Document:-
A/CN.4/SR.1562

Summary record of the 1562nd meeting

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

Extract from the Yearbook of the International Law Commission:-
1979, vol. I

mon heritage of the Spanish people of Europe and the Spanish people of Latin America.

35. Moreover, it should not be forgotten that, when the Spanish had first arrived in what was now Latin America, there had been no archives in the sense now attributed to that term, although cultural property had existed, for instance in the form of monuments. When Spain had recognized the new Spanish-speaking States of Latin America *de jure*, the archives had been reconstituted in the territory of the metropolitan Power. Only the archives of Cuba and Puerto Rico had been transferred, and they had passed to the new metropolitan Power, the United States of America.

36. The Special Rapporteur had rightly made reference in his report to the cultural property removed from the newly independent States of Latin America. It was well known that there were few, if any, Latin American *objets d'art* in Spain. Indeed, even an object of symbolic value such as the golden Inca mask was now in Austria, not Spain. All such cultural property had been removed after independence by other States or by archeological societies that had undertaken excavations in Latin America. A typical case was the Machupicchu site in Peru; almost everything excavated at that site was now on view in the museums of other countries. Excavations in the territories of the Toltecs and Aztecs, also after independence, had likewise yielded treasures that had been taken abroad. There had been no treasure to find in Venezuela, since the nomadic tribes that had lived there had left behind neither archives nor monuments, but a collection of gold objects found in Colombia had recently been on display in Europe, and there were more Ecuadorian *objets d'art* in the United States of America than in Ecuador itself. In none of those cases could it be asserted that the predecessor State was under an obligation to return cultural property, because it had not been removed by the administering Power.

37. In those circumstances, could such property be treated as archives that should pass to the successor State by succession? For his part, he was not clear about the distinction between artistic and cultural property, on the one hand, and archives on the other, which together formed the historical heritage of a State. That heritage was to some extent protected by the various conventions adopted under the auspices of UNESCO, in particular by the Paris Convention of 14 November 1970.[3] Account should perhaps be taken of existing international jurisprudence in so far as it related to the protection of the cultural and artistic heritage, which should however be differentiated from archives. A consideration of that general point might assist the Commission in its task.

38. With regard to paragraph 1 of draft article A, the idea of belonging to the territory should not be stressed. It was not so much a question of State archives that belonged to the territory as of those relating to or concerning the territory. For example, written documents might exist that belonged to the territory but did not concern it. Certain documents of great importance concerning Latin American countries were not even in Spain; they were in the Netherlands, the United Kingdom or the United States of America.

39. The Special Rapporteur had drawn an interesting distinction between the actual transfer of documents to the State concerned, on the one hand, and the communication of such documents, on the other. Actual transfer was impossible where the material concerned was the joint property or common heritage of several States; in such cases, however, there was the possibility of reproduction by modern techniques. Obviously, a copy did not have the same value as the original, but if a State did not have the original it could always obtain accurate information on a given historical event, or scientific and cultural data of interest to it, from microfilms or photocopies. France, the Netherlands and the United Kingdom, for example, held certain archives that related not only to the policies pursued on their behalf by their agents in the territories of Latin America but also to their general policy in the context of the balance of power in Europe. It would be impossible for those States to surrender the documents in question, which did not concern Latin America only, but they could supply photocopies or microfilms. In that connexion, he pointed out that Venezuela had recently sent a mission to Europe, as a result of which photocopies would have been made, by the end of 1979, of nearly all the documents on Latin America now to be found in Europe, except in the Soviet Union.

40. Lastly, he stressed the need to examine the draft articles on succession to State archives with the utmost care, in view of the importance of the subject, and to distinguish clearly between that subject and a number of similar matters dealt with in other conventions.

The meeting rose at 1 p.m.

---

[3] Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (United Nations, *Treaty Series*, vol. 823, p. 231).

1562nd MEETING

Thursday, 28 June 1979, at 10.10 a.m.

Chairman: Mr. Milan ŠAHOVIĆ

Members present: Mr. Barboza, Mr. Bedjaoui, Mr. Dadzie, Mr. Díaz González, Mr. Evensen, Mr. Njenga, Mr. Pinto, Mr. Quentin-Baxter, Mr. Reuter, Mr. Riphagen, Mr. Tsuruoka, Mr. Ushakov, Sir Francis Vallat.

