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**Summary record of the 1149th meeting**

Topic:  
**Other topics**

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# INTERNATIONAL LAW COMMISSION

## SUMMARY RECORDS OF THE TWENTY-FOURTH SESSION

*Held at Geneva from 2 May to 7 July 1972*

### 1149th MEETING

*Tuesday, 2 May 1972, at 3.25 p.m.*

*Chairman:* Mr. Senjin TSURUOKA

*later:* Mr. Richard D. KEARNEY

*Present:* Mr. Ago, Mr. Alcívar, Mr. Bartoš, Mr. Bilge, Mr. Castañeda, Mr. Hambro, Mr. Nagendra Singh, Mr. Quentin-Baxter, Mr. Reuter, Mr. Rossides, Mr. Sette Câmara, Mr. Tammes, Mr. Thiam, Mr. Ushakov, Mr. Ustor, Sir Humphrey Waldock, Mr. Yasseen.

### Opening of the Session

1. The CHAIRMAN, after declaring the twenty-fourth session of the International Law Commission open, said that in accordance with the decision taken at its last session, he had represented the Commission at the twenty-sixth session of the General Assembly, where the Sixth Committee had considered the Commission's report from 8 to 21 October and on 11 and 12 November.

2. The Sixth Committee had devoted the closest attention to the draft articles prepared by the Commission on relations between States and international organizations and in particular to the question of the final phase of the codification of that topic. The opinion had been expressed that, in order to complete its study, the Commission should once more examine the question of the right of representation of States, since the draft articles had not dealt with that question.

3. Representatives generally had endorsed the limitation of the draft articles to the representation of States in their relations with international organizations of a "universal character", but it had been suggested that relations with regional organizations should be studied at a later stage.

4. A number of representatives had expressed approval of the structure of the draft, notably the reduction of the original number of articles. Several had expressed their approval of the consolidation of the provisions concerning permanent missions and permanent observer missions; some, on the other hand, had expressed reservations regarding that consolidation on the grounds that it tended to obscure the fundamental difference, in character and function, of such missions.

5. On 28 July 1971, the Commission had decided to recommend that the General Assembly convene an international conference of plenipotentiaries to study

the draft articles and conclude a convention.<sup>1</sup> The Sixth Committee had devoted a considerable part of its debate to the procedure to be followed in the final phase of the codification of the subject-matter. The Commission's recommendation to convene an international conference had been supported by some representatives on the grounds that a conference would provide the coherence and uniformity indispensable for a constructive study of so complex a draft, that a conference would enable delegations to concentrate their attention, and that it would be inconvenient for countries with small delegations if the convention were drawn up by the Sixth Committee.

6. On the other hand, a number of representatives had taken the view that the Sixth Committee should be asked to prepare the final draft of a convention for adoption by the General Assembly. The reasons put forward in support of that proposal had been that the Sixth Committee, being composed of experts representing all States Members of the United Nations, had the necessary experience to carry out the task, that an international conference would involve additional expenditure for the United Nations, which was in a difficult financial situation, that the future work programme of the Sixth Committee was not particularly heavy, and that another conference in addition to those already scheduled might impose too great a burden on the representatives of States.

7. The view had prevailed, however, that the final decision should be left to the next session of the General Assembly. The Assembly had accordingly decided to invite Member States, and Switzerland, as a host State, to submit, not later than 1 June 1972, their written comments and observations on the procedure to be adopted for the elaboration and conclusion of a convention, and on the substance of the draft articles. The same invitation had been extended to the Secretary-General of the United Nations and the Directors-General of the specialized agencies. The item had been placed on the provisional agenda for the twenty-seventh session of the General Assembly, where the question of procedure would be discussed and decided.

8. The representative of Austria had announced that his Government would be prepared to act as host to the conference, if convened, on the same conditions as had applied to the Vienna conferences on diplomatic intercourse and immunities, consular relations and the law of treaties.

9. With regard to the topic of succession in respect of treaties, satisfaction had been expressed at the Com-

<sup>1</sup> See *Yearbook of the International Law Commission, 1971*, vol. II, part one, document A/8410/Rev.1, para. 57.

mission's intention, stated in its report on its twenty-third session,<sup>2</sup> to complete the first reading of the draft articles on that topic at its next session. General approval had been expressed of the Commission's conclusion that the topic should be dealt with within the framework of the law of treaties, while certain representatives had urged that it should be studied in conjunction with succession in respect of matters other than treaties.

