Document:-

A/CN.4/SR.1564

Summary record of the 1564th meeting

Topic:

Succession of States in respect of matters other than treaties

Extract from the Yearbook of the International Law Commission:-

1979, vol. I

those treaties to their territory or about the actual content of those instruments, of which they had found no trace in the archives left in the territory by the colonial Power.

30. Precolonial historical archives and cultural archives proper to the territory should unquestionably revert in their entirety to the newly independent State, for here it was a question not of property belonging to the predecessor State but of property proper to the territory. That principle should be firmly and immediately applied and should not admit of any exception. It was confirmed by doctrine—more particularly by the proceedings of the sixth international round-table conference on archives, which had expressed the opinion that "the metropolitan country should return to States that achieve independence ... the archives which antedate the colonial régime", for those archives "are without question the property of the territory".[9] It was also confirmed by State practice: for example by the 1947 Treaty of Peace between Italy and Ethiopia, by the 1950 Franco-Vietnamese agreement on archives and by the partial settlement of the Franco-Algerian dispute concerning precolonial historical archives.[10]

31. He pointed out that article 13, paragraph 1, which the Commission had already adopted, provided that, when the successor State was a newly independent State,

> If immovable and movable property, having belonged to an independent State which existed in the territory before the territory became dependent, became State property of the administering State during the period of dependence, it shall pass to the newly independent State.

That principle was valid in the case of precolonial historical archives, which were State property.

32. With regard to archives established outside the newly independent territory but relating to that territory, he had found no examples of that type of succession apart from the case of the India Office library, which had not been settled.[11]

33. As for administrative archives, they should undeniably revert to the newly independent State, since they were indispensable for the administration of its territory. Thus the sixth international round-table conference on archives had stated that the former administering Powers had "the duty to hand over all documents which facilitate the continuity of the administrative work and the preservation of the interests of the local populations".[12] The General Assembly had confirmed the same principle in the case of the decolonization of Libya (resolution 388 (V), of 15 December 1950) and in the case of Eritrea (resolution 530 (VI), of 29 January 1952). The problem of the administrative archives concerning Algeria had also been resolved in conformity with that principle.

34. In conclusion, he considered that the problem of archives was vital for newly independent States and should not be settled on the basis of the location of the archives, in other words, by assigning the archives to the State that held them at the time of the succession of States, for that would encourage the removal of archives on the eve of the territory's independence. The problem should be settled by direct agreement between the two States concerned, on the basis of the need for co-operation between the predecessor State and the successor State, which should together seek solutions satisfactory to each. One solution was to enable each State to obtain reproductions of any archives of which it had not received the originals.

35. The archives proper to the territory to which the succession of States related should necessarily revert, in their entirety and in their original form, to the newly independent State, in conformity with the twofold principle of "origin" and "connexion" applied by archival scholarship. "Archives proper to the territory to which the succession of States related" were to be understood as meaning, first, pre-colonial historical archives and, secondly, archives of a purely administrative or technical nature that had been kept in the territory until its independence and that were often termed "local" archives.

36. Political archives of the colonial period, or "archives of sovereignty", should be opened to the successor State in the same way as they were opened to the public by the predecessor State.

37. Lastly, it was essential to take account of the concerns of the newly independent States without losing sight of the interests or fears of the former administering Powers.

The meeting rose at 1 p.m.

1564th MEETING

Monday, 2 July 1979, at 3.10 p.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. Thiam, 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, A/CN.4/L.298)

[Item 3 of the agenda]

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

[9] *Ibid.*, para. 165.

[10] *Ibid.*, paras. 166–168.

[11] *Ibid.*, para. 173.

[12] *Ibid.*, para. 174.

ARTICLE C (Newly independent States)[1] (*continued*)

1. Mr. BARBOZA was prepared to agree, for the time being, that only draft articles A and C should be submitted to the General Assembly. In his view, draft article A (1560th meeting, para. 1) did not adequately cover some of the situations provided for in draft articles B, E and F (A/CN.4/322 and Corr.1 and Add.1 and 2, paras. 140, 204 and 206). For example, paragraph 2 (*a*) (ii) of draft article B provided that State archives concerning exclusively or principally the territory to which the succession of States related would pass to the successor State "if they were constituted in the said territory". The intention seemed to be to make an exception to the general rule laid down in draft article A, namely, that such archives would pass to the successor State in any event. That exception was not immediately apparent, however, and the Commission might wish to provide for it elsewhere in the draft. He was in favour of deleting draft article B, which would make draft article 14[2] superfluous. The latter article was itself unnecessary, and the fact that it had been placed in square brackets showed that it was controversial. Draft articles E and F raised a number of questions which it was needless to enumerate, but which served to reinforce his view that the General Assembly's examination of those articles at that stage might not be favourable.