Succession of States in respect of matters other than treaties (*continued*) (A/CN.4/322 and Corr.1 and Add.1 and 2)

[Item 3 of the agenda]

DRAFT ARTICLES SUBMITTED BY THE SPECIAL RAPPORTEUR (*continued*)

ARTICLE A (Transfer of State archives)[1] (*continued*)

1. Sir Francis VALLAT said that the Commission had been wise to decide that special treatment was required for the question of State archives, which was undoubtedly difficult and technical. He wondered, however, whether the Commission should not follow the example of UNESCO and seek expert advice, particularly in regard to the return of documentary and other material, so as to ensure that it arrived at sound and satisfactory conclusions. He was in no way belittling the Special Rapporteur's excellent work, but he knew from experience how many technical problems were involved.

2. The Commission would not find it easy to form clear legal views on the subject, and it was necessary to proceed with some caution. The Special Rapporteur had referred to a series of principles, including the principle of territoriality, which were really more in the nature of ideas or concepts. If the Commission was to consider principles in a legal context, then those principles would have to be not only identified but also clarified and defined, particularly in an area in which they overlapped and even tended to conflict. Where any set of papers was concerned there would inevitably be a conflict of interests, which would not necessarily be confined to the predecessor and successor States.

3. In his view, two related principles were of particular importance: the principle of the place of accumulation and the principle of the unity of archival collections. Archives, in the sense in which the Commission used the term, were collected by government offices, which were normally located in the capital city of the State concerned or the place where government business was carried on, and were gradually built up until they formed a rich and varied collection of documentary material. There could be no archives unless documents were collected at a given point or points, which meant that they had a natural attachment to their place of accumulation. Allied to that principle, but of greater importance, was the principle that a collection built up as a natural unit within the government service should remain a natural unit.

4. In that connexion, he had been impressed by the remarks of Mr. Díaz González (1561st meeting), whose problems in obtaining documents from various sources he appreciated only too well. If he had understood aright, Mr. Díaz González was not suggesting that the archives of other States should be broken down and handed over to Venezuela simply because that country had a primary interest in the content of some of the documents and, indeed, a primary interest also from the point of view of teritorial sovereignty. The kind of problem with which the government of Venezuela was faced should be resolved not by the passing or transfer of part of the government archives of certain other countries, but by access to those archives. The unity of the accumulated archives should be preserved in the interests of the world as a whole, and that was one of the cardinal principles to be reflected in any modern codification of the subject.

5. The need to delimit the subject-matter with which the Commission was concerned had been generally recognized. He thought it was necessary to distinguish between government records and other objects of intrinsic value, such as works of art. In particular cases, that distinction was of course very difficult to draw, but it was not one that could be avoided in principle. He therefore agreed that the Commission should think in terms of a definition based on the concept of records of a documentary character, so that it would be the nature, as a record, of the particular paper or instrument concerned, and also its nature as part of a collection, that would give it the character of an archive. It seemed to him that on that basis archives were properly to be distinguished from, say, paintings and valuable coins. The problem of the removal of treasure from certain countries undoubtedly called for a solution, but it had its own special aspects and should be kept distinct from the question of archives. Of course, he was not excluding the possibility of archives being recorded on some material other than paper or parchment.

6. Another point on which the Commission should be clear was the legal nature of the subject. He had detected a slight tendency to treat succession of States as though it were an aspect of the return or restitution of archives, whereas, in his view, a clear distinction should be made between those two matters. He had no hesitation in agreeing that, where records had been removed from a territory that had become a separate State to the territory of another State, they should, in principle, be restored; but that was not really a problem of succession of States.

7. Another distinction that should be made was between the transfer of an item and what in English law was known as the "passing of property" in the item. Draft article A had been formulated in terms of the passing of property, but when the archives in question were located in the territory of the predecessor State, the time would inevitably come when they would have to be physically transported to the successor State. That involved innumerable practical problems, which was why he considered it essential to make such a distinction. At the same time, he would have thought that any such transfer was contrary to the basic principle of the unity of State archives. That, in turn, pointed to the need to go somewhat beyond the strict confines of the topic—since it might be unrealistic to isolate the abstract question of the pass-

[1] For text, see 1560th meeting, para. 1.

ing of title—and to draft certain other provisions. For example, the Special Rapporteur had contemplated the possibility of providing for the reproduction of State archives, and some such provision might indeed be necessary in the general interest. A copy, of course, particularly on microfilm, was certainly no substitute for the original, but it was better than nothing.

