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**A/CN.4/L.328/Add.1**

**Draft articles on succession of States in respect of State property, archives and debts. Texts proposed by the Drafting Committee: articles G to K and A - reproduced in A/CN.4/SR.1694, paras. 29 and 32**

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

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possible referred in the draft articles only to the rights and duties of diplomatic couriers. He would, however, try to take account in subsequent versions of draft article 4 of Mr. Tabibi's suggestion (*ibid.*) concerning the strengthening of the obligations of the sending State.

25. With regard to Mr. Riphagen's question (1691st meeting) concerning the wording of article 6, subparagraph 2 (*b*), he said he realized that the meaning of that provision might not be entirely clear, but what he had had in mind was a provision similar to that contained in article 47, subparagraph 2 (*b*), of the 1961 Vienna Convention.

26. Replying to the question raised by Mr. Riphagen and Mr. Aldrich (*ibid.*) concerning the difference between a diplomatic bag entrusted to the captain of a ship or a commercial aircraft and a diplomatic bag sent through normal postal channels as a consignment on a ship or an aircraft, he said that when a diplomatic bag was entrusted to the captain of a ship or an aircraft, an official document indicating the number of packages constituting the diplomatic bag was required and the captain of the ship or aircraft had physical custody of the bag, whereas in the case of a bag sent as parcel post, overland shipment or airfreight, only the ordinary documents for forwarding were required and the bag was the responsibility of the postal administration concerned. Legal protection for both types of diplomatic bags was, however, the same.

27. Since the Commission's term of office was ending and it was important to ensure the continuity of the study of the topic under consideration, he suggested that the Secretariat might send a questionnaire to Governments requesting them to provide all relevant information on treaties, national laws, regulations, procedures and practices concerning the treatment of the diplomatic courier and the diplomatic bag and that it might request that the topic should be discussed in the Sixth Committee of the General Assembly.

28. The CHAIRMAN said that, if there were no objections, he would take it that the Commission agreed to refer draft articles 1 to 6 to the Drafting Committee.

*It was so decided.*

**Succession of States in respect of matters other than treaties (concluded) (A/CN.4/338 and Add.1-4, A/CN.4/345 and Add.1-3, A/CN.4/L.328 and Add.1 and 2)**

[Item 2 of the agenda]

**DRAFT ARTICLES PROPOSED BY THE DRAFTING COMMITTEE (concluded)**

**ARTICLE G<sup>6</sup> (Scope of the articles in the present Part (State archives)),**

<sup>6</sup> For initial consideration of the text by the Commission at its present session, see 1688th meeting, paras. 33 *et seq.*

**ARTICLE H<sup>7</sup> (Effects of the passing of State archives),  
ARTICLE I<sup>8</sup> (Date of the passing of State archives),  
ARTICLE J<sup>9</sup> (Passing of State archives without compensation), and**

**ARTICLE K<sup>10</sup> (Absence of effect of succession of States on the archives of a third State)**

29. Mr. DÍAZ GONZÁLEZ (Chairman of the Drafting Committee) said that the Drafting Committee proposed that articles G, H, I, J and K should read (A/CN.4/L.328/Add.1):

**Article G. Scope of the articles in the present Part**

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

**Article H. Effects of the passing of State archives**

A succession of States entails the extinction of the rights of the predecessor State and the arising of the rights of the successor State to such of the State archives as pass to the successor State in accordance with the provisions of the articles in the present Part.

**Article I. Date of the passing of State archives**

Unless otherwise agreed or decided, the date of the passing of State archives is that of the succession of States.

**Article J. Passing of State archives without compensation**

Subject to the provisions of the articles in the present Part and unless otherwise agreed or decided, the passing of State archives from the predecessor State to the successor State shall take place without compensation.

**Article K. Absence of effect of a succession of States on the archives of a third State**

A succession of States shall not as such affect State 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.

30. Those articles, together with article A, constituted the first section, entitled "Introduction", of Part III of the draft, which dealt with State archives. Article A, which contained a definition of the expression "State archives", had been adopted by the Commission in first reading, while articles G, H, I, J and K had been submitted by the Special Rapporteur at the present session and referred by the Commission for the first time to the Drafting Committee. Those articles contained introductory provisions applicable to Part III of the draft as a whole. They corresponded to the provisions adopted in the introductory sections of Parts II and IV of the draft, which dealt with State property and State debts respectively. In drafting the titles and texts of the articles under consideration, the Drafting Committee had drawn particularly on the

<sup>7</sup> *Idem*, 1689th meeting, paras. 1-15.

