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A/CN.4/L.189

Third report of the Working Group: revised article 2 - reproduced in A/CN.4/SR.1193

Topic:

Question of the protection and inviolability of diplomatic agents and other persons entitled to special protection under international law

Extract from the Yearbook of the International Law Commission:-

1972, vol. I

international boundaries concerned only the neighbouring countries and that any disputes should be settled by international adjudication or arbitration.

80. In paragraph (25) of his commentary, the Special Rapporteur referred to the Treaty of Kabul of 1921.[17] That Treaty was not in fact a boundary treaty, but a treaty of friendship concluded after the third Anglo-Afghan war of 1919. It had been terminated in 1953, by one year's notice given under article XI, and it contained no provisions indicating that any part of it was intended to be permanent or dealing with the question of succession. The interpretation given by the United Kingdom was one-sided and even contrary to the provisions of the Indian Independence Act; it was also contrary to the various promises, written and unwritten, given to Afghanistan. The boundary in question was not a demarcation line, but a political boundary made for the purpose of safeguarding British India's security against possible invasion from the north. The area comprising the North-West Frontier Province and the Free Tribal Area, to which the Indian Independence Act referred, had not been a part of the Indian administration, because the Free Tribal Area had been independent at the time of British rule in India. Even today, although they were behind the so-called Durand line, the North-West Frontier Province and the Free Tribal Area were administered separately. The whole frontier to which the 1921 Treaty referred had not been demarcated by the Joint Commission as stipulated in the Durand Treaty, itself an unequal and colonial treaty.

81. The statement in the United Kingdom note in *Materials on Succession of States*,[18] quoted in paragraph (25) of the commentary, that "the withdrawal of British rule from India had not caused the Afghan Treaty to lapse and that it was hence still in force", was contrary to article XI of the Treaty, which clearly stated that the Treaty could be terminated by giving one year's notice. There were, however, other documents in the same publication which should also be included in paragraph (25) of the commentary in order to balance the views of the two countries. One was a letter from the Head of the British Mission, Sir Henry Dobbs, to the Afghan Foreign Minister in 1921, recognizing Afghanistan's interest in the question of the Indian boundary beyond the Durand line and recognizing that the frontier tribes were not citizens of India. Another was the Declaration of 3 June 1947 by the United Kingdom Government, which dealt with the special case of the North-West Frontier Province and the Free Tribal Area [19] and did not accord with the note quoted by the Special Rapporteur in paragraph (25).

82. While he wished to express his deepest appreciation to the Special Rapporteur for his valuable research and commentary, he hoped that the Commission would give very careful consideration to the question whether boundary treaties really came within the scope of the present convention, and whether they were the same as, or quite different from, other territorial treaties. He also urged that, if a rule on other territorial treaties was formulated, it should distinguish between the different subjects of such treaties.

83. Sir Humphrey WALDOCK (Special Rapporteur) said that it was not his practice, in the commentary, to try to pronounce on the legal validity of any arguments in a controversy. He thought that, in paragraph (25) of the commentary, he had set out the views of both sides and that the presentation was a balanced one. He only wished to point out that the general reservation included, as article 4, in his first report [20] fully protected the position of any State which had legal grounds for challenging the validity of a boundary. His intention was precisely the same in the proposed draft article 22; it was designed solely to exclude the idea that, by virtue of the "clean slate" principle of the "moving treaty-frontiers" rule, the mere occurrence of a succession could open the way to every kind of claim with regard to boundaries. In his view, to accept that idea would have disastrous consequences.

84. The CHAIRMAN, speaking as a member of the Commission, asked the Special Rapporteur whether the provisions or article 22 *(bis)* would apply to an air transit agreement that was in effect prior to a succession.

85. Sir Humphrey WALDOCK (Special Rapporteur) replied that, in his view, air transport agreements were not localized treaties. He had included the reference to air space in article 22 *(bis)* because the possibility could not be excluded that air transport over a particular corridor might be the subject of a special agreement granting international air transit rights similar to the special rights of passage through the Dardanelles, for example.

