

INTERNATIONAL COUNCIL ON ARCHIVES / COMMITTEE ON LEGAL MATTERS

**REFERENCE DOSSIER ON  
ARCHIVAL CLAIMS**

DOCUMENTS COLLATED BY Hervé BASTIEN, MEMBER OF THE COMMITTEE

1995

INTERNATIONAL COUNCIL ON ARCHIVES



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## **RESTITUTION OF ARCHIVES : ARCHIVAL CLAIMS, LEGAL ISSUES**

by Lee Mc Donald, chairman of the ICA Committee on Legal Matters

A thorough knowledge of international legal precedents and international law has been identified as a prerequisite for the resolution of claims related to archives. The purpose of this document is to identify specific issues where the advice of legal counsel would contribute to the creation of a consensus for the resolution of archival claims. The International Council on Archives has collated relevant agreements on this subject and provided, as an example, outstanding claims for archival restitution that could be addressed by Russia. The issues to be addressed by legal counsel will establish the relevance of agreements and advice that have been developed by the international community and determine whether additional principles are required to facilitate negotiations on specific claims.

- 1/ What direction to States does the Hague Convention of 1954 (Convention on the Protection of Cultural Property in the Event of Armed Conflict) provide for the restitution of archives?
- 2/ Were the principles related to archives in the Vienna Convention on Succession of States in Respect to State Property, Archives and Debts (1983, not ratified) consistent with principles established by the Hague Convention (1954) and international law?
- 3/ Is the Professional Advice on the Vienna Convention (1983) produced by the International Council on Archives consistent with international law and current precedents?
- 4/ Is the View of the Archival Community on the Settling of Disputed Claims (ICA, Guangzhou, 1995) consistent with international law and current precedents?
- 5/ What direction to States does the Resolution of the European Parliament concerning the right of peoples to information on their own history and the restitution of archives (1991) provide for the restitution of archives, having regard to the fact that the archives have both an evidential and an historical value?
- 6/ What direction is provided by international law to Russia for the restitution of archives that originated prior to the conclusion of World War II in Austria, Belgium, the Czech Republic, Finland, France, Germany, Greece, Hungary, Latvia, Liechtenstein, Netherlands, Norway, Poland, Rumania and Yugoslavia?
- 7/ Which balance should be established between binding rules from both customary and conventional international law, and specific measures which may be freely chosen in each case by concerned parties?



## INTRODUCTION

This Dossier has been developed to help resolve archival issues related to war, military occupation, and the succession of States.

From the XVIIth century until the Second World War, archives were often mentioned in the bilateral treaties which concluded hostilities. The primary evidential and administrative value of archives required that outstanding issues be resolved in a timely manner so that States could continue to govern.

But since the mid XXth century, bilateral treaties have become less common in this field. Apart from some regional instruments (especially those dealing with the Pan-American area, like the 1935 "Roerich Pact" or the 1976 San Salvador Convention on the Protection of Archaeological, Historical and Artistic Heritage of the American Nations), attention has been focused on multilateral conventions, such as the 1954 Hague Convention on the Protection of Cultural Property in the Event of Armed Conflict. An additional protocol to this Convention has now to be prepared to provide a better degree of efficiency.

UNESCO and the International Council on Archives cooperated in an important project on archival claims that resulted in the principles found in Report 20C/102 presented to the twentieth session of the General Conference of Unesco in 1978. The 1983 Vienna Convention on Succession of States in Respect to State Property, Archives and Debts did not, unfortunately, take these principles into account and the International Council on Archives underlined this point in its Professional Advice on the Convention. The Vienna Convention was ratified by only a handful of States, a number insufficient to have it come into force.

This Dossier is divided in two parts, including respectively :

- international legal texts; and,
- professional principles supported by the archival community and expressed by the ICA.

Increasing interest is currently devoted to the protection of cultural property against theft and illegal export. This led to the 1970 Unesco Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property. Though this perspective may concern archives as cultural goods, it is not included in the present Dossier.

We hope that this Dossier will be relevant and useful for the archival community and other colleagues involved in the resolution of archival claims.

ICA COMMITTEE ON LEGAL MATTERS  
PARIS - FRANCE - 1995





**INTERNATIONAL LEGAL TEXTS IN FORCE**



- **General elements before the 1954 Convention**

***4th Hague Convention on the laws and customs of war on land (1907)***

(Art. 27). In sieges and bombardments all necessary steps must be taken to spare, as far as possible, buildings dedicated to religion, art, science or charitable purposes, historical monuments, hospitals, and places where the sick and wounded are collected, provided that they are not being used at the time for military purposes.

It is the duty of the besieged to indicate the presence of such buildings or places by distinctive and visible signs, which shall be notified to the enemy beforehand.

(Art. 46). Family honor and rights, the lives of persons, and private property, as well as religious convictions and practice, must be respected.

Private property can not be confiscated.

(Art. 56). The property of municipalities, that if institutions dedicated to religion, charity and education, the arts and the sciences, even when State property, shall be treated as private property. All seizure of, destruction or wilful damage done to institutions of this character, historic monuments, works of art and science, is forbidden, and should be made the subject of legal proceedings.

***London declaration of the allied powers (January 5, 1943)***

See hereby. Confirmed at the Bretton Woods Conference (July 1944).

According to the Control Council for Germany at the meeting on January 21, 1946 :

"The question of restitution of property removed by the Germans from Allied countries must be examined in all cases, in the light of the declaration of 5th January, 1943".

**Declaration by United Nations on forced dispossession of property  
in enemy-controlled territory**

January 5, 1943

The Union of South Africa, the United States of America, Australia, Belgium, Canada, China, the Czechoslovak Republic, the United Kingdom of Great Britain and Northern Ireland, Greece, India, Luxemburg, the Netherlands, New Zealand, Norway, Poland, the Union of Soviet Socialist Republics, Yugoslavia and the French National Committee:

Hereby issue a formal warning to all concerned, and in particular to persons in neutral countries, that they intend to do their utmost to defeat at the methods of dispossession practised by the Governments with which they are at war against the countries and peoples who have been so wantonly assaulted and despoiled.

Accordingly the Governments making this Declaration and the French National Committee reserve all their rights to declare invalid any transfers of, or dealings with, property, rights and interests of any description whatsoever which are, or have been, situated in the territories which have come under the occupation or control, direct or indirect, of the Governments with which they are at war or which belong or have belonged, to persons, including juridical persons, resident in such territories. This warning applies whether such transfers or dealing have taken the form of open looting or plunder, or of transactions apparently legal in form, even when they purport to be voluntarily effected.

The Governments making this Declaration and the French National Committee solemnly record their solidarity in this matter.

***Universal declaration of human rights (United Nations, december 10, 1948)***

(Art. 27/1). Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits.

***Fourth Geneva convention relative to the protection of civilian persons in time of war (august 12, 1949)***

(Art. 27). Protected persons are entitled, in all circumstances, to respect for their persons, their honour, their family rights, their religious convictions and practices, and their manners and customs (...)

(Art. 53). Any destruction of the Occupying Power of real or personal property belonging individually or collectively to private persons, or to the State, or to other public authorities, or to social or cooperative organizations, is prohibited, except where such destruction is rendered absolutely necessary by military operations.

- **Convention for the Protection of Cultural Property in the Event of Armed Conflict adopted at The Hague, 14 May 1954**

The High Contracting Parties,

Recognizing that cultural property has suffered grave damage during recent armed conflicts and that, by reason of the developments in the technique of warfare, it is in increasing danger of destruction;

Being convinced that damage to cultural property belonging to any people whatsoever means damage to the cultural heritage of all mankind, since each people makes its contribution to the culture of the world;

Considering that the preservation of the cultural heritage is of great importance for all peoples of the world and that it is important that this heritage should receive international protection;

Guided by the principles concerning the protection of cultural property during armed conflict, as established in the Conventions of The Hague of 1899 and of 1907 and in the Washington Pact of 15 April, 1935;

Being of the opinion that such protection cannot be effective unless both national and international measures have been taken to organize it in time of peace;

Being determined to take all possible steps to protect cultural property;

Have agreed upon the following provisions:

#### CHAPTER I. GENERAL PROVISIONS REGARDING PROTECTION

##### Article 1. Definition of cultural property

For the purposes of the present Convention, the term 'cultural property' shall cover, irrespective of origin or ownership:

- (a) movable or immovable property of great importance to the cultural heritage of every people, such as monuments of architecture, art or history, whether religious or secular; archaeological sites; groups of buildings which, as a whole, are of historical or artistic interest; works of art; manuscripts, books or other objects of artistic, historical or archaeological interest; as well as scientific collections and important collections of books or archives or of reproductions of the property defined above;
- (b) buildings whose main and effective purpose is to preserve or exhibit the movable cultural property defined in sub-paragraph (a) such as museums, large libraries and depositories of archives, and refuges intended to shelter, in the event of armed conflict, the movable cultural property defined in sub-paragraph (a);
- (c) centres containing a large amount of cultural property as defined in sub-paragraphs (a) and (b), to be known as 'centres containing monuments'.

## Article 2. Protection of cultural property

For the purposes of the present Convention, the protection of cultural property shall comprise the safeguarding of and respect for such property.

## Article 3. Safeguarding of cultural property

The High Contracting Parties undertake to prepare in time of peace for the safeguarding of cultural property situated within their own territory against the foreseeable effects of an armed conflict, by taking such measures as they consider appropriate.

## Article 4. Respect for cultural property

1. The High Contracting Parties undertake to respect cultural property situated within their own territory as well as within the territory of other High Contracting Parties by refraining from any use of the property and its immediate surroundings or of the appliances in use for its protection for purposes which are likely to expose it to destruction or damage in the event of armed conflict; and by refraining from any act of hostility directed against such property.
2. The obligations mentioned in paragraph 1 of the present Article may be waived only in cases where military necessity imperatively requires such a waiver.
3. The High Contracting Parties further undertake to prohibit, prevent and, if necessary, put a stop to any form of theft, pillage or misappropriation of, and any acts of vandalism directed against, cultural property. They shall refrain from requisitioning movable cultural property situated in the territory of another High Contracting Party.
4. They shall refrain from any act directed by way of reprisals against cultural property.
5. No High Contracting Party may evade the obligations incumbent upon it under the present Article, in respect of another High Contracting Party, by reason of the fact that the latter has not applied the measures of safeguard referred to in Article 3.

## Article 5. Occupation

1. Any High Contracting Party in occupation of the whole or part of the territory of another High Contracting Party shall as far as possible support the competent national authorities of the occupied country in safeguarding and preserving its cultural property.
2. Should it prove necessary to take measures to preserve cultural property situated in occupied territory and damaged by military operations, and should the competent national authorities be unable to take such measures, the Occupying Power shall, as far as possible, and in close co-operation with such authorities, take the most necessary measures of preservation.
3. Any High Contracting Party whose government is considered their legitimate government by members of a resistance movement, shall, if possible, draw their attention to the obligation to comply with those provisions of the Convention dealing with respect for cultural property.

#### Article 6. Distinctive marking of cultural property

In accordance with the provisions of Article 16, cultural property may bear a distinctive emblem so as to facilitate its recognition.

#### Article 7. Military measures

1. The High Contracting Parties undertake to introduce in time of peace into their military regulations or instructions such provisions as may ensure observance of the present Convention, and to foster in the members of their armed forces a spirit of respect for the culture and cultural property of all peoples.
2. The High Contracting Parties undertake to plan or establish in peace-time, within their armed forces, services or specialist personnel whose purpose will be to secure respect for cultural property and to co-operate with the civilian authorities responsible for safeguarding it.

### CHAPTER II. SPECIAL PROTECTION

#### Article 8. Granting of special protection

1. There may be placed under special protection a limited number of refuges intended to shelter movable cultural property in the event of armed conflict, of centres containing monuments and other immovable cultural property of very great importance, provided that they:
  - (a) are situated at an adequate distance from any large industrial centre or from any important military objective constituting a vulnerable point, such as, for example, an aerodrome, broadcasting station, establishment engaged upon work of national defence, a port or railway station of relative importance or a main line of communication;
  - (b) are not used for military purposes.
2. A refuge for movable cultural property may also be placed under special protection, whatever its location, if it is so constructed that, in all probability, it will not be damaged by bombs.
3. A centre containing monuments shall be deemed to be used for military purposes whenever it is used for the movement of military personnel or material, even in transit. The same shall apply whenever activities directly connected with military operations, the stationing of military personnel, or the production of war material are carried on within the centre.
4. The guarding of cultural property mentioned in paragraph 1 above by armed custodians specially empowered to do so, or the presence, in the vicinity of such cultural property, of police forces normally responsible for the maintenance of public order shall not be deemed to be used for military purposes.
5. If any cultural property mentioned in paragraph 1 of the present Article is situated near an important military objective as defined in the said paragraph, it may nevertheless be placed under special protection if the High Contracting Party asking for that protection undertakes, in the event of armed conflict, to make no use of the objective and particularly, in the case of a port, railway station or aerodrome, to divert all traffic therefrom. In that event, such diversion shall be prepared in time of peace.

6. Special protection is granted to cultural property by its entry in the 'International Register of Cultural Property under Special Protection'. This entry shall only be made, in accordance with the provisions of the present Convention and under the conditions provided for in the Regulations for the execution of the Convention.

#### Article 9. Immunity of cultural property under special protection

The High Contracting Parties undertake to ensure the immunity of cultural property under special protection by refraining, from the time of entry in the International Register, from any act of hostility directed against such property and, except for the cases provided for in paragraph 5 of Article 8, from any use of such property or its surroundings for military purposes.

