# DISPLACED ARCHIVES

EDITED BY JAMES LOWRY

# Displaced Archives

Displaced archives have long been a problem and their existence continues to trouble archivists, historians and government officials. *Displaced Archives* brings together leading international experts to comprehensively explore the current state of affairs for the first time. Drawing on case studies from around the world, the authors examine displaced archives as a consequence of conflict and colonialism, analysing their impact on government administration, nation building, human rights and justice. Renewed action is advocated through considerations of the legal approaches to repatriation, the role of the international archival community, 'shared heritage' approaches and other solutions. The volume offers new theoretical, technical and political insights and will be essential reading for practitioners, academics and students in the field of archives, cultural property and heritage management, as well as history, politics and international relations.

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# Foreword

*Eric Ketelaar*

*Archives ... Worth Fighting For!* was the message on a t-shirt, printed by students in archival enterprise at the University of Texas on the occasion of Archives Week 1999. The t-shirt also carried the image of Angelina Eberly firing the cannon in the 'Archives War' of 1842 that kept the national archives of Texas in Austin, and thus kept Austin as the capital of the Republic and later the state. Fighting for archives when archives are the cause of a conflict or hunted for their content or merely used as a pawn ... Fighting for archives may also make archives a victim. Whatever the cause for such fighting, it often concerns archives removed from the place where they originally accumulated. The archives may have been moved to a safe place, captured by military force and removed elsewhere or removed following seizure and confiscation.

These are 'displaced archives', a term used as early as 1960 by Ernst Posner when commemorating the second Archivist of the United States, Solon Justus Buck. From 1943, Buck (assisted by Posner) promoted programmes to protect archives in war areas in Europe and Asia, including establishing collection centres for displaced archives to be returned to their rightful owners. Among these displaced archives were diplomatic, military, administrative and historical archives of the defeated enemy, along with archives that the enemy had seized in occupied countries. The collection centres were just one stop on an odyssey of the archives before they reached their final destination. That journey often ended only decades later – and still there are archives displaced during or after armed conflict lingering in custody, public and private.

Archives are always displaced, that is (in day-to-day language), removed from place A to place B. An immigrant relocates with some of his documents to another place, a government agency's records are transferred from its offices to an archival repository, private papers are sold to a new owner residing within or outside the country of origin. Administrative reform and state succession can cause archives to be moved elsewhere. Archives can migrate to another location, legally with the migrant's other possessions or illegally. Colonisation and decolonisation lead to archives ending up at places other than where they were created.

Each of these categories of displaced archives is *Worth Fighting For!* but each 'struggle for the files' is difficult and fraught with delays, blockages and obstructions that prolong the strife. This is due to different reasons. In the first

place, I agree with Douglas Cox that fighting for displaced archives often is a substitute for fighting over the historical events that gave rise to the displacement. Moreover, fighting for archives is exercising power: the power to dispose, detain, return and donate – and to determine the conditions. Those powers are generally hidden behind legal, political, religious and professional arguments. These arguments, in turn, are invoked as 'principles' that should guide the fate of displaced archives. But practice does not always obey principle, as Leopold Auer comments. Power, principles and practice can defeat or protract the process of returning displaced archives.

This is aggravated by the incommensurability of the legal regimes governing the displacement and return of archives, and the inequality of the parties involved. Inequality also within the parties: diplomats, lawyers, politicians, military, archivists – their agendas, principles and practices only seldom converge. One of the strategies for overcoming this scramble is resorting to the practical resolution of disputes over displaced archives on a case-by-case basis, rather than striving at an all-encompassing and definitive arrangement. One such pragmatic option is leaving unanswered, for the time being, the question where the rightful place of the archives is, and rather endeavouring to facilitate access to the archives, considering the International Council on Archives' (ICA) *Principles of Access to Archives*.

Enshrined in the ICA's *Code of Ethics*, as Charles Kecskeméti reminds us, is the moral duty of archivists to cooperate in the repatriation of displaced archives. That effort may well begin with making the disputed archives accessible, not only making them available for consultation on the premises and abroad, but also by providing finding aids and other tools that will enable any interested individual or community to use the archives effectively. Archivists, individually and collectively, have an obligation to the records, to the users and to society at large. They provide access, so that the archival heritage created by oppressors and oppressed alike, within the country or in exile, is not kept hidden away, locked up, unintelligible, unsearchable and unusable. Fighting for archives is fighting for access to archives, which, as the *Universal Declaration on Archives* states, 'enriches our knowledge of human society, promotes democracy, protects citizens' rights and enhances the quality of life'.

# Acknowledgements

# Introduction

## Displaced Archives

*James Lowry*

### Archives as Bodies

Archivists speak about the archive as a body – a corpus of records. To Léon de Laborde, head of Napoleon III's Imperial Archives, the following statement is attributed:

> A library is something, archives are someone. This *something* can be distributed, cut up, parcelled out according to all bibliographical systems ... It is quite otherwise with that *someone* that lives and breathes; do not dismember him; it would be far too cruel to rob him of his head in order to put it in this room, to tear off his arms and legs to scatter them elsewhere, because the heart only beats on the condition that one respects the entire body.[1]

This concern for wholeness stems from the fact that archives tell stories through their forms, structures and relations, as well as their content. The order in which individual records accumulate in a file tells us something about the matter being documented and the way it is being handled. Individual files accumulate in an order that can tell us how they relate to other files and the organisation and processes of their creator. Archival theory has evolved to support the preservation of these connections. It is a theory that privileges wholeness. From this perspective, the displacement of archives can be conceived of as the disfiguration of an organic whole – the removal of part of a body. As Charles Kecskeméti stated in 1977, 'It is the duty of archivists to safeguard the integrity of the national heritage but irregular accession to the archives are just as contrary to the concept of integrity as are "amputations" '.[2] And there is a correspondence between the violated corpus of the archive and human bodies. Records are material evidence of systems for regulating bodies, and the material by which those systems function. Paulo Nzili, castrated in Embakasi Detention Camp in Kenya in 1957, was among the Kenyans who made a claim for compensation from the British government in 2009 for abuses that occurred during the Kenyan Emergency.[3] The litigation would bring to light the existence of the Foreign and Commonwealth Office's (FCO) secret 'migrated archive' that was removed from Kenya on the eve of independence and maintained in Hanslope Park, in the south-east of England.[4]

The migrated archive and other records removed from Kenya, some perhaps yet to be identified, may not document that particular act of castration, but they form part of the body of official records created in Kenya by the regime under which the castration occurred. The records emanate from the system that functioned to quell the Mau Mau rebellion by establishing Embakasi and other detention camps, and by recruiting, training and paying British and local army and police officers. They document the context in which the violation of Nzili's body was ordered, executed and condoned. They document, if not the act itself, certainly the apparatus that enacted it. At present, those records are removed from the context of their creation and are incomplete, just as, in their absence, the records remaining in Kenya are incomplete.

The FCO's migrated archive, removed to Britain because of the sensitivity of the records, is now a symbol of a denuded Kenyan heritage and a lack of accountability in the British government. The values of archives as symbols of patrimony and sources of intelligence are apparent in the treatment of records throughout the history of warfare, (de)colonisation and the succession of states. The first evidence of the recognition of the value of archives can be found in the remnants of the early infrastructures for their protection. Alfonso Archi has described how the royal palace archives at the ancient cities of Ebla, Mari and Ugarit were accessed from the royal audience halls.[5] The proximity of the archives to the seat of power is telling of the value attributed to the records they house, if only in that convenient access to them was a prerequisite for the efficient functioning of power. In addition to their physical situation, the architecture of state archives is often suggestive of value. The trope of the 'archive as temple' in archival literature employs the imposing facades of many archive buildings as evidence of a deeper connection between archives and power. As Eric Ketelaar has written, '[A]rchives serve symbolically as temples shielding an idol from the gaze of the uninitiated, guarding the treasures as a monopoly for the priesthood, exercising surveillance over those who are admitted'.[6] Archives as physical places of power and protection signify the values of records.

Further evidence of the value of archives may be found in events that demonstrate that archives have been coveted, such as thefts and displacements. There are numerous examples throughout history, and each one represents an acknowledgement of the values of archives as symbols, treasures, evidence or intelligence.

These values of archives are attached to them differently by different people and regimes, and they are informed by different systems of law and ideations of identity (around patrimony, community, resistance, diaspora, etc.). In each archive, then, there will be multiple stakeholders with various interests and connections with the records. This situation becomes more complex after displacement. Just as the complete archive tells a story through its forms, structures and relations, the dismembered archive can tell stories about the process of dismemberment, with the same concepts of context in play: the connections become more complex and entangled as the number of stakeholders and range of values increases. It is this mesh of connections, values and needs that makes access and repatriation problematic.

## The Purpose and Context of This Book

Though the problem of displaced archives has a long history, it continues to trouble archivists, historians and government officials. What is striking is that there has been no serious multilateral action on the problem for thirty years. It is as if the great exertion to bring the Vienna Convention into being in 1983 exhausted its authors and disappointed its audience to such an extent that no enthusiasm remains for multilateral co-ordination on solutions. The primary purpose of this book is to revive the international dialogue on displaced archives in view of the theoretical, socio-political and technological developments of more recent years.

Displaced archives have been the subject of international treaties and conventions over a long history, as may be seen from Bautier's 1961 survey covering the thirteenth century through to the 1950s.[7] In 1977, United Nations Educational, Scientific and Cultural Organization (UNESCO) published a study it commissioned from the International Council on Archives (ICA): Charles Kecskeméti's *Archival Claims: Preliminary Study on the Principles and Criteria to be Applied in Negotiations*. Its principal contribution to the study of archival displacement was the definition of a number of principles – 'territorial provenance', 'retroactive patrimoniality', 'functional pertinence', 'joint heritage' – that might provide a vocabulary for discussions. The 1977 study informed UNESCO's 1981 *Model Bilateral and Multilateral Agreements and Conventions Concerning the Transfer of Archives*, in which Kecskeméti and Evert Van Laar outlined different types of agreements on displaced archives, discussing their forms, coverage and the conditions appropriate to their use. As this work was going on, the International Law Commission was considering the same issue. Its work would culminate in 1983 in the *Vienna Convention on Succession of States in Respect of State Property, Archives and Debts.* The Convention was adopted by the United Nations, but it has not come into force since too few states have consented to it. The failure of the Convention haunts many of the chapters in this book.

Some research and analysis of archival claims have been undertaken since the Vienna Convention. In 1995, the ICA published a *Reference Dossier on Archival Claims* compiled by Hervé Bastien. The dossier brings together international legal texts, relevant UNESCO resolutions and key ICA documents including resolutions, the advice ICA provided on the Vienna Convention and a position paper adopted by ICA's Executive Committee in 1995. It is an invaluable resource for the study of the problem of displaced archives. In 1998, Leopold Auer's *Disputed Archival Claims: Analysis of an International Survey* (*A RAMP Study*) was published by UNESCO. It reports on Auer's survey of archival claims, providing examples and statistics that lend 'colour to the already existing picture' and augment Bastien's *Dossier*.

This appears to have been the last on the matter until the 2004 ICA Congress in Vienna, just over twenty years after the Vienna Convention. At the 2004 Congress, the National Archivist of Algeria, Abdelmadjid Chikhi, raised the issue of displaced archives. In May 2009, the Executive Board of the ICA, meeting in Tamanrasset, Algeria, approved the establishment of the Displaced Archives

Working Group. Though the group struggled to define displaced archives, it agreed on two lines of work: one towards the creation of an updated bibliography on the subject, the other for a revision to Auer's questionnaire, for circulation to the international archival community. Giulia Barrera, of Italy's *Direzione Generale per Gli Archivi*, drafted a plan to take the former piece of work forward while I slightly revised Auer's questionnaire for circulation to ICA members. Both documents were submitted to the working group, but as of 2016, this work has not been taken forward and the working group is considered dormant.

Alongside this history of the efforts of international organisations to deal with displaced archives, there is a history of bilateral work on particular cases, some of which are discussed in this book. Many of these cases still need resolution, but some offer examples of solutions. This book attempts to encourage both multilateral and bilateral actions by posing questions about the definition of displaced archives, examining legal approaches to issues associated with archival displacement and repatriation, considering other kinds of solutions and contemplating the role of the international archival community.

## Defining Displaced Archives

This book is concerned with the removal of archives from the place of their creation. In particular, it is concerned with *displacements*: those removals that are arguably not illicit *thefts* but somehow legitimised or defensible by virtue of the fact of their being removed by states, regimes or exiled groups rather than individuals. A number of chapters in this book attempt to define or challenge definitions of 'displaced archives'.

The generally accepted term for this phenomenon in Commonwealth countries has been *migrated archives*, though this has more recently become synonymous with a particular series of FCO records now partially transferred to the UK National Archives. Timothy Lovering, in his chapter, 'Revisiting Expatriate Archives', proposes that the term 'migrated archives' is too euphemistic to reflect the political and cultural significance of archival displacement, at least in the complex case of the Rhodesian army records. He proposes 'expatriate archives' as the most appropriate term for the records he is concerned with. Much of the UNESCO and ICA work refers to 'archival claims', which is certainly the most diplomatic of the phrases in use – perhaps it deserves more currency. This book is called *Displaced Archives* and favours the term because it denotes a contestable removal without implying theft, does not share 'expatriate's' association with nationhood (via its Ancient Greek root, *patris*), which is not an appropriate association for all forms of archival displacement, and communicates the nature of the problem more immediately than the term 'archival claims'. However, where 'displaced archives' is used in this book, it is not in adherence to an agreed definition. Instead, each author engages with the question of definitions to the extent necessary for their work.

A number of the chapters in this book discuss categorisations of archival displacement. There have been a number of attempts at categorising displaced

archives, such as Albert Leisinger's classifications, which drew on the work of Morris Rieger.[8] Nathan Mnjama has discussed how these categories manifest in the African context and, in this volume, Lovering considers Mnjama's use of them.[9] Thinking through terms and taxonomies – defining displaced archives – is an important prerequisite for action on repatriation and other possible solutions: it goes to the essence of the problem. Defining displaced archives according to, for instance, their spatial and temporal contexts as opposed to their social and political contexts, has ramifications for how archival claims are settled. This is perhaps most clearly articulated in Bruce Montgomery's chapter, 'Iraq and Kuwait: The Seizure and Destruction of Historical Patrimony', which raises questions about the rightful heirs of archives after significant socio-political changes. Should state security documents created by Saddam Hussein's regime be returned to the current regime in Iraq? Should records created by Iraq's persecuted Jewish community be repatriated to Iraq or distributed to the Jewish diaspora? The definition of nations, communities, borders and identities are at the heart of all conversations about the ownership of archives, so exactly how those definitions are constructed is crucial to understanding and resolving disputes over archives.

Definitions have also been significant in the process of displacement, at least during decolonisation. In 'Making Sovereignty and Affirming Modernity in the Archives of Decolonisation: The Algeria–France "Dispute" between the Post-Decolonisation French and Algerian Republics, 1962–2015', Todd Shepard revises and expands his '"Of Sovereignty": Disputed Archives, "Wholly Modern" Archives, and the Post-Decolonization French and Algerian Republics, 1962–2012,' published in *The American Historical Review* in 2015. Shepard, amongst others in this book, discusses the French and Belgian policy of distinguishing between archives *of sovereignty* and archives *of administration* in order to decide which records should be left and which removed during decolonisation. Mandy Banton discusses how files marked *watch* were priorities for removal from the British colonies in her chapter, 'Displaced Archives in The National Archives of the United Kingdom'. Shepard and Banton both note the *ad hoc* application of processes for dealing with these categories of records, which, as Vincent Hiribarren observes, was a feature of decolonisation. How these archives were defined at the time of their displacement is fundamental to how they are treated under law now.

## The Legal Approach and Its Implications

Historically, archival claims have been treated as legal issues. As Kecskeméti outlines in his chapter, 'Archives Seizures: The Evolution of International Law', in Europe, it was through customary law that archives were ceded with the territories to which they related, a practice only interrupted by the Second World War. As the central figure in the ICA at the time the Vienna Convention was written and adopted, and as the author of much of the ICA's professional advice on displaced archives, Kecskeméti reflects on the politics and personalities involved in the development of the Convention, which was an attempt to fill the post-war

legal vacuum, and he fixes the Convention in its place in the history of international archives law.

Legal approaches have often failed to resolve modern archival displacements, many of which arose from the failure to articulate and apply legal norms. Leopold Auer's chapter, 'Displaced Archives in the Wake of Wars', examines legal approaches to the treatment of archives during conflict, noting differing guidance in rules of combat, as well as problems in applying international conventions when archives can be defined as both cultural property and sources of intelligence. Shepard and Banton observe the inconsistencies with which official policy was applied as European powers withdrew from their colonies. These chapters expose legal regimes as illusory: political will and logistical considerations have far more effect on the fate of records than conventions, laws and policies. Banton, especially, shows how political will, however changeable and inconsistent, is more powerful than legal norms and precedents. Her chapter discusses the British retention of records over a period in which British legal opinion on the ownership of the records vacillated. Much of this had to do with definitions. There is a correlation between the difficulty of defining displaced archives and the failure of legal solutions, since definitions are prerequisites for the application of laws.

In contemplating the legal nature of displaced archives, we begin to encounter questions about the nature of states, forms of government and the legitimacy of regimes. In this respect, this book barely scratches the surface, but two important examples are found in Hiribarren's chapter 'Hiding the European Colonial Past: A Comparison of Archival Policies', in which he looks for patterns in European approaches to removing records during decolonisation. First, his attempt to observe commonalities in European archival policies at the end of the colonial period finds a connection between breaks with autocratic regimes and present-day democratic aspirations to openness. Opening the archives of former regimes is a technique for distancing and distinguishing the present regime from its predecessor. This dynamic has interesting consequences for narratives of nationhood, as Hiribarren shows. Second, in relating access to colonial records to European expectations of government transparency, Hiribarren suggests that ongoing secrecy over displaced archives should be a concern for all citizens of the former colonial powers, since it demonstrates a lack of accountability in their own governments.

Hiribarren is not so much concerned with repatriation as opening and being transparent about what governments hold. Nevertheless, repatriation has been the focus of discussions throughout the history of the problem, and a legal perspective has continued to dominate these discussions. As the chapters in this book make clear, this has produced relatively few resolutions in the post-Second World War, post-colonial context.

## Considering Solutions

Auer, whose work in 1998 was an important contribution to the literature on displaced archives, concludes in his chapter that bilateral negotiations remain the most effective method of resolving archival claims. Shared heritage arrangements

also warrant consideration; Michael Karabinos and Douglas Cox offer some examples of successful shared heritage ventures and suggest that they might serve as models. And somewhat cynically we could count, as another tested approach, the more mercenary and ethically dubious tactic discussed in Patricia Kennedy Grimsted's chapter – the sale or 'trade' of displaced archives to their rightful owners. This book looks at these approaches and advances new concepts that could encourage new solutions. Anne Gilliland offers a new perspective in 'Networking Records in Their Diaspora: A Reconceptualization of Displaced Records in a Postnational World'. She uses post-nationalism and ideas such as 'rights in records' and 'co-creation' to provide a theoretical framework that questions many of the assumptions about the nature of the problem, which have been tied up with nation states, borders, law and records as material property. This is a challenge to both holders of disputed archives and claimants. It is a challenge to those on all sides of post-conflict and post-colonial relationships to examine what is actually at stake in archival disputes. The practical analogue of this theoretical frame is found in the technologies that support the transnational movement of information. Do the technologies that have emerged since the last significant work on this in the 1990s, such as linked data, offer a way out of the impasse? Cox's concluding chapter, 'Revisiting the Law and Politics of Compromise', similarly breaks new ground in terms of the established discourse around displaced archives. Cox asks us to examine the underlying principles that have informed displacements and disputes; he suggests that the frequent stalemates in archival claims are rooted in adherence to ideas that might usefully be compromised without detriment to either side.

## The Role of the International Archival Community

What is the role of the international professional community of archivists in solving the problem of displaced archives, given that it is intrinsically political and political will is essential in the resolution of cases? In this book, we see the power of political will most clearly in Grimsted's description of Russia's stance on the repatriation of records removed to Moscow during and immediately following the Second World War. The preeminent expert on the displaced archives held in Russia, Grimsted has provided an update on European records in Russia in 'Pan-European Displaced Archives in the Russian Federation: Still Prisoners of War on the 70th Anniversary of V-E Day'. She notes the use of archives as bargaining chips in geopolitical manoeuvring. The resolution of those cases is entirely a matter of the will of the Russian government. But now that archival theory acknowledges that archival work is implicitly political, what are the repercussions for displaced archives? How will archivists work to shift, subvert or maintain the prevailing political will? If archivists have agency, how will they use it?

There is a role for archivists in all countries to play in resolving disputes over archives. A number of chapters in this book reflect on what that role might be – most directly, and perhaps naively, in the chapter that I have written with Nathan Mnjama: 'A Proposal for Action on African Archives in Europe'. We call for

European archivists, in particular, to take an official position on African archives displaced during decolonisation. This echoes Kecskeméti's reference to the ICA's code of ethics: 'Archivists should cooperate in the repatriation of displaced archives.'[10] How archivists do this will obviously vary widely across countries and organisations.

At the simplest level, archival work can have an effect. Michael Karabinos' contribution to this book, 'Indonesian National Revolution Records in the National Archives of the Netherlands', underscores the value of basic archival work, in particular archival description, in enabling conversations between nations to advance: it is through catalogues that we become aware of which records are where. On the removal of records from Ireland by the British following the Treaty of 1922, Gerard O'Brien wrote:

> As regards the important files from the Chief Secretary's Office itself, all transferred papers were marked 'sent to London' in the CSO registers, usually with the date of their transfer, and the registers themselves left behind in the Castle [in Dublin].[11]

These systematic traces are rare. Much more commonly, no purposeful traces were left. As Auer writes in his chapter, 'At the beginning of the process of identification, there may only be circumstantial evidence, perhaps no more than gaps in the archives'. Mnjama and I have raised the problem of not knowing what was removed during decolonisation, and call for more work on the preparation of guides. As Hiribarren has stressed, access is essential, and Karabinos shows how access begins with description. The catalogue is the key.

How else might the international community contribute? In his conclusion to this book, Cox offers some thoughts on how archivists can facilitate solutions and prevent further disputes. In 1981, Kecskeméti and Van Laar envisaged an arbitration role for UNESCO and the ICA. Is it time for this idea to be revisited? Or should the work of the international community be focused on more short-term interventions, such as the establishment of a fund for copying projects? Again, this is an echo of an older conversation that seems to have ceased with the failure of the Vienna Convention. It is a conversation we could usefully return to now that the theoretical, socio-political and technological landscapes are so different.

## A Note on the Structure and Contents of the Book

In the same way that legal approaches, which strive for generality, have failed to address the unique circumstances of archival displacements, attempts to arrange the chapters of this book according to general categories, such as the technical, theoretical or legal issues they deal with or the nature of the displacements they discuss (through war, or through decolonisation), led to artificial divisions that elided the complex ways in which the issues are entangled. The final arrangement of the chapters is therefore loosely structured, and cross-references have been supplied in the text and footnotes to point to some of the connections.

An imperfection of this book is that its contributors are overwhelmingly white, western European or Anglophone, and writing from countries whose governments are in possession of archives claimed by other countries. There was a public call for contributions to this book and personal invitations to experts in the global south and east, especially those countries with unresolved claims. The leading experts on archival displacement in the countries of the global south and east are often the national archivists, who are thoroughly familiar with their collections and the gaps in them arising from displacement. National archivists have often discussed archival displacement at conferences but may find it politically difficult to publish on subjects that concern relations between their governments and foreign powers. Considerations of political prudence may also explain why my invitations to experts in government employ in the global north were met with silence. In an attempt to bring other voices into the conversation, Mnjama and I have heavily quoted African colleagues, but where these are recent quotes they are often from Mnjama's anonymised survey of African national archivists.[12] Along with the other lines for further research suggested throughout this book, there is a need for more diverse voices in the conversation that will, I hope, now be revived.

## Conclusion

Displaced archives have not been under discussion in the international archival community for some time, but many long-standing cases have not been resolved and some new cases have arisen. In that time, new archival theories, new social forces and new technologies have also emerged. Archival theory continues to shift. The continuum theory has gained ground since the work of Bastien and Auer in the mid- and late-1990s. The odyssey of migration described by Lovering constitutes an example of the continuum conception of the life and relationships of records, Karabinos brings continuum thinking into his study of Indonesian records in the Netherlands, and Gilliland uses continuum concepts to significantly re-frame the problem. New technologies have changed the way that records are created and used, which has arguably led to a shift in perceptions of information and its carriers. What value does the data have, and what value the records? Archival theory is still grappling with the implications of the digital environment where records are increasingly seen as 'performances'. When what constitutes the original is unclear, does, could or should that change the perception of the adequacy of copies in settling disputes? Cox challenges us to rethink what 'originals' and 'copies' mean. Then, is there such a thing as 'digital repatriation', or are we still talking about copying? Lovering refers to the repatriation of content, but are archives objects with emotional implications as Kecskeméti has suggested? Could new thinking about materiality and affect in archives reinforce the symbolic power of the originals, as artefacts of unique and significant value? And then, what do displaced archives tell us about ourselves? Gilliland has started that line of enquiry by questioning the significance of nationhood, and Hiribarren has reflected on the connections between archives, openness and national narratives. Where is the boundary of the nation? Montgomery notes that the 1907 Hague

Convention is silent on the legality of private contractors removing records during conflicts, which is another iteration of a problem for archivists and others caused by shifting or blurring boundaries between the public and private spheres seen, for instance, in discussions about the extension of Freedom of Information requirements to private companies that provide public services.

Theories, social forces and technologies have developed since the last significant work on this issue. In this changed environment, it is time to reconsider displaced archives. By resolving disputes and reconstituting bodies of archives, physically or virtually, we can reconstruct the contents and connections that enable archives to tell their stories. This will have important consequences for historical narratives, accountability and justice.

## Notes

1 Quoted by Moore, 2008, p. 220.
2 Kecskeméti, 1977, p. 6.
3 Witness statement of Paulo Muoka Nzili, Claim number HQ09X02666 in the High Court of Justice Queen's Bench Division between Paulo Muoka Nzili (Claimant) and the Foreign and Commonwealth Office (Defendant), statement dated 3 November 2010, available at https://www.leighday.co.uk/LeighDay/media/LeighDay/documents/Mau%20Mau/Claimant%20statements/Paulo-Nzili-WS--26-10-10---Final-.pdf [accessed 17 April 2016].
4 Banton, 2013.
5 Archi, 2003.
6 Ketelaar, 2002, p. 234.
7 R-H. Bautier's report to the Sixth International Conference of the Round Table on Archives, held in Warsaw in 1961.
8 A. Leisinger, 1982, pp. 1–7.
9 Nathan Mnjama, 2011.
10 ICA, 1996.
11 O'Brien, 2004, p. 20.
12 Our intention was also to make available relevant text from journal articles and conference proceedings from the 1960s through to the 1990s, which are unavailable digitally and scarce in hardcopy.

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# 1 Archives Seizures

The Evolution of International Law[1]

*Charles Kecskeméti*

## Historical Summary

Since the seventeenth century, the system of rules governing the relationships between states has been called the *jus gentium* (law of nations). We owe to Emer de Vattel, citizen of Neuchâtel and subject to the King of Prussia, the brilliant synthesis of this law, still used as a starting point for reflections on public international law.[2] Vattel makes a distinction between *customary law* (tacitly established rules, in other words 'custom') and *conventional law* recorded in treaties; each treaty constitutes a unique case complying with customary law.

Customary and conventional laws concerning archives have existed since the Middle Ages. Studies undertaken under the umbrella of the United Nations Educational, Scientific and Cultural Organization (UNESCO) in the 1970s have identified 144 treaties between 1645 and the end of the Second World War, the former being the date of the Second Treaty of Brömsebro signed between Sweden and Denmark. While most of these treaties relate to the transfer of sovereignty and the records that should accompany the transfer, thirteen of them address the restitution of displaced archives.

All these treaties are governed by three principles of customary law:

1 The predecessor state gives to the successor state the documents necessary for exercising sovereignty and ensuring administrative continuity. The list of archives to be transferred or duplicated is established by agreement between the two parties.
2 The archives displaced during the period the state was dependent are returned when the state becomes independent again.
3 Archives seized and displaced during a war are returned at the end of hostilities to the power against whom the war was being waged.

A fourth principle was added during the twentieth century, according to which the provisional occupying military authorities' archives would remain the property of the occupying power.

As summarised by R.-H. Bautier in 1961: 'For centuries there has been, if not an "international law on archives", at least an "archival issue in the international

law".'[3] Neither systematic exposition nor critical studies have been conducted on the international law on archives. There is no handbook, no corpus of treaties and no collection of studies. Archivists have tended only to pay attention to the issue of displaced archives during negotiations to resolve bilateral disputes, and lawyers have seemingly had even less cause to consider the problem. The Institute of International Law, founded in 1873, which meets every two years and whose commissions work inter-sessionally, has considered during its 137-year history, a wide range of topics related to international law, but it has never addressed the issue of archives in international law.

In the archival field, compliance with customary law was respected until the Second World War. In a monarchic Europe, the issue was familial: if a state added a province to its territory, the reigning prince received from his 'cousin' the archives that would help him to govern his new province. The advent of the age of popular sovereignty created a new framework. In the Europe of nation states, the transfer of archives is no longer merely a technical operation; it now has a chauvinistic, emotional dimension.

The break with convention regarding transfers in the case of a succession of states occurred after the Second World War. A few agreements were signed just after the war, in particular by France, with newly independent colonies and protectorates. The distinction between *sovereignty archives* and *governance archives* as a principle upon which to decide what is owned by who (mainland and colony or protectorate), dates back to this time. These concepts were malleable and gave the negotiators a lot of flexibility, but had the merit of solving a few cases.

The application of customary law suddenly stopped with the great wave of decolonisation, and disputed claims proliferated within ten years. In the 1960s some fifty newly independent countries did not conclude the ordinary agreement to receive the records that would formerly automatically have been given to the new sovereign by his 'cousin'. Some agreements were secured in 1975 between Portugal and its newly independent colonies, but these consisted solely of the issuance of authenticated copies on both sides, without mentioning the transfer of records in one direction or another. The evacuation of the archives from the former colonies to Europe was not handled uniformly, which led to extreme contrasts in practice. For example, the archives of French West Africa (*Afrique Occidentale Française*) remained in Dakar, while about 7.5 km of records were transferred from Algeria to France.

The United Nations (UN) and UNESCO, as well as the European Parliament and the Council of Europe, felt the need to put an end to the legal disorder resulting from the fall into abeyance of customary law with respect to archives. One of the conditions for success in such an endeavour is to associate archival expertise with legal expertise so as to ensure that the law reflects the archival issues.[4] Studies conducted in the 1960s and 1970s under the aegis of the UN (via the International Law Commission) and UNESCO (via the International Council on Archives, or the ICA) resulted in, amongst other items that I will return to later, three theoretical outcomes:

1 they identified a wide range of topics for further research;
2 they explicated the difficult set of circumstances created by the non-compliance with customary law from 1939;
3 they revealed how significant the lack of theoretical and historical literature was in this field.

## An Intellectual Framework for Approaching Resolutions

UNESCO and the ICA's work began in 1974. The first task was to give the member states a tool in order to facilitate dispute settlements with a typology of disputes, a specific and unambiguous terminology, concepts able to offer a way out of impasses and a coherent set of principles based on practice – in other words, an intellectual framework in which the involved parties could find consensual solutions. UNESCO and ICA's efforts aimed at initiating the codification of customary law on the basis of an analysis of the conventional law.[5]

This work found that most of the current and latent disputes fell under one of the four following types:

1 change of sovereignty over a territory, without the creation of a new state;
2 transfers carried out during wars or after a military occupation;
3 creation of new states as a result of break-ups of political entities;
4 impacts of colonisation and decolonisation.

Three principles, based on provenance, were developed to govern the settlement of disputes:

1 The *retroactive sovereignty* principle, which means that the archives produced by administrations and institutions in charge of managing the business of the territory that has become a newly independent state are devolved to the new state.
2 The *territorial origin* principle, according to which the archives produced by the territory before it became dependent, and then incorporated in the archives of the annexing or supervising state, are bound to the successor state. This principle also requires the restitution of the public and private archives seized by belligerents during hostilities or by the occupying authorities.
3 The *functional pertinence* principle, observed by most of the treaties signed after a change of sovereignty, means that the transfer of power and responsibilities must be accompanied by the transfer of archives that are necessary for administrative continuity to be ensured.

The implementation of these principles requires an international climate of *détente* and a full recognition of the right of every national community to its national heritage. In its effort to celebrate and ensure the continuity of its national heritage, every national community should be able to rely upon the assistance of other states owning sources related to its history. The same spirit of solidarity implies

that countries holding information will forward that information to the citizens of other countries who need it to protect or assert their rights. In his presentation for the International Conference of the Round Table on Archives (CITRA) in Thessaloniki, Klaus Oldenhage of the Bundesarchiv, summarising the Federal Republic of Germany's experience, underlined the crucial importance of professional cooperation for reconstituting the archival heritages dismembered during the Second World War and for getting on with the preservation and opening up of occupying military authorities' archives.[6]

If archival holdings are produced by an administration whose succession is divided between several states, and therefore the archival holdings belong to several national heritages, the only responsible solution is to implement the concept of joint heritage. Applying this concept, the archival holdings are entirely preserved in one of the involved countries, ensuring their safety, and the other countries have equal access and moral property rights. This concept has proven to be practicable. It is a fundamental basis of the 1926 Baden–Baden convention between Austria and Hungary. Regarding the transfer of archives from Vienna to Budapest, the Baden–Baden convention, based on the principle of provenance, discarded the territorial pertinence principle, the application of which would have required the division of the archival holdings. The convention stated that the archives produced by the central authorities of the Habsburg Monarchy between 1526 and 1918 were the common, indivisible and inalienable property of Austria and Hungary. The archival holdings' (held in the Haus-, Hof- und Staatsarchiv, Hofkammerarchiv and Kriegsarchiv) preservation and management were entrusted to Austria. Hungary, as a co-owner, was represented by permanent delegates located in the premises of the Austrian archives. Decisions on access and disposal rules were taken by mutual agreement between the archival authorities of both countries. The documents related to the preparation of this convention (those emanating from the Austrian side in German), with a history of the negotiations, have been published under Imre Ress's leadership.[7]

The tentative codification of the customary law, outlined in the report 20C/102 of the Director General of UNESCO, was unanimously adopted by the 1980 UNESCO General Conference. Work continued on the theoretical level with the publication of a series of studies[8] and, at the practical level, with the implementation of an international microfilming programme.

## The 1983 Vienna Convention

Confronted by a legal vacuum, the International Law Commission of the United Nations undertook, in 1967, the preparation of an international *Convention on Succession of States in respect of State Property, Archives and Debts*. A wide range of texts and data were collected and analysed – this part of the Commission's work is of enduring value. UNESCO, ICA and the professional community awaited with optimism the completion of the Commission's work, with the promise of starting a new era in the history of the international law on archives. Unfortunately, the reality was disappointing. The 1983 Vienna Convention is a

typical product of the time of the contest between the two Cold War blocs. It did not aim to codify customary and conventional laws to provide a legal basis for the resolution of disputes. In its determination to use the process as a platform to continue disputes, instead of finding solutions agreeable to all, the majority of the Conference even rejected the joint heritage provisions proposed by UNESCO and supported by the Austrian, Hungarian and Swiss delegates. The International Law Commission, rather than attempting to reach consensual agreements, presented an argument meant to support the demands of former colonies and more specifically to strengthen the position of Algeria in its dispute with France.

The Vienna Conference became a political platform that produced a political statement rather than a workable convention, since an international convention adopted by a simple majority vote was meaningless (as it would be ignored by the minority holding the disputed archives). The Conference agreed with the International Law Commission and the Convention was adopted. The adopted text is demanding to the point of being inapplicable. Indeed, the Convention requires from the signatory states the transfer to the successor states of public archives in accordance with the criteria specified in articles 27, 28, 30 and 31, even if there is no agreement between the states. The wording of three of these criteria is questionable, as pointed out in the ICA professional advice, but given the political objectives of the Commission, it had obviously to abstain from resorting to archival expertise.[9] In 1984, it became clear that the Convention was dead.[10] On paper, the law is passed according to the United Nations, even if the Convention will never enter into force because it has too few signatories. Because of the Commission's militant option, approved by the intergovernmental Conference, the legal gap was not filled, and it has not been filled since.

Since the Conference was a political platform, it is not surprising that the ICA's professional advice on the Convention would be the target of political attacks. In an enthusiastic paper advocating for Algeria's cause over France, Marco Mozzati, professor at the University of Pavia, without even reading the professional advice, accused the ICA of shaping the text as requested by the French Foreign Office in order to counter Algeria's claims.[11] If Mozzati had read it, he would have found that the text, of a strictly legal and professional nature, included neither arguments nor considerations related to the pending litigation. Besides, the central tenet of the advice about the imperative need to open negotiations between the opposing parties corresponded to the Algerian position. Mozzati's attack indirectly gave support to the view that the Vienna Convention was not conceived as a legal tool inaugurating the era of the settlement of disputes that had built up over the three decades of decolonisation, but as a weapon aimed at strengthening the position of Algeria in its dispute with France.

The controversial paper by the Deputy Director General of the Polish State Archives, Wladyslaw Stepniak, which was presented at several conferences, advocated the territorial pertinence principle, which was discarded by the research conducted under the aegis of UNESCO.[12] Stepniak, who had matters to settle with the ICA, chose to discredit the professional advice using truncated or distorted quotes in order to overshadow the Convention's clauses requiring the transfer of archives

without the agreement of the parties, and innuendoes suggesting the ICA maneuvered with Germany to take the displacement of communities into account in the negotiations. The ICA's position on this matter was confirmed during the multilateral meeting held by the Bundesarchiv and the ICA in Koblenz on 12 December 1994, to explore the issue of archives restitution. This position is based on experience that shows that archives left behind when a population is being displaced (due to deportation, fleeing etc.) are never transferred afterwards and that archives taken away by the displaced population are never sent back to their place of origin. Even if this status quo can be contested, it need not be: the *law of nations* requires that the right of access to archives be guaranteed to the people concerned, in both ways; *displaced archives* available to the people of the territory they have been displaced from; and *remaining archives* available to the displaced people and their descendants.

## International Law on Seizure and Spoliation during and after the Second World War

Seizures on a scale exceeding even Napoleon's transfers, led by the Third Reich for political, military, financial or ideological reasons, destroyed any archival precedent on the European continent even before the Soviets continued the spoliations. I stress this point because we are still suffering the consequences. Without the trauma caused by Nazism, Europe would not have so easily accepted being without legislation on archives. By 1943, the Allies knew they would have to be prepared for a tremendous effort to locate all the seized archives scattered across the Reich territory. Immediately after the victory, Britain and America began repatriations, and thousands of tons of archives were sent back to their countries of origin. There was one exception: about 500 items from the Smolensk Communist Party archives were kept in Washington – an unnecessary thing to do, as microfilms would have been as useful for research as the original documents. But these 40 to 50 linear metres of seized archives allowed the Union of Soviet Socialist Republics (USSR) to pose as a spoliation victim. Meanwhile, the USSR held 27,000 linear metres of foreign records secretly transferred to Moscow.

I shall restrict myself to a short comment on the Soviet continuation of the Nazi spoliation, whose most eminent expert, Patricia Grimsted, has contributed to this volume. This comment is about the Russian law of 1998 stating that all the archives seized during war time, which were preserved in the territory of Russia, were then Russia's property. According to Emer de Vattel's discourse, such a law is a violation of the *law of nations*, the generally established practice for all civilised nations of the world. According to the current legal terminology, it is an 'internationally unlawful act' null and void under international law.[13] The 1998 law is illicit, regardless of the emotional motives and the political background that surrounded its adoption. In practical terms, it violates the 1907 Hague Convention signed by Russia. If the USSR could plead a breakdown in continuity with imperial Russia in 1917, the situation changed radically after 1991, when, in a sense, the Russian Federation restored continuity with the pre-1917 Russian Empire. Regardless of the obligations imposed under the Hague Convention, the subject of the law being of an international nature, its unilateral character makes it incompatible with legal norms. It is as

unacceptable as a national law allowing the police to conduct searches in embassies or arrest diplomats declared *personæ non gratæ*.

The Council of Europe urged Russia to end its non-restitution stance, but was not successful. With the restitutions Russia has made to the Allied countries after 1998, it has gone half way in applying the Allied powers' resolution adopted on 5 January 1943. The second half of the way is yet to be travelled, and the issue is not only with the records held by Russia. In 1996, Leopold Auer was commissioned by UNESCO to identify and analyse ongoing or latent legal disputes, in order, finally, to be able to measure the extent of the problem. But most of the archivists who were asked to fill out his questionnaire were convinced that the sensitive nature of the topic required maintaining opacity, and did not reply. Auer could therefore identify only sixty-one legal disputes reported by twenty-four countries against twenty-five countries.[14] There is no current comprehensive data on outstanding disputed claims.

## A Matter of Common Sense and Ethics

Over forty years after UNESCO's initiative to help countries resolve archival disputes, the results are mixed. In addition to the technical progress mentioned earlier, we should be glad that some bilateral issues have been resolved, in particular those between Indonesia and the Netherlands, Namibia and South Africa, and Slovakia and the Czech Republic. But this does not constitute a trend, as proven by the lasting Franco–Algerian dispute and the new disputes created by the disintegration of the USSR and Yugoslavia. In these two cases, both key successor states are taking time to reconsider the matter.

This leads to the question: why is it so difficult to take the path of the rule of law? Maybe because holding archives that belong to other countries with the idea that it enriches the national heritage is a seductive myth, stronger than common sense. One could come up with explanations related to the circumstances of specific cases, but there is no point in getting into a controversy about specific cases: the law is powerless in front of ideology. We have to abandon the myth, once and for all, and recognise that irregular additions to the national heritage are as contrary to the concept of integrity as amputations.

Transfers and restitutions, exchange agreements and the creation of joint heritage arrangements are within the competence of the legislative and executive authorities of states. The use of archivists' theoretical and practical knowledge is obviously crucial to finding an acceptable solution for all parties and to carry out the necessary arrangements. The archival expertise includes an ethical component, as defined in the ICA's code of ethics: 'Archivists should cooperate in the repatriation of displaced archives.'[15]

## Notes

1　This chapter is an edited version of a translation by Céline Fernandez of Kecskeméti's *'Saisies d'archives et de bibliothéques: l'évolution du droit'* published in A. Sumpf and V. Laniol, eds., *Saisies, spoliations et restitutions. Archives et Bibliothèques au XXe siècle*, Presses Universitaires de Rennes, 2012, pp. 25–34, published in English with the authorisation of Presses Universitaires de Rennes.

2  Vattel, 1758.
3  Bautier, 1963, pp. 11–56.
4  In October 1996, two months after the end of his term as President of the International Council on Archives, the late Jean-Pierre Wallot presented at a conference held in Roanne, France, a masterful synthesis on the efforts made since 1945 to close the legislative gap.
5  Kecskeméti, 1977 (PGI-77/WS/1). Reproduced in *Actes de la XVIIe Conférence internationale de la Table ronde des archives*, Cagliari, 1977, pp. 113–130.
6  Oldenhage, pp. 129–133.
7  Ress (ed.), 2008.
8  Borsa, 1981; C. Kecskeméti and E. Van Laar, 1981; Pieyns, 1981.
9  After the Conference, the French Foreign Office asked ICA to formulate advice on the Convention. This professional advice, circulated at the time, was published in 1997, in the Council of Europe's reference dossier, compiled on behalf of ICA's Legal Matters Committee by Hervé Bastien. The refrerence dossier has been published in *Interdependence of Archives. Proceedings of the 29th, 30th and 31st Conference of the Round Table on Archives*, pp. 209–268 in English and pp. 207–265 in French. The *Professional advice* has also been published in C. Kecskeméti, 2000, pp. 259–266.
10  About the Vienna Intergovernmental Conference fiasco, see Monnier, 1984, pp. 221–229.
11  Mozzati, 1989, pp. 213–244.
12  Stepniak, 2003.
13  An action or an omission by which a State breaches of an international obligation.
14  Auer, 1998, p. 37.
15  ICA. *Code of Ethics*, September 1996, p. 2.

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# 2 Making Sovereignty and Affirming Modernity in the Archives of Decolonisation

## The Algeria–France 'Dispute' between the Post-Decolonisation French and Algerian Republics, 1962–2015[1]

*Todd Shepard*

The last decade has seen a number of historians begin to explore what happened to the documents that European authorities produced and collected during decolonisation. Most seek to detail archival developments specific to decolonisation in conjunction with an exploration of how archival questions alter ongoing debates about the mid-twentieth-century 'end of empires'. The most ambitious work to put both into dynamic conversation. In a 2015 forum on 'The Archives of Decolonisation', for example, British historian, Jordanna Bailkin, detailed the movements of archives that anchored her recent study *The Afterlife of Empire*. She does so to reveal that one effect of 'the era of decolonization' was how 'the notion of what constituted a "secret" was transformed.' This, in turn, allows her to emphasise that 'the violence of imperial collapse was one prized secret, which generated its own mechanisms of archival suppression'. Such histories of 'the archives of decolonization' grapple with questions central to the now flourishing historiography of archives, notably with how it is that we might have access to certain documents. Sephardi Jewry historian, Sara Stein, evokes this question in terms of 'documents retroactively fabricated, left behind, hoarded and sought, guarded, concealed, buried in the sand'. The inspiration to understand 'why some elements of decolonization have been so difficult to see' has led these scholars to draw numerous lessons from vibrant discussions about the archives of empire, sparked by scholars such as the historian Antoinette Burton and the anthropologist Ann Stoler. Bailkin's analysis of her own efforts 'to delve more deeply into the question of why certain sources pertaining to decolonization are or are not available, and how their availability is organized' expands on the work that Stoler and others have done to map the colonial histories that help explain why certain sources and collections are now out of reach.[2]

Stories about the 'wanton destruction' of archives have drawn special attention, as in Bailkin's revelation that 'in Uganda, eight months before independence, the departing British regime loaded three Land Rovers full of confidential records and dumped them into Lake Victoria'. So have the histories of stolen or disappeared documents been brought to light. Historian of colonial violence, Caroline Elkins,

recounts one such discovery, precipitated by a recent court case that drew on the expertise she and other historians could offer about how Britain targeted civilians in its violent effort to crush the 'Mau Mau.' The authority of London's High Court dragged into the public domain (although subjected to numerous restrictions) substantial archival collections that the authorities had first transported from Kenya to Britain or extracted from other collections in Britain and then worked to hide from scholars. As with Bailkin, Elkins links the ways that this history reveals new evidence about how decolonisation unfolded, notably of particular forms of violence the British had embraced in 1950s Kenya, and what it renders visible about 'the processes through which this evidence was first removed from Kenya, subsequently hidden, and then later disclosed through legal discovery.' The intersections between the evidence in the documents and the way in which it was managed, she argues, 'is of great relevance to how we as historians think about British decolonization and the relationship between the state and the construction of its archives.' How to map this relationship remains a pressing question.[3]

The French-Algerian 'Dispute' ('*le contentieux*') over the archives of French-ruled Algeria (1830–1962) is usually narrated in terms of the types of spectacular stories that rhythm the frustrated, annoyed, or angry accounts of many historians, of archives drowned, burnt, thrown away and stolen. According to its actors, the Dispute is about what happened at the time of decolonisation to official collections then archived in Algeria and what this means for the writing of history. Conflicting French and Algerian accounts, like those of theft, destruction or loss, share the fantasy that historical truth could emerge if only archival records were made whole and accessible. Concurrently, their disagreement foregrounds the centrality of the nation–state in modern definitions of what histories need to be recounted. Bailkin draws particular attention to how this presumption has shaped 'our ability to know about decolonization' which 'remains circumscribed by the archival structures put into place in the postwar years'. Along with other historians inspired by culturalist analyses and yet drawn to state-produced archives, Bailkin's work on the organization of such collections challenges the presumption they nurture 'that the effects of decolonization could be confined to the realm of high politics. This illusion,' she insists, 'has been sufficiently powerful to constrain our interpretive lenses, to shape the historiography of decolonization, and to interact in complicated ways with the paths of declassification.' This effort to move beyond 'the state', of course, has been fundamental to the work of many historians since at least the 1950s, the very years of the so-called 'era of decolonisation'. This coincidence opens up possibilities to explore whether there were in fact causal links: on the one hand, to give new detail to existing maps of the generative tensions between state archives, the historians who rely on them, and the legitimation of the nation-state and, on the other, to chart certain ways this dynamic changed.[4]

The history of the Dispute itself, which continues today, offers some sharp insights into the question that Elkins evokes but that even the most expansive discussions of archives usually avoid. 'The institution of the Archives,' as Jennifer Milligan argues in her history of how the *Archives Nationales* developed into an

institutional foundation of the modern French state, is 'just as potent a political tool as its contents – and therefore politically dangerous'. Archives as key institutions of modern states are more than buildings, staff and documentary contents, although those elements help make them so 'potent'. Through their existence and the way they function they help constitute a state insofar as their workings offer proof that it is an emanation of its people, a nation–state, and thus modern. Elkins offers a reading of the visual and affective aspects of how this works when she describes how 'orderliness and authenticity pervade Britain's National Archives at Kew'. She describes how the organisation and presentation of space works to instantiate a certain understanding of how the institution operates:

> The doors of its imposing, sterile structure give way to an uncluttered interior governed by a hyper-monitoring system, identification cards, assigned seats, routinized systems for ordering and holding documents, proficient archivists, and security checkpoints. One cannot help but marvel at its benign efficiency, or the rigor with which its rules are enforced.

What interests her is how 'from the carefully managed files, a sense emerges of a coherent decolonisation process, and one that adhered to and imparted the rule of law, just as the colonial administrators and archivists in London adhered, and still adhere, to the rules of document preservation.' Both the visible order and the possibility of access reinforce the argument that Britain is a modern democracy, worthy of trust and capable of exercising authority. Elkins focuses on how the stark differences in appearance and access between the British National Archives and the archives of post-decolonisation Kenya 'would come to reflect the seeming disorder of the postcolony and its archival inefficiencies, rather than any kind of Orwellian fantasy of state-directed purging at the time of colonial retreat.' Her descriptions also offer insights into how the dynamic interplay between the former coloniser and the former colonised allows authorities on both sides to make use of archives to anchor assertions of sovereignty. Such work is particularly clear in the way that two post-decolonisation republics – France and Algeria – built new and 'modern' archives, which each claims should house the archives under dispute. A focus on 'archives-as-institutions' helps explain why, I would suggest, the Dispute about their contents has had political effects on both sides of the Mediterranean and has shaped historical production in ways far larger than missing documents – even in large numbers – can account.[5]

This history of archives and decolonisation asks how historical production and archives participate in defining what national sovereignty means post-decolonisation. Existing histories of the increasingly complex post-1945 relationship between nation-states and sovereignty examine accusations that the United Nations and other international institutions have arrogated the sovereign rights of states such as the USA; explore the growing displacement of elements of sovereignty from member states to the European Union; or analyse how neo-colonialism radically circumscribes the sovereignty of post-decolonisation nation-states, and neo-liberalism that of all states.[6] Yet the work the production of history does in establishing sovereignty

in this period is under-examined. Scholars such as Milligan and Bonnie Smith have shown that the play of archives, archivists, historians and history always involves more than the struggle to tell accurate and well-documented histories: this dynamic participates in the constitutive relations linking people to institutions and states to a unique history, reinforcing both claims to sovereignty by and the implication of citizens in the nation.[7] The mid-twentieth century 'era of decolonisation' altered this equation, as it shaped, in conjunction with the emergence of new states, novel forms of sovereignty and new archives as well.

Decolonisation participated in the concomitant (and quite dramatic) redefinition, led by professional archivists, of what materials state archives should collect, which crystallised in the late 1950s. This can be shorthanded as a shift from 'archiving the State' to 'archiving the Nation'. Existing accounts of this history celebrate rupture. They tell how official archivists finally broke the chains of a state-centric definition of what documentation mattered, in order to open archival doors and storage rooms to the broader and truer sources of national histories: documentation of social, cultural, economic and associative activity, among others. Krzysztof Pomian, in his article 'The Archives' in Pierre Nora's massive *Les Lieux de Mémoire* argues that 'beginning in the 1950s, the Archives of France ruptured the identification of the memory and the history of the nation with the history of the State,' which had guided their collection policies until then. It is also noteworthy, although unmentioned by Pomian, that the rupture he describes was synchronic with two other histories, usually told in terms of rupture: the embracing of 'nation building' projects by so many post-decolonisation states and the growing importance of efforts to look 'beyond the state' by so many historians (perhaps most famously by the Annales School, a historical movement that developed in France and which came to international prominence). Pomian notes that the archivistic shift 'also affected the very content of this memory and this history, which are no longer as they previously were, restricted to political, diplomatic, military, and administrative facts.'[8]

The history of the Dispute suggests that this inspiring contemporary history – of widening collection practices among archivists and of topics and questions among historians – has obfuscated a more troubling history rife with the politics of sovereignty. This past shapes how we do history as well as how post-decolonisation states govern and define people, formerly colonised (such as Algeria) as well as colonising (such as France). Undeniably, a shift to archiving the nation had innumerable benefits, for historians among others. The differences between this approach and a narrower focus on archiving the state, however, resulted at least as much from efforts to institutionalise new forms of sovereignty as from more enlightened thinking. Celebrations of archiving the nation, in short, have avoided grappling with how it participates in the tough and conflictual work of defining a nation, especially in an era that sees the the nation-state as the only type of state possible.

The drama of what happened to the archival collections under dispute helps make the constitutive tensions between the archives and the post-decolonisation French and Algerian republics difficult to see. Take the most arresting vignette.