The meeting rose at 12.55 p.m.

[17] League of Nations, *Treaty Series*, vol. XIV, p. 67.

[18] United Nations, *Legislative Series*, ST/LEG/SER.B/14, pp. 186-187.

[19] *Ibid.*, pp. 5-6.

[20] See *Yearbook of the International Law Commission, 1968*, vol. II, p. 92.

1193rd MEETING

Monday, 3 July 1972, at 3.25 p.m.

Chairman: Mr. Richard D. KEARNEY

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

Question of the protection and inviolability of diplomatic agents and other persons entitled to special protection under international law

(A/CN.4/253 and Add.1 to 5; A/CN.4/L.182, L.186, L.188 and Add.1, and L.189)

[Item 5 of the agenda]

(resumed from the previous meeting)

THIRD REPORT OF THE WORKING GROUP: DRAFT ARTICLES ON THE PREVENTION AND PUNISHMENT OF CRIMES AGAINST DIPLOMATIC AGENTS AND OTHER INTERNATIONALLY PROTECTED PERSONS

ARTICLE 2 [1]

1. The CHAIRMAN invited the Commission to consider the revised text of article 2 submitted by the Working Group in its third report (A/CN.4/L.189), which read:

Article 2

1. The intentional commission, regardless of motive, of:

(*a*) A violent attack upon the person or liberty of an internationally protected person;

(*b*) A violent attack upon the official premises or the private accommodation of an internationally protected person likely to endanger his person or liberty;

(*c*) A threat to commit any such attack;

(*d*) An attempt to commit any such attack; and

(*e*) Participation as an accomplice in any such attack,

shall be made by each State Party a crime under its internal law, whether the commission of the crime occurs within or outside of its territory.

2. Each State Party shall make these crimes punishable by severe penalties which take into account the aggravated nature of the offence.

3. Each State Party shall take such measures as may be necessary to establish its jurisdiction over these crimes.

2. The only change made by the Working Group was the introduction of the new sub-paragraph (*c*) in paragraph 1, covering threats.

3. Mr. YASSEEN said that in the French text of paragraph 1 (*d*) the words "*tenter d'accomplir*" should be replaced by "*tenter de commettre*".

4. Mr. RAMANGASOAVINA said he was in favour of deleting paragraph 1 (*c*). The idea of a threat was hard to define and should not be included.

5. The CHAIRMAN said that he, too, had some misgivings about the addition proposed by the Working Group, because of its very wide scope. In view of the difficulty of limiting the scope of the new provision, however, he suggested that the Commission should provisionally approve article 2 in its revised form.

It was so agreed.

[1] For previous discussion see 1191st meeting, paras. 27 *et seq.*

Succession of States in respect of treaties

(A/CN.4/202; A/CN.4/214 and Add.1 and 2; A/CN.4/224 and Add.1; A/CN.4/249; A/CN.4/256 and Add.1 to 4; A/CN.4/L.183 and Add.1 to 4; A/CN.4/L.184 and L.185)

[Item 1 (*a*) of the agenda]

(resumed from the previous meeting)

DRAFT ARTICLES SUBMITTED BY THE SPECIAL RAPPORTEUR

ARTICLE 22 (Succession of States in respect of boundary settlements) *(continued)*

6. The CHAIRMAN invited the Commission to continue consideration of article 22 (A/CN.4/256/Add.4).

7. Mr. SETTE CÂMARA, congratulating the Special Rapporteur on the outstanding quality of his work on articles 22 and 22 *(bis)*, said it was regrettable that the Commission had insufficient time for a full and detailed discussion of his findings and proposals.

