The Consequences of the fall of Vienna Convention of Succession of States in Respect of State Property, Archives and Debts

Władysław Stępniak

Head Office of the State Archives of Poland
Key points

• The Vienna Convention on Succession of States (1983)
• The letter of the Secretary General of ICA (1984)
• Report of the Director General of UNESCO (1978)
• Professional Advice on the Vienna Convention (1983)
• Position Paper of Guangzhou (1995) and follow up
The Vienna Convention on Succession of States (1983)

• prepared by the most outstanding scientific authorities
• supported by International Law Commission of UN
• including achievements of UNESCO and ICA
• profound analysis of practices

• transfer during wars
• transfer caused by change of sovereignty
  o establishment of a new State
  o colonial system
• back transfer to the country of origin
  o principle of provenance with exception to the principle of functional pertinence
  o conception of the joint archival heritage
  o the right to the historical continuity of nations
Professional Advice on the Vienna Convention (1983)

• disqualification of the Convention?
• prevailing political approach
• primacy of a bilateral (or multilateral) agreement
• deciding about its ownership
• consequences of population displacements

• only the idea of the reconstitution of the memory of nations
• formal position of ICA on matters related to archival claims
• call for return to traditional methods of settling claims
• the priority of international public law over the legislation of individual States?
• Is the transfer of original archive materials in the course of international claims settling anachronic?
The initiative of UNESCO and ICA from 1997-1998

• Disputed archival claims. Analysis of an international survey: A RAMP Study, by Leopold Auer:
  • "Archival claims are still claims for originals and the possibility of their solution with the help of microfilms seems only to be of limited value....
  • The concept of joint heritage is favoured only by minority
Agreement on Succession of the Former State of Yugoslavia

• Concluded on June 29, 2002 in Vienna
• Annex D. Archives:
  • Article 2 (principles of provenance), Article 3 (functional pertinence), Article 4 (principle of pertinence or territorial provenance), Article 6 (common heritage and respect for the integrity of groups of SFRY State archives).
Traditional practicies of States in settling archival claims

• official records kept in archives belong to the territory they were created on
• return archive material taken in the past out of the territory being the subject of succession
• if the origin is known records must be returned to the successor
• owner or successor decision for private archives
Thanks for your attention!

stepniak@archiwa.gov.pl