In June 1962, during the final weeks of over thirteen decades of French rule, Pierre Boyer, head of the Regional Archives of Algiers, set off with a group of soldiers on a boat filled with some thirty cartons of police archives, which they planned to sink in the Bay of Algiers. When it became clear that the crates would not stay underwater, they doused them with gasoline and burned them. Another: one week before, on 15 June 1962, the anti-independence French terrorist group, the Secret Army Organisation (OAS), bombed the government building that contained the regional archives (as well as the apartment where Boyer and his family lived). This was part of their 'scorched earth' campaign, which sought to destroy all that (according to their interpretation) France had built in 132 years of occupation before the victorious Algerian nationalists, organised in the National Liberation Front (FLN), could take control. The documentary holdings suffered little damage (forty people died in the bombing; the OAS did far more damage to written sources the previous week, when it targeted the Library of the University of Algiers). Its holdings, however, like those of the most important official archives in Algeria, did not remain intact.[9]

Beginning in early 1961 and over the months leading up to (and after) the Algerian Republic's declaration of independence on 5 July 1962, French authorities destroyed 'certain documents that,' in French Army Chief of Staff General Le Puloch's interpretation, 'if one-sidedly exploited, could be deleterious to the interests of France.' At the same time, they packed and shipped to France thousands of cartons of archives, containing tons of documents (Algerian archivists today claim 200,000 'pillaged' cartons containing 600 tons of documents; French officials speak of the 'repatriation' of some 53,000 cartons containing 150 tons of documents). The largest quantity (some 8.5 linear kilometres of cartons) arrived at an emergency storage site in Aix-en-Provence, while military archives travelled to Vincennes on the outskirts of Paris (home of the French military archives, now known as the *Service Historique de la Défense*, or SHD), and archives of French activities in late 1961 and 1962 ended up in Paris, some sent directly to the *Archives Nationales de France* (French National Archives), most integrated into the documentary holdings of various ministries.[10]

These vast collections of documents that escaped destruction, and that left Algeria, are at the heart of the Dispute. This case is not the only instance of the mass transfer of archives out of a territory at the moment of decolonisation; the Belgians, for example, acted similarly when they left the Congo. The United Kingdom and its former colonies, notably Pakistan, India and Kenya, all have long-time disagreements about archival questions. French authorities proclaimed that the same principles governed their decisions vis-à-vis archives as they left all their former overseas possessions, and 'repatriated' substantial collections of archives from Madagascar and other sites.[11]

Yet in most tellings, as the former director of Algeria's *Centre des Archives Nationales d'Algérie* (the National Archives or CANA) avers, 'the Algero-French dispute is the world's most intractable.' One French historian bitterly complains that this particular post-decolonisation struggle has had international implications that affect all archives: he claims that the Dispute is the tacit reference that

led the 1983 *Vienna Convention on the Succession of States in Respect of State Property, Archives, and Debts* (the text that the United Nations relies on in its determinations about archival disputes between member states) to proclaim that 'archives belong to the territory in which they were produced.' This principle is often invoked as a clear legal foundation for Algerian claims that archives produced in colonised Algeria need to be archived in Algeria. The formulation, he affirms, results from the Algerian government's lobbying of the Soviets and their allies, in order to gain a legal imprimatur for their claims against France. The Convention altered, he argues, previous international understandings concerning the 'territoriality' of archives. (Such understandings, his argument presumes, were less politicized because only Western powers, among them many that then had overseas colonies, participated in their formulation).[12] Among scholars 'on [the French] side of the Mediterranean,' a 2003 article affirmed, 'it is taken to be true that Algeria has only copies of some archives necessary to study its colonial history, with all the originals in France.' Many scholars across the Mediterranean (and elsewhere) accept such presumptions. In Algeria today, it is the subject of much public outrage, with dozens of articles on the subject appearing in Algerian newspapers in 2012, around the fiftieth anniversary of the Algerian Republic's declaration of independence. Claims such as 'France ... keeps fresh this gaping wound that she inflicted on Algerians' collective memory' give some measure of the perceived stakes.[13]

The clearest implication of the sad tales of the archives sunk into Lake Victoria (or burned on the shores of the Bay of Algiers), and the hopeful aspect of stolen collections – that they will be recovered, or at least made available for research – is that a truer story could have been told if more appropriate archived material had been (could have been) consulted. Similarly, most discussions of decolonisation and colonial archives focus on how documents are lost to study, if not necessarily wilfully, then (and more importantly) structurally, by the reorganisation of archival collections that decolonisation entailed. This is true even of scholars who embrace theoretical and methodological approaches that are explicitly sceptical of empirical positivism. Yet archives exist to do other things than simply contain documents, rich in information. A critical assessment of archives can do more than unpack how those documents have been classified.[14]

Archives as institutions undergird other structures, notably states. What Milligan shows, through an archival history of the French National Archives, is that the modern centrality of what she terms '*publicité*' gives archives as institutions a key role in anchoring a State's claims to represent the nation. '*Publicité*,' she analyses, 'meant much more than "renown," or publicity's current connotation of advertising.' Discursively, '*publicité* implied a public-ness that both invited the public into the physical space of the Archives and bound the public interest to the contents and workings of the institution – and thus the government that guaranteed the institution.' The drama of the Dispute, from this perspective, deflects attention from how post-1962 archives and the historians that rely on them participate in building republics – and distinct nations – on both sides of the Mediterranean.[15]

In Algeria today, the Dispute matters far more than it did in the first twenty-five years of independence. This is, in part, because it is one of a constellation of archival questions that seem to impede public knowledge about Algeria's history. This concern has become of great importance since the events of October 1988, when public demonstrations led to the end of one party (the FLN) rule, which opened up debates about the national past and institutions. The Dispute, of course, is a fight with the former colonial power and – in ways similar to ongoing disputes about 'cultural patrimony,' notably artwork and archaeological treasures transferred in the nineteenth and twentieth centuries from places that Westerners dominated to Western collections – summons people to focus on the still important role that French imperialism (and post-decolonisation attitudes) plays in Algerian affairs. This helps to explain why Algerian elites, political and intellectual, so regularly bring it up.[16] Yet popular interest in other debates makes clear that the Dispute remains pressing in Algeria because of how much history matters to (and divides) many Algerians. In spring 2011, the Algerian francophone press (and, I am told, the Arabic press, although to a lesser extent) had front-page articles about two 'affairs': in one, Yaacef Saadi, author of the screenplay for *The Battle of Algiers* (1965) and former leader of FLN guerrillas in Algiers, accused Louisette Ighilahriz of lying about her wartime membership in the underground FLN; a few weeks later, former Algerian President Ahmed Ben Bella, in an interview with *Jeune Afrique*, insisted that he alone, of all the 'first generation' of FLN leaders, had been both a patriot (others were Berberists, he stated, who preferred their ethnic group to the nation) and capable (the others were, to a man, incompetent in his telling). The opposition *El Watan* newspaper explained to readers what many other Algerians had already claimed: both Saadi and Ben Bella were setting the stage for 2012, when the legal requirement for French archives to open certain previously classified collections to consultation might well reveal that both men had given far more information and assistance to the French enemy than had ever been recognised. It was time for the archives to free Algerians from the heavy weight of official 'revolutionary' history, and the claims of those, such as Saadi and Ben Bella, whose public authority depended on their proclaimed role in the revolution. The archives appear to offer the possibility of returning sovereignty to the people because, many Algerians believe, their contents will undo the myth-making that the revolutionary generation relies on to rule.[17]

In the intensity of this conflict, as other scholars of the 'archives of decolonisation' demonstrate, the country resembles other post-decolonisation states. After the 1952 revolution declared Egypt finally free of the British control that until then, its authors argued, had remained colonial (even though independence had been announced in 1919), the new government paid particular attention to historians. As Omnia El Shakry describes, official accounts cast the scholars themselves 'as participants freed from a monarchical and colonial past in a national struggle toward postcolonial revolutionary sovereignty.' Just months after the revolution, the regime accompanied such talk with a wholesale reorganisation of the Egyptian state archives. El-Shakry links these developments to the fact that 'as historians have demonstrated, the question of archival compilation, management, and

availability has been a perennial feature in the Egyptian press.' As in Algeria, archive questions do more than allow civil society actors to question official histories. El-Shakry goes so far as to argue that, in Egypt and elsewhere in the Arab world, the obstruction of post-independence official state archives has tended to make 'the workings of the colonial state far more visible than the operations of the national states that succeeded colonial rule.' She focuses on the impediments placed in the paths of scholars who seek access to information about the past to argue that 'the archive has functioned as a dense locus of postcolonial power, and its impermeability has often masked the precise nature of the political and social debates that went into the consolidation of regimes in the aftermath of decolonization.' Yet is also necessary to note the crucial role of non-historians as actors and audiences in these debates. This emphasizes something different: that the workings of archives themselves, because they offer institutional evidence of a state's relationship to its people, seem to be particularly propitious levers to question the authorities' claims to legitimately exercise sovereignty. While this may be particularly visible in countries that (re)asserted sovereignty after decolonisation, its effects stretch across the coloniser-colonised divide.[18]

In France, as well, the Dispute has been a matter of intense public debate, most particularly in late 1981, when 'to everyone's surprise,' as a contemporary report put it, 'the so-called Affair of the "Algerian" archives has become the most emotionally fraught archival question France has ever dealt with.' After the election of François Mitterrand to the presidency in May, the French government sought to rebuild strained ties with the country's most important former colony, Algeria. A visit to Algiers by the Minister of Foreign Affairs, Claude Cheysson, included a discussion of the 'transfer of the archives of the colonial period to Algeria.' This was a topic that, in early 1980, the previous government had agreed to discuss through a joint Franco-Algerian committee. The then President of the Republic, Valéry Giscard d'Estaing, had quickly intervened, however, to proclaim 'these archives are among the constitutive elements of our national patrimony, as well as of our national sovereignty'; they would remain French.[19]

Giscard d'Estaing's emphatic statement insisted that control of the disputed archives helped constitute French sovereignty. Yet in October 1981, another prominent French minister visiting Algiers offhandedly pronounced it 'normal that Algeria would be concerned about the archives that were transferred in 1962. I think that we can reach an agreement.' A 2012 interview about the role of the Dispute in present-day Algeria seemingly describes what happened next in early 1980s France. According to jurist Mohamed Bedjaoui, disputes between modern states about archives have been quite common in recent history, although usually they interest only small numbers of people. Sometimes, however, 'thanks to an exceptional situation, a whole people suddenly grow passionate about its archives, one of the constituent elements of its collective memory.' In mid-October 1981, public criticisms of what appeared to be a secret deal to send 'French' archives to Algeria exploded. The first volleys came in right wing newspapers and from organisations of 'repatriates' (people who had lived in Algeria under French rule and had moved to France because of the country's independence) linked to the

far right. Within days, however, the largest repatriate group, *Le RECOURS* which had supported Mitterrand in the recent presidential election, also levelled harsh criticisms. Numerous historians, archivists and academic organisations weighed in as well, in near unanimous opposition.[20]

The most pressing claim, reiterated by scholars, politicians and the 'modest family of workers' who wrote to one newspaper to protest any transfer of control over the 'Algerian Archives,' concerned 'sovereignty.' As the *Académie des Sciences d'Outre-mer* (the Academy of Overseas Sciences) stated: 'The archives, property of the French nation, are archives "of sovereignty," an extension of metropolitan archives. They cannot be handed over to a foreign government.' This claim has a history. Even as France was still at war in Algeria, a territory it defined as an integral part of the Republic, French archivists proposed a definition 'of sovereignty' in order to explain why certain archives produced in (French) Algeria should be sent to the metropole. It was archivists indeed who made the decision to 'repatriate' the so-called 'archives of formerly colonized territories'; Boyer would reaffirm this for Algeria in an article he published called 'The Repatriated Archives' in 1982, where he wrote that 'the General [de Gaulle] was apprised of the planned operation by M. André Chamson, Director of the Archives of France. The response was that it was up to [Chamson] to assume his responsibility.' Along with the decision to transfer, archivists defined the grounds with a 1961 report to the profession noting that 'the Director General [of the *Archives Nationales*] had the government adopt a principle of distinguishing between archives "of sovereignty"... "historical" archives ... and, finally, "administrative" archives.' The archivist explained that the first category of archives comprised 'those that concern the work our country did as sovereign power, and which must remain the property of France.' Those in the second 'are connected to the now ended epoch of colonization and must remain French, even if it necessitates giving microfilms to the newly independent countries.' The third group were collections 'necessary to daily life in the concerned countries, and that must as a result remain there.' References to the second of three categories disappeared from subsequent explanations, notably around 1981. Boyer, like others, distinguished between archives 'of sovereignty' and archives he termed 'of management' ('*gestion*' rather than the earlier '*adminstration*').[21]

The decisions of these French archivists set the stage, or at least the terms, of the Dispute and of public controversies in Algeria as well as France; but histories driven by Algerian actors help explain why they happened. Boyer's account of the process of archive 'repatriation' in 1962 asserts that 'up until then, the question of archives had been of little concern' to the FLN. Archival research shows that he was wrong, at the very least when he spoke of 'Algerian authorities' and 'the FLN.' At the CANA, it is now possible to consult the inventory of the *Fonds GPRA-MAE* (the archives of the Ministry of Foreign Affairs of the Provisional Government of the Algerian Republic or the GPRA), which allow researchers to request documents that the FLN leadership collected in exile, in Cairo and Tunis, over the course of the revolution.[22] These resources make clear that building an archive of the Algerian nation was a priority for '*l'Algérie Combattante*'

(Fighting Algeria), for intertwined reasons of 'sovereignty,' 'administration' and 'history.' FLN leaders sent out teams to collect treaties signed with Ottoman or other precursor states and authorities in the territory that by 1954 was Algeria. They sought historical documentation that referenced a space distinct from other territories and peoples. The files they assembled anchored one of their key strategic gambits: to assert the existence of a sovereign Algerian state that preceded the French conquest. 'The restoration of the Algerian state, sovereign, democratic, and social' was the heart of the FLN's first Proclamation of 1 November 1962, a stark rejection of French arguments that 'Algeria' existed, legally and territorially, because of French decisions since the conquest. It also was a forthright challenge to international jurists, who argued that no claim to sovereignty had ever been anchored wholly in Algerian territory, which had always been part of a larger (imperial) state, whether Roman, Almoravid, Almohad, Ottoman or French. Historians know that FLN leaders nimbly took advantage of changing international conditions to win recognition for their unprecedented claim to represent both a sovereign nation, which had never existed in international law, and a territory, which they did not control. FLN leaders saw the establishment of an archive as a crucial tool to ground what they knew were innovative claims to Algerian sovereignty.[23]

The Evian Accords, which France and representatives of the GPRA initialled on 18 March 1962, implicitly recognised the victory of the Algerian nationalists. Still, the French government insisted that Algerian sovereignty would be created by the two referenda the Accords made possible (one in France and the other in Algeria), and not 'restored.' Even as they rejected such colonialist arguments, FLN leaders continued to worry about their need for archives. In the final pre-independence Congress of the umbrella National Council of the Algerian Revolution (CNRA), which took place in Tripoli in late May and early June 1962, long-time nationalist politician, Ahmed Boumendjel, argued that it was necessary to act immediately 'to save archives of the Turkish epoch and that concern the *habous* question [Muslim charitable foundations].' In the midst of discussions that led to the adoption of a 'Tripoli Program' that denounced the just-adopted Evian Accords as 'neo-colonialist,' one speaker identified the failure of FLN negotiators to bring the 'archives question' into discussions with France as 'one of the greatest failures.' This places Boyer's 1982 argument that 'the [Evian] accords do not even mention' archives in a different light. Soon after independence, the Algerian government asked United Nations Educational, Scientific and Cultural Organization (UNESCO) to send an expert to advise them on how to redefine and reorganise the archives 'at every level: juridical, scientific, administrative, etc.'[24]

In the late 1950s and early 1960s, UNESCO was engaged in an international project to modernise archives, one aspect of a transnational effort to transform state-centric archives into depositories of a far broader range of sources. One of the most prominent French theorists of 'archivistics,' Yves Pérotin, authored the UNESCO report, which announced that all of its recommendations turned around two principles: to maintain the organic continuity of the collections and 'to take advantage of the fundamental changes taking place in Algeria to define a

wholly modern archivistic regime.' If the first principle was axiomatic for modern archivists, the second promised both to offer Algerians and historians access to (the Democratic People's Republic of) Algeria's past and to place 'revolutionary' Algeria, here as in so many domains, in a vanguard position. This definition of the 'modern' archive recurred in early 1960s discussions among French archivists. The United States, according to the President of the French Association of Archivists, was the model, a country where 'they passionately pursue, without regard to borders, any written testimonials that might relate to their country.' What, in 1965, became the French Overseas Archives (ANOM), in Aix-en-Provence, was wholly modern in this sense: under the direction of Pierre Boyer (now repatriated from Algeria) it joined together collections taken from existing and now disappeared ministries with those 'repatriated' from overseas. It was to be an archive that gave access to history: a colonial past now concluded. Unlike any existing French state archive it was not designed also to hold materials necessary for 'administration' or 'management.' Algeria's National Archives, too, have focused on collecting any and all documents that speak to Algeria's 'linear' history, from the Roman Empire through to the Revolution, as their former director describes.[25]

The 'modern' archives of the 1960s took shape in the era of decolonisation and the history they focused on documenting was newly and starkly national: nation-states, which no longer had either an empire or overseers overseas. The history of the Dispute foregrounds an odd and very telling coincidence: while some archivists were redesigning archives, other archivists defined what 'sovereignty' meant. For the definition 'of sovereignty' that governed the division of the Algerian archives was not rooted in decisions made at Westphalia in 1648 or San Francisco in 1945; nor did it reference Jean Bodin, Thomas Hobbes, nor even Carl Schmitt. Rather, in 1960–1961 in Paris, Chamson relied on precedents that a previous Director General had fixed in 1954 (to decide which archives the French would take with them as they left Vietnam) to define what Algerian archives were 'of sovereignty.'[26] In a context where states across the world affirmed and also negotiated away sovereignty, archivists in France and Algeria defined what sovereignty was, and therefore what kinds of documents were part of the national history. As a French archivist explained in 2004, in reference to the Dispute, the definition 'of sovereignty' was 'the rights France has to an archival patrimony that corresponds to a chapter of her history.'[27]

The definition 'of sovereignty' that the ANOM depends on explicitly affirms that France acted in the colonies, the French state made decisions and choices, which shaped shared histories. This certainty, it must be pointed out, did not actually govern which archives remained in Algeria in 1962 and which French authorities took. A group of doctoral students, reporting on their work in Algerian archives in 2002–2004, noted that large quantities of archives that clearly fell under the definition that Chambon and Boyer established as 'of sovereignty' still remain in Algeria. This is especially true for the most recent – and, presumably, the most sensitive – collections. Rather than the principles that supposedly governed the dispatch of archives to France, 'already assembled and classified [pre-1945] archives were easier for the movers to put into boxes. When it came to more recent documentation,' their survey suggests, 'improvisation reigned more often than not.' They make the important

point that 'the historian who presumes that the distinction between archives "of sovereignty" and "of management" strictly reflects' what archives remain in Algeria and which the French took 'would be mistaken.'[28]

Sketchy evidence from the last months of French rule suggest that 'improvisation reigned' at most levels. Even the destruction of documents appears to have resulted from a hasty winnowing that, at least for the armed forces, seemingly aimed to eliminate suspect collections rather than extract particular (and particularly worrying) files. What has yet to come to light is the type of evidence that has emerged in regards to the British withdrawal from Kenya, which offers clear proof, as Elkins argues, that 'the document-purging process was by no means a haphazard one.' As she details:

> [The recently uncovered] files reveal in extensive detail the degree to which the British colonial government directed and orchestrated—at home and in Kenya—the purging of evidence pertaining to the formulation and use of systematized violence, the ex post facto attempts at providing legal coverage for abuses committed by British colonial agents, and the manipulations of investigations into these abuses and derogations of law at the time.[29]

One way to analyse these differences is historiographical: British official efforts to cover up massive and systematic state violence in Kenya (and in other end-of-empire episodes) were much more effective than those of other European imperial powers, notably France, because of their greater efficiency. It remains historiographically commonplace, as well as received wisdom, that Britain's decolonisation was 'successful,' in stark contrast to countries that failed to withdraw with similar grace.[30] Violence has been the crucial measure of success, the knowledge that Britain's 'orderly' transfers of power were different in kind from fruitless French wars to keep 'Indochina' (Vietnam, Cambodia and Laos) and Algeria, which produced enormous casualties and human suffering. It is this fantasy of British wisdom and humanity that recent work by scholars such as David Anderson and Elkins has begun to unsettle.[31] What is now becoming clear is how hard both countries worked to maintain imperial control, with massive and indiscriminate violence as a fundamental tool. Rather than simple 'efficiency,' however, what might also explain the difference were the different understandings proposed by British and French authorities about sovereignty.

In their preparation for decolonisation, the British authorities in Kenya relied on a system for categorising their archives that was quite distinct from that which French archivists proposed. This is most evident in how they named their categories. As Elkin details 'under what was known as the "Watch" system, all documents in every Kenyan ministry and department were to be divided into two categories: "Watch" and "Legacy." Those documents to be designated as "Watch"' – like those that the French named 'of sovereignty' and 'historical' – 'were papers that would either be destroyed or be sent to Britain.'

The different name British authorities gave to documents similar to the collections the French named 'administration' (or in latter accountings, 'management')

is even more striking. As Elkins writes: 'those constituting "Legacy" material were documents that would be handed over to the independent government in Kenya.'[32] Whereas the French nomenclature emphasised that those collections to be taken or destroyed – 'of sovereignty,' 'historical' – were foundational to national narratives of the colonial past, the British naming insisted that those left behind, those that concerned the day-to-day operations of institutions offered evidence of British colonial rule.

What the French archivists did do with their vague and inapplicable definition 'of sovereignty' was erase exactly what French authorities, for so long, claimed distinguished Algeria from other overseas possessions, whether of France or any modern state: as part of France, French sovereignty was not just exercised in Algeria, it in part was anchored there too. This idea that Algeria helped make modern France (especially in its republican form), juridically and institutionally, was repeatedly invoked with assertions that twentieth-century France was a 'great Muslim nation,' as one senator put it in 1960. Concretely, the legal definition of French nationality was made (1889) to govern Algeria. Symbolically, it was in Algiers that Charles de Gaulle proclaimed the Provisional Government of the French Republic, which rejected the Vichy State's claims to incarnate France. It was in Algiers that the Fourth Republic fell and that the Fifth (that is, today's) Republic took shape.[33]

Algerian independence made this past disappear from view. It did this, paradoxically, even as decolonisation also brought into being new archives, in France and Algeria, and, more broadly, helped give form to new ways of archiving. As Pérotin described, only a wholly new country such as Algeria could 'define a wholly modern archivistic regime.' At the very moment that states such as France and Algeria became newly national, archivists sought to shift from archiving the state to archiving the nation. As late as 1956, T.R. Schellenberg's still influential *Modern Archives: Principles and Techniques*, which focused on the very American and British archivists that French commentators identified as at the forefront of 'modern' practices, continued to insist that state archivists should concern themselves 'with the materials produced by the governments they serve.' The 'active policy' of collecting non-state materials that archivists around the world were just beginning to adopt took shape in just-decolonised countries. Pérotin's report for UNESCO detailed the archival law he proposed for Algeria, the first article of which would 'define the "National Archives Collection [Fonds]." Unknown in Western archivistic theory, this concept is fruitfully simple.' He explained what made it generative:

> I chose the term 'national', rather than 'of the State', because it seemed to me to be even broader and less likely to focus only on the administrative machinery of the executive. The national archives must aggressively include the papers of all national organizations, whether they are political, trade unions, economic actors, etc.

Just two years before, the UNESCO mission to newly independent Tanganyika reminded readers that 'sound history is based on a wide selection of sources.' Marcia Wright, an 'American post-graduate historian with experience in archival

work,' called for the Dar es Salaam archive to seek out the records of 'independent anthropologists who have worked in the country ... Diaries and papers of long-time residents and missionaries, participants and observers in Tanganyika's development ... African leaders.'

Wright, it must be noted, also proposed that 'everything in Tanganyika argues for a liberal policy regarding restrictions on the use of archives and declassification of colonial records.' This was because 'a new country can only benefit by a reputation for cooperation with scholars whose works, in turn, will increase knowledge of Tanganyika in the world.' Bailkin, too, tracks how 'decolonization prompted new demands for transparency.' She describes how 'one Kenyan archivist considered whether retaining documents for fifty years made sense for a "new" African country: "it is not easy to follow European practice partly owing to the comparatively short period of recorded history in Kenya ..." He successfully proposed,' she remarks, 'a thirty-year rule that was then still five years away in Britain,' yet another indication of the hopes of many that decolonisation would bring both new transparency and modernity to archives world-wide. The phrase that Pérotin used to explain why newly independent countries (such as Algeria) were so important to archivists' efforts to establish a 'wholly modern archivistic regime,' however, tells us more about what has happened since: 'countries whose sovereignty is ancient cannot always allow themselves' to do so.[34]

Pérotin reminds us at once how tightly archives and sovereignty are bound together in the modern era even as he argues that the (archival) history that countries required was broadly 'national' rather than merely state-centric. While he asserted that this broadening was a form of progress, it was a claim that made sense because of a new context. Decolonisation, we might say, required more attention to the first term of the nation-state, now that imperial state forms were discredited (and even more so as post-war expectations that the future of all states would be supranational largely had disappeared by the early 1960s). New ways of doing history, and the new practices of archival collecting that help make these possible, did emerge during the era of decolonisation. They promised to allow historians to definitively break with Herbert Baxter Adams' nineteenth-century axiom that 'History is [only] Past Politics.' Archives in post-decolonisation Algeria, Tanzania (the country Taganyika formed with Zanzibar in 1964) and Kenya have worked to collect new kinds of sources that will make possible histories of the nation, rather than just histories of the state. Yet the history of access to archives in all three countries has been rather difficult, as Elkins' discussion of the Kenyan archives emphasizes. With a similar mandate, the French ANOM, too, has not given evidence of the promise an American scholar conveyed in 1966 that it was 'meant to be somewhat more accessible than the archives in Paris, where the fifty-year rule is still strictly applied.' The British government, as the recent 'discovery' has made brutally clear, also has been far from forthcoming.[35]

The turn to archiving the nation, rather than just archiving the state, appeared more true to the past in the same years as decolonised states claimed to be more true to their nations. Both promised more access to truth and freedom and, thus,

a less complicated relationship to sovereignty. The history of the Dispute, however, suggests that what emerged were different paradoxes rather than the end of limiting contradictions.

That so many of today's archive controversies concern the mid-twentieth century 'end of empire' is the result of more than just efforts to hide embarrassing pasts. They speak to how much the exercise of sovereignty is shaped by post-decolonisation concerns. Among former colonisers, some of the most pressing concerns result from the steps taken to redefine states and nations as wholly 'European' despite their extra-European histories, as well as how decolonisation shaped the concomitant establishment of modern 'social citizenship' welfare states. Among the formerly colonised, the work done to cement national identities, often accompanied by the elaboration of highly centralised administrations, continues to trouble efforts to link states to people. So, too, have efforts to negotiate relations with their former colonisers, which the end of the Cold War rendered yet more complicated. One response is to pretend that yet more modern archives might open up sources that could fully illuminate all such questions. Yet historians might gain much from the recognition that archival disputes – about what limits national archives place on access to documents; on how they organise and manage their collections – themselves offer telling clues of the ongoing difficulties of thinking 'nation' and 'state' together. For such control offers modern states the rare possibility to exercise sovereignty in ways that link past and present to state-owned facilities and public employees, despite international conventions and the summons of transnational publics. It thus offers rich material for historical analyses that seek to work with as well as against the grain of the archives.

## Notes

1   This chapter revises '"Of Sovereignty": Disputed Archives, "Wholly Modern" Archives, and the Post-Decolonization French and Algerian Republics, 1962–2012,' *The American Historical Review* 120.3 (2015): pp. 869–883.
2   Bailkin, 2012; Bailkin, 2015, pp. 884–899, 895 and 885; Stein, 2015, pp. 900–919 and 904; Burton, 2006, pp. 1–24; Stoler, 2009.
3   Bailkin, 2015, p. 888; Elkins, 2015, pp. 852–868 and 859.
4   Bailkin, 2015, p. 897; on the post-1945 history of efforts by historians to think 'beyond the state,' see Shepard, 2010, pp. 474–483.
5   Milligan, 2007, pp. 20–35. See also Milligan, 2002; Elkins, 2015, p. 852.
6   Eg. Shepard, 2012, pp. 113–134; Keohane, 2002, pp. 743–765; Robertson, 2003.
7   On 'the political' and archival history, see Smith, 1998.
8   Pomian, 1992, pp. 163–233. *Les Lieux*, as a number of scholars note, almost wholly erases empire from its exploration of the French past and its memorializations, and Pomian's article is no exception. On the silences of *Les Lieux*, see Noiriel, 1988.
9   For a recent evocation of the Bay of Algiers and bombing episodes, see Noureddine Khelassi, 'Entre l'Algérie et la France, il y a l'Histoire, la mémoire, des archives et des biens patrimoniaux. Il était une fois les canons et les crânes,' *La Tribune* (13 June 2012, Algiers); consulted online 23 August 2012, at http://www.latribune-online.com/suplements/culturel/68950.html. Details about the role of Boyer from 27 July 2012 interview with Geneviève Boyer about Pierre Boyer's manuscript diary of the events of 1962 (in her possession) and 1 July 2012 interview with documentary filmmaker

Frédéric Biamonti, who consulted the memoir during the making of *Les pieds noirs: L'amère patrie* (2012); and Pierre Boyer, 'Les archives rapatriées,' *Itinéraires* 264 (1982), 49–67; 61. NB: While I have yet to receive authorisation to cite the memoir, I here am concerned only with the dramatic role this anecdote plays in various depictions of the documentary stakes of 'the Dispute,' rather than its veracity. On effects of bombing, see Pérotin, 1964.

10  'Lettre du general Le Puloch au général commandant supérieur des forces en Algérie' (3 August 1962), cited in Samrant, 2003, pp. 103–110. On the purging of military archives, see Samrant, 2005, p. 105; on the diverging estimates of tonnage, see Boyer, 1996. On the quantities that arrived at Aix, see Mbaye, 2009, pp. 291–299 and 295. In addition to archived document collections (military and others) that had yet to be transferred from the originating services to official archives, the archives of the Governor General of Algeria (GGA) and the regional (until 1958: departmental) archives of Algiers (which shared space with the GCA), Oran and Constantine were affected by the transfer; the archives that had been just recently established in the new departments (1956–1960) were also affected; communal archives were largely untouched. See Dion, 2004, pp. 89–107.

11  Kecskeméti 1977, 5, in UNESCO Archives; consulted online (28 September 2012), 5. For an overview of French treatment of archives in French Africa between 1959–1960, see Bat, 2010, pp. 301–311. NB: in terms of archives, Senegal was the exception; in fact, French authorities sought to keep their agreement to leave the originals in Dakar and use microfilm to make copies for France secret, so as not to anger or inspire people in other former colonies.

12  Badjadja, 2004, p. 645; Kecskeméti, 2004, pp. 41–50; 46–7. On French archivists' understanding of 'territoriality,' see Laroche, 1966, pp. 235–252; and Bautier, 1970, pp. 40–43. NB: My aim here is to emphasise the historical contingency of claims made in reference to legal principles (notably sovereignty), not to legitimise this unsourced claim of back-channel diplomacy.

13  Guignard, Kudo and Bader, 2003, pp. 110–112. The authors make clear what more recent writing (and the ongoing research of scholars from many countries) makes clear: there are growing possibilities to do archival research in Algeria. Hassan Gherab, 'Le contentieux sur la restitution de fonds archivistiques est toujours pendant. Les archives algériennes, une mémoire amputée par la France,' *La Tribune* (Algiers) (1 June 2012); consulted online (30 August 2012), at http://www.latribune-online.com/suplements/cahiers_du_week-end/68252.html.

14  E.g. Stoler, 2009.

15  It is outside the scope of this essay to discuss how archives work to structure or support other groups or communities. Milligan, 2007, p. 20.

16  See esp. Rahal, 2012, pp. 118–51 and Stora, 2000, pp. 109–118. The literature on patrimonial disputes is large; for the French-Algerian case, see Leturcq, 2008, put online 1 October 2011, consulted 29 August 2012. URL: http://anneemaghreb.revues.org/431; DOI:10.4000/anneemaghreb.431.

17  'L'historien Mohamed Harbi décortique des épisodes-clés du mouvement national et livre ses verités, "Les archives de la guerre de Libération sont explosives",' *El Watan*, 26 May 2011; Aït Benali Boubekeur, 'Les Algériens veulent connaitre la vraie histoire, monsieur Ben Bella,' *Le Quotidien d'Algérie* (19 May 2011). NB: In 2000, Ighilahriz sparked an international discussion about the violence of decolonisation when she described how she had been tortured and raped by French officers during the 1957 Battle of Algiers.

18  El Shakry, 2015, pp. 920–934; 922–923.

19  Lucain, 1981, pp. 641–647.

20  'Le Dr. Mohamed Bedjaoui, membre de la Cour internationale de justice: "Le droit international régi le sort des fonds d'archives",' *La Tribune* (Algiers) (1 June 2012); consulted online (30 August 2012); Lucain, 'La question des archives.' On Le RECOURS, see

Philippe Bernard, 'Le métissage des mémoires: un défi pour la société française,' *Hommes et migrations* 1247 (2004): 27–35.

21 'Le transfert des documents d'archives aux autorités algériennes. La réaction de l'Academie des Sciences d'outre-mer,' *Le Monde* (26 November 1981), p. 6 (NB: this organisation had been founded in 1922 as the *Académie des sciences coloniales*); for letter, see Jean des Cars, 'Affaire des archives: indignation nationale,' *Figaro-magazine* (14 November 1981), pp. 116–119. The term 'repatriate' in reference to transfers between France and Algeria has a very specific history; see Shepard, 2008, pp. 140–147. Boyer, 1982, p. 55; 'Neuvieme congrès annuel des archivistes français. Paris–Beauvais, 14–17 June 1961,' *La Gazette des archives* 34–35 (1961), pp. 139–143; 141.

22 Here and elsewhere, I employ multiple terms such as Algerian 'war' and 'revolution' that were used by actors at the time, in order to highlight the many implications and the multiple (and often contradictory) interpretations of what happened. I reject ongoing efforts to invent names, such as the 'Algerian war for independence' or the 'French-Algeria war,' which work to restrict the meaning of what happened in the name of 'science' or objectivity. Such approaches, as Nedjib Sidi-Moussa shows, parallel official efforts to fit this multivalent history into nation-state narratives; see Sidi-Moussa, 2013.

23 Connelly, 2002; Shepard, 2012.

24 '5è séance présidée par Benyahia Mohamed Seddik' of the CNRA Congress of Tripoli, May–June 1962 (1 June 1962), pp. 99–101, in Centre des Archives Nationales d'Algérie, or CANA: Fonds CNRA 1. On the Boumendjels, see Rahal, 2010. Pérotin, *Archives publiques*, 4.

25 Ibid. Pérotin's most influential work was 'L'Administration et les "trois ages" des archives,' *Seine et Paris* 20 (1961), pp. 1–4 (translated as 'Administration and the "Three Ages" of Archives,' *American Archivist* 29, no. 3 [1966]: 363–369). Dousset, 1965, pp. 3–4; on the ANOM (formerly the CAOM), see Mbaye, 2009; Avezou, 1963, pp. 3–4 ; Laroche, 1966, pp. 235–252; Badjadja, 2004, pp. 631–682.

26 Ermisse, 2004, pp. 54–55.

27 Doury-Bonnet, 2012.

28 Ibid.; Bader, Kudo and Guignard, 2004, pp. 158–168. See also Lacroix, Marynower and Vermeren, 2011, pp. 147–149.

29 Elkins, 2015, p. 860.

30 For a classic statement of this argument vis-à-vis France, see Kahler, 1984.

31 Anderson, 2005; see also Bennett, 2007.

32 Elkins, 2015, p. 861.

33 Shepard, 2011, pp. 252–261.

34 Schellenberg, 1956, 15. Pérotin, *Archives publiques*, 4; on 'active' archival practice, see *Manuel d'archivistique, Théorie et pratique des archives publiques en France*. Paris, France, 1970; Marcia Wright, 'Report on the government records and public archives of Tanganyika with recommendations for a national archives - (Mission)' Dar es Salaam, 2 November 1962, UNESCO Archives 158073, 24; 17–18; description of Wright: J.R. Ede, 'Development of national archives: Tanganyika - (mission) July 1963–June 1964' Dar es Salaam, 1964, in UNESCO Archives EPTA/TANGANAC/1, 1; Pérotin, *Archives publiques*, 4; Bailkin, 2015, p. 896.

35 On expectations that the (near) future would be supranational and their collapse, see: Shepard, 2012. See Rahal, 2012; Magaya and Lowry, 2012, pp. 47–58; Coyle Dauphin, 1966, pp. 48–65; 54.

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# 3   Displaced Archives in The National Archives of the United Kingdom

*Mandy Banton*

This chapter presents an overview of those archival collections held in The National Archives of the UK (TNA) that can be identified as being 'displaced' as a result of varied acts of British imperialism. Using examples of documentation created by the governments or administrations of British or foreign dependencies during the seventeenth to twentieth centuries, it outlines reasons for such 'displacements' or 'migrations'. The first section discusses what we might call historic displacements, detailing four examples of collections held by TNA and its predecessor, the Public Record Office (PRO), for many years: records from Guiana (Guyana), the Ionian Islands, Tangier and Wei-Hai-Wei. The second, more detailed, section concerns the 'migrated archives' deposited at TNA in this present decade: colonial government records removed from British dependencies at 'end of empire'. It reviews contemporary and more recent discussions within responsible UK government departments concerning the legitimacy of such removals, the legal status of the records vis-à-vis UK public records legislation and local archival practice, British responses to international initiatives for restitution, and the concealment of not only the records but knowledge of their very existence. It touches upon the debates in a wider arena that attended the eventual release of these records as scholarly, media and political interest was aroused.

Continuing debates about the definition of 'displaced' or 'migrated' archives throw wide open the possibility that a range of documentation from British government departments not primarily concerned with colonial affairs might fall into such categories. The final section provides some examples and briefly discusses the validity of claims that the internal records of responsible departments of the metropolitan power can also be considered as 'displaced'.

## The Historic Collections

The three South American provinces of Essequibo, Demerara and Berbice were administered by the Dutch West India Company until 1792. Captured, lost and recaptured by Britain during the French Revolutionary and Napoleonic Wars, the territories were ceded to the United Kingdom (the UK) in 1814 and united as British Guiana in 1831. Records were surrendered to Britain by the government of the Netherlands in 1819 on grounds that they were needed for effective

administration. These records were already displaced, having been taken over by the Netherlands government when the company was wound up.[1] In contrast, the Ionian Islands, also ceded to Britain in 1814, were transferred to independent Greece fifty years later; the local records of British administration were then removed to London.[2] They were among the first records of, or associated with, the Colonial Office to be sent to the PRO. Colonial Office officials were happy with the practice, introduced in 1860, commenting two years later that papers required could be 'obtained at a moment's notice',[3] but there was no public access to records dated between 1837 and 1902 until 1948.

The third example is that of Wei-Hai-Wei, which was leased from China in 1898 for use as a naval harbour and returned in 1930. TNA's catalogue states that the Civil Commissioner's records were then taken over by the Colonial Office, but in fact they were stored in the British Embassy at Peking (Beijing) until 1961. They seem to have been forgotten rather than deliberately concealed and swept up during a review of embassy and consular records – perhaps encouraged by the passing of UK public records legislation in 1958 but more probably as a consequence of relocation of the embassy the following year.

In all these cases, locally created documentation was sent to London rather than remaining *in situ* to support ongoing good governance and provide a local resource.

The case of records from Tangier is different. This Portuguese possession was ceded to England in 1661 as part of the dowry of Catherine of Braganza, the wife of Charles II. The cost of maintaining the settlement was exorbitant and after only twenty-three years it was simply abandoned rather than being ceded to another sovereign state. Its harbour and fortifications were destroyed, and its military and civilian residents were evacuated together with the records of its courts and municipal assemblies.

In addition the Colonial Office archive at TNA has long included small collections from three former British territories: Ceylon, Malta and Sierra Leone. There are a few records of the Palestine custodian of enemy property and one volume of papers from the government of Heligoland.[4] A much larger collection is that of the British North Borneo Company, which governed present-day Sabah from 1882 to 1942. The company transferred its surviving records to the PRO following the winding-up of its affairs in 1952. Finally, there are small discrete collections from territories held temporarily in wartime: Corsica, Curaçao, Guadeloupe, Havana, Martinique, St Croix, St Eustatius, St Thomas, Santo Domingo and Suriname. In contrast, records of the British administration of Reunion (1810–15) are held in the *Archives Départementales de la Réunion* (Departmental Archives of Reunion).

PRO staff appear to have regarded these displaced collections as rare and uncontroversial exceptions. In the first guide to Colonial Office records, published in 1964, R. B. Pugh wrote: 'It hardly needs saying that the domestic records of oversea governments do not form part of the ... records.'[5] He was presumably unaware of the contemporaneous actions of the Colonial Office in supervising the destruction or removal to London of official records of colonial governments.

## The 'Migrated Archives'[6]

### *The Background*

In 2009, the report of a conference on the 'expatriation' of records noted the 'disparity of power' between the metropole as the recipient of archival materials and the colonial or post-colonial periphery as the source. But, it continued, 'In the UK context, the internal records of former colonial states were routinely passed into the custody of successor national governments'.[7] Despite earlier doubts, we were finally disabused of this notion only in April 2011 when a London newspaper reported that: 'Government efforts to cover up one of the darkest episodes in British colonial history have been revealed by the discovery of a vast cache of documents relating to the bloody Mau Mau rebellion in Kenya.'[8]

In June 2009, five elderly Kenyans brought a claim against the British government, alleging mistreatment and torture at the hands of British colonial and military personnel.[9] The unrelenting efforts of lawyers and expert witnesses eventually forced the Foreign and Commonwealth Office (FCO) to admit the existence in the UK of some 1,500 Kenyan government files removed at independence. It subsequently announced that it held files from 37 former dependencies, a collection first estimated at 8,800 items but in fact comprising about 20,000. The FCO commissioned Anthony Cary, a former diplomat, to examine 'what went wrong and what lessons should we draw?' His report emphasised bureaucratic incompetence and loss of corporate memory rather than any deliberate intention to conceal the existence of the archives.[10] On 5 May 2011, William Hague, the then Foreign Secretary, informed Parliament that it was his intention 'to release every part of every paper of interest subject only to legal exemptions'.

Inevitably the 'discovery' of these migrated archives attracted considerable media and scholarly attention even before their gradual transfer to TNA and release to the public. Three expert witnesses in the trial published on the Kenya background.[11] The present writer used documents already in the public domain to build up a picture of the processes of 'migration'.[12] Professor Stephen Howe noted, 'Potentially, almost every part of the narrative of decolonisation ... will have to be rewritten'.[13] Attention has continued to be paid to this issue by the media[14] while further journal articles have appeared.[15] In February 2015, some early work based on the newly released records was presented to a workshop at the Institute of Commonwealth Studies.[16]

My own interest in these 'migrated archives' has been less their content and more the policy behind their 'migrations'; the history of their custody in the UK; ongoing debates as to their legal status; and attempts to secure their return to the independent states.

### *The Policy*

Evolving policy was rooted in earlier concerns for the safeguarding of official papers, a subject re-emphasised in wartime. In June 1939, governors were warned that official publications must not include information of value 'to a potentially

hostile power'.[17] In 1943, they were instructed to adopt a new file classification system and were sent guidelines designed to ensure that papers were kept from unauthorised persons. Thus in the post-war years, when the primary concern of British authorities was to keep sensitive information from ministers and officials in incoming independent governments, some groundwork was already in place.

The first of the migrated archives sent to the UK came from Ceylon (Sri Lanka), which achieved independence in 1948. Failing to find a precedent based on constitutional change in the dominions, India or Ireland, Colonial Office officials entered into anxious discussions. 'Are we entitled to do as we please with these records?' they asked. 'Are they UK Govt. or Ceylon Govt. archives? Are we entitled to withhold them from the Ceylon Government?'[18] Their legal adviser thought that Ceylon ministers charged with the direction of government might reasonably argue that they should have access to relevant documents.[19] This is the only acknowledgement I have seen in all the Colonial Office files concerning the migrated archives of the principle that records should follow function.[20]

One Colonial Office official thought that the problem might be shelved by passing files to the British High Commissioner, but another believed that leaving them in Ceylon would cause embarrassment: 'Public interest ... could grow very readily to monsoon dimensions.'[21] Furthermore, this could be only a short-term solution. There was no uncertainty about the status of records of British high commissions and embassies. They were (and are) UK public records that could remain in overseas 'posts' only temporarily.

The best option might be to bring the Ceylon records to London: 'Any storm there might be would be directed against the Colonial Office (we are well cast for the role of old enemy), and not against the High Commissioner, who must play the part of new friend.'[22]

The papers under consideration at that time were not records created by the colonial government, but correspondence between successive governors and London. In an attempt at clarification, an official wrote:

> The Governor, while Ceylon was a colony, was partly a piece of the Government of the Colony, and partly the representative there of His Majesty's Government in the UK. It seems to follow ... from this that despatches ... he received in the former capacity should remain with the independent Ceylon Government ... Those he received in the latter capacity can be treated as belonging to HMG in the UK.[23]

It was impossible to translate such a distinction into the actual sorting of papers into two categories, and 464 volumes of despatches, dating from 1835, were sent to London.[24] An assumption seems to have developed that the migrated archives date from the period of decolonisation. In fact there are nineteenth-century papers from 11 territories and records from well before the Second World War for many more.[25]

Developing policy in the 1950s is obscured by the apparent destruction of files relating to the Gold Coast and Malaya, subsequently described by the Colonial Office librarian as providing the most useful background. We do know, however,

that in 1956 an official had stressed that it was *not* the practice of the Colonial Office to take over archives of governments of dependent territories.[26] In 1959, a report of what was done in Malaya was sent to Nigeria for information. In 1956, as the civil service was 'Malayanised', advantage had been taken of office moves and reorganisations to 'withdraw ... papers which could not be handed over.'[27]

'Disposal' of documents continued to give rise to anxious discussion, but by 1961 a policy had been formulated based on recommendations of a Gold Coast (Ghana) committee. It was sent to Sierra Leone in March 1961 and to the East African dependencies in May. The Colonial Office had moved away from its previously uncertain stance as responsibility was transferred from the geographical departments and library, whose staff had recognised both the significance of documentation to incoming governments and its potential historical importance, to the Intelligence and Security Department (ISD). Staff there had other priorities, informed at least in part by an ongoing liaison with MI5 – the Security Service. In 1963, discussing appraisal of records of the West Indies Federation, ISD stressed that the prime need for financial assistance was 'on grounds of security of material, not on grounds of historical interest ...'[28] Security liaison officers played a key role in policy implementation in the dependencies; the 1959 report on Malaya was compiled by one of their number.

The 1961 policy, which may already be familiar, was not specifically concerned with the destruction or removal of records but with the question of what should be kept back from successor governments: documents which,

1   Might embarrass HMG [Her Majesty's Government] or other Governments;
2   Might embarrass members of the police, military forces, public servants or others (such as police agents or informers);
3   Might compromise sources of intelligence;
4   Might be used unethically by Ministers in the successor Government.

However, 'There would be no objection to the transfer ... of secret or lower papers provided that they have been scrutinised and selected by a small committee of, say, a Special Branch officer and two Senior Administrative Officers'.[29]

Paradoxically, less than six weeks before these guidelines were first circulated, a Colonial Office minister had stated in Parliament that the preservation of official records of each colony or former colony was the responsibility of the individual governments.

### The Practice

The uneven application of the 1961 policy can be explained partly by the lack of general guidance on destruction or removal of documentation and partly by the fact that, as Colonial Office officials had so often emphasised, colonies were not governed directly from London; there had always been an 'arm's length' approach resulting in differing policies and practices. Even the 1961 policy was described by one London official as '*almost* a standard instruction'.[30] And we should not ignore individual

inclinations; some officials were reluctant to destroy documentation potentially of lasting value, while others enthusiastically tossed as much as possible into the incinerator or bonfire. An added complication was that the Colonial Office was not the only UK government department concerned; its responsibility for the colonies and protectorates was transferred to the Commonwealth Relations Office (CRO) as each territory achieved independence, resulting in an awkward overlap. The CRO had for decades also been responsible for certain dependencies closely associated with one or other of the dominions, and the short-lived Central African Office (CAO) supervised the dismantling of the Federation of Rhodesia and Nyasaland.

In 1963, officials of the CAO discussed with their counterparts in Salisbury (Harare) the possible transfer to London of Federation records. They could find no way of doing this without the British Government assuming responsibility, which, they said, 'would obviously not be acceptable'.[31] They suggested that the PRO might take them directly from the Federation on deposit. The PRO refused, and the final blow was dealt by Roy Welensky, Prime Minister of the Federation, who was determined that no records should go to London. He was convinced that nothing could safeguard them from the attentions of British Intelligence. The CAO did not seek Colonial Office advice.

Reports of what happened elsewhere are both complex and uneven; many pertinent Colonial Office files have not survived.[32] A few examples must suffice. In some territories new procedures were put in place prior to independence. Northern Rhodesia (Zambia) introduced an interim file classification known as 'WATCH', admired by 'security experts' in London.[33] The Kenyan version is described in detail.[34] WATCH papers could be seen only by an authorised officer, defined as 'a servant of the Kenya Government who is a British subject of European descent, and who has been security cleared ...' Uganda adopted a similar procedure known as 'Operation Legacy', but officials emphasised that the instruction that a dedicated committee should assess documentation was quite impossible to implement even in the Chief Secretary's Office 'let alone in all the other hundreds of offices throughout the Protectorate'.[35] Officials in British Guiana made the same point, although for different reasons: in the greater Caribbean region there were too few expatriate staff to undertake the task.

For some territories there is an indication of the quantity of papers destroyed: Malaya sent five truckloads for incineration in Singapore, while in Northern Nigeria documents were burnt in small quantities on a daily basis over a period of several months. There are few lists of what was destroyed, it seems unlikely that destruction schedules were compiled.

There are occasional lists of files sent to London, some with accounts of their transportation. There is an example of documents sent elsewhere. In 1965, records from Basutoland (Lesotho) were sent to the Oxford Colonial Records Project (OCRP) for deposit in Rhodes House Library.[36] The Colonial Office got wind of this and retrieved the files, emphasising that the OCRP collected private, not official, papers. Similarly, a Kenyan politician, Sir Michael Blundell, arranged for his own papers to be deposited in Oxford but shipped them via the British High Commission in Nairobi where they were examined, found to include classified

official documents, and sent to the CRO. Blundell was furious, demanding to know why 'his' papers 'are now in the possession of a Librarian in some Office or other in London ...'[37]

### *Custody in London: Content and Status of the Archives*

The impression given by FCO statements since 2011, supported by the conclusions (although not the detail) of the Cary report, appears to be that the migrated archives, on receipt in London, were warehoused and simply forgotten. However, sixty-six Colonial Office and FCO files released in November 2013, provide an account of sporadic interest and activity within those departments and the PRO/TNA and bring the story up to 2012. There are two main and interconnected themes: content and, most significantly, legal status.

In 1967, when the Kenyan government asked for the return of its records, officials in London insisted that documents removed from Nairobi were the property of the British Government. Thereafter there were sporadic and inconclusive discussions about the status of the archives.

In 1972, an FCO official stated categorically that the Cyprus records belonged in Cyprus. He wrote:

> They were not handed over at Independence ... simply because they contain much material which is sensitive and much which is critical of many persons still prominent in ... Cyprus today. But these considerations do not make the records UK public records, any more than are the records of any other former Colonial Government. They were sent to us for safe-keeping, until such time as their sensitivity will have diminished and the records will be able to be handed back to the Government of Cyprus.[38]

PRO staff, however, thought that they *were* UK public records. Four years later, still failing to agree, the FCO and PRO referred the question to the higher authority. The Lord Chancellor's Office agreed with the FCO – the records removed from Cyprus were *not* UK public records.[39] By 1982 the PRO and the FCO had reversed their positions. The PRO said that files from Aden were not UK public records. The FCO held that they were.

In the meantime, E. C. Blaney, head of FCO's Library and Records Department, had become involved. In 1978, she asked colleagues if it was correct that colonial records should go to the PRO, and was told: 'It is, of course, our practice to leave records behind on independence – removing only sensitive items. Even then we would hope in ... time to return the comparatively few files ...'[40] Eighteen months later Blaney noted that 'a UN committee has taken up the cudgels on behalf of the "third world" countries' and stressed:

> We cannot ... ignore this problem indefinitely ... Until [it] is examined in detail it is impossible to recommend an acceptable solution. It would be best to make a start now and not hope that the problem will go away – it just will not![41]

The contents of the migrated records were then checked by D. J. Fisher, and the listing improved. Fisher claimed that they were certainly British government property, and stated that 'the fact that we have only 2,000 boxes of material from over 300 years of colonial rule is conclusive evidence that the majority of records were left with the succeeding governments'.[42] He clearly failed to recognise that many had been destroyed. He recommended that ephemera be removed, files 'of no value' destroyed and the remainder reviewed for transfer to the PRO *or return to the former colonies.*

Fisher's work is in 34 *unregistered* folders now in FCO 141.[43] A 1995 FCO minute notes: 'Presumably it was decided to take the precaution not to create files which, when open to the public, might draw attention to migrated records by then destroyed or forgotten.'[44] Despite Cary's finding that there had been no attempt to conceal the existence of the migrated archives, it is clear that in 1995 there was no wish to make their existence known. The folders include lists of 'migrated' documents held in a repository at Hayes on the outskirts of London and, in the case of 'top secret' documents, at the Curtis Green building in the heart of the city.[45] Each includes a brief constitutional history of the territory concerned, an 'account of action' prior to decolonisation, where known, (that is, action regarding the destruction or transfer of documentation) and an assessment of whether the independent government was aware that the FCO held its records. In most cases it was thought not, although as was pointed out in the case of Uganda, 'A great deal of effort was put into Operation Legacy and there can be no guarantee that an exercise of this magnitude was not known to ministers or local staff'.[46] Kenya had claimed its records as early as 1967, and there have been less formal approaches from the Bahamas, Botswana, Swaziland and Tanzania. The government of Israel was aware of the presence in London of certain staff records from the former Palestine.

Fisher also researched the archives legislation in place in 32 Commonwealth countries.[47] Much of this had been enacted post-independence but many countries, including Antigua and Barbuda, the Bahamas, Belize, Dominica, Gambia, Ghana, Grenada, Jamaica, Mauritius, Nigeria, St Lucia, St Vincent and Uganda, had earlier statutes – some dating back to the nineteenth century. The Colonial Office had always strongly encouraged good record keeping in the dependencies and the provision of adequate archival storage and preservation. There is no explanation of why Fisher went to the trouble of identifying statutes if their provisions were not to be taken into account when considering status. They were ignored at least once; the Bahamas enacted a Public Records Act in 1971, two years before independence. In 1972, however, the governor was instructed not to send further papers to the local record office.[48]

Are all the documents listed by Fisher now in FCO 141 at TNA? This is not particularly difficult to ascertain, but is a lengthy and tedious task. I checked for the Bahamas, for which there is a list of 110 files held by the FCO in 1980–1981. Subjects include the Black Power Movement, Howard Hughes (the American tycoon), President Nixon's use of the Bahamas as a 'retreat' and CIA representation. There are only thirty-five Bahamas files in FCO 141 among which these

subjects are not included. Is this evidence of destruction by the FCO, or the continued withholding of papers? In other folders there is confirmation of destruction of files in London. (Some records may never be accounted for; exhaustive searches for thirteen boxes of top secret files identified as relevant to the Kenya court case revealed that a total of 170 boxes of files recorded as being held in the Old Admiralty Building could not be found.)

By July 1982, Blaney had second thoughts about the wisdom of returning records, and recommended that a decision be postponed until 1998, fifty years after Ceylon's independence. She stressed that even Kenya was not fully aware of the quantity and sensitivity of material in British hands. Any return would set a precedent, act as a warning to territories yet to achieve independence and perhaps provoke further international debate.

In 1995, an FCO official recommended that the Lord Chancellor's Office be asked again 'whether or not we are dealing with public records'. The status of the Cyprus records, he said, had still not been determined although the consensus at the PRO was that migrated records were not public records. 'If they are not public records', he noted, 'we have *carte blanche* over their fate'.[49] The following year a colleague said he had no doubt that the PRO should accept the Kenyan files, at least, on the grounds that they belonged to Government House. This was a common sleight of hand; documents had routinely been removed from colonial government departments to the governor's or high commissioner's office before being sent to London, and their provenance obscured.

At about the same time, a joint FCO/PRO submission to the Lord Chancellor argued that the Hong Kong records 'were *not* UK public records ... but that any ... that passed into the ownership of the FCO would *become* UK records on 1 July 1997' (when Hong Kong was returned to China). I have not found a direct response, but a 1997 *Annual Report on FCO Documentation Performance* states that 'migrated records ... are not in fact or technically proven to be our official public records'. Incidentally, there are no Hong Kong records among the migrated archives at TNA but a huge collection is still with the FCO.

Cary refers to a 2007 'train of emails ... [which] makes clear the uncertain status of the archives'. TNA said then that if the FCO was considering transferring records elsewhere, 'they should *not* go to another UK repository ... If they are now releasable ... the proper course of action would be to arrange their return to the successor administrations ...' This view was still held in 2009, but in 2011 TNA surprisingly advised FCO to take legal advice – surprisingly since TNA claims to be the authority on what is or is not a public record. The legal opinion received was that the migrated archives are indeed UK public records. The FCO has refused to give me the wording, so I do not know how this opinion was reached. Others disagree. Dan Leader, one of the lawyers acting in the Mau Mau case, told me, 'I agree that the migrated archives in law are the property of the former colonies and real thought needs to go into how to ensure that (at least) copies of these key documents are repatriated.'[50]

It is worrying that the definition of 'public records' in the 1958 Public Records Act has proved so difficult to interpret. My understanding is that 'Records

belonging to Her Majesty whether in the United Kingdom or elsewhere' was included to encompass the records of British diplomatic posts, not those of colonial governments. This was certainly the interpretation reached by the Lord Chancellor's Office in 1976. Guidance issued by the PRO in 1999 stated:

> As a broad rule of thumb, if the creator of a record was a central government department, agency or body, or predecessor to a modern department of state, funded from central Treasury funds granted through a parliamentary vote, then its records are likely to be public records falling within the definition and scope of the 1958 Act.

This would exclude the records of colonial governments, but current guidelines on TNA's website are more tentative.[51] I wonder if the decision reached by the FCO lawyers in 2011 might be based on a further definition: 'records ... held in any department of HMG in the United Kingdom' – the migrated archives were so held by FCO for decades. There is little doubt about the legal status of the 'historic collections' of migrated archives since public records are also defined as any already in the PRO in 1958. But what about documents held not in the PRO but within UK government departments at that date – as, for example, were those from Ceylon?

## International Initiatives for Restitution

The 1970s saw increasing international interest in displaced archives. The 1970 'convention on the means of prohibiting and preventing the illicit import, export, and transfer of ownership of cultural property' included archives among definitions of 'cultural property', but was not retrospective. UNESCO subsequently examined 'the possibility of transferring documents from archives constituted within the territory of other countries' noting:

> Archives ... not only document the historical, cultural and economic development of a country and provide a basis for a national identity, they are also a basic source of evidence needed to assert the rights of individual citizens. Changes in territorial boundaries and sovereignty have deprived many countries of at least part of their rightful archival heritage. It is important to all nations and to mankind generally that the problem of providing access to archives, and their restitution ... where ... required, should be dealt with urgently.

