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**DISPUTED ARCHIVAL CLAIMS.
ANALYSIS OF AN INTERNATIONAL SURVEY :
A RAMP STUDY**

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I. INTRODUCTION

Despite all UN, UNESCO and ICA resolutions and recommendations on the subject, there has been no agreement on guidelines for dealing with disputed archival claims and the potential restitution of the archives. Neither the issue of restitution nor of state succession with relation to archives has been brought under normative acts in international law; perhaps due to the lack of interest by the states involved and to the fear of the effect upon rights of sovereignty. Therefore, a significant number of the returns received stated that the settlement of claims should be left exclusively to bilateral and, in some cases, multilateral agreements between states. This approach must be taken into account when dealing with problems for the restitution of archives and documents.

Given the multitude of claims, of different types and origins, which are conceivable, only a pragmatic approach based on acceptable professional and legal principles, offers a reasonable chance of success. The objective should be to resume as quickly as possible the traditional practice of dealing with disputed archival claims by means of negotiations between the interested parties. However, international consultation would appear to be essential to secure the agreement of states to the objective of settling the claims, to establish a typology of cases, to devise an adequate conceptual framework and to develop principles to be observed during the negotiation of bi-lateral agreements.

In accordance with the terms of a framework agreement established between UNESCO and ICA in the summer of 1996, the latter was commissioned to carry out an analysis of existing international archival claims based upon the answers to a world-wide survey. For the purpose of this survey a first questionnaire was distributed to the national archive administrations of 83 countries. The reaction to this questionnaire is in itself significant, although not really surprising. Of the 83 archive administrations approached 45 did not respond at all; 6 national archives (Czech Republic, Denmark, Liechtenstein, Peru, Slovakia, Switzerland) did not wish to participate, and did not give any reasons, France and the United Kingdom did not think participation to be opportune for the moment; and Finland preferred bilateral contacts with the Russian Federation. The archive administrations of 5 countries (Botswana, Cape Verde, Japan, Luxembourg, Portugal) reported no disputed archival claims.

The remaining 24 administrations which responded positively to the first questionnaire (Algeria, Andorra, Austria, China, Croatia, Estonia, Germany, India, Kenya, Latvia, Lithuania, Mongolia, Netherlands, Pakistan, Poland, Romania, the Russian Federation, Slovenia, Tanzania, Tunisia, Yugoslavia, Zambia) provided data on 61 disputed archival claims¹ against the following 25 countries: Austria (Croatia 1, Slovenia 1, Yugoslavia 1, Yugoslavia 8), Belarus (Poland 3), Belgium (Tanzania 1), Bosnia (Austria 1, The former Yugoslav Republic of Macedonia 1, Yugoslavia 4, Yugoslavia 9), Burundi (Tanzania 2), Croatia (The former Yugoslav Republic of Macedonia 2, Yugoslavia 5, Yugoslavia 10), Czech Republic (Germany 2), France (Algeria, Germany 3, India 2, Tanzania 3, Tunisia), Germany (Poland 1, Tanzania 4, Yugoslavia 2), Hungary (Romania), India (Pakistan 2, Tanzania 5), Italy (Croatia 2, Slovenia 2), Kenya (Tanzania 6), Lithuania (Poland 2), The former Yugoslav Republic of Macedonia (Yugoslavia 6, Yugoslavia 11), Poland (Germany 4, Lithuania), the Russian Federation (Austria 2, China 1, Estonia, Germany 1, Latvia, Lithuania, Mongolia, Netherlands, Poland 4, Yugoslavia 3), Rwanda (Tanzania 7), Slovenia (The former Yugoslav Republic of Macedonia 3, Yugoslavia 7), Spain (Andorra), Uganda (Tanzania 8), Ukraine (Poland 5), United Kingdom (China 2, India 1, Kenya, Pakistan 1, Tanzania 9, Zambia), United States (Poland 6, the Russian Federation, Tanzania 10), Yugoslavia (Croatia 3, The former Yugoslav Republic of Macedonia 4, Slovenia 3).

To all of the afore-mentioned 24 administrations a second, detailed questionnaire was distributed. Responses have been received from all but six of the countries (Estonia, Mongolia, Romania, Tanzania, Zambia). Andorra withdrew from the enquiry at this stage, declaring itself unable to take part, but without, however, offering any further explanation. The final 17 detailed responses vary greatly in form and comprehensiveness, ranging from simple lists to elaborate dossiers as in the cases of Algeria,

1. In all cases in which a country has been asserting claims on more than one country these claims are distinguished in the following analysis by different numbers, e.g. Germany 1, Germany 2 etc.

Germany and Poland. A number of inconsistencies were also noted between the answers to the first and second questionnaire as well as simple errors or other points which would need further clarification. Given the rather feeble reaction to the questionnaire the question arises as to whether an analysis based upon 17/24 responses may be regarded as representative at all. For whole regions we are left in the dark as to whether the lack of responses was due to political reasons, a lack of interest or a lack of disputed archival claims. Latin America, francophone Africa south of the Sahara and the Pacific region are black holes while for the rest of Africa and Asia there are only a few examples (5 for Africa, 4 for Asia). Thus, it would appear to reduce the impact of decolonization and make the problem a mainly European one. On the other hand we know from the results of other enquiries carried out recently that, for example, in the Pacific region archives were removed by occupying forces and that the problem of archival restitution between Europe and Asia is even larger than indicated by the answers given.

The following analysis and evaluation is based upon the responses to both questionnaires which means that it takes into account all the afore-mentioned 61 archival claims but gives detailed information on only 36 of them. The survey was not intended to cover claimants only (see question 5.2), but this was in fact what happened. Either the questionnaires were interpreted only in this way or the countries to which claims were addressed did not wish to participate (France or the United Kingdom). Therefore, after having examined the data, a circular letter was sent out to the national archive administrations of ten selected countries, asking whether they were prepared to comment on the archival claims concerning them. Seven administrations (Croatia, France, Germany, Lithuania, the Russian Federation, Slovenia and the United Kingdom) reacted positively to the request. Their responses, insofar as they arrived in time, have been taken into account in the case-by-case survey. Nonetheless, one must be aware of the fact that the point of view of the claimant is probably over-represented in the present survey and that for a future solution of the issues in question it will always be necessary to consider the other side. The analysis is presented as a case-by-case survey with a statistical analysis (A) and an evaluation (B). The conclusion attempts to make practical suggestions for future action.

II. CASE BY CASE SURVEY²

Algeria

Claim against France for the restitution of archival documents removed to France in 1961/62. The material involved concerns documents from the 15th century to 1962 (about 20,000 linear metres). Negotiations have taken place, 1980/81, and partial transfers of originals and copies were made in 1967, 1975 and 1981. Due to a decision of the President of the French Republic negotiations have halted.

Reference: *Le contentieux archivistique algero-français* in: *Publications des Archives Nationale d'Algerie* n.3, 1996.

Andorra

Claims against Spain for both public and private archives. No negotiations have taken place. No further details. No response to the second questionnaire.

Austria 1

Claim against Bosnia and Herzegovina for the restitution of the archives of the Bosnian department of the Austro-Hungarian Ministry of Finance. The material involved was removed from Vienna in 1925. Negotiations have taken place in 1923-26, 1958-61 and 1975-89, within the framework of the Austro-Yugoslavian Convention on Archives 1923. Negotiations ended with the break up of former Yugoslavia. No response to the second questionnaire.

Reference: A.Auer and Ch.Thomas: *The Austro-Yugoslavian Convention on Archives. A Case Study in State Succession* in: *Information Development* 1/3, 1985, p.169-175.

Austria 2

Claim against the restitution of public and private archival documents of Austrian provenance from the Russian Federation. The material in question, about 500 linear metres, was seized by Nazi authorities after 1938 and then, after 1945, by the Red Army. No negotiations have taken place.

Reference: G.C.Browder: *Captured German and Other Nations' Documents in the (Osoby) Special Archive Moscow* in: *Central European History* 24, 1991, p.424-445.

China 1

Claim against the Russian Federation for a complete microfilm copy of the records of the Communist International (Komintern) created by Chinese communists. The material involved concerns documents from 1917 to 1940 (about 8 linear metres). No negotiations, but some transfers of originals have taken place.

China 2

Claim against the United Kingdom for public archives. Negotiations are continuing. No further details. No response to the second questionnaire.

Croatia 1

Claim against Austria for original, and microfilm copies of, public archives; based upon the Austro-Yugoslavian Convention on Archives of 1923. Both negotiations and partial transfers of originals and copies have taken place but were suspended on account of the break-up of former Yugoslavia.

Reference: L.Auer and Ch.Thomas, *The Austro-Yugoslavian Convention on archives. A Case Study in State Succession*, in: *Information Development* 1/3, 1985, p.169-175

Croatia 2

Claim against Italy for original and microfilm copies of, public and ecclesiastical archives relating to zone B of the territory of Trieste, in pursuance of the Treaty of Osimo 1975. Despite negotiations (1985-89) no transfers of material have taken place.

2. Unless stated otherwise, all data is based upon the information submitted by the claimants.

Croatia 3

Claim against Yugoslavia against original and microfilm copies of, public archives of Croatian provenance for the period 1918-92. Despite negotiations from 1994, no transfers of material have taken place. Two draft reports of a working group on succession issues have been compiled. Under certain circumstances the use of the concept of joint heritage to facilitate the solution of the claim might be conceivable.

Estonia

Claims against the Russian Federation for public archives. Negotiations have taken place, but have ceased. No further details. No response to the second questionnaire.

Germany 1

Claim against the Russian Federation for the restitution of public and private archival documents of German provenance. The material in question was seized by the Red Army at the end of World War II. It mainly comprises documents of the 19th and 20th centuries (over 3,000 linear metres). Continuing negotiations from 1992. Partial transfers of originals to the German Democratic Republic took place before 1989. The claim is based upon art. 15 of the the Russian Federationn-German Cultural Agreement 16 December 1992.