#### Article 10. Identification and control

During an armed conflict, cultural property under special protection shall be marked with the distinctive emblem described in Article 16, and shall be open to international control as provided for in the Regulations for the execution of the Convention.

#### Article 11. Withdrawal of immunity

1. If one of the High Contracting Parties commits, in respect of any item of cultural property under special protection, a violation of the obligations under Article 9, the opposing Party shall, so long as this violation persists, be released from the obligation to ensure the immunity of the property concerned. Nevertheless, whenever possible, the latter Party shall first request the cessation of such violation within a reasonable time.
2. Apart from the case provided for in paragraph 1 of the present Article, immunity shall be withdrawn from cultural property under special protection only in exceptional cases of unavoidable military necessity, and only for such time as that necessity continues. Such necessity can be established only by the officer commanding a force the equivalent of a division in size or larger. Whenever circumstances permit, the opposing Party shall be notified, a reasonable time in advance, of the decision to withdraw immunity.
3. The Party withdrawing immunity shall, as soon as possible, so inform the Commissioner-General for cultural property provided for in the Regulations for the execution of the Convention, in writing, stating the reasons.

### CHAPTER III. TRANSPORT OF CULTURAL PROPERTY

#### Article 12. Transport under special protection

1. Transport exclusively engaged in the transfer of cultural property, whether within a territory or to another territory, may, at the request of the High Contracting Party concerned, take place under special protection in accordance with the conditions specified in the Regulations for the execution of the Convention.
2. Transport under special protection shall take place under the international supervision provided for in the aforesaid Regulations and shall display the distinctive emblem described in Article 16.
3. The High Contracting Parties shall refrain from any act of hostility directed against transport under special protection.



#### Article 13. Transport in urgent cases

1. If a High Contracting Party considers that the safety of certain cultural property requires its transfer and that the matter is of such urgency that the procedure laid down in Article 12 cannot be followed, especially at the beginning of an armed conflict, the transport may display the distinctive emblem described in Article 16, provided that an application for immunity referred to in Article 12 has not already been made and refused. As far as possible, notification of transfer should be made to the opposing Parties. Nevertheless, transport conveying cultural property to the territory of another country may not display the distinctive emblem unless immunity has been expressly granted to it.
2. The High Contracting Parties shall take, so far as possible, the necessary precautions to avoid acts of hostility directed against the transport described in paragraph 1 of the present Article and displaying the distinctive emblem.

#### Article 14. Immunity from seizure, capture and prize

1. Immunity from seizure, placing in prize, or capture shall be granted to:
  - (a) cultural property enjoying the protection provided for in Article 12 or that provided for in Article 13;
  - (b) the means of transport exclusively engaged in the transfer of such cultural property.
2. Nothing in the present Article shall limit the right of visit and search.

### CHAPTER IV. PERSONNEL

#### Article 15. Personnel

As far as is consistent with the interests of security, personnel engaged in the protection of cultural property shall, in the interests of such property, be respected and, if they fall into the hands of the opposing Party, shall be allowed to continue to carry out their duties whenever the cultural property for which they are responsible has also fallen into the hands of the opposing Party.

### CHAPTER V. THE DISTINCTIVE EMBLEM

#### Article 16. Emblem of the convention

1. The distinctive emblem of the Convention shall take the form of a shield, pointed below, per saltire blue and white (a shield consisting of a royal-blue square, one of the angles of which forms the point of the shield, and of a royal-blue triangle above the square, the space on either side being taken up by a white triangle).
2. The emblem shall be used alone, or repeated three times in a triangular formation (one shield below), under the conditions provided for in Article 17.

#### Article 17. Use of the emblem

1. The distinctive emblem repeated three times may be used only as a means of identification of:
  - (a) immovable cultural property under special protection;
  - (b) the transport of cultural property under the conditions provided for in Articles 12 and 13;
  - (c) improvised refuges, under the conditions provided for in the Regulations for the execution of the Convention.
2. The distinctive emblem may be used alone only as a means of identification of:
  - (a) cultural property not under special protection;
  - (b) the persons responsible for the duties of control in accordance with the Regulations for the execution of the Convention;
  - (c) the personnel engaged in the protection of cultural property;
  - (d) the identity cards mentioned in the Regulations for the execution of the Convention.
3. During an armed conflict, the use of the distinctive emblem in any other cases than those mentioned in the preceding paragraphs of the present Article, and the use for any purpose whatever of a sign resembling the distinctive emblem, shall be forbidden.
4. The distinctive emblem may not be placed on any immovable cultural property unless at the same time there is displayed an authorization duly dated and signed by the competent authority of the High Contracting Party.

### CHAPTER VI. SCOPE OF APPLICATION OF THE CONVENTION

#### Article 18. Application of the Convention

1. Apart from the provisions which shall take effect in time of peace, the present Convention shall apply in the event of declared war or of any other armed conflict which may arise between two or more of the High Contracting Parties, even if the state of war is not recognized by one or more of them.
2. The Convention shall also apply to all cases of partial or total occupation of the territory of a High Contracting Party, even if the said occupation meets with no armed resistance.
3. If one of the Powers in conflict is not a Party to the present Convention, the Powers which are Parties thereto shall nevertheless remain bound by it in their mutual relations. They shall furthermore be bound by the Convention, in relation to the said Power, if the latter has declared that it accepts the provisions thereof and so long as it applies them.

#### Article 19. Conflicts not of an international character

1. In the event of an armed conflict not of an international character occurring within the territory of one of the High Contracting Parties, each party to the conflict shall be bound to apply, as a minimum, the provisions of the present Convention which relate to respect for cultural property.
2. The parties to the conflict shall endeavour to bring into force, by means of special agreements, all or part of the other provisions of the present Convention.
3. The United Nations Educational, Scientific and Cultural Organization may offer its services to the parties to the conflict.

4. The application of the preceding provisions shall not affect the legal status of the parties to the conflict.

## CHAPTER VII. EXECUTION OF THE CONVENTION

### Article 20. Regulations for the execution of the Convention

The procedure by which the present Convention is to be applied is defined in the Regulations for its execution, which constitute an integral part thereof.

### Article 21. Protecting powers

The present Convention and the Regulations for its execution shall be applied with the co-operation of the Protecting Powers responsible for safeguarding the interests of the Parties to the conflict.

### Article 22. Conciliation procedure

1. The Protecting Powers shall lend their good offices in all cases where they may deem it useful in the interests of cultural property, particularly if there is disagreement between the Parties to the conflict as to the application or interpretation of the provisions of the present Convention or the Regulations for its execution.
2. For this purpose, each of the Protecting Powers may, either at the invitation of one Party, of the Director-General of the United Nations Educational, Scientific and Cultural Organization, or on its own initiative, propose to the Parties to the conflict a meeting of their representatives, and in particular of the authorities responsible for the protection of cultural property, if considered appropriate on suitably chosen neutral territory. The Parties to the conflict shall be bound to give effect to the proposals for meeting made to them. The Protecting Powers propose for approval by the Parties to the conflict a person belonging to a neutral Power or a person presented by the Director-General of the United Nations Educational, Scientific and Cultural Organization, which person shall be invited to take part in such a meeting in the capacity of Chairman.

### Article 23. Assistance of Unesco

1. The High Contracting Parties may call upon the United Nations Educational, Scientific and Cultural Organization for technical assistance in organizing the protection of their cultural property, or in connection with any other problem arising out of the application of the present Convention or the Regulations for its execution. The Organization shall accord such assistance within the limits fixed by its programme and by its resources.
2. The Organization is authorized to make, on its own initiative, proposals on this matter to the High Contracting Parties.

### Article 24. Special agreements

1. The High Contracting Parties may conclude special agreements for all matters concerning which they deem it suitable to make separate provision.
2. No special agreement may be concluded which would diminish the protection afforded by the present Convention to cultural property and to the personnel engaged in its protection.

#### Article 25. Dissemination of the Convention

The High Contracting Parties undertake, in time of peace as in time of armed conflict, to disseminate the text of the present Convention and the Regulations for its execution as widely as possible in their respective countries. They undertake, in particular, to include the study thereof in their programmes of military and, if possible, civilian training, so that its principles are made known to the whole population, especially the armed forces and personnel engaged in the protection of cultural property.

#### Article 26. Translations reports

1. The High Contracting Parties shall communicate to one another, through the Director-General of the United Nations Educational, Scientific and Cultural Organization, the official translations of the present Convention and of the Regulations for its execution.
2. Furthermore, at least once every four years, they shall forward to the Director-General a report giving whatever information they think suitable concerning any measures being taken, prepared or contemplated by their respective administrations in fulfilment of the present Convention and of the Regulations for its execution.

#### Article 27. Meetings

1. The Director-General of the United Nations Educational, Scientific and Cultural Organization may, with the approval of the Executive Board, convene meetings of representatives of the High Contracting Parties. He must convene such a meeting if at least one-fifth of the High Contracting Parties so request.
2. Without prejudice to any other functions which have been conferred on its by the present Convention or the Regulations for its execution, the purpose of the meeting will be to study problems concerning the application of the Convention and of the Regulations for its execution, and to formulate recommendations in respect thereof.
3. The meeting may further undertake a revision of the Convention or the Regulations for its execution if the majority of the High Contracting Parties are represented, and in accordance with the provisions of Article 39.

#### Article 28. Sanctions

The High Contracting Parties undertake to take, within the framework of their ordinary criminal jurisdiction, all necessary steps to prosecute and impose penal or disciplinary sanctions upon those persons, of whatever nationality, who commit or order to be committed a breach of the present Convention.

### FINAL PROVISIONS

#### Article 29. Languages

1. The present Convention is drawn up in English, French, Russian and Spanish, the four texts being equally authoritative.
2. The United Nations Educational, Scientific and Cultural Organization shall arrange for translations of the Convention into the other official languages of its General Conference.

#### Article 30. Signature

The present Convention shall bear the date of 14 May, 1954 and, until the date of 31 December, 1954, shall remain open for signature by all States invited to the Conference which met at The Hague from 21 April, 1954 to 14 May, 1954.

#### Article 31. Ratification

1. The present Convention shall be subject to ratification by signatory States in accordance with their respective constitutional procedures.
2. The instruments of ratification shall be deposited with the Director-General of the United Nations Educational, Scientific and Cultural Organization.

#### Article 32. Accession

From the date of its entry into force, the present Convention shall be open for accession by all States mentioned in Article 30 which have not signed it, as well as any other State invited to accede by the Executive Board of the United Nations Educational, Scientific and Cultural Organization. Accession shall be effected by the deposit of an instrument of accession with the Director-General of the United Nations Educational, Scientific and Cultural Organization.

#### Article 33. Entry into force

1. The present Convention shall enter into force three months after five instruments of ratification have been deposited.
2. Thereafter, it shall enter into force, for each High Contracting Party, three months after the deposit of its instrument of ratification or accession.
3. The situations referred to in Articles 18 and 19 shall give immediate effect to ratifications or accessions deposited by the Parties to the conflict either before or after the beginning of hostilities or occupation. In such cases the Director-General of the United Nations Educational, Scientific and Cultural Organization shall transmit the communications referred to in Article 38 by the speediest method.

#### Article 34. Effective application

1. Each State Party to the Convention on the date of its entry into force shall take all necessary measures to ensure its effective application within a period of six months after such entry into force.
2. This period shall be six months from the date of deposit of the instruments of ratification or accession for any State which deposits its instrument of ratification or accession after the date of the entry into force of the Convention.

#### Article 35. Territorial extension of the Convention

Any High Contracting Party may, at the time of ratification or accession, or at any time thereafter, declare by notification addressed to the Director-General of the United Nations Educational, Scientific and Cultural Organization, that the present Convention shall extend to all or any of the territories for whose international relations it is responsible. The said notification shall take effect three months after the date of its receipt.

#### Article 36. Relation to previous conventions

1. In the relations between Powers which are bound by the Conventions of The Hague concerning the Laws and Customs of War on Land (IV) and concerning Naval Bombardment in Time of War (IX), whether those of 29 July, 1899 or those of 18 October, 1907, and which are Parties to the present Convention, this last Convention shall be supplementary to the aforementioned Convention (IX) and to the Regulations annexed to the aforementioned Convention (IV) and shall substitute for the emblem described in Article 5 of the aforementioned Convention (IX) the emblem described in Article 16 of the present Convention, in cases in which the present Convention and the Regulations for its execution provide for the use of this distinctive emblem.
2. In the relations between Powers which are bound by the Washington Pact of 15 April, 1935 for the Protection of Artistic and Scientific Institutions and of Historic Monuments (Roerich Pact) and which are Parties to the present Convention, the latter Convention shall be supplementary to the Roerich Pact and shall substitute for the distinguishing flag described in Article III of the Pact the emblem defined in Article 16 of the present Convention, in cases in which the present Convention and the Regulations for its execution provide for the use of this distinctive emblem.

#### Article 37. Denunciation

1. Each High Contracting Party may denounce the present Convention, on its own behalf, or on behalf of any territory for whose international relations it is responsible.
2. The denunciation shall be notified by an instrument in writing, deposited with the Director-General of the United Nations Educational, Scientific and Cultural Organization.
3. The denunciation shall take effect one year after the receipt of the instrument of denunciation. However, if, on the expiry of this period, the denouncing Party is involved in an armed conflict, the denunciation shall not take effect until the end of hostilities, or until the operations of repatriating cultural property are completed, whichever is the later.

#### Article 38. Notifications

The Director-General of the United Nations Educational, Scientific and Cultural Organization shall inform the States referred to in Articles 30 and 32, as well as the United Nations, of the deposit of all the instruments of ratification, accession or acceptance provided for in Articles 31, 32 and 39 and of the notifications and denunciations provided for respectively in Articles 35, 37 and 39.