The importance of the migrated archives to support the rights of citizens has been demonstrated in the Kenyan case. Records from the British Indian Ocean Territory have been used in claims brought by the Chagossians, but given the existence of a redacted copy of a 1999 FCO minute concerning these records that instructs 'do not disclose the existence of the migrated records' it seems that they were not available to the claimants but used only to support the British case.[52]

Discussions eventually resulted in the *Vienna Convention on Succession of States in respect of State Property, Archives and Debts*, but it did not come into force, being ratified by too few member states. Britain had emphatically opposed the inclusion of archives in the convention. The FCO legal advisers stressed that its acceptance by a significant number of states, 'could seriously prejudice the claims of H.M.G. to the ownership of' the India Office Library and Records.[53] There are examples of obfuscation: in a 1976 reply to a survey requesting details of archival claims, Jeffery Ede, keeper of the UK public records, first sidelined the question by claiming to misunderstand, and then stated that there had been no claims for records in his custody, thus avoiding mention of known claims for documents still held by the FCO.[54] He also stated, 'Archives should normally be kept and made accessible for research in the country in which they have accrued as the result of normal administrative practices.'[55] The following year a briefing prepared for the British representative on the International Law Commission, involved in drafting the convention, stated that 'with a few small exceptions, all archives accruing in former colonial territories ... have been left in those territories'.[56]

It was the UNESCO initiative that had inspired Blaney's interest and her fear that any return of records might provoke further international debate. Sporadic debate continued without such provocation. In 1991, the European Parliament, considering a call for the return of certain archives, concluded that it had no authority in the matter but regretted that some member states still held

> information concerning the colonial and pre-colonial period in the develop-
> ing countries, which is not available to those countries but is of major impor-
> tance both for their cultural identity and their economic development.

It urged states 'to open talks forthwith with the ... countries whose archives they hold, with a view to their return'. The FCO sent me a copy of their file on the subject, which shows that the matter was simply referred to the PRO. There are copies of correspondence between the then Keeper of the Public Records of the UK and his counterparts in Spain and the Netherlands, which I had hoped might lead me to a fuller PRO file, but TNA staff have found nothing. The FCO took no further action.

There are in fact precedents for the return of documentation removed to the UK. Records of the Lieutenant Governor of New Brunswick (1784–1867) were sent to London when the province became part of the Dominion of Canada; they were returned in 1922. In 1973, records of the superintendent of convicts in New South Wales were returned to Australia; TNA retains microform copies. The Public Record Office Act of 1877, which sanctioned the destruction of 'valueless' documents, also provided that documents of 'insufficient value' to be preserved in the PRO might be disposed of other than by destruction. By an Order in Council of 1908, certain Colonial Office documents were transferred to colonial governments, but in 1912 the Royal Commission on Public Records noted only eight transfers and regretted that further possibilities had not been explored.[57]

## Displaced Archives: Wider Considerations

Both the historic collections of displaced archives and those transferred to TNA in this decade are, as noted, held amongst the records of the Colonial Office and its predecessors and successors. Other UK government departments have amassed records concerning imperial and colonial affairs. The Foreign Office was primarily concerned with the conduct of British relations with independent states but was also a lead player in the forging of those links with indigenous peoples, particularly in Africa, which progressed from treaty-making to annexation. It is a matter of debate whether reports sent from its consular agents overseas – who included David Livingstone and Roger Casement – might be regarded as displaced. British interests and influence also spread into 'informal' empire, which accounts for the presence at TNA of legal records of the British settlement at Shanghai. Like the Tangier records, these perhaps pertain only to the British expatriate community. Another collection previously stored in the Beijing embassy (with the Wei-Hai-Wei records) is of a very different nature: the Chinese-language records of the province of Kwantung seized during the Anglo-French invasion of 1858.[58] This example throws up a question about the extent to which documentation, like artefacts, may have been seized during military campaigns. Records of the German Foreign Ministry were captured by the Allies in 1945 and subsequently appraised for filming by a German War Documents Project set up by the British and United States governments in 1946 and later joined by the French. The originals were returned to Germany.[59]

This chapter has concentrated on those record collections held at TNA, consisting of official documentation removed from British and foreign dependencies and more commonly designated 'migrated archives'. The definition of that term is, however, debatable. Dr Shitla Prasad, who coined it in 1972, stated:

> An important part of the archives of most developing countries presently lies in various repositories in developed countries. The former colonial powers have either taken them or else they were created in the colonial powers by the branch of the government concerned with the administration of the colony. Morally these records belong to the developing countries concerned, they are vitally necessary for reconstructing its history.

His identification as 'migrated records' of those records created within the metropoles is problematic. Others argue that records of, for example, the British Colonial Office are primarily concerned with British history in its widest sense. In archival terms, to break up these collections for transfer overseas would destroy their provenance. In practical terms, it would be impossible in the case of series arranged by subject rather than geographically. Whichever line we take, they do include much information about the dependencies – provided by colonial governments and others – which is not now available in the independent countries.

Many other UK government departments have amassed a wealth of information about the British empire and its constituent parts, for example the defence departments and perhaps particularly the Admiralty. The importance of the Royal Navy in exploration and the expansion and defence of empire hardly needs stating. It supported British diplomacy in time of peace; it protected merchant shipping in time of war; it patrolled the seas in search of illegal slavers after British Parliamentary abolition of the trade in 1807; it provided ships and personnel for the Niger expeditions of the mid-nineteenth century. Admiralty records include reports of a punitive expedition against alleged pirates on the River Congo, which include detailed maps and descriptions of waterways and settlements.[60] On this occasion and many others, for example treaty-making, Royal Navy officers, in their dealings with indigenous peoples, were filling a role usually fulfilled by diplomats.

Reference has been made to the administration of dependencies by companies rather than government: the Dutch West India Company and the North Borneo Company. A related example is that of the Company of Royal Adventurers of England Trading with Africa, 1663–1672, and its successors to 1821, which, although not administrators of overseas possessions, maintained settlements on the West African coast. Their rich records are in the Treasury series T 70.

Although such material may be primarily of historical interest, there is much of current practical concern. TNA records relating to international boundaries, for example, have been of particular importance in recent years to the governments of Guyana, Malawi and Mozambique.

## Conclusion

There are difficulties in working on a topic which is evolving and constantly throwing up new questions. I have been looking back at parliamentary statements. In May 2011, William Hague said that FCO officials had briefed the governments of those former British territories that might have an interest in the migrated archives. I know that, in the case of Malta, this briefing was passed on to the government archivist. Was this done elsewhere?

In November 2012, the Minister for Europe reported the existence of what we now know as the 'special collections' or 'non-standard files', a huge accumulation of mainly internal records of the FCO and its predecessors not assessed for transfer to TNA in accordance with public records legislation and dating back to the nineteenth century.[61] He stated, 'The FCO has not identified any colonial administration files among these papers beyond those currently being transferred.' That was untrue: a quarter of a million Hong Kong files are included. The Cary report mentions these, and Colonial Office files long in the public domain show that from 1950 onwards, records were microfilmed in Hong Kong and sent to the UK.

On 12 December 2013, an FCO minister announced in the Commons that 'the final tranche of files was opened to the public at the National Archives on

29 November' (a statement repeated in Parliament on subsequent occasions). However, at the time of writing, a further eighty-five files or previously closed extracts have been released. The lack of any formal announcement of such releases is likely to obscure their existence.

Members of the House of Commons and the House of Lords have asked pertinent questions about the migrated archives. In the summer of 2013, Lord Boateng[62] asked 'what meetings have occurred between the Foreign and Commonwealth Office and National Archives officials responsible for decisions relating to the files of former colonial administrations with their counterparts in the Commonwealth countries concerned or with academics from those countries?' The answer, with no further explanation, was that no such meetings had taken place.[63] Boateng also asked if the government would discuss the digitisation of the archives of former colonial administrations with the Association of Commonwealth Universities and relevant Commonwealth governments. The answer was basically 'no', but couched as 'There are no current plans to consider digitisation of these archives. Due to the cost of digitisation the Foreign and Commonwealth Office generally releases all of its paper records in their original format.'[64]

A degree of misinformation and obfuscation in Parliamentary statements has done nothing to inspire confidence in the FCO's claim that it 'is committed to complying with the Public Records Act and to full transparency with respect to our record holdings'. Professor Tony Badger who served as the independent reviewer to oversee the release of the migrated archives, and continues that role in respect of the 'special collections', has said that it is entirely understandable that this new-found transparency will not alleviate the legacy of suspicion created by the failure of the FCO to acknowledge the existence of the migrated archives. But he has also pointed out that what is truly remarkable is not that the migrated archives were concealed for so long, but that they were not destroyed in 1982 or 1996 or 2007 as might well have happened.[65]

How will the story develop? Kenya has, of course, continued to press for the return of its records; groups such as the Eastern and Southern Africa Regional Branch of the International Council on Archives have maintained an interest over many years; and the matter was discussed at the 2014 and 2015 AGMs of the Association of Commonwealth Archivists and Record Managers, which is canvassing members for national opinions and suggestions for ongoing action. In 1981 the International Law Commission noted: 'The removal of archives is a universal and timeless phenomenon. In almost all cases, they are returned sooner or later to their rightful owners, except, it seems in cases of decolonisation. But time has not yet run its full course to produce its effect in this field.'[66] Thirty-four years later the matter remains unresolved.

## Notes

1   Those relating to Essequibo and Demerara were formerly held in Middelburg, those concerning Berbice in Amsterdam. The residue is in the National Archives at The Hague. R. B. Pugh, *The Records of the Colonial and Dominions Offices*, London, UK. 1964, p. 52.

 2 26th Annual Report of the Deputy Keeper of the Public Records, p. 8, PRO 43/26.
 3 CO 323/263, cited in Anne Thurston, *Sources for Colonial Studies in the Public Record Office*, vol. 1, HMSO, 1995, p. 62.
 4 Heligoland was captured from Denmark in 1807, ceded to Britain in 1814 and to Germany in 1890.
 5 Pugh, 1964, p. 52.
 6 In the remainder of this chapter the term 'migrated archives' is used to refer to the collection of 'colonial administration files' removed from former British dependencies at independence.
 7 Timothy Lovering, 'Expatriate Archives', *Archives*, Volume XXIV, Number 121, October 2009.
 8 Ben Macintyre, '50 Years Later: Britain's Kenya Cover-up Revealed', *The Times*, 5 April 2011.
 9 Ndiku Mutua and 4 Others v. the Foreign and Commonwealth Office: https://www.judiciary.gov.uk/judgments/mutua-others-fco-judgment-051022012/ [accessed 14 Oct. 2015].
10 https://www.gov.uk/government/publications/cary-report-on-release-of-the-colonial-administration-files [accessed 14 Oct. 2015].
11 Articles by David Anderson, Hugh Bennett and Caroline Elkins, *The Journal of Imperial and Commonwealth History* 39(5), 2011.
12 Banton, 2012; Banton, 2013.
13 Howe, 2011.
14 For example by Ian Cobain in *The Guardian*, Katie Engelhart in VICE News and Stephen Williams in the October 2014 issue of *New African*.
15 Anderson, 2015: Edward Hampshire, 'Apply the flame more searingly. The destruction and migration of the archives of British colonial administration, a South-East Asia case study', *The Journal of Imperial and Commonwealth History*, Vol. 41, No. 2, 2013, pp. 334–352.
16 http://commonwealth-opinion.blogs.sas.ac.uk/2015/exploring-the-hidden-histories-of-decolonization-at-the-icws/ [accessed 14 Oct. 2015].
17 FCO 141/1158, Colonial Office confidential circular, 6 June 1939.
18 Mitchell, 1 April 1949, CO 537/4854.
19 K. O. Roberts-Wray, 20 September 1947, CO 54/992/3.
20 In contrast, it is regularly mentioned in papers at the British Library discussing the disposal of Indian records.
21 Mitchell, 1 April 1949, CO 537/4854.
22 Ibid.
23 W.L.D. [Dale?] 6 April 1949, CO 537/4854.
24 At some later stage, records of the Soulbury Commission on Constitutional Reform were added.
25 See appendix.
26 Reported by A. M. MacKintosh, 29 December 1958, CO 1030/691.
27 'Destruction of Records in the Federation of Malaya', 9 September 1957, in DO 186/17, Disposal of Nigerian Government archives, 1959.
28 A. R. Thomas, Disposal of physical assets of the West Indian Federal Government, 1960-62. 23 January 1963, CO 1031/4010.
29 Guidelines were subsequently updated and wording may differ. This is from the version sent to the East African dependencies on 3 May 1961. CO 822/2935, disposal of files in Tanganyika, 1960-62.
30 C. E. R. Darby, ISD, 13 December 1961, FCO 141/19928.
31 N. D. Watson, CAO, 11 November 1963, DO 183/508.
32 For example the file FCO 141/19930, Disposal of classified and accountable documents prior to independence of Colonial territories, cites 18 other Colonial Office files only three of which are at TNA.

33  G. W. Jamieson, CAO, to P. G. Bennett, Lusaka, 5 March 1963, FCO 141/19933.
34  See FCO 141/6957.
35  W. J. Marquand, Uganda, 20 May 1961, FCO 141/19935.
36  See FCO 141/911, Basutoland: destruction, transfer and archiving of files.
37  See correspondence in FCO 141/19931.
38  H. G. F. Harcombe, FCO, to A. J. McDonald, PRO, 18 July 1972, PRO 69/426.
39  T. S. (later Sir Thomas) Legg, Lord Chancellor's Office, to A. W. Mabbs, PRO, 8 March 1976, PRO 69/426.
40  D. Gregory to E. C. Blaney, 24 November 1978, FCO 141/19913, Migrated Records Kenya.
41  Copy [23 June 1980] on FCO 141/19912.
42  FCO 141/19912, D J Fisher, minute, to Mr Smyth, 22 January 1981.
43  An additional folder, FCO 141/19927, Lists of files held in Hayes Repository, Middlesex: Malta, Malaya, Nigeria, East Africa, is retained by FCO under Section 3.4 of the Public Records Act which allows for retention if 'required for administrative purposes or ... for any other special reason'.
44  R. R. M. Hollas, Library and Records Department, FCO, 1 February 1995, FCO 141/19933.
45  The latter were subsequently moved to the Old Admiralty Building; in 1994 the entire collection was moved to Hanslope Park.
46  Undated typescript, FCO 141/19909, Uganda: background report on pre-independence records migrated to the UK; list of records; Operation Legacy, 1961–1984.
47  Listed in Fisher's general folder, FCO 141/19912.
48  FCO to governor, August 1972, FCO 141/19872.
49  R.R.M. Hollas, 1 February 1995, FCO 141/19933.
50  Communication to author, 12 June 2014.
51  http://www.nationalarchives.gov.uk/documents/information-management/how-to-identify-a-public-records-body.pdf [accessed 14 Oct. 2015].
52  FCO 141/19945, British Indian Ocean Territory [BIOT]: annotated file list, 1999.
53  Ian Mathers, Legal Advisers, minute dated 12 October 1976, FCO 12/195.
54  Correspondence in FCO 12/195.
55  Ede was echoing statements made in Parliament by two secretaries of state for the colonies: Leo Amery in 1929 and Arthur Creech Jones in 1948.
56  Briefing for Sir Francis Vallat, May 1977, FCO 12/195.
57  Cd. 6361, 1st Report, page 19, section 3, paragraph 67.
58  In Foreign Office series FO 931; see David Pong, *A Critical Guide to the Kwangtung Provincial Archives deposited at the Public Record Office of London*. Cambridge, MA. 1975.
59  Some microfilm copies are at TNA in the 'GFM' series. For a history of the administration and microfilming of the captured archives, including papers on their use in official histories, at the Nuremberg trials and by the US Air Force see Robert Wolfe (ed) *Captured German and related records: a national archives conference*. Ohio. 1974.
60  ADM 123/121, the expedition against the Congo pirates, 1875–1876.
61  Cary had drawn attention to a significant information management risk: 'Lack of knowledge about the data or information that is held by the FCO including where it is held, why it is held, who has access to it, and how it is used.' An inventory was subsequently compiled and published: https://www.gov.uk/government/publications/foreign-offices-archive-inventory [accessed 14 Oct. 2015].
62  Paul Boateng is a lawyer and former Labour member of Parliament and Cabinet minister, subsequently British High Commissioner to South Africa, and now a member of the House of Lords.
63  Hansard 8 July 2013: Column WA20.

64  Hansard 8 July 2013: Column WA19. Boateng had perhaps read Professor Philip
    Murphy's letter to *The Guardian*, in which he said 'the UK should bear the costs
    of making [the migrated archives] freely available in digitised form. This impor-
    tant act of reparation would allow scholars from Britain's former colonies access
    to key documentation on their countries' struggles for independence.' http://www.
    theguardian.com/world/2013/may/07/uk-responsibility-mau-mau [accessed 14 Oct.
    2015].
65  A thirty-minute video by Professor Badger providing an overview of his role as
    independent reviewer can be viewed at https://www.gov.uk/colonial-administration-
    files [accessed 14 Oct. 2015].
66  http://legal.un.org/ilc/texts/instruments/english/commentaries/3_3_1981.pdf [accessed
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## Appendix

FCO 141, Foreign and Commonwealth Office and predecessors: Records of Former Colonial Administrations: Migrated Archives (numbers are of items released to November 2013)

Aden, 1949–1967, 47 items

Anguilla, 1967–1972, 274 items

Bahamas, 1962–1973, 40 items

Botswana (listed in catalogue as Bechuanaland), 1921–1966, 304 items

British Indian Ocean Territory and Seychelles, 1930–1976, 275 items

Brunei, 1847–1965, 927 items

Cameroon, 1922–1962, 148 items

Cyprus, 1879–1960, 2859 items

Fiji (see also Western Pacific), 1931–1970, 29 items

Gambia, 1932–1965, 93 items

Ghana (listed in catalogue as Gold Coast), 1932–1964, 274 items

Jamaica, 1927–1963, 352 items

Kenya, 1906–1982, 2726 items (including 915 items from the Kenya Land Transfer Programme, 1955–1982)

Kiribati and Tuvalu (listed in catalogue as Gilbert and Ellice Islands), 1943–1978, 40 items

Lesotho (listed in catalogue as Basutoland), 1909–1966, 771 items

Malawi (listed in catalogue as Nyasaland), 1946–1964, 162 items

Malaysia (listed in catalogue as Malaya), 1884–1963, 821 items

Malta, 1852–1971, 4359 items

Mauritius, 1942–1968, 265 items

Nigeria, 1895–1962, 451 items

Palestine, 1926–1950, 53 items

Seychelles (see under British Indian Ocean Territory)

Sierra Leone, 1943–1961, 64 items

Singapore, 1847–1963, 2934 items

Solomon Islands, 1936–1978, 325 items

Sri Lanka (listed in catalogue as Ceylon), 1835–1948, 694 items

Swaziland, 1888–1968, 339 items

Tanzania (listed separately in catalogue as Tanganyika, 1920–1964, 332 items, and Zanzibar, 1888–1964, 327 items)

Trinidad, 1874–1972, 37 items

Turks and Caicos, 1945–1973, 26 items

Tuvalu (see under Kiribati and Tuvalu above)

Uganda, 1900–1963, 459 items

Vanuatu (listed in catalogue as New Hebrides), 1936–1982, 280 items

West Indies (records of the West Indian Development and Welfare Organisation and the West Indian Federation), 1940–1963, 262 items

Western Pacific High Commission, 1884–191978, 59 items

Zambia (listed in catalogue as Northern Rhodesia), 1924–1964, 583 items

Zimbabwe (listed in catalogue as Southern Rhodesia), 1959–1968, 15 items

# 4 Indonesian National Revolution Records in the National Archives of the Netherlands

*Michael Karabinos*

## Introduction

The main goal of this chapter is to examine a case of archival displacement in the form of original documents at the *Nationaal Archief* (National Archive) of the Netherlands in The Hague from Indonesia, recording the war of independence from 1945 to 1949. There will first be a short history of the colonisation and decolonisation of Indonesia, followed by an explanation of how certain government records, personal papers, brochures, pamphlets and posters made in Indonesia came into the hands of the Dutch military. While some of these documents were returned to Indonesia following the re-establishment of diplomatic relations between the two countries in the late 1960s, others can still be found in The Hague. I will provide an overview of what these records are and where they can be found. Finally, I will conclude with a look at these records through the archival principles of joint heritage, custody and access.

The collection at the Nationaal Archief is vast, even just including those archival collections concerning Indonesia. Without looking over every single record, it can never be known with absolute certainty whether any study is complete. However, by focusing on key archives and searching for specific terms and phrases, I can increase my chances of finding those displaced archives that are the subject of my research. While my overview may be incomplete, its importance lies not in its ability to be all-encompassing, but rather to use those records I did find to highlight certain principles.

For the purposes of this research, I focused on three main archives: the archive of the Netherlands East Indies Forces Intelligence Service, the archive of the Attorney-General of the Netherlands Indies and the Ministry of Defence's archive of the war in Indonesia. While viewing these archives for other research, I noted the existence of what appeared to be original records – in the form of posters, photos, letters and government records – from Indonesia during the national revolution period. The invitation to provide a chapter to this book offered me the opportunity to revisit these archives and ruminate further over their existence, implications and role in the postcolonial relationship between the Netherlands and Indonesia.

The Nationaal Archief has, unsurprisingly, a massive collection of Indonesia-related records, including many from the war of independence period. The vast

majority of these records were created by the Dutch government in The Hague. The records of the Dutch colonial administration were kept at the Dutch-created *Landsarchief* (National Archive) in Batavia (Jakarta). After independence, the *Landsarchief* transformed into today's *Arsip Nasional* (National Archives of Indonesia), and the records of the Dutch East India Company and the Dutch colonial administration stayed in Jakarta.[1] Neither archive will be the focus of this chapter. Instead, I will limit my field of research to original records created after Indonesia declared its independence in August 1945, but before it was formally recognised by the Netherlands, slightly over four years later.

First, however, a short overview of the colonial history of Indonesia is necessary to explain the context in which the records were created.[2] What is now Indonesia gradually came under Dutch control in a process that lasted from the early seventeenth century until the early twentieth century. For the first 200 years, this was done by the Dutch East India Company (VOC), which was founded to control the spice trade. Following the bankruptcy of the VOC in 1799, the colonies passed to the Dutch government which – aside from a brief British interregnum during the Napoleonic Wars – ruled the islands until the Japanese occupation in 1942. The Japanese occupation ended in 1945 and, shortly after, President Sukarno declared independence. A four-year-long military campaign between Indonesian nationalists and the returning Dutch administration followed. The transfer of sovereignty took place in 1949.[3] This simplistic version of the past is sufficient for attention to now turn to the Nationaal Archief and its collections of displaced archives.

Inventories available on the website of the Nationaal Archief are not always clear as to which documents are originals and which are copies made from originals at the Arsip Nasional.[4] It is also difficult to determine exactly what certain documents are or who their creators were due to unclear descriptions. Determining if a document truly is an original seized record requires requesting it and looking at it first-hand. For historians and other researchers of the early years of the Republic of Indonesia, the extent of displaced archives in the collection is unknown, probably to the detriment of our understanding of this period in Indonesian history. The Indonesian government, which has previously shown a strong interest in archival cooperation with the Netherlands regarding this era, may also be unaware of the records discussed below and have reason to discover more of what is located at the Nationaal Archief.

## Djogdja Documenten

In 1942, after the Japanese invasion, the Dutch East Indies government fled to Australia and set up a government-in-exile. The NEFIS was formed at this time as the Dutch military's intelligence agency, gathering intelligence on the situation in the East Indies. After the Japanese capitulation in 1945, the NEFIS' main duty changed to gathering intelligence on Indonesian nationalist groups. Headquartered in Bandung, south of Jakarta, the NEFIS collected, translated, processed and evaluated records. From this information, another unit of the NEFIS was charged with

making intelligence reports that were sent to officials in the Dutch East Indies, the Netherlands and their allies.[5]

On 17 August 1945, following the Japanese surrender, nationalist leaders Sukarno and Mohamed Hatta declared the independent Republic of Indonesia. From this date until the end of 1949, two competing states existed in the archipelago, with frequent military engagements. In December 1948, the Dutch launched the second of their so-called 'police actions' against the Republic of Indonesia. This military action included the invasion of Yogyakarta, which at that time was functioning as the Republican capital. After arresting the Republican leaders and taking control of government offices, the NEFIS officials began the process of evaluating Republican records. The records they seized would form the *Djogdja Documenten.*

I first became aware of Indonesian government records held in the Nationaal Archief during the initial stage of my doctoral dissertation research in late 2010.[6] Amongst correspondence between the two national archives at the Nationaal Archief, I came across letters from Indonesian archivists in the late 1960s to the Dutch government requesting documents known as the *Djogdja Documenten*.[7] These records were created by the Indonesian government after 1945 and had been seized by the Dutch military intelligence agency (the Netherlands East Indies Forces Intelligence Services or the NEFIS) during the occupation of the Republican capital, Yogyakarta, after December 1948. Cooperation between the two countries from 1970 until the mid-1990s resulted in the return of the collection, which can today be viewed at the Arsip Nasional.

Reading the letters from the director of the Arsip Nasional to Dutch archivists and diplomats sent me deeper into the collection at the Nationaal Archief, searching for more references to their seizure. While the returned records of the *Djogdja Documenten* no longer constitute displaced archives, they serve as a case of formerly displaced archives being returned to the country of origin. This can be used as a possible exemplar for other displaced archives. Furthermore, I can also use them as a starting point for finding other records.

The files that I have found in The Hague make it clear that seized items still exist in the Netherlands, but no inventory or scholarly work gives an accurate portrayal of what exactly remains. Therefore, I want to determine the provenance of these records. I would like to discover if they belong to an expanded definition of the *Djogdja Documenten* or if they were records seized by other means. I believe that some of the records were from Republican offices and would therefore fit within the *Djogdja Documenten*, while others were seized at other times and from other original owners.

The *Djogdja Documenten,* as individual records, were created by various Indonesian ministries and agencies. Their existence as a single entity is only the result of their seizure by the NEFIS in late 1948, early 1949. The NEFIS was the wing of the Dutch military charged with gathering intelligence on the independence movement in Indonesia. Part of this duty involved the seizure of documents from citizens and government alike. Becoming property of the Dutch East Indies government, the NEFIS archive was brought to The Hague in 1949, leaving port in Indonesia a mere four days before the transfer of sovereignty.[8]

Within the NEFIS archive there are 4,100 files (*bestanddelen*) labelled 'found, seized and captured'.[9] The inventory numbers 3,013–7,112 contain all the records used by the NEFIS during their intelligence gathering on the Indonesian independence movement.[10] Each record also has a routing slip created by the NEFIS with details surrounding the record's creation. The records were passed around among high-level officers, and these routing slips kept track of their movements. The inventory gives no indication which records were part of the *Djogdja Documenten*, only noting that they can be found somewhere between numbers 3,013 and 7,112. There is no mention of how many records were part of the *Djogdja Documenten*, nor that they were returned to the Arsip Nasional. This, despite the fact that the inventory was written in 2001, years after the repatriation. My own research at the Arsip Nasional has allowed me to determine that the *Djogdja Documenten* fall between numbers 5,223 and 5,808, but are not the entirety of this range. What is considered the *Djogdja Documenten* at the Arsip Nasional is only 356 files out of 4,100.

The major shift in Indonesian-Dutch relations that allowed for the return of the *Djogdja Documenten* began after the regime change from President Sukarno to President Suharto. Whereas Sukarno kept to an anti-imperialist form of nationalism, Suharto made a point of repairing relations with the West.[11] Suharto's rise to power led to a cultural agreement in 1968 between Indonesia and the Netherlands, and a specific archival agreement in 1970.[12] Indonesian historians and archivists travelled to The Hague to make inventories of Indonesian collections there, thus assuring that – in the words of Dutch ambassador Hugo Scheltema – 'in the future Indonesian researchers need not to make such a long trip anymore to be able to write about the history of Indonesia's independence'.[13] Not all records were returned at once, partially due to the fact that the records of the *Djogdja Documenten* came from so many various archives in Indonesia. Upon shipment to The Hague, some were misplaced or mixed up with other collections.[14] The first batch arrived in Indonesia by 1975, with a promise from the new Dutch ambassador, Paul Jalink, that there were 'more to come'.[15] In the 1980s, further work was done to bring more of the *Djogdja Documenten* to Indonesia.[16] A few years later, the conversation had essentially ended. It was around this time that the Indonesian national archivist who had spearheaded the cooperation retired, which was soon followed by the diplomatic row between the two nations over Indonesian actions in East Timor that ended the Netherlands' role in Indonesian development aid.[17] While archival training and cooperation has since been reinstated, the return of original NEFIS documents has not been a matter of discussion. Thousands of records are therefore still in the NEFIS archive, and viewing their contents makes it difficult to understand why some were returned as part of the *Djogdja Documenten* and others were not.[18]

The returned *Djogdja Documenten* are a small portion of the NEFIS archive, and an even smaller portion of the records removed from Indonesia. Their return, while a positive step and a necessary action, also appears somewhat haphazard. The question of why some records were returned and some were not cannot be answered in a satisfying manner, at least not at this moment. A letter dated

2 April 1987 from the Director of Cultural Services (Netherlands) to the Secretary General of the Ministry of Foreign Affairs (Netherlands)[19] states that the Arsip Nasional disagreed with the Ministry's strict criteria of 1975 and had a more inclusive definition of the *Djogdja Documenten*, which required more records to be sent. Cultural Affairs (and the Nationaal Archief) agreed with Indonesia and tried to get Foreign Affairs to agree to send more records. More records were sent, but the transfers were still not comprehensive. The end result was positive in that there was a return of displaced archives, but it is confusing, as the new criteria (while less 'strict') are not clear and leave some archives 'displaced' in the Netherlands. This raises a question about the logic behind the repatriations. It is not a question I will spend time pondering in this chapter, and instead turn to the search for other seized records from the same period.

## NEFIS Archive

The rest of the NEFIS archive is perhaps the best place to look, within the Nationaal Archief, for original records created by Indonesians during the revolution, given what is known about the *Djogdja Documenten*.[20] In the course of my doctoral research, the inventory for the NEFIS archive, with the access number of 2.10.62, was updated. As late as 2012, the online inventory gave only a general overview of numbers 3,013–7,112, but no specifics for individual records. To access this information, one had to ask for a more detailed print inventory available only at the Nationaal Archief reference desk. This more detailed inventory has since been made available online, making it easier to determine what is held in the NEFIS archive that was seized or 'found', without visiting the Nationaal Archief. The inventory is still confusing, however, as nearly all records are listed as 'original' despite many being photocopies. In some cases, the originals were those returned to Indonesia as part of the *Djogdja Documenten.* In other cases, the original may have been destroyed or lost: there is no clear answer.

Furthermore, while it is not reflected in the inventory, there is a distinction between records created by the Indonesian government and any other records creators. Of the 4,100 seized or found records in the NEFIS archive, both governmental and non-governmental records are mixed. Legally speaking, from the Dutch perspective, records that were not created by the Indonesian government would not have necessarily been seen as Indonesian property when records began being returned. They would have been records seized for intelligence purposes and would have become Dutch military property after their seizure. These records include those brought to the Dutch by local informants, other private citizens, or seized from other nationalist and independence-minded organisations such as the *Barisan Banteng* (Buffalo Brigade).

By sending some of the records back to Indonesia, the Nationaal Archief and the Dutch government distinguished those records they chose not to return. Decisions were made, but it is not entirely clear how. Why were certain records chosen over others? While I have not viewed every document available, those that I have viewed make it clear that this is an archive that needs to be carefully and

thoroughly searched in the course of the Arsip Nasional's intermittent search for Indonesian government records in the Nationaal Archief.

## Other Archives

Another major source of seized archives at the Nationaal Archief is in the collection of the Procureur-Generaal (Attorney General) of the East Indies. It was in this archive that I found a photo album containing black and white photographs showing officials from the earliest days of the Republic of Indonesia and even earlier in the nationalist movement. These are the people directly involved with the independence struggle of Indonesia; the country's 'founding fathers'. The Nationaal Archief makes their provenance known – in the inventory of the archive it states: 'During the second police action in Yogyakarta, seized photos of Republicans'.[21] A note attached to the album from the head of the NEFIS to the Attorney General says that on 19 December 1948, the date the Dutch launched their second 'police action', these photographs were found in various buildings in Yogyakarta. Written on the cover of the album, in Indonesian, is a note to any potential viewer of these photographs. It states: 'If you borrow this, please return it to the owner in order.'[22]

Some of the photos look like passport photos; others are more candid. The metadata available gives no indication as to what they were used for prior to being seized. After being seized, it could be surmised that they were used to identify leading nationalists, but the metadata lacks sufficient information to confirm this. The file also contains other photographs that appear less related to the national movement, including a wedding photo and an older photograph of the nurses' union of the Dutch East Indies (the PKVB).

A further review of the archive of the Procureur-Generaal contains many other Indonesian-created documents from the period. These, the inventory makes clear, were seized from the archive of the Attorney General of the Republic of Indonesia. The records are related to competitors of the Republic in the independence fight, such as the communists who attempted a coup in Madiun and the left-wing *Front Demokrasi Rakjat*. This collection includes police reports from the National Police based in Yogyakarta, lists of prisoners after the coup attempt and original propaganda posters. The records in the Procureur-Generaal archive are a mix of Republican government records and those created by private citizens or other, non-Republican nationalist groups. As far as government records are concerned, the archive of the *Kepolisian Negara* (National Police) is held at the Arsip Nasional, but there are clearly original documents from this organisation in the Nationaal Archief.[23]

The archive of the Ministry of Defence has some of the most visually appealing records that I came across on my search. Here there are original, hand drawn, full colour posters created and distributed by nationalists in various cities. The inventory describes them as Indonesian propaganda and pamphlets but there is a deeper purpose to their creation that is overlooked in such a description. Posters found in Surabaya are written in English and contain clear anti-colonial, pro-democracy messages. It is possible these were created at the time when Indonesian nationalists

expected American troops to drive out the remaining Japanese occupiers. It is well-documented that Surabaya in particular was plastered with messages that evoked the spirit of the American Revolution and American democracy in a bid to persuade the American troops to support Indonesian independence. Instead, Indonesia was occupied by a British colonial army made up mostly of Indian soldiers, who were the first to engage in military action against Indonesian independence fighters in late 1945.[24]

Other posters in the Ministry of Defence archive are in Indonesian and feature purely Indonesian images, such as the Borobudur temple of Central Java. On one, the text translates to 'we know the feeling of suffering'. Below this phrase is a Dutch flag with the number 350 next to it and a Japanese flag with 3 ½ next to it, representing the years of occupation. From these two flags, a man representing Indonesia arises, holding a sword and looking into a bright sunrise with the new Indonesian flag. The names of their original creators are lost, as there is very little in terms of metadata. Where the NEFIS archive has its routing slips with at least some metadata, these pamphlets and posters sit alone in a folder with very little to contextualise them.[25]

I must also mention a second NEFIS archive that contains twenty-two boxes of reports and dossiers on hundreds of people. The inventory lists the name of each person but the contents are secret. The entire archive will not be made public until 2026. Reading the inventory description, we are taunted with the fact that the archive contains a '*grote verzameling*' (large collection) of documents seized in Yogyakarta in 1948.[26]

Each one of these archives was the creation of Dutch military engagements in Indonesia. Viewing them through records continuum theory, we can say that by seizing the records in question the Dutch military 're-created' them as a new archive.[27] That should not be seen as a justification for the actions of the Dutch or proof of Dutch ownership of the records. It simply explains their existence as a cohesive collection in the Nationaal Archief. Taking these archives and contextualising them using various archival principles is the next step in fully understanding them. In any situation of displaced archives, the difficult concepts of cultural heritage or memory inevitably must be referenced. I will also look at the records through the concepts of custody and access, which are inherently tied to cases of displaced archives.

## Heritage

Archives, particularly national archives, are often referred to as memory or heritage institutions. This designation is problematic as it immediately evokes the questions: Whose memory? Whose heritage? Original Indonesian documents in the Nationaal Archief make us question the role of a national archive and its responsibilities and representations. If the Nationaal Archief truly is the 'national memory' of the Netherlands as its website claims, where in that memory is there room for documents belonging to another nation?[28] The Arsip Nasional makes a similar claim on its website, showing the competing visions of national memory these records could represent.[29]

It may be better to look at Indonesian archives in terms of joint heritage. The archive of the Dutch East India Company, for instance, is the cultural heritage of both the Netherlands and Indonesia.[30] The seized archives, however, are a more difficult case for a joint heritage argument. Objects made in the struggle to end the colonisation of one group of people by another would certainly be more closely related to, in this case, the heritage of Indonesia. Even if joint heritage is the term used to describe these records, it should not be overlooked that what binds records in joint heritage, in colonial examples, is *force*.

In the concept of joint heritage, archives cannot be split without damaging their context and thereby, to an extent, their historical value. Writing about joint heritage as it relates to Dutch archives around the world, Dutch archivist Jinna Smit writes:

> [Joint heritage] is relevant when archives form part of the national heritage of more than one country and cannot be divided in parts without seriously damaging its legal, administrative and historical value. The concept of joint heritage suggests that in such situations the archives as a whole are kept in one country, which is acting as owner and custodian. However, the countries sharing this heritage have equal rights concerning access, appraisal and conservation.[31]

Is that what is happening with the records that form the subject of this chapter? Such a statement could be made regarding the VOC records, but its relevance to the NEFIS archive and the other records is less certain. Are they truly joint heritage or are they squarely the heritage of Indonesia seized and held in the Netherlands? The return of certain records, such as the *Djogdja Documenten*, makes it clear that who is the 'owner and custodian' matters greatly, and that even more may need to be sent to Indonesia. Archival cooperation between the two countries is in a relatively positive place currently. The infrastructure exists for action, or at the very least further discussion, to take place regarding these archives.

Questions regarding joint heritage also have to keep the creator and the context in mind. Are records created by the Indonesian government or other nationalist movements different from the VOC or Dutch colonial records in relation to joint heritage? Considering that these documents or posters were created in direct opposition to Dutch rule, do they hold the same joint heritage as colonial administration records? The return of the *Djogdja Documenten* would suggest that the context of their creation does make a difference, and that the records of the struggling early independent Indonesia are properly the heritage of Indonesia.

Can there be any argument that these seized or found records are part of Dutch heritage or that they should be Dutch government property? The military engagements in the Indies from 1945 to 1949 may not be a highlight of Dutch history or a particularly proud part of Dutch heritage, but they happened nevertheless. The actions of the NEFIS, the Dutch military and the colonial government are on display through these records; if not in their content, then by the fact of their presence in the Nationaal Archief. If the return of these records is not forthcoming, their existence could still be better explained by both national archives.

## Custody

Custody of records created by the Indonesian government would certainly be the purview of the Arsip Nasional. International bodies such as the United Nations Educational, Scientific and Cultural Organization (UNESCO) and the International Council on Archives would support this assertion. Both have officially condemned the seizure of archives during military occupation, with UNESCO stating that 'military and colonial occupation do not confer any special right to retain archives acquired by virtue of that occupation'.[32] Of course, in practice, this guidance is not always observed, as attested to by the cases described throughout this book.

Any other records at the Nationaal Archief that could be determined to be Indonesian government property would, following the logic applied to the *Djogdja Documenten*, also be considered for repatriation. Records like the *Djogdja Documenten* are a class of records completely unlike an example such as Britain's migrated archives.[33] In that case, British colonial administration records were removed from their place of creation and shipped to the metropole, where they were kept hidden. Arguments for the continued custody of the migrated archives in the United Kingdom can be tied to the fact that the colonial administrations were the creators. These records at the Nationaal Archief, on the other hand, were quite clearly initially created by the Indonesian government. This situation demands that the Netherlands and Indonesia bilaterally work towards a solution.

The cooperation between the Netherlands and Indonesia shows that archival disputes can be resolved through diplomatic channels. In fact, Leopold Auer's UNESCO RAMP (Records and Archives Management Programme) study from 1998 based on a questionnaire sent to the national archives of eighty-three countries and which details the outstanding archival disputes at that time, mentions the work that took place twenty years earlier between the Netherlands and Indonesia as a successful example of bilateral cooperation in the recovery of disputed archives. Indonesia did not respond to the questionnaire and, therefore, there is no list of what was still in dispute in 1998.[34]

## Access

The question, therefore, is not who owns these records, but rather, who has access to them. Discovering the outcome that maximises access would be the most beneficial. Scanning and making the records available online would be the obvious way to increase access, but the Nationaal Archief has an incredibly long list of records to digitise, and these may not be of a high priority. The fact that it is not an overly large collection does make it logistically feasible to digitise them all, if either side is willing to allocate the time or money necessary. While access is important, in cases of displaced archives ownership and custody will still always be contested for their symbolic significance. If these records were seized by the NEFIS from Indonesia and other similar records were returned to the Arsip Nasional, surely these should be as well.

I want to be clear on the difference between custody and access, and the importance of both. Custody does not guarantee access, while access does not require custody. The Netherlands is giving access to the majority of these records, other than the closed NEFIS archive – access in the sense that anyone can see them with no restrictions. However, access is limited by unclear inventories. Discovering that these records exist and are at the Nationaal Archief takes more work than seeing them once their location is determined. This is a second side to access that is differentiated in the Dutch words *toegang* and *openbaarheid*. On the one hand *openbaarheid* refers to being publically accessible – the records have been made accessible in a legal sense. *Toegang*, on the other hand, refers to the type of access granted by archival tools. Inventories and indices enable access in the *toegang* sense. In the *toegang* sense, some of these records are difficult to access as the inventory makes no mention of them. In some cases, I discovered records relevant to this chapter while looking for something else and would never have found them any other way. From an *openbaarheid* perspective these records are accessible, as there is no legal barrier to their being viewed by the public at the national archives. The barrier to access comes instead from a *toegang* perspective, where the tools available do not always open up the records.

For historians and other researchers from Indonesia, accessibility is twice hindered: first, by vague inventories, and a second by the geographic obstacle of the records being on another continent. Geographical inaccessibility is the type Jeanette Bastian describes in the United States Virgin Islands.[35] Bastian refers to the 'voicelessness' of the colonised in colonial archives.[36] This idea is noteworthy in this case as so many of the Arsip Nasional records are Dutch-created. In such records, the voices of the local population can become lost. The records described in this chapter were created by Indonesians and are the direct voice of the colonised, which is all the more reason that they should be accessible to Indonesians.

Accessibility, in the *toegang* sense, is further limited by language. Even when the inventories of the Nationaal Archief describe seized records from Indonesia, they do so in Dutch. Indonesian or any non-Dutch researchers would have to know the right Dutch terms to use when searching for such records. Given their content, their context and the idea of a shared past, the Nationaal Archief could begin increasing *toegang* access through the language used in its inventories for particular archives. Archivists from both national archives, as well as scholars, could work together to continue the work I have begun here in terms of identifying the records and archival collections at the Nationaal Archief that require further action regarding their custody and access.

## Conclusion

Past cases show that the framework already exists for cooperation between the Netherlands and Indonesia regarding displaced archives. Continuing the exploration into their shared heritage is something in which both governments have shown an interest. Intensive work was done in the 1970s regarding the repatriation of the *Djogdja Documenten*, which continued through to the 1990s.

The Indonesian collections remaining in the Nationaal Archief show that there are grounds for the cooperation to continue.[37] Indonesia still must determine which archives are most important and then work with the Netherlands to agree upon their future. The Netherlands, as the current custodian, must work with Indonesia to improve access, in both senses of the word.

The archives that I described in this chapter, as well as any similar archives yet to be discovered, are crucial to fully telling the story of Indonesian independence. Their content and context should be known. As they exist now, they are displaced archives, seized by occupying military forces in the midst of Indonesia's fight for independence. Geographical and linguistic obstacles exist that hinder their accessibility. These obstacles have existed for far too long. I believe they are not insurmountable. The obstacles of access can be overcome through a continuation of the history of archival cooperation that the two national archives share.

## Notes

1 For simplicity's sake, I will refer to both national archives in their native language throughout this chapter.
2 I have previously written about the repatriation of archives from the Netherlands to Indonesia in Karabinos, 2013, pp. 279–294.
3 Excellent English-language histories of Indonesia's colonisation and independence include: Elson, 2008; Gouda and Zaalberg, 2002; Kahin, 1952; Vickers, 2013.
4 The inventories can be searched at www.gahetna.nl
5 Yulianasari, 2012, pp. 58–63.
6 Karabinos, 2015, pp. 372–391 and Karabinos (PhD Dissertation, Leiden University), 2015.
7 The uncommon spelling of Djogdja for the city that is known variously as Yogyakarta, Yogya, Jogjakarta, Jogja, Djogjakarta and Djogja is chosen as it is how the archive is named at the Arsip Nasional.
8 Nationaal Archief, Den Haag, Netherland Forces Intelligence Service (NEFIS) en Centrale Militaire Inlichtingendienst (CMI) in Nederlands-Indië, nummer toegang 2.10.62
9 NL-HaNA, Marine en Leger Inlichtingendienst, 2.10.62, inv.nr. 3,013–7,112.
10 Inventory numbers were given by the Nationaal Archief and differ from the NEFIS document numbers given at time of processing by NEFIS.
11 This shift came with a human cost that should not be overshadowed by the archival cooperation it allowed, as anywhere from 500,000 to 1,000,000 Indonesians were killed in a reactionary, anti-Communist purge after Suharto took power.
12 Vos, 2000.
13 Nationaal Archief, Den Haag, Nederlandse Ambassade Indonesië 1962–1974, nummer toegang 2.05.188, inventarisnummer 590.
14 Nationaal Archief, Den Haag, Algemeen Rijksarchief, Tweede Afdeling, nummer toegang 2.14.04 inventarisnummer 266.
15 NL-HaNA, ARA/Tweede Afdeling, 2.14.04 inv. nr., 266.
16 NL-HaNA, ARA/Tweede Afdeling, 2.14.04 inv. nr., 201.
17 Indonesian–Dutch archival cooperation, which included the transfer of documents, began with the work of Ms Soemartini, director of the Arsip Nasional from 1971–1991. Hein de Graff, 'In Memoriam Mevrouw Raden Adjeng Soemartini', *Archievenblad* (July 2005), p. 9. After comments by Dutch Minister of Development Cooperation, Jan Pronk, regarding the human rights violations of the Suharto government, the Indonesian government would remove the Netherlands from its role in development aid to Indonesia. Baehr, Castermans-Holleman and Grünfeld, 2002, pp. 189–190.

18  Karabinos, 2011, pp. 139–150.
19  NL-HaNA, ARA/Tweede Afdeling, 2.14.04 inv. nr. 201.
20  NL-HaNA, Marine en Leger Inlichtingendienst, 2.10.62, inv.nr. 3013–7112.
21  'Tijdens de tweede politionele actie in Jogjakarta buitgemaakte foto's van republikeinen.'
22  Nationaal Archief, Den Haag, Procureur-Generaal bij het Hooggerechtshof van Nederlands-Indië, 1945–1950, nummer toegang 2.10.17, inventarisnummer 798.
23  NL-HaNA, Proc.-Gen. Hooggerechtshof Ned.-Ind., 2.10.17, inv.nr.,694.
24  Gouda and Zaalberg, 1997, p. 1.
25  Nationaal Archief, Den Haag, Ministerie van Defensie: Strijdkrachten in Nederlands-Indië, nummer toegang 2.13.132, inventarisnummer 3397.
26  Nationaal Archief, Den Haag, NEFIS, nummer toegang 2.10.37.02
27  Upward,1997, pp. 10–35; Reed, 2005, pp. 18–43; Upward, McKemmish and Reed, 2011, pp. 197–237.
28  National Archives of the Netherlands, 'Home', http://en.nationaalarchief.nl, accessed 22 May 2015.
29  Arsip Nasional Republik Indonesia, 'Vision', http://www.anri.go.id/detail/36-92-Visi-dan-Misi , accessed 14 October 2015.
30  The archive of the Dutch East India Company is part of the UNESCO Memory of the World programme and includes archives in the Netherlands, Indonesia, South Africa, India and Sri Lanka. See http://www.tanap.net/
31  Smit, 2012, p. 179.
32  Grimsted, 1997, p. 245.
33  See Anderson, 2011, pp. 699–716; Banton, 2012, pp. 321–335; and Hampshire, 2013, pp. 334–352.
34  Auer, 1998, p. 24.
35  Bastian, 2001, pp. 96–114; Bastian, 2002, pp. 76–93; Bastian, 2005, pp. 25–44.
36  Bastian, 2005, p. 28.
37  Indonesia, along with Brazil, Ghana, India, Russia, South Africa and Surinam, were named 'priority countries' by Dutch government's Common Cultural Heritage Policy (2009–2012), which further shows that continued cooperation is possible. Jinna Smit, 2012, p. 176.

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# 5    Hiding the Colonial Past?
# A Comparison of European
# Archival Policies

*Vincent Hiribarren*

Displaced archives are a common legacy of colonialism. The recent scandal of the 'migrated archives' in the United Kingdom is another reminder to the populations of the former colonial world that a part of their past is still hidden in Europe. The former colonising powers hid – and are sometimes still hiding – parts of their colonial past. Based on my historical research in the British, French and German archives, this chapter will examine the similarities and differences between the 'migrated archives' and their European counterparts (Belgium, France, Germany, Italy, Netherlands, Portugal, Spain). This chapter does not provide an exhaustive summary of the archival policies of each European country, but rather seeks to examine and contrast some of these policies and the political questions these policies continue to raise. I will argue that Europeans have consistently tried to hide their colonial past and that this colonial past is still haunting the political debates in some of those countries while it is noticeably absent from others.

Two fundamental issues must be addressed: sources and definitions. There is a lack of historical literature that directly tackles the question of displaced colonial archives. Historians and journalists have often overlooked this phenomenon or, conversely, have imagined providential documents that could answer all of their questions. The difficulty in gathering evidence about archival policies at the time of decolonisation frequently comes from the fact that only a few introductory lines are devoted to the question of displaced or hidden records in most imperial histories. The following chapter is therefore largely informed by conversations with journalists, professional historians and archivists.

A taxonomic issue is raised by the term 'colonial archives' as this term covers a range of records and archival materials. Even if they are not treated as such in this chapter, a range of alternative documents can be judged as being part of the 'colonial archives'. These could include private files created by the local elite ruling with the colonisers, or documents dealing with the colonies but produced in the metropole. The most commonly used definition and the one adopted in this chapter is that colonial archives are official documents produced in a colonial territory by the European powers. This restrictive definition allows this chapter to focus on the question of displacement in a more systematic manner.

The official focus is also fundamental to understanding the lack of research on the way in which colonial archives have been understood. Scholarship dealing

with the question of archival policies generally focus on one country in particular. After all, the 'national' archives in each former colonial power is the principal place where primary sources deriving from government in that country are gathered. This chapter will argue that this national focus obscures the way in which colonial records have been systematically displaced, hidden and occasionally destroyed by a number of colonial powers around the world. One of the key themes of this chapter is thus the location of archives and the importance of them being in their rightful place - in the nations that were formerly colonies. The similar histories of displaced colonial archives demonstrate the extent to which cultures of secrecy pervade the governments of Europe. Strikingly, displaced archives have become more a symbol of the lack of accountability of democratic governments than sources for the study of the late colonial period.

## Displacing Archives: A European Habit?

The chapter written by Mandy Banton in this collection analyses in depth the migration of archives from the British Empire to Britain. The British were not the only colonisers to displace records at the end of colonial rule. The French, for example, found a legal rationale for the migration of their archives from Indochina. In 1950, they decided that their 'sovereign archives' would be sent to Paris whereas the 'administrative archives' would stay in Indochina.[1] They were labelled 'sovereign' because the documents were generally produced by the highest French authorities in the colonies. As a result, they were supposed to belong to the French state. These files typically related to military operations or political figures that had played a major role during decolonisation. The logic was that these documents should not be left in the hands of the future leaders of the soon-to-be independent nations and that they would prove useful in exerting pressure or as leverage against certain parties. The administrative archives were the remaining files, which were supposed to deal with the day-to-day management of the colonised territories. The documents could be about schools, roads or land tenure, for example, and became the basis of many archive collections in the newly independent countries. This legal distinction set a precedent for the whole of the French colonial empire and gave the illusion of transparency when it came to the migration of colonial documents. Thus, in 1954, the French Indian cities sent their sovereign archives to Paris as did the colonies from French Equatorial Africa and Madagascar between 1958 and 1960.

However, this process was not applied universally. The sovereign archives of the federation of French West Africa remained in Dakar, where they still are, while records created in Algeria were removed. When the last French settlers left Algeria in 1962, they took nearly all the archives with them. Four years later, the Centre for Overseas Archives (CAOM) was created at Aix-en-Provence. The chapter by Todd Sheppard in this book describes how, until the present day, the Algerian government still claim that the French should have left all of their colonial archives to the newly independent nation. Conversely, some documents left in Brazzaville[2] or Antananarivo[3] could have been considered 'sovereign' and

were left behind by the French authorities. Clearly, the French legal framework cannot obscure a certain level of improvisation and a lack of resources during decolonisation.

The Belgians also sent some of their colonial archives to the metropole and, as in the French case, separated their documents between 'sovereign' and 'administrative' archives. As distinct from the records of other European countries, Belgian colonial records became, at a very early date, a part of the story of Belgian colonialism. When, in 1908, King Leopold II handed over his African possessions to the Belgian State, he chose to have all his archives burnt.[4] Even if it was possible today to find documents for the beginning of the twentieth century in the Democratic Republic of Congo, research on the early colonial period proves to be challenging. Unveiling the history for the rest of the colonial period (1908–1960) might prove to be easier, though, since the Belgian state chose to keep its colonial records. In 1960–1961, the Belgian administration carefully planned the displacement of their Congolese colonial documents. This operation, called *Opération Archives*, aimed at relocating the Congolese records to Brussels. This transfer raised important questions about the documents that should remain in Congo and those that should be sent to Brussels and it was eventually decided that all the Congolese documents should be sent to the Ministry of Foreign Affairs. Because of the size of Congo and the political situation in 1960, only the records concerning the provinces of Léopoldville, Équateur and the Upper-Congo found their way to Brussels. For practical reasons that had nothing to do with the archival policies of Belgium, many records concerning Kasai and Katanga remained *in situ*, while others were sent to Brussels, thus showing the unequal results of Belgian archival policies.

The documents concerning Ruanda-Urundi (now Rwanda and Burundi) were treated rather differently. They were divided into two sections and, as in the French case, the 'sovereign' archives were sent to the metropole whereas the 'administrative' archives were left in the territory. This operation, named 'Neven's Mission' after the Congo's archivist, took place between March and June 1961.[5] As the transfer was not as improvised as in Congo, and the size of the territory was smaller, the files to be found in Brussels are arguably more coherent than the Congolese records. Yet, despite their differences, *Opération Archives* and Neven's Mission were responsible for the transfer of a large quantity of colonial documents to the Ministry of Foreign Affairs in Brussels. These files were not made available to the public before 1997–1998, when the Ministry of Foreign Affairs moved to a new location.

Arguably, the Netherlands is where colonial records are most open today. The national archives at Prins Willem-Alexanderhof in The Hague gives access to thousands of documents produced by the Dutch East Indies Company (*Vereenigde Oost-Indische Compagnie*, 1602–1799), which were available for researchers as early as 1856, whereas the archives of the Ministry of Colonies (1814–1959) were progressively transferred to the national archives and opened in the 1960s and 1970s. The Dutch East Indies records have been widely studied by researchers.[6] One notable scholar who has examined the historical and political significance

of these records is the American anthropologist, Ann Stoler, who devoted her book *Along the Archival Grain* to the practical and theoretical meaning of the archives.[7] Significantly, the Dutch East Indies Company kept many of its archives in Indonesia. In order to preserve these documents, the Dutch colonial authorities created the *Landsarchief* in Jakarta in 1892. As a result, most of the documents produced in Indonesia during the nineteenth and twentieth century are still available in that country. The *Landsarchief* has subsequently become more than a simple storage room and has attracted a range of researchers since the 1930s.[8] The fragmentation of the records of the Dutch East Indies Company between different continents has led to the creation of a project partly funded by the United Nations Educational, Scientific and Cultural Organization **(**UNESCO), the Netherlands and Indonesia to create a database of the Dutch East Indies records.[9]

This does not mean that the Dutch archives are completely open and transparent. A number of sensitive colonial period records have been transferred to The Hague.[10] In December 1948, during the Indonesian war of independence (1945–1949), Dutch troops captured the city of Yogyakarta and seized documents that were transferred to the Dutch national archives. Among the stolen documents, the Pringgodigdo Archive contained information on the elaboration of the Indonesian constitution of 1945. Some other documents directly dealt with the organisation of the young Indonesian Republic and concerned some important political figures. The Indonesian government managed to obtain the repatriation of the Pringgodigdo Archive between 1975 and 1987, but it is unclear to what extent some of the Indonesian archives are still to be found in the documents kept by the Dutch military intelligence agency.[11] Similarly, displaced archives from the former colony of Surinam can still be found in the Netherlands. Under the pretext that they could not be accessed in Surinam, many documents were sent to The Hague throughout the colonial period.[12] As in the Indonesian case, the archives were digitised at the beginning of the twenty-first century and were sent back to Paramaribo.[13]

The European powers routinely displaced archives during the decolonisation years. With or without a legal framework, France, Belgium and the Netherlands did not hesitate to transfer documents from their former colonies to the metropole. The question of the true scale of the transfers remains, though.

