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Summary record of the 1199th meeting

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1199th MEETING*Friday, 7 July 1972, at 10.5 a.m.**Chairman:* Mr. Richard D. KEARNEY

Present: Mr. Ago, Mr. Alcívar, Mr. Bartoš, Mr. Bilge, Mr. Castañeda, Mr. El-Erian, Mr. Elias, Mr. Hambro, Mr. Quentin-Baxter, Mr. Ramangasoavina, Mr. Rosides, Mr. Sette Câmara, Mr. Thiam, Mr. Tsuruoka, Mr. Ushakov, Mr. Ustor, Sir Humphrey Waldock, Mr. Yasseen.

**Draft report of the Commission on the work
of its twenty-fourth session**

(A/CN.4/L.187 and Add.1; A/CN.4/L.187/Add.15 to 20)

*(continued)***Chapter II****SUCCESION OF STATES IN RESPECT OF TREATIES***(resumed from the 1197th meeting)*

1. The CHAIRMAN invited the Commission to resume consideration of chapter II of its draft report.

**B. Draft articles on succession of States in respect
of treaties (continued)**

*Commentary to article 20 (Dissolution of a State) [27]¹
(A/CN.4/L.187/Add.15)*

The commentary to article 20 was approved.

*Commentary to article 17 (bis) (Multilateral treaties) [22]
(A/CN.4/L.187/Add.16)*

The commentary to article 17 (bis) was approved.

*Commentary to article 17 (ter) (Bilateral treaties) [23]
(A/CN.4/L.187/Add.16)*

The commentary to article 17 (ter) was approved.

*Commentary to article 17 (quater) (Termination of
provisional application) [24] (A/CN.4/L.187/Add.16)*

The commentary to article 17 (quater) was approved.

*Commentary to article 19 (Uniting of States) [26] (A/
CN.4/L.187/Add.17)*

The commentary to article 19 was approved.

*Commentary to article 22 (Boundary régimes) [29] and
article 22 (bis) (Other territorial régimes) [30] (A/CN.4/
L.187/Add.18)*

2. Sir Humphrey WALDOCK (Special Rapporteur) replying to a comment by the Chairman, suggested that, as article 22 referred to both a boundary and a boundary régime, the words "or a boundary régime" should be

inserted after the word "boundary" in the last sentence of paragraph (16) of the commentary.

It was so agreed.

*The commentary to articles 22 and 22 (bis), as amended,
was approved.*

*Commentary to article 1 (Use of terms) [2] (A/CN.4/
L.187/Add.19)*

3. Mr. AGO said he thought the statement in the second sentence of paragraph (6) that the Commission had concluded that the characteristics of the various historical types of dependent territories did not justify differences in treatment from the standpoint of the general rules governing succession of States in respect of treaties, was rather sweeping, particularly where protectorates were concerned.

4. Sir Humphrey WALDOCK (Special Rapporteur) said that he himself shared Mr. Ago's view; but the Commission had decided not to include a special rule on protected States, and the only way to cover that point was to say that, in the context of the modern law, there was no justification for making any distinction in respect of dependent territories. He would suggest that Mr. Ago's point might be met by adding a footnote to paragraph (6) explaining the Commission's decision.

It was so agreed.

5. Mr. QUENTIN-BAXTER said he thought paragraph (6) of the commentary should also reflect the fact that the Commission had indicated its desire to follow the United Nations' definition of non-self-governing territories. During the Commission's discussions, he had pointed out that, in accordance with United Nations practice, a dependent territory might exercise its right of self-determination by choosing association with an existing State rather than full independence. That was an approved United Nations doctrine that had a direct bearing on the present commentary.

6. Sir Humphrey WALDOCK (Special Rapporteur) said that the United Nations' category of non-self-governing territories was not very exact from the standpoint of the law of succession, and he had already stated elsewhere in the report that the Commission, in its approach, had taken account of the principles of the Charter of the United Nations.² The question of associated States was extremely complex, because of the many different kinds of association.

7. Mr. ELIAS said he thought the question should not be introduced into paragraph (6) of the commentary and suggested that the point could perhaps be made in another footnote.