8. On a broader plane, it was necessary to bear in mind that interest in State archives was not confined to the successor and predecessor States, since archives were in a sense the heritage of all mankind. For any set of State archives, there might be some 40 or 50 States with a direct interest, either legal or cultural.

9. Lastly, there were a number of practical problems concerning archives to be considered, which related to preservation, protection against destruction, access and national security.

10. Mr. TSURUOKA drew the Commission's attention to two cases of succession of States in respect of archives concerning Japan, which had been the successor State in one case and the predecessor State in the other.

11. The first case, in which Japan had been the successor State, concerned the restoration to Japan, in 1953, of the Amami Islands, part of the Ryukyu Islands, which had been placed under United States administration after the Second World War under the terms of the Peace Treaty with Japan. The 1953 Agreement between the United States of America and Japan concerning the Amami Islands[2] provided, in article III, paragraph 4, that the property of the government of the Ryukyu Islands, including papers, archives and evidentiary materials, situated in the Amami Islands on 25 December 1953, would be transferred to the Government of Japan on that date and without compensation.

12. The second case, in which Japan had been the predecessor State, concerned the peace treaty concluded in 1965 between Japan and the Republic of Korea,[3] and did not relate directly to archives, Indeed, that treaty, which had been concluded to settle the basic relations between the two countries, did not mention the transfer of archives, although such a transfer had in fact taken place. But in addition to that basic treaty, Japan and the Republic of Korea had in the same year concluded an Agreement on art objects and cultural co-operation,[4] article II of which provided that the Government of Japan would restore to the Government of the Republic of Korea, by a procedure to be agreed upon between the two Governments, and within six months of the entry into force of the Agreement, the works of art listed in the annex.

13. As in those two cases, succession to archives was generally settled by agreement between the two States concerned, without its being necessary to refer to special rules of international law concerning the transfer of archives. If it was nevertheless necessary to draw up rules on succession of States in respect of archives, what was most important was to specify clearly which archives were to be transferred in the event of a succession of States.

14. A distinction had first to be made between archives belonging to the State and those belonging to private persons. It was also necessary to distinguish between State archives proper and historical or cultural State archives. That distinction was based on a criterion of time: most States published their archives after 20 or 30 years, and State archives thus became historical State archives, as they were now of only historical value and were accessible to everyone. In his opinion, the draft articles should cover only State archives proper, in other words those that had not yet been published. Lastly, State archives must be distinguished from works of arts. Draft article 1[5] stated:

> The present articles apply to the effects of succession of States in respect of matters other than treaties.

It was therefore necessary to circumscribe the subject-matter by limiting it to the direct effects of succession of States. The example of Japan and the Republic of Korea showed that, without being regulated by a treaty on State succession, works of art and historical documents could be the subject of artistic and cultural collaboration between the two countries concerned. The Japanese Government had even promised to encourage Japanese owners of works of art of Korean origin to restore them to the Republic of Korea.

15. He thought, therefore, that State archives proper should be distinguished from other documents and works of art and that the Commission should concern itself only with State archives. It should also be observed that draft article A stated only a residuary rule, leaving essentials to be freely settled by agreement between the parties. That rule should merely establish, in an equitable manner, the necessary minimum conditions for satisfying the legitimate interests of the predecessor State and the successor State.

16. Mr. NJENGA said that the Special Rapporteur's eleventh report provided an interesting insight into a problem that the newly independent States had begun to perceive but had not yet really formulated. The Commission had been wise in its decision to treat archives separately from other movable property, and its work on the progressive development of international law in that area would be particularly valuable, given the situation of newly independent countries in regard to archives. In many of those countries, particularly those whose accession to independence had been preceded by armed conflict, documents had been removed or destroyed, or had simply disappeared. He was referring not only to recent documents but also to documents dating back several centuries, which were of considerable importance for a country's history.

[2] United Nations, *Treaty Series*, vol. 222, p. 193.

[3] Treaty on basic relations between Japan and the Republic of Korea (*ibid.*, vol. 583, p. 33).

[4] *Ibid.*, vol. 584, p. 49.

[5] See 1560th meeting, foot-note 1.