2. He had no basic objection to draft article C, which applied accepted principles in regard to succession to State property in general and State archives in particular. He noted, however, that whereas paragraph 1 (*a*) referred in general terms to "archives of all kinds" that had belonged to the territory prior to its dependence, paragraph 1 (*b*) spoke of "administrative and technical archives" connected with the activity of the predecessor State. He wondered what was the reason for that distinction.

3. Paragraphs 2 and 3 of draft article C reflected the concepts of co-operation and common heritage. He found the idea of a common heritage particularly interesting in so far as its application in that and other areas of international law would make it possible to define all its legal consequences. Mr. Reuter had referred to the hypothetical case of a colonial Power that had kept among its archives documents relating to the frontiers of some of its former colonies. That case could be seen as one of the application of the concept of common heritage, imposing a special obligation on the former administering Power to act with caution in the matter of such documents.

4. Paragraphs 4 and 5 provided for the application of, and were therefore the logical sequel to, paragraphs 1, 2 and 3 of the draft article, while paragraph 6 embodied an essential principle applying to agreements concluded between the predecessor and successor States in respect of archives.

5. Lastly, in regard to draft article A, he believed that a short list of items designed to circumscribe the concept of archives would serve the purposes of the draft better than a definition. He noted that draft article 5 (State property), which was the counterpart of draft article A, did not define State property, but provided that such property would be determined by reference to internal law. Article 5, however, referred not only to property but also to rights and interests, so that any object of financial, cultural, intellectual or historical value owned by the predecessor State, and situated in the territory to which the succession related, would be transferred to the successor State. In effect, therefore, State property was defined by reference to international rather than internal order. In his view, it was even more important to adopt such a reference in the case of archives; hence some such wording as "archives, records and other documents" should be used to circumscribe the concept of archives and at the same time to ensure that no relevant materials were excluded from the scope of the draft.

6. Mr. USHAKOV said that the principle of article C was acceptable, but that the text raised some drafting problems.

7. He wondered, first, why the Special Rapporteur had omitted the word "State" before the word "archives" in paragraph 1 (*a*). Was it in order to extend the rule of passage to archives other than State archives, or because it was implicitly understood that the reference was to State archives? He thought it should be made clear that State archives were at issue, because there were also other categories of archives. He also wondered why, again in paragraph 1 (*a*), the Special Rapporteur had not reproduced the formula used in article 13, paragraph 1, concerning movable and immovable property, since he regarded State archives as State property. For to speak of State archives meant that the archives had belonged to an independent State that had existed in the territory before it became dependent. It would therefore be better to reproduce the text of article 13, paragraph 1, and speak of "State archives of all kinds having belonged to an independent State which existed in the territory before the territory became dependent". Obviously, a problem might arise if the territory of the former independent State had been divided between several colonial Powers. That problem need not be resolved in the text of the article, but should perhaps be mentioned in the commentary.

8. With regard to the administrative and technical archives referred to in paragraph 1 (*b*), it should perhaps be made clear that not only central but also local archives were involved. He wondered whether the formula "connected with the activity of the predecessor State in respect of the territory to which the succession of States relates", used in article 13, paragraph 3 (*a*), in regard to movable State property, should not be reproduced in the case of State archives.

9. As to paragraph 2 of the draft article he was not sure whether the obligation to "undertake, for the purposes of the predecessor State, and at the latter's request and expense, any necessary reproduction of the archives that pass to it", could be imposed on the

[1] For text, see 1563rd meeting, para. 21.

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

successor State. He also wondered whether that obligation would be imposed on the successor State on the date of the succession of States or later. Although the problem of State property was settled on the date of the succession of States, the problem of archives might not arise until after that date, because it was often much later that the predecessor or successor State found it necessary to refer to archives in order to find the documents needed for the management of its affairs. However, after the date of the succession of States, the successor State had sovereign power over the archives that had passed to it, and was therefore free to deny the predecessor State access to them. He therefore believed that it would be better to say, in a more flexible article in the general part of the draft, that the successor and predecessor States must co-operate by granting each other access to their archives.