## From Dictatorship to Democracy

The relationship between democracy and the openness of the archive has been stressed by a number of theorists and philosophers.[14] Jacques Derrida succinctly evoked this correlation: 'Effective democratisation can always be measured by this essential criterion: the participation in and the access to the archive, its constitution and its interpretation'.[15] This section suggests that it is in fact the former dictatorships of Europe that are now more likely to open their colonial archives than those with an unbroken democratic tradition. This is due to the fact that newly democratic governments are often eager to stress the difference between themselves and their predecessors.

The best example is the German case, where the archives have been open since the end of the Second World War. The German colonial period was relatively short-lived, as the 1919 Treaty of Versailles divided German colonial possessions in Africa, China, South-East Asia and Oceania between the Allied powers. In addition, in some cases, as in Northern Cameroon, where the Germans were only present for fifteen years, many of the traces of the German colonial past have more or less disappeared. Nonetheless, even in remote parts of their colonial empire, the German colonial administration produced detailed records that were regularly transferred to Berlin, a phenomenon that explains why the records housed in the *Bundesarchiv* (the Federal Archives) in Berlin-Lichterfelde are relatively rich on the German colonial period.[16]

The German willingness to open the archives is very much tied to the legacy of Nazi rule. Both East and West German historians have attempted to shed new light on the atrocities of the first half of the twentieth century, and even if colonial history has often been overshadowed by the study of Nazism, post-Second World War historians from Germany have revised the assumptions about the 'progressive role' played by the Germans in their colonial empire. Among the historians of the German colonial period were those who wanted to find the roots of the Shoah in the first genocide of the twentieth century in Namibia. The connection between the colonial and the Nazi past have been explored by a number of scholars since the beginning of the twenty-first century.[17] This renewal of the study of German colonialism is a phenomenon of the beginning of the twenty-first century,[18] and has helped to drive the opening of government archives. The federal government was remarkably efficient at answering the demand from researchers and the consequence is that the German colonial archives are now accessible to journalists and researchers.

Italy is another country where the colonial archives were relatively open by the beginning of the twenty-first century. Once again, the democratic regime has opened its records relatively easily since the colonial era is associated with the fascist period, though Italy had acquired colonies before the fascist years. In this early period, record-keeping did not seem to be a central preoccupation of the different administrations in charge of the colonies. Indeed, the 'administration was scarcely aware [...] of its own culture and memory'[19] and the archives did not seem to become important until after the colonial period. Officially, Italy lost its African colonies with the signing of the Treaty of Paris on 10 February 1947. Italy was no longer fascist; yet, its colonial archives were still controlled by the bureaucrats who had been responsible for colonial rule in Africa. The Ministry of Italian Africa was closed on 29 April 1953 but some of its former employees carried on working either for the *Ministero degli Affari Esteri* (MAE) or for the *Amministrazione Fiduciaria Italiana sulla Somalia*.[20] Indeed, a state decree of 11 January 1952 created the *Comitato per la Documentazione Dell'Opera dell'Italia in Africa* (Committee for Research on the activities of Italy in Africa). The Committee's apologetic aims were very clear as its members were supposed to 'publish, as the other European colonizing powers did before, the most significant Italian documents pertaining to our colonies ... proving the civilising activities

carried out by Italy on the African continent'.[21] Some politicians dealing with African affairs in the 1950s tried to build a positive image of the Italian colonial presence in Africa. In one of the first meetings of the Committee, Giuseppe Brusasca, a former resistance fighter who was one of the leading Italian MPs and the Honorary President of the Committee, declared:

> The depth and humanity of our actions are clearly attested by the words of admiration and the invitations to cooperate addressed to us by the Negus and his ministers. We can even hear it more from the feelings expressed by the indigenous people who bow to the ground to salute the representative of Italy.[22]

When the Committee was finally dissolved on 13 March 1984, its members had published relatively little; they had just compiled a selection of colonial documents without any coherence or scientific rigour. Overall, they published 41 books including one study translated into English. Their apologetic endeavour was clear from the start, but the most striking feature of their actions is how they managed to gain a quasi-monopoly over the MAE archives. Historian, Nicola Labanca, refers to this period as a 'private management' of state archives sanctioned by the law. Indeed, the Committee ensured that the colonial archives were placed in a different room than the other MAE documents and they even created a new reference number ('Africa III'), which altered the original classification of the documents. Their control over the archives was ideological, intellectual but also physical. An American historian who managed to obtain access to these archives published a book on Somalia in 1966. At the beginning of his book, he did not talk about the MAE archives but about the 'Committee's historical archives'. The Italian colonial archives are now located at the MAE, Piazzale della Farnesina, in Rome and are available to researchers.

What has been said of Germany and Italy can also be said of Portugal. The end of António de Oliveira Salazar's regime in 1974 triggered the end of the colonial period for Mozambique, Angola, Guinea-Bissau and São Tomé and Príncipe. The colonial archives, since they were associated with Salazar's regime, were opened to the public. The archives of the secret police, known as 'the PIDE', were open in 1994, and despite problems linked with their organisation, researchers have access to the colonial archives in Lisbon. These documents are mainly divided between the *Instituto Português de Apoio ao Desenvolvimento*, the *Arquivo Histórico Diplomático*, the *Direcção-Geral do Tesouro e Finança*, the *Direcção-Geral da Administração e do Emprego* and the *Arquivo Histórico Ultramarino*.[23]

Former dictatorships are more inclined to open their colonial archives because of the clear break between the current political regimes and their colonising predecessors.[24] Indeed, stressing the similarities between these countries could lead to the creation of a pan-European history of displaced colonial archives. The European dimension of this question is undeniable and writing a European history of colonial archives would show the similarities between the approaches to displacement adopted by the colonising powers. However, the relative openness

of the colonial archives in Germany, Italy and Portugal should not obscure the fact that each former colonising power has its own unique archival history. It is only in the unique national contexts that we can understand the debates surrounding access to those displaced archives today.

## Nation-Making or Nation-Destroying Archives?

The argument correlating the advent of democracy with the opening of colonial archives seems to be misleading in the Spanish case. Spain has been a democracy since Francisco Franco's death in 1975 and, yet, historians of the twentieth-century Spanish colonial empire face many problems obtaining access to the colonial archives. Personal communication with historians of the late colonial period reveals that they cannot read material that has been classified as 'reserved'. The word 'complicated' often comes up in their description of how they navigate these archives. There is a lack of political will to open Spain's colonial records, one that appears not to concern Spain's relations with its former colonies. A recent event clearly shows the relationship between modern-day Spain and its former colonies: when Adolfo Suárez, the first democratically elected prime minister of the Spanish Government, died in 2014, only one foreign head of state attended his funeral; it was Teodoro Obiang, the president of Equatorial Guinea.[25] The current relationship between Spain and its former colonies in Africa cannot explain the current archival blackout. Instead, the question of the colonial archives is a question about the Spanish state in general. It is worth noting that the 1920s Rif War in Morocco and the dictatorship of Miguel Primo de Riviera were intrinsically linked. Moreover, General Franco seized power in Spain with the African Army in 1936. Whereas in the United Kingdom only a section of the Foreign and Commonwealth Office (FCO) archives are hidden, in Spain everything that deals with the state can be hidden: historians and journalists tend to see it as a pattern in Spanish history. Opening the archives on the recent colonial period (as opposed to the American empire) would open the doors to archives dealing with the Spanish Civil War, those of the democratic transition or those of the relationship of the state with Euskadi Ta Askatasuna, the Basque separatist organisation. The question of the archives in Spain is, therefore, not only colonial but also national. As a consequence, the history of the relationship between Spain and its twentieth-century colonial empire still remains to be written.

The question of national sensitivities does not concern Spain alone. The opening of the archives was responsible for the renewal of scholarship on the Belgian colonial period as well, with ramifications for the official narrative of Belgian history. One book in particular was responsible for a debate on Belgian colonial history. *The Assassination of Lumumba* by Ludo de Witte in 1999 (Dutch version) attested to the responsibility of the Belgian government in the assassination of the Congolese Prime Minister, Patrice Lumumba.[26] De Witte principally based his study on the archives of the Belgian Foreign Ministry, the United Nations, Frederic Vandevalle, the head of the intelligence services of the colony, Musée Royal de l'Afrique Centrale and the Minister of Belgian Congo until 1960,

August E. de Schryver.[27] After the publication of *The Assassination of Lumumba*, the Belgian government asked for a commission of enquiry, the proceedings of which are now available on the website of the Belgian Parliament.[28] For the commission of enquiry, the Royal Palace Archives opened for the first time in history. The government even issued an apology in a speech to the Belgian Parliament on 5 February 2002. The commission's report did not mention all the actions undertaken by the Belgian secret services in Congo but made some precise recommendations in terms of guaranteeing access to Belgian colonial documents.[29]

The national aspect of the debate has also been important in France. The publication of a PhD thesis in the 2000s on the question of torture in colonial Algeria was the first one to use military files.[30] The archives of the prefecture of Paris also revealed the degree of violence used by Maurice Papon, a former French colonial officer who became prefect of the French capital. The question, once again, is about colonial memory interfering with French domestic politics. Indeed, it was revealed that Papon 'actively collaborated' with the Nazis during the Second World War. The question of the colonial past was thus intrinsically linked to another national debate, that of the Second World War.

Oral history and other types of sources have already revealed the chronology of events in the colonial period. Displaced archives will rarely revolutionise our understanding of the colonial period. They will, instead, provide us with some precise details and a clearer understanding that can shed light on important episodes of the colonial past. What the colonial archives reveal is the way colonial history is interpreted and understood throughout Europe. When they can potentially undermine a certain national narrative, they are physically hidden away in various archive centres throughout Europe. When they can harm some relatively young democracies, such as Spain, they remain closed and the late colonial past is glossed over. Displaced colonial archives directly challenge the national narratives in countries such as Spain, Belgium and France. The colonial archives can thus interrogate European history but they also have a direct political impact on European democracies.

## Towards More Democratic Accountability?

As colonial archives have become a political problem more than a historical problem, this chapter finally argues that in most European countries, journalists (and not historians) are leading the charge in opening the archives. Most European countries do not have a press as willing to criticise the government as the British press. It might come from a lack of interest or a fear of political power, but the fact is that newspapers such as *Libération* in France or *El País* in Spain do not publish many articles dealing with obscure colonial pasts. However, some journalists still try to denounce the silence of the political class. One of the earliest examples comes from the Netherlands, where in 1969 a journalist interviewed a soldier who had fought in Indonesia. The broadcast triggered many publications on colonial Indonesia.[31] Interest in the colonial past has waned since then. However, after a 2011 judgment of a court in The Hague required the Netherlands to pay

reparations, the press has become more willing to evoke the war in Indonesia. The 2012 publication of photographs of Dutch soldiers killing Indonesian civilians showed to what extent this interest still relies on the ebb and flow of media attention.[32]

Belgian colonial history has been the subject of many publications in the last twenty years. King Leopold II's rule over Congo (1885–1908) has particularly attracted the attention of historians and the public. For example, a 2003 BBC documentary on the colonisation of Congo revealed the inhumane exploitation of rubber farm labourers in Leopold's personal colony.[33] In 2010, the Belgian author David Van Reybrouck proved there was a genuine interest in a past that has not yet been fully explored when his book (Dutch version) on colonial Congo became a best-seller.[34] French journalists have also tried to explore the colonial past by using the recently opened archives of de Gaulle's Secretary for African and Malagasy Affairs, Jacques Foccart.[35] In Spain, *El País* entitled one of its articles 'Secrets of State are forever'. One journalist even directed a documentary based on interviews denouncing the Spanish exactions in Equatorial Guinea.[36] There are other examples of the journalistic interest in the late colonial period throughout Europe and quite strikingly they tend to show that there is a genuine interest among the public. This interest partly originates from the fact that the archives that serve as the evidence for those stories were painstakingly hidden.

In the British context, the scandal of the migrated archives was partly revealed because of Freedom of Information requests. The last European country where such a law was enacted was Spain (10 December 2013) and throughout Europe a legal framework aiming at more transparency is gradually taking shape. Displaced archives do not only highlight fault lines within national debates, they also speak to government accountability. Their content might not be totally original or even important. After all, many of these documents were technical files and did not have any strategic value. Displaced archives have nonetheless become the symbol of a lack of accountability of European governments and of a certain culture of secrecy. Their very existence not only challenges national narratives but also undermines democratic governments' transparency and accountability.

## Conclusion

This chapter has attempted to show the similarities between the European policies concerning displaced archives. Most European countries share a culture of secrecy that is more likely to be pronounced if the current political regimes are the direct heirs of those who were in power during the decolonisation years. In other words, former dictatorships (with the notable exception of Spain) are more likely to disclose information from their colonial archives.

The question of displaced archives has been heavily politicised in Europe and journalists have tended to be at the forefront of a fight to unveil the late colonial period. There is a genuine public interest in questions that deal with secrecy and the media have seized this opportunity to sell more newspapers, radio shows or historical documentaries. Interestingly, the interest in the displaced colonial

archives does not seem to originate from a specific interest in the history of the former colonial world. The displaced archives are a physical expression of the culture of secrecy of most European governments and their existence challenges the legitimate rights of European citizens to a certain type of democratic accountability.

This very culture of secrecy might find an unlikely ally in the recent economic crises. In Portugal, the lack of public funding had direct consequences on the budget of government agencies in charge of the archives, with implications for the staff and resources available for arranging, describing and providing access to the records. In Belgium, it has been suggested that a plan to transfer the colonial records from the Ministry of Foreign Affairs to the *Archives Générales du Royaume* might make some documents inaccessible for a long period of time given the Archives' limited resources for describing and providing access to the documents. If 'culture of secrecy' is too strong a phrase in these cases, one could certainly talk about a general European 'culture of neglect'. In both cases, petitions signed by archivists and researchers have shown that the question of the colonial archives fuels speculations on the real transparency of European archival policies.[37] In addition to the more evident arguments for their repatriation or accessibility, displaced archives ought to be associated with European democratic rights and should simultaneously be studied for their archival, historical and political values.

## Notes

1  Cornède, 2010, pp. 313–20; Mbaye, 2010, pp. 291–99; and Bat, 2010, pp. 301–11.
2  Field trip in January 2015, see the website: Jean-Pierre Bat and Vincent Hiribarren, https://archivescolonialesbrazzaville.wordpress.com/ [accessed 12 October 2015].
3  Field trip in September 2015 and communication with the director of the National Archives of Madagascar, Sylvie Sahondra Andriamihamina.
4  Hochschild, 1998, pp. 294–5.
5  This section is based on an article by Piret, 2015, pp. 419–435.
6  Jeurgens, 2013, pp. 84–106.
7  Stoler, 2009.
8  Lidwina, 2012. https://openaccess.leidenuniv.nl/handle/1887/19788 [accessed 15 October 2015].
9  See the structure of the records in particular: http://www.tanap.net/content/about/heritage.cfm [accessed 15 October 2015].
10  For a fuller discussion of Indonesia records in The Hague, see Karabinos' chapter in this volume.
11  Karabinos, 2013, pp. 279–94 and Jeurgens, Kappelhof, and Karabinos, (eds.), *Colonial Legacy in South East Asia: The Dutch Archives*, 2012.
12  *Archief van de Gouverneur-Generaal der Nederlandse West-Indische Bezittingen (1828-1845), Gouvernementssecretaris der Nederlandse West-Indische Bezittingen (1830-1847); Archief van de Hoge Raad der Nederlandse West-Indische Bezittingen (1828-1832).*
13  Personal communication with Charles Jeurgens, University of Leiden, 26 August 2015.
14  Combe, 1994.
15  Derrida, 1996, p. 4, footnote 1.
16  Hollmann, 2003, Introduction.
17  Schenk, 2013, pp. 164–172.

18  Naranch and Eley, 2014, Introduction.
19  Bertinelli and Pellegrini, 1994, p. 3.
20  Legge n. 430 del 29 aprile 1953 as quoted by Morone, 2010, p. 27.
21  Ascm, Giuseppe Brusasca, b. 71, s.f., copia dell'interrogazione parlementare del 27 Novembre 1951 dell'on. Raffaele Ciasca. Il deputato divenne poi membro di rilevio del Comitato. As quoted by Morone, 2010, pp. 27–28.
22  Ascm, Giuseppe Brusasca, b. 50, f. 305, verbale n. 2 del Comitato, 24 gennaio 1952 as quoted by Morone, 2010, p. 30.
23  http://arquivos.ministerioultramar.holos.pt/source/presentation/pag.php?pag=0 [accessed on 3 August 2015].
24  Cornu and Fromageau (eds.) 2015.
25  http://politica.elpais.com/politica/2014/03/31/actualidad/1396294853_515099.html [accessed on 23 May 2014].
26  de Witte, 1999.
27  de Witte, 2001, p. 206.
28  http://www.lachambre.be/doc/flwb/pdf/50/0312/50k0312007.pdf [accessed on 23 May 2013].
29  de Witte, 2001, p. 187.
30  In its published version: Branche, 2001.
31  P.M. Doolan, 'The Hueting Interview and Dutch atrocities in Indonesia' http://www.pauldoolan.com/2013/04/the-hueting-interview-and-dutch.html?spref=tw [accessed 15 October 2015].
32  P.M. Doolan, 'Dutch Imperial Past Returns to Haunt the Netherlands', *Imperial & Global Forum* http://imperialglobalexeter.com/2014/04/06/dutch-imperial-past-returns-to-haunt-the-netherlands/ [accessed 15 October 2015].
33  *White King, Red Rubber, Black Death*, 2003.
34  Van Reybrouck, 2014.
35  *Histoires Secrètes di Boafra. Foccart s'en va en Guerre*, 2002.
36  Montanyà, 2006.
37  For the Portuguese petition: Carta aberta: o Arquivo Histórico Ultramarino, a democracia e o conhecimento, 21 March 2014, http://www.publico.pt/culturaipsilon/noticia/carta-aberta-o-arquivo-historico-ultramarino-a-democracia-e-o-conhecimento-1629251?page=2# [accessed 15 October 2015]. For the Belgian petition: Les Archives coloniales belges en danger, 22 November 2014, http://ldh-toulon.net/les-Archives-coloniales-belges-en.html [accessed 15 October 2015].

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# 6    Expatriate Archives Revisited

*Timothy Lovering*

In April 2008, a workshop was held at the University of the West of England, Bristol to explore the concept of 'expatriate archives'. This term arose in the context of the Rhodesian Army Archive project, an Arts and Humanities Research Council (AHRC) funded programme to catalogue the military records of the white minority regime that unilaterally declared independence from the United Kingdom in 1965 and governed what was to become Zimbabwe until 1980. This archive may be placed in the broad category of 'migrated archives', a concept that has been foregrounded by recent revelations surrounding the archives of decolonised former British territories, which were formally acknowledged in 2011 to be held by the Foreign and Commonwealth Office (FCO) at Hanslope Park. This development has generated intense interest, but this initially focused primarily on the direct question of the British Government's complicity in destroying or hindering access to the material.[1] Subsequent scholarship has placed a more intense focus on the role of the British Government and officials in the instigation and the process of migration, and the concomitant destruction of records during decolonisation.[2] Nevertheless, the term 'migrated archives' itself has been applied relatively uncritically.

The Rhodesian Army Archive shares multiple parallels with the FCO material, in terms of both content and the context of its migration. In common with other migrated records of colonial governments, it has left a tangible gap in the archives of the successor state. However, its status as a government archive in private hands adds complexity to the issues around migration, raising questions about the interplay between simple geographical displacement, and more complex contested moral interests and ownership. Moreover, the complex history of the archive's movements since 1980 may be seen not simply as a single act of displacement, but rather as an integral contextual element of the life history of the collection. This chapter explores the concepts of migrated and expatriate archives by placing the case of the Rhodesian Army Archive in its wider context.

In 2006, the University of the West of England (UWE) was awarded a major grant to catalogue the Rhodesian Army Archive; the catalogue was to be the principal output of a three-year project entitled *Wars of Liberation, Wars of Decolonisation: The Rhodesian Army Archive Project* (hereafter 'the Archive Project'). I was a research fellow on this project from its initiation in September

2006 to May 2009. The cataloguing project was concluded in 2011. Reflecting the lack of a permanent home for the archive, and the perceived security sensitivities around the collection, the catalogue is not publicly available, remaining on a secure server at UWE.[3]

UWE's initial news release relating to the project noted that the collection was 'sitting in hundreds of uncatalogued boxes' in the British Empire and Commonwealth Museum (BECM), an institution that opened to the public in 2002 but closed to the public in 2008 and was finally wound up as an institution in 2012 in the face of financial pressure and questions about the management of the collections.[4] The BECM's existing guide to archive collections described the collection as '[u]nique operational records (restricted access) relating to UDI [the period of the Unilateral Declaration of Independence] [...] [a] very large collection of Army, Airforce, and Civil records covering the efforts to combat insurgency'.[5]

The Archive Project established that the collection comprised a wide range of records created by units of the Rhodesian security forces, including the Rhodesian Army, Rhodesian Air Force, Combined Operations Headquarters, Special Branch/Central Intelligence Organisation and the Directorate of Military Intelligence. In addition to covering the period after the unilateral declaration of independence (UDI) in 1965, a smaller number of records originated from the Headquarters of Central Africa Command, the army of the former Federation of Rhodesia and Nyasaland (comprising the present day countries of Zimbabwe, Zambia and Malawi).[6] As suggested by this description, these were clearly official records. The main series of records were accompanied by much smaller collections of ephemera, more typical of the holdings of regimental museums in the UK and Commonwealth. The BECM prospectus had noted that the collection consisted of 350 boxes, with 'approximately 700 further boxes to come', which would 'probably be received in March 2005'.[7] In fact, the complete collection amounted to around 1,225 boxes, significantly in excess of the project's expectation.[8]

As indicated by the official title of the collection – 'Rhodesian Army Association'[9] – it was clear that the archive had been deposited at the BECM by the Rhodesian Army Association (RAA), probably in or shortly prior to 2001, the year when the collection was formally accessioned. The RAA, one of a number of organisations for former Rhodesian services personnel, appears to have been formed in the UK in early 1989. Unlike many ex-military organisations – which are essentially members' clubs – its constitution foregrounded the historical record. Its initial primary aim was to publish a *Military History of the Rhodesian Army covering the period 1964 to 1980*; a subsidiary aim was the maintenance of a record of every person who served in the Rhodesian forces.[10]

In 2001, a new organisation named the Rhodesian Army Association Museum Trust (RAAMT) was established within the framework of the RAA. The timing indicates a direct relationship to the deposit of the RAA collection, underlined by the Trust being formally headquartered at the BECM. Although responsible for all the RAA's museum collections, the RAAMT's aims were clearly focused on the 'preservation of the records of The Rhodesian Army and other related documents

or property'. The RAAMT was to be a voluntary, autonomous organisation, though it was stated that membership would consist of 'fully paid-up members' of the RAA.[11] Documents obtained from UWE using the Freedom of Information Act show that discussions were ongoing as late as 2011 concerning the transfer of the physical ownership of the collection to the BECM.[12] Any such plans were, of course, curtailed by the permanent closure of the BECM in 2012, but the original project proposal stated that copyright vested in 'all material' in the RAA had been transferred to the BECM,[13] while the later collaboration agreement between UWE, the BECM Trust and the RAAMT stated that the RAA and BECM jointly retained 'all Intellectual Property Rights' in the archive, a curious statement given the origin of the papers as official records.[14]

Following the dissolution of the BECM, the Archive Project's principal investigator appears to have suggested that the RAAMT approach Rhodes House Library, Oxford, as a potential home for the collection where it could be accessed by researchers.[15] UWE documents show that the RAAMT did express a strong interest in relocating the material to Rhodes House.[16] This transfer did not transpire, and it is tempting to speculate that any proposal to place the archive in a public institution would have been at odds with the RAA's amended constitution of 2010, which included an archive committee and archive officer charged with securing access to the archive in the interests of the security and reputations of Rhodesian forces personnel.[17] Consequently, as of 2015, the archive remains in the custody of the RAAMT and its physical location does not appear to be in the public domain.[18]

There was little public indication of how the material had come to be at the BECM in the UK, though the initial UWE press release included an enigmatic reference that it had been 'saved from destruction after independence in 1980 and smuggled into South Africa'.[19] Certainly some of the non-archival Rhodesian Army artefacts held at the BECM had been shipped there from Johannesburg in 1998.[20] It was also clear that the second – and larger – tranche of records was transferred to the BECM direct from South Africa during the first year of the project.[21]

As Sarudzayi Chifamba noted in a 2013 article in *The Patriot*, this raises obvious questions about the location of the archive between 1980 and 1998, and of the bulk of the material down to 2007.[22] The detailed history of the archive between 1980 and 1998 was not revealed to the personnel of the Archive Project. However, Afrikaans markings stamped on many of the files showing the 'argief' (archive or collection), 'groep' (group or series) and 'houer' (carton) clearly suggested that they had previously been in the custody of a South African institution. Moreover, the collection was recorded as 'Rhod', a marking that also appeared on the exterior of the boxes, which suggests that the archives had been stored alongside other, non-Rhodesian, collections. As Ivan Murambiwa, the Director of the National Archives of Zimbabwe, has noted, other Rhodesian military records certainly found their way into the custody of the South African Defence Force. Rhodesian Military Intelligence records including information gathered on Zimbabwean nationalist organisations and individuals were discovered in 2002

in the Archives of the South African Defence Department. This archive was controversially returned to the Zimbabwean defence or intelligence establishment in 2004, a step justified in an affidavit of the South African defence minister on the grounds that the records 'had been obtained unofficially by the military intelligence division of the South African Defence Force in 1980', and the move was therefore 'in keeping with the archival principle that official government records remain the property of the originating country and its people'.[23] The records had been moved to the Defence Department in 1993. In this context, it is probable that the records that were to become the RAA archive were similarly transferred to the South African military for potential intelligence use, but at the end of apartheid in 1994, rather than continuing in that custody like the intelligence records, they were 'returned' to Rhodesian military personnel.

The ambiguous character of the archive was clear to the UWE project team from the outset. As the principal investigator, Diana Jeater, noted in the first project newsletter:

> We quickly realised that there were important ethical and practical issues associated with the Rhodesian Army Archive (RAA) project, which, it seemed, were not peculiar to us. There were various sources of tension and anxiety about display, cataloguing and preservation. There were also significant concerns about the uses of the material, including issues of copyright, confidentiality and access.[24]

The latter observations reflected a tension around the status of the archive; as a collection of official records spanning a self-governing colonial territory, a regional federation and an unsanctioned regime in rebellion against the colonial power. The legitimacy of its provenance, whether removed with the knowledge of the government, of a subset of the government, of military commanders acting on their own initiative or otherwise was unknown. Indeed, it was not clear whether the migration took place under the Government of Rhodesia, the short-lived regime of Zimbabwe Rhodesia (June to December 1979), the brief restoration of British colonial control as Southern Rhodesia (December 1979 to April 1980) or after the independence of Zimbabwe on 18 April 1980. In this context, the decision to focus the project's second workshop on migrated or 'expatriate' archives was a simple one.[25]

As Mandy Banton has noted, the concept of 'migrated archives' appears to have been coined in 1972 by the director of the Indian National Archives, Shitla Prasad. Prasad included in the definition both records 'taken' from former colonial territories by the metropolitan governments, and those records 'created in the colonial powers' that concerned those territories.[26] This latter emphasis was reflective of the long-standing claim of the Indian and Pakistan governments on the India Office Library now maintained under the British Library.[27]

The repatriation of these categories of migrated records has been a key focus of attention for African archivists and scholars from the 1960s onwards.[28] Writing on 'migrated archives' with a conscious focus on Africa, Nathan Mnjama identifies six categories of post-colonial 'archival claims'. These categories build directly on definitions identified by Leisinger in 1982,[29] and include:

1    government records generated and maintained in the metropolitan centres of
     the colonial powers;
2    local records of colonial administrations transferred to the metropole at
     independence;
3    records moved between the administrations of different territories;
4    records of regional bodies that relate to multiple states;
5    private and organisational papers relating to colonial territories; and
6    records of national liberation movements.[30]

The first four of these categories are clearly reflective of the major types of
archives identified by the United Nations Educational, Scientific and Cultural
Organization (UNESCO) 'Consultation group to prepare a report on the pos-
sibility of transferring documents from archives constituted within the territory
of other countries'.[31] Reflecting the colonial and post-colonial context of the
migrated archives concept, these categories largely exclude from scope those
archives migrated as 'spoils of war', which have typically been captured under
the term 'displaced' archives.[32]

   Mnjama's first category, comprising records that were created by central gov-
ernment agencies of the colonial powers in the metropole, directly represents the
second of the two major categories cited by Prasad. This includes both those depart-
ments that directly oversaw the affairs of overseas territories, such as Britain's
Indian Office, Colonial Office, Foreign Office and Dominions Office, and those
that otherwise operated overseas, such as the War Office. Mnjama notes that such
records 'were at no stage removed from the colonies', and that the creating entities
therefore have a legitimate interest in maintaining them.[33] While the position that
these are not true migrated archives is difficult to argue with, insofar as they have
not been physically migrated from the state in which they were created or compiled,
the identification and copying of such records has in fact been a key focus of activity
for African archives recovery programmes from the 1970s onwards.[34]

   The second category – which are identified by Mnjama as the true 'migrated
archives' – are those official records that were created or compiled as the inter-
nal records of colonial administrations, but were subsequently removed by the
colonial power, typically during the process of decolonisation.[35] The preeminent
example of this phenomenon is the body of records that is known as the 'migrated
archive', maintained by the UK FCO. Following previous denials, the existence
of this collection was publicly acknowledged by the FCO in 2011. This came in
the face of demands for access to records, which would potentially support court
cases concerning the alleged abuse of detainees during the Mau Mau 'emergency'
in colonial Kenya.[36] Although presented as a revelation in the popular press, a
FCO internal report written by Anthony Cary acknowledged that the Kenyan gov-
ernment had sought the repatriation of their records as early as 1967, repeating the
request in the 1970s and 1980s.[37] The admission of the existence of the migrated
archive raised significant public and academic debate around the failure of the
British government to meet its obligations under the Freedom of Information Act,
the apparent censorship of the historical record, as well as the specific revelations
exposed in the content of the records.[38]

Since the initial disclosure, the migrated archives have been transferred to the National Archives as record series FCO 141, *Records of Former Colonial Administrations: Migrated Archives*. The final scope of the series clearly indicates the extent of the practice of migration, encompassing files removed from at least forty territories, certainly including all the significant colonial territories proper that were decolonised between 1948 and the late 1970s.[39] Similar migrations of local records took place under other colonial powers; Todd Shepard, for example, notes that France '"repatriated" substantial collections of archives from Madagascar and other sites'.[40] Similarly, a disputed, but certainly substantial volume of records was removed from Algeria to France at the close of the War of Independence, where they were either sent to specialist repositories or 'integrated into the documentary holdings of various ministries.'[41] Banton further reminds us that a number of smaller migrations of local colonial records to the metropole took place before independence, including the legacy archives of the predecessor Dutch administration of British Guiana, the Ionian Islands protectorate and the naval port at Wei-Hai-Wei.[42]

Mnjama notes as a key feature of this category that they were 'illegitimately removed from the territories from where they were created'.[43] This echoes the view espoused by Prasad that 'morally these records belong to the developing countries concerned' and 'must be restored to them', a position consistently maintained by archivists in the post-colonial states of Africa since the late 1960s.[44] It is also reflective of the position set out in the 1983 *Vienna Convention on the Succession of States in respect of State Property, Archives, Debt*, which states that 'archives having belonged to the territory to which the succession of States relates and having become State archives of the predecessor State during the period of dependence shall pass to the newly independent State', effectively a principle of *uti possidetis juris* for information.[45] As Banton has described in detail, the *Vienna Convention* never came into force;[46] however, Shepard reminds us that the *Convention* has nevertheless become an important point of reference for the principles it enshrines, particularly in the context of Algerian claims over the archives removed to France in 1961–1962.[47]

The detailed revelations around the FCO Migrated Archives problematise the concept of migrated archives as it has been understood by archivists in post-colonial states. The Kenyan Government's claims to the records removed at independence, outlined in Cary's report, were clearly founded on the basis that the migration was illegitimate and thus, by implication, outside the scope of established conventions or precedent.[48] Cary revealed that clear instructions were issued to the colonial Kenya Government not to transfer to the successor government papers that might embarrass the British Government, embarrass members of the police, armed forces or public servants, comprise intelligence sources or be used unethically by the successor government.[49] Edward Hampshire notes almost identical instructions and criteria in operation in the case of Sarawak and North Borneo in 1962, following on from similar but simpler criteria in use in Malaya in 1957.[50] Banton's research suggests that the practice of removing archives to Britain was part of an established, policy-driven process that may have been conceived in time for the

independence of Ghana in 1957, and shows in detail how it was implemented in Nigeria.[51] Hampshire goes further, dating the first significant migration under the Colonial Office to the decolonisation of Ceylon in 1948,[52] and describing the influence of this process on subsequent migrations.[53] Moreover, it is clear that the preceding practice as exercised in the cases of India and Pakistan had been not to simply transfer to the successor governments, but also large scale destruction of records, a process which continued in tandem with migration after 1957.[54] Shepard describes a similar process and motivations behind the destruction and migration of the records of former French colonies.[55]

The evidence therefore suggests that the migration of sensitive records by the colonial powers was a standard practice alongside extensive destruction. At the same time, there are clear suggestions that the British government vacillated in its position towards migrated archives. Banton notes the claimed position of the Colonial Office in 1956 that it was 'not their practice to take over archives of Governments of dependent territories'.[56] In the face of the Kenyan requests for the return of records from 1967, the UK position was that the materials were the property of the British Government, and indeed related to British interests. However, by the early 1980s, the position of the Public Record Office was that the migrated records were 'not UK public records'; rather 'but for concern over their safety, [they] would have been handed over to the incoming government on independence'.[57] The British position on the status of the records remained ambiguous thereafter until they were transferred from the FCO to the National Archives between 2012 and 2014. Shepard similarly notes a significant exception to the French position, insofar as Senegalese records remained in place on decolonisation.[58] These complexities, of course, do not affect the moral principle set out by Prasad, but they may lead us to re-evaluate the precise status of the true 'migrated' archives.

Mnjama's third category is defined as records created in one territory and moved to another. In principle, this may be interpreted as an extension of the second category, insofar as it represents a movement of records from their place of origin, typically by the colonial power. The primary examples provided by Mnjama are the records of the British protectorates of Bechuanaland (now Botswana), Basutoland (now Lesotho) and Swaziland, the so called 'High Commission territories' adjacent to South Africa that were governed through the British High Commissioner for South Africa. Records of these territories were moved to Southern Rhodesia in 1948, shortly after the Government Archives of Southern Rhodesia had expanded its remit over the adjacent territories of Northern Rhodesia and Nyasaland in 1946, to become the Central African Archives (CAA).[59] During 1948 and 1949, the CAA appear to have been actively involved in providing records and archive management advice to Basutoland at the request of the High Commissioner, so that the transfer may be seen as part of a wider expansion of the institution's role in the region, underpinned by Southern Rhodesia's nominal status as itself subject to the High Commission.[60] The apparent transfer of the Rhodesian Military Intelligence records to South Africa in 1980 reflects a similar process, albeit without the context of imperial intervention.

Mnjama's fourth category comprises records of regional bodies, colonial and post-colonial, which either directly controlled or represented the interests of multiple territories. In fact, the examples given cover two distinct entities; regional bodies such as the East African Community, whose records remain in Arusha as the location of its headquarters, and true federal entities.[61] Examples of the latter include the Federation of Rhodesia and Nyasaland, many records from which remained in the Central African Archives (later the National Archives of Zimbabwe) in Harare, and the West Indies Federation, the records from which are maintained in the Federal Archives Centre at the University of the West Indies in Barbados (there is also significant number in the migrated archives collection in FCO 141).[62] These cases have been less contentious, particularly where the archives have remained in the place of their creation. Nevertheless, steps have been taken to repatriate the content of these records, including a major microfilming project in the early 1980s to provide copies of Rhodesia and Nyasaland records for the national archives of Zambia and Malawi.[63]

The fifth category comprises private papers of individuals and organisations operated in colonial territories, but which are now maintained overseas. Numerous examples of such records exist in the university libraries of the UK. This really constitutes at least two distinct categories, first the corporate papers of organisations that may have substantially operated in the territories concerned, and second the genuinely private papers of individual colonialists. The former include many organisations in which the substantial interest is in the former territory concerned, including missionary records as well as the archives of commercial organisations. Such collections have often been systematically removed from their place of creation in a process akin to the official migrations described above. The latter group of 'personal' papers typically includes the small personal collections of former colonial officials. However, such archives can be contentious when they involve figures of national significance, such as the Roy Welensky papers, relating to the former prime minister of Rhodesia and Nyasaland, which are currently held at Rhodes House Library in Oxford, or the Ian Smith papers held at Rhodes University in South Africa, and in fact consist largely of official records of the Rhodesian Cabinet and related material.[64]

Mnjama's sixth and final category is records of liberation movements, where these are maintained outside the relevant territory. Many of these are really distinct from other non-governmental papers only insofar as they were created and subsequently maintained by organisations or proto-governments in exile. Where they were created outside the borders of the territory concerned, these records may share with the first category the distinction of being migrated in a physical sense.[65]

Mnjama does not include the concept of 'displaced' archives in his typology. As noted above, this term has typically been applied to cases of archives 'looted' as 'spoils of war' during conflict, particularly in the context of Nazi and subsequent Soviet expropriations during the Second World War.[66] Reflecting this context, the concept has been intimately bound up with wider questions of restitution of cultural artefacts.[67] The preeminent example of this category has been the collections

of archives from across Europe that were captured by Soviet armies, particularly in the context of attempts at their recovery following the dissolution of the USSR and the passing of the 1998 Russian law 'On Cultural Valuables Displaced to the USSR as a Result of the Second World War and Located on the Territory of the Russian Federation'.[68] More recent examples have included records and archives seized by coalition forces in the 2003 Iraq invasion and subsequently removed to the United States and other US controlled locations.[69]

The Rhodesian Army archive does not fit neatly into any one of these categories, though it shares commonalities with many of them. In terms of the second category, in common with the FCO archive, the RAA archive was unambiguously created as official records of the pre-independence government, and has left a tangible gap in the archives of the successor state; to this extent it certainly qualifies as a 'migrated' archive as much as any public collection would under the same circumstances. Indeed, given our new understanding of the systematic processes of destruction and migration that were applied by the British authorities at decolonisation, we may speculate that the predominantly secret and top secret intelligence papers maintained in the archive are of precisely the category that would – in different circumstances – have met the Colonial Office's criteria for removal or destruction. Reflecting the third category, the archive was migrated between territories, being moved from Rhodesia to South Africa in 1980. Indeed, much of the RAA collection dates from the late-1970s; consequently the bulk of its lifecycle may have been as official records of the South African rather than the Rhodesian forces. The collection contains a significant number of records of the Federation of Rhodesia and Nyasaland, overlapping with the fourth category. Finally, the archive has been presented and operated as a private collection, thereby meeting the definition of the fifth category.

In confronting these complexities, the term 'migrated' archives appears to be an unsatisfactorily passive euphemism for the systematic, deliberate removal of archives from their place of creation. These archives had explicitly been deracinated from their place of origin; they had been *expatriated*. The concept of 'expatriate' archives is also in simple opposition to the idea of repatriation, which is a persistent theme in the discourse of migrated archives.

However, the archive's journey after leaving South Africa, and its custody in the hands of the Rhodesian Army Association, remind us that questions of migration and expatriation are not one-dimensional. At one level, as a body of material in the custody of an organisation that represents the interests of a well-defined community, the RAA collection has features in common with community archives, particularly as the archive's current custodians are in many cases both the authors and the subjects of the material. In this context, Andrew Flinn has defined a community as 'a group who define themselves on the basis of locality, culture, faith, background, or other shared identity or interest,' a description which is certainly apt for the RAA.[70] Underlining this perspective, the RAA has operated substantially as a community history group, supporting the development of (sometimes hagiographic) unit and campaign histories, and memorialising members of its community. Further, the RAA archive as a whole has functioned

in accordance with the common model of the community archive, actively collecting documentary materials from members, and making no distinction in its constitution between the migrated official records, personal archives and relevant ephemera.[71]

This argument can be taken further. While the migration of the archive can be understood as an appropriation of Zimbabwe's history, there is little doubt that to its current custodians it represents a tangible locus of Rhodesia's history, not just at community but at national level. The Archive Project's final project report notes, 'The material is ... of course, of enormous significance to the dwindling band of former members of the Rhodesian military, their families and contacts of the regimental associations'.[72] As described by Onslow and Berry in their final report in the Archives Project's related oral history project, the RAA archive is one among a number of symbols for ex-Rhodesians who experience 'a deep-felt sadness for a country and a home that no longer exists' and feel 'the lack of public space to memorialise Rhodesia'.[73] This echoes the foundational role of the archive in the nation state. As Shepard argues, 'Through their existence [archives] help constitute a state insofar as their workings offer proof that it is an emanation of its people'.[74] For the ex-Rhodesians, their 'nation' state is gone and all that remains is the archive, a repository not just of history but also of identity. This creates a duality of interests between the nation state of Zimbabwe on the one hand, and the RAA on the other, that is quite distinct from the archetypal migration from periphery to metropole. The RAA collection, therefore, is not only expatriated, it is also the archive of an expatriate community, indeed of a doubly expatriated community, once exogenous as colonisers in Zimbabwe, now exogenous in a worldwide Rhodesian diaspora.

That this community is a finite one, insofar as there can be no more *de jure* Rhodesians, inevitably raises the practical issue of what will happen to the archive as the numbers of its current custodians decline, an issue on which the constitution of the RAAMT simply states that in the event of the Trust being wound up, the assets would 'be given to such other organisation having similar objects as may be decided'.[75] If the dichotomy set out in the previous paragraph is accepted, it would seem inevitable that the moral interest in the archive will shift further towards the extant nation state of Zimbabwe. However, the RAA itself continues to recruit as affiliate members 'All descendents [sic] or dependents of full members', implicitly establishing the possibility of the archive remaining in private hands.[76]

The term 'expatriate' was ultimately selected as representing the duality apparent in the RAA archive's status as an expatriated body of material that in content clearly constitutes an element of the national archive of Zimbabwe, yet is also intimately intertwined with the exogenous or expatriate community of former Rhodesians. It is proposed that this specific duality provides a valuable perspective on the ambiguities inherent in wider categories of migrated archives. In contrast to 'migration', it signifies a fundamental imbalance between subject and place. At the same time, it recognises the plurality of interests, of colonised and coloniser, that is embedded in all archives of colonisation.

## Notes

 1 Anderson, 2011, pp. 699–716; Badger, 2012, pp. 799–807.
 2 Banton, 2012, pp. 321–335, doi:10.1080/03086534.2012.697622; Edward Hampshire, 2013, pp. 334–352, doi:10.1080/03086534.2013.799349.
 3 'Wars of liberation, wars of decolonisation: The Rhodesian Army Archive Project: Research databases and models', Research Councils UK Gateway to Research, accessed 27 October 2015.
 4 'UWE wins £423K grant to catalogue Rhodesian Army archive', University of the West of England, 21 September 2006. The RAA Project was significantly impacted by the closure of the BECM as a public museum in 2008, which was followed by final closure in 2012, amid serious questions about the museum's approach to the ownership of its collections. This paper is not about those events, but the context sheds light on the absence of key information about the removal of the collection from Zimbabwe and its subsequent movements, both this paper in particular and the RAA project in general. See Grosvenor, 2012; 'The British Empire & Commonwealth Collection', Bristol Museums, Galleries and Archives, accessed 4 July 2015; McCann, Pinfold and Wallace, 2012; Morris, 2012.
 5 Duffy, 2006, p. 27.
 6 Lovering, 2009, p. 1; 'Wars of Liberation, Wars of Decolonisation: The Rhodesian Army Archive Project: Newsletter.' University of the West of England, February 2008.
 7 Duffy, 2006, p. 27.
 8 'Wars of Liberation, Wars of Decolonisation: The Rhodesian Army Archive Project: Research Databases and Models', Research Councils UK Gateway to Research, accessed 4 July 2015.
 9 Duffy, 2006, p. 27.
10 'Rhodesia Army Association', The Rhodesian Forces Website, captured 11 August 2004.
11 'Rhodesian Army Museum Trust', The Rhodesian Forces Website, capture 25 August 2004.
12 Meeting, 23 March 2011 (University of the West of England Freedom of Information request).
13 Resource Enhancement Proposal, Wars of Liberation, Wars of Decolonisation: The Rhodesian Army Archive Project, 24 November 2005 (University of the West of England Freedom of Information request).
14 Collaboration agreement relating to the Rhodesian Army Archive Project, 14 January 2009 (University of the West of England Freedom of Information request).
15 'Wars of Liberation, Wars of Decolonisation: The Rhodesian Army Archive Project: Research Databases and Models', Research Councils UK Gateway to Research, accessed 4 July 2015.
16 Email from archivist, Bodleian Library of Commonwealth and African Studies at Rhodes House, 31 May 2011 (University of the West of England Freedom of Information request).
17 'Rhodesia Army Association', The Rhodesian Forces Website, accessed 1 August 2015.
18 Chifamba, 2013.
19 'UWE wins £423K grant to catalogue Rhodesian Army archive', University of the West of England, 21 September 2006.
20 Storey, 2013, p. 8.
21 'Wars of Liberation, Wars of Decolonisation: The Rhodesian Army Archive Project: Newsletter', University of the West of England, February 2008'.
22 Chifamba, 2016.
23 Murambiwa, 2008.
24 'Wars of Liberation, Wars of Decolonisation: The Rhodesian Army Archive Project: Newsletter', University of the West of England, April 2007'.

25 Lovering, 2009, p. 2.
26 Shitla Prasad quoted in Banton, 2012, p. 322.
27 Banton, 2012, p. 331.
28 Mnjama, 2011, pp. 15–34.
29 A. Leisinger, 'Disputed Archival Claims: A Persistent and Urgent Problem', *ESARBICA* 7 Seventh Biennial Conference and Seminar of the East and Central Africa Regional Branch of the International Council on Archives held in Harare on 13–17 September, 1982, cited in Mnjama, 2011, p. 20.
30 Mnjama, 2011, pp. 20–24.
31 Banton, 2012, pp. 330–331.
32 For example Grimsted, 1997 pp. 27–74, doi:10.1017/S0960777300004045.
33 Mnjama, 2011, p. 20.
34 Mnjama, 2011, p. 17.
35 Mnjama, 2011, p. 21.
36 See Anderson, 2011; Badger, 2012; Elkins, 2011, pp. 731–748, doi:10.1080/03086534. 2011.629084.
37 Cary, 2011.
38 Cobain and Norton-Taylor, 2012; Cobain and Norton-Taylor, 2012; Badger, 2012.
39 'Eighth tranche of colonial administration records released', *The National Archives*, 29 November 2013.
40 Shepard, 2015, pp. 869–883 doi:10.1093/ahr/120.3.869, p. 873; see also Shepard's chapter in this book.
41 Shepard, 2015, p. 872.
42 Banton, 2012, p. 322.
43 Mnjama, 2011, p. 21.
44 Shitla Prasad quoted in Banton, 2012, p. 322; Mnjama, 2011, p. 16.
45 Vienna Convention on the Succession of States in respect of State Property, Archives, Debt, 1983*,* Art 28 1(a).
46 Banton, 2012, pp. 331–332.
47 Shepard, 2015, p. 873.
48 Cary, 2011, p. 2.
49 Cary, 2011, p. 1; Banton, 2012, p. 325.
50 Hampshire, '"Apply the Flame More Searingly"', p. 340, 342. Banton, 'Destroy? "Migrate"? Conceal?', 2013 p. 328.
51 Banton, 2012, p. 325.
52 Readers should also see Banton's discussion of this migration in her contribution to this volume.
53 Hampshire, 2013, p. 336.
54 Banton, 2012, p. 328.
55 Shepard, 2015, p. 872.
56 Banton, 2012, p. 327.
57 Cary, 2011, p. 2.
58 Shepard, 2015, p. 873.
59 Mnjama, 2011, p. 23; Dritsas and Haig, 2014, p. 36.
60 Simbawachi, 2013.
61 Mnjama, 2011, p. 23.
62 The University of the West Indies W.I. Federal Archives Centre, accessed 15 July 2015.
63 Mazikana, 1986, pp. 273–277.
64 Murambiwa, 2009.
65 Mnjama, 2011, p. 23.
66 Grimsted, 1997, p. 27; Grimsted, 2010, pp. 291–333, doi:10.1017/S0940739110000123.
67 Akinsha, 2010, pp. 195–216, doi:10.1017/S0940739110000093; Akinsha, 2010, pp. 257–290, doi:10.1017/S0940739110000111; Sandholtz, 2010: pp. 147–176, doi:10.1017/S094073911000007X.

68  Grimsted, 2010, pp. 291–292.
69  Cox, 2011, pp. 451–481.
70  Flinn, 2007, pp. 151–176, doi:10.1080/00379810701611936, p. 153.
71  'Rhodesia Army Association', The Rhodesian Forces Website, accessed 1 August 2015.
72  'Wars of Liberation, Wars of Decolonisation: The Rhodesian Army Archive Project: Research Databases and Models', Research Councils UK Gateway to Research, accessed 4 July 2015.
73  Onslow and Berry, 2010, accessed 14 November 2014, p. 14.
74  Shepard, 2015, p. 870.
75  'The Rhodesian Army Association Museum Trust', The Rhodesian Forces Website, accessed 23 October 2015.
76  'Rhodesia Army Association'. The Rhodesian Forces Website, accessed 1 August 2015.

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# 7    A Proposal for Action on African Archives in Europe

*Nathan Mnjama and James Lowry*

## Introduction

Archival displacement is acutely evident in many African archives and has been of concern to many African governments since the end of the colonial period. It has been at the forefront of the minds of archivists from the East and Central African Regional Branch of the International Council on Archives (ECARBICA) from the time of their first meeting in Nairobi in 1969. Since then, the issue has been discussed and resolutions passed by ECARBICA and its successor, ESARBICA (the Eastern and Southern African Regional Branch of the International Council on Archives). Notwithstanding these resolutions, the records removed from Africa during the process of decolonisation still largely remain in the custody of European powers. Why are African nations interested in displaced archives? The Africa Studies Association's Archives-Libraries Committee *Resolution on Migrated Archives* in 1977 stated:

> Archives are recognized as an essential part of any nation's heritage providing documentation not only of the historical, cultural, and economic development of a country thereby providing a basis for a national identity, but also serving as a basic source of evidence needed to assert the rights of individual citizens.

As we will show, these assertions echo the ESARBICA resolutions. Furthermore, the ESARBICA resolutions give a sense that archival displacement is an unresolved injustice of colonialism.

In this chapter, we will discuss displaced archives as a phenomenon of decolonisation in Africa, using examples from the British Empire and the Commonwealth of Nations to illustrate a broader issue that effects many African and European countries, though we recognise that each case has its own particular context and circumstances. We sketch out the process of displacement before and during decolonisation and the underdevelopment of archival services in colonial administrations. We survey various efforts to locate, copy or repatriate displaced archives, observing a general lack of progress on the resolution of the question of African archives in Europe, and finally propose that European archivists could usefully take a position on the matter.

## The Nature of the Problem

According to Nomsa Nsibandze, migrated archives are archives in exile or archives unjustly transferred from one country to another.[1] Francis Garaba argued that 'whether one employs the term "fugitive archival material", or "missing documents", "migrated archives", "removed" or "displaced archives", the common factor is that they are not where they are supposed to be, in their rightful place of custody'.[2] These definitions foreground the ethical implications of the movement of records while stopping short of demarcating the nature and context of the records and their removal. This is more helpful than it might seem. There have been a number of attempts at categorising displaced archives, such as Albert Leisinger's classifications, which drew on the work of Morris Rieger.[3] Nathan Mnjama has discussed how these categories manifest in the African context.[4] While this work is helpful in illustrating the range of issues implicit in the phenomenon of archival displacement, typologies tend towards abstraction – efforts at deriving broad principles or formulas sideline the unique circumstances, records, histories and personalities that result in archival displacements, claims and resolutions. This chapter is concerned with records removed to Europe from the African territories in which they were created, regardless of factors that might allow them to be defined more precisely. The ambiguities in the definitions given by Nsibandze and Garaba acknowledge the ethical, or even moral, aspects of claims on archives in the post-colonial context, while leaving room for dispute and discussion about the scope and circumstances of particular claims. We are concerned here with archives created in Africa and removed to Europe.

## Archival Displacements

Under British colonial rule, the transfer of records from the colonies to Britain was sanctioned by the Colonial Office for the preservation of the records. A letter dated 2 January 1929 from L. S. Amery, the Colonial Secretary, stated:

> If there are any early official records in your custody which it is considered essential to remove in order to ensure their preservation, I shall be glad if you will furnish me with detailed particulars including the lineal space which they would occupy.[5]

Further advice was sent out to the colonies in 1936:

> It may be that the best measures that are practicable locally for the preservation of records cannot be achieved in some cases, on account of climatic conditions etc being otherwise than adequate; in that case consideration should be given to the question of transferring some of these records to the Public Record Office in this country.[6]

The extent to which transfers for preservation were made is unclear. There have also been claims that colonial administrators removed records in breach of

regulations. More than thirty years ago, P.M. Mukula, then Director of Zambia National Archives, argued that:

> Government Officials took an oath of allegiance and are supposed to be loyal, truthful, honest and sincere. They were required to maintain records properly and were not supposed to remove copies produced in the course of official duty. On departure the officials were expected to leave all types of correspondence intact and no records or copies whatsoever were to be taken home. Nothing official was to be used for personal glory or private collection. Yet surprisingly enough, some colonial administrators had no respect for the administrative code under which they operated. General orders cautioned them against removal but they removed documents stealthily without permission. Their offence is no different from that of an official who has been sent to prison on charges of theft or for breach of official secrecy. These officers took or sent to their home countries official correspondence, reports and findings which can now be found listed in the Manuscript Collection of Africana in Rhodes House Library, Oxford. There is no good reason why these records cannot be repatriated, they are public records, although they have been classified as historical manuscripts.[7]

The *ad hoc* compliance with official guidance continued as independence approached and colonial governments began a programme of selecting records to be sent to Britain. Although this unfolded differently in the various colonies, archival displacements during decolonisation commonly happened without any formal selection criteria, or criteria were applied unevenly. Mandy Banton has shown how this happened in the British empire, and Todd Shepard, Vincent Hiribarren and Michael Karabinos have shown that this was also true in other European empires.[8] Some records were removed, but others, perhaps due to their bulk as much as lack of utility, were either abandoned or destroyed by burning, causing significant gaps in the records that remained.

The reasons for the removal of records were varied but chiefly, as Kago Ramokate, a former director of Botswana National Archives, stated 'the colonial powers took away some of the records because they were "too sensitive and might cause unrest if left with the natives"'.[9] The 'discovery' of the 'migrated archives' in the UK government's Foreign and Commonwealth Office has drawn attention to British policy on the disposition of records during decolonisation: this policy centred on the concern that records that might embarrass governments or public servants should not be handed over to successor governments.[10]

European refusals to return displaced archives suggest that there is a view that they are properly European archives and constitute an element of the imperial heritage, but by that logic we would see European claims for the colonial records that could not be evacuated from Africa, which we do not. Commenting on the removal of African records to European countries, S. Sowoolo, a former director of National Archives of Nigeria, posited that:

> This is not merely a matter of African-related archives in Europe but of authentic African archives which should be in Africa and nowhere else.

