "State debts", terms which recurred throughout the convention, also be defined in the article on the use of terms? For example, she was concerned about the word "property"; if that term was used in a definite meaning in Part II without being defined in the General provisions there might be difficulties with respect to its use in Part IV, where articles 35 and 36 spoke of "property, rights and interests". Since it was her understanding that a balance was intended between Parts II and IV, she felt that there would be a juridical lacuna if the same term was not clearly seen to be used in the same way in both Parts. Accordingly the solution to the problem would be to incorporate definitions of "State property", "State archives", and "State debts" in article 2.

16. Mr. KIRSCH (Canada) said that it had not been his intention to comment in detail on the amendment submitted by the United Kingdom. However, his delegation understood the special legal situation covered by the amendment and hoped that the Conference would take it into consideration and find a generally acceptable solution.

17. Article 2 as it stood raised a problem associated with the criterion used in subparagraphs (a) and (d) of paragraph 1 for defining a succession of States, namely, that of the replacement of one State by another in the responsibility for the international relations of the ter-

ritory. His delegation questioned the appropriateness of that criterion in the context of the draft convention.

18. The definition of the meaning of "succession of States" given in article 2 was identical to that given in the corresponding provision of the 1978 Vienna Convention on Succession of States in Respect of Treaties and was based on the premise that the assumption of responsibility for international relations was sufficient evidence of the substitution of one State, the successor, for another, the predecessor, in a territory. He pointed out, however, that responsibility for international relations was not directly linked to the succession to State property or debts; whereas treaties sprang from international relations and were governed by international law, State property and debts were subject to essentially national management and were covered by internal law. It could happen that a State attained independence while leaving responsibility for its international relations to another State. In such circumstances the succession of States to State property and debts would not take place under the terms of the draft articles. Nor indeed would the act of entrusting responsibility for the international relations of a territory to another State in itself trigger a succession of States within the meaning of the draft articles.

19. His delegation was therefore inclined to believe that the classical criterion of assumption of effective control over the territory in question, confirmed as necessary by formal international recognition of its effectiveness and legality, would probably better reflect both the true course of events and actual international practice than did the existing text.

20. Although the International Law Commission explained in paragraph 2 of its commentary why it had opted for the wording "in the responsibility for the international relations of territory" in preference to certain others, and his delegation appreciated the reasons for that choice, there was no reference to the questions which his delegation had just raised. He would be grateful if the Expert Consultant would indicate whether the Commission had discussed the issue and, if so, what conclusions it had reached.

21. Mrs. TYCHUS-LAWSON (Nigeria) said that her delegation viewed with great interest the amendment to article 2 proposed by the United Kingdom. In essence, the United Kingdom delegation in that amendment was attempting to draw a distinction between the government of the territory to which the succession of States related and that of the State responsible for its international relations as regards the functions regulated by the draft convention. Her delegation took the view that such a distinction would be misleading.

22. Such a distinction was valid only to the extent that the "government" of the dependent territory and that of the metropolitan Power operated from two geographically distinct territories; it was for that reason that, where there was a need to differentiate between the property or archives belonging to the territory as distinct from those belonging to the metropolitan Power, the International Law Commission had made that distinction by relating such property or archives to the territory in question, as in article 14, paragraph 1(a), to which the representative of the United Kingdom had referred.

23. It was common knowledge that the "government" of such a territory had no international legal personality but was in fact an agency of the government of the metropolitan Power, enabling that Power to administer the territory on a day-to-day basis. Indeed, the dependent territory was part of the dominion of the metropolitan Power and in most cases was in the charge of a colonial secretary, who was a minister in the government of the metropolitan Power and presided over the colonial office responsible for the policies of that Government with respect to colonies or dependent territories.

24. For all practical purposes, therefore, all executive and legislative functions in such a territory were performed by the relevant organs of the metropolitan Power through the agency of the "government" of the territory. For instance, in cases where the draft articles called for recourse to the internal law of the predecessor State for the purpose of determining which State property or archives passed to the successor State, that predecessor State would invariably be the metropolitan country.

25. The United Kingdom proposal would also give rise to a problem of interpretation: how and by whom would the extent of the responsibility of the "government" of the dependent territory and the metropolitan government for the functions regulated by the convention be determined? The answers to those questions might rely on subjective criteria rather than on the objective and universally applicable criteria contained in the definitions of article 2 as it stood.

26. Furthermore, even on the assumption that the practice adopted by certain colonial Powers was a valid guide to be followed in the event of a succession of States, she pointed out that what happened was not merely that the "government" responsible for the local administration of the territory was replaced. What in fact happened was that the predecessor State, namely, the metropolitan State, was replaced by the successor State, namely the newly independent State.