8. There was no doubt that certain treaties, commonly referred to as "treaties of a territorial character", or as "dispositive", "real" or "localized" treaties, constituted exceptions to the "clean slate" principle and the "moving treaty-frontiers" rule. The distinction between "real" and "personal" treaties was that the former were regarded as transmissible and the latter were not. It was also accepted, in theory and in practice, that "dispositive" treaties might also constitute an exception to the "moving treaty-frontiers" rule. The legal basis for the special treatment of those treaties was found by some writers in such principles as *nemo dat quod non habet, nemo plus juris transferre potest quam ipse habet* and *res transit cum suo onere.* Such treaties created real rights which impressed the territory with a status that was intended to have a certain degree of permanence. Real rights in international law had been defined as those which were attached to territory and which were in essence valid *erga omnes.*

9. The Special Rapporteur had quite rightly treated boundary settlements and other treaties of a territorial character separately, because a boundary treaty defining a frontier was instantly executed, whereas the others entailed repeated acts of continuous execution. There could be very little doubt that boundary settlements constituted an exception to the rule in article 6 of the draft articles.[2] The general doctrine and the virtually unanimous practice of States favoured their continuity *ipso jure.* At no time in the history of decolonization had the validity of boundary treaties been questioned on the basis of the "clean slate" principle, and the member States of the Organization of African Unity had pledged themselves to respect the borders existing on their attainment of national independence. It was clearly in the interests of the international community that boundary treaties should continue in force; the alternative was chaos. The rule of continuity did not mean that boundary treaties were sacrosanct or that the injustices and errors of the past must be perpetuated. Such treaties could, and indeed had been, challenged, but on grounds other than the "clean slate" principle. One of the strongest

[2] See 1181st meeting, para. 55.

arguments in favour of adopting the solution proposed by the Special Rapporteur was the decision of the United Nations Conference on the Law of Treaties to except boundary treaties from the fundamental change of circumstances rule [3]—a decision which showed that, in the interests of the international community, such treaties were regarded as having a special status.

10. Of the two alternatives proposed by the Special Rapporteur, he preferred alternative A. Since the continuance in force of boundary settlements was a very important rule, it should be stated in clear-cut terms, allowing the least possible margin for doubt. Alternative B raised the problem of the separability of transmissible and non-transmissible treaty provisions, which was fraught with serious logical and practical difficulties. It also ran counter to the rules of treaty interpretation, which presupposed the integrity of the treaty. To distinguish between succession in respect of the boundary and succession in respect of the treaty might prove to be very dangerous in practice. If the "clean slate" rule was accepted for the treaty, it would certainly introduce an element of doubt concerning the validity of the boundary settlement contained in the treaty. Moreover, paragraph 2 of alternative A excepted from the continuity rule "any provisions which by reason of their object and purpose are to be considered as relating only to the predecessor State". Provisions alien to the boundary settlement could be so considered and therefore excluded from the rule of continuity.

11. Mr. HAMBRO said that, while he wished to compliment the Special Rapporteur on his commentary on articles 22 and 22 *(bis)*, he had come to the conclusion that article 22 did not really have a place in the draft. In his view, boundary questions should be dealt with in terms of the legal situation established by the treaty, rather than in terms of the treaty itself. It was quite clear that no case of succession, whether resulting from the creation of a new State or from the separation of part of a territory, could affect boundaries. If it was decided that an article along the lines of article 22 should be included in the draft, he would prefer alternative B since, unlike Mr. Sette Câmara, he considered it dangerous to equate boundaries with treaties. He would, however, prefer a somewhat simpler wording, such as "A treaty which establishes a boundary is not changed by a succession of States".

12. Mr. USHAKOV said that the question dealt with in article 22 related to boundaries in general and not only to treaties establishing or governing them, so that it did not fall within the topic of succession of States in respect of treaties or even within that of succession of States in general. It was generally accepted that questions of territory and population were pre-existent to the actual succession of States, because there had to be a State with a territory and a population before there could be any succession. He would therefore prefer alternatives A and B, which expressed the same idea in different terms, to be replaced by a general saving clause reproducing the idea put forward by the Special Rapporteur in his first report—in which such a reservation had been included as article 4 [4]—namely, that a succession of States was not to be understood as in itself affecting a boundary settlement established by treaty prior to the occurrence of the succession. The clause might read: "Nothing in the present articles shall be understood as affecting an established boundary, in particular boundaries established by or in conformity with a treaty prior to a succession of States."