> The archives find themselves in Europe because they had been – for whatever reason – deliberately transferred there by the former colonial powers. The view of African Archivists on this matter is that such archives should be repatriated – in their original to their original owners.[11]

African archivists often share this view. In 2015, Mnjama conducted a survey of directors of national archives in the ESARBICA region. When asked to comment on the impact of the removal of archives from Africa on their respective countries, one director responded:

> [T]he removal occasioned major gaps in our archival holdings. The country lost a natural part of its documentary heritage. This scenario evidently denied our citizens and research scholars access to critical information and data relating to British colonial administration in our country and by extension impacting negatively on the compilation of our country's history.[12]

Another respondent claimed that 'these records, the country recognises, are of enormous potential value to the nation in terms of historical research and therefore the greatest justification for their return brings forth the very real possibility of rewriting our history.'[13] Yet another commented that due to the transfer of records to European cities, 'endeavours meant to hold the colonial administration accountable for its actions have been difficult to pursue due to the scarcity of information occasioned by this removal.'[14] Whether removed for the preservation of the records, or for political, diplomatic or intelligence reasons, or illicitly, there is a strong feeling amongst African archivists that records removed from Africa should be returned.

## Colonial Administration and the Genesis of Archival Underdevelopment in Africa

A common feature of British colonial administration in Africa was its failure to develop effective archival practices. Except for South Africa, where an archival service was operated by the white regime, and in Zimbabwe, where an archival service was established in 1934 for the preservation of white settler history, in all British colonies in Africa, archival services only began to emerge in the late 1940s and early 1950s. Colonial administrations paid little or no attention to the development of archival services to the extent that at the independence of many African countries, their archival services were still in their infancy. Although the Colonial Office occasionally issued circulars on the management of records, Abiola Abioye has shown how, in Nigeria, these circulars were largely ignored, leading to a weak legal and administrative foundation for the National Archives of Nigeria.[15] Derek Charman and Michael Cook, who, as the first chief archivist of the Kenya National Archives and the first archivist of the Tanzania National Archives respectively, were able to speak with some authority on the pre-independence situation, noted in the mid-1960s that 'in Uganda and Kenya

the colonial governments had made rather perfunctory efforts to create archives organizations, but to all appearances rather to appease the Colonial Office than out of any real conviction.'[16] African nations were left not only with gaps in their collections arising from displacements, but with inadequate archival institutions, laying the foundations for the argument that displaced archives are safer in foreign hands. Though archives in Africa often still face resource constraints that are rooted in the colonial period, and colonial period records may be at risk in these conditions, the practical challenges should be faced in concert with the legal and ethical questions, rather than serving as a rationale for the retention of African archives in Europe.

## Efforts to Locate, Copy and Retrieve Displaced Archives

The impact of underdeveloped archival services and the problem of locating and retrieving records removed from Africa, generally, remain unresolved. While some African countries such as Botswana, Kenya, Ghana and Zimbabwe have made efforts to locate some of their records held outside their boundaries, others are yet to initiate such programmes.

In the East and Southern African region, concerns over displaced archives have been raised regularly at the biennial conferences of ESARBICA (and previously ECARBICA). Archivists from the ESARBICA region have passed several resolutions calling for the return of records removed from their countries, the first being in 1969 during the inaugural ECARBICA conference in Nairobi, at which it was

> resolved to seek through the International Council on Archives the moral support of the United Nations and its agencies and OAU [Organisation of African Unity, the forerunner to the African Union] in persuading governments and national bodies presently possessing such records to secure their return or the supply of photocopies of them and also to seek financial support of the United Nations and its agencies in mounting a programme of copying where governments are unable or unwilling to finance themselves.[17]

Five years later in Lusaka, Zambia, the participants in the ECARBICA conference urged member states to 'make concrete efforts to retrieve migrated archives from the former colonial powers'. It was further recommended that 'governments of the participating countries formulate policies for the retrieval of records originating from the countries of East and Central Africa and held in former metropolitan and other cities'.[18] The lack of action on these resolutions prompted Peter Mazikana, who was then the principal archivist of Zimbabwe National Archives, to say:

> I am painfully aware that many resolutions have been passed on this subject and that precious few have ever materialized. It is therefore not my wish to encourage more of them which may be pious and high sounding but whose terms may be so broad as to defeat implementation, or whose aspirations may be so lofty as to elude the securing of adequate resources

for implementation. From Zimbabwe standpoint, I see the issue as twofold: there is the question of central African material largely located in Zimbabwe, which is of interest to our neighbours and possibly to others outside this region, secondly there is the question of the acquisition of material located outside this region, largely in the United Kingdom. What we must do is to thrash out a pragmatic, viable and unambitious regional strategy which must take full account of our regions aspirations and yet not gloss over the limited resources at our disposal.[19]

Although no such regional strategy has appeared to date, available evidence indicates that some of the member states in the East and Central African region made efforts to implement the resolutions. In August 1978 and November 1979, Kenya undertook surveys of records relating to Kenya held in Britain. The findings of the two surveys indicated large amounts of Kenyan records held in Britain, so the Kenya government decided to open a cultural office in its High Commission in London with the sole objective of copying Kenyan records held in Britain. Two officers from the Kenya National Archives were posted to this new office and they worked closely with National Archives staff in Nairobi and members of the history department at the University of Nairobi. The collaboration with the history department ensured that Kenyan scholars were kept abreast of newly copied records from Britain. Despite the many challenges faced by the Kenya National Archives in locating and copying its records in the UK, it was satisfied with the collaboration and support it received from archivists in Britain, but less so with the support of the British government. Speaking at the Pan African Conference on Archival Policies and Programmes in Africa held in Abuja, Nigeria in 1994, Musembi, the former director of the Kenya National Archives and Documentation Service, noted:

Generally speaking, we have continued to receive sympathy and support from archivist and librarians in the UK and USA. We thank them most sincerely. However, [the] attitude of the former colonial powers has not been very helpful.[20]

Other African countries that have been involved in microfilming projects include Botswana, which began listing and copying records held at the UK's Public Record Office/National Archives in 1980. As early as 1976, Ghana embarked on acquiring microfilm copies of records relating to Ghana from the Danish Royal Archives. Ghana also obtained financial assistance from the Dutch Government to carry out a survey of records relating to Ghana held at the Dutch National Archives. Tunisia too has been engaged in a microfilming project. Between 1981 and 1983, major microfilming of Tunisia related records held in Paris was undertaken and some 2,483 35mm reels were added to Tunisia National Archives.[21] Though the majority of our references in this chapter concern the British colonial and post-colonial context, these few examples serve to remind us that archival displacement from Africa concerns numerous European countries.

Apart from the refusal to return archives to their countries of origin, there have been suggestions that European countries have not cooperated with African countries in their search for and copying of displaced archives. In Mnjama's 2015 survey, one of the respondents stated:

> They give you what they want to give you and those that they feel you should not view are kept from you. We purchased practically all our colonial reports from the Commonwealth Office. The records from the National Archives were microfilmed at a price and we have them in our repositories. We know for a fact that they did not give us everything pertaining to our country.[22]

African governments were very hopeful that problems with displaced archives would be addressed through the efforts of United Nations Educational, Scientific and Cultural Organization (UNESCO) and the International Council on Archives, particularly through international microfilming initiatives and the Vienna Convention, the latter being a particular source of disappointment. The Vienna Convention arose from the United Nations Conference on Succession of States in Respect of State Property, Archives and Debts held in Vienna in 1983. At the end of the conference, the *Vienna Convention on the Succession of States in respect of State Property, Archives and Debts* was adopted, but has received too few signatures to enter into force. Charles Kecskeméti, the then executive secretary of the International Council on Archives, suggested that among the reasons for this rejection was the fact that the Convention 'was compiled without taking into account some basic archival principles and issues'. He concluded:

> [T]he Vienna Convention is of no assistance to the archival institutions of the countries it was supposed to help and did not achieve the breakthrough with respect to international archival law.[23]

Realising that not much could be achieved through the Convention, ECARBICA, at its 1986 conference held in Mbabane, Swaziland, passed a new resolution intended to take the issue forward by other means:

> Realizing that the convention as it stands now will not achieve the intended objectives on the settlement of problems arising from the succession of states in respect of archives, this conference urges national archival institutions to submit for the consideration of governments possible initiatives for filling the legal gaps which will still persist concerning disputed archival claims and devolution of archives in cases of succession of states.[24]

In effect, the resolution called for a continuation of bilateral approaches. Yet, almost two decades later, it was still deemed necessary to push for action: in 2003, during the seventeenth ESARBICA General Conference held in Maputo, Mozambique, the following resolution was passed.

Bearing in mind that the issue of migrated archives still remains unresolved in most of our member states, this conference urges them to:

a    Explore the possibility of initiating joint programmes for the selection and acquisition of migrated records, and,

b    Seek the support of NEPAD[25] in promoting the return of our cultural heritage from former colonial powers.

The highest level at which the issue of displaced archives was ever discussed within the East and Southern African region was during a meeting of government ministers responsible for records and archives, held on 20 October 2003 in Cape Town. The government ministers gathered there noted:

1    That the archival heritage of Africa, in all its aspects – oral and written – was ignored, marginalised, transferred and denied during the colonial era;

2    That in the post-independence era urgent competing priorities and limited resources unfortunately resulted in further neglect of our archival heritage;

3    That steps are being taken with Africa and the region to promote co-operation in the preservation of Africa's archival heritage and in the improvement of records management practices, both paper-based and electronic; and

4    That Africans have lacked access to records created in colonial capitals about African history and that this has resulted in the disempowerment of the African peoples.[26]

The ministers recommended that 'the African Union, through NEPAD [the New Partnership for Africa's Development], authorize the establishment of an archival steering committee to promote co-operation in archival matters including that of ensuring that all the archival material taken from or within Africa in whatever form should be repatriated to countries of origin'.[27] But again, no action was taken and no such steering committee has been established.

## Challenges Related to Copying Displaced Archives

Mazikana has argued that while some repatriation did take place, 'By and large ... the former colonial powers remained steadfast in their claims on the records and instead encouraged the copying of these records to give the new nations access'.[28] In the face of inaction on restitution, copying seems an alternative that at least provides access to the information contained in records, but even copying comes with challenges. One of the major limitations that African countries face relates to access periods. Until the enactment of the Freedom of Information legislation in the UK, access to records was limited to archival material that was at least thirty years old. During the Kenyan initiatives of the late 1970s, efforts to copy Kenyan records less than thirty years old and which were of major interest to Kenyan researchers failed due to the thirty-year closure period. During discussions at

the ECARBICA conference in 1982, Michael Roper of the UK's Public Record Office explained the Public Record Office position. Roper stated:

> I am afraid the 30 year rule is the 30 year rule as far as the Public Record Office is concerned. It is always open to departments that have transferred to give access to records within the closed period. This is a political decision between the Government of Kenya and the Government of the United Kingdom between our two foreign offices and nothing to do with the archives – the PRO has no status in this at all and unless the Foreign Office says go ahead we cannot give any access within the 30 year rule.[29]

Despite the UK's current transition from a thirty-year rule to a twenty-year rule, records are routinely retained in agencies under the Lord Chancellor's Security and Intelligence Instrument, which can limit access to records of relevance to African claims.[30]

Another challenge that African countries face in locating and copying their displaced archives stems from the lack of comprehensive guides on sources in Britain relating to Africa. When Kenya first made a request for the return of records held by the British government, the Foreign Office suggested that Kenya should compile a list of the records it wished to obtain. This was an impossible task as no records had been left behind indicating which files had been removed to Britain. In recognition of the need for adequate findings aids in their own countries, the delegates to the seventh ECARBICA Conference called upon the directors of National Archives:

> [T]o encourage the idea of preparation and publication of finding aids to bring under adequate administrative and intellectual control materials already in their custody as an essential preliminary to the development of appropriate mechanisms for the acquisition of complementary material wheresoever located.[31]

Lack of information on the nature and volume of records held in the UK remains a challenge. Mnjama's 2015 survey indicated that many of the national archives in the East and Southern African region are unaware of the nature, volume and formats of records removed from their countries. There is a sense among the archivists of Africa that there is still much more to be disclosed by European governments about the records that were removed from the colonies.

Copyright restrictions also inhibit the possibility of copying, especially for privately held archival collections. This was particularly so for various collections held at Rhodes House Library, Oxford University. Locating the copyright holders or their legitimate heirs became a major challenge for the Kenyan researchers as some of the copyright holders had died or moved. Copyright clearances had to be obtained for each copyright holder indicating the terms under which permission to copy the materials had been granted, access restrictions (if any) and whether the national archives receiving the copies had any right to provide copies to *bona fide* researchers.

The costs involved in locating and copying displaced archives have been and remain a critical factor contributing to the slow progress in resolving problems associated with displaced archives; costs affect both the amount of copying that can be done and may also influence what can be acquired.[32] Many respondents to Mnjama's survey suggested that the costs of repatriating or copying archives should be borne by the UK government: 'As the UK Government bore the initial cost of taking them from our country and keeping them all this time, it would be a welcome gesture if the same Government took upon itself the responsibility and cost of returning them to our country',[33] or rather more forcefully: 'In my thinking, it should be the former colonialists [who should pay] because they had no business removing our national documentary heritage from our countries.'[34]

## A Proposal for Action on African Archives in Europe

In light of the revelation of the Foreign and Commonwealth Office's migrated archives, what other secrets lie in the African papers scattered across Europe? When will we see them? The problem of records removed from Africa remains unresolved over half a century after many African countries achieved independence. The ESARBICA resolutions offer proof of the deep desire for the return of these records. The theoretical and legal debates around displaced archives often obscure the human element: the people of Africa want their archives back; do the people of Europe feel so strongly about keeping them?

Digitisation offers a compromise, much like microfilming did, but it comes with similar problems of copyright and cost. As Mnjama has reported, there is a consensus among the national archivists of Africa that the country of origin should hold the originals and own the copyright, with digital surrogates funded by the former colonial power and then retained for their own use.[35] To date, African efforts at repatriation and copying have been limited, slow and expensive. The governments of Europe have done little to aid this work, though the archivists of Europe have been more responsive. It is, therefore, to them that we make our proposal for action on African archives in Europe. We call on the international archival community to adopt – whether through the International Council on Archives, other networks or on institutional bases, but publicly – an official position on archives displaced from Africa. Furthermore, we ask colleagues in Europe to aid in the settlement of archival claims through:

1   Assisting in the location of displaced archives, and compiling and publishing guides and inventories of archival materials removed from their countries of origin.
2   Exerting direct pressure, in their personal and professional capacities, on their own governments to address archival claims.
3   Working through professional associations and networks to lobby their governments for action on repatriation.
4   Pushing for and facilitating digitisation projects that would see the content – if not the material – of the records returned.

5   Using the International Council on Archives as a vehicle for facilitating dialogue between governments with a view to reaching bilateral agreements on archival repatriation.

The archivists of Africa have made resolution upon resolution concerning the repatriation of displaced archives, and these have been unknown or ignored in Europe. Past efforts to address problems of displaced archives at the international level by UNESCO, the International Council on Archives and others, have not yielded solutions, as the failure of the Vienna Convention illustrates. As many of the chapters in this book have argued, professional principles and 'international' (i.e. European) customary law support the return of displaced archives to the places of their creation. It is time for the former colonial governments to open bilateral discussions and institute measures for the return of African records to their places of origin, and for European archivists to fulfil their professional and ethical obligations in respect of African archives in Europe.

## Notes

1  Nsibandze, 1996, p. 86.
2  Garaba, 2011, pp. 26–43.
3  Leisinger, 1982, pp. 1–7.
4  Mnjama, 2011.
5  Retrieved from Swaziland National Archives Files RCS 903/14 and RCS 1–29 82/29 Custody of Public Records and Destruction of Public Records. Reproduced in *ESARBICA Journal* Vol. 6, 1983, pp. 80–83.
6  Circular letter W Ormsby Gore to the Officers administering the Governments of ... Retrieved from Swaziland National Archives Files RCS 903/14 and RCS 1–29 82/29 Custody of Public Records and Destruction of Public Records. Reproduced in *ESARBICA Journal* Vol. 6, 1983, pp. 80–83.
7  Mukula, 1982, p. 26.
8  See their chapters in this book.
9  Ramokate, 2004.
10  Banton, 2012, p. 37.
11  Sowoolo, 1977, p. 3.
12  Mnjama, p. 49.
13  Ibid.
14  Mnjama, p. 49
15  Abioye, 2012, pp. 15–26.
16  Charman and Cook, 1967, p. 70.
17  Mnjama, 2012.
18  Mnjama, 2007, p. 147.
19  Mazikana, p. 31.
20  Musembi, 1996, pp. 125–126.
21  Fakhfakh, 1996, pp. 127–128.
22  Mnjama, 2015, p. 50.
23  Kecskeméti, 1998, p. 197.
24  Mnjama, 2007, p. 164.
25  New Partnership for Africa's Development, a technical body of the African Union. Available at http://www.nepad.org.

26 *ESARBICA Declaration on Archives in Africa* Cape Town, South Africa, 20 October 2003, reproduced in *Bibliotheek- en Archiefgids* 80(3), 2004, p. 43. ISSN 0772-7003.

27 Ibid.

28 Mazikana, 1997, available at http://www.unesco.org/webworld/wirerpt/wirenglish/chap11.pdf; accessed on 2 December 2015.

29 Roper, 1982, p. 16.

30 The Lord Chancellor's Security and Intelligence Instrument is available at https://www.gov.uk/government/publications/signed-instrument-for-the-retention-of-public-records.

31 'Resolutions', 1982, p. 194.

32 Musembi, 1982, p. 13.

33 Mnjama, 2015, p. 51.

34 Ibid.

35 Mnjama, 2015, pp. 45–54.

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# 8 Displaced Archives in the Wake of Wars

*Leopold Auer*

## Introduction

Archives, being mobile property, are very liable to all sorts of displacements, the causes of which may range from administrative reforms to the effects of war. In the event of armed conflicts, the displacement of archives may occur both for their protection and due to belligerent action. In any case, archives have often been coveted as loot because of their financial, legal, informative or cultural value. Consequently, the examples of archives destroyed, plundered and removed through military operations are innumerable. This was emphasised by the members of a preparatory group for the meeting of the Society of American Archivists in 2013:

> [N]ations and peoples have suffered throughout history from the removal of their documentary heritage. Records have been removed during war, revolution, and other conflicts for purposes ranging from plunder to propaganda, to intelligence, to documenting of war crimes, to the rescue of archives threatened with destruction. Such 'displaced archives' are scattered in institutions across the globe; access to such records and their long-term disposition remain central controversies in international archival affairs.[1]

This definition covers most of the ground, although one must add other categories of displaced archives in the wake of war or other armed conflict. Up to the end of the nineteenth century, there existed marked trends towards archival centralisation. State administrations regarded themselves as entitled to concentrate archival repositories at the seat of government. Local and regional archives very often were transferred to the capital, and ecclesiastical archives secularised.[2] The same attitude has manifested in the handling of colonial archives or of archives of occupied and newly acquired territories. With the acceptance of the principle of provenance and with the growing awareness of the unalienable rights of social entities to their cultural heritage, including archives, a gradual change of opinion has taken place, sometimes resulting in the restitution of archives to their original legal owners. Thus, the nineteenth-century trend towards centralisation has been replaced by a strategy of decentralisation and regionalisation that may lead to a

restitution of records from central to regional archives such as in Bavaria or, still more recently, in France or Spain.[3] In other cases, the needs of state succession have brought remedy to former centralisation, rendering once legitimate displacements an issue for restitution in the wake of war and of subsequent changes of sovereignty over a given territory. Thus, issues of war and state succession are, in effect, closely intertwined.[4] In some cases, we may even speak of displaced archives although no displacement has occurred at all. If we assume that there is a rightful place for archives, archives could be said to become displaced as soon as the link with their creator – individual or institution – is severed.[5]

A particular problem is constituted by archives of military administrations in occupied territories. According to the practice of international law until recently, these archives should be repatriated if possible.[6] Depending on whether the principle of administrative or territorial provenance is applied, occupation records belong respectively to the occupiers who created them or to the people and territory that was occupied. In practice, often the principle prevailed that such records were kept by the power that gained control over them, a principle that favours the victor to the detriment of the losing side, and one that is not really governed by legal considerations. The principle was also sometimes applied by colonial powers to records created by them in the colonies, although this interpretation is certainly disputable and has not been accepted by many former colonies.[7] The destiny of archives of military occupation, as well as of archives in the case of major migrations or the resettlement of populations, requires further international attention and at least the drawing up of provisional guidelines, particularly in the light of the experience after the disintegration of the Soviet Union and of former Yugoslavia with its 'ethnic purification'.

## The Early Modern Period

The issue of displaced archives in the wake of wars has a long history. Notable examples comprise looted archives from practically all over the world.[8] In the war between Charles V and rebellious Protestant princes, parts of the archives of Philip of Hesse fell into the hands of imperial troops; the Bavarian general Tilly abducted parts of the archives of the deposed Count Palatine, son-in-law of James I, from Heidelberg to Munich; and in the battle of Nördlingen in 1634, the victorious imperial army took the archives of the enemy as booty. The Swedes were perhaps the first to practice the large-scale looting of archives in wartime, and, then as in later cases, this practice represented a policy of imperialism and aspirations for greater status. Equally, during the Thirty Years War, the Swedes captured archives of the Emperor in Prague and of the Elector of Mainz, which is the reason why Luther's letter to the Elector accompanying his famous ninety-five theses and correspondence between Emperor Ferdinand III and his brother Leopold Wilhelm are, today, kept by the Swedish Riksarkivet. A decade later, Swedish troops captured various archives in the Baltic region and in Poland, among them the Polish Crown Archives, and transported them likewise to Stockholm. The troops of Louis XIV took parts of the archives of the Imperial Chamber Court in

Speyer as booty to Paris. The capture and subsequent displacement of archives is not limited to wars but may occur in other forms of armed conflicts. When the town of Messina revolted against Spanish domination in 1678, the Spanish viceroy, while putting down the revolt, captured the municipal archives and had them taken to Spain, to deprive the town not only of its rights and entitlements but also of its collective memory. It was not until 1994 that these truly displaced archives were returned to Sicily.[9] Far less is known about examples outside Europe in the early modern period. We know very little about archives in India or in the Arab world, which had a highly developed archival system at its disposal, and next to nothing about displaced archives in those regions.[10] In ancient China, the archives of the central government were often destroyed as soon as they had served their purpose as source material for the official historiography.

The legal situation regarding international law until the end of the Ancien Regime is ambiguous. In the early modern period, taking archives as booty was far from condemned. Despite some voices to the contrary, the eminent legal expert Hugo Grotius explicitly allowed the harm of an enemy both in his person and in his property. 'In a public war anyone at all becomes owner, without limit or restriction, of what he has taken from the enemy'.[11] Restitutions were subject to settlements in peace treaties.

## French Revolution and Napoleonic Wars

The eighteenth century showed an increasing interest in the protection of cultural property, including records, in cases of armed conflict. Johann Jacob Moser questioned the legitimacy of capturing the records of an enemy sovereign,[12] and Emmerich de Vattel called the destruction of cultural property in war times 'the act of a declared enemy of the human race'.[13] Cultural property, including libraries or collections of scientific interest, was increasingly protected, or at least not targeted, as long as it did not directly serve military purposes. However, this development was interrupted by a number of belligerent events towards and after the end of the century. After the Third Partition of Poland, the Polish state archives were transported to St Petersburg.[14] The coalition wars in the wake of the French Revolution and above all the campaigns of Napoleon saw a hitherto unknown degree of archival looting.[15] Napoleon's project to create a huge centralised European archive in Paris, to foster historical research, resulted in a gigantic archival plunder that probably inspired similar activities during the Second World War. The project had been suggested to the Emperor by the French general archivist Daunou, who saw that it would appeal to his ideas of French glory and grandeur. However, it may be also regarded as a result of the encyclopaedic interest of the Age of Enlightenment. Notwithstanding these scholarly motives for the displacement of archives in the Napoleonic period, for a later successor of Daunou during the Second Empire it constituted the introduction of an incorrect principle.[16]

For the implementation of his project, Napoleon ordered the transfer of captured archives to the French capital from various territories occupied by his troops. Archives of the central institutions of the dissolved Holy Roman Empire, in

themselves archives of European significance, were abducted from Vienna during the French occupation in 1809, followed, in 1811, by large portions of the diplomatic correspondence kept by the archives of Simancas. Perhaps most strikingly, the Vatican archives were transported to Paris, when the papal state was annexed to the French Empire. All these archives together comprised many thousands of crates. Napoleon's Empire collapsed before his idea of a European archive could fully materialise. Demands for restitution were put forward immediately after the fall of Napoleon, but the restitution remains incomplete. The last parts of the captured Spanish archives were returned only in 1941 and in 1976, after a state visit of King Juan Carlos to Paris. Parts of the Vatican archives are still kept in the *Archives Nationales* because the Vatican authorities are not prepared to cover the expenses for their transport back to Rome. In some cases, restitution remains incomplete because of losses during the period of displacement. It goes without saying that the displacement of archives is always liable to disorder, damage and can even cause the destruction of records. The process of restitution is often difficult and time consuming. After a certain lapse of time, it may not be possible to identify captured fonds, files or single documents with absolute certainty. As has been shown by the example of the Vatican archives, the expenses of the return must be taken into account.

The archival plunder by Napoleon constituted the most spectacular displacement of archives of the period. However, apart from these abductions under his command, wars and political changes have caused many other archives to be transferred to other places. For reasons of safety and to protect them against capture by French troops, the archives of the central government of the Austrian Netherlands were transported to Vienna, and in 1805 and 1809 parts of the Viennese archives were evacuated to Temesvar for the same reason.[17] The archives of the Elector of Mainz went through a real odyssey that ended with their partitioning between Austria and states of the later German Confederation.[18] Political changes in the course of the wars of the French Revolution and the secularisation of the ecclesiastical and municipal territories of the Holy Roman Empire, brought about changes of ownership of various other archives and eventually a centralisation of most of them in German capitals. Mention must also be made of the Venetian archives that were transported to and temporarily kept in Vienna after the Peace Treaty of Campoformido.[19]

With the defeat of Napoleon and the break-up of his empire, the restitution of displaced archives became a predominant issue in the negotiations for the return of cultural property. Whereas, before this period, the possession of captured and displaced archives was not, apparently, challenged, defeated France was confronted with a number of demands for restitution by the coalition powers. Several of them set up special commissions to pursue the return of archival loot to its place of origin.[20]

## Road to The Hague Conventions

Displacements of archives and disputed archival claims during and after the Napoleonic Wars contributed to the development of international law with respect

to archives and other cultural property, increasingly refuting their characterisation as lawful booty. Leading diplomats of the period such as Austrian State Chancellor Prince Metternich stressed the need to keep documents necessary for the purpose of administration with the producing agencies. For his colleague, Lord Castlereagh, the removal of works of art was 'contrary to every principle of justice and to the usages of modern warfare'.[21] In reaction and with reference to the extensive confiscations of the Napoleonic period, nineteenth-century manuals on international law paid increased attention to the issue of cultural property in the event of wars and showed a tendency to regard categories such as works of art or collections of scientific importance as inviolable, recommending protection against destruction and looting.[22] In his *Elements of International Law*, Henry Wheaton states – with reference to the plunder committed by Napoleon and the restitution after 1815 – 'that monuments of art, and repositories of science are exempted from the general operations of war'.[23] Even more explicit with regard to archives are the Anglophone experts in international law, Henry Halleck and Sir Travers Twiss, when they argued that no state should allow its troops in wartime to seize or destroy state papers, public archives or historical records, as this would mean to wage war 'in a manner not sanctioned by the modern practice of nations'.[24] On the other hand, more or less at the same time, the American jurist Francis Lieber, in his instructions for the United States army, asserts the right to seize and remove works of art, libraries and scientific collections from conquered territory, though he states that they should not be destroyed, injured or privately appropriated.[25]

These discussions paved the way for the Brussels Convention of 1874 and eventually to the conventions and regulations of The Hague Peace Conferences of 1899 and 1907. The Fourth Convention of the Hague Conference of 1907 on Land Warfare and its annexed regulations codified, for the first time, existing international practice with respect to the protection of cultural property in case of war, condemning explicitly its confiscation and limiting the right to booty with regard to movable property to those things that were regarded as necessary for military operations.[26] Although these provisions do not mention archives explicitly, it has been argued that they confine wartime capture and post-war seizure of archival material to public records that are necessary for legitimate military intelligence, military operations or purposes of military administration. But even then, captured archives should not be displaced but exploited at the place of their origin. In the light of wartime evacuations and the necessity of protecting archives against the ravages of war, it is very often impossible to comply with this demand. Probably still more often, the necessity of protection is put forward as a reason for displacement. With regard to private archives, The Hague Convention reflects a strict respect for private property and demands that the property of municipalities and of institutions dedicated to religion, charity and education, the arts and sciences, even when state property, be treated as private property. This does, however, not apply to private property that, at the outbreak of war, is already situated in an enemy country. As the Fourth Convention and its regulations do not explicitly refer to archives, subsequent interpretation differs.[27] That archives may

be covered by the provisions of the Fourth Convention on Land Warfare is shown *inter alia* by several references to article 56 of The Hague Convention during the First World War.[28]

## The Two World Wars and Their Aftermaths: Displaced Archives and Their Restitution

Despite The Hague Convention, the First World War saw numerous cases of the destruction and capture of cultural property, including archives, from occupied territories.[29] However, the First World War's most noteworthy feature with regard to archives is the return and restitution, in its aftermath, of previously displaced archives to their places of origin through the stipulations of the various peace treaties and archival conventions. Thus, displacements of archives due to both armed conflicts and administrative measures, sometimes reaching back as far as to eighteenth century, were remedied. In the first instance, mention must be made of the treaty of Saint-Germain between the allied powers and Austria, providing *inter alia* for the return of the Bohemian crown archives to Prague and for the return of parts of various Italian archives disputed between Austria and Italy since 1866.[30] Of equal importance was the Treaty of Riga in 1921 between Poland, Russia and Ukraine, by which the Polish archives removed to St. Petersburg were, at least in part, restituted.[31]

Probably the largest mass movement of archives, however, was accomplished during the Second World War for reasons of politics, ideology, military strategy and state intelligence.[32] Large quantities of public and private archives were removed, evacuated and seized – at first by the authorities of the Axis powers, later, when their forces were retreating, by the armies of their allied adversaries. Archives in practically all parts of Europe were afflicted, being, at one time or another, under foreign occupation. Archives in Asia, such as those of China, Indonesia or Japan were also affected. Apart from the wishes of all of the powers involved to secure important intelligence material, additional motives for this mass movement of archives included ideological reasons and research needs with regard to the First World War on the part of the Axis powers and, after 1945, the need for material to prepare the Nuremberg trials.[33] During the seventy years since the Second World War, many of these displaced archives have been returned to their rightful owners, yet the problem is still an issue that is far from being completely settled. Over the last two decades, the disintegration of the Soviet Union and Yugoslavia has presented both archivists and experts of international law with new problems of restitution. To achieve progress towards a solution demands not only the good will of all parties concerned but also a careful study of all the legal, political and professional aspects involved.

German authorities removed or microfilmed archives and records captured in France, Belgium and the Netherlands, on the eastern front, in Yugoslavia and in Fascist Italy. Probably the most extensive plunder and devastation of archives by Nazi authorities took place in Eastern Europe, where various agencies such as the Künsberg brigades from the German Foreign Office, the Military Archives

(*Heeresarchiv*), Rosenberg's Special Command (*Einsatzstab*) and others plundered archives for anti-Bolshevik and anti-Semitic propaganda and for strengthening control over various enemies of the regime.[34] When these captured archives were in turn captured by Allied forces, together with innumerable German records, an extensive process of confiscation and restitution was set into motion.

Restitution started, quite naturally, with the records captured by the armies and authorities of the Third Reich. However, the restitution process was far from comprehensive, the Allied powers restituting archives in the first instance to their respective friendly countries, while the enemy camp had to wait. As for the Western allies, French, Belgian and Dutch records were immediately returned in 1945, Italian records in 1963. An extensive American restitution of archival materials to the Soviet Union took place between 1945 and 1948, comprising archives removed by the Germans from Novgorod, Pskov, Riga and Kiev.[35] On the other hand, pre-revolutionary Russian consular records held in the US National Archives were not returned to Moscow until 1989, parts of the communist party archives of Smolensk not until 2002, as discussed in this volume and elsewhere.[36]

The majority of German records that fell into the hands of western Allied troops remained on German soil, and only those of military and political significance were sent to Great Britain or the United States. Restitution to Germany started as early as 1951 and continued through to 1957. Systematic return by semi-annual shipment, however, was accomplished chiefly during the decade from 1958 to 1968. The legal basis for the restitution of records to Germany from the United States was the proposition for disposal of these records in compliance with the US' Records Disposal Act of 1943. According to a congressional approval of 1953, the records thus authorised for disposal were to be donated to the Federal Republic of Germany or, in the case of materials relating to the occupation of friendly countries by Germany, to the respective friendly countries. Between 1956 and 1968, thirty-five shipments comprising more than 8,000 linear metres of German records were returned. German Foreign Office archives and records of the *Reichskanzlei* of the Third Reich were returned from Great Britain between 1956 and 1958, German naval archives from Great Britain, between 1959 and 1968.[37]

From the German records that fell into the hands of the Red Army, Soviet authorities returned substantial portions to the German Democratic Republic between 1950 and 1960 and again in the late 1980s. In 1990, parts of the Hanseatic city archives of Bremen, Hamburg and Lübeck were restituted to the rightful owners in exchange for the Tallinn City Archives, which were returned to Estonia from the German *Bundesarchiv*.[38] The disintegration of the Soviet Union opened the possibility of negotiations for the restitution of foreign material kept in the Moscow Special Archive.[39] This material, including, as most prominent booty, French intelligence and counter-intelligence records, had been captured by the Germans and subsequently fallen into the hands of Soviet troops. In 1992, restitution agreements were signed with Belgium, France, Liechtenstein and the Netherlands. However, only France had received any of its archives when, in 1994, restitution was halted due to a resolution of the Russian parliament to suspend further action until the preparation of a comprehensive act on the settlement

of all questions relating to cultural property transferred to the Soviet Union during and after World War II. Since then, continued negotiations have led to further restitutions, in particular to France and Austria.[40]

The archives of German occupation forces were not restituted, nor were the repatriated archives of the Allied occupation forces in Germany. The records of the German commander in France (*Militärbefehlshaber Frankreich*) were turned over to France. There are also still some seized German textual and non-textual records in US federal custody. Innumerable seized German documents have been incorporated into American files, most notably in the Nuremberg and other US war crimes trial records and into the records of the US Strategic Bombing Survey, which leaves only the choice between destroying the integrity of the original German or of the later American file. The victorious powers also seized private records from firms and individuals, for the purpose of war crimes prosecutions. Mention may be made of the confiscation of the records of the IG Farben chemical company for having knowingly engaged in building up German military capacity. Similarly, records of the German Patent Office were seized and transported to the United States.[41]

The restitution of archives and records after 1945 has not been confined to Europe and not to issues resulting from the Second World War, either. Claims for restitution came up between France and former colonies (Algeria, Vietnam), between France and India on behalf of the former French possessions, between Britain and its former colonies (e.g. Kenya) or between the Netherlands and Indonesia.[42] Ethiopian cultural property, including state archives looted during the Italian occupation after 1935, was partly returned in execution of the peace treaty with Italy of 1947 and the Italo-Ethiopian Treaty of 1956.[43] Claims to cultural property, looted by the Japanese army after 1937, although without specific reference to archives, have been put forward by China.[44] On the other hand, many of the Japanese records seized during the American occupation were held in the United States until 1956.[45]

After the end of the Second World War, endeavours to prevent the looting of cultural property in the wake of wars gained momentum in the framework of the newly created system of United Nations agencies. Relevant activities with respect to archives have been carried out under the aegis of United Nations Educational, Scientific and Cultural Organization (UNESCO), alone and in co-operation with the International Council on Archives (ICA).[46] Both organisations have set up structures for promoting discussions on and the resolution of issues of displaced archives. The ICA devoted several of its conferences to the topic of displaced archives and disputed archival claims.[47]

An important achievement was the UNESCO-monitored Hague Convention of 1954[48] which gives a precise definition of cultural property that includes archives and tries to maintain a balance between the protection of cultural property in the event of armed conflicts, on one hand, and military necessity on the other.[49] However, it is limited to provisions for the protection of cultural property in times of war, but does not deal with problems of restitution or return. Further progress was achieved by the Second Protocol to The Hague Convention, issued in 1999,[50]

which defines more precisely, and thus restricts, the cases of military necessity that allow acts of hostility against cultural property, and which introduces penal provisions for serious violations of the Convention. Moreover, it led to the creation of an Intergovernmental Committee for the Protection of Cultural Property in the Event of Armed Conflict.[51] Recent developments include principles recommended by two UNESCO experts meetings in Paris on the settlement of disputes concerning cultural heritage displaced during the Second World War,[52] and, in accordance with the recommendations of The International Congress on Archives 2004, the setting up of a displaced archives working group in the framework of ICA.

## Political versus Professional Aspects

Throughout history, the capture and restitution of archives has had political motivations. Securing intelligence material and refuting or supporting war crime charges were ever-present motives for the capture of records; state interests and political friendship, for their restitution. National pride, national interest, mass media campaigns or even, as in the case of the restitution after the Napoleonic wars, the reluctance of custodial institutions to return seized archives[53] may be sometimes a greater obstacle to overcome than the legal questions. Practice does not always obey principle; therefore, regardless of what legal principles and guidelines may exist or may be adopted in the future, most fundamental is a spirit of international cooperation and goodwill between the countries involved that, however, may only exist under adequate political conditions.

The illicit removal of records and archives is not always easy to prove. There may be uncertainty about the legal validity of former agreements or treaties authorising the transfer of documents. Individual looting and subsequent purchase in good faith may be obstacles to legal claims for restitution. This is, above all, true where private documents are concerned. In the course of events, and in particular in the course of military operations, public records may fall into private hands and, by subsequent bona fide purchase, become private property. In countries where private property is protected by the law, the state may not have the legal power to force private owners to return archival documents unless it can be proved that national laws have been violated. National legislation, however, may differ considerably with regard to purchase in good faith, even where the legal acquisition of state property by individuals is concerned. According to the nature and stipulations of national legislation, restitution or return in such cases may be achieved only through consent by the private owners and in return for compensation.

The first necessary step with regard to displaced archives is their identification. Very often displaced archives are kept hidden, only known to a restricted number of persons. To keep the secret, free access and use have to be denied, which makes them, in the literal sense of the word, useless material for anybody other than their holders, and even they must avoid referencing the material. At the beginning of the process of identification, there may only be circumstantial evidence, perhaps

no more than gaps in the archives. The next step must be a precise description of the records involved with reference to the process of their creation as well as to the circumstances of their displacement to permit appropriate claims or to dismiss inappropriate ones.[54] This includes, of course, information about their location at the time when claims are raised. It is equally necessary to know about existing legal agreements with regard to the records in question and about any legal factors that may affect their proprietary status. Not least of all, a thorough knowledge of international legal precedents and of relevant international legislation and discussion (such as United Nation documents) will be needed, as well as knowledge of the literature on the subject.

The preparation of a dossier for claims of restitution and the negotiations for a settlement of such claims are very time-consuming. The time factor also plays an important role insofar as it becomes more difficult to gather information on displaced archives and the possible path of their migration if a long time has passed since their displacement. Also, for this practical reason, it may not seem sensible to raise claims for restitution or return of archival material beyond a certain limit of time. Nobody today would probably think of claiming records captured during the Thirty Years War, quite apart from the fact that those plunders have been sanctioned by the Treaty of Münster. What may also render the task of identification more difficult is the possibility that documents may have become integrated into a foreign file context, for instance, in the case of the Nuremberg trials. Apart from the difficulty of identification, integration in foreign files may raise the question of whether restitution is justified at all, or whether the exchange of quality microform or digital copies and their finding aids would not be an equally satisfactory means of resolving such disputed claims.

## Conclusion

The issue of displaced archives has not been brought under normative acts in international law, perhaps due to the lack of interest by the states involved, or fearing for the effects upon their rights of sovereignty. A preference for bilateral and multilateral agreements between states is discernible. A relatively recent example is the agreement between the successor states of the Soviet Union of 6 July 1992 that, although recognising Russia as successor to the Soviet Union with regard to the archives of its central institutions, retains the right of all participating governments to the return of archival holdings created within their territories and having been taken from within their borders. In any case, the transfer of state property cannot take place in a legitimate way without a special legal agreement.[55]

Restitution or non-restitution may be a controversial issue, but what should be achieved, however, is unrestricted access to displaced archives in the interest of individuals who may be concerned, and for the sake of scholarly research. In the unwanted event of future conflicts involving occupation and/or transfers of territory, it should be made a binding rule that every occupying power that exploits captured archives is obligated to maintain archival and file integrity by

leaving all documents in their existing file context. A possible plan of action may include the compilation of a list of displaced archives and of guidelines for the promotion of bilateral or multilateral agreements to overcome the regrettable lack of agreement on generally accepted and recognised principles for the solution of archival claims. Digital technologies provide possible solutions; we look to the ICA's new expert group for leadership in renewed efforts to resolve outstanding archival claims.[56]

## Notes

1  *Roundtable Endorsements*. SAA, 2013. Cf. also Cox, 2011, pp. 451–481.
2  Kecskeméti, 1976, pp. 311–322, here at p. 313 is speaking of 'le phénomène centralisateur'.
3  Jaroschka, 1979, coll. 41–50; Liess, 2001, pp. 123–154.
4  This aspect is emphasised by Fitschen, 2004, p. 22.
5  This was the case when in 1499 the Swiss gained control over the law-court in the canton of Thurgovia whereas its archives remained in the town of Constance or when, during the war against the count of Tyrol in 1415, they captured the Habsburg family archives at Baden to which they could lay no legitimate claim. Cf. Maurer, 1982, pp. 489–500, here at p. 492ff and p. 499f note 58 and 59.
6  Fitschen, 2004, p. 206, based upon Auer, 1998, pp. 172–178, here at p. 173f.
7  Fitschen, 2004, p. 265f. See now the unpublished thesis by Karabinos, 2015, and his contribution to this volume.
8  For the following European examples of the early modern period cf. Meyer-Landrut, 1953, pp. 45–120, here at pp. 56–58. For Sweden see also Emil Schieche, 1967, pp. 111–133, and Auer, 1992/2, pp. 265–269, here at p. 267.
9  Esch, 1999, pp. 129–147, here at p. 136.
10 Still fundamental are the essays edited by Berque and Chevallier, 1976, and Ghose, 1963. Archives were displaced mainly for reasons of safety or because of the lack of an archive administration as in Morocco; cf. Ayache, 1976, pp. 37–46, here at p. 40f., and El Fasi, 1976, pp. 47–54, here at p. 50f. Examples for archives displaced in the wake of wars, though not for the early modern period, are given by Carrère d'Encausse, 1976, pp. 245–256, here at p. 246 (records of the emirate of Khiva abducted to St. Petersburg and restituted to the Uzbek archives in Taschkent), and at p. 248 (papers of the Tartar leader Ismail Bey Gasprinski abducted to Istanbul). In India parts of the Mughal archives seem to have been included in the material looted by British troops during the mutiny of 1857. Their later destiny is unknown or at least not yet explored, some records are suspected to be kept in the Jaipur State Archives; Ghose, 1963, p. 21 and 29f.
11 Quoted by Toman, 1996, p. 5.
12 Meyer-Landrut, 1953, p. 58.
13 Quoted by Toman, 1996, p. 5 n. 11.
14 Fitschen, 2004, p. 71.
15 The topic was discussed at a conference in Paris on 1st and 2nd July 2013: Annexer la mémoire, centraliser le savoir dans l'Europe napoléonienne. Archives et bibliothèques de l'Europe à Paris; so far no proceedings have been published. For literature on the issue cf. Ritzler, 1963/64, pp. 144–190; Conde Villaverde and Andrés Díaz, 1996, pp. 119–129, here at p. 120; Fitschen, 2004, pp. 74–78; Auer, 2010, pp. 1–13; Potin, 2013, pp. 84–85. Some interesting examples of displacements of smaller Italian archives during the rule of Napoleon are given by Ernst, 2003, p. 275f.
16 Laborde, 1867, p. 188.
17 Fitschen, 2004, p. 69; Bittner, 1936, p. 20*f.

18 Auer, 1990, pp. XVII–XXIX, here at pp. XVII–XXI; cf. also Fitschen, 2004, p. 70 with note 128.

19 Fitschen, ibid., p. 69f with nn. 124 and 130; Maleczek, 2009, pp. 455–478.

20 Fitschen, 2004, pp. 75–78.

21 Quoted by Toman, 1996, p. 5, and by Meyer-Landrut, 1953, p. 59 (original version in French).

22 Meyer-Landrut, ibid., pp. 67–69; Fitschen, 2004, pp. 78–81.

23 Quoted by Meyer-Landrut, 1953, p. 68.

24 Fitschen, 2004, p. 79.

25 Tomán, 1996, p. 7f. Lieber's position is consonant with the American practice as shown by the seizure of archives in Mexico in 1847, and in the Philippines in 1899; cf. Philip Brower, 1963, pp. 191–207, and Montgomery, 2012, pp. 326–370, here at pp. 333f.

26 There exists an abundance of literature on The Hague conferences and their follow-up with respect to cultural property; cf. Fiedler and Turner, 2003, and the select bibliography furnished by Toman, 2009, pp. 846–886. On the Fourth Convention in particular see Laun, 1947; Schindler and Toman (eds.), 2004, pp. 63–98; Die Haager Landkriegsordnung, 2010 (cf. bibliography). The most relevant stipulations are contained in art. 23g, 53 and 56 of the regulations annexed to the Fourth Convention.

27 For the discussion see Fiedler, 1996, pp. 175–183; Toman, 1996, pp. 10–13; Fitschen, 2004, pp. 202–206.

28 Two examples are furnished by Meyer-Landrut, 1953, pp. 61 and 72 note 85, with further reference to additional literature. Cox, 2011, p. 460, draws attention to the head of the State Archives of Antwerp who claimed immunity of his archives from seizure by German authorities with reference to the Hague Convention.

29 Notable examples comprise ministerial archives and archives of the Belgian general staff, seized by the German authorities in Brussels, and restituted due to art. 38 II of the Treaty of Versailles, and captured German records taken into American custody; Meyer-Landrut, 1953, p. 62, and Brower, 1963, p. 206.

30 Fitschen, 2004, pp. 112–120. See also Auer, 2013, pp. 179–193.

31 Czapliński, 1998, pp. 148–153; Grimsted, 2001, p. 86f.; Fitschen, 2004, p. 128f.

32 The passages relating to World War II and its aftermath, and the sub-chapter on politicial versus professional aspects represent a slightly revised and annotated version of Auer, 1998.

33 The mentioned research activities on World War I intended to exonerate Germany and Austria-Hungary from their responsibility for the outbreak of the war. For the role of captured archives during the Nuremberg war tribunal see Taylor,1974, pp. 92–100. Cf. also Meyer-Landrut, 1953, p. 66.

34 Meyer-Landrut, ibid., p. 65; Grimsted, 2001, pp. 198–206, 282–299, 318–329.

35 Meyer-Landrut, 1953, p. 66; Grimsted, 2001, pp. 222–224 and pp. 224–236.

36 Grimsted, ibid., pp. 240–242; Cox, 2011, p. 455.

37 Still fundamental on these issues are Pomrenze, 1974, pp. 5–30, and Wolfe, 1986, pp. 292–302. See also Eckert, 2004; Grimsted, 2001, pp. 243–247, and Fitschen, 2004, pp. 199–205.

38 Grimsted, 2001, pp. 307–309, and Fitschen, 2004, p. 209.

39 On the material kept in the Moscow Special Archive see Browder, 1992, pp. 424–445, Jena and Lenz, 1992, col. 457–467, and Grimsted, 2001, pp. 296–307.

40 Cœuré, 2007; Ermisse and Martinez, 2007, pp. 89–106, here at p. 93f., and Auer, 2011, pp. 51–61, here at p. 53 n. 11.

41 Meyer-Landrut, 1953, p. 207.

42 For archival policies with respect to former colonies see the contribution by Vincent Hirribarren in the present volume, for the disputed archival claims between France and Algeria, see also Ermisse and Martinez, 2007, pp. 90–92.

43 Paper by Richard Pankhurst presented to the Unesco Expert Meeting on the Settlement of Disputes Concerning Cultural Heritage Displaced During the Second World War, Paris, 29–31, May 2000.

44  Paper presented to the UNESCO expert meeting as above. See also Ando, 2003, pp. 14–28.
45  Montgomery, 2012, p. 335, and Cox, 2011, p. 479f.
46  Cf. the surveys by Evans, 1998, pp. 69–78, and Kecskeméti, 1998, pp. 79–85.
47  Warsaw 1961, Cagliari 1977, Thessalonica 1994, Washington 1995; cf. Grimsted, 2001, pp. 88–91, and 104–109.
48  Fundamental for all further research is the comprehensive commentary by Tomán, 1996.
49  For discussion on this issue cf. Tomán, ibid., pp. 74–82.
50  A comprehensive commentary is furnished by Toman, 2009.
51  Cf. art.6, ch. 4 (art. 15–21), and art. 24 of the Second Protocol; Tomán, 2009, pp. 84–120, 245–387, 492–533.
52  Cf. the final reports CLT/2000/CONF/601/3 and CLT/2002/CONF/602/3.
53  Obviously and perhaps understandably, archivists often seem to have problems seeing themselves not as keepers but as dispensers of records.
54  For the need of a thorough description see also Grimsted, 2001, pp. 221–224.
55  Kecskeméti, 1992, pp. 132–140.
56  For a possible future plan of action see also Auer, 1998, pp. 22–24, and Grimsted, 2001, pp. 125–128.

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# 9 Pan-European Displaced Archives in the Russian Federation

## Still Prisoners of War on the 70th Anniversary of V-E Day

*Patricia Kennedy Grimsted*

The Second World War – with the National-Socialist regime and accompanying Holocaust – wrought the greatest archival destruction and dislocation in history. When combined with retaliatory seizures by the Soviet regime, post-war boundary changes and the Cold War split between East and West, the catastrophe of archival displacements was magnified. Western Allied post-war archival seizures from Germany were likewise of historic proportions, but their restitution to West Germany in the 1960s for the most part, with detailed description and filming before return, is now more transparent. The account by Astrid Eckert, *The Struggle for the Files*, or in German *Kampf um die Akten*, provides a helpful overview of the politics involved.[1]

The full story of the archival devastation and displacements on the Eastern Front is much less known, and many key sources in Russia remain suppressed to this day. It was only with the opening of Soviet archives in the late 1980s and the end of the Union of Soviet Socialist Republics (USSR) in December 1991 that the subject could be openly addressed. The volume *Returned from Russia: Nazi Archival Plunder and Recent Restitution Issues* (2007) with its 'Afterword 2013' could only begin to recount the extent to which the archival heritage of many nations was displaced to the Soviet Union in the wake of the Second World War and many components returned to Eastern Europe before its collapse.[2] It was only with the simultaneous emergence of an independent Russian Federation with its own archival administration at the beginning of 1992, that serious negotiations for returns to Western Europe were possible. Having been closely involved with the revelations about the wide range of captured European archives remaining in Russia in October 1991, to be discussed below, I have been following the fate of 'displaced' archives in Russia ever since. (Western archivists would usually use the term 'captured records', but Russians prefer the less accusatory term 'displaced'.)

The present account provides an updated summary, with a few examples to reflect some of the perplexing problems in wartime dispersal and remaining hoped-for restitution.[3] While emphasis here is on the fate of archives centralised in Moscow's Central State Special Archive (*Tsentral'nyi gosudarstvennyi osobyi arkhiv SSSR*, or TsGOA SSSR), it should not be forgotten that the captured archives brought to the USSR were dispersed to archives throughout the country.

For example, while significant collections of socialist and revolutionary records were destined for the Central Archive of the Communist Party, materials of Russian émigré or exile provenance, or archival Rossica, as they are often known, were deposited in secret divisions of other central state archives in Moscow and Leningrad; but neither of those categories, even if clearly of foreign provenance or ownership, were – or are today – considered candidates for possible restitution.[4]

A day after the rest of Europe celebrated the Seventieth Anniversary of V-E Day on the 7 May 2015, Russia celebrated the Seventieth Anniversary of the Soviet Victory over Nazi Germany in the Great Patriotic War, with the largest ever military parade through Red Square. It was as if the Soviet Union had fought and triumphed in a unique and different war. The discrepancy in dates, and the fact that Western leaders shunned the Moscow celebration, were but more symbols of the persisting, and recently intensified, continental divide.

Meanwhile across the city, the remaining 'displaced' archival 'trophies' gathered in the wake of the victorious Soviet march to Berlin, were being transferred to the main building of the Russian State Military Archive (*Rossiiskii gosudarstvennyi voennyi arkhiv* or RGVA). By the end of the summer of 2015, the building on *Vyborgskaia ulitsa*, constructed by German prisoners-of-war for the former Special – or, in Russian, *Osobyi* – Archive (TsGOA) to house the millions of captured foreign archives brought to Moscow, was handed over to the neighbouring Russian State Archive of Literature and Art (RGALI).[5] While the greatest bulk of captured records – or 'trophy' archives – long 'displaced' in that Moscow building have now been returned to their European homes, victory in Europe is still not complete: all too many archival prisoners-of-war from countries throughout the continent remain far from home – many twice captured during the war and its aftermath. Despite Soviet victory seventy years ago and Russian celebration today, they remain a symbol that the war is still not over, even as they are further integrated into the RGVA.

Yet it is important to remember that the Western leaders who understandably shunned the Russian victory celebration in 2015 will still have to contend with a resurgent Russian Federation if they want to see more of their archives, books and other cultural treasures come home. It took presidential-level politics to produce the diplomatic agreement in November 1992 that brought two-thirds of the seven linear kilometers of displaced French 'trophy' archives home before the Russian Duma (parliament) curtailed restitution in May 1994 and sent the French trucks home empty. Chief archivist of the Netherlands, Eric Ketelaar, may have been the first (in March 1992) to sign an agreement for return of the captured Dutch archives, but most of them made their homeward journey only a decade later in 2002 and 2003, when Queen Beatrix drank a toast with Russian President Vladimir Putin in the Kremlin after the final official Government Decree was enacted permitting their return.[6]

Displaced foreign cultural treasures held in Russia have been one of the dramatic revelations since the collapse of the Soviet Union, while Russia's failure to return them to the countries of their provenance, and the lengthy negotiations for those returned, have been one of the thorniest elements in Russia's foreign

relations. Archives constituted a small percentage of the overall Soviet cultural plunder. Unlike art, however, many foreign archives were seized more for potential intelligence utilisation and political control, and hence should hardly be considered 'compensation', 'compensatory restitution' or 'cultural reparations'. For example, early in April 1945, Soviet NKVD security chief, Lavrentii Beria, recommended to Viacheslav Molotov, the Minister for Foreign Affairs, a special mission 'to search thoroughly through all German archives and libraries ... and bring to the Soviet Union materials ... that have scientific-historical and operational significance for our country'.[7] Estimates of the quantity of archives captured by different Soviet agencies are still virtually impossible. Various shipments were measured alternately in freight cars, crates or tons, and many included printed books and art – or in one case, nine freight cars of steel document cases and shelving – along with the records themselves.

After the Khrushchev thaw in the late 1950s, many 'trophy' cultural treasures from East Germany and Eastern Europe were returned to their homelands in the Communist bloc. Simultaneously, as the Soviet Union became active in the International Council on Archives, many millions of files 'saved by the Soviet Army' were restituted to Eastern-bloc countries before 1991. Such returns were positively portrayed as the Soviet role of 'helping other countries reunify their national archival heritage'.[8] As publicly expressed in 1968,

> in strict adherence to international legal norms and respectful of the sovereign law of peoples and their national historical and cultural legacy, the Soviet government transferred to the Democratic Republic of Germany archival materials rescued by the Soviet Army after the defeat of Hitlerite Germany ... more than two million archival files (from the 14th century to 1945).[9]

Although the international legal norms have not essentially changed, the Russian respect for archives as the inalienable 'national historical and cultural legacy' of foreign countries has noticeably dwindled after more became known abroad about the captured records still in Moscow.

As *glasnost* took hold in February 1990, a Russian journalist's 'Five days in the Special Archive' broke the sensational story and publicly revealed the extent of captured German National-Socialist (N-S) period records that remained in that building. She was the first to have mentioned the top-secret Central State Special Archive (TsGOA SSSR) in print a year earlier, when microfilms of the long-suppressed 'death books' from the Auschwitz concentration camp were finally turned over to the International Red Cross.[10] But it was another year and a half before the world knew that there were also captured state and private archives in Moscow from countries all over Europe, including long-lost French military intelligence and national security records, to say nothing of voluminous Masonic files and private papers of prominent Jews. An October 1991 interview with me by a Russian journalist friend, Evgenii Kuz'min, first revealed to the public over seven linear kilometres of French records that had been hidden for half a century.[11] When, a year earlier, I first found a Soviet file about the discovery of

French archives in a German *Reichssicherheitshauptamt* (Reich Security Main Office - RSHA) Amt IV intelligence centre in a remote village in Czechoslovakia and Beria's orders for their transport to Moscow in July 1945, I had no idea what had happened to them, nor did my Russian archival colleagues. I privately queried a prominent French archivist I knew, only to find the French did not know either, or at least were not prepared to reveal their suspicions.