#### Article 39. Revision of the Convention and of the Regulations for its execution

1. Any High Contracting Party may propose amendments to the present Convention or the Regulations for its execution. The text of any proposed amendment shall be communicated to the Director-General of the United Nations Educational, Scientific and Cultural Organization who shall transmit it to each High Contracting Party with the request that such Party reply within four months stating whether it:
  - (a) desires that a Conference be convened to consider the proposed amendment;
  - (b) favours the acceptance of the proposed amendment without a Conference;
  - (c) favours the rejection of the proposed amendment without a Conference.

2. The Director-General shall transmit the replies, received under paragraph 1 of the present Article, to all High Contracting Parties.
3. If all the High Contracting Parties which have, within the prescribed time-limit, stated their views to the Director-General of the United Nations Educational, Scientific and Cultural Organization, pursuant to paragraph 1(b) of this Article, inform him that they favour acceptance of the amendment without a Conference, notification of their decision shall be made by the Director-General in accordance with Article 38. The amendment shall become effective for all the High Contracting Parties on the expiry of ninety days from the date of such notification.
4. The Director-General shall convene a Conference of the High Contracting Parties to consider the proposed amendment if requested to do so by more than one-third of the High Contracting Parties.
5. Amendments to the Convention or to the Regulations for its execution, dealt with under the provisions of the preceding paragraph, shall enter into force only after they have been unanimously adopted by the High Contracting Parties represented at the Conference and accepted by each of the High Contracting Parties.
6. Acceptance by the High Contracting Parties of amendments to the Convention or to the Regulations for its execution, which have been adopted by the Conference mentioned in paragraphs 4 and 5, shall be effected by the deposit of a formal instrument with the Director-General of the United Nations Educational, Scientific and Cultural Organization.
7. After the entry into force of amendments to the present Convention or to the Regulations for its execution, only the text of the Convention or of the Regulations for its execution thus amended shall remain open for ratification or accession.

#### Article 40. Registration

In accordance with Article 102 of the Charter of the United Nations, the present Convention shall be registered with the Secretariat of the United Nations at the request of the Director-General of the United Nations Educational, Scientific and Cultural Organization.

In faith whereof the undersigned, duly authorized, have signed the present Convention.

Done at The Hague, this fourteenth day of May, 1954, in a single copy which shall be deposited in the archives of the United Nations Educational, Scientific and Cultural Organization, and certified true copies of which shall be delivered to all the States referred to in Articles 30 and 32 as well as to the United Nations.

#### **Protocol**

The High Contracting Parties are agreed as follows:

I

1. Each High Contracting Party undertakes to prevent the exportation, from a territory occupied by it during an armed conflict, of cultural property as defined in Article 1 of the Convention for the Protection of Cultural Property in the Event of Armed Conflict, signed at The Hague on 14 May, 1954.

2. Each High Contracting Party undertakes to take into its custody cultural property imported into its territory either directly or indirectly from any occupied territory. This shall either be effected automatically upon the importation of the property or, failing this, at the request of the authorities of that territory.
3. Each High Contracting Party undertakes to return, at the close of hostilities, to the competent authorities of the territory previously occupied, cultural property which is in its territory, if such property has been exported in contravention of the principle laid down in the first paragraph. Such property shall never be retained as war reparations.
4. The High Contracting Party whose obligation it was to prevent the exportation of cultural property from the territory occupied by it, shall pay an indemnity to the holders in good faith of any cultural property which has to be returned in accordance with the preceding paragraph.

## II

5. Cultural property coming from the territory of a High Contracting Party and deposited by it in the territory of another High Contracting Party for the purpose of protecting such property against the dangers of an armed conflict, shall be returned by the latter, at the end of hostilities, to the competent authorities of the territory from which it came.

## III

6. The present Protocol shall bear the date of 14 May, 1954 and, until the date of 31 December, 1954, shall remain open for signature by all States invited to the Conference which met at The Hague from 21 April, 1954 to 14 May, 1954.
7. (a) The present Protocol shall be subject to ratification by signatory States in accordance with their respective constitutional procedures.  
(b) The instruments of ratification shall be deposited with the Director-General of the United Nations Educational, Scientific and Cultural Organization.
8. From the date of its entry into force, the present Protocol shall be open for accession by all States mentioned in paragraph 6 which have not signed it as well as any other State invited to accede by the Executive Board of the United Nations Educational, Scientific and Cultural Organization. Accession shall be effected by the deposit of an instrument of accession with the Director-General of the United Nations Educational, Scientific and Cultural Organization.
9. The States referred to in paragraphs 6 and 8 may declare, at the time of signature, ratification or accession, that they will not be bound by the provisions of Section I or by those of Section II of the present Protocol.
10. (a) The present Protocol shall enter into force three months after five instruments of ratification have been deposited.  
(b) Thereafter, it shall enter into force, for each High Contracting Party, three months after the deposit of its instrument of ratification or accession.  
(c) The situations referred to in Articles 18 and 19 of the Convention for the Protection of Cultural Property in the Event of Armed Conflict, signed at The Hague on 14 May, 1954, shall give immediate effect to ratifications and accessions deposited by the Parties to the conflict either before or after the beginning of hostilities or occupation. In such cases, the Director-General of the United Nations Educational, Scientific and Cultural Organization shall transmit the communications referred to in paragraph 14 by the speediest method.



11. (a) Each State Party to the Protocol on the date of its entry into force shall take all necessary measures to ensure its effective application within a period of six months after such entry into force.
- (b) This period shall be six months from the date of deposit of the instruments of ratification or accession for any State which deposits its instrument of ratification or accession after the date of the entry into force of the Protocol.
12. Any High Contracting Party may, at the time of ratification or accession, or at any time thereafter, declare by notification addressed to the Director-General of the United Nations Educational, Scientific and Cultural Organization, that the present Protocol shall extend to all or any of the territories for whose international relations it is responsible. The said notification shall take effect three months after the date of its receipt.
13. (a) Each High Contracting Party may denounce the present Protocol, on its own behalf, or on behalf of any territory for whose international relations it is responsible.
- (b) The denunciation shall be notified by an instrument in writing, deposited with the Director-General of the United Nations Educational, Scientific and Cultural Organization.
- (c) The denunciation shall take effect one year after receipt of the instrument of denunciation. However, if, on the expiry of this period, the denouncing Party is involved in an armed conflict, the denunciation shall not take effect until the end of hostilities, or until the operations of repatriating cultural property are completed, whichever is the latter.
14. The Director-General of the United Nations Educational, Scientific and Cultural Organization shall inform the States referred to in paragraphs 6 and 8, as well as the United Nations, of the deposit of all the instruments of ratification, accession or acceptance provided for in paragraphs 7, 8 and 15 and the notifications and denunciations provided for respectively in paragraphs 12 and 13.
15. (a) The present Protocol may be revised if revision is requested by more than one-third of the High Contracting Parties.
- (b) The Director-General of the United Nations Educational, Scientific and Cultural Organization shall convene a Conference for this purpose.
- (c) Amendments to the present Protocol shall enter into force only after they have been unanimously adopted by the High Contracting Parties represented at the Conference and accepted by each of the High Contracting Parties.
- (d) Acceptance by the High Contracting Parties of amendments to the present Protocol, which have been adopted by the Conference mentioned in subparagraphs (b) and (c), shall be effected by the deposit of a formal instrument with the Director-General of the United Nations Educational, Scientific and Cultural Organization.
- (e) After the entry into force of amendments to the present Protocol, only the text of the said Protocol thus amended shall remain open for ratification or accession.

In accordance with Article 102 of the Charter of the United Nations, the present Protocol shall be registered with the Secretariat of the United Nations at the request of the Director-General of the United Nations Educational, Scientific and Cultural Organization.

In faith whereof the undersigned, duly authorized, have signed the present Protocol.

Done at The Hague, this fourteenth day of May, 1954, in English, French, Russian and Spanish, the four texts being equally authoritative, in a single copy which shall be deposited in the archives of the United Nations Educational, Scientific and Cultural Organization, and certified true copies of which shall be delivered to all the States referred to in paragraphs 6 and 8 as well as to the United Nations.

● **Resolution on the right of nations to information concerning their history and the return of national archives (A3-0258/90) / January 24th, 1991**

The European Parliament,

- having regard to the motion for a resolution by Mrs Van Hemeldonck on the right of nations to information concerning their history and the return of national archives (B3-0028/89),
  - having regard to the various reports and resolutions on cultural cooperation, adopted by the ACP-EEC Joint Assembly between 1981 and 1983,
  - having regard to the report on cultural cooperation between the ACP States and the EEC and adopted by the European Parliament on 8 July 1983 (OJ No C 242, 12.9.1983, p. 118.),
  - having regard to the resolution on the third ACP-EEC Convention adopted by the Joint ACP-EEC Assembly in September 1985, which deals in some detail with the cultural and social dimension of Lomé III,
  - having particular regard to the resolution of the Joint ACP-EEC Assembly on the right of nations to information concerning their history and the return of national archives, adopted on 25 March 1988 in Lomé (Togo),
  - having regard to the resolution adopted in September 1990 by the ACP-EEC Consultative Assembly on the priorities to be observed in implementing Lomé IV which stressed that cultural cooperation is the real starting point for a development process centred on Man and his development,
  - having regard to Resolutions 3026 XXVII, 3148 XXVIII, 3187 XXIX and 3391 XXX of the General Assembly of the UN,
  - having regard to the International Microfilming Programme for Developing Countries of UNESCO and ICA (International Council on Archives),
  - having regard to the report of the Committee on Development and Cooperation and the opinion in the form of a letter of the Committee on Youth, Culture, Education, the Media and Sport (A3-0258/90),
- A. whereas the right to culture and to information concerning history is a fundamental right of individuals and of nations,
- B. whereas the wish of certain countries to reconstruct their cultural inheritance is a legitimate cultural aspiration, on the understanding that archives created and built up outside these countries should rather be regarded as part of a common cultural heritage,
- C. whereas archives represent a major contributory factor in the preservation of a people's or a group's cultural identity, testifying as they do to its historical, cultural or economic development,
- D. having regard to Article 146 of Title XI of Lomé IV concerning the safeguarding of the cultural heritage and also to Annex XXIV concerning the declaration by the ACP states on the return or restitution of cultural property,

- E. whereas, amongst international treaties, Lomé IV is unique in containing contractual commitments undertaken by a group of industrialized nations and a group of developing nations on the need to take the cultural dimension into consideration,
- F. convinced that cooperation can only be successful if the Community takes the cultures and history of the nations concerned into account and makes an effective contribution to maintaining and restoring the cultural patrimony of the ACP States,
- G. whereas the Hague Convention (1954), the Brussels Convention (1950) and the Paris agreements (1954) list the archives which must be returned to their country of origin,
1. Welcomes the fact that in Lomé III socio-cultural factors were included in ACP-EEC cooperation and that these factors have grown in importance in Lomé IV; welcomes also the provisions of Title XI, Chapter 2, concerning the promotion of cultural identities and intercultural dialogue;
  2. Believes that it is necessary to provide for a balanced exchange both within the framework of Lomé IV and in cooperation with other developing countries, as a means of contributing to mutual enrichment and better understanding between the ACP countries and the Community on the one hand and the Community and the other developing countries on the other hand;
  3. Stresses that increased cooperation would not merely mark a turning point in the history of development policy, but could also exercise a positive influence on North-South relations;
  4. Deplores the fact that hitherto the benefits of exchanges of information have been largely one-sided, and calls on the Community to provide assistance to the ACP States in developing their cultural sector;
  5. Draws the attention of the Community and its Member States to the following resolutions on the return of cultural assets and archives to their countries of origin: Resolution No 529 of the 34th UN General Assembly (October 1979) and Resolution No 4/7/6.4 adopted by UNESCO at its 20th General Conference; makes special reference to the resolution of 6 November 1989 and to the decision taken at the 23rd General Conference which gave rise to the International Microfilming Programme for Developing Countries;
  6. Stresses that the return of archives to the developing countries does not fall within the sphere of competence of the EC, but of its Member States; believes therefore that their return to their countries of origin must be arranged through bilateral agreements or multilateral agreements, in cases where the archives are scattered over several EC Member States;
  7. Believes that the desire of the developing countries to see the return of their inheritance is entirely comprehensible and justified, particularly in the case of geological, agronomical and hydrographical archives and those concerned with town planning, which are of direct or indirect economic and social significance or which relate to the history or creation of the state concerned;
  8. Demands that the Member States, acting in a spirit of mutual understanding and solidarity, should grant all requests from the ACP countries for the return of cultural artefacts and archives, where these are, within the criteria established by UNESCO, of fundamental spiritual and cultural value;

9. Believes that in principle the developing countries have a legitimate right to the return of their archives, but considers there is a need for appropriate guarantees of the conservation of archives and cultural artefacts, including those of minority groups;
10. Believes that the EC Member States should under no circumstances refuse to make copies of archives available to developing countries, and that the developing countries must have full and free access to archives held in the EC;
11. Believes that in cases where archives and cultural artefacts are returned there is an urgent need for
  - appropriate facilities to permit the storage of, and access to, archives,
  - qualified staff and research workers to ensure the administration, storage research into and presentation of archives and cultural artefacts;believes that the above aim is one which can usefully be pursued and financed under the heading of international cooperation;
12. Recommends, by analogy with Article 146 of the Fourth ACP-EEC Convention, that a data bank be established for the storage of all archives currently scattered amongst Member States which concern the ACP countries, particularly those archives which are of importance for their cultural identity and their economic development;
13. Regrets that some Member States still have in their possession scientific, historical, political and cultural information concerning the colonial and pre-colonial period in the developing countries, which is not available to these countries but is of major importance both for their cultural identity and their economic development;
14. Urges the Member States of the Community, therefore, to open talks forthwith with the Third World countries whose archives they hold, with a view to their return, and in the meantime to approve the installation of information systems using modern technology;
15. Calls on the Commission, in the framework of the Lomé Conventions, and if asked to do so by the ACP States, to support projects likely to help developing countries to acquire and/or inspect archive data relevant to them;
16. Calls on the Commission to publish, in collaboration with the Council and the Member States, a register of the cultural agreements and treaties of independence signed by the Member States with the developing countries, especially ACP countries, in which the problem of the return of archives is referred to;
17. Instructs its President to forward this resolution to the Commission and the governments of the Member States.

