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**Comments on Judge Hudson's Working Paper on Article 24 of the Statute of the
International Law Commission**

Topic:
**Ways and means for making the evidence of customary international law more
readily available**

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Addendum to the Working Paper by Manley O. Hudson
on Article 24 of the Statute of the International Law Commission[Original Text: English]
[15 March 1950]

EXCHANGE OF OFFICIAL PUBLICATIONS

1. Inquiry concerning the progress of UNESCO's work on this subject resulted in a memorandum [LBC Memo 1421, 3 March 1950] and a dispatch of documents, both received after this working paper was revised.

2. The subject was considered at a "meeting of experts," not named, in July 1948. The conclusion seems to have been reached that it was not feasible to revise the Brussels Convention of 1886, and that effort

should be concentrated on the promotion of bilateral agreements.

3. A handbook on international exchange of publications is soon to appear. The UNESCO Clearing House for Publications does not distinguish between official, scientific and literary publications.

4. The documents leave the impression that the subject has not been exhaustively explored.

DOCUMENT A/CN.4/27

Comments on Judge Hudson's Working Paper on Article 24
of the Statute of the International Law Commission

(presented by the Secretariat)

[Original Text: English]
[6 June 1950]

1. The following comments refer chiefly to Judge Hudson's conclusions set forth in Section V of his working paper (A/CN.4/16, paras. 74-93). In this section the author suggests, for the consideration of the Commission, a number of measures which might be taken with a view to making the evidence of customary international law more readily available.

2. It is noteworthy that Judge Hudson among the various types of evidence of customary international law includes also "texts of international instruments", meaning treaties and other international agreements. There seems to be much force in his argument (para. 8) that "the differentiation between customary international law and conventional international law ought not to be too rigidly insisted upon", as "a principle or rule of customary law may be embodied in a bipartite or multipartite agreement", and "not infrequently conventional formulation by certain States of a practice also followed by other States is relied upon in efforts to establish the existence of a rule of customary law". It may be recalled, in this connexion, that the Secretariat, in its memorandum to the Committee on the progressive Development of International Law and its Codification entitled "Methods for Encouraging the Progressive Development of International Law and its Eventual Codification" (A/AC.10/7), proposed that measures should be taken not only to render the evidence of customary international law more accessible but also to facilitate the development of conventional international law, *inter alia*, through technical improvements relating to the compilation of international legislative materials.

In the latter respect it was suggested that although there already existed systematic compilations treaties and conventions, the Committee "might find it useful to consider such technical improvements as the preparation of a subject index or classification of the contents of multipartite instruments; a multilingual glossary to be used in the preparation of translations of multipartite instruments; and a list of short titles of multipartite instruments" (p. 3 of the memorandum). No decision was taken by the Committee on this suggestion, and Article 24 of the Statute refers only to evidence of customary international law. It is gratifying that Judge Hudson has now made out a strong case for considering, under Article 24, also conventions as, to some extent, evidence of customary international law. For practical purposes, it makes no difference whether action to facilitate the development of conventional international law through such technical means as mentioned above is taken separately or in connexion with steps to improve the accessibility of customary international law. The Secretariat has therefore every reason to support Judge Hudson's suggestion that "the Commission may deem it proper to take some account of the availability of the materials of conventional international law in connexion with its consideration of ways and means for making the evidence of customary international law more readily available" (para. 8).

3. Several of the proposals submitted by Judge Hudson with a view to making the various types of evidence dealt with in his paper more readily available are concerned with the distribution of published materials.

He suggests that the Secretariat might be asked to report on the present distribution of publications such as the United Nations Treaty Series, the League of Nations Treaty Series, the Reports of the International Court of Justice, the Reports of International Arbitral Awards, the series edited by the Permanent Court of International Justice and the reports of the awards of the Permanent Court of Arbitration. On the basis of the reports submitted by the Secretariat, the International Law Commission might thereafter consider ways and means for improving and extending the distribution of such printed materials.

3a. It seems, however, hardly advisable for the Commission to deal with these questions of distribution, unless the Commission is prepared to make recommendations to the General Assembly envisaging large financial outlay.