Reference: K.von Jena and W.Lenz: *Die deutschen Bestände im Sonderarchiv in Moskau*, in: *Der Archivar* 45, 1992, col.457-467

Germany 2

Claim against the Czech Republic for the restitution of original, and copies of, public archives of German provenance (mainly archives of the *Waffen SS* and of military institutions). The material in question was seized by the Red Army at the end of World War II. Continuing negotiations from 1990; partial transfers of copies have taken place. The claim is based upon the Czech-German Cultural Agreement of 9 November 1989 and a Czech-German declaration January 1997.

Germany 3

Claim against France for the restitution of public and private archival documents of German provenance. The material in question was seized at the end of World War II. It comprises mainly documents of NS and military institutions (e.g. *NS Gauleitung Baden*, *Gestapo Trier* and *Koblenz*, *Reichsstatthalter Westmark*) and records of the German embassy in Paris for the period 1925-45. Continuing negotiations from 1992; partial transfers of originals and copies have taken place.

Germany 4

Claim against Poland for the restitution of public archival documents of German provenance. The material in question was seized by the Red Army at the end of World War II. It mainly comprises files of the *Reichssicherheitshauptamt* and of other central ministries of the Third Reich (about 20 km). Continuing negotiations from 1970; partial transfers or originals and copies have taken place. The claim is based upon art. 28/3 of the treaty on good neighbourhood and friendly partnership 17 June 1991. It seems possible to envisage the use of the concept of joint heritage to facilitate the solution of the claim.

India 1

Claim against the United Kingdom for a complete microfilm copy of the records of the East India Company and the India Office for the period 1616-1947. Negotiations from 1975. An agreement with the India Office Library was concluded; partial transfers of copies have taken place. The approximate quantity of the whole claim comprises 2,875,000 exposures. It seems possible to envisage the use of the concept of joint heritage to facilitate the solution of the claim.

Reference: *A Survey of Archives Relating to India and Located in Major Repositories in France and Great Britain*, UNESCO: Paris, 1983 (PGI/83/WS/19).

India 2

Claim against France for a complete microfilm copy of the records of the French administration in India from the period 1690-1955, removed to France in 1956. An agreement has been made, but covered only

a part of the fonds concerned; partial transfers of copies have taken place. The approximate quantity of the whole claim comprises 700 vols, 375 bundles and 7130 files.

Reference: *A Survey of Archives Relating to India and Located in Major Repositories in France and Great Britain*, UNESCO: Paris, 1983 (PGI/83/WS/19).

Kenya

Claim against the United Kingdom for microfilms of records removed from Kenya to the United Kingdom during the process of decolonization. Negotiations between 1970 and 1980. No transfers of copies have taken place, but Kenya has purchased some of the claimed microfilms. The use of the concept of joint heritage to facilitate the solution of the claim might be possible.

Latvia

Claim against the Russian Federation for the restitution of the original public archives of the Latvian provenance. The material in question, which was removed to Moscow, comprises records of the Latvian section of the KGB, of prisoner camps and a number of films, mainly created between 1920 and 1990. Despite continuing negotiations no transfers have taken place. The claim is based upon the principle of provenance. In some cases the use of the concept of joint heritage to facilitate the solution of the claim seems possible.

Lithuania

Claim against the Russian Federation for public and private archives of Lithuanian provenance (due to the partition of Poland, World Wars I and II and the break-up of the Soviet Union). The material in question (e.g. Jesuitica, court books of the Lithuanian granddukes, ministry of foreign affairs of the inter-war period, Lithuanian section of KGB) covers the period from the 14th to the 20th century and comprises about 30,000 archival units. After negotiations from 1920 to 1940 a partial agreement was concluded; some transfers of originals and copies have taken place. The claim is based upon the principle of provenance.

The former Yugoslav Republic of Macedonia 1

Claims against Bosnia and Herzegovina due to the break-up of ex-Yugoslavia. Negotiations have started and are still continuing. No further details. No response to the second questionnaire.

The former Yugoslav Republic of Macedonia 2

Claims against Croatia due to the break-up of ex-Yugoslavia. Negotiations have started and are still continuing. No further details. No response to the second questionnaire.

The former Yugoslav Republic of Macedonia 3

Claims against Slovenia due to the break-up of ex-Yugoslavia. Negotiations have started and are still continuing. No further details. No response to the second questionnaire.

The former Yugoslav Republic of Macedonia 4

Claims against Yugoslavia for original, and selective microfilm copies of, public archives from Yugoslavia due to the break-up of the former federation. Despite negotiations, from 1994 no transfers have taken place and no agreement has been concluded. The use of the concept of joint heritage to facilitate the solution of the claim seems possible.

Mongolia

Claims against the Russian Federation with respect to state succession. Negotiations have started and are still continuing. No further details. No response to the second questionnaire.

Netherlands

Claim against the Russian Federation for the restitution of public and private archival documents of Dutch provenance. The material in question was seized by the *Einsatzstab Rosenberg* and is now kept in the Special Archives in Moscow and in other archive repositories. It mainly concerns records of the Ministry of Defence and of a large number of private organisations, all from the inter-war period, (50 km). Despite the agreement of 21 March 1992, no transfers have taken place and negotiations are

continuing. The claim is based upon an interallied agreement of 1944 and upon the afore-mentioned protocol of 1992.

References: Patricia Kennedy Grimsted: *Displaced archives on the Eastern Front: Restitution problems from World War II and its aftermath* in: *Janus* 1996/2, p.42-77, here p.59 and n.128

Pakistan 1

Claim against the United Kingdom for public records presently preserved in the Oriental and India Office Collection in London. The material in question comprises papers of the East India Company 1616-1850, residency records 1800-1947 and administrative records relating to the partition of India 1947. Continuing negotiations from 1947. An agreement has been concluded but not ratified; partial transfers of copies have taken place. The claim is based upon the principle of provenance.

Pakistan 2

Claim against India for public archives on account of the break-up of former British India in 1947. Negotiations have taken place. No further details. No response to the second questionnaire.

Poland 1

Claims against Germany for original, and microfilm copies of, public archival documents on account of the partition of Poland and to changes of sovereignty after World War II. The material in question comprises provincial archives (mainly Silesia and Eastern Pthe Russian Federation), the archives of the Teutonic Order and files of the German authorities in Poland during World War II, covering the period from the 12th to the 20th century. Continuing negotiations from 1990 (negotiations with the GDR before 1961); no transfers of originals or copies have taken place. The claim is based upon the agreement with the GDR of 1961 and upon art.28 of the "Treaty on Good Neighbourhood and Friendly Partnership" (17 June 1991). It seems possible to envisage the use of the concept of joint heritage to facilitate the solution of the claim.

Poland 2

Claims against Lithuania for original, and microfilm copies of, public archival documents on account of the changes of sovereignty after World War II. The material in question mainly comprises provincial archives of the 19th/20th century. Continuing negotiations from 1994 partial transfers of originals have taken place. It seems possible to envisage the use of the concept of joint heritage to facilitate the solution of the claim. In a comment, Lithuania refers specifically to an agreement signed on 26 October 1994 and to the preparation of microfilms for an exchange with the Polish National Archives to which there has been, so far, no reaction from the Polish side.

Poland 3

Claims against Belarus for original, and microfilm copies of, public archival documents on account of the changes of sovereignty after World War II. The material in question comprises mainly provincial archives of the 14th to the 20th century. Continuing negotiations from 1992; partial transfers of copies have taken place. The claims are based on an agreement of 29 September 1992 between the archive administrations of the two countries. It seems possible to envisage the use of the concept of joint heritage to facilitate the solution of the claim.

Poland 4

Claim against the Russian Federation for original, and microfilm copies of, public archives of Polish provenance due to the partition of Poland, World Wars I and II and the break-up of the Soviet Union. The material in question (e.g. registers of the royal chancery, diplomatic correspondence, archives of state agencies of the inter-war period) covers the period from the 16th to the 20th century. After a first agreement in 1921, negotiations re-opened in 1991. Partial transfers of originals and copies have taken place. The claim is based upon the treaty of Riga (18 March 1921) and upon an agreement of 27 April 1992 between the archive administrations of the two countries. The use of the concept of joint heritage to facilitate the solution of the claim seems possible.

References: Patricia Kennedy Grimsted: *Displaced archives on the Eastern Front: Restitution problems from World War II and its aftermath* in: *Janus* 1996/2, p.42-77, here p.59 and n.132/33 -

G.C.Browder: *Captured German and Other Nations' Documents in the (Osoby) Special Archive Moscow* in: *Central European History* 24, 1991, p.424-445, here nn.1224, 1300, 1305, 1421, 1515

Poland 5

Claims against Ukraine for original, and microfilm copies of, public archival documents on account of the changes of sovereignty after World War II. The material in question mainly comprises provincial archives. Continuing negotiations from 1990; partial transfers of copies have taken place.

Poland 6

Claims against Stanford University, USA, for original public archival documents now kept at the Hoover Institute. The material in question comprises deposited diplomatic and consular archives and various archives of the region of Siedlce, all dating from the 20th century. Negotiations started in 1992; no transfers have taken place.

Romania

Claims against Hungary on account of the Second World War and state succession. Negotiations have taken place, but have ceased. No further details. No response to the second questionnaire.

Russian Federation

Claim against the United States of America for the restitution of parts of the Smolensk party archives now kept in the National Archives in Washington. Negotiations have taken place (1992-95); restitution was halted by the US Congress because of a political link with the unresolved claim against the restitution of a collection of Hebrew and Yiddish books and manuscripts held in the Russian State Library in Moscow.

Reference: Patricia Kennedy Grimsted: *The Odyssey of the Smolensk Archive (Carl Beck Papers 1201)*, Pittsburgh 1995.