History was a part of the national heritage and an essential element in self-knowledge, and he therefore considered that, in affording newly independent States an opportunity of obtaining at least copies of some of those documents, the draft articles were taking a step in the right direction, which should be encouraged.

17. He agreed that the question of the definition of archives was not particularly important at that stage and that the Commission could perhaps revert to it later. At the same time, he believed that if the definition were limited to documentary material alone, the draft articles would lose much of their force. As was clear from the Special Rapporteur's report (A/CN.4/322 and Corr.1 and Add.1 and 2, paras. 8–19), archives could include many other objects, and he agreed with Mr. Pinto (1561st meeting) that documents reproduced on substances other than paper should not be excluded. Indeed, one of the means by which the history of a country could be traced was by deciphering inscriptions on wood and stone. In his country, Kenya, all such inscriptions were now treated as archives, and one private collection, which included stamps and old books dating back to the period before the Britisch administration, had been considered of such national importance that the premises in which it was housed, together with the contents, were to be declared a national museum. Consequently, it was important not to cast the definition of "archives" in such narrow terms that materials of that kind would be excluded.

18. The draft rightly emphasized the need for agreement between the predecessor and successor States, which would serve the interests of equity and obviate the likelihood of dissension. However, clear-cut rules were also needed to regulate the many cases in which there was no agreement and to oblige the predecessor State to return archives, both documentary and historical, to the successor State or, as the case might be, to leave such documents in the successor State. The Special Rapporteur had given a number of reasons why newly independent States had not been in a position to insist on such agreements (A/CN.4/322 and Corr.1 and Add.1 and 2, para. 63), but there was an additional reason, namely, that in many cases those States did not even know what archives had been removed.

19. He had some doubts about the exception made in draft article A for archives of sovereignty, since some of those archives might be of only relative importance to the predecessor State, but of vital importance to the successor State. If it were decided to retain that exception, he would suggest—and there was some basis in practice for his suggestion—that it be understood not to apply to documents and records pertaining to boundaries. Countries that did not know on what basis the boundaries they had inherited had been drawn—and that applied to most African countries—would then be in a position to defend their legal position regarding those boundaries.

20. He did not think there was any need to seek the advice of experts, as Sir Francis Vallat had suggested, since the Special Rapporteur had gone into the subject in great detail in his report, and UNESCO's long experience also indicated that the material available was adequate to enable the Commission to deal with the subject. Moreover, the provision in the draft concerning reproduction of documentary archives would ensure an equitable arrangement that was fair to both sides. Admittedly, a copy was not the same as an original, but there might be cases in which a country would have to be content with a copy: for instance, where it would be inequitable for the successor State to deprive the predecessor State of certain documents.

21. He did not share the Special Rapporteur's doubts about the position of interested third States. Provided that they were prepared to bear the cost of reproduction, and that provision to that effect were inserted in the draft, third States should be entitled to secure copies of administrative archives.

22. Mr. EVENSEN said that the Commission would be deceiving itself if it failed to recognize that the subject under consideration had strong political overtones. In the circumstances, its main task was to engage not in codification but in the progressive development of international law pertaining to succession to State archives, and to formulate articles that would have some chance of survival when they came to be examined in the political climate of the General Assembly. He fully agreed with the legal principles reflected in the proposals under consideration and wished to congratulate the Special Rapporteur on the great wisdom and moderation he had displayed in drafting proposals that constituted progressive development of the law.

23. On the other hand, he could not agree with Sir Francis Vallat's view that the Commission did not have the necessary expertise to accomplish the task before it. The Special Rapporteur's report in fact contained sufficient factual and legal information to enable the Commission to move ahead. Sir Francis Vallat had also mentioned two fundamental principles relating to State archives, namely, unity of archives and integrity of their place of accumulation. With regard to the first of those principles, the originals could be returned to what might be termed the "rightful owners", but the unity of archives could still be maintained thanks to the efficacy of modern reproduction processes. It was also important to bear in mind that the unity of accumulated archives must to some extent depend upon the manner in which they had been accumulated—an essential consideration underlying the Special Rapporteur's report. Again, there were a number of principles of a legal, social and moral character that could be invoked in opposition to the principle of integrity of the place of accumulation of archives, and he thought that they too should form a cornerstone of the present draft.