27. For the reasons stated, the Nigerian delegation believed that the United Kingdom amendment was not only unnecessary but would lead to a great deal of confusion. There was no such thing as a legally separate government of a dependent territory; the only distinction was geographical and not legal or political. Besides, the amendment sought to introduce a restrictive qualification to a definition which should be of universal application.

28. She added that, of the provisions of article 2 as it stood in the Commission's draft, paragraph 1 was acceptable to her delegation. However, although her delegation understood the underlying intention of paragraph 2 as explained in paragraph (8) of the commentary, it doubted the value of such a provision. The draft convention dealt with rules of international law and her delegation did not perceive any danger in a State's using in its internal law the definitions given in article 2. Paragraph 2 of that article on the other hand was potentially ambiguous as it might be interpreted in the future to mean that definitions and terms as used by States might be substituted for the definitions of article 2, paragraph 1.

29. In her delegation's opinion, paragraph 2 could safely be deleted without damage to the article as a whole. Alternatively, if the Committee should not wish to delete paragraph 2, she suggested that, at the end of the paragraph, the phrase "in regard to their internal law and usages" might be added, subject of course to drafting refinements.

30. Mr. MUCHUI (Kenya) said that he wished his delegation to be associated with the comments made by the representative of Nigeria. His delegation was unable to support the United Kingdom proposal. First, it was not quite clear what the term "a legally separate Government of a territory" really meant. He was not convinced that, for example, the Governments of former British Protectorates had been separate from the United Kingdom Government in any way other than geographically. As he understood it, the chief executive of the colonial administration, in most cases the Governor of the territory, had been directly answerable to the Colonial Secretary, the Minister of the United Kingdom Government responsible for colonies. In those circumstances, it was not possible to assert that the government of the colony was legally separate. On the contrary, it was completely bound to the United Kingdom Government.

31. It was true that colonial administrations owned property, held archives and contracted debts, but they performed those functions on behalf of the metropolitan government. There was the example of government vehicles: as he recalled the situation, all vehicles in his own country which had been owned by the colonial government had borne the legend OHMS (On His (Her) Majesty's Service) on their registration plates. How then could that colonial administration be regarded as a separate government?

32. Even if it was at all possible to regard colonial administrations as legally separate governments, the introduction of an amendment of the kind proposed by the United Kingdom would lead to innumerable difficulties in the interpretation of the future convention. For example, who was to determine the delimitation of the respective functions of the colonial administration and the metropolitan Government? There was also the danger that the provision proposed by the United Kingdom might lend itself to extension to cover some federal systems in which the governments of the component States were largely independent.

33. For all those reasons, his delegation could not accept the United Kingdom amendment.

34. Mr. TÜRK (Austria) said that, while not well-versed in the constitutional intricacies of the British Empire, he could sympathize with the reasons which had prompted the United Kingdom delegation to propose its amendment. Nevertheless, he preferred the article in the form proposed by the Commission.

35. An earlier speaker had suggested that a government could not be treated in the same way as a State, and his delegation felt that the United Kingdom amendment might accordingly be reworded in such a way as to make it clear that it was only the territory to which the succession of States related that was to be treated, for the purposes of the convention, as if it were the pre-

decessor State. Such a modification would help to make the amendment more acceptable.

36. His delegation wondered whether, if it was thought justifiable to incorporate the ideas contained in the amendment, it might not be better to do so in a separate article rather than as an addition to paragraph 2 of article 2.

37. Mr. BEDJAOUI (Expert Consultant) said that he wished to reply to a number of points raised by earlier speakers.

38. The delegation of Hungary had suggested that problems might arise if the general provisions did not offer a definition of "State property", "State archives" and "State debts". In reply, he pointed out that article 8 contained a definition of "State property", but the commentary to the article, in its paragraph (9), made it clear that the definition applied only to Part II of the draft. The possible inclusion of a general definition was a question which the Drafting Committee might investigate.

39. Referring to the statement made by the representative of Canada, he said that at the definition level there could be no differences between a succession of States in respect of treaties and a succession of States in respect of the matters covered by the draft articles under consideration. The difficulty lay in dealing with the predecessor State's financial liabilities towards a third State in so far as they passed to the successor State. In such cases, one had to look for guidance to public international law, since the interests of a third State could not be adequately protected under public internal law alone: a successor State could not be expected to follow the public internal law of a predecessor State in order to fulfil its financial obligations to a third State. Owing to the complexity of such case it would be difficult to work out an exhaustive definition of "succession of States" simply by reference to public internal law. The succession of States was a phenomenon of international law. Besides, without it, the third State could not be protected.