Slovenia 1

Claim against Austria for original, and microfilm copies of, public archives based upon the Austro-Yugoslavian Convention on Archives of 1923. Several phases of negotiations 1926, 1961 and 1975-91; the last being suspended because of the break-up of former Yugoslavia. The greater part of the material claimed has been transferred.

Reference: L.Auer and Ch.Thomas: *The Austro-Yugoslavian Convention on Archives. A Case Study in State Succession* in: *Information Development* 1/3, 1985, p.169-175.

Slovenia 2

Claim against Italy for original, and microfilm copies of, public and private archives belonging or relating to Istria acquired 1947 in pursuance of the Treaty of Osimo 1975. Negotiations have taken place 1953, 1961 and 1978-87; partial transfers of originals and copies 1954 and 1961.

Slovenia 3

Claim against Yugoslavia for original, and microfilm copies of, public archives of Slovenian provenance for the period 1918-91. Despite negotiations (1992) no transfers of materials have taken place. The use of the concept of joint heritage to facilitate the solution of the claim seems possible.

Tanzania 1-10

Tanzania's response included claims against ten countries (Belgium, Burundi, France, Germany, India, Kenya, Rwanda, Uganda, United Kingdom, United States of America) on account of the process of decolonization without, however, giving any further details. No response to the second questionnaire.

Tunisia

Claim against France for microfilm copies of, records removed from Tunisia to France in 1955, after the end of the French protectorate. The material in question covers the period 1881-1955. Negotiations (1981/82) and partial transfers of copies have taken place.

Yugoslavia 1

Claim against Austria for the restitution of public and private archives removed from Yugoslavian territory during the Second World War. Negotiations and restitutions have taken place under the framework of the Austro-Yugoslavian Convention on Archives of 1923. End of negotiations due to the break-up of former Yugoslavia.

Reference: L.Auer and Ch.Thomas: *The Austro-Yugoslavian Convention on Archives. A Case Study in State Succession* in: *Information Development* 1/3, 1985, p.169-175.

Yugoslavia 2

Claim against Germany for the restitution of public archives, removed from Yugoslavian territory during the Second World War, covering the period 1918-41. Neither negotiations nor restitutions have taken place.

Yugoslavia 3

Claim against the Russian Federation for the restitution of original public archival documents of Yugoslavian provenance. The material in question was removed from Yugoslavian territory by Germany during World War II and then captured by the Red Army at the end of the war. It mainly comprises documents of the 19th and 20th centuries (diplomatic and consular archives, archives of masonic lodges and of other institutions); in total over 2,000 archival units. Negotiations started in 1956; partial transfers of originals have taken place.

Reference: G.C.Browder: *Captured German and Other Nations' Documents in the (Osoby) Special Archive Moscow* in: *Central European History* 24, 1991, p.424-445, here e.g.p.432 and 439, nn 508, 560, 579, 799, 1385, 1429

Yugoslavia 4

Claim against Bosnia and Herzegovina for original, and microfilm copies of, public archives of the 19th and 20th centuries on account of the break-up of former Yugoslavia. Despite negotiations from 1992 no transfers of materials have taken place.

Yugoslavia 5

Claim against Bosnia and Herzegovina for original, and microfilm copies of, public archives of the 16th to the 20th century, on account of break-up of the former Yugoslavia. The material in question comprises 86 archival fonds. Despite negotiations from 1992 no transfers of materials have taken place. In a comment on the Yugoslavian claim, the Croatian Archives have pointed out that nn.1-58 of the list are on the agenda for negotiations in Brussels; the rest are from Croatian territory before 1918.

Yugoslavia 6

Claim against the former Yugoslav Republic of Macedonia for original, and microfilm copies of, public archives of the 19th and 20th centuries on account of the break-up of former Yugoslavia. Despite negotiations, from 1992, no transfers of materials (with the exception of selected microfilm copies) have taken place.

Yugoslavia 7

Claim against Slovenia original, and microfilm copies of, public archives for the period 1945-90, on account of the break-up of former Yugoslavia. Despite negotiations, from 1992, no transfers of materials have taken place. In a comment the Slovenian National Archives noted an agreement of 17 October 1997 according to which all archives of central agencies of former Yugoslavia should be regarded as a joint heritage. Slovenia also wishes to stress the private nature of the archives of associations and societies.

Yugoslavia 8

Claim against Austria for the restitution of public and private archives removed from Serbian territory during the Second World War. Negotiations and restitutions have taken place under the framework of the Austro-Yugoslavian Convention on Archives of 1923. End of negotiations due to the break-up of former Yugoslavia. No response to the second questionnaire.

Yugoslavia 9

Claims against Bosnia and Herzegovina due to the break-up of ex-Yugoslavia. No negotiations have taken place. No further details. No response to the second questionnaire.

Yugoslavia 10

Claims against Croatia due to the break-up of ex-Yugoslavia. No negotiations have taken place. No further details. No response to the second questionnaire.

Yugoslavia 11

Claims against the former Yugoslav Republic of Macedonia due to the break-up of ex-Yugoslavia. No negotiations have taken place. No further details. No response to the second questionnaire.

Zambia

Claims against the United Kingdom on account of the process of decolonization. No negotiations have taken place. No further details. No response to the second questionnaire.

III. ANALYSIS OF CLAIMS

1. STATISTICAL DATA

a) Origins of the Claims

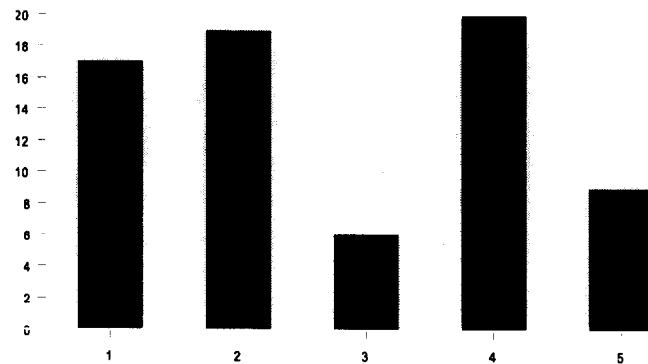


Fig. A

(According to the responses given)

1. Break-up of political entity: 17 (Croatia1, Croatia3, Latvia, Lithuania, The former Yugoslav Republic of Macedonia1-4, Mongolia, Pakistan2, Poland1, Poland4, Serbia2, Serbia3, Serbia4, Slovenia1, Slovenia3)
2. Decolonization: 19 (Algeria, China2, India1, India2, Kenya, Pakistan1, Pakistan2, Tanzania1-10, Tunisia, Zambia)
3. First World War: 6 (Austria1, Croatia1, Lithuania, Serbia1, Slovenia1, Yugoslavia1 - only 2nd quest)
4. Second World War: 20 (Austria2, Croatia2, Estonia, Germany1-4, Netherlands, Poland1-5, Romania, the Russian Federation, Serbia1, Slovenia2, Yugoslavia1-3)
5. Other: 9 (China1, Estonia, Lithuania, Poland6, Romania, Yugoslavia4-7)



Fig. B

(Harmonized Typology)

Type 1: State succession: 25 (Croatia1-3, The former Yugoslav Republic of Macedonia1-4, Mongolia, Pakistan2, Poland1-5, Serbia2-4, Slovenia1-3, Yugoslavia1, Yugoslavia4-7,)

Type 2: Restitution (in the context of state succession): 23 (Algeria, Austria1, China2, Estonia, India1-2, Kenya, Latvia, Lithuania, Pakistan, Romania, Tanzania1-10, Tunisia, Zambia)

Type 3: Restitution: 14 (Austria2, Germany1-4, Netherlands, Poland4-6, the Russian Federation, Serbia1, Yugoslavia1-3)

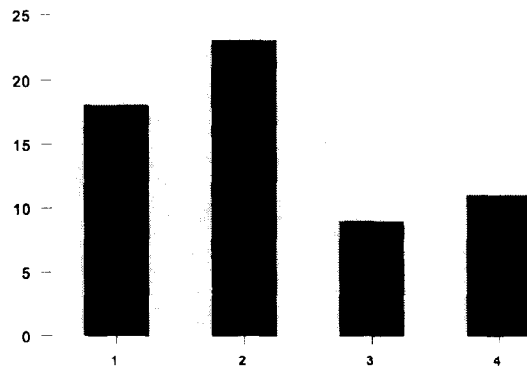


Fig. C
(Negotiations)

1. Discontinued negotiations: 18 (Algeria, Austria¹, Croatia¹⁻², Estonia, Kenya, Lithuania, Pakistan², Romania, the Russian Federation, Serbia¹, Slovenia¹, Yugoslavia¹, Yugoslavia³⁻⁷)
2. Continuing negotiations: 23 (China², Croatia³, Germany¹⁻⁴, India¹ (first quest. no!), Latvia, The former Yugoslav Republic of Macedonia¹⁻⁴, Mongolia, Netherlands, Pakistan¹ (first quest. no!), Poland¹⁻⁶, Slovenia²⁻³)
3. No negotiations: 9 (Austria², China¹, India² (first quest. yes!), Serbia²⁻⁴, Tunisia, Yugoslavia² (first quest. yes!), Zambia)
4. No answer³: 11 (Tanzania¹⁻¹⁰, Andorra)

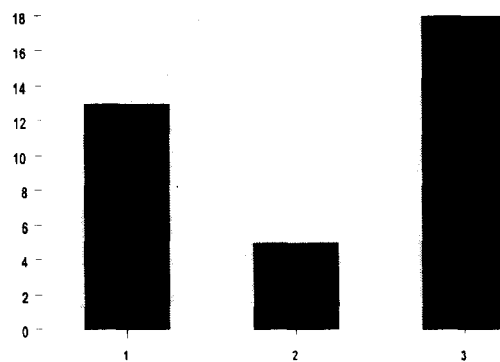


Fig. D
(Agreements)

1. Agreement made but not completed: 13 (Croatia¹, Germany¹⁻², Germany⁴, Netherlands, Pakistan¹, Poland²⁻⁴, Slovenia¹⁻², Yugoslavia¹, Yugoslavia³)
2. Agreement made but only covering part of the funds: 5 (India¹⁻², Lithuania, Poland¹, Poland⁶)
3. No agreement: 18 (Algeria, Austria², China¹, Croatia²⁻³, Germany³, Kenya, Latvia, The former Yugoslav Republic of Macedonia⁴, Poland⁵, the Russian Federation, Slovenia³, Tunisia, Yugoslavia², Yugoslavia⁴⁻⁷)
4. Partial transfers of originals: 14 (Algeria, China¹ (although no negotiations!), Croatia¹, Germany¹, Germany³⁻⁴, Latvia, Lithuania, Poland², Poland⁴, Slovenia¹ (greater part), Slovenia², Yugoslavia¹, Yugoslavia³)
5. Partial transfers of copies: 19 (Algeria, Croatia¹, Germany¹⁻⁴, India¹⁻², Kenya (no transfer but purchase!), Latvia, Lithuania, Netherlands, Pakistan¹, Poland³⁻⁵, Slovenia¹⁻², Tunisia)

3. This category comprises only cases in which questionnaires were returned, but individual questions have been left blank.