10. Approval of article 1 of the draft,<sup>3</sup> on the use of terms, especially the term "succession", had been expressed by certain representatives. As to article 6,<sup>4</sup> opinions had differed on the question whether the general rule regarding a new State's obligations in respect of its predecessor's treaties should suffer exceptions regarding "dispositive", "territorial" or "localized" treaties. On the one hand, the opinion had been expressed that no exception to the general rule should be admitted, while, on the other hand, it had been maintained that such treaties were binding on the successor State and should therefore constitute exceptions to the general rule.

11. The General Assembly had recommended that the Commission endeavour to make progress in its consideration of the topic of succession of States in respect of matters other than treaties.

12. It had also recommended that the Commission continue its work on State responsibility and try to make substantial progress in 1972 towards the preparation of draft articles on that topic. It had been agreed that the Commission should continue its study of the most-favoured-nation clause and of treaties concluded between States and international organizations or between two or more international organizations.

13. With regard to the question of persons entitled to special protection under international law, some representatives had urged that it called for immediate attention. Others, however, had opposed the idea of preparing draft articles on the question, on the ground that the protection of diplomatic and consular officers was already adequately provided for in international law and that what was needed was not another international instrument, but effective application of the existing law.

14. After due deliberation, the General Assembly had decided to request the Commission to study the question with a view to preparing a set of draft articles dealing with offences against diplomatic and other persons entitled to special protection under international law, for submission to the Assembly at the earliest date which the Commission considered appropriate. Member States had also been requested to submit their comments to the Secretary-General so that the Commission might take them into account in studying the question.

15. Satisfaction had been expressed at the excellent way in which the seventh session of the Seminar on International Law had been conducted. Several repre-

sentatives had announced their government's intention to contribute to the cost of the next Seminar.

16. Satisfaction had also been expressed at the continuing co-operation with other bodies. At the meeting of the Inter-American Juridical Committee, the Commission had been represented by Mr. Sette Câmara. He (the Chairman) had been unable to attend the November session of the European Committee on Legal Co-operation, but, at the invitation of its Secretary, he had visited the European Committee in January. He had also attended the thirteenth session of the Asian-African Legal Consultative Committee, held in Lagos from 18 to 25 January.

17. Lastly, he had the pleasure to announce that the sum of US \$3,000 had been paid in December 1971 by the Brazilian Government as its 1971 contribution to the Gilberto Amado Memorial Fund.

### Election of Officers

18. The CHAIRMAN called for nominations for the office of Chairman.

19. Mr. AGO, after paying a tribute to the outgoing Chairman for the able manner in which he had performed his duties, proposed Mr. Kearney, whose keen intelligence, sound common sense and sympathetic understanding were well known to all members. Mr. Kearney also possessed a rare capacity for hard work, as he had clearly shown at the previous session in the Commission's work on relations between States and international organizations.

20. Sir Humphrey WALDOCK said he took great pleasure in seconding that proposal. He wished to associate himself particularly with the tribute paid by Mr. Ago to Mr. Kearney for his great contribution to the success of the Commission's work on relations between States and international organizations, as Chairman of the Working Group. He would be sadly missed on the Drafting Committee.

21. Mr. USHAKOV, Mr. NAGENDRA SINGH, Mr. BARTOŠ, Mr. CASTAÑEDA—speaking also on behalf of Mr. Alcívar and Mr. Sette Câmara—Mr. THIAM and Mr. REUTER associated themselves with the tributes paid to the outgoing Chairman and supported the proposal of Mr. Kearney for the office of Chairman.

*Mr. Kearney was unanimously elected Chairman and took the Chair.*

22. The CHAIRMAN thanked the Commission for the honour it had done him and called for nominations for the office of First Vice-Chairman.

23. Mr. USHAKOV proposed Mr. Ustor.

24. Mr. NAGENDRA SINGH seconded the proposal.

25. Mr. BARTOŠ, Mr. ALCÍVAR, Mr. REUTER, Mr. THIAM and Sir Humphrey WALDOCK supported the proposal.

*Mr. Ustor was unanimously elected First Vice-Chairman.*

26. The CHAIRMAN called for nominations for the office of Second Vice-Chairman.

<sup>2</sup> *Ibid.*, para. 131.

<sup>3</sup> See *Yearbook of the International Law Commission, 1969*, vol. II, p. 50.

<sup>4</sup> *Op. cit.*, 1970, vol. II, p. 31.

27. Mr. THIAM proposed Mr. Ramangasoavina.  
 28. Mr. REUTER seconded the proposal.  
 29. Mr. NAGENDRA SINGH and Mr. USHAKOV supported the proposal.