**UNESCO DOCUMENTS**



● **Records of the General Conference, Eighteenth Session, Paris, 17 October to 23 November 1974 (4.212)**

The General Conference

Bearing in mind that a great number of Member States of Unesco have been in the past for longer or shorter duration under foreign domination, administration and occupation, Considering that archives constituted within the territory of these States, have, as a result, been removed from that territory,

Mindful of the fact that the archives in question are of great importance for the general, cultural, political and economic history of the countries which were under foreign occupation, administration and domination,

Recalling recommendation 13 of the Intergovernmental Conference on the Planning of National Documentation, Library and Archives Infrastructures, held in September 1974, and desirous of extending its scope,

1. Invites the Member States of Unesco to give favourable consideration to the possibility to transferring documents from archives constituted within the territory of other countries or relating to their history, within the framework of bilateral agreements;
2. Recommends that, in consultation with the appropriate non-governmental organizations, the Director-General envisages the possibility of a detailed study of such transfers and that he informs the nineteenth session of the General Conference thereof.

Conformément à cette Résolution, le Secrétariat a inclus le paragraphe suivant dans le plan de travail (18 C/5 approuvé, para. 4108) :

"Conformément à la résolution 4.212, on s'occupera d'entreprendre en collaboration avec les organisations internationales non gouvernementales compétentes, une étude détaillée de la possibilité de transférer, dans le cadre d'accords bilatéraux ou d'autres arrangements, des documents de valeur historique des archives du territoire d'autres pays vers les pays d'origine, en tenant compte des problèmes d'ordre juridique, financier et technique que posent ces transferts. Les résultats de l'étude seront soumis à la Conférence générale à sa dix-neuvième session".

- **Report of the Director-General on the study regarding problems involved in the transfer of documents from archives in the territory of certain countries to the country of their origin**

#### SUMMARY

In pursuance of the resolution 5.1 adopted by the General Conference at its nineteenth session and the Programme and Budget for 1977-1978 (paragraph 5048) approved by the General Conference at its same session, a detailed study was undertaken on the transfer of documents from archives in the territory of certain countries to the country of their origin.

In the light of this study, the Director-General has prepared, and hereby submits to the General Conference, the present report on the problems involved in the transfer of documents from archives in the territory of certain countries to the country of their origin. This report summarizes the conclusions and recommendations of the study and of a series of consultations with specialists on the problems involved in the transfer of such documents.

It contains a plan of action and a statement of principles and guide-lines intended to facilitate negotiations and agreements between or among Member States in respect of matters concerning the transfer of archives.

Point for decision: paragraph 37.

Conformément à la décision de la Conférence générale prise en sa 19<sup>ème</sup> session, le Directeur général a soumis à la 20<sup>ème</sup> session le rapport ci-dessous.

#### I. INTRODUCTION

1. At its eighteenth session the General Conference adopted 18 C/ Resolution 4.212. by which it, inter alia, invited "Member States of Unesco to give favourable consideration to the possibility of transferring documents from archives constituted within the territory of other countries or relating to their history, within the framework of bilateral agreements". By the same resolution, the General Conference recommended that, "in consultation with the appropriate non-governmental organizations, the Director-General envisage the possibility of a detailed study of such transfers and that he inform the nineteenth session of the General Conference thereof".
2. In pursuance of this resolution, the Secretariat organized at Headquarters, from 16 to 18 March 1976, a consultation with a group of experts in order to have a preliminary exchange of experience and to obtain the views of specialists on this subject. The group of experts identified the main issues of the problem and recommended to the Director-General the need for a preliminary investigation of the issues before undertaking a detailed study.<sup>1</sup>

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<sup>1</sup> Final Report of Consultation Group to Prepare a Report on the Possibility of Transferring Documents from Archives Constituted within the Territory of other Countries. Paris, 16-18 March 1976 (CC. 76/WS/9).



3. The Secretariat then requested the International Council on Archives to undertake a preliminary investigation, and the Director-General presented a progress report on these activities to the nineteenth session of the General Conference (document 19 C/94). Since the preliminary investigation<sup>2</sup> was expected to report favourably on the need for a detailed study of the question, the attention of the General Conference was directed to the intention of the Director-General, expressed in 19 C/5 (paragraph 5048), to prepare a follow-up action through a detailed study of the transfer of documents from archives in the territory of other countries to the country of their origin, the results of which would be communicated to the twentieth session of the General Conference.
4. Following approval of this proposal (19 C/5 Approved, paragraph 5048), the Secretariat asked the International of the Round Table on Archives for the detailed study.<sup>3</sup> The publication of the draft of this study was subsequently approved by the Secretariat for use as the working document for the Seventeenth Conference of the Round Table on Archives, which met in Cagliari 5-8 October 1977. To ensure adequate representation of the views of developing countries on this problem, the Secretariat through its subvention to the International Council on Archives provided financial assistance to the national archivists of a number of Member States so that they could participate in the Cagliari Round Table.
5. In concluding its follow-up action the Secretariat organized at Headquarters, from 29 to 31 March 1978, a second consultation with a group of experts to consider the conclusions and recommendations of the detailed study in light of the discussions and findings of the Cagliari Round Table, and to advise the Director-General on the nature of the report which he might wish to submit to the General Conference at its twentieth session.
6. This report summarizes the conclusions and recommendations of the preliminary and detailed studies and of a series of consultations with experts on problems involved in the transfer of archives. It relates these problems to the broader question of restitution of other types of cultural property, proposes a statement of principles and guidelines to facilitate negotiations and agreements between Member States in cases involving conflicting claims to archives, particularly after decolonization, and recommends a programme of international and national action to assist in the solution of these problems.

## II. ARCHIVES AND CULTURAL PROPERTY

7. Archives are universally recognized as an essential part of the heritage of every national community. Since they are indispensable in the development of national awareness and identity, they constitute a basic part of the cultural property of States.

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2 Archival Claims: Preliminary Study on the Principles and Criteria to be Applied to Negotiations, by Charles Kecskemeti (PGI 77/WS/1), published in English and French.

3 Constitution and Reconstitution of National Archival Patrimony: Report to the Cagliari Round Table, Section I. Statistical Elements for Determining the Scope of the Problem, Section II, Appendix I, Part I; Historical Chart of the Agreements on Archival Transfers, Section II, Appendix I, Part II, by Christian Gut.

8. The inclusion of archives within the broad definition of cultural property is fully recognized. The "Convention on the means of prohibiting the illicit import, export, and transfer of ownership of cultural property", adopted at its sixteenth session by the General Conference, specified archives as one of the major categories of such property (Article I (j)). In addition, archives are one of the types of cultural property covered by the proposals which, in accordance with 19 C/ Resolution 4.128, the Director-General is submitting to the General Conference in connection with the establishment, by the General Conference at its current session, of an intergovernmental committee to be entrusted with the task of seeking ways and means of facilitating bilateral negotiations for the restitution or return of cultural property to States having lost them as a result of colonial and foreign occupation.<sup>4</sup>
9. At the same time, however, it must be recognized that archives have an official and legal status different from that of most types of cultural property. Archives which were originally created to accomplish administrative transactions also serve as the evidence of those transactions. Both as evidence and because of the information they contain, they are indispensable for the continuing administration of all activities within the jurisdiction of the State. They not only document the experience of the people, but they also record and safeguard the rights and interests of the government and of individual citizens. Archives thus constitute irreplaceable legal titles and evidence which is essential to guarantee continuity in the exercise of the functions incumbent on public authorities.
10. This special status of archives has been expressed by the International Law Commission of the General Assembly of the United Nations as follows: "While one can conceive of a State without a navy, for example, it is impossible to imagine one without a currency, without a treasury, without funds, and without archives; which constitute these kinds of State property which are most essential and most widespread - so much so that they can be said to derive from the very existence of the State."<sup>5</sup>
11. The International Law Commission further observes that "State archives, jealously preserved, are the essential instrumental for the administration of a community. They both record the management of State affairs and enable them to be carried on, while at the same time embodying the ins and outs of human history; consequently, they are of value to both the researcher and the administrator. Secret or public, they constitute a heritage and public property which the State generally makes sure is inalienable and imprescriptible.
12. In dealing with problems of restitution of and access to cultural property, it is therefore essential that, where appropriate, the legal and official character of archives, and their special status as public property of the State deriving from the basic sovereignty of the State itself, be taken fully into account.

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4 The proposals will be examined under item 12 of the provisional agenda of the twentieth session of the General Conference. See document 20 C/86.

5 Eighth Report on Succession of States in Respect of Matters Other than Treaties. Draft Articles with Commentaries on Succession to State Property, by Mohammed Bedjaoui, Special Rapporteur, document A/DN.4/292, date 8 April 1976, p. 25.

13. In discussions of archival claims a distinction is sometimes made between public and private archives. This is a legal distinction that not only differs significantly from State to State, but that has undergone change from time to time in the same State. Furthermore, in some States, archives that were once regarded as private have been or are now accorded the status of official records, for example, church registers of births, marriages, and deaths that have been used to establish citizenship rights or eligibility for certain public benefits. The proposed principles and guidelines contained in this report should therefore be understood to apply to all categories of archives within the jurisdiction of the State. The concepts relating to the general protection of cultural property, which may in particular cases be supplemented by specific national legislation, are applicable to all other categories of archives.

### III. MAIN ISSUES OF THE PROBLEM

14. Changes in territorial boundaries and sovereignty have deprived a number of countries of ownership or convenient access to at least part of their archival heritage. It is therefore important to all nations, and to mankind generally, that the restitution of archives and the problems of providing access to archives should be dealt with urgently.
15. The studies and reports referred to above indicate that problems involving archives usually arise in one of the following circumstances:
- (a) changes in sovereignty over a given territory without the creation of a new State;
  - (b) transfers which took place during wars, or as an effect of military occupation;
  - (c) the emergence of new States through the splitting of former political entities;
  - (d) the effects of colonization and decolonization, which require consideration of the following categories of archives:
    - (i) archives created and retained in the metropolitan countries;
    - (ii) archives created in the colonies and transferred to other colonies;
    - (iii) archives of a colonial administration created in the former colony and removed to the metropolitan country at the time of independence;
    - (iv) archives of a regional colonial administration which relate to more than one now independent State;
    - (v) archives created in the colonies during the metropolitan administration and inherited now successor States.
16. An analysis of more than 200 treaties, conventions, acts, agreements, and other legal instruments relating to the cession and transfer of archives<sup>6</sup> indicates the existence of a variety of routine policies and procedures for the transfer of and access to current records and archives in cases of cession of territory between existing States, for the restitution of archives evacuated or removed during war time or military occupation, and for the reconstitution of the archival heritage of formerly sovereign or autonomous States. However, no policies and procedures have been developed for the transfer or ownership of archives to new States created through decolonization.

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<sup>6</sup> See the works cited in notes 2 p. 27 and 2 p. 28.

17. With regard to the creation of new States, there has been general recognition of the principle that such States have a right to certain archives, but there has been no generally accepted doctrine or criteria for determining such transfers. Nor has there been any consistent policy or procedures for implementing such transfers in the very few cases where multilateral and bilateral agreements have been concluded and implemented. Moreover, a significant portion of the existing source materials relating to the history of those countries which, for extended periods, have been under foreign administration, has been created and therefore automatically located outside the national territories of these new States. To the problems of ownership of archives must therefore be added related problems of access. Those involved in conflicting claims have asserted a wide variety of principles and criteria, which in turn have been variously interpreted and frequently subordinated to political, economic, and other considerations. It is this lack of generally accepted principles and guidelines to assist in the formulation of multilateral and bilateral agreements that has made essential the international consideration of these problems.

#### IV. STATEMENT OF PRINCIPLES AND GUIDELINES

##### *Objective*

18. In light of the above considerations, the objective of this proposed statement of principles and guidelines is to provide to all Member States an instrument of reference intended to facilitate negotiations leading to the conclusion of special agreements, either bilateral or, if appropriate, multilateral, with a view to the resolution of conflicting archival claims.

##### *Bilateral and multilateral negotiations and agreements*

19. Because the patrimonial character of archives as State property derives from the basic sovereignty of the State itself, problems involved in the ownership and transfer of State archives are fundamentally legal in character. Such problems should therefore be resolved primarily through bilateral or multilateral negotiations and agreements between the States involved. The agreements should specify all practical and financial responsibilities with respect to their implementation.

##### *International law principles, policies and procedures*

20. During bilateral or multilateral negotiations, recourse should be had, to the maximum extent possible, to the relevant principles of international law and the policies and procedures developed thereunder, especially those relating to succession of States in respect of matters other than treaties.

##### *National laws and regulations*

21. Since State property, and especially the alienation of State property, is subject to specific legislation and procedures in most countries, due regard should be given to such legislation and procedures to help facilitate the formulation of transfer agreements. It is particularly important that attention be given to the definition and status of archives as provided by the laws and regulations of the particular States involved at the time of the removal or the transfer of the archives.