6. Open Claims: 61 (Algeria, Andorra, Austria1-2, China1-2, Croatia1-3, Estonia, Germany1-4, India1-2, Kenya, Latvia, Lithuania, The former Yugoslav Republic of Macedonia1-4, Mongolia, Netherlands, Pakistan1-2, Poland1-6, Romania, the Russian Federation, Serbia1-4, Slovenia1-3, Tanzania1-10, Tunisia, Yugoslavia1-7, Zambia)

b) Type of Claims

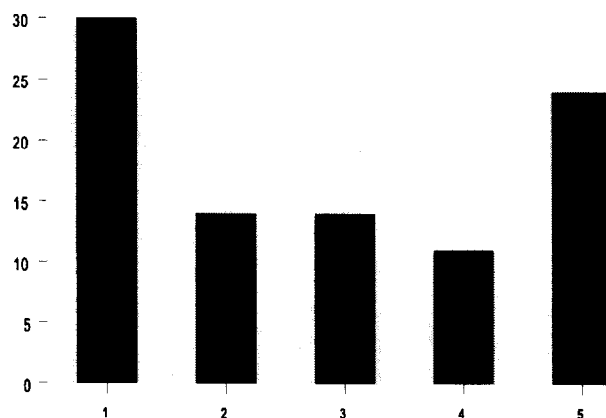


Fig. E

1. Claim against originals: 30 (Algeria, Austria2, Croatia1-3, Germany1-4, Latvia, Lithuania, The former Yugoslav Republic of Macedonia4, Netherlands, Pakistan1, Poland1-4, Poland6, the Russian Federation, Slovenia1-3, Yugoslavia1-7)
2. Claim against complete microfilm copies: 14 (Austria2 (only if originals not possible), China2, India1-2, Kenya, Latvia, Poland1-4, Slovenia1-3, Tunisia)
3. Claim against selected microfilm copies: 14 (Croatia1-3, Kenya, The former Yugoslav Republic of Macedonia4, Poland1-3, Slovenia1-3, Yugoslavia4-6)
4. The concept of joint heritage possible: 11 (Croatia3, Germany4, India1, Kenya, Latvia, The former Yugoslav Republic of Macedonia4, Poland1-4, Slovenia3)
5. The concept of joint heritage not possible: 24 (Algeria, Austria2, China2, Croatia1-2, Germany1-3, India2, Latvia, Lithuania, Netherlands, Pakistan1, Poland6, the Russian Federation, Slovenia2, Tunisia, Yugoslavia1-7)
6. No answer: 2 (Slovenia1, Poland5)

c) Fonds involved

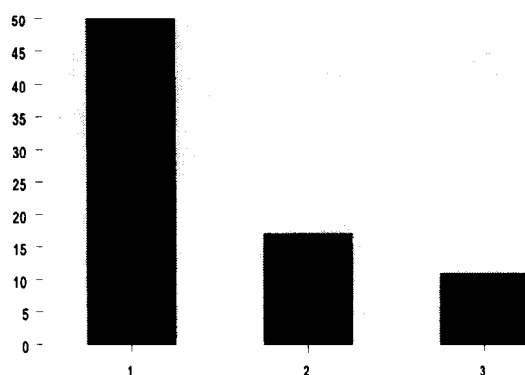


Fig. F

1. Public archives: 50 (Algeria, Andorra, Austria1-2, China2 (party archives!), Croatia1-3, Estonia, Germany1-4, India1-2, Kenya, Latvia, Lithuania, The former Yugoslav Republic of Macedonia1-4, Mongolia, Netherlands, Pakistan1-2, Poland1-6, Romania, the Russian Federation (party archives), Serbia1-4, Slovenia1-3, Tunisia, Yugoslavia1-7, Zambia)
2. Private archives: 17 (Algeria, Andorra, Austria2, Germany1, Germany3, India1-2 (2nd quest. no!), Kenya (2nd quest. no!), Lithuania (quest. no, but Jesuitical!), The former Yugoslav Republic of Macedonia1-4, Netherlands (large quantity, special legal problem!), Slovenia2 (first quest. no!), Yugoslavia1 (first and 2nd quest. no, but attached list contains references to private papers), Yugoslavia3 (first and 2nd quest. no, but attached list contains references to private papers))
3. No answer: 11 (China1, Tanzania1-10)

Main fonds concerned

(see the case-by-case analysis below)

Covering dates:

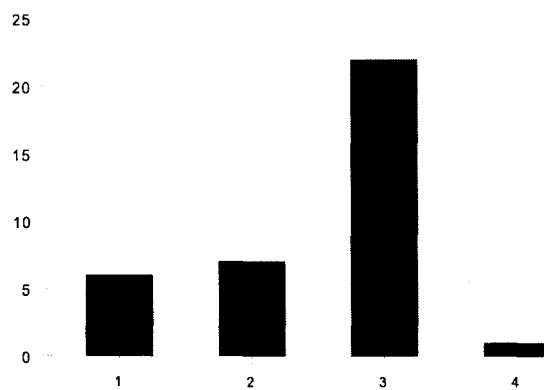


Fig. G

1. Middle Ages to 20th century: 6 (Algeria [15th-20th cent], Lithuania[14th cent-1991], Poland1[12th-20th cent], Poland3[14th-20th cent], Slovenia1[12th cent-1918], Slovenia2 [13th cent-1954])
2. 16th-20th century: 7 (Croatia1 [17th cent-1918], Croatia2 [16th cent-1947], India1 [1616-1947], India2 [1690-1955], Pakistan1 [1616-1947], Poland4 [16th-20th cent], Yugoslavia5 [16th-20th cent])
3. 19th-20th century: 22 (China2 [1917-40], Croatia3 [1918-92], Germany1 [19th-20th cent], Germany2 [1936-45], Germany3 [1925-45], Germany4 [20th cent], Kenya [1886-1963], Latvia [1920-90], The former Yugoslav Republic of Macedonia4 [1918-92], Netherlands [c.1920-42], Poland2 [19/20th cent], Poland5 [19th/20th cent], Poland6 [20th cent], the Russian Federation [1917-41], Slovenia3 [1918-91], Tunisia [1881-1955], Yugoslavia1 [1858-1941], Yugoslavia2 [1918-41], Yugoslavia3 [1874-1944], Yugoslavia4 [19th/20th cent], Yugoslavia6 [19/20th cent], Yugoslavia7 [1945-90])
4. No data: 1 (Austria2)

Approximate quantity:

20,000lm (Algeria), 477lm (Austria2), 8lm (China2), not important (Croatia1-2), unknown (Croatia3), over 3,000lm (Germany1), unknown (Germany2), unknown (Germany3), 20lm (Germany4), 2,875,000 exposures (India1, cf. n.2), over 1,000 archival units and 7130 files (India2⁴), not given (Kenya), 30,000 units (=3,000lm?) (Lithuania), 50lm (Netherlands), not known (Pakistan1), unknown (Poland1), large quantity (Poland2, 5), unknown (Poland3-4), not important

⁴ The figures are covering all the material relating to France, cf. n.2.