13. Mr. AGO said he agreed with the previous speakers that the question dealt with in article 2 did not really fall within the topic of succession of States in respect of treaties, for reasons relating to the nature and form of a transfer of territory from one sovereignty to another in international law. In civil law, a contract was equivalent to title, in other words, the deed of transfer of a piece of land established a real right. The same was not true in international law, in which the real right was only established by the surrender of the territory in execution of the "contract", that was to say the treaty. The treaty of cession was the source of a right and an obligation, but territorial sovereignty over the territory was established only when the treaty had been executed. Once it had been executed, the treaty was terminated, and was nothing more than evidence of the legitimacy of the transfer. What took place, therefore, was not succession in respect of treaties, but succession to a real right. For instance, if Italy, which had ceded territory to Yugoslavia after the Second World War in execution of a peace treaty, were to become part of a unified European State, that State would inherit only the territorial sovereignty that now belonged to Italy; it would not at the same time succeed to the treaty which had established the limits of that territorial sovereignty.

14. Like Mr. Ushakov, he was in favour of a general saving clause applying to the whole draft. Failing that, he would be in favour of alternative B, since alternative A was ambiguous and did not reflect the position in international law.

15. Mr. YASSEEN said it was unfortunate that the Commission did not have time to give the question all the attention it merited. Unlike the previous speakers, he considered that the question dealt with in article 22 did, to some extent, relate to succession of States in respect of treaties. In international law, boundaries were established in several ways, including by treaty. It was the execution of the boundary treaty that determined the line of the boundary. That was a *de facto* situation conforming to an objective rule. The boundary could not be questioned so long as the treaty was deemed to be in force. The treaty had produced its effects, but it retained all its importance as a title and as evidence of the establishment of the boundary. Hence it was difficult to examine the topic of succession in respect of treaties without settling the question of boundary treaties. The successor State must know to what extent it could rely on the title represented by the treaty to defend its frontiers if they

[3] See *Official Records of the United Nations Conference on the Law of Treaties, Documents of the Conference* (United Nations publication, Sales No. E.70.V.5), p. 297, article 62.

[4] See *Yearbook of the International Law Commission, 1968*, vol. II, p. 92.

were disputed by other States. A provision on the subject therefore had a place in the draft articles.

16. However, the question at issue was not boundary settlements as such, because boundaries could be settled by means other than treaties, but only treaties relating to boundaries. He was therefore in favour of alternative A. For a number of reasons based on the interests of the international community, of which stability in international relations was not the least, it was essential that a treaty establishing a boundary should continue in the event of a succession of States.

17. Paragraph 2 of alternative A could be made shorter. After the words "with the exception", it would be better simply to say "of any provisions which relate only to the predecessor State".

18. Mr. RAMANGASOAVINA said he agreed with Mr. Yasseen that although the subject-matter of article 22 did not quite come within the sphere of succession of States in respect of treaties, the principle stated was nevertheless worth laying down in an article following the set of articles already drafted. For any newly independent State tended to question everything that had been done before independence and there was no lack of examples of conflicts over disputed boundaries. An article such as article 22 would therefore be useful for the purpose of guaranteeing, in the interests of good-neighbourly relations between States, the continuity of a treaty or arbitral award delimiting a frontier. The Commission should therefore clearly state the principle that a succession of States did not affect treaties establishing boundaries which had already been executed. Such an article would be a logical sequel to article 62, paragraph 2, of the Vienna Convention on the Law of Treaties, which already provided that a fundamental change of circumstances could not be invoked as a ground for terminating a treaty if the treaty established a boundary.

19. He was in favour of alternative B, which was simpler and clearer. However, at the end of paragraph 1, the words "by a treaty" could be deleted.