<sup>8</sup> *Idem*.

<sup>9</sup> *Idem*.

<sup>10</sup> *Idem*.

articles in Part II, Section 1 (State property). It had decided, in the light of the comments made in the Commission, to maintain the parallelism between the introductory sections of Parts II and III. To that end, it had made the same drafting amendments to the articles under consideration as had been made to the articles in Part II, section 1, with the result that the articles were now identical—except as concerned the use of the terms “property” and “archives”.

*Articles G, H, I and J were adopted.*

31. Mr. ALDRICH said that, in his view, article K, like article 9, was neither necessary nor desirable.

*Article K was adopted.*

#### ARTICLE A<sup>11</sup> (State archives)

32. Mr. DÍAZ GONZÁLEZ (Chairman of the Drafting Committee) said that article A as proposed by the Drafting Committee (A/CN.4/328/Add.1) read:

##### *Article A. State archives*

**For the purposes of the present articles, “State archives” means all documents of whatever kind which, at the date of the succession of States, belonged to the predecessor State according to its internal law and had been kept by it as archives.**

33. A number of drafting changes had been made to the article to preclude the possibility of its being interpreted restrictively: the words “the collection of documents of all kinds” had been replaced by the words “all documents of whatever kind”, while, at the end of the article, the word “preserved” had been replaced by the word “kept” and the term “State archives” had been replaced by the term “archives”, which, in the context of the definition, included all types of official record. The replacement of the word “preserved” by the word “kept” made clear the scope of the definition, which covered the archives known as “living archives”.

*Article A was adopted.*

#### ARTICLE 3 *quater* (Rights and obligations of natural or juridical persons)

34. Mr. DÍAZ GONZÁLEZ (Chairman of the Drafting Committee) said that the Drafting Committee proposed an article 3 *quater* (A/CN.4/L.328/Add.2) which read:

##### *Article 3 quater. Rights and obligations of natural or juridical persons*

**Nothing in the present articles shall be considered as prejudging in any respect any question relating to the rights and obligations of natural or juridical persons.**

The article was designed to forestall the impression that the effects of a succession of States in respect of

State property, archives or debts might prejudice in any way any question relating to the rights and obligations of natural or juridical persons. The Drafting Committee had felt it particularly appropriate to formulate such a safeguard clause in view of the Commission’s decision (1692nd meeting) not to refer in article 16 to “any other financial obligation chargeable to a State”.

35. Article 3 *quater* had been drafted in very general terms and had, therefore, been included in Part I, which contained general provisions applicable to the draft as a whole.

36. Sir Francis VALLAT said that, while he was not opposed to article 3 *quater*, and understood its intention, he was of the opinion that it did not make good the omission of article 16, subparagraph (b), from the set of draft articles, which now contained no provision that would enable natural or juridical persons to have recourse against any of the successor States formed as a result of the dissolution of a State.

*Article 3 quater was adopted.*

#### ARTICLE L (Preservation of the unity of State archives)

37. Mr. DÍAZ GONZÁLEZ (Chairman of the Drafting Committee) said that article L as proposed by the Drafting Committee (A/CN.4/L.328/Add.2) read:

##### *Article L. Preservation of the unity 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 unity of State archives.**

The article was based on the former paragraph 6 of article F, which had been adopted in first reading the previous year.<sup>12</sup>

38. In the light of the discussion within the Commission, the Drafting Committee had felt it advisable to draw up a separate article laying down, in a general form, the principle of the unity of State archives. That principle was relevant not only to the category of State succession covered by article F, but also to the other such categories covered by Part III, section 2. The Drafting Committee had, therefore, stated it in general terms and included it in Part III, section 1, the provisions of which were applicable to Part III as a whole.

39. Since it contained a safeguard clause, article L had been modelled on the other similar clauses to be found in articles 3 *ter* and 3 *quater*.

*Article L was adopted.*

#### ARTICLE B<sup>13</sup> (Newly independent State)

<sup>12</sup> For text, see 1690th meeting, para. 1.

<sup>13</sup> For initial consideration of the text by the Commission at its present session, see 1689th meeting, paras. 16–42.

<sup>11</sup> *Idem*, 1688th meeting, paras. 33 *et seq.*