##### *Retroactive sovereignty*

22. In accordance with United Nations resolution 1514 (XV) of 1960, and resolution 2625 (XXV) of 1970, it is essential that the legal status of new States should be extended backwards to the period preceding their independence. This will materially assist in negotiations in cases of decolonization and the creation of new States because of the absence of any clear precedents from international law in such cases.

- Provenance (respect for the integrity of archives groups)*
23. It is equally essential that to the fullest possible extent the archival principle of provenance or respect for the integrity of archives groups should be observed in all proposed transfers of archives. In accordance with this principle all archives accumulated by an administrative authority should be maintained as a single, indivisible, and organic unity in the custody of that authority or its legally designated successor. This is necessary to preserve the integrity and value of archives as titles, as proofs, and as both legal and historical evidence.
- Functional pertinence*
24. The only significant exception to the principle of provenance derives from the application to archives of the concept of functional pertinence. The transfer of powers, responsibilities, and competencies to a new State must necessarily be accompanied by the transfer of titles, proofs, and information which will render the exercise of these powers and responsibilities possible. With regard to archives, there must be a transfer of those which are functionally pertinent in order to provide administrative continuity for all parties concerned. This concept makes it possible to determine the ownership of archives groups accumulated by administrations responsible solely for the affairs of a given non-sovereign political entity, whether or not the administrations operated within and were located within the territory of that political entity. Archives groups accumulated in such cases form part of the heritage of the successor to the political entity concerned, and not of the State or administration which was exercising sovereignty at the time the archives group was created or in the place where it was created.
- Joint heritage*
25. Where an archives group or a body of archives results from the activity of an administration where succession is shared between the predecessor State and two or more successor States - i.e. where the archives form part of the national heritages of two or more States but cannot be divided without destroying its juridical, administrative, and historical value - as a realistic solution recourse should be had to the concept of joint heritage. The practical result of the application of this concept is that the archives group is left physically intact in one of the countries concerned, where it is treated as part of the national archival heritage, with all of the responsibilities with respect to security and handling implied thereby for the State acting as the owner and custodian of that heritage. The States sharing this joint heritage should then be given rights equal to those of the custodial State.
- Right to historical continuity*
26. In the application of the above principles and guidelines it should be understood that every national community has the right to an identity acquired from its history. In the name of human solidarity, national communities are required to assist each other in the search for historical truth and continuity. Access to archives is indispensable in this search and in the establishment of a national identity.
- International co-operation and understanding*
27. It is well recognized that the foregoing legal and archival principles and concepts will not necessarily result in the successful resolution of problems involved in the transfer of archives without a background of a spirit of international co-operation and a recognition of moral principles and obligation by the Member States involved. Also in negotiations and the formulation of agreements between nations, special attention should be given to the international contribution toward the establishment of the new economic order which can be promoted directly through more liberal access to the informational content of archives and generally through the cultural development of the developing countries. The role of archives in such development does not need to be reiterated.

## V. A PLAN OF ACTION

28. It is within the competence of Member States to solve problems relating to archival claims through bilateral or multilateral negotiations and agreements taking into account the principles and guidelines detailed above. In addition, Unesco should carry out a programme of action which would promote and facilitate the negotiations and implementation of agreements between Member States in this area. This programme was discussed at the Consultation on Archival Claims held in Paris in April 1978 and received the unanimous support of its members.

29. The programme, to be undertaken in co-operation with the International Council on Archives and other competent non-governmental organizations, is briefly summarized below.

### *Inventoring of sources*

30. Unesco assistance would be continued for existing projects for the compilation and publication of guides to the sources of history of the nations of Africa, Asia, and Latin America. In these projects particular attention will be given to the identification and listing of both displaced archives and of documents relating to a nation's history that are properly located in foreign archives. The inventoring of sources is regarded as a basic action in promoting the solution of problems in this area.

### *Feasibility study for data base of sources*

31. A feasibility study would be undertaken of the possibilities and problems involved in applying automated storage and retrieval systems and techniques to information on sources of national histories located in foreign archives.

### *Model agreements*

32. To facilitate the negotiation of new agreements, financial support would be given for the compilation and publication of model bilateral and multilateral agreements and conventions concerning the transfer of archives, the establishment of joint heritages, and regulations providing for access thereto.

### *Pilot project*

33. As a means of studying the procedures and techniques to be applied in actual situations involving the transfer of archives or the establishment of a joint heritage, action would be taken, upon the request of governments involved in current bilateral or multilateral arrangements, to establish a pilot project so as to share this experience with other interested Member States. The project would include a study of the formal agreement; surveys and studies of the procedures and techniques for identifying, testing and copying documents; and possible financial assistance for the above activities and for related fellowships and study grants.

### *Feasibility study for establishment of a microfilming fund*

34. Because of the numerous proposals that have been made for the creation of an internationally-financed and managed microfilm fund to assist in the solution of problems involved in the transfer of archives and in obtaining access to sources of national history located in foreign archives, a feasibility study would be undertaken to define the dimensions of the problem, to determine all relevant cost factors, and to study administrative, procedural, and technical problems in the establishment and operations of such a fund.

*Infrastructure development*

35. Assistance would continue to be provided, chiefly through existing programmes, toward creating in Member States the conditions required for the proper housing, preservation, and general administration of restituted archives. The assistance would include providing to these countries the equipment and manpower training necessary to provide copies of documents required by other Member States, and appropriate language training and training in foreign administrative procedures and record-keeping systems and practices so that restituted archives would be fully accessible to all users.

*Budget implications*

36. If the plan of action outlined above is to be launched in 1979-1989, additional resources estimated in the order of \$50,000 under the regular programme would be required. The Director-General will make efforts to provide the necessary sum within the existing provision of draft document 20 C/5 through internal adjustments.

*Draft resolution*

37. The General Conference may wish to adopt the following resolution:

The General Conference,  
Recalling resolution 212 adopted by the General Conference at its eighteenth session,  
Having examined the Report of the Director-General on the Study regarding Problems involved in the Transfer of Documents from Archives in the Territory of Certain Countries to the Country of Origin (20 C/102),

Notes the Statement of Principles and Guidelines contained in paragraphs 19-27 of document 20 C/102, as an instrument of reference intended to facilitate negotiations leading to the conclusion of bilateral and/or multilateral agreements, with a view to solving conflicting archival claims,

Invites Member States to take into consideration this Statement of Principles and Guidelines in matters relating to such archival claims,

Notes the plan of action contained in paragraphs 30-35 of document 20 C/102,

Invites the Director-General to make efforts to find the necessary funds to implement the above-mentioned plan of action through appropriate adjustments within the Programme and Budget foreseen for 1979-1980 (document 20 C/5).





**PROFESSIONAL PRINCIPLES  
SUPPORTED  
BY THE ARCHIVAL COMMUNITY  
AND EXPRESSED  
BY THE INTERNATIONAL COUNCIL ON ARCHIVES**



- **Resolutions passed during CITRA sessions**

***VIth International Conference of the Round Table on Archives  
(Warsaw, 1961)***

2. Clauses on Archives in International Treaties.

The VIth International Conference of the Round Table on Archives deems necessary that, in any discussion leading to clauses of international treaties relating to archives, the advice of the concerned archivists be required.

3. Mutual Restitution of Displaced Archives during World War II

Considering that archives are for every nation part of the most valuable cultural property and that each nation has the right to hold its own archives;  
On the base of international law and in order to promote peace and friendship among peoples;  
The VIth International Conference of the Round Table on Archives deems desirable to call on archival institutions and archivists all around the world, asking them to take the suitable measures for returning to their rightful owners archives groups and documents which have been displaced during World War II.

***Resolutions of the 17th Conference of the Round Table on Archives  
(Cagliari, 1977)***

As a follow-up to the decisions taken by the ICA General Assembly at its Washington session in 1976, and by the General Conference of Unesco at its session held in Nairobi in 1976, the International Archival Round Table determined as the agenda for its 17th Conference the study of the constitution and reconstitution of national archival heritages.

The deliberations, in which took part the representatives of the archival administrations and associations of archivists of the following 45 countries; Algeria, Argentina, Austria, Bahamas, Belgium, Brazil, Bulgaria, Canada, Colombia, Congo, Czechoslovakia, France, FRG, Ghana, Greece, Guyana, Hungary, India, Indonesia, Israel, Italy, Ivory Coast, Kenya, Luxembourg, Malawi, Malaysia, Morocco, Netherlands, Norway, Peru, Poland, Portugal, Rumania, Senegal, Spain, Sri Lanka, Sweden, Switzerland, Tanzania, Tunisia, URSS, UK, USA, Upper Volta, Yugoslavia, have led to the conclusions indicated below.

The Round Table noted with satisfaction the progress achieved on the theoretical level since the adoption of the Resolution 4.212 by the 19th Session of the General Conference of Unesco. It expressed its full satisfaction regarding the success of the recent bilateral negotiations between, firstly, Austria and Yugoslavia, and, secondly, Indonesia and the Netherlands.

In accordance with the conclusions of the consultative meeting held in Paris, 16-18 March 1976, which were presented in the form of a draft resolution, the Round Table reaffirms the right of each state to the recovery of archives which are part of its archival heritage and which are now kept outside its territory, as well as the right of each national community to have access, under agreed conditions, to records belonging to other countries and relevant to its own history and to copy them.

Considering the scope of unresolved archival claims, particularly of those originating from the colonial system;

Considering that the settlement of these claims falls exclusively within the competence of the public authorities of the countries concerned;

Considering that this settlement should be achieved through bilateral or multilateral negotiations;

The Round Table recommends:

- a) That the opening of negotiations regarding problems of ownership of archives on the one hand, and rights to access and copying, on the other hand, be promoted among all interested parties.
- b) That the preparation of the technical files intended for use in such negotiations be entrusted to professional archivists.

The Round Table underlines that the principle of the respect of the integrity of archive groups should be used as a controlling principle in the settlement of disputed archival claims.

The Round Table nevertheless recognizes that the concept of functional pertinence may be relevant in particular circumstances.

The Round Table underlines the advantage of referring to all of the criteria deriving from the principle of provenance for determining the patrimonial ownership of disputed archives, and also emphasizes the value of the concept of common patrimony as a regulator in establishing the right of access to archives for the authorities and the citizens of countries participating in the patrimony.

The Round Table recognizes the legitimate right of the public authorities and citizens of countries which formed part of larger political entities, or which were administered by foreign powers, to be informed on their own history. The legitimate right to information exists of itself, independently of the ownership of archives.

The Round Table considers that the settlement of conflicting claims may be facilitated and accelerated in the coming years through a coherent international action. Without prejudice to possible other international actions, the Round Table considers that the immediate efforts of ICA should be directed to the implementation of the following projects:

- a) the inventorying of all archive groups, including displaced archives, relating to the history of other countries in the custody of both public and private repositories in each country;
- b) the publication of a representative collection of agreements and conventions on the transfer of original records and on access to archives;
- c) the preparation of a treatise on the principles and terms recommended for use in the settlement of disputed claims, to which would be annexed one or more draft model agreements;
- d) a study of ways and means of financing microfilm operations which are expected to increase as bilateral agreements are concluded. This study should consider the feasibility of a special international fund administered by Unesco.

In consequence of the above, the Round Table requests the Executive Committee of ICA to integrate these four projects in the Medium Term Plan of the organization.

Moreover it requests the Executive Committee to appoint a small group of experts to contribute to the implementation of the three latter projects.

Cette résolution avait été préparée par un comité ad hoc composé du bureau de la C.I.T.R.A. (MM. Biljan, del Piazze, Gut et Kecskeméti), des présidents de séance (Melle Saunders, MM. Dahm et Sanchez Belda) et des présentateurs (MM. Garcia Belsunce, Milosevic et Smith).

Elle a été adoptée, après discussion, par 28 voix (Allemagne fédérale, Argentine, Bahamas, Belgique, Brésil, Bulgarie, Canada, Colombie, Côte-d'Ivoire, Etats-Unis, France, Ghana, Guyana, Hongrie, Indonésie, Israël, Italie, Kenya, Malaisie, Norvège, Pays-Bas, Pérou, Pologne, Portugal, Roumanie, Royaume-Uni, Sénégal, Suède) contre 2 (Algérie et Congo).

Sept délégations se sont abstenues (Autriche, Malawi, Maroc, Tanzanie, Tchécoslovaquie, Tunisie, U.R.S.S.).

Huit délégations (Espagne, Grèce, Haute-Volta, Inde, Luxembourg, Sri-Lanka, Suisse, Yougoslavie) étaient absentes au moment du vote.

L'adoption de ce texte rendit caduc un autre projet rédigé par les représentants de l'Algérie, du Kenya, du Malawi, du Maroc, de la Tanzanie et de la Tunisie dont voici le texte :

Considérant les nombreuses résolutions pertinentes de l'O.N.U. relatives au droit des peuples anciennement colonisés à disposer d'eux-mêmes,

Considérant la résolution pertinente de l'U.N.E.S.C.O. en sa XVIIème session tenue à Nairobi relative au transfert des archives,

Considérant la responsabilité morale, historique des anciens pays colonisateurs dans les processus de la colonisation et de transferts massifs d'archives qui en ont résulté,

Vu la nécessité pour les pays frustrés dans leurs archives de réécrire leur histoire nationale,

La Table ronde internationale des Archives réunie à Cagliari (Italie) du 5 au 8 octobre 1977, recommande :

1. la publication des inventaires détaillés des archives transférées sous forme d'originaux,
2. la réintégration de ces archives en application du principe généralement appelé de la provenance territoriale,
3. l'ouverture de négociations par les pays détenteurs en vue de régler, dans l'intérêt de toutes les parties, les modalités pratiques d'une telle réintégration,
4. en attendant, l'accès inconditionnel des ressortissants des pays anciennement colonisés aux archives conservées dans les anciennes métropoles,
5. considérant que le transfert d'Etat à Etat ne peut être assimilé à la communication des archives à des particuliers,

considérant qu'il s'agit de réintégration d'éléments constitutifs du patrimoine archivistique, il ne peut être opposé aux demandeurs de délais à consultabilité.