8. The CHAIRMAN suggested that Mr. Quentin-Baxter should submit a footnote covering the point he had raised.

It was so agreed.

9. The CHAIRMAN said that, if there were no further comments, he would take it that the Commission ap-

¹ The numbers in square brackets are the numbers of the articles as they appear in the Commission's report (A/8710/Rev.1), which is reproduced in volume II of this *Yearbook*.

² See chapter II, para. 35 of the report.

proved the commentary to article 1, subject to the addition of the two proposed footnotes.

It was so agreed.

Section B, as amended, was approved.

A. *Introduction* (resumed from the 1196th meeting)³

5. *The principle of self-determination and the law relating to succession in respect of treaties* (paras. 24 and 25)

10. The CHAIRMAN invited the Commission to resume consideration of sub-section 5 of the introduction and to comment on paragraphs 24 and 25 (A/CN.4/L.187/Add.1).

Paragraphs 24 and 25 were approved.

Sub-section 5, as amended, was approved.

6. *General features of the draft articles* (A/CN.4/L.187/Add.1 and Add.20)

11. Mr. USTOR said he thought that reference should be made to the special characteristics of the codification of succession of States in respect of treaties. A convention on that subject would not be directly binding on successor States, but he thought the Commission should state in its report that it believed the adoption of such a convention was nevertheless desirable.

12. Sir Humphrey WALDOCK (Special Rapporteur) supported that suggestion. He thought it would be wise to stress to governments, at the present stage, the value of the work of consolidation as such, whether or not, technically speaking, new States would be bound by the convention that might eventually be adopted. He had previously written a note for the Drafting Committee on the question of non-retroactivity and he would suggest that a shortened version of that note should be included at an appropriate point in the introduction.⁴

13. He also wished to suggest that some reference should be made to the fact that the Commission had discussed the question of a time-limit for notification of succession and had decided to review that matter in the light of the comments of governments.

14. The CHAIRMAN said that, if there were no further comments, he would take it that, subject to the additions proposed by the Special Rapporteur, the Commission approved sub-section 6.

It was so agreed.

Section A, as amended, was approved.

Chapter II, as amended, was approved.

RESOLUTION EXPRESSING APPRECIATION AND THANKS
TO THE SPECIAL RAPPORTEUR

15. The CHAIRMAN suggested that the Commission should adopt the following resolution for inclusion in its report:

³ Paras. 82 *et seq.*

⁴ See chapter II, para. 41 of the report.

"The International Law Commission,

"Having adopted provisionally the draft articles on succession of States in respect of treaties,

"Desires to express its deep appreciation and thanks to the Special Rapporteur, Sir Humphrey Waldock. The draft articles on that subject and the commentaries thereto illustrate the invaluable contribution of wisdom, learning and devoted effort that Sir Humphrey Waldock has made to the development of the law of treaties."

The resolution was adopted by acclamation.

The draft report of the Commission on the work of its twenty-fourth session, as amended, was adopted.

Closure of the Session

16. The CHAIRMAN said he wished to thank all members for their co-operation and their devoted work in accomplishing the difficult task of preparing two sets of draft articles at a single session. He also wished to express appreciation of the work of the Secretary to the Commission, the staff of the Codification Division, the Senior Legal Officer in charge of the International Law Seminar and the other members of the Secretariat who had assisted the Commission in its work.

17. He was very grateful for the support he had received from the First Vice-Chairman, who had so ably presided over the Drafting Committee, from the other officers of the Commission and from Mr. Tsuruoka, the Chairman of the Working Group on the prevention and punishment of crimes against diplomatic agents and other internationally protected persons. Last, but by no means least, he wished to pay a warm tribute to Sir Humphrey Waldock, the Special Rapporteur on succession of States in respect of treaties, who had done such outstanding work during the present session; among contemporary jurists, Sir Humphrey had made a truly unique contribution to the codification and progressive development of international law.

18. Mr. AGO associated himself with the Chairman's expression of congratulations and thanks. In his turn, he wished to pay a tribute to the skill with which the Chairman had conducted the Commission's work, thus enabling it to adopt two sets of draft articles, one on succession of States in respect of treaties and the other on the protection of diplomats. The Commission had seldom ended a session with so many texts for submission to the General Assembly.