10. In paragraph 3, he thought it should be specified that the succession referred to was "to the State archives of the predecessor State". In his opinion, the formula "concerning the territory to which the State succession relates" was not clear and might cause difficulties if the agreement between the predecessor State and the successor State was challenged. In that case would it be sufficient to be able to invoke "the right of every people to information about its history and cultural heritage", in accordance with the reservation in paragraph 6? That point should be clarified in the commentary.

11. Mr. NJENGA said it would be regrettable, and entirely unacceptable to him, if the terms of paragraph 1 of draft article C were to be understood in the restricted sense of article 13, namely, as archives that had "belonged to an independent State which existed in the territory before the territory became dependent", for that would necessarily restrict their application to documents kept by the Government. However, there were innumerable documents, collected by individuals—by missionaries for example—for their own use, that did not form part of government archives but that were vital to the history, culture and even the administrative structure of independent States. As the Special Rapporteur had pointed out in his report (A/CN.4/322 and Corr.1 and Add.1 and 2, para. 180 (*a*)), those States started life at a disadvantage. Moreover, they often had no idea what belonged to them. If the Commission were to start quibbling about words, the draft article would become meaningless. He therefore had no hesitation in opting for a broader application of the draft article calculated to facilitate the widest possible access to archives. That approach was supported by the conclusions of the seventeenth international round-table conference on archives, referred to in the Special rapporteur's report (*ibid.*, para. 179).

12. Archives should be viewed as a whole, particularly since in the colonial situation the dividing line between those that had and those that had not belonged to the State was a very fine one, and since any attempt by the Commission to draw it would do little service to the basic aim of the recovery and integrity of the archives of newly independent States. That distinction would mean, to cite but one example, that there would be no obligation to return the fine collection of manuscripts on Hinduism housed at the India Office library in London, to which the Special Rapporteur had referred (*ibid.*, para. 173). It would be better to err on the side of generosity towards the newly independent States rather than adopt an unduly legalistic approach, whereby succession to archives could be denied on the basis of a narrow classification. It would also be better to explain fully in the commentary what was meant by the phrase "archives of all kinds which belonged to the territory prior to its dependence", rather than restrict the terms of paragraph 1 (*a*) and then explain the reasons why.

13. Mr. Ushakov had suggested that, instead of a rule requiring the predecessor State to reproduce archives, a general article on co-operation should be included in the draft. His own view was that a clear rule was needed, since co-operation agreements were conspicuous by their absence. The Special Rapporteur had been unable to quote one instance, from territories formerly administered by the British, of an agreement for the return of archives. It was therefore essential to start on the firm basis of an obligation, which could be followed by co-operation agreements. That was what the Special Rapporteur had done, in a fair and balanced draft, and he would suggest that, rather than disturb that balance, Mr. Ushakov's point should be dealt with in the commentary.

14. He endorsed the important principle embodied in paragraph 6, which would ensure that agreements on archives concluded between the predecessor and successor States would serve to promote rather than restrict the dissemination of information on a people's history and cultural heritage.

15. Lastly, he would recommend that draft article C be referred to the Drafting Committee at once; he was opposed to any change in substance, since in his view that would undermine the draft as a whole.

16. Mr. FRANCIS considered draft article C as possibly the most important of all the articles on succession to State archives.

17. He agreed entirely with Mr. Njenga that the first limb of paragraph 1 (*a*) should be construed in broad terms, given the special historical and cultural background of newly independent States. In Jamaica, for instance, there was a group of people known as the Maroons, who had never been conquered by the British. Retaining the traditions they had brought with them from Africa, they had remained a self-contained unit to the present day. His understanding was that, under the terms of paragraph 1 (*a*), the documents of the Maroons, although not State-owned, would be regarded as State archives, since they would be considered as part of the heritage and history of Jamaica.

18. Bearing in mind the terms of paragraph 6 of draft article C, he would be inclined to rest the rationale for paragraph 1 (*a*) on a fundamental right of a people to information and to a national point of reference. He agreed with the spirit of the provision in that—to

borrow a concept of English law—certain rights "ran with the land", which meant that those rights necessarily depended on the fate of the territory. Moreover, paragraph 1 (*a*) embodied a sound proposition from the standpoint of administrative convenience and functional utility alike. It was almost certainly true to say that research students from most newly independent States still could not complete a project on the governmental process prior to dependence without consulting the archives of the former administering Power, for instance those at the Records Office in London. All those considerations provided ample justification for the rule.