24. The very substantial State practice referred to by the Special Rapporteur showed that succession to State archives was an essential element of the different types of State succession. Hence the formulation of a set of relevant principles was not only useful but also

necessary; in addition, the Commission was politically expected to engage in such a task. One of the basic principles should be that of fair and reasonable restitution of archives. In that connexion, he drew attention to the appeal made by the Director-General of UNESCO that governments should conclude bilateral or multilateral agreements concerning the restitution of archives—an appeal in which he had stated that the viscissitudes of history had robbed many peoples of a priceless portion of their inheritance, in which their enduring identity found its embodiment (*ibid.*, para. 45).

25. Mr. QUENTIN-BAXTER thought it surprising that, just as the Special Rapporteur was close to completing the immense task of preparing a draft on State succession in respect of matters other than treaties, he should have submitted a final report that opened up entirely new vistas. The fact that, amid all his other official burdens, he had been able to prepare such an excellent report on highly important issues was little short of miraculous.

26. It was difficult to relate the magnitude of the topic under discussion to the over-all structure of the draft articles. In the context in which it had been previously considered, the definition of State property in article 5 was admirably suited to the purposes of the Commission, which was not concerned with property owned by private persons or by any public institution other than the State. Regardless of what might happen in a case of State concession, internal law, until it was changed, was the guide for establishing the legal entity in which rights or obligations were vested. It was only when the State itself, under its internal law, was deemed to own the property in question that internal law failed to provide a means of settling a case of succession of States. International law must then assist internal law in determining who the new owner was to be. As Mr. Díaz González had observed (1561st meeting), the question whether documents or artefacts that were vital to a new State happened to be the property of the predecessor State at the moment of succession was quite an arbitrary factor. The Commission's concern was with the intrinsic importance of the relevant material to the successor State. In its texts on the topic of State succession, the Commission had dealt solely with a particular moment in time. It had not dealt with matters arising before or after the succession of States, which came under the broader topic of State responsibility. However, the important considerations advanced by the Special Rapporteur were in no sense confined to that one point in time, namely, the moment at which the succession occurred: the prime consideration was the connexion between a State and all the documents and other material that helped to determine the nature, title, history and feeling of identity of the State.

27. It should be remembered that the meaning of the term "State property", as employed in part I of the draft, depended on the meaning attached to it in internal law, which in any event decided what constituted property. For example, in the case of copyright, the very existence of such a property right or interest depended in any given instance on the internal law of the State. In regard to State archives, however, the Commission's primary concern was not whether the predecessor State considered them as constituting property in any ordinary sense of the term. Of course, an item that was a work of art would have commercial value, but even in the more mundane case of State papers, countries were concerned with something that was of great importance to them. As Mr. Reuter (*ibid.*) had noted, it was a question of their soul. In that perspective, it had already been noted that States did, in varying degrees, interfere with property rights. For instance, private owners of items that were intrinsically important to their country were sometimes subject to rules which prevented them from altering the items in question or selling them on the world market. However, the point to be borne in mind was that, although many countries were acutely conscious of the need to preserve their cultural and artistic heritage, they tended to deal with such matters within the framework of respect for existing property rights and simply imposed certain restrictions on ownership. Consequently, it was reasonable to believe that they would wish to apply the same principles in dealing with items of great significance to other countries.

28. Clearly, the topic was of such magnitude that it went beyond the rather narrow scope of the particular moment of succession and of a transaction that involved only the predecessor and successor States and the question as to what the predecessor State regarded as property. He therefore had great difficulty in fitting the subject of succession to State archives into part I of the draft as it had evolved so far, and considered that the proposed articles on that subject should not be regarded as a modification of that part of the draft.

29. The subject was important enough to warrant mention in the draft articles, but it could not be treated adequately in terms of the definition of State property contained in article 5. Obviously, in a case of State succession, the successor State should, as far as possible, receive the material that confirmed its title to sovereignty over particular areas of land. Modern reproduction processes provided the answer to many problems, and, although the integrity of the place of accumulation of State archives must necessarily be an important factor, it was equally desirable that, wherever possible, a complete collection of the documents intimately associated with a country's very being should be available to scholars and researchers in the country itself, which should not be compelled to go on bended knee to seek assistance from other countries where the documents were preserved.

30. The draft articles should certainly refer to the matter of succession to State archives, but it would be unfortunate if it were suggested that the much wider subject of the restitution of objects of cultural and other importance to States could be dealt with adequately within the confines of the topic of State succession in respect of matters other than treaties. It would be even more unfortunate if the Commission's coverage of the question were artificially reduced by dealing with the matter in terms of the definition of

State property in article 5, which had been worked out for an entirely different purpose.