A week after the interview with me was published in Moscow, Anatolii Prokopenko, the director of the top-secret Special Archive confirmed and elaborated on the findings of the 'well-known "archival" spy Grimsted,' in a follow-up interview entitled 'Archive of French spies revealed on Leningrad highway![12] As Western journalists rushed to Moscow, followed by archivists and researchers, word came back: Yes, there were indeed archives also from Belgium, the Netherlands and the Grand Duchy of Liechtenstein. Even the Rothschild family was well represented in the Special Archive. I was not permitted in the archive for another year, by which time Prokopenko was no longer director.

Soon after the story of captured French records became front-page news, the International Council on Archives convened a colloquium in Paris in June 1992. When Russian deputy chief archivist, Vladimir Kozlov, stepped off the plane, the director of the *Archives Nationales* queried his Russian counterpart, 'How soon can we send transport to pick up our archives?'[13] Although Franco-Russian diplomatic agreements were rushed to signature in November 1992, providing for the return of French archives by the end of 1993, the full return of the French archives took another ten years. Indeed today, some important French files still remain in RGVA.[14]

Nevertheless, restitution in the archival world from Russia has fared much better than has been the case with art and library books. While we still know much less about all the 'hidden treasures' in museums, libraries and private collections, we now know much more about the foreign archives brought to the Soviet Union at the end of the war, even if many of the descriptions remain rudimentary. Yet, it was not until 2001 that RGVA and the Russian archival agency, Rosarkhiv, issued an official unannotated list of fonds (record groups) covering most of the foreign holdings in RGVA 'displaced as a result of the Second World War'. Published with German support, that volume lists fonds, usually with names of their creating foreign agencies in the original language. Regrettably, the online version of that 2001 RGVA publication has not been updated to take account of the considerable restitution since 1992.[15] Meanwhile, in March 1999, the former Special Archive, euphemistically re-baptised in 1992 as the Centre for the Preservation of Historico-Documentary Collections (TsKhIDK), was abolished as a separate repository and merged with the RGVA nearby.[16]

When accepted as a member of the Council of Europe in January 1996, the Russian Federation was required to commit itself to the restitution of cultural treasures and specifically archives – among a number of other intents – namely '(§ xiv) to settle rapidly all issues related to the return of property claimed by Council of Europe member states, in particular the archives transferred to Moscow in 1945'.[17] Such promises were never publicised in Russia and were blatantly

overlooked by the Duma. Restitution hardly moved rapidly. Indeed, Russia has not been prepared to hand archives – or any other cultural property – over to their legitimate owners without a complicated claims process involving lengthy state-to-state negotiations, often as long as ten years, for 'compensation' and 'exchange' of Rossica in return, even for those identified as owned by Holocaust or other Nazi victims.

With the collapse of the Iron Curtain and more open Russian contacts with the Western World, reform-minded Russian archival leaders were quick to lament the extent of Russian archival and manuscript heritage that had been alienated abroad. Eager hands went out for lost fragments of the Russian archival legacy, dispersed through exile or emigration of Russian cultural and political leadership, even if created abroad, backed by a Russian law supporting return to the homeland. Already in 1992, while foreign archivists preached the importance of restitution, Rosarkhiv viewed their captured or 'trophy' archives in Moscow as 'capital' for potential exchange for important components of archival Rossica from claimant countries.[18]

Upward of two-thirds of the French archives had gone home by 1994, for which France had paid almost half a million dollars for 'storage charges', microfilming and other fees, along with some significant archival Rossica in 'exchange' from France. At that point, however, France was the only country to have received any of its archives from Moscow since 1991, despite other signed agreements. Then the Duma abruptly put restitution on hold for several years while it debated a law to nationalise all the cultural valuables 'displaced to the Russian Federation as a result of the Second World War'. Nevertheless, there was a sign of progress with the return of the Liechtenstein archives in July 1997, although billed as an 'exchange' for rather costly Rossica the Grand Duchy was required to purchase. And then, despite the restitution stalemate, the Duma agreed to permit the return of the twice-captured records of British expeditionary forces, copies of which had been turned over to British authorities earlier.[19]

It took ten years from the revelations about displaced cultural treasures for the Russian Federation to develop a legal basis and procedures for processing restitution claims. After three years' debate, the Duma almost unanimously passed a law that President Boris Yeltsin (earlier vetoed) was obliged to sign in 1998 that essentially nationalised the cultural and archival booty 'displaced' to the Soviet Union at the end of the Second World War. With its May 2000 amendments that President Vladimir Putin signed, the law prohibits restitution of any cultural treasures (with no distinction for archives) to Germany and its wartime allies (including Austria and Hungary).[20] The provisions for restitution to 'victims of the Nazi regime and those who fought against it' – although the term was rather 'exchange' – are carefully limited as noted above, involving 'exchange' and usually high financial charges by the Russian side, including storage, appraisal, microfilming and processing fees. Subsequent directives provided for implementation with required approval of each instance through an Interagency Council on Restitution, along with various elaborate supplemental governmental regulatory acts along the way. In Russian law, the return of archives was never singled out differently than other cultural valuables.

While the restitution of art and library books has faltered, between 1993 and 2009 archives have been returned to seven countries – France, Belgium, the Netherlands, Luxembourg, Lichtenstein, Austria and Great Britain, as well as the Rothschild family archives from Austria to The Rothschild Archive in London (the only return – *qua* 'exchange' – to a private family).[21] All were carried out under the terms of the 1998/2000 law, even if several took place before the law was signed. The archival returns to France, Belgium, the Netherlands, Luxembourg, along with the Rothschild family are all described by archivists responsible for the negotiations in the book, *Returned from Russia*, first published in 2007.[22]

## The Austrian Case

Because Austria had been part of the German Reich, restitution of the extensive Austrian component from the Special Archive was more complicated, even requiring a new Duma law, and has yet to be completed. Most of the over 100 Austrian fonds were identified in an annotated guide in 1996, compiled by Austrian specialists Gerhard Jagschitz and Stefan Karner.[23] The first major restitution to Austria in 2009 transferred 51 fonds with 10,770 files, comprising approximately 80 per cent of the Austrian archives in Moscow. Austria paid 'compensation' of €400,000, according to an Austrian press account, calculated according to the 1998 law, for storage fees, microfilming and related charges.[24] Yet, even with the 2013 updated paper edition of *Returned from Russia*, we could not include a chapter on Austria, because at least thirty-two more archival fonds of Austrian provenance, most of them Jewish, were still being prepared for transfer, first planned for the end of 2010, but still pending in 2016.[25]

One matter complicating restitution negotiations with Austria is that some of the Hebrew manuscripts from the Jewish Community in Vienna – *Israëlitische Kultusgemeinde* (IKJ – fond 707k) and other Jewish sources that arrived in Moscow from Silesia in 1945 – were transferred in the late 1940s from the Special Archive to the Lenin Library, now the Russian State Library (RGB). Obviously, those should go home with the rest of the IKG legacy. In a few cases, contingent parts of the same manuscript can be found in the RGB and the RGVA, as is apparent in an illustrated catalogue published in Moscow in 2005, sponsored by the Commission on Art Recovery (New York) in the 'Heritage Revealed' series.[26] Those manuscripts were not catalogued in the RGB until recently, and some were allegedly stolen and sold off to under-the-table dealers. A part of one fifteenth-century Hebrew manuscript that emerged from Israel on auction in New York was confiscated by US Customs and returned to Vienna in 2003 – the first IKG manuscript to be returned since the war.[27] Austrian Jewish archivists who visited Moscow were permitted to examine and verify the Austrian Jewish manuscripts still in the RGB, but it remains unclear if they all will be included in the next transfer to Austria. When I recently queried the RGVA directors about the possible cause for delay, I was told that Austrian Jewish specialists had not come for long enough to identify adequately all the Jewish files of Austrian provenance to be claimed for return.

## Greece: Jewish Community and Related Records

One of the most vocal in a series of ICA efforts to promote archival restitution in the wake of the Moscow revelations was the 1994 Conference of the International Round Table on Archives (CITRA) in Thessalonica, devoted thematically to divided and displaced archives. The concluding resolution of that conference, passed almost unanimously by the heads of the world's national archives, declared that archives should not be used as 'trophies' or 'objects of exchange'.[28] Having been invited by the ICA as a guest specialist, I was sitting near the Russian delegates and happened to notice they were among only three countries to abstain from the vote. Nonetheless, since the ICA 1994 resolution, I have noticed professional archivists in Russia usually seem to avoid the term 'trophies', despite its regular use in the media!

Not mentioned during the CITRA proceedings were the dispersed records of the Thessalonica Sephardic Jewish Community, almost 95 per cent of whom perished in the Holocaust. Neither I, nor probably any of the world archival leaders assembled, were aware at the time that 297 files from the Thessalonica Jewish Community were in Moscow, where they remain today. Some of them even contain community registration photographs of many individuals who perished in the Holocaust. And there is a small fond of records from the Jewish Community in Athens, and a few other fragmentary Greek fonds as well from the former Special Archive.[29] I first learned about them after I received a telephone inquiry from Greece, and then they were mentioned as an example at the Washington Conference on Holocaust-Era Assets in 1998.

The current dispersal of the Jewish community archives from Thessalonica is an unusually complicated case, but a blatant example of the wartime archival catastrophe. The 297 files in Moscow comprise but one of several widely displaced portions. A large shipment from Thessalonica of the initial batch of books and archival materials, seized by the Einsatzstab Reichsleiter Rosenberg (ERR) in 1941, went to the NSDAP Institute for Research on the Jewish Question (IEJ) in Frankfurt. Some of those found after the war were brought to the US Army run Offenbach Archival Depot (OAD) outside Frankfurt and returned to Greece in 1946, together with fragmentary files from other Greek Jewish communities.[30] When the decimated Jewish communities in Greece were not prepared to provide for their appropriate archival care in the immediate post-war period, they were sent on deposit to the Central Archives for the History of the Jewish People (CAHJP) in Jerusalem. Today they constitute a special Greek Collection, with 462 files from the Thessalonica Community Archives.[31]

Another segment of Thessalonica Jewish Community archives, apparently found after the war in Berlin, were transferred to the Institute for Jewish Research in New York City (YIVO). Recently, YIVO has digitised those original Thessalonica files and generously transferred digital copies at no cost to the community in Thessalonica.[32] When I recently inquired of one of the RGVA directors about the delay in the return of Greek files, he retorted that the United States had yet to return the original Thessalonica files to Greece. I told him I was not

aware of any formal claim from Greece to YIVO in New York, and that the US government could not require a private institution, such as YIVO, to turn over archives they held that I believed were legitimately acquired after the war.

In the meantime, RGVA had already sold the right to film copies of the Greek files to a project at Tel Aviv University, as well as complete microfilm copies to the US Holocaust Museum (USHMM) in Washington, DC. English-language finding aids have been prepared by Devin Naar for the copies from Moscow in Washington, as well the other original segments in New York and Jerusalem, in connection with his doctoral dissertation.[33] Reportedly, RGVA subsequently proposed charging the Greek Government for another set of microfilms to be retained in Moscow (where no one can read the Ladino in Sephardic script, in which many of the documents are written), before letting the originals return home. Negotiations have continued but the formal Greek claim, submitted in 2008, was countered with a Russian demand for the Greek government to return some pre-revolutionary Russian consular records discovered in Greece.

In the meantime, indicative of the complexity of dispersal, Dutch archivists found a few additional fragmentary Jewish files from Thessalonica intermixed with Dutch Jewish files returned to the Netherlands from Berlin in the 1970s, and a few more among the fond from RGVA devoted to Jewish organisations in the Netherlands, returned from Moscow in 2003. In August 2008, Dutch archivists personally delivered the originals of those files to the Jewish Community in Thessalonica – the first received from the twice-plundered Moscow-held Greek archives to return home.

Why should it take over twenty years to negotiate the return of the files from the Greek Jewish Community of Thessalonica, of which 95 percent of its consistency were deported and murdered by the Nazis during the Second World War, after its library and archives were seized by a special commando of the Einsatzstab Reichsleiter Rosenberg? When I posed the question to the head of the Greek Foreign Ministry Archives in Athens in June 2014, she assured me that the Greek archives would be home from Moscow by the end of the year. She and her colleagues had been negotiating for their return since the mid-1990s. Presumably, however, the return of the displaced Greek archives were not a high agenda priority during more recent meetings between Greek Prime Minister Alexis Tsipras and Russian President Vladimir Putin.

## Masonic Files Still Unidentified in RGVA

Another blatant example of the complex dispersal of files from Austria and Greece, and even remaining files from France, is the largest collection of Masonic archives ever assembled, large parts of which remain in Moscow today. Masonic archives from all over the European continent were brought together during the Second World War by the Seventh Office (Amt VII) of the RSHA. First collected in the buildings of the two largest Masonic lodges in Berlin that were taken over as Gestapo headquarters, the collection was evacuated to Silesia in 1943. A Masonic research centre occupied one of Himmler's favourite castles on the

Schlesiersee (post-war Polish Sława) until January 1945. Most of the Masonic archival collections, however, together with some portraits and regalia, ended the war in a former brewery in the RSHA archival evacuation site in the village of Wölfelsdorf (post-war Polish Wilkanów) further southeast, and were all brought to Moscow on Beria's order in the autumn of 1945.

Those Wölfelsdorf collections also included some of the Masonic archives that had been among the first ERR seizures from France and Belgium that the ERR were subsequently required to transfer to the RSHA. The ERR, however, retained some of its Masonic archives until the end of the war, many of which they had evacuated with their research collections to Ratibor (post-war Polish Racibórz), including Masonic files from Paris and Bordeaux. Most of those were captured a second time at the end of the war by Soviet trophy scouts: part went in a major shipment of 54 freight train cars of books and archives to the Belarus capital of Minsk, while others went together with the large group of ERR archives to the Ukrainian capital of Kyiv. Those foreign Masonic files were ordered to Moscow in the early 1950s, but somehow contingent fragments remained in Minsk and surfaced only recently, as reported by a Belarus historian in Paris in 2015.[34] As an example of further post-war dispersal, another small segment of French Masonic files found in Silesia by the Poles after the war were presented by the head of the Polish archives to his French counterpart in 1960 and are now held in the French National Archives in Pierrefitte-sur-Seine.[35]

Many German Masonic files were returned from Moscow to the German Democratic Republic towards the end of the Soviet period, and many Masonic fonds devoted to files from specific lodges in the former Special Archive have been returned to France, Belgium, the Netherlands and Luxembourg since 1991.[36] Of particular concern in Moscow today is the voluminous pan-European Masonic collection (RGVA, fond 1412k). Even following the transfer to the Netherlands in 2003 of 290 Dutch Masonic files identified from that fond by Dutch Masonic archivist Evert Kwaadgras, the collection still contains 14,291 files from all over Europe, including many from Germany.[37] Two Austrian Masonic scholars, Helmut Reinalter and Helmut Keiler, were responsible for the publication of a German translation of the six-volume Russian-language finding aids (*opisi*) for that collection in 2002. Regrettably, however, the files themselves were not examined in connection with that publication, and hence the many incorrect file descriptions (and provenance attributions) found in the Soviet-period finding aid are unfortunately perpetrated in the German edition.[38]

Significantly affecting delay in the Austrian archival return, RGVA archivists report that no Austrian Masonic specialist has come to examine and submit their official list of files to be claimed, some from fonds for specific lodges and others within that collection (fond 1412k). Jagschitz and Karner reported some 4,660 files from 45 Austrian Masonic lodges in 1996, but they were unable to complete the descriptive task and suggest further verification is needed of many more.[39] Thus far, the 290 Masonic files returned to the Netherlands are the only files to have been withdrawn from the massive pan-European collection, but there are still more files of Dutch provenance left behind.[40]

During the past five years, Norwegian Masonic historian and archivist, Helge Horrisland, has diligently combed fond 1412k for files of Norwegian provenance, in the course of long hours on many expensive, and often frustrating, trips to Moscow. He uncovered 'close to 5,000 Norwegian files', seized from Oslo in 1941 and 1942. In late 2011, according to Rosarkhiv procedures, the Norwegian Foreign Ministry filed a provisional list to be claimed. When I visited his lodge in Oslo in the summer of 2013, Horrisland assured me that I would be invited again when the Norwegian files returned home (then expected by 2014). I have yet to receive an invitation to Oslo because, in the meantime, RGVA archivists questioned 151 files on Horrisland's list, for which he since prepared lengthy counter explanations. The controversy was apparently resolved by autumn 2015, and a formal diplomatic claim was submitted in early 2016, with hopes for the long-awaited transfer soon.

A conference on 'anti-Masonry' brought Horrisland and me together in October 2010 in the Canonbury Masonic Centre in Islington, North London, where, following my keynote lecture and Horrisland's illustrated presentation on the fate of Masonic archives during the war, we also spread the word about the Moscow collection to Masonic specialists from several other European countries. Horrisland has since identified some '50 Greek files, some quite bulky' in the collection at the request of a Greek Masonic brother who took part in that conference and learned for the first time that there were Greek Masonic files in Moscow. To be sure, a Greek Masonic specialist should identify those, so they can be included in the still unfulfilled Greek archival claim. In addition, Horrisland 'found scattered material from former Yugoslavia, Czechoslovakia and Hungary, and as well as many files from lodges in Germany and Austria'. He also noted 'several hundred files registered in the finding aid from Denmark and Sweden, but that is a registration error,' he claims. 'Neither of these countries were robbed of their Masonic archives.... They remain intact both in Copenhagen and Stockholm. As far as I can see those files are mostly German archivalia that have been wrongly identified' in the Soviet finding aids.[41] Even given restrictions on restitution under the 1998/2000 Russian Cultural Property Law, all of those files captured by the Nazi regime from declared Masonic 'enemies of the Reich', should be eligible for return to their homelands.

## Remaining Archival Prisoners-of-War

'How many "trophy" files from how many European countries were part of the recent transport from the original Special Archive building to the main RGVA building?' I queried RGVA deputy director, Vladimir Korotaev, who has long been in charge of the foreign captured records from the former Special Archive. 'The number has not changed for several years', he explained. Thus presumably RGVA still holds 593 fonds of captured records, with more than 234,000 file units, dating from the fifteenth century to 1945, as recorded earlier in the ArcheoBiblioBase description.[42] That figure is down from the estimated four and a half million files of captured records when the Special Archive first

emerged from its top-secret wraps and opened to researchers in June 1992 as the TsKhIDK.

Archival materials of provenance in Germany and Poland are the most voluminous national components remaining today in RGVA. Return to Germany is forbidden by Russian law, although that law contradicts the *Soviet-German Treaty on Good Neighbourliness, Partnership and Cooperation* signed in 1990, the additional Agreement between Rosarkhiv and the Bundesarchiv signed in July 1992, and the Russian-German Cultural Agreement of 1993, all clearly providing for restitution to Germany. German and Russian archivists are not optimistic about a change of Russian government policy, given the vehemence of anti-restitution sentiment in Russian political circles and in the public at large. Photocopies have been handed over for some of the Nazi concentration-camp records remaining in Russia, such as those from Sachsenhausen and Auschwitz (now in Poland), but the originals – even including Auschwitz card files and death books – remain in RGVA. Details are still not openly available about additional files from German concentration camps that are held by the Federal Security Service (FSB; successor of the KGB), which are known to contain more Sachsenhausen and Trawniki files among others.

Despite Russian recalcitrance for repatriation of German archives from the N-S period, a positive cooperative step between German and Russian archivists is exemplified in the joint project for microfilming and database description of the records of the Soviet Military Administration in Germany (SVAG/SMAD). Despite the announced 'success' of that project, some vital files from the SVAG/SMAD remain classified in Moscow. Legally, those are Russian agency records, although considered of 'joint heritage', as opposed to captured records of German agency provenance.[43] For example, of crucial importance for other countries as well as for Germany, still-classified SVAG files contain scattered documentation about many Soviet-seized cultural valuables, including archives that were transported to the Soviet Union under SVAG auspices – to say nothing of major reparation shipments.

Even more essential for tracing Russian wartime cultural losses and post-war retrieval, the SVAG records also contain a crucial series of files documenting Western Allied restitution to the Soviet Union from Germany. Regrettably, many of the most important relevant files are now reclassified – albeit also displaced – in the Russian State Archive of the Economy (RGAE). Recently, a large group of long-lost files from the SVAG Administration for Reparations and Deliveries (*Upravlenie reparatsii i postavok SVAG*), and its subdivision for Restitution were identified among records of the Soviet Ministry of Foreign Trade in the Russian State Archive of the Economy (RGAE, fond 413, *opis'* 16), finally declassified after 2006.[44] Since my discovery and identification of those documents in the summer of 2009, however, the entire series has been reprocessed in RGAE, and almost all of the RVAG documents relating to the restitution and retrieval of cultural valuables have been withdrawn from the separate 'collection' that now replaces the earlier *opis'* 16 within that fond; currently reclassified, they are again closed for public research.[45] Given recent Ministry of Culture regulations

against communication of documents relating to post-war restitution and retrieval of cultural property, RGAE has not publicly acknowledged their SVAG provenance. Nor have they been willing to transfer those files to the neighbouring State Archive of the Russian Federation (GA RF) so they could be united with the other records of the same SVAG Administration for Reparations and Deliveries.[46]

The most complete list of fonds for what Soviet archivists referred to as the 'German Division' of the Special Archive is now found – not on the RGVA website where researchers would expect it – but rather on the unofficial German website 'Sonderarchiv' maintained by Sebastian Panwitz in Berlin (which also includes Austrian records). Some of those listings conveniently render German versions of the original Soviet finding aids.[47] Problems still arise for researchers, however, because many of the files in Moscow are not optimally arranged or accurately described in sufficient detail. Most crucial for research, they need to be correlated and integrated with other segments of the same record groups now held in Germany or elsewhere.

The extensive German N-S period wartime records held in Moscow deserve particular attention in this connection, because many are essential for research on various topics relating to the Nazi period, and specifically for our focus on research about Nazi-era displaced cultural assets. In contrast to Soviet authorities, it should be remembered, in the 1960s, the British and Americans returned almost all the German (including N-S period) records they had captured to West Germany, many of which came from the same German agency record groups captured by the Red Army in 1945 and 1946 that still remain in Moscow.[48] For example, records of the *Reichssicherheitshauptamt* (RSHA, including SD and Gestapo), the *Reichsarchiv*, the *Heeresarchiv* (Military Archives), and the ERR all belong to contingent files in corresponding record groups in the Bundesarchiv. Those were all prominent German agencies of archival plunder, and hence their continuing location in Moscow seriously impedes and complicates research.[49] The much larger component of ERR files in Kyiv (captured by Ukrainian authorities at the end of the war) have been available online since 2011, with improvements in their description still pending.[50] For example, French military archivists have recently been trying to analyse German 'utilisation' of the Russian-captured French military records returned to France, but their findings will remain incomplete without careful study of the German-prepared wartime inventories of those French records and related documents that still remain with the *Heeresarchiv* fonds in Moscow.[51]

Even under the restrictive 1998 Russian law on cultural property that forbids cultural returns to Germany, the return of private German Jewish archives and some others that were clearly 'enemies of the N-S regime' should nonetheless be legally possible. These should include the personal papers of prominent German cultural leaders who fled to France and were stripped of their German citizenship. Despite the initiative of archivists from the Bundesarchiv together with Jewish archival specialists from Berlin in identifying the displaced German Jewish files remaining in the RGVA in the past decade, the German government has not pressed a claim for those important Jewish documents. In part, the German government does not want to recognise the 1998 law that goes against the Soviet-German and

Russian-German treaties and agreements. Besides, priority German concern with a much higher stake rests with the unsuccessful negotiations for the return of art masterpieces of German provenance and other German cultural treasures seized at the end of the war, many of which remain still unidentified and inaccessible in the Russian Federation.

## 'Why Haven't the Polish Archives Come Home?'

Return of all of the Polish records displaced as a result of the Second World War in the RGVA, by contrast, should be much more legitimate under terms of the same Russian law. Already in April 1992, Poland was among the first to sign an Agreement on Archival Cooperation with the Russian State Archival Committee (*Roskomarkhiv*, now *Rosarkhiv*), which provided for 'return of documents to their legal owners ... on the basis of appropriate agreements'; it is still listed today on the Rosarkhiv official website among active Russian archival agreements with foreign countries and quoted in an official 2010 Russian publication.[52]

So then 'Why Haven't Polish Archives Come Home?'[53] The Polish case, alas, is much more complicated. Poland was clearly part of the Communist bloc before 1989 and should have benefited from the internationalist archival restitution policies in which Soviet authorities indulged, as publicly explained in Soviet archival and historical journals.

A more detailed Polish account of Soviet revindication of archives through 1964 appeared in 1982.[54] Recently, Rosarkhiv chief, Vladimir Kozlov, estimated that in the years 1956–1958, 1961, 1963 and 1967, Soviet archival authorities transferred no less than 100 fonds and about 300,000 files to Poland.[55] The Polish Archival Directorate (NDAP) Director-General Władysław Stępniak suggested a smaller number, and noted many of the Soviet-period transfers were incomplete, 'sterilized' fonds. Portions of the same fonds not returned were kept in secret until the collapse of the Soviet Union, but are now publicly described in some detail.[56]

As telling examples of a lack of humanitarian concern, it was 1989 before Russia gave copies of prisoner-of-war and concentration camp files from Poland to the Red Cross. Indeed, the original Auschwitz construction records remain in Moscow, although Poland did receive limited, selected microfilms for the Auschwitz–Birkenau Museum.[57] Only after the collapse of the Soviet Union did Poland finally receive the death books (1941–1943) from Auschwitz, which were also captured when the Red Army liberated the concentration camp in 1945.[58]

While the Russian 2001 list of fonds in the RGVA provides no annotations, in the case of Poland, ninety Polish fonds in the RGVA are much better described in a book-length Polish-language guide published in 2000 in Warsaw by the NDAP, prepared in bilateral archival collaboration.[59] Most of those records were captured by Soviet authorities rather than the Germans, yet all of those listed in the RGVA should be subject to return under the 1998/2000 Russian law. However, the Russians are raising rather curious difficulties for some of the materials. For example, they are arguing that the seventy-nine remaining files from the records of the Senate of the Free City of Danzig (*Senat der Freien Stadt Danzig* – fond 1353k)

should not be returned to Poland because Danzig (now Polish Gdańsk) was not part of Poland before 1945. Given their provenance, however, on what grounds should they remain in Russia? In fact, other portions of the same group of records were returned to Poland during the Soviet period and are now held in the State Archive in Gdańsk, which obviously would be a more appropriate archival home for the remaining files of the Danzig Senate than in the RGVA in Moscow.

The Polish-published 2000 guide to records in Moscow, also describes the voluminous 103 fonds of Polish provenance now held in the GA RF. Polish archivists, understandably, also insist in claiming those records from the post-partitions period of Russian imperial rule created on Polish territories before 1918, which should have been returned under earlier treaties and bilateral archival agreements. That issue complicates the matter, because those records, most of which were evacuated east during the First World War, are not covered by the 1998 law. As the Polish guide carefully demonstrates, however, other parts of the same record groups returned earlier from the Soviet Union are held in the Archive of Contemporary Records (*Archiwum Akt Nowykh* – AAN) and local archives in Poland.[60]

Given the seriousness of the dispersed Polish archival heritage, particularly as a result of the partitions and many subsequent boundary changes, Poland was singled out by the ICA and the European Union (EU) during the 1990s for a much more comprehensive pilot project for 'The Reconstitution of the Memory of Poland', an extensive database inventory of archival documents for the history of Poland in European countries, covering the period starting with the Polish partitions at the end of the eighteenth century.[61] Now based at the University of Warsaw with NDAP and EU sponsorship, the database continues to expand, in an effort to overcome wartime destruction and dispersal of archives over the centuries.

From the even earlier pre-partition period, the record books of the Lithuanian and Crown Metrica, clearly of provenance first in Vilnius and then in Kraków, still remain in the Russian State Archive of Early Acts (RGADA) in Moscow. Most of those records were captured by order of Catherine the Great, following the Third Partition of Poland in 1795, and slated for transfer to Poland according to the 1921 Treaty of Riga. Although finally open to researchers from all countries since 1992, Russians still consider them off-limits for restitution to the country of provenance. Nevertheless, they should be considered of 'joint-archival heritage' for Poland, Lithuania, Belarus and Ukraine, even while Russia claims predominant interest because many of the lands covered became part of the Russian Empire.[62]

Such examples of 'joint heritage' contrast to the many important groups of records for which there could well be legitimate claims from other independent nations that were part of the Russian and/or Soviet Empires. Currently, such claims prove next to impossible to realise, however, faced with the Russian unilateral position, as formulated in 1992, of non-devolution of centrally created records of imperial rule to any of the former Soviet republics, and even separate fonds totally of territorial provenance within the former republics. Signatures were required by members of what was then considered the Commonwealth of Independent States.

My 2001 monograph, entitled *Trophies of War and Empire: The Archival Heritage of Ukraine, World War II, and the International Politics of Restitution*, discusses relevant international law and usage relating to archives, with abundant examples of the now 'displaced' Ukrainian archival legacy. An initial chapter discusses the minimal Russian sensitivity to the archival pretentions of former Soviet republics.[63] Unfortunately, Poland also must contend with such Russian archival policies for successor states of the Russian Empire, given the fact that large parts of Poland were for centuries part of that empire. The Polish insistence on 'territorial provenance', and often even 'territorial pertinence', has in many cases been ruled out, which means that archival restitution claims from Poland for pre-1918 records will remain much more difficult than claims from Western Europe for records acquired during and since the end of the Second World War in the former Special Archive that have successfully *Returned from Russia*. Today, however, when even Polish apples are among the Russian retaliatory sanctions on imports, the prospects for speedy archival restitution do not look bright.

## Conclusion

The archives of foreign provenance brought to Russia, along with the voluminous other cultural 'spoils of war', represent symbols of the victory that Russians celebrate in what many still call the Great Patriotic War of the Fatherland. Many Russians overlook the fact that the 'trophy' archives – hidden away for fifty years – are in reality the official records of other European countries – many of them Soviet wartime allies – who also fought in the same war against the Nazi regime and who also suffered severe wartime losses and destruction. In many cases, they represent the memory of individuals and institutions that were clearly victims of the Nazi regime and the Holocaust, to say nothing of 'their national historical and cultural legacy', as Soviet archivists publicly acknowledged.

Too many Russian politicians, government officials, as well as the population at large, remain convinced that they got back all too little of what was plundered by the invader, and that whatever foreign-owned cultural treasures still remain in Russia are inadequate 'compensation' for their country's cultural losses, to say nothing of their lost loved ones. Soviet, and more recently Russian Government rhetoric and archival restrictions reinforce such attitudes. Sources open abroad today clearly demonstrate the extent of restitution to the Soviet Union by the Western Allies, and especially the United States.[64] Other sources demonstrate the extent of Soviet retrieval of cultural property seized by the German invaders from the Russian Federation and other Soviet republics – although unlike private property in the West, most of the major German seizures were from state institutions.

The Russian regime today apparently wants to preserve the belief that 'nothing was returned' by classifying sources that would tell otherwise. Indeed, today in Russia many of the archival sources and publications that tell a more complete story are not easily available, and such information has not reached the body politic. The recent increased 'reclassification' of relevant Russian sources, such as the SVAG reparations and restitution files, impedes the needed research that could result in a more

balanced account and contradict the 'nothing was returned' arguments of Russian nationalist politicians. Meanwhile restitution remains an almost taboo principle in the Russian Federation, particularly if it refers to the potential Russian return of cultural property 'displaced as a result of the Second World War' to victims abroad. Yet how can files from another country's archival heritage 'compensate' the Russian nation, and who in Russia can read the Ladino documents of the Thessalonica Jewish Community, most of whom were exterminated in the Holocaust?

## Notes

 1 Eckert, 2012.
 2 Grimsted, Hoogewoud and Ketelaar, 2007; paper edition 2013, with 'Afterword–2013' by Grimsted.
 3 The present chapter draws heavily on my earlier related publications, including Grimsted, 1997, pp. 27–74; http://www.jstor.org/stable/20081612; earlier versions appeared in *Janus* (1996) and *IISG Research Paper, no*. 18. See 'Displaced Cultural Treasures as a Result of World War II and Restitution Issues: A bibliography of publications by Patricia Kennedy Grimsted'; http://socialhistory.org/en/russia-archives-and-restitution/bibliography, with digital texts of many, including some listed below.
 4 See summary details in *Returned from Russia*, pp. 94–98. Regarding the Russian non-return of Rossica, see Grimsted, 2004, pp. 107–39; serial edition as *Slavic & East European Information Resources* 4, no. 4, 2003, pp. 107–39.
 5 See more details and pictures of the Special Archive building in *Returned from Russia*, p. 91 and p. 113.
 6 See Ketelaar, in *Returned from Russia*, pp. 241–49, and the picture of Queen Beatrix and President Putin, facing page 241.
 7 Beria to Molotov, 6 April 1945, and Kruglov to Beria, 5 April 1945, State Archive of the Russian Federation (GA RF). 5325/10/2025, fols 4–5.
 8 See, for example, Baskakov and Shablovski, 1958, pp. 175–79; Tikhvinskii, 1979, pp. 11–16.
 9 Kapran, 1968, p. 33.
10 Maksimova, 1990, based on an interview with TsGOA director Anatolii Prokopenko. A notice by Maksimova, 'Arkhivnyi detektiv', *Izvestiia*, no. 177, 24 June 1989, was the first mention of the Special Archive in print in connection with the transfer of microfilms of Auschwitz records to the Red Cross.
11 Kuz'min, 1991, p. 13; publication of that interview was delayed for almost a year and was permitted in print only after August 1991.
12 See the interview with TsGOA director, Anatolii Prokopenko, in Maksimova, 1991.
13 As recounted to me by Kozlov. Among many newspaper accounts in Paris about the French archives, see, for example, Thierry Wolton, 1991.
14 Regarding the seizure and return of the French archives, see especially Coeuré, 2007 and second paper edition, 2013. See also the French chapter with appended lists of fonds returned and some that remain in Moscow, together with additional bibliography in *Returned from Russia*.
15 *Ukazatel' fondov inostrannogo proiskhozhdeniia i Glavnogo upravleniia po delam voennoplennykh i internirovannykh NKVD-MVD SSSR Rossiiskogo gosudarstvennogo voennogo arkhiva*, comp. T.A. Vasil'eva, et al; V.P. Kozlov and V.N. Kuzelenkov, eds, Moscow: Rosarkhiv, RGVA, 2001; http://guides.rusarchives.ru/browse/GuidebookCard.html?id=123. Regarding published descriptions of holdings from the former Special Archive, see *Returned from Russia*, Chapter 5, especially pp. 106–112, and the bibliography, pp. 311–328. Typescript file-level *opisi* are available for all fonds

in RGVA, including those already returned to their home countries. Fonds returned to western European countries are listed with current locations and finding aids in *Returned from Russia*, Chapters 6–10.

16  See Rossiiskii gosudarstvennyi voennyi arkhiv/Russian State Military Archive (RGVA), in ArcheoBiblioBase, B-8: http://www.iisg.nl/abb/rep/B-8.tab1.php?b=B.php%23B-8. Since the merger, fond numbers the former TsGOA/TsKhIDK now have the added letter 'k'.

17  Council of Europe Parliamentary Assembly, Opinion No. 193 (1996): 'On Russia's request for membership of the Council of Europe', 25 January 1996, when Russia was admitted to membership on its basis. Another paragraph in the admission document signed by Russia committed it 'xi. to negotiate claims for the return of cultural property to other European countries on an ad hoc basis that differentiates between types of property (archives, works of art, buildings etc.) and of ownership (public, private or institutional)'. At: http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=13932&lang=en.

18  See the Russian version of my report on the Russian retrieval of archival Rossica, P.K. Grimsted, 'Tsel' vyiavleniia zarubezhnoi arkhivnoi Rossiki: politika ili kul'tura?', in *Zarubezhnaia arkhivnaia Rossika: Itogi i perspektivy vyiavleniia i vozvrashcheniia. Materialy Mezhdunarodnoi nauchno-prakticheskoi konferentsii, 16–17 noiabria 2000 g., Moskva*, ed. Vladimir P. Kozlov (Moscow, 2001; Rosarkhiv, Rossiiskoe obshchestvo istorikov-arkhivistov); an expanded English version was published as '*Archival Rossica/Sovietica Abroad—Provenance or Pertinence, Bibliographic and Descriptive Needs*', *Cahiers du Monde Russe et Sovietique* 34, no. 3 (1993), pp. 431–80.

19  See more details in Grimsted, '"Trophy" Archives and Non-Restitution: Russia's Cultural "Cold War" with the European Community', *Problems of Post Communism*, 45, no. 3 (May/June 1998), pp. 3–16, with a cover picture of Prince Hans-Adam of Lichtenstein at the opening the Moscow exhibit following the 'exchange'.

20  *Federal Law on Cultural Valuables Displaced to the USSR as a Result of the Second World War and Located on the Territory of the Russian Federation*, No. 64-FZ of 15 April 1998 (with amendments), trans. Konstantin Akinsha and Patricia Kennedy Grimsted, in *Spoils of War v. Cultural Heritage: The Russian Cultural Property Law in Historical* Context, published as *International Journal of Cultural Property*, 17, no. 2 (2010), pp. 413–26. See also Grimsted, 'Legalizing "Compensation" and the Spoils of War: The Russian Law on Displaced Cultural Valuables and the Manipulation of Historical Memory', pp. 217–56: http://journals.cambridge.org/download.php?file=%2FJCP%2FJCP17_02%2FS094073911000010Xa.pdf&code=0c75497dded19b105eecd461067b11c3.

21  See Grimsted, 2010, pp. 291–334.

22  See *Returned from Russia* (2013), above note 2. See more details on the French return by Maure, 2012, pp. 327–338; from the same conference, see also Le Clech and Richard, 2012, pp. 339–355; and Mazet, 2012, especially pp. 364–369.

23  Jagschitz and Karner, '*Beuteakten aus Österreich': Der Österreichbestand im russischen 'Sonderarchiv' Moskau* (Graz, Vienna: Selbstverlag des Ludwig Boltzmann-Instituts für Kriegsfolgen-Forschung, 1996) = *Veröffentlichungen des Ludwig Boltzmann-Instituts für Kriegsfolgen-Forschung*, vol. 2. See additional details in Grimsted, 2005, pp. 107–47; http://socialhistory.org/sites/default/files/docs/mercury.pdf.

24  Steiner, 2009; http://diepresse.com/home/kultur/kunst/485745/index/do.

25  In addition to Jagschitz and Karner, many of those fonds were described in more detail in Kuzelenkov, Kupovetskii and Fishman, 2005, English edition, 2010, although that volume fails to cover many Austrian Jewish archives in RGVA.

26  *Rukopisi i arkhivnye dokumenty Evreiskoi obshchiny goroda Veny v rossiiskikh sobraniiakh. Katalog/Manuscripts and Archival Documents of the Vienna Jewish Community Held in Russian Collections: Catalogue* (Moscow: 'Rudomino' 2006; Proekt 'Obretennoe nasledie'/Project 'Heritage Revealed'); http://www.old.libfl.ru/restitution/catalogs/catalog3.pdf.

27  See details in Grimsted, 2005, pp. 125–128, and Henry, 2004, p. 48 (with colour photograph). See more details in Richler, 2014, p. 222.

28  The proceedings with the resolutions were published in the ICA journal *Janus*, 1995, and as a separate volume: *Archival Dependencies in the Information Age*, *CITRA 1993–1995*.

29  A sample is pictured in *Returned from Russia*, p. 130. The Thessalonica Community records (RGVA, fond 1428k; 297 file units; 1919–1941) and those from Athens (fond 1427k; 112 file units; 1901–1942); two smaller fonds comprise records of Zionist offices in Thessalonica involved with assisting the emigration of Jews to Palestine (fond 1435k and 1437k). There are a few additional files of Greek Jewish provenance, such as files of B'nai B'rith from Greece and Yugoslavia (fond 1225k). Copies of all of the Greek fonds are now available in USHMM.

30  A transfer document to Greece of 41 crates with 8,511 items comprising unspecified books and archives is found in the OAD Administrative Records, subseries Cultural Object Restitution and Custody Records, file Greece OAD 9, within RG 260 (OMGUS), NACP dated 9 November 1946, together with a bill of lading from the shipping firm in Hamburg (displayed on Fold3.com, from *NARA Microfilm Publication M1942*).

31  See the folder list: 'Salonika list.pdf' on the CAHJP website: https://cahjp.huji.ac.il/content/salonika-community-archives. See the Israeli chapter (2015) of my *ERR Archival Guide*: http://www.errproject.org/guide.php, Section 4.3.1., fond RI-33 Salonika Community Archives (GR/Sa).

32  The Thessalonica holdings in YIVO (New York) constitute RG 207, with a microfilm at USHMM (RG-67.018M); with a finding aid, 'Guide to the Records of the Jewish Community of Salonika, Greece, 1912–1954, RG 207', comp. Devin E. Naar; ed. Trudy Balch, New York: YIVO Institute for Jewish Research, 2008.

33  The Thessalonica holdings on microfilm in USHMM are assigned in: RG-11.001M.51 (RGVA, fond 1428k) RG-11.001M.42 (RGVA, fond 1437k), and RG-11.001M.53 (RGVA, fond 1435k). See Devin Naar, *Jewish Salonica: Between the Ottoman Empire and Modern Greece*, Palo Alto, CA: Stanford University Press, 2016.

34  The French Masonic files from Paris and Bordeaux that remain today in Minsk were the subject of a report at a colloquium in Paris on 10 September 2015 by Belarus historian Anatole Steburaka, now published as 'Les archives françaises confisquées par les nazis during la Seconde Guerre mondiale et conservées en Biélorussie', *Bulletin des bibliothèques de France*, no. 10 (November 2016): http://bbf.enssib.fr/matieres-a-penser/les-fonds-francais-de-minsk_67072. As Steburaka has shown, the Masonic documents still in Minsk are an integral part and belong with those returned earlier to France from Moscow. My own report about the Nazi-looted foreign books in Minsk appears in the same issue: Grimsted, 'Livres et archives pillés en France par l'Einsatzstab Reichsleiter Rosenberg (ERR): La Bibliothèque Tourgueniev et les fonds français déplacés à Minsk', BBF: http://bbf.enssib.fr/matieres-a-penser/livres-et-archives-pilles-en-france-par-l-einsatzstab-reichsleiter-rosenberg-err_67074.

35  AB/XIX/3367: 'Documents emportés par les Allemands durant la Seconde Guerrre mondiale et retrouvés en Pologne, don de M. Altmann, directeur des Archives de Pologne, 1876–1940'. Given the rather obscure reference, French Masonic archivists were unaware of this lost segment, described in the French chapter (January, 2017) of Grimsted, *Reconstructing the Record of Nazi Cultural Plunder. A Guide to the Dispersed Archives of the Einsatzstab Reichsleiter Rosenberg (ERR) and the Postwar Retrieval of ERR Loot*, available at http://www.errproject.org/guide.php.

36  For German returns see Endler and Schwarze, *Die Freimaurerbestande in Geheimen Staatsarchiv Preussischer Kulturbesitz*, Vol. 1: *Grosslogen und Protektor: Freimaurerische Stiftungen und Vereinigungen*; Vol. 2: *Tochterlogen*, Frankfurt am Main: Peter Lang, 1994–1996; = *Schriftenreihe der Internationalen Forschungsstelle Demokratische Bewegungen in Mitteleuropa 1770–1850*, vols. 13 and 18. For other countries see full listings appended to those country chapters in *Returned from Russia*.

37  The 14,291 figure appears in a notation dated 15 May 2003 at the end of the sixth volume of *Opis'* 1 for RGVA, fond 1412k, as confirmed by this author 10 June 2010. No other files, and indeed none from Austria, have been extracted since. See the reference to the Dutch Masonic files found by Evert Kwaadgras in *Returned from Russia*, p. 244 (and note 11).

38  Helmet Reinalter, ed., *Die deutschen und österreichischen Freimaurerbestände im Deutschen Sonderarchiv in Moskau (heute Aufbewahrungszentrum der historisch-dokumentarischen Kollektionen)* (Frankfurt am Main: Peter Lang, 2002; = *Schriftenreihe der Internationalen Forschungsstelle, 'Demokratische Bewegungen in Mitteleuropa 1770-1850'*, vol. 35). See *Returned from Russia*, pp. 110–111. Several Masonic archivists, including those from the Netherlands and Norway, who have examined files within the fond have found many erroneous attributions in the published German translation, and in some cases even compounding the inaccuracies of the Russian *opisi*.

39  Many of the Austrian Masonic files are listed with lodge of provenance by Jagschitz and Karner, above note 23, pp. 212–232. See also Chapter 5 below, pp. 110–111. Professor Karner briefed me regarding the extensive research he believes still needs to be done to identify more Austrian Masonic files so they can be returned to their homeland.

40  See more details in *Returned from Russia*, p. 111 (with notes 32 and 33).

41  Helge Horrisland, e-mail to the author, 15 March 2011 (quoted with permission), as well as subsequent conversations and e-mail exchanges.

42  Interviews with Vladimir Korotaev, most recently in June 2016. See the recent interview with Korotaev by Kerstin Holm, 'Lifting the Veil on Moscow's Secret Archives', in *Echoes of Exile, Moscow Archives and the Arts in Paris 1933–1945*, ed. Ines Rotermund-Reynard, Berlin: De Gruyter, 2014, pp. 67–73. See the description and bibliography of reference literature for RGVA (B8) in ArcheoBiblioBase, the Russian archival directory and bibliography: http://www.iisg.nl/abb/index.php. It should be noted that the number of foreign fonds may be misleading, because many of them now hold only a few documents, along with their *opisi*, since most were returned to their countries of provenance.

43  Regarding the SMAD/SVAG project, see the report of Kai von Jena, 'Die Verwirklichung des Deutsch-Russischen Gemeinschaftsprogramms zum Studium, zur Auswertung und zur Reproduktion der Akten der SMAD', *Mitteilungen des Bundesarchiv*, 2003, Heft 2, pp. 39–44; see the Russian-language listing for publications from and relating to the SMAD/SVAG on the GA RF website: http://www.statearchive.ru/387, including the latest Handbook for SVAG records (note 44 below): http://www.statearchive.ru/427.

44  Cultural restitution and retrieval functions under SVAG were handled under the same SVAG Administration, subordinated to the more important economic and industrial reparations priorities that were coordinated and directed from Moscow by the Ministry of Foreign Trade. Another small series (*opis'*) of 12 files of more purely administrative reports from that same SVAG division, including some of Zorin's retrospective reports, remain among other more voluminous SVAG records in the State Archive of the Russian Federation (GA RF, fond 7317, *opis'* 26). See Christiane Künzel (Kh. Kiuntsel'), 'Upravlenie reparatsii i postavok SVAG', *Sovetskaia voennaia administratsiia v Germanii, 1945-1949. Spravochnik*, edited by Jan Foitzik (Ia. Foittsik), T.V. Tsarevskaia-Diakina, and A.V. Doronin, Moscow: ROSSPEN, 2009, pp. 363–376; http://www.statearchive.ru/427; German edn: *SMAD-Handbuch. Die Sowjetische Militäradministration in Deutschland 1945–1949* (Munich: Oldenbourg, 2009). That chapter cites fond 7317, *opis'* 26, but Künzel was unaware of the larger group of SVAG files from that same Administration mixed in with the 541 files that constituted Series 16 of the Soviet Foreign Trade records (RGAE, fond 413 – MVT SSSR, *opis'* 16).

45  Based on my personal analysis of these materials in RGAE.

46  GA RF, fond 7317 (SVAG), *opis'* 26 (Otdel/Upravlenie reparatsii i postvok); see above, note 44.

47  Sebastian Panwitz lists German (including Austrian) records starting with fond no. 500k: at http://www.sonderarchiv.de. Dates are provided for those transferred to the GDR during the Soviet period and other subsequent transfers to the countries of provenance.

48  Regarding the Western returns, see Eckert, 2004 (in German *Kampf um die Akten*).

49  See Grimsted, 2013, 'Afterword – 2013', pp. A19–A23.

50  See the 'Rosenberg Collection' in Kyiv at the TsDAVO website: http://err.tsdavo.gov. ua, with more English access to the extensive Russian guide-index pending. See the updated Introduction, 'Alfred Rosenberg and the ERR: The Records of Plunder and the Fate of Its Loot' (2015), in Grimsted, *Reconstructing the Record of Nazi Cultural Plunder. A Guide to the Dispersed Archives of the Einsatzstab Reichsleiter Rosenberg (ERR) and the Postwar Retrieval of ERR Loot* updated chapters available at: http:// www.errproject.org/guide.php; the updated Ukrainian chapter is forthcoming.

51  French military archivists reported at a conference in Strasbourg in October 2010 describing the French processing of the returned records, and their analysis of German 'utilisation' of the files, but they unfortunately were not aware and had not examined the important German records of their capture and processing of the files held in Moscow. See, for example, *Returned from Russia*, pp. 20–31.

52  'Soglashenie o sotrudnichestve mezhdu General'noi direktsiei Gosudarstvennykh arkhivov Pol'shi i Komitetom po delam arkhivov pri Pravitel'stve Rossiiskoi Federatsii', 27 April 1992, as quoted by Władysław Stępniak, 'Arkhivnoe nasledie', in *Belye piatna – Chernye piatna. Slozhnye voprosy v rossiisko-pol'skikh otnosheniiakh*, A.V. Torkunov and A.D. Rotfel'd, eds., Moscow: Aspekt press, 2010, p. 725. The Polish version or a printed text of the Agreement has not been found. That Agreement was reinforced in Article 11 of the 25 August 1993 cultural Agreement – 'Soglashenie mezhdu Pravitel'stvom Rossiiskoi Federatsii i Pravitel'stvom Respubliki Pol'sha o sotrudnichestve v oblasti kul'tury, nauki i obrazovaniia', Varshava, 25 avgusta 1993 g. – with specific mention of the return of archives, available electronically: http://www.businesspravo.ru/Docum/DocumShow_DocumID_86597.html.

53  See my article 'Restitution Progress for WW2 Captured Archives in Moscow, but Why Haven't Polish Archives Come Home?', prepared for the Kraków conference 'Looted–Recovered. Cultural Goods – the Case of Poland', in November 2014; publication of the conference proceedings in both Polish and English is expected later in 2017.

54  Wróbel-Lipowa, 1982.

55  Kozlov, p. 718.

56  Stępniak, 2010, pp. 728–29. As explained by Stępniak, 'Preface', in *Archiwalia polskiej proweniencii terytorialnej przechowywane w Państwowym archiwum Federacji Rosyjskiej i Rosyjskim państwowym archiwum wojskowym*, ed. Władysław Stępniak, Warsaw: Naczelna Dyrekcja Archiwów Państwowych, 2000.

57  Gerald Fleming, 1991, pp. 9–12, gives a short popularized account of findings among the archival remains held by the former Special Archive. See the Polish account of the archival holdings in the Oświęcim-Birkenau Museum by Jarosz and Śliż, 'Zbiory dostępne dla wszystkich', 1996, pp. 60–62.

58  Russian specialists have compiled a name index of Soviet children who were killed as registered in the Auschwitz (*Pol.* Oświęcim) deathbooks from a database in the former Special Archive: L.I. Kudriavtseva et al, comps., *Knigi smerti Osventsima: Deti Belorussii, Rossii, Ukrainy, pogibshie v Osventsime v 1942–1943 gg.:* (*Po knigam registratsii smerti uznikov Osventsima*), Moscow, 1995; Rosarkhiv; TsKhIDK. The Auschwitz death records preserved do not extend beyond 1943, nor do they include those who perished in the gas chambers, whose identities were not recorded. In most cases the recorded cause of death was fabricated.

59  *Archiwalia polskiej proweniencii* (above, note 56). Provides brief annotated description of captured records from the interwar Republic of Poland and the Gdańsk (*Ger.* Danzig) region in the former Special Archive now part of RGVA (pp. 107–144); see especially fonds1353k and 1422k.

60  As explained by Stępniak, 'Preface', in *Archiwalia polskiej proweniencii*, pp. 14–15 (English); pp. 11–12 (Polish); and pp. 17–18 (Russian). Stępniak develops many of these points in 'Arkhivnoe nasledie', in *Belye piatna – chernye piatna*, p. 729.

61  See, for example, an initial report issued by the Head Office of State Archives (NDAP), *Reconstruction of the Memory of Poland: Sources to the History of Poland and Poles (1772–1945) in the European Countries' Holdings* (Warsaw, 2000). See also the speech by the Polish Minister of Foreign Affairs, Włodzimierz Cimoszewicz, opening the exhibition 'Reconstruction of the Memory of Poland', Council of Europe, Strasbourg, November 2004–May 2005; http://www.coe.int/t/e/com/files/cm_chair-sessions/chair/poland/disc_inauguration_expo.asp.

62  See, for example 'L'URSS et la restitution des archives. Le cas polonaise: 1921–1939. Autour du traité de Riga', in *Saisies, spoliations et logiques de restitution*, pp. 165–176.

63  See Grimsted, 2001, especially ch 1: 'Defining the Archival Heritage of Ukraine: Russia and the Pretensions of Successor States', pp. 1–50.

64  See, for example, Grimsted, 2002, pp. 27–41; http://www.archives.gov/publications/prologue/2002/spring/spoils-of-war-1.html; condensed from the "Introduction" to the NARA CD-ROM, *U.S. Restitution of Nazi-Looted Cultural Treasures to the USSR, 1945–1959: Facsimile Documents from the National Archives of the United States*, compiled with an Introduction by PKG; Foreword by Michael J. Kurtz, CD-ROM edn, Washington, DC: GPO, 2001; Prepared in collaboration with the National Archives of the United States.

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# Appendix

## *Acronyms*

| | |
|---|---|
| AAN | Archiwum Akt Nowykh (Archive of Contemporary Records), Poland |
| CAHJP | Central Archives for the History of the Jewish People, Jerusalem |
| CITRA | Conference of the International Round Table on Archives |
| ERR | Einsatzstab Reichsleiter Rosenberg (Operational Staff Reichsleiter Rosenberg) |

| | |
|---|---|
| FSB | Federal'naia sluzhba bezopasnosti (Federal Security Service), Moscow; successor of the KGB |
| GA RF | Gosudarstvennyi arkhiv Rossiiskoi Federatsii (State Archive of the Russian Federation), Moscow |
| IEJ | Institut zur Erforschung der Judenfrage (Institute for Research on the Jewish Question), Frankfurt am Main, later Hungen |
| IKG | Israëlitische Kultusgemeinde (Jewish Community), Vienna |
| MVD | Ministerstvo vnutrennikh del (Ministry of Internal Affairs), Moscow |
| MVT SSSR | Ministerstvo vneshnei torgovli (Ministry of Foreign Trade), Moscow |
| NACP | National Archives of the United States, College Park, MD |
| NARA | National Archives and Records Administration |
| NDAP | Head Directorate of Polish Archives |
| NKVD | Narodnyi komissariat vnutrennikh del (People's Commissariat of Internal Affairs) |
| OAD | Offenbach Archival Depot, near Frankfurt am Main, under OMGUS |
| OMGUS | Office of Military Government, United States |
| RGADA | Rossiiskii gosudarstvennyi arkhiv drevnikh aktov (Russian State Archive of Early Acts), Moscow |
| RGAE | Rossiiskii gosudarstvennyi arkhiv ekonomiki (Russian State Archive of the Economy), Moscow |
| RGALI | Rossiiskii gosudarstvennyi arkhiv literatury i iskusstva (Russian State Archive of Literature and Art), Moscow |
| RGB | Rossiskaia gosudarstvennaia biblioteka (Russian State Library), Moscow, former Lenin State Library |
| RGVA | Rossiiskii gosudarstvennyi voennyi arkhiv (Russian State Military Archive), Moscow |
| RSHA | Reichssicherheitshauptamt (Reich Security Main Office) |
| SVAG/SMAD | Sovetskaia voennaia administratsiia v Germanii/Sowjetische Militäradministration in Deutschland (Soviet Military Administration in Germany) |
| TsDAVO | Tsentral'nyi derzhavnyi arkhiv vyshchykh orhaniv derzhavnoi vlady ta upravlinnia Ukraïny (Central State Archive of the Highest Agencies of State Power and Administration of Ukraine), Kyiv (Kiev) |
| TsGOA SSSR | Tsentral'nyi gosudarstvennyi osobyi arkhiv SSSR (Central State Special Archive), Moscow, after 1992 – TsKhIDK, now part of RGVA |
| TsKhIDK | Tsentr khraneniia istoriko-dokumental'nykh kollektsii (Centre for the Preservation of Historico-Documentary Collections), Moscow, now part of RGVA, before 1992 – TsGOA SSSR |
| USHMM | United States Holocaust Memorial Museum, Washington, DC |
| YIVO | Yidisher Visnshaftlekher Institut (Institute for Jewish Research in New York City), before 1939 in Wilno, Poland; after 1940 in New York |

# 10  Iraq and Kuwait

## The Seizure and Destruction
## of Historical Patrimony

*Bruce Montgomery*

## Introduction

In the August 1990 invasion and subsequent occupation of Kuwait, Iraqi forces prosecuted a mass campaign of pillage of Kuwait's financial and cultural assets with the aim of annexing the emirate as part of greater Iraq. In response to Iraq's invasion and plunder of Kuwait, a US-led coalition of countries ousted Saddam Hussein's armed forces from the small emirate. Iraq's defeat in the first Gulf War precipitated more than a quarter century of near continuous war, rebellion and internal upheaval, resulting in the repeated plunder and seizure of Iraq's own cultural and historical patrimony. The scale of destruction, confiscation and displacement of its archival heritage by internal and foreign forces has been perhaps unprecedented in recent times. Nonetheless, unlike Saddam Hussein's probable obliteration of Kuwait's archives as part of his campaign to annex the emirate, most of Iraq's archives from the Saddam era survived and have been preserved by the Pentagon and US research institutions.