20. Mr. THIAM said he agreed with those members who held that the topic of succession in respect of treaties could not be studied without taking treaties establishing boundaries into account, and that it would be preferable to have a separate article on them. Recent experience had shown that even where boundary questions had been settled by treaties, the treaties might be challenged by newly independent States, particularly if they had been concluded by the former colonial Powers. That was why the Organization of African Unity had considered it necessary to take a position on the matter and had decided in favour of the principle proposed by the Special Rapporteur in article 22, namely, the continuance of treaties establishing a boundary. He therefore believed that the Commission should state a firm and clear rule to that effect.

21. The title of article 22 should be "Succession of States in respect of treaties relating to boundary settlements". Of the two versions proposed, he preferred alternative A, which referred more directly to treaties than alternative B. If the Commission adopted alternative B, however, the words "a treaty establishing" should be inserted before the words "a boundary settlement" in paragraph 1.

22. Mr. ELIAS said he wished to congratulate the Special Rapporteur on his full and lucid commentary on articles 22 and 22 *(bis)*. The Special Rapporteur had presented both sides of the argument, thus inviting the Commission to make its choice or to put forward a different proposal on the basis of the material presented. The Commission had to decide whether the question dealt with in article 22 was of merely marginal importance or whether it was one of the key issues in succession of States in respect of treaties. In his view, the question was an important one, especially where newly independent States were concerned, and one which called for a clear and definitive article. Although he found neither of the alternative texts entirely adequate, the question was undoubtedly one that the Commission could not ignore.

23. Since the Commission was dealing with succession of States in respect of treaties, the title of article 22 should reflect that fact. He would suggest, therefore, that it should be amended to read "Succession of States in respect of treaties relating to boundary settlements" or "Succession of States in respect of treaties relating to boundaries".

24. The Commission would have to decide whether to include a general reservation on the lines of the proposed article 4 in the Special Rapporteur's first report or whether to base the provision on article 62 of the Vienna Convention on the Law of Treaties, in which boundary treaties were specifically excepted from the fundamental change of circumstances rule. When the Organization of African Unity had drafted its Charter, it had stressed the need to maintain the integrity of boundaries even though the existing boundaries might not necessarily be the best solution, because otherwise chaos would ensue. Many boundary disputes had arisen in Africa and were the cause of great concern; the establishment of a Commission of Mediation, Conciliation and Arbitration by Article XIX of the OAU Charter[5] underlined the importance that the African States attached to that problem.

25. He favoured the inclusion of a general reservation along the lines already suggested by Mr. Ushakov, but did not reject out of hand the alternative texts proposed by the Special Rapporteur. Of the two, alternative A was much nearer to the heart of the matter. Alternative B raised the problem of defining a boundary settlement and the question whether it was the boundary settlement or the treaty that was transmitted. He would therefore prefer alternative A, but reworded in the form of a residual rule establishing the principle of continuity, except in respect of treaty provisions that applied only to the predecessor State.

26. Mr. TSURUOKA observed that the Special Rapporteur seemed to expect the Commission to express an opinion on whether it was desirable to include an article on boundary settlements, and if so, what its content should be. The texts the Special Rapporteur was pro-

[5] United Nations, *Treaty Series*, vol. 479, p. 80.

posing to the Commission were, on the one hand, article 4 in his first report and, on the other, alternatives A and B of article 22 now under consideration. He himself was convinced of the need for a specific provision and favoured the saving clause proposed as article 4. In his view, the Commission could not avoid the extremely difficult and controversial question dealt with in that article.

27. If he had to choose between alternatives A and B for article 22, he would prefer alternative B, which was more realistic. It laid greater stress on the need to determine how a succession of States might influence the legal effects of treaties concluded prior to a succession. Moreover, alternative A might give the impression that treaties played the primary role in the settlement of boundary questions, whereas there were other factors that also had to be taken into consideration.

28. Mr. USHAKOV noted that some members did not seem to make any distinction between frontier disputes and territorial disputes. The former concerned the exact course of a boundary line, whereas the latter concerned the question whether a territory belonged to one State rather than another.

