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A/CN.4/L.298

Succession of States in respect of matters other than treaties - draft articles relating to succession of State archives: text of articles X, Y and Z proposed by Mr. Tsuruoka - reproduced in A/CN.4/SR.1564, para.30

Topic:
Succession of States in respect of matters other than treaties

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before the date on which the succession of States occurred. However, if it related to administrative and technical archives accumulated in the administering State, he could not support it. In the case of the United Kingdom, for example, it had been the normal practice during the period of colonial administration to accumulate archives both in the territory under administration and in London. What might be termed "colonial correspondence" had been treated in very much the same way as diplomatic correspondence. Broadly speaking, the archives left in the territory on its accession to independence were thus a faithful reflection of the archives accumulated in the administering State. Naturally, there might be instances in which certain deficiencies in local archives could be made good by securing copies of archives constituted in the former administering State. However, if the suggestion in paragraph 1 (b) was that technical and administrative archives accumulated in the administering State were to be transferred to all territories that had become independent, it was quite unrealistic and wholly unacceptable; he could not believe that such a proposition could form the foundation of codification or of progressive development of the law. Consequently he assumed that paragraph 1 (b) did not mean that the archives of the former administering State could be decimated or dissolved, so to speak.

28. On a minor drafting point, he thought it might be preferable to replace the words "succession to archives", in paragraph 3, by the words "the passing of archives"; since succession formed the subject-matter of the whole draft, it was not possible to speak of succession to archives.

29. Lastly, he fully agreed with the principle stated in paragraph 6 of the article.

30. Mr. TSURUOKA submitted the text of three draft articles (A/CN.4/L.298), the first two of which corresponding to article A and the third to article C:

Article X. State archives of an administrative nature

"For the purposes of the articles in the present part, 'State archives of an administrative nature' means documentary material in all forms, constituted and owned by a State, which relates to the actual legislative, administrative or judicial activities of that State."

Article Y. Passing of State archives of an administrative nature

"1. All matters relating to State archives of an administrative nature of the predecessor State shall be settled by agreement between the predecessor and successor States.

"2. In the absence of agreement,

"(a) State archives of an administrative nature which, at the date of the succession of States, are

situated in the territory to which the succession of States relates, shall pass to the successor State;

"(b) the predecessor State will authorize, upon request by the successor State, the appropriate reproduction of State archives of an administrative nature which are necessary for the administration of the territory to which the succession of State relates and which are situated in the territory of the predecessor State, except where such reproduction is deemed incompatible with the national security of the predecessor State."

Article Z. Newly independent States

"When the successor State is a newly independent State,

"(a) the passing of documentary material other than State archives of an administrative nature having historical or cultural value shall be settled in conformity with the relevant provisions of the present articles concerning the passing of State property;

"(b) the agreement referred to in paragraph 1 of article Y shall be negotiated in good faith and in accordance with the principle of equity and shall duly take into account the requirements and concerns of the successor State in respect of the administration of its territory."

31. Those texts were governed by the principle set out in draft article C, paragraph 3, namely, the primacy of any agreement concluded between the predecessor and successor States under which each would benefit liberally and equitably from the archives. That principle must, indeed, be the basis for article C as a whole, even more than for article A. The rules laid down in article C must therefore be of a residual nature, primacy being accorded to the respective interests of the predecessor and successor States.

32. Mr. QUENTIN-BAXTER noted that the draft as a whole employed a system of categorization by type of State succession, which had been applied to State property and State debts and was now being applied to State archives. If the Commission could resolve the very difficult and elusive problems inherent in the present topic, little time would be lost by using the same categorization. Moreover, something would be gained if the draft eventually submitted to the General Assembly were to be comprehensive, rather than appearing arbitrarily selective. Nevertheless, if a selective approach was to be adopted, he fully agreed that special attention should be paid to newly independent States.

33. Draft article C provided a comparatively narrow, conservative and reasonable coverage of the question and could not be regarded as wide-ranging or ambitious. The scope of the article was defined in paragraphs 1 and 6. In paragraph 1, the dominant provision was that in subparagraph (b), in which the Special Rapporteur had rightly chosen to use very much the