40. The problem raised by the United Kingdom amendment was whether the government mentioned in the amendment had international status and capacity and, if so, what that status was. Although he was not in a position to comment specifically on United Kingdom practice, he inclined to the view that such a government was carrying out functions delegated to it by the administering Power, and thus did not possess international status or capacity. He wondered whether the amendment was not in fact seeking to define in terms of public internal law a phenomenon, namely succession of States, which properly belonged to the field of public international law.

41. The amendment stated that the government concerned should, to the extent that it had undertaken the functions regulated by the provisions of the convention, be treated as if it were the predecessor State: if, as he believed, what was involved was a delegation of authority from the metropolitan Power to the territorial government, responsibility for the international relations of that territory remained with the predecessor State. Lastly, where an administering Power was replaced at a specific point in time by a newly indepen-

dent State, there was clearly a case of succession of States, and the problem ceased to be one of definition but was rather one of establishing the date of the succession.

42. He thought, however, that there might be some possibility of finding solutions in article 2, paragraph 2, that would meet some of the preoccupations indicated by the United Kingdom in its amendment. In fact, State property and State archives could be defined in the public internal law of the predecessor State. But the same public internal law could not, of course, define succession of States itself; in other words it could not confer the status of "predecessor" State on one entity or another.

43. Mr. IRA PLANA (Philippines) said that his delegation supported the text of article 2 as proposed by the International Law Commission. The amendment proposed by the United Kingdom would, he believed, give rise to problems. The amendment stated that "a legally separate Government" of the territory to which the succession of States related should be treated for the purposes of the convention as if it were the predecessor State. Such a provision was in contradiction with paragraph 1(b) of article 2, which defined "predecessor State" as meaning the State which had been replaced by another State on the occurrence of a succession of States. It seemed obvious to his delegation that the government referred to in the United Kingdom proposal was merely an agency of the metropolitan government in the territory to which the succession related, and as such could be regarded as representing the metropolitan Government. In the light of those considerations his delegation was unable to accept the United Kingdom amendment.

44. Mr. SHASH (Egypt) said that, while sympathizing with the United Kingdom delegation's attempt to accommodate the convention to British practice, his delegation took the view that the solution proposed in the United Kingdom amendment gave rise to confusion and contained unacceptable legal fictions. States normally tried to accommodate their practice to the conventions which they concluded.

45. As the representative of Kenya had pointed out, the entity described in the amendment as "a legally separate Government of the territory" to which the succession of States related was in fact an agent of the Government of the colonial State, and any responsibility it might have for certain property or archives was discharged on behalf of the colonial State. If a succession of States took place, the predecessor State could be considered to have discharged its obligation to transfer that property or archives, subject to determining the date of succession in that connection. Thus the United Kingdom delegation's concerns were met without the amendment.

46. His delegation could not accept a fiction such as that of considering a government to be a State, and would support article 2 as drafted by the International Law Commission.

47. Mr. BINTOU' A-TSHIABOLA (Zaire) said that, having listened to the statements by the representatives of Nigeria and Kenya, his delegation felt that the Commission's text of article 2 was acceptable as it stood.

The United Kingdom amendment would introduce an element of confusion which would create considerable difficulty from both a legal and a practical standpoint. It would have the effect of relieving the administering Power of its responsibilities as predecessor State. Nor could he accept the proposition that "government" should be equated with "State".

48. He shared the view expressed by the Expert Consultant that the government referred to in the amendment was in fact carrying out functions delegated to it by the administering Power responsible for the territory concerned.

49. Mr. BROWN (Australia) said that his delegation supported the United Kingdom amendment, and that he had difficulties in relating the articles as drafted by the International Law Commission to his country's experience. The Expert Consultant had said that, however difficult it might be to pinpoint the date of a succession, such a date did exist: in the case of Australia, however, that was not quite correct. The various colonies which made up Australia had federated around the turn of the century, but the Government of the United Kingdom had continued to exercise some responsibility for the country's external relations. Nonetheless, the colonial Governments before federation, and the Australian Government since, had been entitled to hold property, maintain archives and contract debts independently of the United Kingdom. In the period subsequent to federation Australia had evolved into a fully independent sovereign State which continued to retain constitutional links with the United Kingdom.

50. Mr. MAAS GEESTERANUS (Netherlands) said that the problems which the Commission's version of article 2 created for the United Kingdom delegation essentially derived from the fact that the Commission had based its definition on one pattern of State succession.