*Mr. Ramangasoavina was unanimously elected Second Vice-Chairman.*

30. The CHAIRMAN called for nominations for the office of Rapporteur.  
 31. Mr. SETTE CÂMARA proposed Mr. Alcívar.  
 32. Mr. USHAKOV seconded the proposal.  
 33. Mr. BARTOŠ, Mr. NAGENDRA SINGH, Mr. THIAM and Mr. ROSSIDES supported the proposal.

*Mr. Alcívar was unanimously elected Rapporteur.*

34. The CHAIRMAN said it was a pleasure for him to pay a tribute to the outgoing Chairman, whose leadership had enabled the Commission to accomplish a substantial amount of work under difficult circumstances at the previous session.  
 35. He thanked members for their kind words about himself and said that the spirit of friendship and co-operation which had always prevailed in the Commission, and the support which he was sure he would receive from the other officers, encouraged him to look forward to a successful session despite the heavy agenda.  
 36. Mr. USTOR and Mr. ALCÍVAR thanked the members who had proposed and supported their nominations.  
 37. The CHAIRMAN said he wished to extend a warm welcome to the four new members of the Commission: Mr. Bilge, Mr. Hambro, Mr. Quentin-Baxter and Mr. Rossides, all of whom were already well known to the members of the Commission as international lawyers and as participants in the work of the United Nations. He also welcomed the new Secretary to the Commission, Mr. Rybakov, who had replaced Mr. Movchan as Director of the Codification Division of the Office of Legal Affairs.  
 38. Mr. BILGE, Mr. HAMBRO, Mr. QUENTIN-BAXTER and Mr. ROSSIDES congratulated the Chairman and the other officers on their election and thanked the Chairman for his kind welcome.  
 39. Mr. RYBAKOV, after thanking the Chairman for his warm welcome, said he could assure him that the Secretariat would continue to co-operate closely with the Commission as it had done in the past.

#### Adoption of the Agenda

40. The CHAIRMAN invited the Commission to adopt its provisional agenda (A/CN.4/252).  
 41. Mr. AGO said that, although it was customary to adopt the agenda without detailed discussion of its composition or of the order in which the items were listed, he wished to point out that it was essential for the Commission to give priority to two items. The first was item 1 (a), succession of States in respect of treaties, which had always been regarded as a priority item and consideration of which was already fairly far advanced.

As the Special Rapporteur for the topic would be called away to other functions and have to leave the Commission the following year, further progress must be made before he left. The second item was item 5, the protection and inviolability of diplomatic agents and other persons entitled to special protection under international law. That item had been specially referred to the Commission by the General Assembly.

42. Mr. NAGENDRA SINGH said he entirely agreed with Mr. Ago on the need to give priority to item 1 (a), even if it had to be at the expense of other items, since the latter had not progressed to the stage of finalization. Apart from the reasons already given, it should be remembered that the Sixth Committee was liable to become impatient because of the inevitably protracted character of the painstaking work of the Commission. Since considerable progress had already been made on item 1 (a), the Commission would be wise to concentrate on that item and present something by way of an accomplishment.

43. He also agreed on the desirability of giving priority to the question of the protection and inviolability of diplomatic agents and other persons entitled to special protection under international law, a topic which promised speedy results.

44. Mr. ROSSIDES said he agreed on the desirability of concentrating on the topic of succession of States in respect of treaties, but it was even more desirable to give priority to the question of the protection and inviolability of diplomatic agents, which was very urgent for many reasons.

45. Mr. CASTAÑEDA said he could agree that priority should be given to items 1 (a) and 5, but the Commission should not lose sight of the fact that item 2, State responsibility, ought also to be dealt with as soon as possible. It was now about ten years since the Commission had adopted a new approach to State responsibility and it had only been prevented from considering that topic by the urgency of other topics, in particular that of relations between States and international organizations. It would also be undesirable to postpone for as much as two years the topic of succession of States in respect of matters other than treaties, on which the Special Rapporteur has already submitted his fifth report (A/CN.4/259).

46. The CHAIRMAN suggested that the Commission should give priority, at its current session, to items 1 (a) and 5 of the agenda.

*It was so agreed.*

47. Sir Humphrey WALDOCK said that it would help the Commission to reach a conclusion on the procedure to be followed with regard to item 5 if the Chairman, who had submitted a working paper with draft articles on the subject (A/CN.4/L.182), would indicate how the topic might best be dealt with, bearing in mind that the Commission had not yet appointed a Special Rapporteur.