31. Mr. BEDJAOUI (Special Rapporteur) noted that the debate had gone far beyond the limits of draft article A to cover all the draft articles concerning State archives, and even articles 1 to 25, which had already been adopted. To answer the questions raised during the debate he would sometimes have to replace article A in the general framework of the articles concerning State archives, and replace the latter in the context of the draft as a whole.

32. In giving his eleventh report an especially wide scope and trying, at the cost of considerable effort, to study the subject in all its aspects, he had been actuated by a sense of duty. Accordingly, he would find it very regrettable if the Commission did not succeed in adopting at least some of the articles on archives at its current session. He would emphasize, in addition, that those articles would make it possible to give the draft topical interest and that the Commission ought not to lose that opportunity. The Commission had been dealing with the subject of succession of States since 1963, but so far its work had resulted only in the adoption of the Convention on Succession of States in respect of Treaties. It was important that the draft articles on succession of States in respect of matters other than treaties should be prepared as soon as possible. A few provisions of that draft—those relating to the nearly completed process of decolonization—would appear outdated, and it was precisely the presence in the draft of provisions concerning archives, which would probably continue to raise difficulties in cases of State succession, that would make the draft an instrument of some value to the international community. He had by no means been convinced by the members of the Commission who had expressed doubts about the advisability of including articles on State archives in the draft; like Mr. Evensen, he thought, on the contrary, that it would be a mistake not to take account of the very pronounced political trend in favour of studying the problems raised by archives in cases of State succession. In addition, as Mr. Njenga and Mr. Evensen had observed, in drafting provisions on that subject the Commission could engage not only in codification but also in progressive development of international law.

33. It was no doubt the difficulties of the subject that had caused Sir Francis Vallat to have some doubts and to suggest recourse to experts. Without claiming to be a complete expert in the matter, he wished to point out that his report was the result of the 17 years he had devoted, in the service of his country, to settling the problem of archives with the former colonial Power. As a UNESCO expert, he had also studied the question of archives with other experts, who had referred to his work on the subject. Since his third report on succession of States in respect of matters other than treaties, which he had submitted in 1970, he had referred to the problem of archives. If the Commission thought it necessary to call in experts, he would agree, but he did not see what form that collaboration could take. He suggested that the Commission should rather adopt a solution half way between that of simply disregarding the problem of archives, which was of such vital importance for some countries, and that of studying the problem exhaustively in the same perspective as his own. The Commission could confine itself to drafting two or three articles in the most flexible terms possible. As some members had pointed out, the difficulties of the subject were not, after all, insurmountable.

34. Referring to the two agreements mentioned by Mr. Tsuruoka, he observed that the latter seemed to have perceived a succession of States where there had been none in the case of the first treaty, and not to have realized that there had been a succession of States in the case of the second. The agreement of 24 December 1953 between Japan and the United States of America, to which he had already referred in his previous reports, had been concluded in the context of military occupation following the Second World War. The United States could not be considered to have succeeded Japan in a part of Japanese territory occupied by United States troops. With regard to the agreement concluded between the Republic of Korea and Japan concerning works of art, articles 1 to 25 of the draft would be applicable. Works of art, apart from their cultural and historical nature, were in fact movable property that was part of the inheritance and were consequently governed by the relevant provisions of those articles. However, those articles became inadequate when State archives had to be considered as movable property, which of course they were, but neglecting their market value to emphasize their informational, documentary, cultural and historical value. It was because those aspects of State archives could not be disregarded that the draft should be supplemented by special provisions on archives.

35. Mr. Tsuruoka had rightly stressed the importance of the agreement of the parties and had pointed out that the draft would not be of any real use to the international community except in so far as it was largely based on the principle of equity. It was also necessary to emphasize the distinction between restitution of archives and works of art, and international co-operation in cultural matters. States could co-operate in making archives or works of art known while in no way prejudicing the rights of ownership in such movable property. If the rules on State succession gave a right of ownership to the predecessor State or the successor State, those rules must be applied, but they did not prevent collaboration between the States concerned. As examples of such co-operation between a former administering Power and a former colony, he mentioned the case of the Netherlands and Indonesia, as well as that of Belgium and Zaire.