## Iraq's Seizure of Kuwait's National Archives:
## The First Gulf War

The immediate antecedents of Iraq's current social and political disintegration, however, lay in the events surrounding Saddam Hussein's almost decade-long conflict with Iran. Saddled with billions of US dollars in war debt following the war with Iran, Saddam aimed to alleviate his ruined economy and shore up his rule by seizing Kuwait's vast oil wealth and financial assets. Saddam also sought to exploit Iraq's historical grievances against Kuwait as a basis for invading the emirate and reclaiming it as Iraq's lost nineteenth province.

   The origins of these grievances date to 1875 when Kuwait became part of the autonomous Ottoman province of Basra in what is now southern Iraq. In 1914, Kuwait broke from the Ottoman realm after receiving assurances of statehood under British protection. With the collapse of the Ottoman Empire after the First World War, the British established colonial rule over the region and subsequently, in 1923, drew the geographical borders of Iraq, Kuwait and the territorial core of Saudi Arabia. The borders between Iraq and Kuwait, however, were poorly

drawn, leaving a bitter legacy of dispute between the two countries. The British also gave Kuwait the barrier islands of Warba and Bubiyan, which partly block Iraqi access to the Gulf waters, as well as the now immensely profitable Rumaila oil field – territorial possessions that further fuelled Iraq's historical grievances against the emirate.[1] The explosive legacy of these grievances gave Saddam convenient justification for invading Kuwait, claiming that he was righting the historical wrongs of British imperialism and rightfully reclaiming Kuwait as Iraq's nineteenth province.[2]

Saddam's predatory invasion of Kuwait thus ventured beyond plundering Kuwait's vast oil wealth to extinguishing and absorbing it altogether as part of greater Iraq. With this aim in mind, Iraq aggressively prosecuted the dismantling of Kuwait's financial, economic and cultural assets: the despoiling of its cultural treasures assumed particular importance. Kuwait was once home to one of the most significant collections of Islamic art in the world. Under the direction of Iraqi curators who were conversant with Kuwait's cultural treasures, Iraqi troops seized thousands of Kuwait's finest cultural objects, burning what they could not take back. They torched cultural institutions housing artefacts, libraries and archives, including Kuwait's National Museum and House of Islamic Arts.

Reminiscent of the Nazi plunder of Europe and Russia or the retributive Soviet trophy brigades that looted Germany after the Second World War, the Iraqis sent truckloads of cultural loot back to Baghdad in violation of international law. Among the cultural spoils was Kuwait's national archives. The Kuwaiti government, with the support of United Nations (UN) Security Council resolutions, has repeatedly demanded the return of the archives. But more than a quarter of a century later, Kuwait's archives – the embodiment of its past and memory – remain missing.

It is understandable that Kuwait demanded the restitution of its archives, which comprised sensitive executive, diplomatic, intelligence, national security, economic and other vital information. Of particular importance were the archives of the Amiri Diwan, the Diwan of the Crown Prince and the Diwan of the Prime Minister – vital seats and symbols of Kuwaiti authority and sovereignty.[3] The demand for the return of these archives echoed the nationalist sentiments of the Federal Republic of Germany after the Second World War when it passed a resolution in October 1949 calling for the Allies to repatriate all of its captured records and archives.[4] The West German government protested that the Allies had carried off German national history – a sentiment shared by Kuwait, which had been robbed of its history by Saddam's Iraq.[5] The demand for the missing archives signified one way of regaining political sovereignty after the 1990 Gulf War. After all, the archives embodied the history of a once-colonial territory and its emergence as an internationally recognised independent and sovereign state. It constituted Kuwait's historical narrative against Iraq's counter-narrative that involved more than a half century of claims over Kuwaiti territory that had been stolen from Iraq under British imperial rule.

In the immediate sense, the Kuwaitis feared that their diplomatic and other sensitive documents would be exploited by Iraqi intelligence to the possible detriment

of the emirate's national and international standing. For example, this concern appeared in a 2007 Wikileaks cable from UN coordinator, Yuri Vorontsov, to the US embassy in Kuwait. Under UN auspices, Vorontzov was facilitating efforts to locate still missing Kuwaiti people and third party nationals and property, including the archives, from the 1990/91 war. His cable noted that the Kuwaitis were 'nervous that sensitive government records may still emerge in Iraq with the potential to cause embarrassment to Kuwait'.[6]

In 2007, Iraq was still labouring under onerous UN sanctions following the 1990/91 war. It was obligated to compensate Kuwait billions of US dollars for its economic ruination and, among other things, to return looted Kuwaiti property, including the emirate's archives. These sanctions were imposed in March 1991 when the UN Security Council adopted Resolutions 686 and 687, mandating the 'return of all Kuwaiti property seized by Iraq'.[7] This obligation was reinforced in Security Council Resolution 1284, passed in December 1999, demanding that 'Iraq return in the shortest possible time all possible Kuwaiti property it had seized'. The resolution provided that the Secretary General should report to the Security Council every six months on the status of this matter, including the 'archives seized by Iraq'.[8] The UN subsequently appointed a high-level coordinator to facilitate efforts with Iraq to locate missing Kuwaiti and third-party country nationals and missing Kuwaiti property.

In the following years, the search for the missing archives under UN auspices proved futile. Several scenarios may explain what happened to the archives: 1, American forces may have inadvertently confiscated the archives in the 2003 war; 2, the archives may have perished in the 1991 Shiite uprisings in southern Iraq, or in the aerial bombings of Iraq in 1993 or 2003; and 3, Saddam may have intentionally destroyed the archives to wipe out Kuwait's history and identity. Legal scholar and blogger, Douglas Cox, has termed the missing archives a 'cold case'. He speculates that the emirate's archives, if taken to Iraq, may have been swept up in the US 2003 invasion of Iraq when millions of Iraqi documents were seized from Saddam's ministries in the frantic hunt for evidence of weapons of mass destruction and other battlefield imperatives. According to this thesis, the archive may be buried or mixed in with the 120 to 150 million pages of documents in the Pentagon's possession at the media processing centre in Qatar – constructed during the war to sift through, digitise and analyse captured documents from Iraq.[9]

This is a plausible scenario. The majority of these records were seized in the early days of the war and transferred to the media processing centre in Qatar for analysis. The processing of these materials proceeded slowly. By 2006, US analysts had advanced through less than 15 per cent of the captured materials.[10] It is unclear whether further progress has been made in processing and analysing the remaining records, which became less vital after US intelligence analysts concluded that Saddam did not possess weapons of mass destruction and after the departure of the last American troops in December 2011.

Nevertheless, the archives also may have been destroyed in the coalition bombing of Iraqi government buildings, including Saddam's intelligence headquarters, foreign affairs ministry and other sites in the 2003 war, or in the plunder and

destruction of government property by Iraqi citizens.[11] Or, the archives may have perished in the looting and burning of government buildings in the 1991 Shiite uprisings immediately following Saddam's defeat in the first Gulf War, or perhaps in the US bombing of Iraq's intelligence headquarters in 1993 in retaliation for Saddam's attempted assassination of former President George Bush.

A more probable scenario is that Saddam intentionally obliterated Kuwait's archives to erase its history and identity with the aim of annexing it as Iraq's nineteenth province.[12] During Iraq's seven-month occupation in 1990/1991, Kuwaiti officials condemned Saddam's efforts to 'wipe out the Kuwaiti identity by changing the demographic composition of the country', including burning the 'archives of many ministries dealing with citizens' affairs, including some departments of the Ministry of the Interior.'[13]

The day before the Iraqi invasion, Kuwaiti officials smuggled the emirate's population registers, stored on computer disks, to New York where they were deposited with the UN Secretary-General as the 'legal and official instrument to be relied on when Kuwait was liberated from the desecration of the invaders.'[14] Kuwait's representatives condemned Saddam's efforts to 'eradicate the national identity of the Kuwaiti people by destroying its archaeological landmarks, plundering libraries and historical documents, and destroying Kuwait's achievements'. Kuwaiti officials accused Iraq of embarking on a 'novel process of depopulating Kuwait from its own inhabitants, confiscating identification documents, and settling Iraqi families in Kuwaiti homes' in efforts to 'change the demographic structure of Kuwait and erase the very identify of the country'.[15]

Two post-war UN fact-finding missions substantiated these allegations. One mission, which visited Kuwait from 16 March to 4 April 1991, reported on the vast devastation of Kuwait's economy and infrastructure. It noted the orchestrated plunder of the country's cultural heritage, including the destruction and pillage of 'most official records'. Among the ruination, the government Ministries of Foreign Affairs, Interior, Planning, Education and Finance, their subsidiary departments and agencies, and the National Assembly had been pillaged, ransacked, damaged or destroyed with the aim of eliminating Kuwait's state institutions. Another UN fact-finding mission to Kuwait from 23 to 27 March 1992 confirmed that there could be 'no doubt that a deliberate attempt was made to extinguish Kuwait, its national identity, the pride of its people in their history and achievements'[16]

Given Iraq's historical grievances, which Saddam sought to exploit as part of his justification for the invasion, and his aim to dismantle the emirate altogether by laying waste to its infrastructure, seizing its financial, economic and cultural assets, annihilating its national identity and history, it is probable that Saddam or his factotums ordered the destruction of the archives, which chronicled Kuwait's emergence as an autonomous state. This explanation would accord with the findings of both UN fact finding missions to Kuwait, one of which concluded that there was no doubt that Iraq purposely sought to extinguish Kuwait's national identity.

There is another compelling reason to believe that Kuwait's national and sovereign archives was destroyed. In the 1991 Gulf War, as Saddam faced the decimation

of his forces by aerial bombing and the spectre of an Allied ground invasion, he ordered his troops to retreat. As his final act of aggression against Kuwait, he ordered the wholesale desecration and destruction of what was left of Kuwait. Iraqi forces carried out a systematic campaign of murder and mayhem aimed at leaving a crippled land to the ruling al-Sabah family. Retreating Iraqi troops cut electrical transmission lines, demolished or severely damaged buildings, power stations, oil refineries, communications facilities, water desalination plants and other vital infrastructure. Hundreds of oil wells were set ablaze or sabotaged, contaminating the desert with streams of oil coursing toward the sea. Saddam also may have destroyed Kuwait's archives as one of his final acts of violence.[17]

## Anfal Files

Saddam's ignominious defeat in the 1991 Gulf War perilously weakened his authoritarian grip on power in the face of the restive Shiites and Kurds in Iraq, who had suffered grievously from his regime's political violence. On 27 February 1991, the US and Allied forces ended Operation Desert Storm after decimating the Iraqi military and liberating Kuwait. Iraq's defeat ignited a massive uprising among the anti-Saddam Shiites in the south of the country. As the rebellion against his regime spread, Saddam dispatched forces from the north to southern Iraq. With the withdrawal of Iraqi troops from the north, in March 1991, the long oppressed Kurds seized their opportunity and rose in popular revolt against Saddam Hussein, storming and burning secret police stations, prisons and torture centres throughout the Kurdish regions of northern Iraq. Within three weeks, Saddam Hussein sent reinforcements to crush the Kurdish rebellion after having put down the uprising in the south.

By April, Iraqi troops had retaken several key cities and towns, taking brutal revenge on civilians and sending more than a million people in desperate flight across the mountains to neighbouring Iran and Turkey. In mid-April, the US, Great Britain and France intervened on behalf of the Kurds by establishing a safe-haven beginning at the Turkish border and extending to the thirty-sixth parallel north, the circle of latitude that served as the northern limit of the no-fly zone in Iraq from April 1991 until the end of 1996. The safe-haven allowed many among the displaced Kurdish population to return to their homes. By October 1991, Iraqi forces were unable to reassert central government control and withdrew unilaterally from most of the Kurdish areas, with the exception of the strategic oil-producing city of Kirkuk.

In the early March 1991 Kurdish uprising, massive quantities of Iraqi state documents were seized from several cities and towns throughout Iraqi Kurdistan. The Kurds overran the cities of Sulaimaniyah, Duhok, Zakho, Shaqlawah and Kirkuk, capturing the headquarters of the secret police, intelligence agencies and Saddam's ruling Ba'ath Party before the Iraqis could destroy or remove the files. Amid the chaos, many of the documents were burned or destroyed, but the Kurds spirited most of them away to remote mountain hideouts before Saddam's security forces returned from the south after subduing the Shiite revolt.[18]

Peter Galbraith, a member of the staff of the US Senate Foreign Relations Committee, travelled to Iraqi Kurdistan in March and April of 1991 to study the plight of the Kurds. While in northern Iraq, Galbraith heard of the mass seizure of the secret police files – the largest captured collection of war crimes evidence since the Second World War. In a meeting in Iraqi Kurdistan with Jalal Talabani, founder of the Patriotic Union of Kurdistan (PUK), Galbraith learned of the PUK's seizure of the documents.[19]

The Kurds' initial interest in the documents lay in discovering whether their community had been penetrated by Iraqi intelligence, but they soon realised the documents' larger significance in revealing evidence about the Anfal genocide, which had ended just two years earlier. Human rights researchers, moreover, immediately saw the files as an unprecedented windfall in the investigation of Iraqi atrocities during the genocidal Anfal campaign. Since the files appeared to chronicle grave violations of humanitarian law against the Kurdish population, Galbraith proposed to Talabani that the documents be transferred to the US for safe-keeping and analysis for evidence of war crimes. Talabani agreed to the proposal with the understanding that the documents would remain the property of the Patriotic Union of Kurdistan. Similar arrangements were negotiated with the Kurdistan Democratic Party (KDP) and the Kurdish Socialist Party, both of which captured smaller caches of documents in the uprising.

As a result, the Pentagon airlifted the files out of northern Iraq in 1992 and 1993 to American soil. While the Senate Foreign Relations Committee assumed formal responsibility for the files, they were transferred to the physical custody of the Defense Intelligence Agency (DIA) for analysis. The DIA subsequently hired Arabic linguists to digitise and produce English language screening sheets to the documents. The DIA also entered an unusual arrangement with Human Rights Watch (HRW), permitting the New York-based group exclusive access to examine the files for a possible case of genocide against the Saddam Hussein regime under the 1948 Genocide Convention. The convention, which outlaws repression and killings intended to destroy 'in whole or in part' any national ethnic group, was signed by Iraq in 1959.[20]

The term 'Anfal' refers to an incident in the Koran in which the followers of the prophet Mohammed attacked and pillaged non-believers.[21] According to HRW, the Anfal campaign waged against the Kurds (29 March 1987 to 23 April 1989) constituted genocide and crimes against humanity – the culmination of decades of Kurdish persecution. The Iraqi Kurds have suffered a difficult history under Arab Iraq. The Kurds stand as one of the world's largest stateless ethnic groups, numbering approximately 30 million people spread since antiquity across today's Turkey, Syria, Iran and Iraq. About six million people live in present-day Iraqi Kurdistan. The Kurds have their own language, which is part of the Indo-European family of languages. The majority are Sunni Muslim, although there are also Shiites in Iraq and Turkey.[22]

For a brief period, the Kurds obtained an independent state under the 1920 Treaty of Sveres, one of the post-First World War treaties that established the modern states of Iraq, Syria and Kuwait. In 1925, the League of Nations rescinded

Kurdish statehood at the insistence of the British government and granted oil-rich Mosul to the newly formed state of Iraq. This act of betrayal repeatedly sparked open revolt among the Kurds in the decades that followed. In 1970, two years after Saddam Hussein and his Ba'ath Socialist Party seized power, the Kurds forced what appeared to be the granting of quasi-autonomy to the majority Kurdish provinces in Iraq's north-eastern region. In reality, the Ba'ath Party granted the Kurds little power. The manifesto on Kurdish autonomy involved little more than a strategy to quell the fighting until the Ba'ath Party could consolidate power. Soon after, in the early 1970s, Iraq began its Arabisation campaign, expelling the Kurds from their villages and confiscating their land for Arab settlement. By 1977, Baghdad had crushed the Kurdish rebellion, forcing tens of thousands to flee to Iran.[23]

With the outbreak of the Iran-Iraq War in September 1980, Saddam Hussein redeployed many of his forces from Iraqi Kurdistan to bolster military operations in the south. As an apparently conciliatory gesture, the Iraqi regime allowed thousands of resettled Kurds to return to Kurdistan. This conciliatory policy ended in 1988 as the war with Iran drew to a close. On 20 August, one day following the ceasefire, Saddam Hussein's military forces attacked the Kurds – bombarding Kurdish rebel forces and civilians with chemical weapons and systematically razing towns and villages, 'expelling their inhabitants, and sending large numbers to camps in model villages in the plains of the Kurdish Autonomous Regions, and to the South where many of them reportedly vanished without a trace'.[24]

The apparent motivation for the Anfal genocide stemmed from the Iran-Iraq war. After 1986, the Iranians began backing the KDP and PUK, the two main Kurdish factions that joined Iranian forces in military raids against Iraqi government positions. Nonetheless, the Anfal was the culmination of Iraq's decades-long effort to subdue the Kurds and a campaign of vengeance to punish the Kurdish resistance for its alliance with Iran. In 1993, Joost Hilterman, a Dutch researcher for HRW who investigated the Anfal in Iraqi Kurdistan, concluded that in 'Anfal alone, perhaps as many as 180,000 people disappeared, thousands of whom were shot and buried in mass graves in a prison in the desert'.[25] Iraqi security forces also made indiscriminate use of chemical weapons, resulting in the deaths of thousands of Kurdish civilians. In March 1988, for example, Iraq's armed forces bombarded Halabja with poison gas, killing 5,000 civilians.[26]

The captured Anfal documents became a vital component in the evidentiary trail of the Kurdish genocide. Between 1991 and 1993, after the various Kurdish political factions established control over the rebel enclave, human rights researchers entered Iraqi Kurdistan to examine the scale of the mass graves that were being uncovered by the Kurds in northern Iraq. Together with extensive interviews with survivors and forensic missions by human rights researchers, the study of the documents revealed a convincing case that Saddam's security forces had carried out a deliberate campaign of genocide against the Kurdish population.[27]

Once on American soil, the Anfal documents gave rise to several possibilities for bringing Saddam and his senior leadership to justice. According to Galbraith, consideration was given to bringing the Saddam regime before the International

Court of Justice under the 1948 genocide convention, or having the UN Security Council establish a special tribunal on the model of Nuremberg.[28] Nonetheless, HRW and other non-governmental orgnaisations (NGOs) were unable to secure at least two sponsoring governments, a requirement under international law for bringing a formal case of genocide against a regime.[29]

In 1997, following the scanning and analysis of the files by the DIA and HRW, the documents were transferred to the Archives of the University of Colorado-Boulder (CU-Boulder) with the permission of the Senate Foreign Relations Committee. At the same time, CU-Boulder obtained a digital copy of the DIA's digital database of the 5.5 million-page Anfal archive. Upon the transfer of the original files, the Senate Foreign Relations Committee stipulated that the files belonged to the Kurds and that any request for their return must be honoured.[30]

As US and international officials deliberated on how to proceed against the Iraqi regime under international law, the legitimacy of the Kurdish seizure of the files was not questioned. On the contrary, according to HRW, 'obtaining access to official records became a Holy Grail for researchers'. The documents constituted a windfall in the investigation of Saddam's atrocities. The protected status of Iraqi Kurdistan after the Gulf War offered human rights investigators unprecedented access to northern Iraq. With the opportunity to interview survivors, exhume mass graves and then to read the official account of what transpired in the Iraqi regime's own words, while 'the regime that had carried out the outrages was still in power, was unique in the annals of human rights research'.[31] Further, the laws of war do not prohibit the capture of state security documents by internal dissident forces during hostilities, or loaning them to a third party – in this case the United States – that remains in a state of hostility with the originating country.

In December 2003, following the US-led invasion of Iraq, American troops captured Saddam when searching a compound in the town of Adwar, about ten miles from his hometown of Tikrit.[32] The capture of Saddam ended one brutal era of Iraqi history, while beginning another. Saddam remained in the custody of US forces until his trial before the Iraqi Special Tribunal, set up by the Coalition Provisional Authority (CPA) on 9 December 2003. The tribunal, consisting of five Iraqi judges, tried Saddam on charges of war crimes, crimes against humanity and genocide. In preparation for the Anfal genocide trial, the US Justice Department assigned the Regional Crimes Liaison Task Force, established under the auspices of the Federal Bureau of Investigation (FBI), to investigate crimes committed by elements of the Saddam regime and assist the new Iraqi government in the trial of senior officials of the former central government.[33]

In 2005, the CU-Boulder Archives turned over the original Anfal archives to the task force for use in the Anfal genocide trials in Baghdad. It is unclear what has happened to these original files; it is most probable that the records were transported to the Pentagon's media processing centre in Qatar, where they could be readily searched and accessed under secure conditions. In other words, it is likely that the original documents remain under US military control. If so, the documents continue to belong to the Kurds under the prior agreement that allowed for their removal to the US for analysis and safe storage.

In September 2014, the University of Colorado-Boulder repatriated a digital copy of the files to a high-level delegation from Iraqi Kurdistan, representing the Kurdish Regional Government and the Zheen Archive Centre in Sulaimaniyah. Barham Salih, former Vice Premier of Iraq and head of the government of the Kurdistan region who played a central role in spiriting the documents out of Iraq, termed the restitution of the digital files an 'extraordinarily important event'. He stated that an examination of the records by independent experts conclusively found that the events of the Anfal military campaign in Iraqi Kurdistan constituted genocide; the younger generations in Kurdistan, he stated, would now have access to these documents to study and understand the history of their persecution and to shape their future anew.[34]

## Documents Seized in the 2003 Invasion of Iraq

The 2003 US-led invasion of Iraq to eliminate Saddam's alleged weapons of mass destruction resulted in the largest documents seizure since the Second World War. In the chaos and confusion surrounding the fall of Baghdad on 9 April 2003, coalition forces, Iraqi opposition groups and individuals confiscated millions of Iraqi state documents from Saddam's government ministries, state security and intelligence agencies, military garrisons and other sites across Iraq.[35] With the rapid advance of US troops, Ba'athist officials fled their government posts, leaving behind sensitive and self-incriminating state security files documenting the regime's acts of political violence and human rights crimes. While some officials also carried away and concealed documents in their homes, later abandoning them in public buildings as military defeat became imminent, other records in cities and towns throughout Iraq were shredded and burned. Still other files perished in the wartime aerial bombing and in the mass looting and destruction of government property in the days and weeks following the invasion.[36]

Despite the failure to secure Iraq's state security records in the early days of the invasion and occupation, US mobile collection teams nevertheless swept up millions of documents as potential sources of intelligence on Saddam's alleged weapons of mass destruction and other battlefield imperatives. The nature of the documents also weas politically explosive in that they named thousands of security agents and informants of Saddam's Ba'athist regime, posing a danger of retributive violence if publicly exposed. The capture of the documents was permissible under Article 53 of the 1907 *Hague Convention Respecting the Laws and Customs of War on Land* and its annexed regulations, which permit the seizure of moveable government property for military operations and necessity. Under the 1907 convention, such seized moveable government property becomes the property of the occupying power.[37]

The Pentagon constructed the Combined Media Processing Centre at Camp As Sayliya in Qatar to house, process and exploit the materials for actionable intelligence. In addition to the capture of millions of intelligence and state security files, US forces seized thousands of audio and videotapes, computer hard drives, devices and peripherals from Saddam Hussein's ministries, military and industrial

sites and other locations. The captured materials played a central role in the frantic hunt for weapons of mass destruction and Saddam's alleged connections to global terrorism. When the hunt for weapons of mass destruction and links to global terrorism failed to yield any evidence by the end of 2003, US intelligence then turned to examining the Iraqi regime's own documents for the smoking gun.[38] Aside from this immediate imperative, the files also held strategic and operational significance for continuing battlefield operations, intelligence and counter-intelligence, psychological operations, location of mass graves and evidence of human rights crimes for prosecution. Ultimately, after scouring the country for weapons of mass destruction, the Iraq Survey Group concluded that Saddam had terminated his nuclear weapons programme in 1991.[39]

In 2006, the captured documents became politicised in the crossfire over the war's rationale. The Bush-Cheney administration justified the US-led invasion of Iraq on the basis of preventing Saddam from distributing his alleged weapons of mass destruction to anti-American global terrorist networks. But with no evidence to support the administration's war narrative, the Bush-Cheney administration pressured the US intelligence community to make the scanned captured Iraqi documents available on the web so that the public could find what the intelligence analysts allegedly could not. This ill-advised experiment was quickly shut down after the Office of National Intelligence published, on a website run by the US Army Foreign Military Studies Office, documents that included a basic guide to building an atom bomb.[40]

With no constraints under international law on how the seized wartime documents could be exploited, the US Defense Department contracted the Institute for Defense Analysis, a Pentagon-funded think tank, to establish a digital centre to make available for research, digital copies of declassified and unclassified records as well as audio and video recordings captured in the Iraq and Afghanistan wars. With the strong support of Robert Gates, then Secretary of Defense, the Conflict Records Research Center (CRRC) began operations in 2009 in a few windowless offices at the National Defense University in Washington, D.C. The plan aimed to leverage the expertise of leading academic researchers from around the world to provide insights about the inner workings of Middle Eastern authoritarian regimes and terrorist networks. This initiative recalled a similar effort after the Second World War, when the US government microfilmed, declassified and fostered research and study of massive caches of captured German and Japanese documents.[41]

## Ba'ath Party Archive

Iraqi cultural officials condemned the CRRC as an instrument of American cultural imperialism. The director of the Iraq National Library and Archives, Saad Eksander, decried the availability of the records to American researchers as violating the rights of the Iraqi people (including their right to privacy), the rights of victims and the social sensitivities of Iraq. Only Iraq, he implied, should determine access to the files and their legitimate use according to its own sensibilities.

This US initiative constituted little more than 'cultural imperialism' by the 'conqueror' or 'occupier' over the 'conquered' and 'occupied' in the service of the Pentagon.[42] But to argue that Iraq should control the intellectual content and use of the captured archives according to its own sensibilities was no more reasonable than to contend that research in the archives of Nazi Germany should accord with the sensibilities of the German people.[43]

Eksander and other Iraqi cultural officials also denounced the US for aiding and abetting the Iraq Memory Foundation (IMF), a private nongovernmental organisation and registered US defence contractor led by the long-time Iraqi dissident, Kanan Makiya, which entered Iraq immediately after the invasion to save Saddam Hussein's legacy of atrocity, for plundering and removing millions of pages of Ba'ath party documents to American soil.[44] The Society of American Archivists and the Association of Canadian Archivists concurred, issuing a joint statement in April 2008 alleging that the IMF's taking of the Ba'ath party archive may have constituted pillage under the 1907 Hague Convention.[45] Although these allegations were perhaps understandable given the unusual circumstances surrounding the removal, the charges had little grounding in international law. The laws of armed conflict permit the capture of enemy records for strategic advantage and necessity, and are silent on whether defence contractors acting on behalf of invading and occupying forces may do the same.

The Ba'ath Party archive was discovered in 2003 by a US soldier in a warren of rooms in the basement of the Iraqi secret police headquarters. The files carried particular importance in chronicling Saddam's web of collaborators during his final years in power and the extent of Ba'ath Party authority throughout Iraqi society. The CPA agreed to turn over the files to the IMF rather than to the Pentagon for intelligence or the CPA's Office of Human Rights and Transitional Justice, which aimed to gather evidence for Saddam's prosecution.[46]

The IMF also vied with various Iraqi groups to acquire looted records from the central government's bureaucracies and ministries after the fall of the Ba'ath Party regime.[47] The looting of government records by Iraqi citizens and groups was animated by various factors: retribution, blackmail, the search for missing relatives or profit from their sale in a thriving black market for Saddam documents. The IMF, moreover, employed a network of contacts to locate and recover records, bringing them to its headquarters in the heart of Baghdad's international Green Zone.[48]

Makiya planned on making the documents in his possession the centrepiece of a public memorial centre in the heart of Baghdad devoted to exposing Iraqis to their authoritarian past. Just days before sovereignty was transferred to the Iraqi interim government on 30 June 2004, the IMF won the first of several US defence contracts, spanning 2003 to 2009, to create a video archive of witness testimonies and collect records detailing the atrocities and crimes of the former Ba'athist regime of Iraq.[49] The IMF intended to edit the video testimonies for a series of documentaries that would air on Iraqi television. The US government saw the production of the documentaries as a counter-intelligence operation – as a way to counter pro-Saddam, pro-Ba'athist propaganda. The Pentagon also contracted the IMF to 'collect documentary evidence of atrocities and crimes committed by the

former Ba'athist regime of Iraq.'[50] To maintain the viability of these contracts, the IMF also won authorisation for its possession of the Ba'ath Party archive from the Iraqi president's office after the CPA's transfer of sovereignty.

But Makiya's hopes for creating a memorial centre collapsed with the rise of the Sunni insurgency against the US occupation and sectarian civil conflict. Amid the ensuing chaos, Makiya sought to remove the documents to safer ground; he convinced the Pentagon of their probable intelligence value for understanding the Sunni insurgency, and in an unusual arrangement, the archive was transported to the US rather than to the media processing centre in Qatar for digitisation and analysis by the DIA before return to the IMF after peace was re-established.

Makiya then struck a five-year deposit agreement, in 2008, with the Hoover Institution at Stanford University to house the millions of Ba'ath Party records with the support of Iraqi officials in the president's office with whom Makiya leveraged his personal influence. The Hoover agreement ignited international controversy and allegations of pillage by Makiya and the IMF. Amid demands for their return by Iraqi cultural officials, professional archival associations and others, the State Department disavowed any US government responsibility for the records, considering it a private matter between the Iraqi government, Hoover and the IMF.[51]

In May 2010, a three-member Iraqi delegation met with US State Department and Pentagon officials in Washington to demand the return of the documents captured in the 2003 war. The Iraqi delegation characterised the documents as 'stolen.'[52] The Americans countered with 'taken' – a word found in Article 53 of the 1907 Hague Convention that permits the wartime confiscation of enemy government moveable property, including records, for military advantage. Both sides agreed on the word 'seized', which means to take possession of by legal authority and which plays to US advantage if it decides to withhold some or all of the records.[53]

The same delegation also met with officials at the Hoover Institution at Stanford University. The parties agreed that the Ba'ath Party archives was Iraqi property and that its return was vital for national reconciliation, democratisation, justice and the establishment of the rule of law in Iraq. There also was agreement that Hoover would consult with the State Department in future negotiations regarding their restitution to Iraq.[54]

In early 2014, before Iraq's swift descent into sectarian bloodshed and the rise of ISIS in Anbar province, the US and the Iraqi government were negotiating the possible return of the captured Saddam-era documents from the 2003 war. In January 2012, the State Department issued a press release regarding a joint statement by the US-Iraq Political and Diplomatic Joint Coordinating Committee. The joint statement aimed to reaffirm the strategic partnership between the two countries. The press release noted, among other things, that the 'United States and Iraq discussed the ongoing process of repatriating archives and documents which are part of the patrimony of the Iraqi people'.[55] The press release mentioned no further details regarding these discussions, but one researcher observed that the use of the terms 'archives and documents' suggested that the negotiations referred not only to the millions of records seized by US forces in the 2003 invasion, but also the contested Iraqi Jewish archives.[56]

## Iraqi Jewish Archives

The Iraqi Jewish archives was discovered in May 2003 when a US mobile exploitation team was diverted from its mission in hunting for weapons of mass destruction to rescue a rumoured ancient Talmud, a Jewish holy book, in the basement of the Mukhabarat, Saddam Hussein's secret police headquarters.[57] After arriving at the Mukhabarat, the soldiers found the basement flooded with three or four feet of fetid water and littered with debris, resulting from broken pipes from US aerial bombing. The search team failed to find the ancient Talmud, but instead discovered and rescued 2,700 other Jewish holy books, Torah scrolls, commentaries and books on Jewish law, and many other water-damaged documents and materials – an invaluable archive of a now dead Jewish community that had been one of the oldest Jewish communities in the world. Some of the material was centuries old.[58] The materials were evidently seized in 1984 from the Batareen synagogue in Baghdad.[59] With the assistance of Vice President Richard Cheney's office, the archive was sent to the US for expeditious conservation treatment for mould contamination and other water related damage.[60]

The archives' transfer to the US followed an agreement between the CPA and the Iraqi State Board of Antiquities and Heritage (SBAH).[61] The CPA-SBAH memorandum of understanding provided for an initial two-year loan of the materials under the US Immunities from Seizure Act (IFSA), a law that gave statutory means to import the archives to the US while protecting it from possible seizure by outside claimants. Congress enacted IFSA in 1965 to facilitate cultural exchange and exhibits among the world's cultural and educational institutions. For the most part, the act immunises owners of cultural materials from efforts to seize them in US courts. The law protects any work of art or other significant cultural object borrowed from outside the United States, either privately or publicly owned. In so doing, the law prohibits state and federal courts from entering any judgment, decree or order for the purpose of depriving foreign custodial or ownership institutions or individuals of custody or control of cultural objects or materials. By enacting the immunity law, Congress sought to invigorate international cooperation and enrich public appreciation and education of other cultures.[62]

When transferring governmental sovereignty to the Iraqis in June 2004, the CPA also gave the Ministry of Culture the prerogative to demand the return of the archives upon written request.[63] These arrangements presumed Iraq the rightful owner of the archives. Nonetheless, the archives soon became contested between Jewish groups and the Iraqi Jewish diaspora on the one hand, and Iraqi government officials on the other. Iraqi officials claimed the archives as an indisputable part of Iraqi cultural heritage. As the controversy over the archives' fate intensified, Iraqi cultural officials demanded the prompt return of the archives. The State Department gave assurances that the US government had every intention of doing so after the materials underwent conservation treatment.

The State Department's stated intent to return the archive to Baghdad, however, met stiff opposition. Jewish groups challenged the premise that the archive belonged to Iraq. In 2010, the *New York Times* reported that the Jewish Agency for Israel,

an international non-governmental group that aims to mobilise world Jewry on behalf of Israel, was 'working with the Americans to obtain Jewish archives that were seized by the Iraqi government'.[64] B'nai B'rith, the oldest and largest global Jewish services organisation, appealed to Secretary of State Hilary Clinton to ban the return of the materials.[65] The World Organization of Jews from Iraq, founded to protect, preserve and promote Iraqi Jewish heritage, also lobbied against returning the archives.[66] Moreover, one scholar questioned why a 'society that barely tolerated and then expelled its Jews, and that loathes and forbids the presence of Jews now, should be given 27 cases of Jewish documents and books'.[67]

The archives are particularly poignant, symbolising the tragic history of persecution, expulsion and dispossession of Iraqi Jews following Iraq's creation as an independent Arab state in 1932. The Iraqi Jews were of ancient lineage, dating to the sixth century BCE, when Nebuchadnezzar conquered Judea and exiled most of its population to Babylonia.[68] For more than 2,500 years, they endured an ever-changing series of rulers and empires. For a brief time beginning in 1917, Iraqi Jews prospered economically and advanced in government posts under British colonial rule, but this progress abruptly ended with the creation of Iraq as an independent state. Soon after, Iraqi Jews began to be dismissed from government posts and were murdered in anti-Jewish riots, including in the 1941 pro-Nazi pogrom, an incident that augured the future destruction of the Iraqi Jewish community.[69]

The repression redoubled following the 1948 founding of Israel, leading tens of thousands of Jews to flee Iraq. Under successive regimes, the Iraqi state persecuted Jews into penury. They were excluded from civil society, subjected to random searches and interrogations, dismissed from jobs, prohibited from higher education and restricted to cities. Moreover, Iraqi authorities restricted their travel abroad, disconnected their telephones, put them under house arrest and surveillance for extended periods, subjected them to a series of anti-Jewish deprivation laws and expropriated their property. Those fleeing Iraq were limited to taking $140 and 66 pounds of luggage; they were forced to abandon their homes, businesses and personal property, including photographs, papers, books, jewellery, family heirlooms and other assets.[70]

In 1951 and 1952, Israel and the US organised an emergency airlift of more than 130,000 Iraqi Jews to Israel under Operation Ezra and Nehemiah, one of the largest such population resettlements in history.[71] The repression of the remaining 5,000 to 6,000 Jews culminated on 27 January 1969, when Saddam Hussein's Ba'ath Party declared a national holiday and attracted a crowd of 500,000 to see the hanging of nine Jews in the public squares in Baghdad on trumped up charges of spying for Israel.[72] By the time of the 2003 US invasion, there were only a small handful of Jews left in Iraq, almost all of them old, in frail health and living in a single Baghdad neighbourhood, near a synagogue that rarely opened.[73]

Until the toppling of Saddam in 2003, the Iraqi state considered its dwindling Jewish population and their culture as an alien presence warranting obliteration. The seizure of their cultural materials and their sequestering in the bowels of the Mukhabarat's Baghdad headquarters recalled the Nazi seizure of Jewish cultural materials and artefacts and their plan to create a series of research institutions

for the study of the Jewish problem. The prospect of the US State Department returning the dispossessed archives to the land of Iraqi Jewish destruction not only raised the spectre of a second dispossession, but also promised to legitimise an historic crime against an ancient people whose origins predated Islam by more than a thousand years. It seemed ironic that Iraqi officials would consider the Iraqi Jewish archive as part of Iraq's cultural patrimony only after the State expunged its Jewish population. Nonetheless, the State Department was now legitimising this second dispossession through its stated intent to return this private religious and communal property to Baghdad rather than to the Iraqi Jewish diaspora.

The critical question was to whom did the archive belong? Whose heritage was it? Did it belong to Iraq, the country of origin, or to the Iraqi Jewish diaspora, the culture of provenance?[74] There was precedent to follow in how the US addressed the disposition of heirless Jewish property of extinct Jewish communities after the Second World War. Few considered sending heirless Jewish cultural property back to the European states where entire Jewish populations had been exterminated or forced to flee. Because of the annihilation of much of European Jewry, the US enlisted the assistance of Jewish non-governmental organisations to accomplish the difficult task of distributing heirless religious and cultural materials to new centres of Jewish learning and spiritual and cultural activity in Palestine and the United States, where so many surviving European Jews had found refuge.[75]

Even so, the moral imperative of returning the archives to the Iraqi Jewish diaspora whose culture and religion it represented was overshadowed by the American diplomatic convenience of maintaining good relations with Iraqi government officials, who considered the archives as Iraq's exclusive cultural heritage. Following the painstaking conservation and restoration of the archive by the National Archives and Records Administration, highlights of the Iraqi Jewish archives were exhibited in New York and Washington, and embarked on a tour of other American cities. In 2014, both the House of Representatives and Senate proposed resolutions requesting the State Department to renegotiate the 2003 agreement it signed with the Iraqi government to return the archives to Iraq after their restoration. In May of that same year, the Iraqi Embassy in Washington reiterated its insistence on the return of the archive. 'We consider the history of Jewish communities in Iraq to be an integral part of the history of our country – one that we honour and cherish – and nothing can erase the history, nor change our commitment to preserving its memory', said an Iraqi press release.[76] At the same time, as Iraq descended further into chaos and violence, Iraqi officials and the US State Department announced an agreement that the archives would remain in the US for an additional two years.[77]

## The Ravaging of Iraq's Cultural Heritage by ISIS

Iraq's descent into renewed bloodshed and perhaps irreversible disintegration began soon after the departure of the last American troops in 2011, leaving the country in the authoritarian hands of Nouri al Maliki's majority Shiite government. The arrest, imprisonment and torture of thousands of Sunnis by Maliki's security forces and the disenfranchisement of Sunnis from power sharing in Baghdad left Iraq vulnerable to

the extremist forces of the self-proclaimed Islamic State (IS), a Sunni 'armed militia with neo-medieval political aspirations in war-torn Syria and Iraq'.[78]

While many of Iraq's Saddam-era records and archives seized in the various wars and upheavals have been preserved by the US Defense Department and American research institutions, the same cannot be said of the ancient manuscripts, objects, cemeteries and archaeological sites ravaged and destroyed by the extremist forces of IS. The destruction of Assyrian sculptures and other artefacts in the museum of Mosul and the bulldozing and ransacking of the ancient sites of Nineveh, Nimrud and Hatra, among others, has represented an indescribable tragedy for human history and culture.

The destruction of ancient archaeological remains and manuscripts has been animated by religious fanaticism with the aim of purging idolatry. But IS also has turned attacks on ancient sites, as well as libraries and archives, into an explicit war strategy to terrorise populations under its control and finance its armed hostilities. The group, for example, has transformed its 'looting brigades into large-scale businesses'.[79] It is able to finance its war strategy through various sources of income, including from the sale of oil on the black market, bank robberies, kidnap ransoms, fees at roadblocks, 'taxes' imposed on traders living in IS-controlled areas and the looting of ancient archaeological sites. In general, IS destroys ancient historical sites only after seizing and removing everything of value.[80]

It remains to be seen how much damage the Islamic State's war on civilisation will inflict on Iraq's cultural heritage. If nothing else, the international laws of armed conflict – specifically the Hague conventions and protocols that purportedly safeguard cultural property in war – have proved woefully inadequate and out of date regarding the actions of non-state actors. The second protocol to the 1954 Hague Convention added protection in civil wars, but Iraq, Syria and other countries never signed it. But even if they had, it would scarcely have made any difference in curbing the destruction and pillaging of ancient cultural sites seen by the IS as, on the one hand, deviant and, on the other hand, lucrative sources of income. Further, UN officials have conceded that the drafters of the second protocol to The Hague agreement never foresaw deliberate destruction by non-governmental extremist groups.[81]

## Conclusion

In more than a quarter of a century of near continuous war and internal upheaval following Iraq's invasion of Kuwait, the state security archives of Saddam Hussein have been repeatedly seized, taken and removed to the United States. The chaos of repeated war and sectarian internal strife also have seen many other of the regime's documents perish in the mass looting and destruction of government property by Iraqis and in aerial bombing campaigns by US and coalition forces in the two Iraq wars. Even so, unlike Saddam's probable destruction of Kuwait's national archives, the overwhelming majority of Saddam regime documents seem to not only have survived through capture by Kurdish and US forces and are now in the hands of the Pentagon and US research institutions; many of these records

also have been made available to scholars and researchers for the writing and understanding of Middle Eastern affairs and world history, albeit amidst charges of cultural imperialism.

With Iraq's social and political disintegration, the question is whether Iraq will survive as a unified state. This question has considerable relevance regarding whether Iraq's state security documents can or should be returned and to whom. To repatriate the documents to the majority Shiite government in Baghdad would be to put them in the hands of the Shiite security forces as well as Shiite militias and Iranian proxies, which likely would exploit them against their Sunni sectarian adversaries. The fracturing of Iraq along sectarian lines, the unlikelihood of reconciliation, the continuing war against the Islamic State and the unravelling of Iraq as a cohesive nation state make the prospect of restitution of the Saddam regime's state security files increasingly unlikely.

## Notes

1  See Draper, 1992. Also, see Schofield, 1993, p. 60.
2  Draper, 1992; and Schofield, 1993, pp. 60–61.
3  See Al Diwan Al Amiri, http://www.da.gov.kw/eng/historiccenter/historic-doc-center. php (accessed 27 July 2014).
4  See Eckert, 2012, p. 2.
5  Ibid.
6  This concern for the return of the missing archives 'appears in a 2007 Wikileaks cable telling the US embassy in Kuwait that Kuwait remained "focused primarily on the return of missing Kuwaiti government archives" because the "Kuwaitis are nervous that sensitive government records may still emerge in Iraq with the potential to cause embarrassment to Kuwait"'. See Cox, 'More on Finding Kuwait's Missing National Archives,' Document Exploitation blog, 23 January 2012, http://www.docexblog. com/2012/01/more-on-finding-kuwaits-missing.html (accessed 28 July 2014).
7  See United Nations Security Council Resolution 686, Adopted by the Security Council at its 2978th meeting on 2 March 1991, S/RES/0686, 2 March 1991.
8  See United Nations Security Council Resolution 1284, Adopted by the Security Council at its 4084th on 17 December 1999, S/RES/1284.
9  See Cox, 2012.
10  Cox, 2012.
11  See Stuart Jeffries, 2008.
12  See Montgomery, 2015, pp. 61–84.
13  Research Centre for International Law, University of Cambridge, Cambridge International Documents Series, Vol I, *The Kuwaiti Crisis: Basic Documents*, 1990, p. 148.
14  Letter from the Permanent Representative of Kuwait to the United Nations, addressed to the Secretary-General, 15 September 1990, *The Kuwaiti Crisis: Basic Documents*, p. 270.
15  Letter from the Permanent Representative of Kuwait to the United Nations, addressed to the Secretary-General, 15 September 1990, *The Kuwaiti Crisis: Basic Documents*, p. 270.
16  Report to the Secretary-General on Humanitarian Needs in Kuwait led by Under-Secretary-General Martti Ahtisaari, 28 March 1991, UN Security Council Doc. S/22409, p. 13.
17  Karsh, 1996, pp. 754–57.
18  See Hennerbichler and Montgomery, 2015.
19  Hennerbichler and Montgomery, 2015.
20  United Nations, United Nations Convention on the Prevention and Punishment of the Crime of Genocide, adopted by Resolution 260 (III) A of the UN General Assembly on 9 December 1948, entered into force 12 January 1951.

21  See Makiya, 1992, pp. 56–57.
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23  HRW/Middle East, *Unquiet Graves*, p. 6.
24  HRW/Middle East, *Unquiet Graves*, p. 6.
25  Miller, 1993, Section 6, p. 15.
26  See HRW/Middle East, *Iraq's Crime of Genocide*, p. xvii.
27  See Montgomery, 2001, p. 77.
28  See transcript interview with Peter Galbraith, 'Saddam's Documents Show Kurd Genocide,' *Weekend All Things Considered*, National Public Radio, 24 May 1992.
29  Montgomery, 2012, p. 353.
30  Letter to Bruce Montgomery from Senators Jessie Helms and Joseph Biden, US Senate Foreign Relations Committee, June 1997.
31  HRW/Middle East, *Iraq's Crime of Genocide*, p. xx.
32  Shishkin and Trofimov, 2003.
33  See The Justice Coalition's *Victims' Advocate*, January 2007, p. 8, http://www.justice-coalition.org/newspaper/January2008/VAjan08.pdf (accessed 14 June 2015).
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35  Mufti, 2004.
36  Ibid.
37  Article 53, 1907 Hague Convention Respecting the Laws and Customs of War on Land and its Annexed Regulations, www.icrc.org/ijl.nsf/full/195, (accessed 19 June 2015). Article 52(2) of Additional Protocol I also permits the seizure of enemy materials in pursuit of military advantage. It is noteworthy that the US was not a signatory to the treaty during the 2003 Iraq war.
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39  See Montgomery, 2014, p. 569.
40  Borger, 2006; and Broad, 2006.
41  See Statement by Brigadier General Anthony Cucolo III, Director of Joint Center for Operational Analysis, and Lieutenant Colonel Kevin Woods, Project Leader and Principal Author of Iraqi Perspectives Project, US Joint Forces Command, 'The Iraqi Documents; A Glimpse into the Regime of Saddam Hussein, Hearings before the Subcommittee on Oversight and Investigations of the Committee on International Relations,' House of Representatives, 109th Cong., 2nd Sess., 6 April 2006, 16.
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43  Montgomery, 2012, p. 583.
44  Eskander, www.essays.ssrc.org/minerva/2008/10/29/eskander (accessed 5 May 2013).
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46  Montgomery, 2012, p. 353.
47  Montgomery, 2012, p. 353.
48  See Register of the Hizb al-Ba'ath al-Arabi al-Ishtiraki In Iraq [Ba'ath Party] Records, Hoover Institution On War, Revolution, and Peace, Stanford University, 2012, http://cdn.calisphere.org/data/13030/g3/c84j0cg3/files/c84jocg3.pdf, (accessed 7 February 2013).
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# 11 Networking Records in Their Diaspora

## A Reconceptualisation of 'Displaced Records' in a Postnational World

*Anne J. Gilliland*

## Introduction

In line with contemporary critical postnationalist discourse, this essay proposes that the archival notion of displaced records and associated arguments about their inalienable relationship to sovereign states are overly predicated upon outmoded physical- and nation states-based thinking. It frames this proposition with regard to evolving ideas about records as concepts, rather than physical entities, that have specific innate properties that extend beyond the limits of sovereign states or institutions, and the affordances of networked structures and infrastructures of the twenty-first century. These structures and infrastructures permit records to have a simultaneous digital presence and to be variously represented and understood in any number of geographic, political, social and intellectual spaces.

Certainly, there will always be cases where records have been removed from or placed outside the space of accessibility of a sovereign nation or community in violation of applicable laws and international conventions and these cases require appropriate remedy,[1] whether that be in the form of international intervention, replevin actions and physical or digital repatriation, or by other means. There will also be cases where records are clearly at risk and measures such as temporary removal or escrowing of copies may be pursued.

In the larger picture, however, the essay posits that it may be more appropriate and useful today for the archival field to acknowledge, respect, advocate for and act upon the realities of always-in-motion diasporas of records in which multiple parties have rights, interests and diverging points of view, than to try to negotiate ownership, protection and physical relocation of records across complex and contested histories and boundaries, power imbalances and stewardship capabilities. Such an acknowledgment moves archival discourse about displaced records away from institution- and nation-state-based ideas about singular provenance, sovereignty, inalienable ownership and physical custody. It focuses instead on records as plural and contingent co-created objects that have certain inalienable and universal characteristics. It also promotes the development of mechanisms for providing pluralised access to them regardless of where they are located and addressing future disputes that may arise over records that are generated, transmitted and stored through transnational networking and cloud-based technologies.

The essay lays out some of the fundamental tenets of postnationalism and discusses ways in which these resonate with constructs drawn from recent expositions of and developments in records theory that have potential for problematising and reformulating the notion of 'displaced records'. Using examples drawn from the history of Yugoslavia and its successor states, the essay concludes with a discussion of how a participative archival network approach that exploits contextual and agentive trajectories as well as biographies of official and personal records might support the needs of communities both local and global, at home and in diaspora in finding, 'claiming' and accessing records, regardless of where they are physically located. This approach takes into account the key role of metadata such as classification schemes and local or 'niche' archival description in ascertaining the presence or absence of records as well as in supporting transnational awareness and presenting a more pluralised and dynamic view of historical events as reflected through records and a diversity of archival representations. It could potentially also uncover new information about actions and individuals and facilitate the discovery of alternate copies and forms of lost or undisclosed evidence.

## Postnationalism and Records Theory

Over the past two decades, there has been increasing scholarly attention given to both the process and the state[2] of postnationalism as it relates to changes in geopolitics and economics that are largely driven by the processes of globalisation. Economic systems, enterprise and trade are globally interconnected and inter-dependent. Media and other forms of cultural exchange also span the globe in terms of their reach and their influence. Further strands of postnational research and policy-making address postnationalism that is a result of either grassroots movements or supra-national factors or bodies (e.g. the United Nations, world courts, the North Atlantic Treaty Organisation – or NATO), and its implications for such concerns as national and cultural identities, the relationships and loyalties of diasporic populations[3] (what cultural critic, Donald Pease, refers to as 'deterritorialized and extraterritorial peoples'[4]) with countries of home and of settlement, the concept and assignment of citizenship, national and international security and the prosecution of human rights violations and war crimes. One manifestation of postnationalism in these respects is the emphasis placed by major human rights instruments and international human rights bodies on rights associated with 'personhood' rather than those associated with specific citizenship.[5]

In this regard, it should be noted that postnationalism does not assert that nationalism no longer exists or is no longer relevant. Rather, postnationalism is understood as co-existing in tension with nationalism, underscoring that people have multiple belongings, and that boundaries can be both blurred and constantly shifting, and doing so in ways that defy temporal continuities. In such a framing, however, the nation-state can no longer serve as the single or even, as Pease notes, 'an operative model either for the regulation or the disruption of these processes'.[6] Noting that the proximately contemporaneous rise of modern nationalism and that of modern archives was not a coincidence and citing the integral role that archives

have historically played in racial politics within nations such as Germany, legal scholar Douglas Cox states:

> Archives can thus enhance the same nationalistic tendencies that, in turn, constitute one of the most invidious threats of intentional destruction to other nations' archives as part of a larger plan of ethnic cleansing, as was graphically illustrated in the former Yugoslavia ... the view of archives as irreplaceable national identity intensifies debates over their 'repatriation' and complicates the resolution of such disputes. The cultural and historical nature of archives can thus be both among their most valuable attributes and the source of their greatest vulnerability to seizure and destruction.[7]

A turn toward postnationalism in the context of thinking about displaced records, therefore, has the added benefit of acknowledging both the political and affective presence of nationalism, while countering some of its darker relationships with archives.

One of the most prominent facilitators of postnationalism in this century is information technology – specifically evolving networked and cloud-based bureaucratic and social technologies that allow for economic, social and cultural exchange and interchange. These technologies not only serve as the infrastructure whereby records are created, distributed or shared, stored and accessed, they also offer generative spaces for coping with issues raised by historically displaced or dispersed records.[8] This may seem to be a fairly self-apparent assertion. However, taking a more critical stance, one might reasonably ask: if records are in various ways a reflection or shadow of a person or body and the processes and places in which they were engaged, then might not that give them similar multiple identities and belongings to those of that person or body? One might further ask, if humans have certain inalienable rights associated with their personhood beyond their citizenship, in other words that are essential to their very nature as a human, then might not records similarly be approached in terms of their characteristics as a record rather than in terms of the 'citizenship' of particular bodies of records with regard to national claims or physical presence? In other words, can records transcend their national identities or material manifestations and be considered postnational because of their universal characteristics?

If we turn to contemporary records theory to try to answer these questions, we can find considerable discussion of how records can have multiple manifestations, belongings and interpretations. They also move across all sorts of definitional, blurred and shifting boundaries, and do so in ways that may defy temporal continuities. Much of this discussion revolves around the complex of contexts within which a record resides and related ideas about provenance.

The importance of context with regard to understanding records is widely acknowledged. For example, it lies at the heart of traditional archival precepts for arrangement and description such as *respect des fonds* and the principle of original order and is thus embedded in the structure and explications of archival finding aids. But what does 'context' actually comprise and what does it tell us about the

record and how it might be located, understood or claimed, especially as we move away from paper or other tangible forms of the record? Sue McKemmish writes:

> The loss of physicality that occurs when records are captured electronically is forcing archivists to reassess basic understandings about the nature of the records of social and organizational activity, and their qualities as evidence. Even when they are captured in a medium that can be felt and touched, records as conceptual constructs do not coincide with records as physical objects. Physical ordering and placement of such records captures a view of their contextual and documentary relationships, but cannot present multiple views of what is a complex reality.[9]

The studies carried out by the International project on Permanent Authentic Records in Electronic Systems (InterPARES) and its successor projects over the past two decades, have drawn upon principles in diplomatics theory to categorise five different types of context pertaining to the actions in which a record participates: juridical-administrative, provenancial, procedural, documentary and technological.[10] Potentially, even in non-digital contexts, each of these contexts might fairly quickly lead us outside the jurisdiction or control of a single records-creating institution or state. The inverse is also the case – with adequate knowledge about them, we should be able to trace any of these contexts to a record. Indeed, the latter notion lies at the heart of business process or functional analysis and macro appraisal approaches that have been pioneered for identifying and appraising records, especially in distributed digital environments. This underscores what all archivists know – that the records themselves are only nodes in much wider contextual webs that might be used to identify other copies of the same records that have been integrated into other documentary contexts, or other records that are related in terms of one or more of these contexts.