51. In the context of the United Kingdom amendment the question was not whether the territory concerned was, or had been, politically and constitutionally subordinated to a metropolitan authority, but whether it was, or had been, a separate legal entity which held its own property and contracted its own debts on the same footing as if it were a State. Where the territory concerned had been a separate legal entity and had then become independent there was no question of the extinction of rights which it already possessed. The Commission's definition did not, therefore, apply in principle to a large number of cases of State succession.

52. In conclusion, he said that his delegation supported the United Kingdom amendment but doubted whether a solution could be found within the General provisions of the draft. In any case, some way should be sought to accommodate the ideas contained in the United Kingdom amendment, even if the amendment itself did not meet with general acceptance.

53. Mr. PIRIS (France) said that the comments made by Canada in 1981 on the definition of "succession of States" in article 2, paragraph 1(a) (see A/CONF.117/5, p. 59) should be borne in mind in reaching a decision on the article. In particular, there were grounds for believing that it was inappropriate to apply to the draft articles on State succession in respect of State prop-

erty, archives and debts the criterion for a succession of States used in the 1978 Vienna Convention, which was that a succession took place when there was a transfer of responsibility for the international relations of territory. The relevant suggestions made by Canada in its comments should be carefully considered.

54. Referring to the amendment submitted by the United Kingdom, he said that, although French constitutional practices differed from those of the United Kingdom, that country's experience in the field of succession of States could not be ignored.

55. As he understood the comments made by the Expert Consultant, one type of succession occurred when the government of the territory concerned, prior to the succession, had an international capacity for certain purposes. His delegation felt, however, that in such a case it was surely more appropriate to refer to continuity rather than to succession as defined in paragraph 1(a) of article 2. On the other hand, if the government of the territory had not had such international status a succession could be said to take place but, even there, the case did not seem to fit the criterion in paragraph 1(a), since property, archives or debts belonging to an overseas territory remained in that territory after it achieved independence.

56. In conclusion, he said that the United Kingdom amendment was a useful clarification, though it might perhaps be improved by the Drafting Committee. If the amendment should not be adopted, however, the Commission's draft of article 2 might be construed as covering the points dealt with in the United Kingdom amendment by virtue of the provision in paragraph 2.

57. Mr. MIKULKA (Czechoslovakia) associated himself with the views expressed by the Expert Consultant and with the reasons given by the Soviet representative for finding the United Kingdom amendment unacceptable.

58. With reference to the point raised by the Hungarian delegation concerning the possibility of including definitions of "State property", "State archives" and "State debts" in article 2, he suggested that the Committee, when adopting article 2, should request the Drafting Committee to incorporate those definitions in the article and to settle any consequential drafting problems. Such a course would also dispose of the problem which his delegation had mentioned at the preceding meeting in connection with article 1.

59. Mr. BEDJAoui (Expert Consultant) said that in the statement which he just made he had said, with some hesitation, that possibly paragraph 2 of article 2 might to some extent serve to take account of the special situation which was of concern to the United Kingdom in so far as the internal law of the predecessor State—which under no circumstances could determine "predecessor" or "successor" status—still made it possible to define State property and State archives. But the subsequent debate had shown that misunderstandings could arise, which was why, in his considered opinion, in any of the situations contemplated, including that outlined by the representative of the United Kingdom, the only valid criterion in the context

was that of "responsibility for the international relations of territory".

60. Mr. EDWARDS (United Kingdom) said that he would like to reply to points raised by a number of delegations.

61. The representative of the Soviet Union had said that a particular difficulty with the United Kingdom amendment was that its last sentence would give the predecessor State continuing functions which properly belonged to the successor State. He failed to see how such a conclusion could be drawn and it certainly did not represent the intent of the United Kingdom. The consequences of the last sentence of the United Kingdom amendment were the same as those which would flow from the definition contained in paragraph 1(b) of article 2.

62. The representative of Nigeria had expressed concern regarding the manner in which a determination would be made as to which government was to be treated as the predecessor State. In practice such determination would not be difficult; in most cases it would be clear which State was responsible for the functions regulated by the convention. In the event of a dispute, the matter could be arbitrated under the procedure for the settlement of disputes which would be included in the convention.

63. The representative of Kenya had raised the question of the precise legal relationship between the government of the territory to which the succession related—as referred to in the United Kingdom's amendment—and the government of the metropolitan State. The governments of former United Kingdom territories nearing independence had been internally autonomous, particularly in the matters regulated by the convention. Such governments, as legal entities, had held their own archives and property and contracted their own debts. They had of course been linked with the United Kingdom Government, as the government responsible for the international relations of the territories.