*XXX International Conference of the Round Table on Archives  
(Thessaloniki, 12-15 October 1994)*

RESOLUTION 1

The XXX International Conference of the Round Table on Archives

Considering that it is in the interests of all peoples that solutions be found to disputed claims arising from the displacement of archives as a result of the Second World War and of the process of decolonisation,

reaffirms the mission of archives in guaranteeing every nation's right to historical continuity,

recalls the accepted archival principles that archives are inalienable and imprescriptible, and should not be regarded as "trophies" or as objects of exchange,

confirms the support of the archival community for the principles embodied in the report of the Director General to the 20th session of the General Conference of UNESCO (20C/102),

calls upon the Executive Committee of ICA to keep CITRA informed of the results of the work of the Committee on Archival Legal Matters,

invites the Executive Committee of ICA to formulate at its next meeting, on the basis of and in the spirit of the deliberations of the present conference, a position paper stating the views of the archival community on the resolution of disputed claims, with principles to be followed and concepts to be rejected in accordance with existing legal practice,

recommends the Executive Committee of ICA to lend its support to bilateral and multilateral professional efforts aimed at ending disputed claims inherited from the period 1923-1989 and at resolving new problems confronting states formerly parts of federations which have dissolved,

expresses the wish that relevant intergovernmental organisations, in particular the United Nations, UNESCO and the Council of Europe, support, with their member States, non governmental initiatives intended to settle disputed claims and reconstitute the historical heritage of each nation.

RESOLUTION 2

The XXX International Conference of the Round Table on Archives

Considering the value of microfilm and other forms of imaging technology in reconstituting the archival heritage,

further considering the reciprocal obligations of former colonial powers and former colonies to co-operate in identifying and copying relevant material,

recognising that excellent work has already been done to implement the decision taken by the General Conference of UNESCO at its 23rd session held in Sofia in 1985 (23C/5 appr.07208) on the reconstitution of the archival heritage,

recalling that clear legal and technical standards for microfilming already exist,

calls on the Executive Committee of ICA, in co-operation with UNESCO, to reactivate and review the International Microfilming Programme, and in particular to investigate fully existing and new sources of funding, and to encourage regional branches and national archives to co-ordinate efforts to establish priorities for further reprography, including imaging technologies, and to

distribute copies of material of joint interest.

### RESOLUTION 3

The XXX International Conference of the Round Table on Archives

Recognising the particular role and responsibilities of those archival institutions which have in their custody holdings created during periods of common history with other nations,

encourages these institutions to pursue or initiate a policy that gives equal access to all countries participating in the joint heritage,

further recognising the important role and responsibilities of the major international custodial institutions that collect and preserve dispersed archives which might otherwise have been destroyed,

emphasises that, in addition to optimal preservation and free access to these archives, there is an overriding need for full intellectual control of them, and underlines the value of ISAD (G) in achieving this, and further emphasises the value of using modern methods of information storage and retrieval to improve and widen access to these archives.

*Resolutions of the XXXIst International Conference of the Round Table on Archives,  
(Washington, DC, 6-9 September 1995)*

Considering the grave dangers presented to archives by war and other armed conflicts,

considering the increasing significance of our shared archival heritage,

recognising the importance of the role of archives in safeguarding the rights of the citizen and the state,

recognising that in time of conflict as in time of peace the first duty of the archivist is to ensure the protection of the archives,

and taking account of the Position Paper, based on the decision of the XXXth CITRA, entitled "The view of the archival community on the settling of disputed claims", adopted by the Executive Committee of the International Council on Archives on 13 April 1995,

the XXXIst International Conference of the Round Table on Archives recommends

1. That archivists, in particular the heads of national archive institutions and representatives of professional associations, make an appeal to their government, if they have not done so, to sign and implement the Hague Convention and Protocol of 1954 by UNESCO for the protection of cultural property in the event of armed conflict;
2. That the Executive Committee of the International Council on Archives propose to UNESCO that a RAMP study should be prepared on the management of archives in time of conflict in order to assist officials and military personnel in the protection of archives, and that the Executive Committee keep this matter under consideration;
3. That archivists, in particular the heads of national archive institutions and representatives of professional associations, support diplomatic initiatives towards finding an equitable solution to archival disputes, and that in the meantime archivists promote co-operation between national archival institutions, by identifying disputed archival material, by ensuring the integrity of such material, by establishing appropriate finding aids and by encouraging reproduction and access;
4. That national archives and professional associations note the reservations made by the Executive Committee of the International Council on Archives (20 April 1995) concerning the final act of the Diplomatic Conference for the adoption of the draft Unidroit Convention on the International Return of Stolen or Illegally Exported Cultural Objects (Rome, 24 June 1995), and ask the Executive Committee to look again at this problem in the light of changes made to the Draft Convention;
5. That archivists pursue a dynamic and impartial policy of identification and acquisition to ensure the preservation of archives of guerrilla and partisan movements;
6. And that the Executive Committee of the International Council on Archives call upon all international and inter-governmental organisations to ensure that they make provision for the management of their current records and historical archives, with particular emphasis on appraisal and access; that national archivists of member states of inter-governmental organisations reinforce this approach through their own government; and that national archivists of the host countries of international and inter-governmental organisations support this initiative through direct contact with such organisation at the highest level.



The International Conference of the Round Table on Archives expresses its gratitude to the government of the US for its hospitality, and requests the archivist of the United States to thank all those who have participated in the organisation of the Conference, and have contributed to its substantial success.

- **Professional advice formulated in 1983 on the Vienna Convention on succession of States in respect of State property, archives and debts, Part III, State archives (art. 19 to 31)**

This professional advice has been formulated at the request of the French Ministry of External Relations, Division of Archives and Documentation, by an ad hoc Working Group appointed by the President of the International Council on Archives. The Working Group was composed of:

- |                         |   |
|-------------------------|---|
| Dr. Leopold AUER,       | ICA representative at the United Nations Centre, Vienna, Austria,                 |
| Dr. Eckhart G. FRANZ,   | Secretary of the International Conference of the Round Table on Archives (CITRA), |
| Dr. Oscar GAUYE,        | Former President of the ICA,  |
| Dr. Charles KECSKEMÉTI, | Executive Secretary of ICA,<br>Rapporteur of the Working Group,                   |
| Dr. Eric KETELAAR,      | ICA Secretary for Standardization,  |
| Dr. Evert van LAAR,     | ICA Secretary for Development,  |
| Mr. Peter WALNE,        | ICA Secretary for Publications.   |

The Working Group was commissioned to study (i) Section III, "State Archives" of the text of the Convention adopted in Vienna on 7th April 1983 by the UN Conference on Succession of States in respect of State property, archives and debts, (ii) the documentation produced during the Conference (Provisional Summary Records, articles as amended by the Drafting Committee, draft amendments submitted by the Member States, report of the Committee on the whole), (iii) the background documentation, especially the Report of the International Law Commission on the work of its thirty-third session (UN document A/36/10), with a view to assessing whether the aforementioned Convention might contribute effectively to the settlement of existing or potential archival claims resulting from successions of States and whether the clauses of the Convention are compatible with internationally recognized principles and practices of archive administration.

#### Comments of the Working group

##### 1. General comments

- 1.1 The Working Group was greatly impressed by the comprehensive historical research carried out by the International Law Commission in formulating the draft Convention and in explaining each clause contained in it. This extensive historical compilation and analysis will be of invaluable help to any State in negotiating the settlement of disputed archival claims.
- 1.2 The Working Group was also greatly impressed by the comprehensive character of the Convention identifying all types of succession of States in respect of archives.

- 1.3 The Working Group recognized the difficulties inherent in the task of the International Law Commission and the Vienna Conference, which consisted in formulating a Convention composed of three distinct parts relating respectively to State property, State archives and State debts. The concern to achieve the harmonization of the three parts prevailed, in some cases, over the respect for the specific legal status and nature of State archives.
- 1.4 While acknowledging the extreme care which was taken to achieve a consistent and precise legal wording, the Working Group concluded that the text of the Convention adopted in Vienna does not provide an adequate basis for dealing with succession of States in respect of archives. The reasons of this conclusion are explained in Section 2, "Special comments" of the present document.

The fact that a significant number of Member States abstained or voted against the adoption of the text at the Vienna Conference indicates that the Convention may not fulfill its objective.

- 1.5 It has to be remembered that the report submitted by the Director General of Unesco to the 20th session of the General Conference on the Study regarding problems involved in the transfer of documents from archives in the territory of certain countries to the country of their origin (Unesco document 20C/102), which offers a comprehensive set of principles and criteria to be observed for the settlement of disputed archival claims was unanimously approved by the Member States. The consensus achieved by the Director General of Unesco on this subject is evidence that a similar consensus could have been attained at the Vienna Conference.
- 1.6 Commissioned to carry out a professional duty by an international non-governmental organisation, the Working Group decided to abstain from commenting on the deliberations of the Vienna Conference. It noted however the essentially political character of the debates, which partially explains why the Conference did not succeed in achieving a consensus.

## 2. Specific comments

### 2.1 Special agreements on State archives in cases of succession of States

#### 2.1.1 Although the Convention declares in article 27 paragraph 1 that

"When part of the territory of a State is transferred by that State to another State, the passing of State archives of the predecessor State to the successor State is to be settled by a special agreement",

Paragraph 2 of the same article describes which parts of the States archives should be transferred "in the absence of such an agreement".

Similarly, article 30 relating to the case of "Separation of part or parts of the territory of a State" and article 31 relating to the case of "Dissolution of a State" set forth criteria for the sharing of archives "unless the predecessor State and the successor State otherwise agree".

Article 28, relating to the case of "Newly independent States", reduces specifically in its paragraph 2 the scope of the agreement between the predecessor State and the successor State to the passing or the appropriate reproduction of parts of the State archives of the predecessor State other than those mentioned in paragraph 1", i.e. the main bulk of the archives to be transferred. It means that should a case of succession of States occur between two States which ratified or acceded to the Convention, no special agreement will be necessary, but State archives shall be transferred according to the provisions of the relevant article of the Convention.

Such a conception disregards the very nature of archives as well as the rationale of an international Convention on the succession of States in respect of archives.

- 2.1.2 Transfer of the Property of State archives cannot take place according to all existing national archival laws without a special legal instrument duly approved by the competent authorities of the States concerned and listing specifically and precisely the record/archive groups and/or sub-groups (and, if necessary, records) which shall pass from one State to the other.

Any Member State of the UN can accept, under an international convention, the binding rule that, in cases of succession of States, it will conclude a special agreement on the passing of State archives. On the other hand, it is unlikely that any State which has archival legislation be in a position to accede to a Convention which prescribes passing of parts of State archives without a special agreement or, should it accede to the Convention, the application of the Convention will prove impossible in the light of that existing legislation.

- 2.1.3 It can be objected to this approach that an International Convention containing clear and precise criteria and principles that shall govern the apportionment of State archives is a sufficient legal instrument for the settlement of successions of States in respect of archives since any State which accedes to the Convention accepts, ipso facto, to modify its legislation so as to be in a position to implement the provisions therein. Allowing it be granted, a list specifying the archive/record groups, sub-groups and items to be transferred, in original or copy, must still be agreed upon. Hence the agreement will be concluded or no transfer will take place for want of knowing what to transfer. It is possible to conclude an agreement in the spirit of a Convention but "in the absence of such an agreement", only the part of the archives of the predecessor State which is located within the territory of the successor State may pass to the latter.

If the predecessor State and the successor State, failing to make a special agreement, are satisfied, at the moment of the succession of States, with sanctioning the status quo, they will be led later to negotiate the transfer of copies and, possibly, of originals. The agreement will only be deferred as to the moment of the succession of States. The Convention will thus generate archival claims, instead of preventing them.

- 2.1.4 The major current disputed archival claims, with the exception of those originating from removal of archives as a result of warfare, are due to the absence of archival agreements, either because the general instrument relating to the change of sovereignty did not prescribe the conclusion of such an agreement, or because the archival agreement provided for in the general instrument was not actually concluded through the opposition of one (or more) of the parties concerned.

One of the Convention's basic objectives would consist in introducing in the international law, as a principle, that the succession of States with respect to archives is to be settled by way of concluding an agreement. It certainly may happen that a State, although a Party to the Convention, will refuse to enter into negotiations on the archival agreement. So may it happen with any provision of any international Convention. Procedures to be followed in such cases are specified in international law (see articles 42 to 45 of the Vienna Convention).

2.1.5 For the above reasons, the Working Group considers that one of the essential articles of the Convention could and should have been worded as follows :

"In all cases of succession of States, the passing of State archives from the predecessor State to the successor State shall be settled by agreement between them. The agreement shall conform to the principles and criteria set forth in articles 6 to 6 of the present Convention".

2.2 Criteria for determining the categories of State archives which shall pass from the predecessor State to the successor State

Provided that the rule of concluding special agreements be included in the Convention, articles specifying which categories of archives should be subject to the bilateral (or pluri-lateral) negotiations in each type of succession of States would certainly help in reaching a mutually acceptable settlement.