Gilliland-Swetland and Eppard, also writing of the InterPARES studies, further assert that:

> Records are temporally contingent – they take on different values and are subject to different uses at different points in time. Records are also time-bound in the sense that they are created for a specific purpose in relation to a specific time-bound action.[11]

Records continuum theory, first developed in the mid-1990s in Australia, holds that whether locally, nationally or societally, records, record-keeping processes and record-keeping agents exist, often simultaneously, across multiple dimensions in time and space and each can be simultaneously situated within multiple communities.[12] As McKemmish notes, 'Both the relationships amongst documents in a recordkeeping system or accumulation of records, and between records and their contexts of creation and use, are multiple and dynamic'.[13] As a result, records can have multiple simultaneous and parallel provenances and multiple parties can be seen to be co-creators of or to be co-present in those records and

thus should have rights in their management and disposition. Fundamental to traditional archival principles upholding the singular provenance and belonging of records, however, is an unchallenged construct of singular agency in records that substantially limits what rights additional parties should or might have in decisions relating to all aspects of record-keeping, thus limiting the ability of archival practices to shift into a postnational paradigm.[14] Gilliland and McKemmish have consequently argued that archives need to develop along more participatory lines, becoming a negotiated space in which different communities share stewardship and recognising that the records they hold or to which they provide access are created by, for and with multiple communities, according to and respectful of community values, practices, beliefs and needs.[15]

One other relevant thread in recent archival research argues that records have an identifiable social life or biography and move, and sometimes morph, through time, space and zones of control in ways that are both interactive and interdependent. The notion of displacement here is quite different from that of, for example, the objects held in museums. Instead it could be argued that records that one might characterise as displaced – records that were perhaps stolen, looted, appropriated or rescued – have been recognised as having some sort of value to another party and have entered or are being activated in a different phase of their lives specifically *qua records*. This research is influenced by applications of object ethnography in anthropology, sociology, education and the arts and humanities, as well as work in sociology and the information fields on the social life of documents. Cultural theorist, Arjun Appadurai, argues that such study is crucial to understanding social and cultural contexts and processes.[16] Object biography focuses on individual, classes or discrete groups or communities of objects and contemplates their shifting nature, and their agency in shaping people and cultures and mediating social relationships.[17] Such approaches study 'things-in-motion' (e.g. commodities that cross cultural, social or political boundaries)[18] as well as boundary objects. Anthropological archaeologist, Severin Fowles, in reviewing critical approaches to 'things', points out a dichotomy in how objects and their status have been regarded:

> On one hand, things are said to be powerful members of society that 'make people' no less than people make them. And yet, on the other hand, things are said to be subalterns who have been held down by the imperialist discourse of humans and who somehow require our defense. Well ... which is it? Are things powerful makers or are they powerless victims? It seems we want to argue both points at once ... The more interesting question, as I see it, is to ask what work is accomplished by the writing of objects as subalterns. And further, what work is accomplished when we elevate these objects to the status of subjects, albeit colonized subjects whose rights and honor it is for to us to defend?[19]

John Seeley-Brown and Paul Duguid's 1996 exposition of theories on the social life of documents emphasises the importance of documents in the formation of

communities, especially among disparate and dispersed groups of people, stating that, 'Seeing documents as the means to make and maintain social groups, not just the means to deliver information, makes it easier to understand the utility and success of new forms of document.'[20] However, those groups may not all understand the meaning of a document in the same way or may employ differing interpretive strategies, or the document may become the basis of negotiation over meaning. Documents can also be boundary objects between communities and can serve as catalysts for coordinating common practices.[21]

An important example of how this thread has been used in recent archival research is Michelle Caswell's investigation into the genesis and subsequent social life of the infamous mugshots taken by the Khmer Rouge of Cambodian prisoners at Tuol Sleng Prison before they were interrogated, tortured and killed.[22] Caswell details how the mugshots have subsequently moved across different documentary contexts, geographic and institutional spaces and material forms, as well as how they are differently understood, commodified and deployed and have different affective capacities from community to community and across generations.

What then can we say about characteristics that might be universal and inalienable to records that might inform ideas about displaced records, and/or enhance postnational understandings about the import of contested records and their locations to multiple parties? We can say that records are always more extensive than is evident simply from their physical manifestations and content. They all have biographies that can take them, in various forms, far beyond their original place and circumstances of creation and use. Displacement and the events and agents associated with it, therefore, are also a part of the biography of records. By the same measure, all records are created and participate within webs of context that extend beyond the immediate place and circumstances of creation. All records can have agency – they can make things happen – whether that be in a juridical or procedural manner, or in ways that cause a community to coalesce around them, or because they function as mediators between different communities, perspectives, time periods, administrations, generations and so forth. All records are subject to multiple and shifting interpretations and value judgments as they move across time, space and communities. And all records are associated with a complex of agents – while whoever is acknowledged to be the provenance of a record and whoever has physical possession of a record have both been historically and legally accorded considerable power in determinations of ownership, disposition, location and interpretation, more people are involved in the creation of a record, either as co-creators or as subjects with substantial presence (for example, the tragic prisoners in Caswell's study) than are currently acknowledged in archival practices. Of course, nothing in any of these statements is specific to records that are born digital, but the networked digital world throws them into relief especially when considering the nature of and contestations over displaced records.

Setting aside nationalist political agendas, the most important consideration about 'displaced records' is that the communities that must rely upon them to be able to carry out essential functions must have ready access to them. The relevance of and need for records can stretch across centuries, generations, geographies and

record-keeping systems. With these characteristics in mind, the final section of this essay uses examples drawn from twentieth century Yugoslavia to lay out a possible archival approach to providing more effective access to displaced and dispersed records.

## Participative Networked Approaches for Locating and Accessing Displaced and Diasporic Records

The culturally rich, ethnically and religiously diverse and administratively layered history of the variously constituted and named region of south eastern Europe that between 1946 and 1991 comprised the Socialist Federal Republic of Yugoslavia (SFRY), has experienced multiple colonial empires, the rise of nationalism, two world wars, major political transitions, brutal civil wars between 1991 and 2001, worldwide human diasporas caused by both economic and forced migration, and the ongoing construction and reconstruction of nations, national identities and political and economic systems. Associated with many of these events have been the movement, removal, disappearance or widespread dispersal of historical and contemporary records, both official and personal. Official records relating to the region up until the end of the Second World War can be found in countries outside the region including Turkey, Austria, France, Italy, Germany, Russia and England. Records pertaining to the SFRY and its antecedents can be found in former state (now national) archives or remain with reconstituted and defunct state bodies and organisations within the independent republics formed after the break-up of Yugoslavia, as well as in the Archives of Yugoslavia in Belgrade, Serbia. Personal or private records may have moved in an even more widespread documentary diaspora, carried by waves of emigrants and millions of refugees and internally displaced persons (IDPs) across the region, Europe and the globe and preserved by private individuals, families, community archives and various other types of collecting repositories. Beyond this, the International Criminal Tribunal for the former Yugoslavia (ICTY) in The Hague, which gathered several million pages of evidence, petabytes of digital materials and tens of thousands of hours of videotaped courtroom proceedings and eye witness testimony, as well as copies of relevant records created by the various parties involved in the wars in Yugoslavia in the 1990s, is another notable location of records of and pertaining to the former Yugoslavia.[23]

Only in certain cases would any of these records be considered to be displaced records according to international treaties and conventions, or be subject to replevin claims or requests for repatriation by archival bodies. Nevertheless, in most if not all cases, the widespread scatter and lack of systematic mechanisms for locating, accessing or collating these records, whether or not they are officially designated as 'displaced' present problems for those needing to locate or access them, not to mention for ensuring the ongoing preservation and integrity of records that remain at risk of further loss. Key records in the region remain largely non-digital, while service infrastructures are frequently inadequately resourced and may also be idiosyncratic or unresponsive, and individuals as well as archives

lack ways to preserve and share trusted copies of their own records so they might not be destroyed or damaged in the future. The displacement and diaspora of records also raise important ethical dilemmas and affect relating to shifting and contested identities, jurisdictions and histories, inadequate trust and cooperation between agencies and nations, the use of multiple languages and scripts and the continual interplay of past and present.

If we consider first the five contexts that were identified by the InterPARES Projects, we can gain a good sense of how complex and dispersed the records picture is, pertaining to this region.

1   *Juridical-administrative contexts* would include records created under Ottoman, Venetian, Austro-Hungarian, Napoleonic and Italian rule, as well as those of the federal and constituent republic administrations in SFRY and nationalised industries and other state bodies and of the independent republics that were established in the 1990s. There was also religious institutional record-keeping by the four main religions in the region.
2   *Provenancial contexts* (encompassing both creators and collectors) would include government agencies, business, religious institutions, schools, community organisations, diasporic communities, families and individuals and also, since the start of the Yugoslav Wars, the ICTY (and all the various provenances associated with its holdings) and independent documentary initiatives.
3   *Procedural contexts* and requirements would be delineated through administrative procedures, record-keeping protocols, requirements relating to sensitive or confidential documents and classification rules and schemes. The existence of records or correspondence copies of key documents in locations as far-flung as Istanbul, Graz, Vienna, Venice, Rome, Padua, the Vatican and Paris illustrate the flow of imperial and ecclesiastical information and bureaucracy.
4   *Documentary context* refers to the various possible relationships that might exist between documents, for example, those with the same provenance, those that participated in the same action or business process, those that dealt with the same subject matter, those created on the same date or in the same year and copies or different versions of the same record. Even before the age of digital networking records existed in multiple copies, and the information they contained existed in multiple forms and versions. However, they may conform to different record-keeping traditions, be filed in different contexts, or be described not only according to diverse institutional practices but also according to local perspectives and historical narratives. An agreement was signed last year by all the successor republics to the SFRY to digitise and describe the records of the former Yugoslavia located within their states, but it is unclear how this will be financed, what descriptive structure might be used, or how current differences in closure and opening periods might be resolved.
5   *Technological context* is relevant to understanding the circumstances of creation and preservation of accessed records and thus their trustworthiness, especially when those are in digital form, as are many of the ICTY records.

Within the independent states and new political economies that emerged out of the former Yugoslavia and in the global diaspora of peoples from the region there are pressing governmental, enterprise and personal needs for records from previous administrations. Inalienability as a concept is often used to underscore the incapacitating effect on a state of not having access to its own records. The new states emerging out of the SFRY are in a position where they inevitably do not hold all the records pertaining to them within their own borders. Still in the throes of making difficult political and economic transitions from state to privatised economies, businesses and industry also require access to earlier records. In the case of the millions of individuals still in the process of recovering, returning or resettling after the wars of the 1990s, access to official records (especially those relating to establishing or obtaining residency or citizenship; proving, reclaiming, transferring or ascertaining ownership of land, homes or other property; obtaining work permits, pensions or veterans' benefits; proving the right to vote or to run for office within a particular jurisdiction; and producing evidence of particular credentials or qualifications such as having completed high school or obtained a medical degree) are also priorities.

What then might be considerations, possibilities and requirements for facilitating ready and effective findability and access to such records, while at the same time navigating continuing political sensitivities and lack of trust, explicating different bureaucratic practices and accommodating variant levels of archival resources and technological capabilities? Research in other domains points to the potential and robustness of entropic networked archival approaches for addressing many of these issues.[24] Rather than constrain such a network by limiting it to particular repositories and requiring the use of prescribed standards, an unbounded, decentralised (i.e. where no single agency or other party takes the lead role) and evolving network encourages trust and participation by allowing each participant to relate the biography or story of, as well as describe the content they are contributing in their own way. A participatory approach should also enable other organisations, communities and individuals to upload and share content, together with their own descriptive and trust metadata. It should also engage with co-creators and others who are present in the records and be responsive to their interests, concerns and rights. Creating a networked environment that is also supportive of independent tool development, sharing and deployment (e.g. by providing open source application development tools) would permit others to contribute or juxtapose parallel descriptions that reflect their own perspectives and interpretations, as well as to mine, map or develop visualisations across different content. Another possible use of tools would be to discern gaps in records as well as to lead users to alternative sources of evidence or information.[25]

Networked approaches also map well onto the contextual structures in which records are embedded. Wendy Duff and Jessica Haskell for example, propose applying Deleuze and Guattari's concept of the rhizome, 'an open, nonhierarchical, and acentric system, as opposed to the arborescent model that currently informs and structures the way archivists arrange, describe, and provide access to their archival materials'.[26] They see the facets of the rhizome to be

'nonhierarchical, nonstructured, dynamic, ceaselessly connected, acentric, and accessible at multiple points'.[27] A rhizomatic approach also increases the possibilities of the serendipitous discovery of relevant records. Ricardo Punzalan suggests a structure for how archivists might approach making evident the biographies or telling the stories of their holdings. Exploring the notion of diasporic or dispersed records in relation to photographic collections, he identifies four dimensions of archival dispersion – geographical, temporal, provenancial and material that 'simultaneously act as barriers for providing consolidated representation' of dispersed items. He argues that it is essential for archivists to understand the context and nature of dispersion to represent the items effectively. He uses the term 'Archival Diaspora' specifically to draw attention to the complicated nature of distributed collections.[28] Adapting Kim Butler's five dimensions of diaspora research to the archival domain, he suggests that such representation should ask:

> What are the reasons for, and conditions of, the dispersal of archival records? What is the relationship of dispersed records to their source communities? How have records come to be understood, used, or assimilated into new collections in the institutions or communities where they currently reside? What is the relationship between the various resultant collections? What do various iterations or cases of dispersed collections tell us about the nature of archives?[29]

By the same measure, it is also essential that those wishing to locate and use the items also understand the context and nature of dispersion. For example, typical questions that arise when an individual today is looking for Yugoslav records include the following: What record do I need and under which authority and in which language might they have been created? Were such records in fact ever created? If so, do they still exist today and where might they be? How will I identify them (are they described in a way that I can find the documents I need?) Can I trust the records I find/receive? If such records never existed, or no longer exist, or exist but are not accessible, does the same information exist in any other form that I might use and if so where, etc.? If not, is there an earlier version of the record somewhere else? Or another process I can go through to reconstruct the record or otherwise support my need?

Beyond following the biography of the record and tracing the various formal contexts outlined above, several other contextual paths could be envisioned, some easier to generate than others and some raising more questions of ethics and vulnerability than others. These might include being able to follow the trajectory or career of a particular actor or agent, for example, a politician, emigrant or refugee, or of a specific record or set of records relating to a particular event. Although it would almost always be easier to trace the trajectory of a major figure, with enough digital content and robust granular description and searchability of documents less prominent individuals and their experiences might become easier to trace.[30] The still disputed assassination of the Austrian Archduke Franz Ferdinand, heir presumptive to the Austrian throne, and his wife in Sarajevo in June 1914 that

precipitated the outbreak of the First World War, provides an interesting example of an event where one might wish to trace the documentary context that developed around the event as well as to follow the life of the records involved.[31]

If we are to fully exploit the context of the records, then as much as possible of the metadata that is created about the record during its life (e.g. procedural documentation) must be captured and exposed. At the same time, descriptive metadata should be maintained (with attribution and date of creation) without attempting to impose external normalisation structures and standards (e.g. a reconceptualised, de-institutionalised approach to the creation and maintenance of authority files would be necessary) that would limit the ability to represent records and their content according to local or national points of view. Finally, high-level linking such as is possible through linked data should be used to help the user move between and collate or trace diverse content and metadata.[32] Two other requirements would be the development of a new trust metadata regime required for uploaded materials (e.g. based on document and use history, certification, comparison with related documents) and the implementation of differentiated access protocols and other relevant constraints to address concerns about privacy and security.

## Summary: What Is to Be Gained by This Approach?

Mindful of the effects and potential of digital networking for records creation and access, this essay has proposed an approach to the problems presented by displaced and dispersed records that is rooted in the recognition and exploitation of the various contexts and other characteristics that are inherent to records. It is also rooted in a commitment to pluralisation in terms of respecting and revealing the different ways in which the same act, event, community or individual have been characterised, historically and archivally by different parties and at different moments, and in supporting new social as well as political interpretations of the past. The benefits of such an approach include recognising and accommodating national, extranational and supranational interests in records (in this case, relating to the former Yugoslavia); enhanced locatability and accessibility of records and possible record-substitutes where the records cannot be located or no longer exist; exposure of records that are not there and generally making it harder for records to be hidden or evidential traces destroyed because their absence can more easily be discerned; the ability to upload alternative descriptions of or commentaries on records and the subjects to which they pertain and juxtaposing these with other descriptions and commentaries on the same records or subjects; and a mechanism for sharing additional or surviving materials of community, personal or sentimental value.

Two final concerns should be addressed in proposing this approach. The first of these relates to the hazards of invoking universalism. Just as there are tensions between nationalism and postnationalism, there are always tensions between universalism and the kind of pluralism that this essay seeks to encourage. The universalism asserted here is supposed to parallel that accorded today to individuals in terms of their human rights. Caswell points out a different dichotomy between

nationalism and universalism in her article on the fate of the Iraqi Ba'ath Party records following the 2003 US invasion of Iraq. Nationalism and universalism in this context refer to the ideas that cultural property is seen as either belonging to a nation or to all of humankind.[33] Her suggestion is to propose

> a third, postcolonial approach to cultural property that takes into consideration the reality of power relations between colonized and colonizer, asserts the sovereignty of states in spite of outdated nationalist constructs, and yet still acknowledges the universal appeal of cultural property in an increasingly globalized world.[34]

The intent with the framework proposed here, however, is to avoid creating a new hegemony that invokes such a dichotomy, and instead allows for pluralism that not only recognises institutional, nationalist and postcolonial interests and agendas, but also supports all the other communities and dynamic interpretations that the records' biographies and contexts engage, precipitate or invoke.

The other concern that a reader might have is why, in such high stakes discussions, should archivists be looking to records theory and network infrastructures and not simply to the law or international conventions? One immediate response is that archivists understand much more about these characteristics of records than do lawyers, international bodies, politicians or institutional leaders. They are able to educate such individuals about those characteristics and how they might come into play in disputes over displaced records. Another response might be to point out again that certain archives have been complicit in or the target of nationalism, and finding a way to frame issues relating to the displacement of records that moves them beyond arguments about sovereignty, inalienability and national identity is one way to combat such concerns. Finally, premising actions regarding displaced records on a more solid understanding and articulation of the characteristics of records allows archivists to be more proactive in addressing the realities of digital networking and globalisation, where it will become increasingly difficult to frame future actions based around experiences with physical records and nation-state-based understandings of the past.

## Notes

1 See UNESCO, 1954, http://www.unesco.org/new/en/culture/themes/armed-conflict-and-heritage/the-hague-convention/, and 1970,http://www.unesco.org/new/en/culture/themes/illicit-trafficking-of-cultural-property/1970-convention/.
2 Hernández-Durán, 2016.
3 See Appadurai, 1998, p. 166.
4 Pease, op. cit., p. 12.
5 United Nations Office of the High Commissioner for Human Rights, 'The Core International Human Rights Instruments and Their Monitoring Bodies', http://www.ohchr.org/EN/ProfessionalInterest/Pages/CoreInstruments.aspx; Koopmans and Statham, 1999, pp. 652–696; Saskia, 1996.
6 Pease, op. cit., p. 11.
7 Cox, 2010, p. 1009.

8 Robert Latham and Saskia Sassen, 2005. Huskamp Peterson (2001) makes similar arguments about the role of national archives and nationalism: http://trudypeterson. com/wp-content/uploads/2014/downloads/Nasty%20Truth%20Korea2.pdf.

9 McKemmish, 1994, pp. 187–203: http://www.infotech.monash.edu.au/research/groups/rcrg/publications/smcktrc.html.

10 InterPARES Glossary, p.2, http://www.interpares.org/book/interpares_book_q_gloss. pdf. Technological context was introduced by InterPARES was identified as a relevant form of context by the InterPARES projects because it was felt that it had implications for the creation, trustworthiness and preservation of digital records.

11 Gilliland-Swetland and Eppard, 2000: http://www.dlib.org/dlib/july00/eppard/07epp ard.html.

12 Upward, 1996, 1997 and 2005.

13 McKemmish, op. cit.

14 Gilliland, 2016, pp. 31–73.

15 Gilliland and McKemmish, 2014, pp. 79–88.

16 Appadurai, 1986, pp. 3–63.

17 For example, see Preda, 1999, pp. 347–366; Steiner, 2001, pp. 207–232; Nicholas Thomas, 1991; Hoskins, 2006, pp. 74–84; and Carrington and Dowdall, 2013, pp. 96–107.

18 Berta, 2014, p. 34.

19 Fowles, 2016, pp. 9–27: http://www.academia.edu/404148/The_Perfect_Subject_Post colonial_Object_Studies.

20 Seeley-Brown and Duguid, 1996: http://pear.accc.uic.edu/ojs/index.php/fm/article/view/466/387.

21 Seeley-Brown and Duguid, op. cit.

22 Caswell, 2014.

23 United Nations Mechanism for International Criminal Tribunals, Archives of the International Criminal Tribunals: http://www.unmict.org/en/about/archives-international-criminal-tribunals.

24 Demetrius and Manke, 2005, pp. 682–696.

25 Two interesting precedents (historical and contemporary, respectively) for this are the International Military Tribunal that was convened after World War II, which made an unprecedented effort to gather together all surviving documentation and which determined that the records kept by the Third Reich were so comprehensive and strictly classified that it was often possible to reconstruct events and operations even when certain central files had been destroyed; and the Declassification Engine, directed by historian Matthew Connelly, which is analyzing classification policies and patterns at the same time as building a corpus of US government documents and using data mining techniques to infer what must exist but is classified.

26 Duff and Haskell, 2015, p. 38.

27 Duff and Haskell, op. cit., p. 50.

28 Punzalan, 2014, p. 326.

29 Punzalan, op. cit., p. 327.

30 For example, using 230,000 records contained in its Provenance Index databases, the Getty Research Institute has been able to construct a 'Network Diagram of Agents Connecting the British, Belgian, Dutch and French Auction Markets from 1801–20', www.getty.edu/research/tools/provenance/zoomify/index.html. The Transatlantic Slave Trade Database (http://www.slavevoyages.org/), which provides details and visualisations of 34,948 trans-Atlantic voyages, has been built using multi-source machine-readable data derived by historians from the 1960s onwards from archival sources in different European countries and ports.

31 These might include, for example, documentation about arrangements for the visit and the visit itself (located in Sarajevo and Vienna); Austro-Hungarian dispatches and documentation of the subsequent investigation of assassination events (Vienna and Sarajevo); documentation of anti-Serb pogroms in Bosnian and Croatian cities;

Austrian imperial communications prior to declaring war with Serbia (Germany, the Vatican, Kingdom of Serbia); German communications with Russia and France, then Belgium; British communications with Belgium and France; Serbian records originally held in Belgrade, and then taken to Berlin by German forces who occupied the Serbian Archives during World War II and then to Moscow by Russian forces after they entered Berlin at the end of the war; documentation of the removal and funeral of the bodies of the Crown Prince and his wife (Montenegro, Trieste, Vienna, personal accounts); documentation about the conspirators (school records, police records); and materials in private hands (observers, participants, etc.).

32  Gilliland and Willer, 2016, pp. 217–228.
33  Caswell, 2010, p. 237.
34  Caswell, op. cit., p. 238.

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# 12 Revisiting the Law and Politics of Compromise

*Douglas Cox*

In 2011, France and South Korea signed an agreement for the return of nearly 300 volumes of Korean royal archives dating from the Joseon Dynasty. French military forces had seized the archives in 1866 and France subsequently held them in the collections of the *Bibliotheque Nationale de France* (BnF).[1] The agreement to return the archives, after years of unsuccessful negotiations, did not provide for their permanent restitution, but was instead a five-year renewable loan to South Korea.[2]

At first blush, this compromise seemed precisely backwards. The value of the return of a displaced portion of South Korea's history was saddled with the indignity of a loan agreement that denied it legal ownership over its own cultural heritage. At the same time, the agreement left the BnF, which had argued for retaining the archives to make them available to the broadest pool of international researchers, with what appeared to be the least useful consolation: technical legal ownership, but not custody.

Yet in retrospect, the agreement between France and South Korea exemplifies a successful compromise. Neither side received precisely what it wanted, but the result was an improvement over the *status quo*. The compromise, in fact, was unique and creative, and has proven thus far to be remarkably successful. The impending transfer of the archives spurred the BnF to accelerate a project of digitising the manuscripts, which are available online to researchers everywhere as part of the BnF's *Gallica* digital library. At the same time, South Korea refused to let the loan arrangement dampen the significance of the repatriation of the archives, which were greeted with parades, ceremonies and renewed study.[3]

As this volume illustrates, the Korean archives are just one in a long line of disputes over displaced records and archives, some extending back decades, which are challenging to resolve. Recent years have also brought invaluable, in-depth case studies illustrating the complexity and dynamics of displaced archives negotiations, including *Returned from Russia*,[4] which explored negotiations over various European archives displaced during the Second World War that were held in Russia, and Astrid Eckert's masterwork on the return of captured German records, *The Struggle for the Files*.[5]

The international community – including, the International Council on Archives (ICA) and the United Nations Educational, Scientific and Cultural

Organization (UNESCO) – has a long history of efforts to advance the resolution of archival disputes. The efforts have included raising awareness of the importance of archives as a part of cultural heritage; identifying relevant historical practices and advocating for international norms – including the concepts of 'archival inalienability' and 'joint heritage' – to guide the resolution of archival disputes; and pursuing practical initiatives such as microfilming projects and funding initiatives.

Despite these efforts, disputed archival claims continue to be difficult to resolve. This chapter will critically examine relevant international initiatives both to assess their influence in resolving disputes and to suggest how such efforts might be renewed and revitalised. In particular, this chapter critiques the focus of the international archival community on issues of sovereignty, inalienability and ownership of archives based both on the law and on the effect such concepts may have on the negotiation of displaced archives disputes. Finally, this chapter recommends a balanced, practical approach that stresses the broad pool of stakeholders in foreign archives, maximises flexibility and encourages creative approaches to resolving, or at least ameliorating, the effects of archival displacement.

## Displaced Archives *Realpolitik*

As a threshold issue, a realistic assessment of solutions to displaced archives controversies requires an honest acknowledgment of the unavoidably political nature of such disputes. Given that archival controversies arise from armed conflict and occupation, colonisation and decolonisation and even peacetime espionage, the often heated and political nature of these disputes is unsurprising. States seize, capture, remove, withhold, purchase, steal and hack the records and archives of other states to gain strategic, tactical, technological, political, military, intelligence and/or economic advantages, or to prevent other states from gaining them. At the same time, such records and archives can legitimately constitute irreplaceable national patrimony and their removal and displacement unquestionably implicates issues of sovereignty, self-determination and national pride.

These factors drive, and complicate, determinations about whether to return displaced archives or even whether to acknowledge custody of foreign records held in secret. Simply put, states are reluctant to transfer foreign archives when there is either a perceived advantage to withholding them or perceived risks to returning them. As a result, protracted negotiations, delay, neglect and inertia are more the rule than the exception.

The most important factor in resolving displaced archives disputes, in fact, appears to be political and economic alignment – or realignment – between the states concerned. In post-conflict scenarios, for example, captured enemy archives are most often returned when new, post-war governments are formed that are allies rather than foes. The return of captured German records following the Second World War, for example, was based in part on a US policy to 'promote friendly relations with the Federal Republic of Germany on a normal basis'[6] Similarly, as Michael Karabinos describes in this volume and previously,

the return by the Netherlands of seized records from Indonesia corresponded to renewed relations between the two countries.[7]

Moreover, while the international archival community has properly criticised the use of displaced archives as diplomatic bargaining chips, this remains one of the most successful means of resolution. The agreement for the return of the Korean royal archives from France to South Korea, for example, occurred in the context of economic negotiations between the two countries during the 2010 G20 Summit.[8] Even the seemingly intractable debate between France and Algeria over colonial archives held in the *Archives Nationales d'Outre-Mer* has seen potential signs of progress in the context of a closer political relationship between the two countries. A 2012 state visit to Algeria that involved the signing of financial, industrial and defence cooperation agreements, heard French President Francois Hollande calling for French archives 'to be opened up' and for greater cooperation between French and Algerian historians.[9]

## Revisiting International Efforts

Acknowledging such realities does not mean that the fate of displaced archives must be abandoned to the vagaries of political expediency, and the international archival community has sought to identify more useful and principled guidelines for resolving such disputes. Seeking to revitalise such efforts provides an opportunity to reassess and, where necessary, recalibrate these principles.

### *Historical Treaties, Diplomatic Practice and the Rise of State Intelligence*

One area of special focus has been a series of extensive historical studies of diplomatic practices and legal instruments in post-annexation, post-war and post-colonisation contexts to inform current negotiations and advocate for consistent international norms.

The ICA summarised conclusions drawn from this research in its 1995 position paper. It described 'a diplomatic routine for settling disputed archival claims' that was 'progressively established from the time of the Treaty of Westphalia onwards', which provided the following principles:

1    treaties relating to changes of sovereignty over a given territory included clauses dealing with the surrender or exchange of archives;
2    lists of archives to be transferred or copied as a result of such treaties were specifically agreed between the two parties;
3    documents necessary for the conduct of current business and for administrative continuity were almost invariably handed over by the predecessor state to the successor state either in original form or as copies;
4    archives captured or displaced during hostilities were returned once peace was concluded; and
5    archives of temporary military authorities of occupation remained the property of the occupying powers.'[10]

These principles seem both reasonable and useful in providing guidance in the resolution of displaced archives disputes. Yet reliance on such historic treaty practice to establish customary norms about what the resolution of more modern archival claims *ought or must* be is more complicated.

First, the treatment of archives in historical treaties does not necessarily reflect a benign international custom, but may indicate the unequal bargaining power of the parties. As UN rapporteur, Mohammed Bedjaoui, described these treaties in his extensive International Law Commission study: 'All, or almost all, annexation treaties in Europe since the Middle Ages have required *the conquered* to restore the archives belonging to or concerning the ceded territory.' Bedjaoui expressly noted that such negotiations were 'generally based not so much on equitable decisions as on political solutions reflecting the power relationship of victor and vanquished.'[11] Archivist Ernst Posner evocatively described the negotiations of the Treaty of St. Germain in 1919, for example, stating, 'Austria's bargaining position was extremely weak' and therefore 'she had to sacrifice archives, without which people can live, to get bread and other food, without which they cannot live.'[12] Such historical treaties may arguably reflect the same forces of political power and leverage that drive more modern diplomatic agreements.

Moreover, as the ICA acknowledges, practices appear to have changed during the last century. As the ICA describes, the 'traditional practice of devolution and restitution of archives was abruptly abandoned in 1945' following the Second World War, leaving an 'unprecedented accumulation of unresolved problems concerning' displaced archives.[13] This conclusion finds support in other sources. The 1958 UK manual on *The Law of War on Land* acknowledged, for example, that victorious troops often allowed surrendering enemy forces certain privileges and rights as a matter of respect, including permitting 'that civil and military archives shall remain in the custody of the officials of the vanquished party'. The manual hastened to clarify, however, that:

> This is *not* the usual practice in *modern* warfare as belligerents place considerable importance upon the capture of civil and military documents belonging to the enemy. They provide the victor with political, military, technical, *etc.*, information relating to the causes of the war, the conduct of hostilities, the conditions prevailing in the territory of the defeated party, and other questions. Considerable use is made of documents relating to scientific methods, technical equipment and research activities of the enemy. Special units are nowadays assigned to armies, whose task is to prevent the destruction of such documents and seize them for their governments.[14]

Indeed, the rise of, and expanding role for, state intelligence operations has become a powerful driving force both in creating displaced archives disputes and complicating their resolution. Whether during war, occupation, decolonisation or peacetime espionage these forces create irresistible incentives to simply carry away as many foreign archives as one can transport. The same forces discourage restitution for fear of relinquishing an intelligence advantage or, worse,

creating a security risk. This is illustrated in Robert Livingston's description of US reluctance to return to Germany the Stasi 'Rosenholz' files, which the US Central Intelligence Agency (CIA) obtained under questionable circumstances following the fall of the Berlin Wall:

> To visiting German intelligence officers who inquired about return of the files, the CIA gave the standard answer of all espionage services when pressed to disclose information in their possession: 'We must protect sources and methods.' In cases such as Rosenholz, which had not been meticulously examined, a service's worry is that the materials may include information about the service that the service has itself has not detected but that those to whom the information is passed may.[15]

### Archival Inalienability and Legal Norms

Consideration of historical diplomatic practices leads to the related and more complicated issue of what laws, both international and domestic, properly govern the resolution of displaced archives disputes. As Bautier said in 1961: 'It can hardly be denied that for centuries there has existed, if not an "international law on archives," at least a problem of "archives in international law."'[16]

The international archival community has thus sought to identify relevant legal norms. In particular, the ICA has invoked the principle of the 'inalienability and imprescriptibility of public records', as a guide for addressing disputed archival claims. 'National laws agree in conferring the status of inalienable and imprescriptible public property on public records', the ICA states, and therefore the 'transfer of ownership of public archives especially in the case of succession of States can therefore only occur through a legislative act of the State which created them'.[17] UNESCO similarly endorsed the concept, stating, 'public archives constitute the inalienable and indefeasible property of the national community which is represented by the State'.[18]

This principle of 'archival inalienability' has unquestionably influenced the framing of displaced archives debates. A 2008 call by the Society of American Archivists and the Association of Canadian Archivists for the transfer to Iraq of various collections of displaced Iraqi records in US custody, for example, expressly invoked the 'inalienable character of national records'.[19] Similarly, in 1992, France and Russia entered an agreement for the return of French archives held in Moscow that had been displaced during the Second World War. The agreement recited that, in accordance with 'international practice, the Sides recognized the inalienable nature of public archives and shall return such of these as, being in the possession of the Sides, ought to belong to the other'.[20]

Inalienability has an undeniable appeal as it provides a clearly defined, understandable norm. The central problem, however, is that this concept oversimplifies the complexity of the legal status of displaced archives. It also oversimplifies the legal positions of states involved in such disputes. This can have the negative effect of encouraging overly aggressive assertions of ownership and legal

rights and, in turn, encouraging inflexible negotiating positions and discouraging compromise. The frequency with which disputes involve allegations that archives were 'stolen' or 'pillaged' or 'plundered' may be evidence of this. Even in situations in which such allegations are accurate, they are rarely useful in negotiations.

Aggressive demands for the return of displaced archives must also be attune to what Mohammed Bedjaoui referred to as the 'incriminating aspect to the act of restitution'.[21] That is, the country that returns archives must not be forced into admitting that they were wrongfully in possession of them (even if they were).

The oversimplification of the concept of archival inalienability can be remedied by simply acknowledging the complexity of the factors that affect the legal status of displaced archives. The circumstances in which such disputes commonly arise implicate several different, highly complex legal regimes that, each in their own way, challenge and limit a state's sovereignty over its archives, the overriding principle that archival inalienability represents.

First, records and archives displaced during war and occupation trigger the application of the law of armed conflict. As this author and others have argued, while national laws may treat state archives as inalienable state property, these laws do not necessarily trump the law of armed conflict pursuant to which belligerents may capture and permanently appropriate enemy state property where there is military necessity.[22] The central complexity is that 'enemy' records and archives constitute a special property category somewhere between enemy property, whose capture the law permits, and cultural property, which enjoys more robust legal protections, although still subject to exceptions for military necessity.[23]

The current *Manual of the Law of Armed Conflict* of the UK Ministry of Defence summarises the basic standard for archives in war: 'Official documents and papers connected with the armed conflict may be seized, even if they are part of official archives, because they will be of military significance. However, other types of archival documents, as well as crown jewels, pictures and art collections may not be seized.'[24] Determining the lawfulness of the seizure of archives can thus become a complicated, fact-intensive inquiry.

Second, the movement of records during colonisation, decolonisation or the creation of new states implicates the separate, but equally complex, legal regime of state succession. The central issue becomes determining the proper division of state property between predecessor and successor states. Charles Kecskeméti notes that archival claims in such situations are 'particularly complex' and that 'there is no possibility of achieving any real progress unless the full complexity of the problem is understood'.[25]

The primary international attempt to codify relevant legal principles came through the 1983 diplomatic conference on the *Vienna Convention on Succession of State in respect of State Property, Archives and Debts*, which attempted to address the transfer of archives between and among predecessor and successor states in several contexts.[26] The ambivalence of the international community towards the principles of this Convention, however, is illustrated by the fact it has not entered into force due to the limited number of state parties. Moreover, the Convention was also challenged by prominent members of the international

archival community, who concluded that the Convention did 'not provide an adequate basis for dealing with succession of States in respect of archives.' In particular, the archivists expressed serious concern that in certain circumstances the Convention contemplates the automatic transfer of archives even in the absence of a specific agreement between the states. 'Such a conception,' the archivists concluded, 'disregards the very nature of archives'.[27]

Third, displaced archives disputes arise in the context of espionage during war or peacetime. 'Espionage is often nothing but a "paper war"', noted Mohammed Bedjaoui, 'which enables the more successful to obtain the enemy's – or even the ally's – plans, designs, documents, secret treaties, and so forth'.[28] The CIA's surreptitious procurement of the Stasi 'Rosenholz' files, mentioned above, which were not returned to Germany until a decade later, provide a compelling illustration.

While acts of espionage, such as the secret taking of foreign government records, may clearly violate the domestic law of the state whose records are removed, the question of whether espionage violates international law is still hotly debated. On the one hand, espionage appears manifestly inconsistent with the basic rights of states to sovereignty and territorial integrity. On the other hand, given that all, or nearly all, states engage in foreign espionage, it is arguably an internationally accepted practice. The debate among legal scholars includes one group that concludes that peacetime espionage is legal under international law, another that it is illegal and a third group 'straddled between the other two, maintains that peacetime espionage is neither legal nor illegal'.[29]

Fourth, human rights norms can – and arguably more often should – place limits on a state's sovereignty over its own records. Indeed, unqualified acceptance of a state's power over its records can have negative effects such as reinforcing regressive legal restrictions on access and facilitating repressive regimes in their destruction of inculpatory records documenting its human rights abuses. In contrast, a report on behalf of UNESCO and ICA on archives of the *Security Services of Former Repressive Regimes*, for example, outlined a spectrum of relevant collective and individual rights related to human rights records.[30] Others have persuasively argued for more robust legal obligations in international human rights law for states to disclose records documenting abuses.[31]

Moreover, the return of displaced records of a former repressive regime can raise human rights concerns over their possible use, especially during transitional periods where a lack of security may predominate. Bruce Montgomery, for example, describes the dangers of 'returning intelligence documents to a successor state government that may exploit them against dissidents, or entire populations, or religious groups'.[32] Some situations may argue for an archival analogy to the international human rights concept of *non refoulment* in which detained foreign citizens are not returned to their home country when repatriation presents risks of torture or mistreatment. In the context of archives, this could include concerns about the safety of the records or concerns about the receiving government's use of these records.

Finally, resort to national laws in determining the legal status of archives is a double-edged sword that can actively create obstacles to resolving archival

claims. Finding a resolution to the issue of the Korean royal archives in France, for example, was impacted by the decision of a French administrative tribunal that held that the manuscripts had become, under French law, an inalienable part of *French* cultural heritage.[33] Similarly, negotiations for the return of German records seized by US forces during the Second World War, was complicated by the fact that 'legal title' to some portion of the records had transferred to the US government and were subject to the US Federal Records Act. Returning the records therefore required action by the US Congress and was characterised as a 'donation' to Germany.[34]

### The Limits of Legal Solutions

These various legal regimes governing displaced archives create several problems. First they are impossibly complex to navigate, subject to varying interpretations, and their application requires a fact-intensive analysis where contested facts are the norm. In fact, the complexity of determining their precise legal status has frequently left displaced archives lost in 'legal limbo'. The Cary Report on 'migrated archives' from former British colonies, for example, describes the 'confusion over ownership' over the records as a result of which 'the Kenyan migrated archive was left in limbo' for decades.[35] Similarly, thousands of boxes of records from Panama, seized by US forces in 1989 from the regime of Manuel Noriega, which remain in US custody, have been subject to the same uncertainty about whether they are properly Panamanian or US property.[36]

Even in situations where the applicable law may be clearer, an ever-present problem with legal norms in international disputes is the lack of enforceability. This both limits the options of those seeking to enforce them and limits the deterrent effect for those violating them. The availability of international forums to bring archival claims is extremely limited. As for national courts, governments enjoy various forms of immunity in their own courts and judges are often wary of weighing in on issues that bear on foreign policy.

As one illustration, during a controversy over records seized by US forces in Haiti in 1994, the US Congressional Research Service analysed the legal issues and concluded: 'Haiti has a reasonable case that the seizure of the documents violated its rights under international law.' Yet the analysis also noted Haiti's limited remedies both in US courts and the International Court of Justice, concluding, 'It is doubtful' that Haiti 'will be able to have the controversy resolved in a judicial forum.'[37]

In the end, the complexities and restraints of the various legal regimes and the reality that disputes are often mired in contested details of historic events, create an environment where the chance of creating a stalemate, in which the parties have conflicting, but plausible legal interpretations, approaches certainty. While it seems counterintuitive given that archival disputes are invariably characterised as predominantly legal disputes, the end result is that law may play little role in successful resolutions. In the negotiations over French archives displaced to Moscow following the Second World War, for example, Jean-Claude Kupermine notes: 'The Russians considered themselves to be the legal owners of

the captured French material in Moscow, whereas the French considered them to be receivers of stolen goods.'[38] Yet putting this disagreement to the side, the parties ultimately concluded an agreement couched in the language of mutual respect and cooperation.

### *Joint Heritage*

A related principle more conducive to compromise and endorsed by both the ICA and UNESCO is the concept of 'joint heritage' or 'common heritage'. For archives 'where succession is shared between several States, and which cannot be broken up,' the ICA states, the archives should be 'physically integrated into the archival heritage of one of the States', but the 'other States sharing a common history' should have 'a right of access to these fonds and a right to copy them.'[39] Such situations are especially prevalent in cases of decolonisation where records of a newly created (or reborn) state may be part of, and interfiled with, the central records of the state to which the territory previously belonged.

   An example of the explicit use of this concept is the 2001 agreement between successor states of the former state of Yugoslavia (SFRY). The agreement treated certain archives 'as common heritage of the States which shall have free and unhindered access to them', allowed each State the right to 'make copies of the archives in question on an equitable cost-sharing basis', and required that the State in custody of the originals observe 'the principle of respect for the integrity of groups of SFRY State archives so as to facilitate full access to and research in those groups of archives'.[40]

   In his 1998 RAMP study, which surveyed existing archival disputes, Leopold Auer highlighted those claims where the 'concept of joint heritage' might prove useful 'to facilitate the solution of the claim'. Yet based on responses from the states involved, Auer noted that a 'solution through the concept of joint heritage is favoured by only a minority, but it seems to be an increasing minority, which leaves some hope for the future'.[41] This assessment, however, was arguably too narrowly drawn. While the specific invocation of 'joint heritage', as precisely defined by the ICA, might be limited, the broader animating principle has had an enormous influence in resolving archival disputes.

   Understood more broadly, in fact, the principle can be seen in the most common form of resolution of archival disputes: one state possessing originals and the other state receiving copies. This result is, in essence, shared ownership, because it provides both states with control over access to the information, which is a central, if not dominant, part of the bundle of rights that comprise ownership.

## Towards Practical Solutions and Avoiding Stalemate

Given the analysis above and the continuing difficulties presented by displaced archives disputes, what follows are some provisional thoughts, both conceptual and practical, on refreshing and revitalising efforts to maximise compromise and find flexible, mutually agreeable resolutions.

### Rethinking First Principles: Archival Internationalism

As an initial matter, it is worthwhile to consider the fundamental question of whether, in attempting to resolve displaced archives disputes (with limited success), we should alter the way we think about displaced archives. Anne Gilliland argues in this volume, for example, for reconceptualising the notion of 'displaced' records consistent with postnationalism and challenging arguments focused on ownership and custody.

Another useful concept familiar to debates over cultural property more generally is the dichotomy between 'cultural nationalism' and 'cultural internationalism'.[42] Cultural nationalism emphasises cultural property as national property that is part of the heritage of a specific nation. Cultural nationalism is a force that drives 'demands for the "repatriation" of cultural property' to their country of origin.[43] Cultural internationalism, in contrast, treats cultural property more as a part of 'common human culture, whatever their places of origin or present location, independent of property rights or national jurisdiction'.[44] The concept is exemplified by the preamble of the 1954 Hague *Convention for the Protection of Cultural Property in the Event of Armed Conflict*, which declares that 'damage to cultural property belonging to any people whatsoever means damage to the cultural heritage of all mankind'.[45]

Grafting this distinction onto the issue of displaced archives – using the terms 'archival nationalism' and 'archival internationalism' – is rather straightforward. Archival nationalism is represented by the concepts in the foregoing discussion: national laws, sovereignty, inalienability and the restitution of displaced archives to the state that 'owns' them. The narrower conception of 'joint heritage', confined only to the specific states involved in state succession, also arguably reflects this. Archival nationalism appears to represent the more common view and it is a reasonable one, especially in the context of archives. As Patricia Kennedy Grimsted has argued: 'Paintings and sculpture may appropriately serve as cultural ambassadors in museums throughout the world, but archives always deserve restitution to the countries where they belong as the official record.'[46]

Archival internationalism, in contrast, de-emphasizes the importance of physical custody and ownership and recommends a greater emphasis on preservation and broad access. This also finds expression in statements from the international archival community. A 1999 statement of the Society of American Archivists on the destruction of archives in the former Yugoslavia, for example, stated: 'Although felt most deeply by those directly affected, the loss of archives anywhere in the world is an irreplaceable tragedy for all mankind.' And warned: 'Once destroyed, archives cannot be re-created, and the cultural patrimony of the world is permanently diminished.'[47] The ICA's 2012 *Universal Declaration on Archives* declares: 'Open access to archives enriches our knowledge of human society.' A broader conception of 'joint heritage', one that might be read to mean 'universal heritage', would also reflect this.

Of course, the two concepts of archival nationalism and internationalism are not mutually exclusive or diametrically opposed. The issue is one of balance between

them. This author would suggest that the international archival community should consider, for instance, whether its advocacy has been tilted too far in favour of archival nationalism. There is some evidence that a recalibration more towards archival internationalism could be a return to its roots. In a 1947 article entitled 'The Archivist's One World', then Archivist of the United States, Solon Buck, described nascent efforts, in which he was intimately involved, to create an international organisation for archives, efforts that ultimately resulted in the ICA. Buck's conception of an international perspective on archives was expansive. He described a holistic concept of the 'archival heritage of mankind' of which 'no one country can possess more than a small part' and he argued for broad access. Buck stressed: 'Scholarship that feeds upon the archival resources of a single country cannot be otherwise than one-sided and nationalistic' and 'the only antidotes are freedom of access to the originals in whatever country they may happen to be and the making and exchange of photographic facsimiles.' Buck also noted the corresponding importance of preservation, stating:

> [T]hese measures in the interest of internationalism – and I might add enlightened nationalism – presuppose the preservation and efficient administration of the separate parts that compose the archival whole. The loss of an important body of records in any country is a loss to all countries – and it matters little in retrospect whether that loss be caused by an atomic bomb, unintelligent handling, or mere neglect.[48]

A greater emphasis towards internationalism in the work and advocacy of the international archival community could arguably have several benefits for the resolution of archival disputes.

First would be the potential for a simple change of tone in addressing these often-heated disputes by recognising a much broader pool of legitimate stakeholders in foreign records. This could expand an acknowledgement of a mutual interest as a softer starting point for negotiation and ideally would allow the parties to more easily move past the stalemate that comes with contested, inflexible positions on facts and law.

Second, less emphasis on sovereignty, inalienability and ownership may encourage more creativity in finding mutually agreeable solutions. The innovative lease agreement between France and South Korea, for example, illustrates the flexibility of bilateral agreements, an important characteristic for archives. When starting with a clean slate, such agreements can be carefully drafted and customised to provide mutual acknowledgment of the specific concerns of the states with the goal of allowing both states to claim victory and, where necessary, save face.

Third, a turn towards a more internationalist viewpoint would help contextualise problematic issues raised by the strict application of inalienability to displaced archives and records outside official state custody. Michelle Caswell, for example, questions the application of the concept of inalienability to records documenting the Khmer Rouge regime in Cambodia, which are in the custody of the

non-governmental Documentation Centre of Cambodia. Caswell argues that if these archives were transferred to the National Archives of Cambodia, as a 2005 Cambodian law may require, the 'records could be destroyed by former Khmer Rouge officials who now hold office; at a minimum, access to the records would be embargoed'.[49]

Such concerns are consistent with Solon Buck's internationalist view, which was unmoored from the idea that international law or archival practice necessarily requires that archives belong in the custody of one state. In particular, Buck described a category of 'Records of International Concern and Importance' and used a rather extreme example of 'military and similar records of aggressor nations that have been defeated through the joint efforts of the United Nations' that 'although national in origin should not in the interests of world peace be left in the custody of the nation that created them' but instead 'preserved for such research and other use as can safely be made of them'.[50]

Finally, a pivot towards internationalism is not inconsistent with recent ICA initiatives focusing on access. The ICA's 2012 *Principles of Access to Archives*, for example, urges that archives be 'made available on equal and fair terms,' and that access to archives should be granted to victims of serious crimes under international law to find evidence of those violations 'even if those archives are closed to the general public'.[51]

### Originals and Copies

A related strategy to further encourage resolution of archival disputes – which might be more controversial or even heretical – would be for the international archival community to critically reassess its views on the perceived significance of the distinction between originals and copies. Given the intense emphasis on the return – or retention – of originals in such disputes, it is reasonable to question whether originals are given more perceived value than their intrinsic value justifies.

The central importance of the distinction between originals and copies in archival disputes was highlighted in Leopold Auer's 1998 RAMP study. Auer noted: '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.' He added: 'The dominance of claims for originals partly explains itself by the high rate of restitution cases in which neither microfilm copies or joint heritage would make much sense.'[52] Such importance placed on originals, by both sides in these debates, is arguably facilitated by, again, the emphasis on sovereignty, inalienability and ownership that is critiqued throughout this chapter.

Non-archivist observers are often surprised to learn that heated archival disputes continue unabated when copies of the archives are available. Such was the case, for example, with the debate between Russia and the United States over the Smolensk archive, which continued for decades despite the fact that the archives had 'long been available in their entirety for public purchase on microfilm'.[53]

To such observers, archival disputes often appear to be proxies for lingering debates over the historical events that gave rise to the displacement.

Of course, such lay opinions and non-technical views do not account for the obvious truth that the original documents are the original property to which states understandably attach special significance as a piece of their national heritage. Yet, even acknowledging that, there is a reasonable argument that the nature of archives, for which content is usually the most important element, diminishes the distinction between the original document and a modern reproduction in a way that is not true of other forms of cultural property.

To be clear, there are situations in which originals unquestionably can have the same significance as other forms of cultural property. The Korean royal archives, returned to South Korea from France, included elaborate paintings and illustrations that were as much art as archives. As a more limited example, an archivist who worked on captured German records from the Second World War prior to their return, lamented that information 'important to the scholar' was lost in the microfilm copies retained in the US National Archives. 'An outstanding example,' she noted, 'is color. It was generally the habit of many German officials of higher rank to stick generally to one color in their penciled notations. It is easy to identify them by their brilliant greens (Himmler), vermilions (Keitel), browns (Jodl), or purples (Thomas).'[54] Yet there are many situations in which such special characteristics are lacking.

There are a variety of additional arguments useful in de-emphasising the distinction between copies and originals. Diplomatic treaties relied on to support possible international norms, for example, also include exchanges of copies. With limited exceptions, courts are also willing to accept authenticated copies into evidence to establish legal rights. And in the era of 'born digital' records, provided that copies capture relevant metadata of the records, the practical distinction between copies and originals approaches true insignificance.

Efforts to encourage the acceptance of copies should focus just as much, if not more, on the states with custody of the originals. As mentioned above, national laws that make state records inalienable can be obstacles to the goal of repatriation of originals and the retention of copies. Yet, reliance on such national laws as a defence should be tested. As Kecskeméti stated in 1977: '[T]ransfer of originals, when legally justified and carried out in accordance with archival principles, should not be considered an impoverishment of the national heritage' and invoked the 'duty of archivists' in accomplishing this.[55] In order to permit the return of German records captured during the Second World War, for example, the then archivist of the United States determined that, in light of the availability of microfilm copies, the original German records no longer had 'sufficient administrative, legal, research, or other value' to warrant their continued retention, which satisfied US records laws.[56]

This is not to say that copies are a universal solution. Kecskeméti's 1977 warning that '[m]icrofilming is not a panacea' also applies to digital reproductions and 'virtual repatriations'.[57] At the same time, greater willingness to retain or accept copies would unquestionably advance the resolutions of these disputes to the benefit of both parties and ultimately international researchers.

### Reinvigorating the Role of Archivists

A final consideration for both advancing the practical resolution of archival disputes as well as avoiding such disputes going forward, is revisiting the role of the archivists. Developing relationships between archival institutions in states involved in archival disputes, for example, has had the effect of progressing resolutions. Michael Karabinos notes that archival cooperation between Indonesia and the Netherlands led to a broader cultural agreement that in turn 'ushered in the cooperation that eventually resulted in the return of the seized archives'.[58]

It is worth noting that in other situations, in contrast, professionals responsible for displaced archives have led the opposition to agreements to return them. In a particularly colourful episode, in negotiations over the Korean royal archives, it was the BnF staff that was strongly opposed to their return to South Korea. In fact, in 1993, then French President Francois Mitterand initially returned a single volume of the archives as a good-will gesture (and contemporaneous with France competing for a high-speed rail contract in South Korea) during a state visit to South Korea. This was over the vehement protest of BnF curators, who refused to hand over the manuscript that was housed in a locked box. Aides to the President were forced to break open the box minutes before the presentation ceremony.[59]

Moreover, when agreements for the return of archives are not forthcoming, government archivists and archival organisations should also revisit practical efforts to ameliorate the negative effects of archival displacement according to the maxim that the perfect should not be an enemy of the good. This could include facilitating access and exchange of copies, or even simply identifying relevant collections. A recurring issue is displaced archives being simply lost or forgotten. Part of the delay of the return of Indonesian archives from the Netherlands 'was that the seized archives were "mixed up with Dutch dossiers", and their whereabouts were not entirely known'.[60] The Korean royal archives at the BnF were lost for decades because they were misclassified as Chinese manuscripts.[61] Panamanian records seized by US forces during the 1989 invasion were forgotten in a US military warehouse for years until the military unit responsible received a bill for a decade worth of storage.[62] Relevant to this, the ICA's 2012 *Principles of Access to Archives* states that institutions holding archives should 'make known the existence of the archives, including the existence of closed materials'.[63]

Moreover, national archives sometimes have a role in setting priorities for their government's programmatic declassification programmes, which could assist in accelerating broader access to collections of displaced foreign records that have been restricted. Further, archivists in states with custody of foreign records might also assist others in navigating national freedom of information laws, which are underutilised in seeking access to non-public displaced government collections.

Finally, given the intractable nature of many displaced archives disputes, additional resources and attention are needed in *avoiding* or preventing archival disputes. This begins with the central role of the ICA and national archivists in highlighting the importance of archives to ensure that their protection is not

overlooked in military strategic plans and that their disposition is on the agenda of diplomatic negotiations in state succession scenarios.

An illustration of an archivist undertaking such a duty is seen in a 2003 letter from then archivist of the United States, John Carlin, to then Secretary of Defense Donald Rumsfeld as the US invasion of Iraq began. Carlin urged the Department of Defense from the start to treat originals of seized Iraqi records as the property of the eventual 'new Iraqi Government' and advised that the National Archives would not treat the originals as records subject to US records laws. Carlin argued instead that '[s]canning and copying technology now allow American forces to obtain copies of virtually any type of record that will be necessary for military and intelligence purposes' and that these copies alone would be treated as the official US records.[64]

While these Iraqi records currently remain in US custody and while the letter clearly did not prevent controversy regarding their fate, Carlin's forward thinking will ultimately facilitate negotiations over their eventual return home. That archives of each nation are important to all nations comes with a corresponding duty for everyone to do their part to protect them.

## Notes

1 *Bibliotheque nationale de France*, 'BnF's Korean manuscripts are lent to the National Museum of Korea (Seoul),' 11 May 2011.
2 See Cox, 2011, p. 409.
3 Ah-young, 2011.
4 *Returned from Russia in Returned to Russia: Nazi Archival Plunder in Western Europe and Recent Restitution Issues*, Grimsted, Hoogewoud and Eric Ketelaar (eds.) 2007.
5 Eckert, 2012.
6 General Records Schedule, 'Seized German Records,' Aug. 1, 1953, US National Archives and Records Administration, Record Group 242, Pomerenze Collection, AGAR-S No. 3144.
7 Karabinos, 2013, pp. 289–290.
8 Cox, 2011, p. 419.
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