3b. In the first place, Judge Hudson has himself some doubts as to whether such questions are within the terms of reference contained in Article 24 of the Statute. He states (para. 64) that, whereas the article, in its reference to "collection and publications of documents" seems to envisage the problem of making unpublished materials available, it does not expressly refer to the question as to what extent published materials are available throughout the world. And in another passage (para. 68) he says that while an inquiry into the latter question might be of some value to Governments and to libraries, "this may be deemed to lie outside of the Commission's function under Article 24 of its Statute".

3c. Furthermore, practical reasons speak against the consideration by the Commission of questions of distribution. Without denying the importance of the question it may be said that the principal practical difficulty connected with research work in customary international law does not lie in a defective distribution of published materials but in the fact that so much important source material is still unpublished. The Commission should therefore above all concentrate on finding ways and means for making unpublished materials available in printed form. And as far as published materials are concerned, it would also seem more important to consider such technical improvements as suggested in the Secretariat memorandum referred to above, than to deal with questions of distribution. Moreover, it may be assumed that the relevant publications referred to in Section V of the working paper have been or are being distributed according to carefully considered plans, taking into account, on one hand, the desirability of a wide distribution and, on the other hand, the limitations set by available funds. It is therefore doubtful whether an inquiry into these questions would lead to practical results. This is the case, in particular, with respect to the United Nations Treaty Series. It seems improbable that the General Assembly would be willing to allocate funds for the purpose of expanding the present distribution of this series.

3d. For these reasons, it is submitted that the Commission should not, at least for the present, deal with questions concerning the distribution of published materials but should concentrate on measures for making unpublished materials available in printed form and on

technical means, such as digests, indices, etc., for facilitating the study of existing collections of materials.

4. Among measures which might be taken in this latter respect, Judge Hudson proposes (para. 75) the preparation of a digest of the League of Nations Treaty Series. Such a project would, however, hardly be realizable. Judge Hudson suggests (para. 23) that the International Labour Code might serve as a prototype. This code is however a digest of a uniform set of international instruments—conventions and recommendations adopted by the International Labour Conference—which furthermore, deal with a limited and coherent group of questions, namely labour conditions. The League of Nations Treaty Series, on the contrary, include a great number of diversified international agreements—multilateral and bilateral treaties, protocols, etc.—relating to practically the whole vast field of international relations. It is difficult to see how a digest of such enormous and diverse materials could be prepared within a reasonable time. Many of the provisions reproduced in such a digest also have lost their binding force through new agreements not included in the series.

4a. What has now been said does not, however, mean that the idea preparing digests of conventional international law should be wholly abandoned. Nor does it mean that the International Labour Code could not serve as a model for such digests. On the contrary, this code indicates the method which should be followed. Taking the Labour Code as a prototype—eventually also other digests such as the Systematic Survey of Treaties for the Pacific Settlement of Disputes edited by the United Nations—a series of digests might be prepared each containing treaty provisions relating to a certain topic of international law. In other words, instead of making a digest of a series of treaties and other international agreements dealing with a great many more or less unrelated subjects, digests of conventional international law should be prepared according to topics. The topics chosen in the first place might preferably be some of those selected for codification by the Commission. Digests of treaty provisions relating to such topics might considerably facilitate the codification work of the Commission and also serve as a complement to the drafts resulting from this work.

4b. It may be added that Judge Hudson's suggestion with respect to the League of Nations Treaty Series might be followed up to some extent by the preparation of a consolidated index covering the whole series. Such an index would be an improvement on the now existing nine indices each of which covers only a part of the series.

5. The suggestion made in the working paper (para. 76) that the Secretariat might publish a list of national collections of treaties seems practicable, as well as the suggestion (same paragraph) to prepare a *répertoire* of treaties modelled on that published by the League of Nations Library from 1930 to 1940. The United Nations Library might be invited to undertake these tasks.

6. An adequate collection of the judgments of the Central American Court of Justice (para. 81) would be useful and could eventually be prepared by the Secretariat.

7. The series of Reports of International Arbitral Awards (para. 82) is being taken over by the Secretariat and will be continued.

8. The publication of a United Nations Juridical Yearbook (para. 83) is a good idea which should be carried out.

9. Judge Hudson's suggestion (para. 85-87) regarding

the publication by the Secretariat of collections of national legislation (including constitutions) and of a Legislative Series should be followed.

10. A *répertoire* of United Nations practice under the Charter, as suggested in the working paper (para. 91), can be prepared by the Secretariat in connexion with its work on the annotations of the Charter.