19. Paragraph 2, which provided for the reproduction of archives, was particularly important, since it was worded in mandatory terms and would therefore facilitate the passing of archives: a predecessor State would know that, after a document had passed, it could still obtain copies, and so would be less likely to remove documents.

20. Lastly, it had been suggested that it might be preferable to replace paragraphs 2 and 3 by a general provision on co-operation. He believed that both paragraphs should be retained as they stood.

21. Mr. DÍAZ GONZÁLEZ fully endorsed the wording of draft article C and shared Mr. Njenga's view that its scope should not be restricted. The only drafting change that might be made would be to replace the word "shall" by the word "may" in paragraph 2, for the simple reason that the reproduction of archives required an agreement between the predecessor and successor States.

22. No one could deny the principle underlying paragraph 1 (*a*), whereby archives of all kinds that had belonged to the territory prior to its dependence passed to that territory, in other words, to the rightful owner. Similarly, it was obvious that the country with the major interest in the administrative and technical archives referred to in paragraph 1 (*b*) was the successor State. Paragraph 6 summed up the idea underlying the whole article because, in removing a territory's archives, the colonial Power was appropriating that territory's cultural memory. It was the inalienable right of all peoples to preserve that memory, and the successor State itself could not renounce that right under an agreement with the predecessor State since that right, as indicated in paragraph 6, belonged not to the State but to the people.

23. Draft article C afforded an opportunity of submitting something viable and practical to the General Assembly, and the Commission must avail itself of that opportunity.

24. Sir Francis VALLAT drew attention to the fact that six draft articles had been submitted to the Commission and that, while some members had contended that the general terms of article A would suffice, others had favoured the retention only of articles B, C, D, E and F. However, the combination of article A and those other articles was somewhat odd, to say the least. The relationship between the general principles enunciated in article A and the specific principles set out in the remaining articles for the different types of State succession would have to be established with considerable care if a viable set of articles were to be prepared on the topic of archives. However, articles B, D, E and F had now been set aside, which would leave only a partial picture of the subject, and was a most unsatisfactory approach. Article C could of course be referred to the Drafting Committee for further examination, but, in the absence of a thorough exchange of views in the Commission, the Drafting Committee would face an extremely difficult task.

25. He had the deepest sympathy for the sentiment expressed in paragraph 1 (*a*), as documents relating to a territory prior to its dependence ought, in principle, to be returned to that territory; but he seriously doubted whether the matter was strictly one of State succession at all. If it was, then the article was rightly confined to specifying that the documents passed to the successor State. Nevertheless, such a provision did not resolve the problem that arose, since it was to be inferred that, at the time of the succession, the documents were outside the newly independent State. In that case, the documents had to be identified and separated from existing archives, and arrangements made for their transfer. Again, a single document removed from a territory by the former administering Power might relate not to one newly independent State, but to a number of such States. Yet another problem was that a document might well have been sent to the metropolitan State and integrated in other archives. Rather than return the document, it would be much more satisfactory to supply the newly independent State with copies of the whole series of documents in the appropriate section of the archives, no matter where or when they had originated. Plainly, the subject gave rise to a number of practical problems that did not follow from the mere fact of succession, in other words, from the replacement of one State by another in responsibility for foreign relations.

26. In paragraph 1 (*a*), dealing with archives that were in the possession of the former administering State, it was essential to clarify the meaning of the expression "archives of all kinds". It was clear from the report that scholars attached different meanings to the term "archives". Moreover, it would be difficult to speak of "State archives", because it was questionable whether all the territories concerned could have been regarded as independent States, in the modern sense, during the period prior to dependence. In the fifteenth and sixteenth centuries the concept of the modern monolithic State had been virtually unknown; there had been a large number of small units, each headed by a prince or a duke, for example, which could not be regarded as independent States in the modern sense of the term. He therefore agreed with Mr. Njenga and Mr. Francis that it would be inappropriate to restrict the article by referring to State archives only.