29. Territorial disputes obviously did not come within the topic of succession of States. However, if alternatives A and B for article 22 were compared, it would be seen that the first dealt with the case of "a treaty which establishes a boundary", whereas the second dealt with "a boundary settlement which has been established by a treaty". The latter expression, which was ambiguous, seemed to apply more to the settlement of a territorial dispute. That alternative was therefore unacceptable.

30. The very way in which alternative A was worded was an argument in favour of a general saving clause excluding not only territorial problems, but also boundary problems. Indeed, the use of the expression "by reason only of the occurrence of a succession of States" implied that other circumstances or principles could play a part: for example, the principle of self-determination and the principle of not using force for the settlement of boundary questions.

31. Sir Humphrey WALDOCK (Special Rapporteur) said that the question to be answered could be put in the following terms: was a treaty establishing a boundary to be considered as a treaty in force for the predecessor State at the date of succession? If so, it was necessary to decide what happened to that treaty and, in particular, whether it continued or not.

32. Mr. USHAKOV said that it was the boundary which was "in force"; the boundary treaty was simply the title or evidence on which the boundary line was based. It was the boundary that was in existence, and that fact could be attested either by a boundary treaty or in some other way.

33. Mr. USTOR said that, like Mr. Hambro, Mr. Ago and Mr. Ushakov, he believed that a boundary treaty had a constitutive effect; it was a "consummated" treaty. A boundary treaty established a factual and legal situation which had a separate and distinct existence from the treaty itself. It was that situation, rather than the treaty, which passed to the successor State.

34. Accordingly, the best solution would be to include in the draft an article on the lines of article 4 in the Special Rapporteur's first report.

35. Mr. BARTOŠ said that there was often a great difference between *de facto* and *de jure* situations. That point could be illustrated by the case of a small island in the Danube, near Belgrade, which had long been the subject of a dispute between Austria-Hungary and Serbia. Serbia had claimed to have succeeded to a geographical situation which had existed under the Ottoman Empire, in other words to possession, whereas Austria-Hungary had based its claim on a protocol of demarcation. The dispute had continued for years and had not been finally settled until the dissolution of Austria-Hungary at the end of the First World War.

36. Mr. Ago had maintained that the Yugoslav-Italian frontier had been finally settled by a treaty of peace and raised no further problems. But no precise demarcation had yet been carried out in certain sectors of that frontier, which were still disputed. It was therefore necessary to distinguish, as Mr. Ushakov had pointed out, between the treaty or title and possession.

37. There were also boundary disputes in Latin America, where the boundaries of the former Spanish provinces had been retained as State boundaries. Some arbitral awards were even challenged. There again, some States claimed title, whereas others invoked the principle of *uti possidetis*.

38. Of the two versions proposed by the Special Rapporteur, alternative A seemed preferable. The General Assembly should, however, be given an opportunity of choosing between them.

39. Mr. EL-ERIAN said that the discussion had given him the impression that there was general agreement that boundaries should be treated in such a way as to enhance the stability of international relations.

40. He was convinced that it was necessary to include an article on the subject in the draft, but he had not formed a very definite opinion on some of the delicate issues which had arisen during the discussion. In particular, although he was attracted by the theory which regarded a boundary treaty as a consummated treaty that created an independent situation, he could not altogether reject the other view, which regarded problems of boundary treaties as treaty problems. In reality, a boundary treaty had a mixed character and could not be viewed exclusively from either of those two standpoints.

41. He found paragraph (27) of the Special Rapporteur's valuable commentary particularly relevant in that connexion, because it clearly stated the limited scope of the rule in article 22. That rule related exclusively to the effect of a succession of States on the boundary settlement and left untouched any other ground for claiming the revision or setting aside of that settlement; it also left untouched any legal ground for defence of such a claim. The mere occurrence of a succession of States thus neither consecrated the existing boundary, if it was open to challenge, nor deprived it of its character as a legally-established boundary, if such it was at the date of the succession of States.

42. In conclusion, he thought that, for the purposes of a first draft to be submitted to the General Assembly as a basis for discussion and as a means of eliciting the views of governments, it would be useful to include article 22. If a choice had to be made between alternatives A and B, he would choose alternative B; if, however, he had to choose between alternative B and the Special Rapporteur's original article 4 in his first report, he was not at all certain which of the two he would prefer.