36. While recognizing the importance of the problem of archives, Mr. Njenga had thought that the Special Rapporteur had perhaps treated the predecessor State too favourably by allowing it to retain the originals of its archives of sovereignty. However, draft article A applied to all types of State succession, and it would have been difficult to lay down any other rule. In practice, archives of succession were located at the

time of succession in the capital of the metropolitan country, either because they had always been preserved there or because the authorities of that country had moved them there shortly before the succession. In any case, they were located far from the successor State and it would be difficult to transfer them to it. That was why he had proposed that the successor State be given a right of access to those archives and an opportunity to obtain copies. In the event of the transfer of a part of the territory of a State, it was obvious that the archives of sovereignty would not be in that part of the territory, which was often quite small, but in the capital of the predecessor State. Hence it would not be reasonable to require that archives of that kind, which constituted a collection that should not be split up, should be handed over to the successor State in their original form. In cases of decolonization, archives of sovereignty were generally not located in the colony but had been removed by the administering Power, and it would be difficult to secure their return to the successor States; that State should be satisfied to have access to them. Practice showed that even States created by the dissolution of a State accepted that the State among them in whose territory the capital of the predecessor State was situated should retain the archives of sovereignty in their entirety, each successor State having access to them and being entitled to reproduce them or to obtain other political archives in compensation. In draft article A he had therefore attempted to find a compromise solution that would satisfy the requirements of each type of succession.

The meeting rose at 1.5 p.m.

1563rd MEETING

Friday, 29 June 1979, at 10.10 a.m.

Chairman: Mr. Milan ŠAHOVIĆ

Members present: Mr. Barboza, Mr. Bedjaoui, Mr. Dadzie, Mr. Díaz González, Mr. Francis, Mr. Njenga, Mr. Quentin-Baxter, Mr. Reuter, Mr. Riphagen, Mr. Tsuruoka, Mr. Ushakov, Sir Francis Vallat.

Tribute to the memory of Mr. Constantin Th. Eustathiades, former member of the Commission

1. The CHAIRMAN announced the death of Mr. Constantin Th. Eustathiades, who had been a member of the Commission from 1967 to 1971, and who had distinguished himself not only in the Commission but also in the Sixth Committee of the General Assembly, on which he had represented Greece for many years. Mr. Eustathiades had also contributed to the development of modern international law by his scholarly works. A telegram of condolences would be sent to Mr. Eustathiades' family on behalf of the Commission.

On the proposal of the Chairman, the members of the Commission observed a minute's silence in tribute to the memory of Mr. Constantin Th. Eustathiades.

Succession of States in respect of matters other than treaties (*continued*) (A/CN.4/322 and Corr.1 and Add.1 and 2)

[Item 3 of the agenda]

DRAFT ARTICLES SUBMITTED BY THE SPECIAL RAPPORTEUR (*continued*)

ARTICLE A (Transfer of State archives)[1] (*concluded*)

2. Mr. BEDJAOUI (Special Rapporteur) said it was gratifying that Sir Francis Vallat (1562nd meeting) had drawn attention to the need to take account of two principles: the place of accumulation of archives, which was generally the capital of the predecessor State, and the unity of archival collections. Archives thus accumulated, which were usually archives of sovereignty, constituted a collection that should not be affected by a succession of States. It was out of respect for those principles that he had proposed that, for certain types of succession, archives deemed essential to the successor State should simply be reproduced. In that connexion, it should be noted that not only the dismantling of such a collection but also any improper additions made to it by the predecessor State were harmful. During the "suspect" period, the predecessor State should therefore refrain from swelling its archival collection improperly and, if necessary, return any additions improperly made.

3. Sir Francis Vallat had also pointed out that the physical transfer of archives was not always an easy matter. For his own part, he had never recommended the transfer of all archives, but simply of those that the predecessor State had improperly added to its collection. It was obvious that archives formed part of the heritage of mankind and that their importance to the international community outweighed the respective interests of the predecessor and successor States. Every country possessed archives on other countries and could assist anyone in writing world history. As Sir Francis Vallat had also remarked, it was important to preserve archives and to prevent their destruction. Finally, with regard to State security, Sir Francis had reiterated the concern he himself had expressed, namely, that a State, for reasons of national security, might be unable to transfer archives, either the originals or copies.

[1] For text, see 1560th meeting, para. 1.