64. The representative of Kenya had indicated, in addition, that the amendment might be a source of complications in the case of federal States. The United Kingdom delegation had made it clear that it was ready to consider improvements to its text; the problem of federal States could be met through appropriate drafting changes with specific reference to articles 14, 26 and 36.

65. The suggestion of the representative of Austria that the United Kingdom's amendment be reworded to make it clear that the succession of States would concern only the territory and not the government was helpful.

66. The representative of Egypt had found the United Kingdom amendment unacceptable on the grounds that it was based on legal fictions. The amendment had been introduced precisely because the United Kingdom had to face certain difficult facts and in no way reflected any kind of fiction.

67. The representative of the Netherlands had expressed the view that the articles in the draft convention were designed to deal essentially with cases of the succession of States that followed a specific pattern and that they did not fit other situations. That was exactly

the problem faced by the United Kingdom. The Netherlands suggestion that a solution should be found elsewhere than in the definitions clause was a good one and should be explored.

68. In his first statement, the Expert Consultant had suggested that paragraph 2 of article 2 might suffice for dealing with the problem which the United Kingdom amendment was intended to resolve. That was precisely why the United Kingdom had decided to submit its amendment to that paragraph. His delegation regretted that the Expert Consultant had gone back on his earlier suggestion. A solution might perhaps be found within the text of paragraph 2, along the lines of the suggestion of the representative of Nigeria.

69. The United Kingdom delegation noted with regret that a majority of delegations did not seem able to accept its amendment, which concerned a technical matter relating to British practice in bringing to independence a large number of States which had become members of the United Nations.

70. Not wishing to prolong the debate, his delegation was therefore prepared to withdraw its amendment. He hoped, however, that, before the conclusion of the Conference, it might be possible to find a way of taking account of the United Kingdom's difficulties with the text as it stood, possibly by taking a further look at article 2, paragraph 2; in that connection, the proposal of the representative of Nigeria might be of assistance.

71. The CHAIRMAN said that the discussion on article 2 had been concluded and invited the Committee to vote on the article.

72. Mr. THIAM (Senegal) suggested that an effort might be made to adopt article 2 without a vote.

73. The CHAIRMAN said that, as there was no agreement among all delegations on the article, he was compelled to call for a vote. He therefore invited the Committee to vote on the text of article 2 as drafted by the International Law Commission.

Article 2 was adopted by 59 votes to none, with 9 abstentions, and referred to the Drafting Committee.

74. Mr. OESTERHELT (Federal Republic of Germany), speaking in explanation of vote, said that his delegation had none of the United Kingdom delegation's difficulties with the text of article 2 as it stood, and especially with paragraphs 1(e) and (d) of the article. However, it felt that in future cases—which were,

after all, the only ones envisaged in the draft convention—the particularities of an important legal system should in some manner be accommodated and reflected in the convention. The drafting of an appropriate rule and the place where it should be included were matters of secondary importance. His delegation hoped that a solution might still be found, possibly elsewhere in the text of the draft convention.

75. Mr. MIKULKA (Czechoslovakia) asked what was the Committee's reaction to his suggestion that definitions of "State property", "States archives" and "State debts" should be incorporated in article 2.

76. The CHAIRMAN said that, if the suggestion of the representative of Czechoslovakia was implemented, then articles 8 and 19 would disappear.

77. Mrs. TYCHUS-LAWSON (Nigeria), speaking in explanation of vote, said that her delegation would have preferred to see paragraph 2 of article 2 deleted for reasons which she had explained earlier. She had not, however, pressed the issue in view of the opinion expressed by the Expert Consultant that it had not been the intention of the International Law Commission to imply that the definitions contained in the article could be superseded by State practice and usage. Her delegation took paragraph 2 to mean that the definitions contained in the article could not be superseded by the internal law of States.

78. Mrs. BOKOR-SZEGÖ (Hungary) said that her delegation had voted in favour of article 2 on the understanding that the Drafting Committee would examine the possibility of inserting in that article the definitions mentioned by the representative of Czechoslovakia.

79. Mr. MIKULKA (Czechoslovakia) asked whether the Committee was in agreement that the Drafting Committee should be asked to consider including the definitions he had mentioned within the framework of article 2.

80. The CHAIRMAN said that, in the absence of other suggestions, he took it that the Committee wished to refer to the Drafting Committee the question of including those additional definitions within the framework of article 2. In that case, the Committee would have concluded its consideration of article 2.

It was so decided.

The meeting rose at 5.20 p.m.