(Poland6), 541 units (?) (the Russian Federation), no data (Slovenia1-3), no data (Tunisia), no data (Yugoslavia1-2), ca.2,000 archival units (Yugoslavia3), no data (Yugoslavia4-7)

d) Microfilm

i) Use of microfilm to resolve the claim

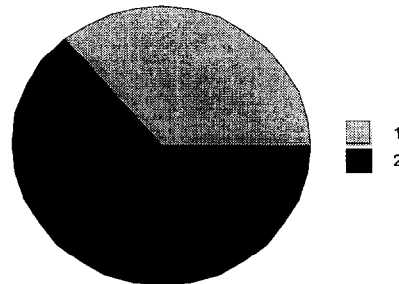


Fig. H

1. Yes: 13 (Austria2 (partly), China1, Croatia1-3 (partly), India1-2, Kenya, Slovenia1-3 (partly), Tunisia, Yugoslavia3)
2. No: 23 (Algeria, Germany1-4, Latvia, Lithuania, The former Yugoslav Republic of Macedonia4 (nonetheless following questions have been answered!), Netherlands, Pakistan1, Poland1-6, the Russian Federation, Yugoslavia1-2, 4-7)

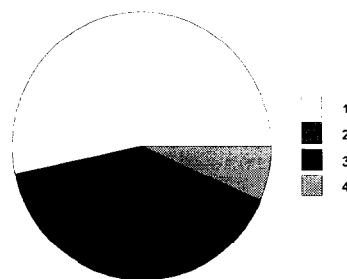


Fig. I

(Financing of Microfilms)

ii) Funding mechanisms

1. The country possessing the fonds: 8 (Croatia1-3, India1-2, Slovenia1-3)
2. The country making the claim: 2 (China1, Yugoslavia3)
3. The two countries jointly: 4 (Austria2, Kenya, Tunisia, Yugoslavia3 (!))
4. Other agencies: 1 (Yugoslavia3 (!))

iii) Cooperation for preparation

by joint financing: Austria2, Kenya, Yugoslavia3

by creating joint working groups: Austria2, China1, Croatia1-3, India1-2, Kenya, Slovenia1-3, Tunisia, Yugoslavia3

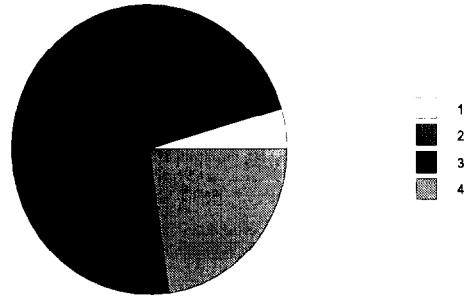


Fig. J
(Supply of Microfilms)

iv) *Conditions of supply*

1. Copy for reading: Austria²
2. Negative master from which copies can be made: 11 (Austria², China¹, Croatia¹⁻³, India¹, Kenya, Slovenia¹⁻³, Tunisia)
3. Right to make copies for readers: 5 (Croatia¹, India¹⁻², Kenya, Tunisia)
4. Full rights to make copies for other organisations: 5 (Kenya, Slovenia¹⁻³, Yugoslavia³)

v) *Other types of copy*

on paper: Kenya, Yugoslavia³
as electronic images: Austria², China¹

vi) *Legal basis for the claim*

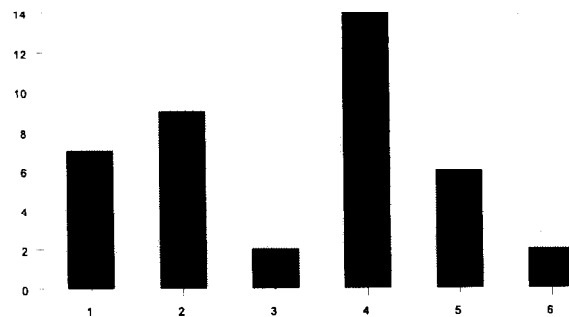


Fig. K

1. National archival legislation: 7 (Yugoslavia²⁻⁷, Latvia)
2. Bilateral agreements: 9 (Croatia¹⁻², Germany¹⁻², Germany⁴, Netherlands, Slovenia¹⁻², Yugoslavia¹)
3. Multilateral agreements: 2 (Netherlands, Slovenia³)
4. Archival principles: 14 (Algeria, Austria², India¹⁻², Kenya, Lithuania, Pakistan¹, Slovenia³, Yugoslavia²⁻⁷,
5. Principles of international law: 6 (Poland¹⁻⁶)

6. Other: 2 (Croatia2-3)
No answer: 3 (China2, Germany3, Tunisia)

vii) *Legal or other reasons supporting the status quo*

Various political reasons (Germany4), not applicable (India1), British claims to the property of the material claimed (Kenya)

viii) *Access conditions in the event of transfer*

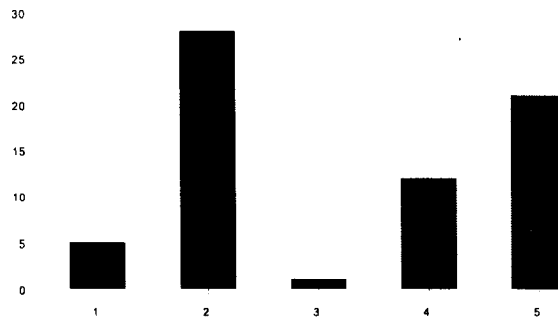


Fig. L

The conditions of access should be governed by

1. the rules applying before transfer: 5 (Algeria, China2; Kenya, Poland4 (!), the Russian Federation, Yugoslavia3)
2. the rules applying in the country to which they are transferred: 28 (Austria2, Croatia1-3, Germany1-4, India1, India2, Latvia, Netherlands, Pakistan1, Poland1-6, the Russian Federation (!), Slovenia2, Slovenia3, Tunisia, Yugoslavia1, Yugoslavia2, Yugoslavia4-7)
3. free access: Lithuania
4. because it is more favourable for researchers: 12: (Austria2, Germany1-4, India2, Lithuania, Netherlands, the Russian Federation, Slovenia2, Slovenia3, Yugoslavia3)
5. because it is more compatible with the interests of the states concerned: 21 (Algeria, Croatia3, India1, India2, Kenya, Latvia, Pakistan1, Poland1-6, the Russian Federation, Tunisia, Yugoslavia1, Yugoslavia2, Yugoslavia4-7)

No answer: China2, The former Yugoslav Republic of Macedonia4, Slovenia1

e) **Measures for solving claims**

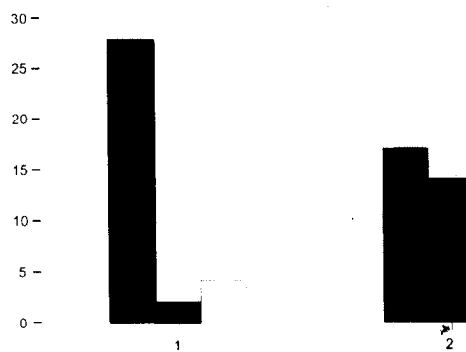


Fig. M
 (Bilateral measures)

i) *Bi-lateral measures*

1. Guarantee of access on a reciprocal basis

yes: 28 (Algeria, Austria², China², Croatia¹⁻³, Germany¹⁻⁴, India², Latvia, Lithuania, Pakistan¹, Poland¹⁻⁶, the Russian Federation, Slovenia³, Yugoslavia²⁻⁷)

no: 2 (Netherlands, Yugoslavia¹)

no answer: 4 (Kenya, Slovenia¹⁻², Tunisia)

not applicable: India¹ (!)

2. Production of copies before an agreement is reached

yes: 17 (Algeria, Austria², China², Croatia¹, Croatia³, Germany⁴, India², Kenya, Latvia, Lithuania, Netherlands, Pakistan¹, Poland⁴, Poland⁶, the Russian Federation, Slovenia³, Tunisia)

no: 14 (Germany¹⁻³, Poland¹⁻³, Poland⁵, Yugoslavia¹⁻⁷)

no answer: 3 (Slovenia¹⁻², Croatia²)

not applicable: India¹ (!)

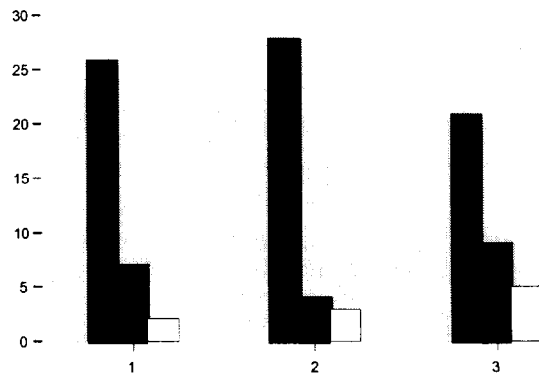


Fig. N
(Multilateral measures)

ii) *Multi-lateral measures*

1. Expert consultation by archivists

Yes: 26 (Austria², Croatia¹⁻³, China², Germany¹⁻⁴, India¹, India², Latvia, Pakistan¹, Poland¹⁻⁶, Slovenia³, Yugoslavia²⁻⁷)

no: 7 (Algeria, Kenya (because not decisive), Lithuania, Netherlands, the Russian Federation, Tunisia, Yugoslavia¹)

No answer: 2 (Slovenia¹⁻²)

Countries to be involved: all countries having claims on the Russian Federation (Austria², Germany¹), existing cooperation with the Russian Federation for microfilming all pertinent records (China²), Czech Republic, Germany (Germany²), Belgium, France, Germany (Germany³), Belarus, Ukraine, Lithuania, the Russian Federation, Poland, Germany (Germany⁴), concerned countries to discuss claims and financial implications (India¹), France and India (India²), U.K., India, Pakistan, Bangladesh, Nepal, Burma and Britain (sic!) (Pakistan¹), successor states of former Yugoslavia (Slovenia³), Germany, Yugoslavia (Yugoslavia²), interested countries, discussion of access, closure period, copies (Yugoslavia³), Yugoslavia, Bosnia, Croatia (Yugoslavia⁴), Yugoslavia, Croatia (Yugoslavia⁵), Yugoslavia, The former Yugoslav Republic of Macedonia (Yugoslavia⁶), Yugoslavia, Slovenia (Yugoslavia⁷)

2. Inter-governmental consultation

yes: 28 (Algeria, Austria², China², Croatia¹⁻³, Germany¹, Germany³, Germany⁴, India¹, India², Kenya, Netherlands, Pakistan¹, Poland¹⁻⁶, Slovenia¹, Slovenia³, Yugoslavia²⁻⁷)

no: 4 (Germany², the Russian Federation, Tunisia, Yugoslavia¹)

no answer: 3 (Latvia, Lithuania, Slovenia²)

countries to be involved: countries concerned by a claim (Algeria, Croatia 1-3, Poland 1-3, 5-6), no answer (Austria², China²), all countries having claims on the Russian Federation (Germany¹), Belgium, France, Germany (Germany³), Belarus, Ukraine, Lithuania, the Russian Federation, Poland⁴, Germany (Germany⁴), India, Pakistan and Bangladesh, discussion of claims and financial implications (India¹), France and India (India²), Britain, France and other former colonial powers (Kenya), the Russian Federation, Netherlands, EU, Council of Europe (Netherlands), U.K., India, Pakistan, Bangladesh, Nepal, Burma and Britain (sic!) (Pakistan¹), no countries mentioned, state succession to the agreements of 1923 and 1958 (Slovenia¹), Italy, Slovenia (Slovenia²), successor states of former Yugoslavia (Slovenia³), interested countries, discussion of access, closure period, copies (Yugoslavia², Yugoslavia³, Yugoslavia⁴, Yugoslavia⁵, Yugoslavia⁶, Yugoslavia⁷).