43. Mr. RAMANGASOAVINA noted that most members of the Commission agreed that a treaty establishing a boundary should not be affected by a succession of States. As some members had pointed out, a State possessed "title" to a certain territory with well-defined boundaries. It was the same in private law, under which, when property was transferred, the change of ownership in no way affected the previously established boundaries.

44. The use of the expression "by reason only", in both alternative A and alternative B for article 22, clearly indicated that the article was to be considered solely from the viewpoint of State succession. It followed that a treaty could be revised for some other reason, in particular on the basis of the principle of self-determination.

45. As to the distinction between treaties settling boundary questions and those settling territorial questions, he pointed out that the ownership of a territory by one State rather than another necessarily entailed a boundary demarcation. A boundary was a line intended to demarcate the territories of two neighbouring States. Moreover, it should be noted that disputes over boundaries arose from the fact that certain portions of territory were claimed by several States. A frontier fixed on the basis of both the crest line and the watershed might give rise to disputes if, as the result of a landslide or other geological disturbance in the mountains or mountain ranges, those lines completely ceased to coincide.

The meeting rose at 6 p.m.

1194th MEETING

Tuesday, 4 July 1972, at 9.35 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. Sette Câmara, Mr. Thiam, Mr. Tsuruoka, Mr. Ushakov, Mr. Ustor, Sir Humphrey Waldock, Mr. Yasseen.

Statement by the Secretary-General

1. The CHAIRMAN said he had great pleasure in welcoming the Secretary-General who, in the six months since he had assumed his high office, had made a wide variety of efforts to deal with difficult problems throughout the world and had endeavoured to do so through measures based on equitable and legal principles.

2. The Secretary-General's devotion to legal principles was understandable, since he was a Doctor of Jurisprudence of Vienna University, which for centuries had been a centre for the study of international law. Austria was noted for the great contributions it had made to the development of international law; among its eminent scholars were Mr. Verdross, who had been for many years a highly esteemed member of the Commission, as well as Mr. Verosta and Mr. Zemanek, who were currently making important contributions in that field. The city of Vienna was, of course, very close to the Commission since three of its drafts had become conventions signed in that city in 1961, 1963 and 1969, and the series would probably continue.

3. The Secretary-General came to the Commission as a valued colleague, since he had contributed to the development of international law as a representative of his country, in particular as Chairman, from 1964 to 1968, of the Committee on the Peaceful Uses of Outer Space, which had broken new ground in international law by formulating a régime for the law of outer space.

4. His visit came at a time when the Commission was busily engaged on the production of two sets of draft articles, one on the prevention and punishment of crimes against diplomatic agents and other internationally protected persons, and the other on the complex problems of succession of States in respect of treaties. The Commission was doing its best with the limited time at its disposal and hoped to be able to submit those two sets of draft articles to the General Assembly at its forthcoming session.

5. He had pleasure in inviting the Secretary-General to address the Commission.

6. The SECRETARY-GENERAL thanked the Chairman for his kind words of welcome and said that, for a number of reasons, he was very glad to have an opportunity of addressing the Commission in such familiar surroundings. Many of its members had been his esteemed colleagues in various capacities, and on a previous occasion, as Foreign Minister of his own country, he had had the privilege of acting as host to many of them during the second session of the Vienna Conference on the Law of Treaties in 1969.

7. He had a very special appreciation of the work being done by the Commission, having personally participated in the codification and progressive development of international law in a new field of human activities, within the framework of the Committee on the Peaceful Uses of Outer Space, over which he had had the honour to preside for several years.

8. In November 1972, twenty-five years would have passed since the General Assembly, by resolution 174 (II) of 21 November 1947, had established the International Law Commission as a means of exercising one of the principal functions entrusted to the Assembly under Article 13, paragraph 1.a., of the Charter, namely, that of "encouraging the progressive development of international law and its codification".