48. The CHAIRMAN said that experience at the previous session with the topic of relations between States and international organizations had shown the effectiveness of the method of setting up a small working group

to take over a variety of functions normally performed by a Special Rapporteur. Perhaps the same method could be followed at the present session in dealing with item 5. The Secretariat had been collecting materials which would be of great assistance in preparing commentaries to future articles on the protection and inviolability of diplomatic agents. He would therefore suggest that a small working group be set up fairly quickly; it might take his draft articles as a basis for its work.

49. Sir Humphrey WALDOCK said he thought it would be desirable for the Commission itself to have some discussion on those draft articles before they were referred to a small working group.

50. Mr. SETTE CÂMARA said that the Working Group which had dealt with relations between States and international organizations at the previous session had had before it six extensive reports by the Special Rapporteur on that topic. In the present instance, he would not object to the appointment of a small working group, but the thought it should proceed more or less on the lines of the Sub-Committee on treaties concluded between States and international organizations or between two or more international organizations. The work of the small working group should logically lead to the appointment of a Special Rapporteur. The subject was a very important one and, to be discussed thoroughly, it needed the help of a Special Rapporteur; it could not be disposed of merely on the basis of draft articles.

51. Mr. BARTOŠ said that although in principle he approved of the draft prepared by the Chairman, he was opposed to its being examined by a working group before the Commission had discussed it. The proposed articles contained certain clauses which amounted to a virtual reform of modern international law and would in some cases involve a return to practices of the past. It was essential that the Commission, whose composition, under its Statute, had to reflect the principal legal systems of the world, should first decide on the main lines of the draft.

52. Mr. USHAKOV acknowledged that a preliminary discussion in the Commission would be useful, but urged that it should be very brief.

53. Mr. AGO said he agreed with Mr. Ushakov. Item 5 of the agenda differed from the subjects the Commission usually dealt with, which were matters of classical international law suitable for codification. In the present case, the General Assembly had referred to the Commission a problem which called for a quick solution, and that could only be provided by setting up a working group. If its work was to be fruitful, however, it was essential that the Commission should first have a general exchange of views.

54. Mr. NAGENDRA SINGH said he agreed that the Commission should have a short discussion on the draft articles before the working group was set up, so that the group could be apprised of any objections to the proposals embodied in those articles.

55. The CHAIRMAN said that there would be a meeting of the officers of the Commission, the special rapporteurs and the former chairmen of the Commission

to discuss the programme of work, before the Commission's next meeting.

*The provisional agenda was adopted.*

### Communication from the Secretary-General

56. The CHAIRMAN said that the Commission had received the following communication from the Secretary-General:

"The Secretary-General is preoccupied with the increasingly adverse effects of the critical financial situation of the United Nations on the reputation of the Organization, as well as on the efficiency and effectiveness of its future operations. While the relationship between this financial situation, which has many intractable aspects of a political nature, and the level of the budget estimates can be a matter of controversy, as has been amply demonstrated in the course of the General Assembly debate on the budget estimates for 1972, the Secretary-General is convinced that, in view of the continuing financial difficulties of the Organization, some measure of budgetary restraint is unavoidable.

"As far as 1972 is concerned, he has made it clear that the budget appropriations need to be administered in such a manner as to achieve a final unexpended balance in the amount of \$4 million, the approximate equivalent of the anticipated shortfall in the payment of assessed contributions. As for 1973, on the assumption that no real progress will be made in the immediate future towards a basic solution of the deficit situation, the Secretary-General has stated that it is essential that the level of the estimates should demonstrate maximum self-restraint and fiscal care on the part of the Secretariat. He has indicated, in particular, that even in those circumstances where a legitimate case could be made for the strengthening in 1973 of particular offices and departments, he would not seek the necessary provisions for such purposes until present difficulties have been resolved.

"To attain these objectives, the Secretary-General has called for the co-operation of all members of the Secretariat, and it is now apparent that he is receiving a positive response. It is evident, however, that if the goals which he seeks to achieve are to be reached, it will be necessary to enlist also the full support of the various United Nations bodies where new programmes and activities are originated. The Secretary-General therefore feels it to be his duty to make all United Nations Councils, Commissions and Committees aware of his preoccupations and his objectives. The Secretary-General does not believe that the application of a policy of financial restraint necessarily means that new programmes and activities cannot be undertaken. The aim should rather be to seek to accommodate such new responsibilities within the staff resources which will have become available as a result of the completion of prior tasks, or by the assignment of a lower order of priority to certain continuing activities.

"While the extent to which the members of the International Law Commission will wish to associate

themselves with the Secretary-General's preoccupations and policies is undoubtedly a matter for them to decide, the Secretary-General trusts that they will wish to assist him in attaining objectives which, in his view and in present circumstances, are in the best interest of the Organization."