3. Joint preparation of databases and finding aids

yes: 21 (Algeria, Croatia², Germany¹, Germany⁴, Kenya, Netherlands, Pakistan¹, Poland¹⁻⁶, Slovenia², Slovenia³, Yugoslavia²⁻⁷)

description of a suggested project: delegation of Algerian archivists to France to take part in the arrangement of documents (Algeria), creation of a database by all countries concerned with information relating to their claims (Germany¹, Germany⁴), database on financial implications for microfilm operations (copying, personnel) relating to East Africa (Kenya), inventory of the fonds "Holland" (Netherlands), modalities pending future decisions of the countries concerned (Pakistan¹), examination of claim lists by experts (Slovenia²), description of fonds (Slovenia³)

no: 9 (Austria², Croatia²⁻³, India¹, India², the Russian Federation, Slovenia¹, Tunisia, Yugoslavia¹)

no answer: 5 (China², Germany², Germany³, Latvia, Lithuania)

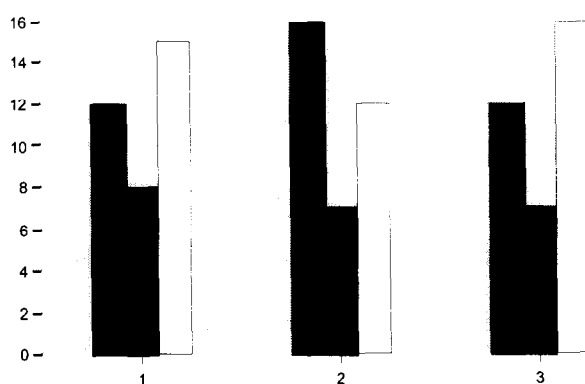


Fig. O

(International legal instruments)

Preparation of an international legal instrument at the level of :

1. UN

yes: 12 (Algeria, Austria², Croatia²⁻³, Netherlands, Poland¹⁻⁶, Tunisia)

no: 8 (Croatia¹, Germany¹, Germany³, Germany⁴, the Russian Federation, Slovenia¹⁻³)

no answer: 15 (China², Germany², India¹, India², Kenya, Latvia, Lithuania, Pakistan¹, Yugoslavia¹⁻⁷)

2. UNESCO
yes: 16 (Algeria, Austria², Germany¹, Germany³, Germany⁴, India¹, India², Kenya, Netherlands, Yugoslavia¹⁻⁷)
no: 7 (Croatia¹⁻³, the Russian Federation, Slovenia¹⁻³)
no answer: 12 (China², Germany², Latvia, Lithuania, Pakistan¹, Poland¹⁻⁶, Tunisia)

3. Council of Europe
yes: 12 (Austria², Germany¹, Germany³, Germany⁴, Lithuania, Netherlands, Yugoslavia²⁻⁷)
no: 7 (Croatia¹⁻³, the Russian Federation, Slovenia¹⁻³)
no answer: 16 (Algeria, China², Germany², India¹, India², Kenya, Latvia, Pakistan¹, Poland¹⁻⁶, Tunisia Yugoslavia¹)

iii) *Role for UNESCO and ICA in preparing or initiating multi-lateral measures*

- yes: 28 (Algeria, Austria², China², Croatia²⁻³, Germany¹, Germany³, Germany⁴, India¹, India², Kenya, Netherlands, Pakistan¹, Poland¹⁻⁶ (!), Slovenia³, Tunisia, Yugoslavia¹⁻⁷)
no: 6 (Croatia¹, Germany², Lithuania, the Russian Federation, Slovenia¹, Slovenia²)
what role: no answer (Algeria, China²), cooperation with countries concerned, initiatives by UN, UNESCO, Council of Europe, OSCE (Austria²), mediation, coordination, collection and dissemination of information (Germany¹, Germany³, Germany⁴), mediation by UNESCO and ICA (India¹), support for finding a solution (India²), follow-up of activities of UNESCO; if UNESCO fails, the matter should be placed before UN (Kenya), preparation for international legal instrument, coordination of activities (Netherlands), support of a mission to U.K. to identify materials of interest (Pakistan¹), promotion of agreements between successor states, explanation of archival principles (Slovenia³), "agent" (Yugoslavia¹), coordination, organization of meetings and professional discussions, instructional role, preparation of international standards (Yugoslavia², Yugoslavia³, Yugoslavia⁴, Yugoslavia⁵, Yugoslavia⁶, Yugoslavia⁷)
no answer: Latvia

f) **Supporting texts**

- Hague Conventions of 1907 and 1954: 6 (Poland¹⁻⁶)
UNESCO 20C/102/1978: 4 (Algeria, Croatia², Germany¹, Germany⁴)
Vienna Convention on State Succession 1983: 9 (Croatia³, Algeria, Kenya, Poland¹⁻⁶)
Other UN documents: 7 (Algeria, Poland¹⁻⁶)
Recommendations of UN, UNESCO and ICA: 8 (Croatia³, Lithuania, Poland¹⁻⁶)
CITRA: 11 (Warsaw 1963 [Algeria], Cagliari 1977 [Algeria], Saloniki 1994 [Croatia³, Germany¹, Germany⁴, Yugoslavia¹⁻⁷], Washington 1995 [Yugoslavia¹⁻⁷])
Guangzhou paper 1995: 7 (Yugoslavia¹⁻⁷)
13th International Congress on Archives 1996: 7 (Yugoslavia¹⁻⁷)
Bi-lateral agreements: 5 (Croatia¹⁻³, Germany¹⁻²)
Archival literature: 2 (India¹⁻²)
No answer: 11 (Austria², China², Germany³, Latvia, Netherlands, Pakistan¹, the Russian Federation, Slovenia¹⁻³, Tunisia)
No generally applicable legal instrument (Lithuania)

2. EVALUATION OF DATA

a) Origins of the Claim/Negotiations

With regard to the origins of the 61 identified archival claims, 25 are cases of state succession (Croatia 1-3, The former Yugoslav Republic of Macedonia 1-4, Mongolia, Pakistan 2, Poland 1-5, Slovenia, Slovenia 2, Slovenia 3, Yugoslavia 1, Yugoslavia 4, Yugoslavia 5, Yugoslavia 6, Yugoslavia 7 Yugoslavia 9, Yugoslavia 10, Yugoslavia 11), although the term itself appears only once in Algeria's response; and 14 of the responses refer to cases of restitution (Austria 2, Germany, Germany 2, Germany 3, Germany 4, Netherlands, Poland 4-6, the Russian Federation, Serbia, Yugoslavia 1, Yugoslavia 2, Yugoslavia 3). In 23 cases (Algeria, Austria 1, China 2, Estonia, India 2, Kenya, Latvia, Lithuania, Pakistan, Romania, Tanzania 1-10, Tunisia, Zambia) a distinction between the issues of state succession and restitution is either not feasible or would not make sense. This is above all the case where claims are due to the process of decolonization. Most of the claims in this category are by Tanzania (Tanzania 1-10), including - rather surprisingly - claims against France (Tanzania 3) and - even more surprisingly - against the United States (Tanzania 10).

The cases of undoubted state succession relate to the break-up of former political entities such as Yugoslavia (The former Yugoslav Republic of Macedonia 1-4, Yugoslavia 9, Yugoslavia 10, Yugoslavia 11, Slovenia 2, Slovenia 3, Yugoslavia 1, Yugoslavia 4, Yugoslavia 5, Yugoslavia 6, Yugoslavia 7) or the Austro-Hungarian Monarchy (Austria 1, Slovenia 1, Yugoslavia 1⁵), and also to changes of boundaries as in the case of Istria (Slovenia 2). State succession after the dissolution of the Soviet Union is, of course, of much more importance than is discernible in the present survey, and becomes apparent only through the responses of Estonia and Latvia to the first questionnaire and through the Lithuanian response to the second questionnaire. Not least various terminology and legal subtleties have to be taken into account. Whereas for Bosnia and Herzegovina, Croatia, The former Yugoslav Republic of Macedonia and Slovenia claims against Yugoslavia are due to the break-up of the latter, Yugoslavia ticked the category "other" for its claims against these successor states, obviously hinting at a position where the issue was one of secession rather than of dismemberment.

All simple restitution cases are due, and this again is not surprising, to the events of the Second World War. Most claims are made on the Russian Federation (Austria 2, Germany 1, Netherlands, Serbia, Yugoslavia 3), but others are against Austria (Yugoslavia 8, Yugoslavia 1), the Czech Republic (Germany 2), France (Germany 3), Germany (Yugoslavia 2) and Poland (Germany 4). When dealing with issues of restitution one must bear in mind that after a certain period the tracks of removed or captured archives, which may have been partly destroyed or damaged, are difficult to follow. Claimants for such archives are not always able to identify their present location. This may perhaps explain why the claim against the Yugoslavian embassy archives in Vienna is asserted twice, both against Austria (Yugoslavia 1) and against the Russian Federation (Yugoslavia 3). Finally, a special case, is constituted by China's claim against parts of the Komintern archives in the Russian Federation (China 1).