27. Paragraph 1 (*b*) presented much more difficulty. It was presumably intended to relate to administrative and technical archives accumulated in the territory

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

same wording as had been adopted for succession to State property, namely, "archives connected with the activity of the predecessor State in regard to the territory". That phrase, which had been fully discussed in the commentaries to the articles in part I of the draft, served to indicate that the test in regard to all kinds of movable property was not the place where such property was situated on the date of the succession of States. Account was taken of the fact that movable property was sometimes more closely associated with the predecessor State or with the successor State, even if it was situated in the other State. Administrative and technical archives could include a vast range of documents, such as correspondence relating to policy in regard to the former colony, civil registers, records of court decisions in criminal and civil matters, and there was no doubt in anyone's mind that such documents belonged to the successor State. It was only in cases of multiple succession that certain problems of distribution might arise. However, the Commission was not concerned with establishing any system of apportionment; it was dealing not with the value of property, but with the value of complete records.

34. The principle enunciated in paragraph 1 (*a*), although very limited in scope, was entirely correct. Archival documents belonging to a territory prior to its dependence should be returned to that territory, even in cases of multiple succession. Certain islands in the Pacific, for instance, had fallen successively under the control of a number of metropolitan Powers.

35. Paragraph 6 stated the broad and uncontested principle that it was the right of peoples to obtain information on their historical and cultural heritage. However, although it was expressed as an overriding principle and one that limited freedom of contract between independent States, that principle was specifically related to access to information and not to possession of property.

36. He had no objection to any of those principles and considered that the Commission would have little difficulty if, in the case of administrative and technical archives, which covered most of the field, it preserved the form of language used in part I of the draft, which had once again been employed by the Special Rapporteur. Nevertheless, he wondered whether there might not be scope for saying, in carefully phrased terms, that in a case of State succession it was always the duty of the predecessor State to provide the successor State with the best evidence available on matters relating to the very identity of the successor State—for example, documents pertaining to boundaries. It would be justifiable for the Commission to endeavour to cover that aspect of the topic, without in any way moving into a matter that came under an entirely different rubric, namely, restitution of property which, for various reasons, had acquired value as works of art. As to the cost of reproducing archives, it did not matter where the incidence of such minor cost factors lay, provided that it lay equitably on the States concerned. The most important thing to stress was that it was the duty of the predecessor State to do everything in its power to place the successor State in a position of "good title".

37. Mr. REUTER observed that the question of State archives was not only complicated in itself, but also raised serious technical problems for the Commission. The Commission was preparing to deal with that question at three levels: in general provisions relating to State property; in an article on the general régime of State archives, and in an article concerning newly independent States. He wondered whether all the rules applicable to newly independent States were set out in the article under consideration, or whether they were additional to those laid down in the general article on the régime of archives which, in turn, were additional to the rules relating to State property. Personally, he would have preferred the Commission to prepare those articles in reverse order, beginning with the rules applicable to newly independent States.

38. The régime applicable to newly independent States, as it appeared from draft article C and the commentary thereto, seemed less favourable to those States than the régime embodied in draft article A, as explained in the commentary to that article. Whereas "in principle, State archives of whatever kind pass to the successor State", as the Special Rapporteur had indicated with reference to draft article A (A/CN.4/322 and Corr.1 and Add.1 and 2, para. 90 (*b*)), only "archives of all kinds which belonged to the territory prior to its dependence and which became the archives of the administering State" passed to the successor State under article C paragraph 1 (*a*).

39. As several members of the Commission had already pointed out, the concept of "archives of all kinds" required clarification. Was that concept to cover documents that formed part of the cultural heritage, to which reference was made in paragraph 6 of the article? It could be laid down as a principle that archives of all kinds situated in the territory of the successor State automatically belonged to that State. He did not consider it necessary to lay down such a principle; the successor State, as the sovereign State in its own territory, would not fail to enact a law providing that all papers situated in its territory and relating to its cultural heritage were State property. The real problem, as Sir Francis Vallat had emphasized, was posed by archives of all kinds that were not in the territory of the successor State and had never been State archives of the predecessor State. That was the problem that several members of the Commission had in mind. To resolve it, the obligation would have to be imposed on all States parties to the future convention to enact legislation permitting any State to take possession, where necessary, of archives that were in private hands, in order to restore them to the successor State. Having regard to that solution, the wording of paragraph 1 (*a*) of the article was too cautious.

The meeting rose at 6.5 p.m.