The meeting rose at 5.15 p.m.

### 1150th MEETING

Wednesday, 3 May 1972, at 11.20 a.m.

Chairman: Mr. Richard D. KEARNEY

Present: Mr. Ago, Mr. Alcívar, Mr. Bartoš, Mr. Bilge, Mr. Castañeda, Mr. Hambro, Mr. Nagendra Singh, Mr. Quentin-Baxter, Mr. Reuter, Mr. Rossides, Mr. Sette Câmara, Mr. Tabibi, Mr. Tammes, Mr. Thiam, Mr. Tsuruoka, Mr. Ushakov, Mr. Ustor, Sir Humphrey Waldock, Mr. Yasseen.

#### Organization of Work

1. The CHAIRMAN said that at the previous meeting it had been decided that the officers of the Commission, together with the special rapporteurs and former chairmen, should meet to discuss the organization of work, in particular the method of dealing with item 5 of the agenda, the protection and inviolability of diplomatic agents and other persons entitled to special protection under international law. As a result of their discussion, it was suggested that a working group consisting of Mr. Ago, Mr. Hambro, Mr. Sette Câmara, Mr. Thiam and Mr. Ushakov, with Mr. Tsuruoka as Chairman, should be set up to review the problems involved and prepare proposals for submission to the Commission. He himself would attend meetings of the working group as required and give any explanations that might be requested regarding the draft articles he had prepared (A/CN.4/L.182). If there were no objections, he would take it that the Commission accepted that suggestion.

*It was so agreed.*

2. The CHAIRMAN said that with regard to the immediate work of the Commission it was proposed that a general discussion be started at once on item 5. That discussion might take up another two meetings, following which the Commission could begin to consider item 1 (a), succession of States in respect of treaties. It would continue consideration of that item until it had reviewed all the draft articles prepared by the Special Rapporteur. That would take approximately five weeks, so that the Commission could defer, for the time being, any further discussion of the organization of its work on the other items on the agenda.

3. There was a strong feeling that those other items, which were important topics of international law, should not be neglected, but that ways and means should be found of giving them some attention. If the Commission was going to achieve the results expected of it, however,

serious thought would have to be given both to the idea of simplifying its methods of work to some extent and to the possibility of holding longer sessions or extraordinary sessions.

4. Mr. CASTAÑEDA said that the Commission should so organize its work as to be able to allocate at least two weeks to the discussion of item 2, the important topic of State responsibility, and at least one week to item 1 (b), succession of States in respect of matters other than treaties. Some attention should also be given to item 6 (a), review of the Commission's long-term programme of work. That would mean speeding up the work on item 1 (a), perhaps by holding two meetings a day.

5. The CHAIRMAN said that all possible methods of speeding up the work of the Commission would be explored. Members could help by exercising the utmost restraint and keeping their statements as brief as possible.

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

(A/CN.4/L.182)

[Item 5 of the agenda]

6. The CHAIRMAN invited the Commission to begin a general discussion of item 5 of its agenda, the question of the protection and inviolability of diplomatic agents and other persons entitled to special protection under international law, which it was called upon to consider under section III, paragraph 2, of General Assembly resolution 2780 (XXVI).

7. He had prepared a working paper on the subject (A/CN.4/L.182) containing a set of draft articles concerning crimes against persons entitled to special protection under international law. For the purposes of the general discussion, members might find it convenient to consider the various problems raised by item 5 in the order in which they were treated in those draft articles.

8. Mr. SETTE CÂMARA said that the topic had been defined in General Assembly resolution 2780 (XXVI) and the Commission would, of course, have to abide by the terms of that resolution. Nevertheless, he felt obliged to place on record his views on the limitation of the topic to diplomatic agents and other persons entitled to protection under international law. Such persons were already the subject of a series of provisions assuring them of special protection, such as the provisions on personal inviolability in the 1961 Vienna Convention on Diplomatic Relations,<sup>1</sup> whereas the acts of terrorism which had unfortunately become so frequent in recent years were directed against other persons as well. Many innocent persons had been the victims of kidnapping, and even in some cases of cold-blooded murder, without the international community being able to take any action.

9. It was worth noting that under the Hague Convention of 16 December 1970,<sup>2</sup> the unlawful seizure of

<sup>1</sup> United Nations, *Treaty Series*, vol. 500, p. 110, articles 29 *et seq.*

<sup>2</sup> See *International Legal Materials*, vol. X, number 1, January 1971, p. 133.