Negotiations

An adequate evaluation of the data with regard to negotiations, and their results, proves difficult, as the answers are often contradictory. Of the total of 61 claims identified by the first questionnaire, up to 41 claims have been the object of negotiations which in at least 23 cases (China 2, Croatia 3, Germany 1-4, India 1 (first response no!), Latvia, The former Yugoslav Republic of Macedonia 1-4, Mongolia, Netherlands, Pakistan (first response no!), Poland 1-6, Slovenia, Slovenia 3) are still continuing. The number of inconsistencies between the responses to the first and the second questionnaire is particularly high in this respect. Whilst in the case of Yugoslavia the second, positive, responses have been retained because of their reference to exact dates of negotiations, it is difficult in the case of India to decide whether negotiations on its claims against France (India 2) have taken place or not and whether negotiations with the United Kingdom (India 1) are still continuing. As the second questionnaire

3. The Yugoslavian claim against Austria mainly relates to the restitution of archives which were captured during the Second World War, but the response to the questionnaire refers also to the execution of the Convention of 1923.

reports an agreement with France covering a part of the fonds concerned, we may assume that negotiations have taken place.

It would appear that negotiations have led to agreements for the transfer of originals, or copies, in at least 12 cases (Germany 1, Germany 2, Germany 4, India 1, India 2, Lithuania, Netherlands, Pakistan, Slovenia 1, Slovenia 2, Yugoslavia 1, Yugoslavia 3). The implementation of all of these agreements is as yet incomplete - otherwise there would be no claim. On the other hand partial transfers of originals and/or copies have taken place in three other cases (Algeria, China 1, Germany) without any preceding agreement. Absence of an agreement was also reported in the claims of Austria vs. Russian Federation (Austria 2), Kenya vs. United Kingdom, Germany vs. France (Germany 3), Russian Federation vs. United States, Slovenia vs. Yugoslavia (Slovenia 3), Yugoslavia vs. Germany (Yugoslavia 2) and in all the claims of Yugoslavia against the former parts of the Federation (Yugoslavia 4-7). Negotiations have taken place in nine cases (Austria 2, China, India 2⁶, Tunisia, Yugoslavia 2⁷, Yugoslavia 9-4, Zambia.

The responses once more reveal the fact that negotiations on disputed archival claims are highly intricate and time consuming and that no quick results should be expected. Lithuania reports negotiations with the Soviet Union throughout the years 1920-40, apparently to be resumed with the Russian Federation. Germany reports continuing negotiations with Poland from 1970 (Germany 4). The negotiations for the execution of the Austro-Yugoslavian Convention of 1923 have lasted - though with a notable interruption 1926-58 - from 1923 to 1991 (Slovenia 1, Yugoslavia 1). Given the complexity of state succession for archives in the cases of the former Soviet Union and of the former Yugoslavia decades of negotiations are conceivable. The same applies to all issues which are due to the process of decolonisation and, of course, to all restitution issues.

b) Type of Claims

The responses to the questionnaire clearly indicate that claims for originals prevail. Therefore microfilm must be regarded as a very secondary means for the solution of any disputed claim. The same is true of the concept of joint heritage, although the minority of countries favouring it seems to be increasing during the last few years. The dominance of claims for originals partly explains itself by the high rate of restitution cases in which neither microfilm copies nor joint heritage would make much sense. However, in cases of state succession where the concept of joint heritage might prove useful it is categorically rejected (Yugoslavia 1-7 - this position, expressed by the responses to the questionnaire, seems to have been overtaken by recent developments).

c) Fonds involved

Fonds involved comprise both public and private archives, although the first certainly dominate (50 cases against 17). Here again the responses have sometimes been contradictory (India 1, India 2, Slovenia 2) or not completely clear. Lithuania and Yugoslavia reported no claims for private archives (Lithuania 1, Yugoslavia 3), but the attached lists contain references to private papers. Yugoslavia provided detailed information on many questions only in Serbocroatian, and so it could not be evaluated. The Netherlands drew particular attention to the issue of the restitution of seized private archives, a matter which is often unduly neglected.

The material involved covers a wide range of documents of all types from the 12th century (Slovenia 1) to the present day. The quantitative dimension of the issue as revealed by the responses to the questionnaire is enormous. In some cases (Algeria, Germany 1, Lithuania) the linear metres of documents claimed amount to several thousands. However, in some cases (India 1, India 2) the figures given correspond to all the material relating to the claimant country in other countries. In many cases no figures could be provided.

6. With regard to India see the reservations made above.

7. The response to the first questionnaire was in the affirmative.

d) Microfilm

Only a minority of 13 of the respondents (against 23) expressed themselves in favour of the use of microfilm to resolve a claim (see also above para.2), and the majority of these would prefer the finances to come from the country possessing the fonds. However, in four cases (Austria 2, Kenya, Tunisia, Yugoslavia 3) financial arrangements might be possible; although in one of them (Yugoslavia 3) two contradictory possibilities were ticked.

e) Legal basis and access

Legal basis

Where they exist, all respondents referred to bi-lateral agreements upon which claims may be based. In the absence of such agreements there is an almost unanimous consensus about the application of the principle of provenance, although it is introduced under different expressions, such as the principle of territoriality or principle of origin. Algeria distinguishes between an archives-territory-link and the principle du respect des fonds; two countries (Kenya, Pakistan 1) refer to the principle of pertinence. All Polish responses refer to principles of international law, whereas Latvia and Yugoslavia see their own national archival legislation as sufficient legal basis for their claim. In two cases (China 2, Germany 3) no explicit answers as to the legal basis for the claim have been given; but in the case of Germany it is self-evident, as in practically all restitution cases, that the records in question are of German provenance.

Access

28 of the respondents (against 5) express a wish that conditions of access should be governed by the rules applying in the country to which the archives are transferred. Most of them reason that such a solution would be more compatible with the interests of the states concerned; only 12 respondents seem to value the solution as being more favourable to researchers.

f) Solutions

i) Bi-lateral measures

Having left all procedural matters out of the questionnaire, the focus under this heading is exclusively on access and the production of copies before an agreement is reached. With two exceptions (Netherlands, Yugoslavia 1) the guarantee of access on a reciprocal basis meets with general approval. The production of copies before an agreement is reached is rejected by Germany, Poland and Yugoslavia. India refers, in both questionnaires, to an already existing agreement with the United Kingdom.

ii) Multi-lateral measures

Most respondents are in favour - although with some significant distinctions - of consultations of archival experts, of intergovernmental consultations and of the joint preparation of data bases and finding aids. In certain cases (Algeria, Kenya, Lithuania, Netherlands, the Russian Federation, Yugoslavia 1), however, archive administrations are not too confident about expert consultations, perhaps because they are aware of the necessity of a decision at the political level. On the other hand, there may also be cases where intergovernmental consultations, for one reason or another, may not be desirable. As long as no reasons are given, however, we are, completely left in the dark as to the motives behind the position adopted by some countries on specific claims (e.g. Germany 2, the Russian Federation, Yugoslavia 1). The joint preparation of data bases and finding aids is a purely practical question. Here again responses may vary from case to case. Whether such projects are useful will depend on common interests, on available funds and on practical feasibility (e.g. in the case of language problems). In most cases the responses received see a role for UNESCO and ICA in preparing or initiating multi-lateral measures (Algeria, Austria 2, China 2, Germany 1, Germany 3, Germany 4, India 1, India 2, Kenya, Netherlands, Pakistani 1, Slovenia 3, Yugoslavia 2, Yugoslavia 3, Yugoslavia 4, Yugoslavia 5, Yugoslavia 6, Yugoslavia 7). In some specific cases, however, countries seem to prefer to adhere strictly to bi-lateral contracts or to avoid, for the moment, there being any discussions at all (Germany 2, Lithuania, Russian Federation, Slovenia 1, Slovenia 2). The role which the responding

archive administrators have in mind is mainly an advocatory and instructional one: the promotion of agreements (India 2, Slovenia 3), the collection and dissemination of information (Germany 1, Germany 3, Germany 4), the explanation of archival principles (Slovenia 3) and the preparation of international standards (Yugoslavia 2-7).

Much more controversial is the question about whether the preparation of an international legal instrument should be envisaged. The preparation of such an instrument at the level of UNESCO meets with agreement in 16 cases (Algeria, Austria 2, Germany 1, Germany 3, Germany 4, India 1, India 2, Kenya, Netherlands, Yugoslavia 1, Yugoslavia 2, Yugoslavia 3, Yugoslavia 4, Yugoslavia 5, Yugoslavia 6, Yugoslavia 7). Next comes the Council of Europe in 12 cases (Austria 2, Germany 1, Germany 3, Germany 4, Lithuania, Netherlands, Yugoslavia 2, Yugoslavia 3, Yugoslavia 4, Yugoslavia 5, Yugoslavia 6, Yugoslavia 7): the smaller number is explained by the fact that the Council's activities are naturally of less interest to non-European countries. Likewise 12 countries (Algeria, Austria 2, Croatia 2-3, Netherlands, Poland 1-6, Tunisia) are in favour of a legal instrument at the UN level; whereas such a solution is explicitly rejected in eight cases (Croatia 1, Germany 1, Germany 3, Germany 4, the Russian Federation, Slovenia 1-3). However, it must be taken into account that many countries have preferred to give no answer at all to this question (China 2, Germany 2, India 1, India 2, Kenya, Lithuania, Pakistan 1, Yugoslavia 1, Yugoslavia 2, Yugoslavia 3, Yugoslavia 4, Yugoslavia 5, Yugoslavia 6, Yugoslavia 7). A negative reply for all three possibilities was given by Croatia 1, Russian Federation and Slovenia 1-3. Although here again, the nature of the individual case must be considered, a preference for bi-lateral solutions and a wide-spread fear of a possible infringement of rights of sovereignty are clearly discernible.

g) Supporting texts

The responses to the questionnaire reveal that information on disputed archival claims, at least among archive administrations, seems to be very fragmentary. For 11 out of 36 asserted claims (Austria 2, China 2, Germany 3, Latvia, Netherlands, Pakistan 1, Russian Federation, Slovenia 1, Slovenia 2, Slovenia 3, Tunisia) no supporting texts could be given. Few references are made to CITRA8 proceedings (Algeria, Croatia 3, Germany 1, Germany 4, Yugoslavia 1-7), to UNESCO documents (Algeria, Croatia 2, Germany 1, Germany 4); and only Yugoslavia makes reference to the last International Congress on Archives and to the Guangzhou paper of the Executive Committee of ICA. Mention of the Vienna Convention of 1983 is limited to Algeria, Croatia, Kenya and Poland; without, however, their taking into account that because this convention has not obtained the necessary number of ratifications it has not come into force. (So far there have been only four accessions to the convention: Croatia, Estonia, Georgia and Ukraine). Only Poland refers to the Hague Conventions of 1907 and 1954. The only reference to the activities of the UN Commission on International Law, in the Algerian response, is certainly due to the leading role of Mohammed Bedjaoui in the work of the Commission. With the exception of India which referred to an article by Ernst Posner, which, although excellent, was republished fifty years ago in "The Indian Archives", no mention at all is made to any of the existing literature on the issue. The responses given clearly indicate that every party was focusing on its special claim without taking advantage of the experience of others.