19. The formulation of the draft articles on the protection of diplomats had, of course, been facilitated by the draft prepared by the Chairman, by the existence of other similar conventions which had served as models and by the fact that the subject was a new one and consequently did not require long research into the practice of States, precedent and doctrine. The draft on succession in respect of treaties had had the benefit of the wide knowledge and extraordinary capacity for work of the Special Rapporteur, Sir Humphrey Waldock.

20. Gratifying though the results of the present session were, it should be remembered that they had been

achieved at the cost of exceptional effort. He therefore appealed to the Chairman, who would be the Commission's spokesman in the General Assembly, to stress that the Commission had often had to work too fast at the present session and that the codification and progressive development of international law was necessarily a slow and difficult task. If the Commission did not have more time to do its work in future, it would be obliged to adopt a slower pace than in 1972. It was not always possible to work both fast and well.

21. Mr. USHAKOV associated himself with the tributes paid by other speakers. In his opinion, the two drafts the Commission had prepared at the present session constituted an important achievement, of which it could be proud.

22. Mr. YASSEEN, Mr. CASTAÑEDA, Mr. ELIAS and Mr. THIAM associated themselves with the tributes paid to the Chairman and other officers of the Commission, to Sir Humphrey Waldock and to the Secretariat.

23. Mr. SETTE CÂMARA also associated himself with those tributes and said he strongly supported the views expressed by Mr. Ago regarding the time the Commission needed for its work.

24. Mr. BARTOŠ associated himself with all the tributes paid by previous speakers. He emphasized the importance of the two drafts completed at the present session and observed that the Commission had made an innovation in its methods of work, for without any loss of homogeneity, it had divided itself into two subsidiary bodies: the Drafting Committee, which had dealt with the draft on succession in respect of treaties, and a Working Group, which had dealt with the question of the protection of diplomats.

25. That innovation should, however, be considered as an experiment. As Mr. Ago had said, the Chairman should draw the General Assembly's attention to the need to ensure that, in future, the Commission had enough time and resources to do its work satisfactorily.

26. Mr. HAMBRO, Mr. ROSSIDES, Mr. BILGE and Mr. QUENTIN-BAXTER also associated themselves with the tributes paid by previous speakers. As new members, they had been struck by the excellent atmosphere that prevailed in the Commission, which had made it a pleasure to participate in its work.

27. Mr. USTOR, First Vice-Chairman, Mr. RAMANGASOAVINA, Second Vice-Chairman, and Mr. ALCÍVAR, Rapporteur, thanked the Chairman and the other members for their kind words and associated themselves with the sentiments expressed by other members.

28. Mr. TSURUOKA thanked the Chairman and the other members of the Commission who had referred so kindly to the Working Group over which he had had the honour to preside. It was he who had to thank the members of the Working Group for their co-operation. He associated himself with the tributes paid to the Chairman and other officers, to Sir Humphrey Waldock and to the Secretariat.

29. Sir Humphrey WALDOCK said he was very grateful to the Chairman and to all the members for their kind and generous words. He owed a debt of gratitude to the First Vice-Chairman, in his capacity of Chairman of the Drafting Committee, to the Secretary to the Commission, to the staff of the Codification Division and to the translation services for all the valuable assistance he had received from them as Special Rapporteur for the topic of succession in respect of treaties.

30. To one who had served for many years on the Commission, the main impression it left was that of its solidarity as a body. The codification of international law was essentially a joint effort by the Commission as a whole. A Special Rapporteur normally felt some anxiety about a draft at the beginning of the work on his topic, but that anxiety was dispelled when the Commission, after discussing and criticizing the draft, made it its own. That corporate spirit of solidarity had been a major factor in the success of the Commission's work.

31. Members of the Commission had the advantage of being expressly required to take due notice of the progressive development of international law and that fact had helped to make the Commission's work a major factor in the consolidation of international law.

32. The CHAIRMAN declared the twenty-fourth session of the International Law Commission closed.

The meeting rose at 1.10 p.m.