The Working Group examined whether the definitions of the various categories of archives to be transferred according to the Convention could be instrumental in facilitating such negotiations.

- (i) All four articles concerned (27, 28, 30 and 31) mention one of these categories: "the part of State archives of the predecessor State which, for normal administration of the territory to which the succession of States relates, should be in that territory" (or, in article 27 "should be at the disposal of the State to which the territory concerned is transferred").
- (ii) All four articles identify another category defined as follows "the part of State archives of the predecessor State other than the part mentioned in subparagraph (a) [subparagraph (b) in article 28, i.e. the category mentioned hereabove] that relates exclusively or principally to the territory to which the succession of States relates".
- (iii) Article 28 contains in its paragraph 1 a subparagraph (a) worded as follow:  
"archives having belonged to the territory to which the succession of States relates and having become State archives of the predecessor State during the period of dependence...".

#### Remarks on the above definitions

- ad (i) The definition is consistent with internationally recognized principles and practices of archive administration and thus can be referred to when negotiating an archival agreement.
- ad (ii) The second definition merely rewords the "principle of territorial pertinence" which has been rejected by the studies conducted under the auspices of Unesco as incompatible with the principle of provenance and inapplicable because of its ambiguity. The ownership of archives cannot be determined by or on the basis of the information contained in them, but only by their provenance.

The proper wording for the definition of the category archives referred to in the subparagraph should read as follows :

“the part of State archives of the predecessor State created by the transactions of administrations and institutions responsible exclusively or principally for the affairs of the territory to which the succession of States relates”.

The above definition requires two additions :

- a) “in cases where, in the process of change of sovereignty, a significant part of the population leaves the territory of the successor State and settles in the territory of the predecessor State, this fact shall be taken into account when negotiating the succession of States in respect of archives”.
- b) “unless otherwise agreed by the parties concerned, the definition hereabove does not cover the archives created by military occupation authorities”.

ad (iii) The third category introduces the concept of “archives belonging to a territory”. This concept is not sufficiently precise.

The category of archives to which the subparagraph refers to and which certainly shall pass, under an archival agreement, from the predecessor State to the successor State, is in fact :

“the archives constituted within the territory before it became dependent from the predecessor State and subsequently integrated in the State archives of the predecessor State whether preserved in situ or removed from the territory and entrusted to custodial institutions (archives, libraries, museums) located within the territory of the predecessor State”.

Paragraph 4 of article 28 contains also the expression “archives... having belonged to the territory”. The term “constituted within the territory” is more appropriate.

### 2.3 Date of the passing of State archives

The Working Group can make no comment on the legal principle set forth in article 22 regarding the date of passing of State Archives. It considers however that, in order to make the Convention applicable, a second paragraph should be added to the article, worded as follows :

“2. The time table for the transfer of archives from the territory of the predecessor State to the territory of the successor State and from the territory of the successor State to the territory of the predecessor State shall be specified in the agreement concluded in accordance with article 6” (see above, comment 2.1.5).

### 2.4 The preservation of the integrity of archive groups

The odd wording of the title of article 25 in English version (Preservation of the integral character of groups of State archives) is certainly due to a wrong translation from the French : “Sauvegarde de l’intégrité des fonds d’archives d’État”. The text of the article is not clear. An understandable wording might have been :

“In the settlement of the succession of State archives, the predecessor State and the successor State shall observe, as far as possible, the principle of respect for the integrity of archive groups”.

## 2.5 The concept of joint heritage

In document A/CONF.117/C.1/L-29/Rev.1, Switzerland proposed an amendment to article 24 (renumbered 25 in the final text) for inserting a paragraph 2 introducing the concept of “joint heritage”, already approved by the General Conference of Unesco. This amendment was rejected by 32 votes to 17 with 14 abstentions.

In some cases of succession of State archives, no settlement can be reached without recourse to the concept of joint heritage, since all parties concerned (the predecessor State and the successor State or States) have equal titles to the ownership of archive groups, but the latter cannot be dismembered without destroying their legal, historical and evidential value.

The paragraph of the Convention on joint heritage could have been worded as follows:

“Archive groups created by administrations, functions of which are shared between the predecessor State and the successor State or States, as a result of the succession of States, may be declared in the special archival agreement “joint heritage”. Rights and responsibilities connected with the custody of and access to the joint archival heritage shall be specified in the agreement”.

## 2.6 Principles and dispositions which require no amendment for being applicable

Principles and dispositions contained in articles 21, 23, 24, 26, paragraphs 3-5 of article 27, paragraphs 3-7 of article 28, article 29, paragraphs 2-5 of article 30 and paragraphs 2-5 of article 31 are applicable in their present wording.

The definition of the term “State archives” as worded in article 20 does not exclude divergent interpretations. However, since it is consistent with the other articles of the Convention and its intent is clear enough, it can be used during negotiations by bona fide parties.

## 3. Conclusions

### 3.1 The Working Group could not but conclude that the problems raised above could have been avoided, had the International Law Commission and the Vienna Conference called for archival expertise in wording the text.

The text, as it now stands, except for the articles and paragraphs listed above in special comment 2.6, is inapplicable.

### 3.2 Until the development under the auspices of the UN, of an applicable Convention on succession of States in respect of archives, States faced with problems of this type may refer, during bilateral or pluri-lateral negotiations, to the report of the Director General of Unesco quoted in general comment 1.5 of the present document.

## ● The view of the archival community on the settling of disputed claims

Position Paper adopted by the Executive Committee of the International Council on Archives at its meeting in Guangzhou, 10-13 April 1995

### 1. The diplomatic practice followed until the Second World War

Despite the absence of generally applicable legal instruments, a diplomatic routine for settling disputed archival claims was progressively established from the time of the Treaty of Westphalia onwards.

The following rules were, in practice, implicitly respected

- i/ all treaties relating to changes of sovereignty over a given territory included clauses dealing with the surrender or exchange of archives ;
- ii/ lists of archives to be transferred or copied as a result of such treaties were specifically agreed between the two parties ;
- iii/ documents necessary for the conduct of current business and for administrative continuity were almost invariably handed over by the predecessor state to the successor state either in original form or as copies ;
- iv/ archives captured and displaced during hostilities were returned once peace was concluded ;
- v/ archives of temporary military authorities of occupation remained the property of the occupying powers.

### 2. The break with tradition after the Second World War

The traditional practice of devolution and restitution of archives was abruptly abandoned in 1945.

Despite the normalisation of relations since then, no peace treaty has been concluded with the main power defeated in 1945, the repatriation of archives seized during hostilities has not been systematically dealt with and, at the global level, the emergence of a hundred or so sovereign states through the process of decolonisation has occurred without there being specific instruments for the devolution of archives.

The abandonment of traditional practice has led to an unprecedented accumulation of unresolved problems concerning the restitution and devolution of archives. The legal vacuum thus created is all the more pernicious as it has been tacitly accepted by all governments.

### 3. The international imperative

The International Council on Archives believes the time has come to put an end to the exceptional conditions which have lasted fifty years and to begin getting rid of disputed archival claims arising from the Second World War, decolonisation and the breakup of federations following the events of 1989.



The experience of the 1983 Vienna Intergovernmental Conference shows that an international convention is useless if it is established without a consensus among states at the price of a contradictory political debate and without regard to how applicable the proposed measures are.

Given the multitude of claims, of different types and origins, which have built up during fifty years of inaction, only a pragmatic approach offers a reasonable chance of breaking the deadlock.

The objective is to resume, as quickly as possible, the traditional practice of dealing with disputed claims by means of negotiations between the interested parties. However, in view of the number of cases and the complex interrelations between the problems however, an international consultation seems essential if the situation is to get back to normal.

The consultation would aim to secure the agreement of states to the objective of settling the claims, to establish a typology of cases, to devise a conceptual framework acceptable to all and to draw up principles to be observed during the preparation of bi-lateral agreements.

The consultation could take place within the framework or under the aegis of international and regional inter-governmental organisations with responsibilities in the archival field.

The consultation would also have to take account of the international regulation of the movement and return of cultural property, which is evolving rapidly. Instruments dealing with the transfer of cultural assets and with the return of cultural assets which were illegally taken, such as the Unesco Convention of 14 November 1970 and the Unidroit draft Convention currently under consideration explicitly include archives in their field of competence.

The International Council on Archives is ready to lend its support to co-ordinating initiatives which might be taken by the different organisations and expresses the hope that the conclusion of a new International Convention could be examined after the traditional practice has been re-established.

#### 4. Concepts and Principles

The body of documents relating to the settling of disputed archival claims which UNESCO and ICA produced between 1974 and 1994, provides a sufficient basis to open up the desired consultation.

The consensus that is being sought could be built up from a number of concepts and principles appearing in these documents.

##### a/ The inalienability and imprescriptibility of public records

National laws agree in conferring the status of inalienable and imprescriptible public property on public records. The transfer of ownership of public archives especially in the case of succession of States can therefore only occur through a legislative act of the State which created them.

b/ Provenance and respect for the integrity of archival fonds

Archives are not groups of documents assembled at the whim of collectors, but instead are accumulated through the operation of their creating institutions. Their definitive place of preservation is determined by the national law of each country.

Archival doctrine, which is founded on the principle of provenance, therefore excludes, on the one hand, the possibility of dismembering fonds, and on the other hand, the acquisition by any archive institution of fonds which do not fall within its jurisdiction.

c/ The right of access and the right of reproduction

Fonds created by institutions where succession is shared between several States, and which cannot be broken up, should be physically integrated into the archival heritage of one of the States.

A state of permanent litigation can however be avoided if the other States sharing a common history see recognised a right of access to these fonds and a right to copy them.

To give effect to these rights, UNESCO has, since 1979, recommended the introduction of the concept of common heritage, which means that identical rights of access are given, on the one hand to the States concerned and on the other hand to the citizens of those States.

d/ Equity and international cooperation

Useful though recourse to the above principles is, it is not sufficient. The settlement of each claim raises particular problems which the parties concerned have to overcome by common agreement and in a spirit of fairness and mutual respect.

The International Council on Archives is convinced that a shared willingness to co-operate can, within a reasonable time, set right the abnormal situation which has resulted from political constraints in the post-war decades.

## APPENDICES



- **Captured Archives in Russia. The Issue of Restitution,**  
by Leopold Auer

### ***1. Introduction***

Because of their material and informative value archives are a coveted loot in times of war. In the course of events displacements of archives occur for their protection as well as by enemy action. Examples of destroyed, plundered and removed archives through military operations are innumerable. Probably the largest mass movement of archives, however, was accomplished during World War II for reasons of politics, ideology, military strategy and state intelligence. Public and private archives of large quantities were removed, evacuated, seized - at first by the authorities of the axis powers, later when their forces were retreating by the armies of their allied adversaries. Afflicted were archives in practically all parts of Europe being, one time or another, under foreign occupation.

Probably the most extensive plunder and devastation of archives by Nazi authorities has taken place in Eastern Europe where various agencies such as the Künsberg brigades from the German Foreign Office, the Military Archives (Heeresarchiv), Rosenberg's Special Command (Einsatzstab) and others were plundering archives for anti-Bolshevik and anti-Semitic propaganda and for strengthening control over various enemies of the regime. Captured archives included archives from the Baltic region, from Kiev and Odessa, the Smolensk District Communist Party Archives and files from the Hungarian Arrow Cross movement. When these captured archives were in turn captured by allied forces together with innumerable German records, an extensive process of confiscation and restitution was set into motion.

### ***2. Restitution and Non-Restitution after 1945***

During the fifty years since the war many of these displaced archives have been returned to their rightful owners, yet the problem is still an issue which is far from being completely settled. Just recently, the disintegration of the Soviet Union and of former Yugoslavia have faced both archivists and experts of international law with new problems of restitution. Between 1945 and 1948 an extensive American restitution of archival materials to the Soviet Union took place, comprising archives removed by the Germans from Nowgorod, Pskov, Riga and Kiev (e.g. parts of the Kiev Archives of Early Acts) and found in Berlin and near Pilsen. The Soviets themselves recovered parts of their archives from Smolensk and Odessa in Silesia and Saxony.

Not restituted were many looted Baltic materials because of the Western non-recognition of the Soviet annexation of the Baltic republics and the archives of Königsberg due to the expulsion of the German population. From the German records which fell into the hands of the Red Army Soviet authorities returned substantial portions to the German Democratic Republic between 1950 and 1960 and again in the late 1980s. In 1990 parts of the Hanseatic city archives of Bremen, Hamburg and Lübeck were restituted to the rightful owners in exchange for the Tallin City Archives which were returned to Estonia from the German Bundesarchiv. The disintegration of the Soviet Union opened the possibility of negotiations for the restitution of foreign material kept in the Moscow Special Archive. This applies in the first place to the French intelligence and counter-intelligence records found in a village in Czechoslovakia, but likewise to documents from agencies of other countries (e.g. Austria, Belgium, Germany, Hungary, Italy, the Netherlands, Poland and Romania). In 1992 restitution agreements were signed with Belgium, France and the Netherlands. However, only France was to have received any of its archives when in 1994 restitution was halted due to a resolution of the Russian parliament to suspend further action until the preparation of a comprehensive act on the settlement of all questions relating to cultural property transferred to the Soviet Union during and after World War II.

Another issue in this tug-of-war is also the non-restitution of Russian archives kept in the United States such as the Smolensk Communist Party Archives and archives of prerevolutionary Russian embassies and consulates. When in March 1992, the archivist of the United States offered the restitution of those parts of the archives which are still held in the U.S. National Archives, restitution was halted by the US Congress because of a political linkage of the issue with the unresolved claim for the transfer of a collection of Hebrew and Yiddish books and manuscripts held in the Russian State Library in Moscow to their private owners in the United States. Prerevolutionary Russian consular records held in the U.S. National Archives were returned to Moscow in 1989, while the archives of the prerevolutionary embassies in Paris and Washington are held in the Hoover Institution in California - a case where the transfer of public records to a private institution further complicates matters.

### ***3. Recommendations***

Despite all UN, Unesco and ICA resolutions and recommendations on the subject, adequate international norms and guidelines for the solution of issues of archival claims and potential restitution have never been agreed upon. The issue of restitution has not been brought under normative acts in international law, perhaps also due to the lack of interest by states involved and fearing for effects upon their rights of sovereignty. Therefore, very often a preference for bilateral and multilateral agreements between states is discernible which must be taken into account when dealing with problems of restitution of records and archival documents. National pride, national interest, mass media campaigns or even, as already in the case of the restitution after the Napoleonic wars, the reluctance of custodial institutions to return seized archives may be sometimes a greater obstacle to overcome than legal questions. Practice does not always obey principles; therefore, regardless of what legal principles and guidelines may exist or will be adopted in the future, most fundamental is a spirit of international cooperation and goodwill between the countries involved which, however, may only exist under adequate political conditions.

The first necessary step with regard to displaced archives is their identification. Very often displaced archives are kept in hidden places only known to a restricted number of persons. To keep the secret free access and use have to be denied which makes them in the literary sense of the word useless material for everybody else than their holders and even they must avoid references. At the beginning of the process of identification there may only be circumstantial evidence, perhaps not more than the fact of missing archives or archival losses. The next step has to be a precise description of the records involved with reference to the process of their creation as well as to the circumstances of their displacement to permit appropriate claims or to dismiss inappropriate ones. This includes, of course, information about their location at the time when claims are raised. It is equally necessary to know about existing legal agreements with regard to the records in question and about any legal factors that may affect their proprietary status. Not at last will be needed a thorough knowledge of international legal precedents and of relevant international legislation and discussion (such as UN documents) as well as of published and unpublished literature on the subject.

Restitution or non-restitution may be a controversial issue, what should be achieved, however, is unrestricted access to displaced archives for the sake of scholarly research and in the interest of individuals who may be concerned. In the untoward event of future conflicts involving occupation and/or transfer of territory it should be made a binding rule that every occupying power exploiting captured archives be obligated to maintain archival and file integrity by leaving all documents in their existing file context. Recommendations for the availability of microform copies of displaced records could facilitate the solution of the problems in question. The creation of an international committee on displaced archives similar to that of Unesco for the restitution of cultural property might be useful.

## Annex 1 - Examples of records under Russian custody

(mainly in the Special Archive in Moscow; cf. Kai von Jena and Wilhelm Lenz, "Die deutschen Bestände im Sonderarchiv in Moskau", in *Der Archivar* 45, 1992, col.457-467 and George C. Browder, "Captured German and Other Nations' Documents in the (Osoby) Special Archive Moscow", *Central European History* 24, 1992, p.424-445)

### Austria

Ministries of the Austro-Hungarian Monarchy and the Austrian Republic, Office of the Federal Chancellor, Federal Police, Vaterländische Front, Trade unions, Vienna University (Faculty for Medicine), Jewish organizations, Masonic lodges, Pacifist organizations, Pan-European Union, Press archives, Personal papers

### Belgium

see below Annex 2

### Czech Republic

Ministry of National Defense, Pan-European Union, Student and Youth organizations, Schlaraffia Prague, Press archives

### Finland

State council

### France

Intelligence archives, International Federation of Pen-Clubs, International Socialist Youth Organization, International Committee for Political Refugees, Jewish organizations (e.g. Executive Committee of the World Jewish Congress), Press archives (altogether more than 7,000 meters of archival material of which two thirds have been restituted)

### Germany

Reich Ministry of Justice, Reich- and Prussian Ministry of the Interior 1815-1944, Reichskanzlei 1914-1945, Reichssicherheitshauptamt 1890-1945, Geheime Staatspolizei 1913-1945, command and subunits of Waffen SS, Private Office Adolf Hitler, Records of German courts, military agencies, Jewish organisations, Masonic lodges, Press archives, Personal files and personal papers (altogether about 3,000 meters of material with 174,000 archival units)

### Greece

Pacifist organizations, Jewish organizations, Great Lodges of the Jewish Order B'nai B'rith

### Hungary

Cross Arrow Movement

### Latvia

Russian Mercy Society, Russian Educational Society

### Liechtenstein

Princely archives (Bohemia and Moravia)

### Netherlands

Military Ministry, Various Dutch associations, Pacifist organizations, Feminist Movement, International Institute for Social History, Press archives, Universum Bank

### Norway

Personal Secretariat of King Haakon VII

Poland

Chancellory of the Polish Primate, Trade unions, Student and Youth organizations, Jewish Humanitarian Society Warsaw

Rumania

Ministry for Military Affairs, Ministry for Home Affairs and various other ministries, Rumanian camps for Soviet war prisoners, Rumanian Credit Bank

Yugoslavia

Foreign Ministry, Jewish organizations, Yugoslavian Association of university women

## Annex 2 - Present State of Issues

Austria

No agreement

Belgium

After bilateral negotiations in 1991 three draft agreements have been prepared but not signed until now. Altogether 1,700 meters of archival material are kept in Moscow

Czech Republic

No information available

Finland

No information available

France

After an agreement of 12 November 1992 between the French and the Russian ministry for Foreign Affairs two thirds of the French archival material have been restituted, before the repatriation was halted by the vote of the Russian parliament.

Germany

Despite of various signed agreements (1990, 1992) no restitution has taken place due to the vote of the Russian parliament.

Greece

No information available

Hungary

A draft agreement is under preparation

Liechtenstein

No agreement

Netherlands

An agreement on the repatriation of Dutch archives kept in Russia has been signed on 21 March 1992 but not implemented

Poland

An agreement on the repatriation of Polish archives kept in Russia has been signed with the Rosarkihv in April 1992 but not implemented

Rumania

An agreement of 1994 foresees negotiations on a particular convention of the restitution of archival material



- **Vienna Convention on succession of states in respect to state property, archives and debts (April 1983)** (has not come into force)

#### *Scope of the present Part*

The articles in the present Part apply to the effects of a succession of States in respect of State archives of the predecessor State.

### PARTIE III. - ARCHIVES D'ETATS

#### Section I. - Introduction

##### Article 19

###### *Portée de la présente partie*

Les articles de la présente partie s'appliquent aux effets de la succession d'Etats en matière d'archives d'Etat de l'Etat prédécesseur.

##### Article 20

###### *State archives*

For the purposes of the articles in the present Part, "State archives of the predecessor State" means all documents of whatever date and kind, produced or received by the predecessor State in the exercise of its functions which, at the date of the succession of States, belonged to the predecessor State according to its internal law and were preserved by it directly or under its control as archives for whatever purpose.

##### Article 21

###### *Effects of the passing of State archives*

The passing of State archives of the predecessor State entails the extinction of the rights of that State and the arising of the rights of the successor State to the State archives which pass to the successor State, subject to the provisions of the articles in the present Part.

##### Article 22

###### *Date of the passing of State archives*

Unless otherwise agreed by the States concerned or decided by an appropriate international body, the date of the passing of State archives of the predecessor State is that of the succession of States.

##### Article 23

###### *Passing of State archives without compensation*

Subject to the provisions of the articles in the present Part and unless otherwise agreed by the States concerned or decided by an appropriate international body, the passing of State archives of the predecessor State to the successor State shall take place without compensation.

##### Article 24

###### *Absence of effect of a succession of States on the archives of a third State*

A succession of States shall not as such affect archives which, at the date of the succession of States, are situated in the territory of the predecessor State and which, at that date, are owned by a third State according to the internal law of the predecessor State.

##### Article 25

###### *Preservation of the integral character of groups of State archives*

Nothing in the present Part shall be considered as prejudging in any respect any question that might arise by reason of the preservation of the integral character of groups of State archives of the predecessor State.

#### Article 26

##### *Preservation and safety of State archives*

For the purpose of the implementation of the provisions of the articles in the present Part, the predecessor State shall take all measures to prevent damage or destruction to State archives which pass to the successor State in accordance with those provisions.

#### Section 2. Provisions concerning specific categories of succession of States

#### Article 27

##### *Transfer of part of the territory of a State*

1. When part of the territory of a State is transferred by that State to another State, the passing of State archives of the predecessor State to the successor State is to be settled by agreement between them.
2. In the absence of such an agreement:
  - (a) the part of State archives of the predecessor State, which for normal administration of the territory to which the succession of States relates should be at the disposal of the State to which the territory concerned is transferred, shall pass to the successor State;
  - (b) the part of State archives of the predecessor State, other than the part mentioned in subparagraph (a), that relates exclusively or principally to the territory to which the succession of States relates, shall pass to the successor State.
3. The predecessor State shall provide the successor State with the best available evidence from its State archives which bears upon title to the territory of the transferred territory or its boundaries, or which is necessary to clarify the meaning of documents of State archives of the predecessor State which pass to the Successor State pursuant to other provisions of the present article.
4. The predecessor State shall make available to the successor State, at the request and at the expense of that State, appropriate reproductions of its State archives connected with the interests of the transferred territory.
5. The successor State shall make available to the predecessor State, at the request and at the expense of that State, appropriate reproductions of State archives of the predecessor State which have passed to the successor State in accordance with paragraph 1 or 2.

#### Article 28

##### *Newly independent State*

1. When the successor State is a newly independent State:
  - (a) archives having belonged to the territory to which the succession of States relates and having become State archives of the predecessor State during the period of dependence shall pass to the newly independent State;
  - (b) the part of State archives of the predecessor State, which for normal administration of the territory to which the succession of States relates should be in that territory, shall pass to the newly independent State;
  - (c) the part of State archives of the predecessor State, other than the parts mentioned in subparagraphs (a) and (b), that relates exclusively or principally to the territory to which the succession of States relates, shall pass to the newly independent State.
2. The passing or the appropriate reproduction of parts of the State archives of the predecessor State, other than those mentioned in paragraph 1, of interest to the territory to which the succession of States relates, shall be determined by agreement between the predecessor State and the newly independent State in such a manner that each of those States can benefit as widely and equitably as possible from those parts of the State archives of the predecessor State.

3. The predecessor State shall provide the newly independent State with the best available evidence from its State archives which bears upon title to the territory of the newly independent State or its boundaries, or which is necessary to clarify the meaning of documents of States archives of the predecessor State which pass to the newly independent State pursuant to other provisions of the present article.
4. The predecessor State shall co-operate with the successor State in efforts to recover any archives which, having belonged to the territory to which the succession of States relates, were dispersed during the period of dependence.
5. Paragraphs 1 to 4 apply when a newly independent State is formed from two or more dependent territories.
6. Paragraphs 1 to 4 apply when a dependent territory becomes part of the territory of a State other than the State which was responsible for its international relations.
7. Agreements concluded between the predecessor State and the newly independent State in regard to State archives of the predecessor State shall not infringe the right of the peoples of those States to development, to information about their history, and to their cultural heritage.

#### Article 29

##### *Uniting of States*

When two or more States unite and so form one successor State, the State archives of the predecessor States shall pass to the successor State.

#### Article 30

##### *Separation of part or parts of the territory of a State*

1. When part or parts of the territory of a State separate from that State and form a State, and unless the predecessor State and the successor State otherwise agree:
  - (a) the part of State archives of the predecessor State, which for normal administration of the territory to which the succession of States relates should be in that territory, shall pass to the successor State;
  - (b) the part of State archives of the predecessor State, other than the part mentioned in subparagraph (a), that relates directly to the territory to which the succession of States relates, shall pass to the successor State.
2. The predecessor State shall provide the successor State with the best available evidence from its State archives which bears upon title to the territory of the successor State or its boundaries, or which is necessary to clarify the meaning of documents of State archives of the predecessor State which pass to the successor State pursuant to other provisions of the present article.
3. Agreements concluded between the predecessor State and the successor State in regard to State archives of the predecessor State shall not infringe the right of the peoples of those States to development, to information about their history and to their cultural heritage.
4. The predecessor and successor States shall, at the request and at the expense of one of them or on an exchange basis, make available appropriate reproductions of their State archives connected with the interests of their respective territories.
5. The provisions of paragraphs 1 to 4 apply when part of the territory of a State separates from that State and unites with another State.

## Article 31

### *Dissolution of a State*

1. When a State dissolves and ceases to exist and the parts of the territory of the predecessor State form two or more successor States, and unless the successor States concerned otherwise agree:
  - (a) the part of the State archives of the predecessor State which should be in the territory of a successor State for normal administration of its territory shall pass to that successor State;
  - (b) the part of the State archives of the predecessor State, other than the part mentioned in subparagraph (a), that relates directly to the territory of a successor State shall pass to that successor State.
2. The State archives of the predecessor State other than those mentioned in paragraph 1 shall pass to the successor States in an equitable manner, taking into account all relevant circumstances.
3. Each successor State shall provide the other successor State or States with the best available evidence from its part of the State archives of the predecessor State which bears upon title to the territories or boundaries of that other successor State or States, or which is necessary to clarify the meaning of documents of State archives of the predecessor State which pass to that State or States pursuant to other provisions of the present article.
4. Agreements concluded between the successor States concerned in regard to State archives of the predecessor State shall not infringe the right of the peoples of those States to development, to information about their history and to their cultural heritage.
5. Each successor State shall make available to any other successor State, at the request and at the expense of that State or on an exchange basis, appropriate reproductions of its part of the State archives of the predecessor State connected with the interests of the territory of that other successor State.

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