IV. CONCLUSION

The responses to the questionnaire reveal more or less what was to be expected and did not contain any great surprises. They lent, however, colour to the already existing picture and supplied further details which are sometimes quite significant. The major disputed archival claims have been known for many years and are relatively well documented. The disputes between Algeria and France, India and the United Kingdom or Austria and ex-Yugoslavia are all more than fifty years old, demonstrating the enduring nature of such issues. The issue has reached a new dimension during the last years with the disintegration of the Soviet Union and the former Yugoslavia and with the claims for the restitution of archives seized during or shortly after World War II which are now held in the Russian Federation repositories. It may be noted in this context that questions of state succession with respect to archives due to the break-up of the Soviet Union do not appear at all in the present survey, although we do know from other sources that such issues exist and are of major importance.

Archival claims are still mainly claims for originals and the possibility of their solution with the help of microfilms seems only to be of limited value. This is above all true for restitution cases. On the other hand it is noticeable that many Asian and African countries are prepared to content themselves with microfilm copies if these are extended beyond the legal claim to all the holdings relating to their history. A solution through the concept of joint heritage is favoured only by a minority, but it seems to be an increasing minority, which leaves some hope for the future. Recent developments seem to indicate that this concept has been adopted for some of the claims, at least, between the successor states of former Yugoslavia. Although it would not make sense to reopen such historic cases as the Thirty Years War, archival claims may still extend far back: for Poland the consequences of the partitions between 1772 and 1795 are still the bedrocks of claims. However, most claims do not go further back than our century and here, as has been shown by the statistical analysis, the effects of World War II and of the process of decolonisation certainly prevail.

For the solution of disputed archival claims the international community has developed a number of both legal and archival guiding principles. They are, however, not known widely enough and therefore, the dissemination of relevant information and the raising of awareness remain tasks which call for further action. One must not forget that the issue is not only a professional one, it is a problem involving political interest and national pride. Where the political will is lacking a solution of disputed archival claims will not be possible. It is also for this reason that international action is very often eyed with some distrust and seen as interference with national sovereignty. Therefore, the discernible preference is for relying exclusively on bilateral negotiations in order to achieve mutually acceptable settlements. But even when all political obstacles have been removed, one must be aware of the fact that negotiations on archival claims are very time consuming and that quick results cannot be expected. That solutions are possible, however, has been shown by the success of the concept of joint heritage practised between Austria and Hungary after World War 1, by the success of negotiations between Indonesia and the Netherlands more than twenty years ago, and by the common solution reached by Portugal with Brazil and with its former territories in Africa. Just recently an example was set by the transfer of archives from South Africa to Namibia, which was completely consonant both with archival principles as recommended by UNESCO and ICA and with political interests.

It should be the general rule that in cases of disputed archival claims a special legal instrument should be drawn up, approved by the competent authorities of the states concerned, listing specifically and as precisely as possible the archives or parts of them which shall pass from one state to another. To determine which categories of archives or records should be transferred, it will be necessary to have a set of approved, clear and uncontroversial criteria, worked out from the very beginning in co-operation with experts in international law and archives. The organisational framework will therefore consist of one or several bodies of experts of all the parties concerned, who will be responsible for drawing up a list of all disputed archival holdings and for negotiating an agreement. In particular the creation of an international committee, similar to that of UNESCO for the restitution of cultural property, including the restitution of displaced archives, might be useful.

APPENDIX:
TEXT OF QUESTIONNAIRES

Conseil international des Archives
International Council on Archives



INTERNATIONAL ARCHIVAL CLAIMS

Please complete this form and return it before 20 December 1996 to:

ICA Secretariat
60 rue des Francs-Bourgeois
75003 Paris, France
Fax: +33 1 42 72 20 65
E-mail: 100640.54@compuserve.com

1. Name of Archive.....
Contact Name.....
Address.....
.....
.....
Tel:..... Fax:..... e.mail :.....
2. Do you wish to participate in the international survey of archival claims?
Yes No
3. Country with which you have a claim.....
(if more than one, please copy this form and fill in one for each claim)
4. What is the origin of this claim *(tick one)*?
De-colonisation Second World War Other war
Break-up of former political grouping Other
5. Does this claim concern: Public Archives Private Papers
6. Have there been any bi-lateral negotiations regarding this claim?
Yes No
If yes, are these negotiations continuing? Yes No

Note: *If you have answered Yes to question 2, the survey questionnaire will shortly be sent to the contact person named in question 1.*



International Survey of Archival Claims
(Carried out under contract with UNESCO)

DETAILED QUESTIONNAIRE

NOTE: This is not a confidential questionnaire. ICA reserves the right to publish or communicate part or all of the answers given, to UNESCO or to other parties having an interest in this question .

Part 1 Origins of the Claim

1.1 The claim arose as a result of:

1.2 Has an agreement for transfer of originals or copies: (tick ✓ one)

- a. been made but not completed?
b. not been made?
c. been made but only covering a part of the fonds concerned?

1.3 Have there been negotiations? Yes No

If Yes, from 19_____ to 19_____

1.4 Have there been partial transfers:

- of originals ? Yes No
of copies ? Yes No

Part 2. Type of Claim

2.1 Is this a:

- Claim against originals
Claim against a complete microfilm copy
Claim against selective microfilm

In the case of a complex claim, all 3 may apply, depending on the fonds concerned.

2.2 Is it possible to envisage the creation of a «joint heritage» (see definition below) as a means of facilitating the solution of this claim?

Yes No

The definition of «joint heritage» is: 'Archive groups (fonds) resulting from the activities of administrations, functions of which are shared between two or more successor States may be declared «joint heritage». Rights and responsibilities connected with the custody of and access to the joint archival heritage are to be specified in the agreement concluded on its establishment by the States concerned'.

Part 3 The fonds involved in the Claim

3.1 The claim relates to:

public archives private archives

3.2 Please list the main fonds concerned below:
(If necessary, please use a separate sheet and attach it to this form)

3.3 Covering dates _____

3.4 Approximate quantity (preferably in linear metres) _____

Part 4 Microfilm

(In some cases microfilm may be instrumental in resolving a claim, but not all claims can be met in this way)

4.1 Can microfilm be used to resolve this claim? Yes No

If Yes, go on to 4.2; if No, go on to Part 5.

4.2 Financing of filming. In your opinion, who should the costs of microfilming be borne by:

the country possessing the fonds
the country making the claim
the 2 countries jointly
other agencies

4.3 Preparation and carrying out of microfilming. How can the 2 parties co-operate in this?

by joint financing? Yes No
by creating joint working groups? Yes No

4.4 Conditions of supply of microfilm. In the case under consideration, a solution may be reached through (tick more than one box if applicable):

- supply of copy for reading (e.g. diazo)
- supply of negative master from which copies can be made
- transfer of the right to make copies from the film for readers
- transfer of full rights to make copies for other organisations

4.5 Other types of copy. Have you studied the possibility of copies being supplied in another form:

- on paper Yes No
- as electronic images Yes No

Part 5. Claims for transfer of original documents

5.1 Legal basis for the claim (please refer to the different fonds mentioned in Part 2)

5.2 Legal or other reasons supporting the status quo:

5.3 Access conditions in the event of transfer (closure periods etc.).
The conditions of access for researchers should be governed by:

- a. the rules applying before transfer
- b. the rules applying in the country to which they are transferred

Reasons for your choice:

- because it is more favourable for researchers
- because it is more compatible with the interests of the States concerned.

Part 6 Measures which would aid a solution to the claim.

6.1 Practical bi-lateral measures.

Which of the following would, in your opinion, be helpful in resolving this claim:

guarantee of access to the archives concerned on a reciprocal basis?

- Yes No

production of copies in the meantime, before an agreement is reached?

- Yes No

6.2 Multi-lateral measures.

Which of the following would, in your opinion, be helpful in resolving this claim:

- a) expert consultations of archivists Yes No

If Yes, which countries should be involved, and what subjects should be discussed:

b) inter-governmental consultations Yes No

If Yes, which countries should be involved, and what subjects should be discussed:

c) joint preparation of databases, guides or other finding aids

Yes No

If Yes, please give a short description of the project you would like to see undertaken:

d) preparation of an international legal instrument at the level of

the United Nations	Yes <input type="checkbox"/>	No <input type="checkbox"/>
UNESCO	Yes <input type="checkbox"/>	No <input type="checkbox"/>
the Council of Europe	Yes <input type="checkbox"/>	No <input type="checkbox"/>

6.3 Do you see a role for UNESCO and ICA in preparing or taking the initiative in multi-lateral measures?

Yes No

If Yes, what role:

Part 7 Supporting texts

Please list (a maximum of 5) archival or legal texts or international instruments which, in your opinion would most help to reconcile the different points of view in this claim:
