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Summary record of the 1197th meeting

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States”, which appeared to be difficult to render into French, should be replaced by the words “relating to cases of secession”.

It was so agreed.

85. Sir Humphrey WALDOCK (Special Rapporteur) suggested that the last two sentences of paragraph 23 should be dropped. In view of decisions taken by the Commission after they had been drafted, they were inaccurate.

It was so agreed.

Paragraph 23, as amended, was approved.

86. Sir Humphrey WALDOCK (Special Rapporteur) explained that the five sub-sections so far considered did not exhaust the contents of the introduction. A further document would be issued containing explanations of the form, scope and scheme of the draft articles as a whole.¹³

The meeting rose at 12.55 p.m.

¹³ Document A/CN.4/L.187/Add.20, discussed at the 1199th meeting, paras. 11 to 14.

1197th MEETING

Thursday, 6 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. Ros-sides, Mr. Sette Câmara, Mr. Thiam, Mr. Tsuruoka, Mr. Ushakov, Mr. Ustor, Sir Humphrey Waldoock, Mr. Yasseen.

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 6; A/CN.4/L.184 and L.185)

[Item 1 (a) of the agenda]

(resumed from the previous meeting)

DRAFT ARTICLES PROPOSED BY THE DRAFTING COMMITTEE
(A/CN.4/L.183/Add.6)

ARTICLE 22

1. Mr. USTOR (Chairman of the Drafting Committee) said that the Committee proposed the following title and text for article 22:

Article 22
Boundary régimes

A succession of States shall not as such affect:

- (a) A boundary established by a treaty; or
- (b) Obligations and rights established by a treaty and relating to the régime of a boundary.

2. That article, together with article 22 (*bis*), would now form a separate Part V, entitled “Boundary régimes and other territorial régimes established by a treaty”.

3. The Drafting Committee had considerably simplified the text of article 22 submitted by the Special Rapporteur in his fifth report (A/CN.4/256/Add.4). The text now proposed was a clear statement of the rule, namely, that a succession of States did not as such affect either a boundary established by a treaty, or treaty obligations and rights relating to a boundary régime. Those two ideas were expressed succinctly in sub-paragraphs (a) and (b). The purpose of the words “as such” in the opening sentence was to indicate that the article referred only to the rules of State succession, since other rules could come into play and affect boundaries or treaty rights and obligations relating to boundary régimes.

Article 22 was approved.

ARTICLE 22 (*bis*)

4. Mr. USTOR (Chairman of the Drafting Committee) said that the Committee proposed the following title and text for article 22 (*bis*):

Article 22 (bis)
Other territorial régimes

1. A succession of States shall not as such affect:

(a) Obligations relating to the use of a particular territory, or to restrictions upon its use, established by a treaty specifically for the benefit of a particular territory of a foreign State and considered as attaching to the territories in question;

(b) Rights established by a treaty specifically for the benefit of a particular territory and relating to the use, or to restrictions upon the use of a particular territory of a foreign State and considered as attaching to the territories in question.

2. A succession of States shall not as such affect:

(a) Obligations relating to the use of a particular territory, or to restrictions upon its use, established by a treaty specifically for the benefit of a group of States or of all States and considered as attaching to that territory;

(b) Rights established by a treaty specifically for the benefit of a group of States or of all States and relating to the use of a particular territory or to restrictions upon its use and considered as attaching to that territory.

5. Members would note that the words “and considered as attaching to that territory” had been added at the end of paragraph 2 (b) of the text in document A/CN.4/L.183/Add.6.

6. Paragraph 1 of the article dealt with treaty situations of a territorial character. Paragraph 2 dealt with a special kind of treaty situation, covering such matters as the use of international waterways. Each of the two paragraphs was subdivided into two sub-paragraphs, the first dealing with obligations and the second with rights. All four sub-paragraphs ended with a proviso to the effect that the obligations or rights were considered as attaching to the territories in question. The purpose of that proviso was to emphasize that the rights or obligations must have a certain connexion with the territory.

7. In reply to a question put by the Chairman, he said that the Committee had abandoned the idea of including in article 1 a provision on the use of the term “territory”.

8. Sir Humphrey WALDOCK (Special Rapporteur) said he would prepare a passage on that point for inclusion in the commentary.

Article 22 (bis) was approved.

ADOPTION OF THE DRAFT ARTICLES ON SUCCESSION
OF STATES IN RESPECT OF TREATIES

9. The CHAIRMAN invited the Commission to adopt the text of the draft articles on succession of States in respect of treaties as approved during the session.

Article 0 (Scope of the present articles) [1]¹

Article 0 was adopted unanimously.

Article 1 (Use of terms) [2]

Article 1 was adopted unanimously.

Article 1 (bis) (Cases not within the scope of the present articles) [3]

Article 1 (bis) was adopted unanimously.

Article 1 (ter) (Treaties constituting international organizations and treaties adopted within an international organization) [4]

Article 1 (ter) was adopted unanimously.

Article 1 (quater) (Obligations imposed by international law independently of a treaty) [5]

Article 1 (quater) was adopted unanimously.

Article 1 (quinquies) (Cases of succession of States covered by the present articles) [6]

10. Mr. USHAKOV said that he wished to place on record his abstention from voting on article 1 (*quinquies*). He reserved his decision on that article until the second reading.

Article 1 (*quinquies*) was adopted by 15 votes to none with 1 abstention.

Article 2 (Transfer of territory) [10]

11. The CHAIRMAN invited the Commission to consider article 2 (Transfer of territory) (A/CN.4/L.185), as approved provisionally at the 1181st meeting.²

12. The Drafting Committee had approved the article on the understanding that the draft would include a saving clause concerning cases of military occupation, State responsibility and the outbreak of hostilities.

13. Mr. USHAKOV pointed out that paragraph 2 should refer not only to article 22 but also to article 22 (*bis*).

14. Sir Humphrey WALDOCK (Special Rapporteur) agreed that the rules in both articles would apply to any case of State succession.

15. If paragraph 2 were retained in article 2, it would be necessary to include a clause of the same kind in a

number of other articles of the draft. He therefore proposed that the paragraph should be deleted. Article 2 would then consist of only one unnumbered paragraph.

The Special Rapporteur's proposal was adopted.

16. Mr. BARTOŠ said that he would abstain from voting on article 2 because of his objection to the inclusion of the words "or administration" in the opening sentence, for the reasons he had explained during the previous discussion.³

Article 2, as amended, was adopted by 15 votes to none, with 1 abstention.

Article 3 (Agreements for the devolution of treaty obligations or rights from a predecessor to a successor State) [7]

Article 3 was adopted unanimously.

Article 4 (Successor State's unilateral declaration regarding its predecessor State's treaties) [8]

Article 4 was adopted unanimously.

Article 5 (Treaties providing for the participation of a successor State) [9]

Article 5 was adopted unanimously.

17. Mr. USTOR (Chairman of the Drafting Committee) said that the Committee proposed that Part III of the draft (Newly independent States) should begin with a new section 1 entitled "General rule" and consisting only of article 6. In consequence, sections 1 to 4 of Part III would be renumbered sections 2 to 5.

It was so agreed.

Article 6 (Position in respect of the predecessor State's treaties) [11]

Article 6 was adopted unanimously.

Article 7 (Participation in treaties in force) [12]

Article 7 was adopted unanimously.

Article 8 (Participation in treaties not yet in force) [13]

Article 8 was adopted unanimously.

Article 8 (bis) (Ratification, acceptance or approval of a treaty signed by the predecessor State) [14]

Article 8 (bis) was adopted unanimously.

Article 9 (Reservations) [15]

Article 9 was adopted unanimously.

Article 10 (Consent to be bound by part of a treaty and choice between differing provisions) [16]

Article 10 was adopted unanimously.

Article 11 (Notification of succession) [17]

Article 11 was adopted unanimously.

Article 12 (Effects of a notification of succession) [18]

Article 12 was adopted unanimously.

Article 13 (Conditions under which a treaty is considered as being in force) [19]

Article 13 was adopted unanimously.

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 paras. 44 *et seq.*

³ See 1176th meeting, para. 98.

Article 15 (The position as between the predecessor and the successor State) [20]

Article 15 was adopted unanimously.

Article 17 (Termination, suspension of operation or amendment of the treaty as between the predecessor State and the other State party) [21]

Article 17 was adopted unanimously.

Article 17 (bis) (Multilateral treaties) [22]

Article 17 (bis) was adopted unanimously.

Article 17 (ter) (Bilateral treaties) [23]

Article 17 (ter) was adopted unanimously.

Article 17 (quater) (Termination of provisional application) [24]

Article 17 (quater) was adopted unanimously.

Article 17 (quinquies) (Newly independent States formed from two or more territories) [25]

18. Mr. AGO, supported by Mr. ELIAS, proposed that the words "Newly independent" be deleted from the title of section 5 (Newly independent States formed from two or more territories).

It was so agreed.

Article 17 (quinquies) was adopted unanimously.

19. Mr. AGO proposed that the words "of States" be added at the end of the title of Part IV, which would then read: "Uniting, dissolution and separation of States".

It was so agreed.

Article 19 (Uniting of States) [26]

Article 19 was adopted unanimously.

Article 20 (Dissolution of a State) [27]

Article 20 was adopted unanimously.

Article 21 (Separation of part of a State) [28]

20. Mr. USHAKOV said he would vote in favour of article 21, though he still had doubts regarding paragraph 2, which in his opinion went much too far. He suggested that a passage should be included in the commentary recording those doubts, which he understood to be shared by other members of the Commission.

21. Mr. USTOR and the CHAIRMAN, speaking as a member of the Commission, supported that suggestion.

22. Sir Humphrey WALDOCK (Special Rapporteur) said he would prepare a suitable passage for inclusion in the commentary.

Article 21 was adopted on that understanding.

Article 22 (Boundary régimes) [29]

Article 22 was adopted unanimously.

Article 22 (bis) (Other territorial régimes) [30]

Article 22 (bis) was adopted unanimously.

Article X (Cases of military occupation, State responsibility and outbreak of hostilities) [31]

Article X was adopted unanimously.

23. The CHAIRMAN invited the Commission to vote on the draft articles as a whole. A vote in favour would not imply the abandonment of members' positions on specific articles, and, as usual, the adoption of the draft articles on first reading would in no way affect the position they might wish to adopt on second reading in the light of government comments.

The draft articles on succession of States in respect of treaties, as a whole, were adopted unanimously.

24. Mr. AGO moved a vote of congratulations and thanks to the Special Rapporteur on succession of States in respect of treaties.

The motion was carried by acclamation.

25. Mr. EL-ERIAN said that since, to his regret, he had been unable to be present when the Commission had voted on the draft articles as a whole, he wished to place his affirmative vote on record and to associate himself with the tribute paid to the Special Rapporteur.

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

(A/CN.4/L.187 and Add.1 to 16)

(resumed from the previous meeting)

Chapter II

SUCCESSION OF STATES IN RESPECT OF TREATIES

B. Draft articles on succession of States in respect of treaties

Commentary to article 0 (Scope of the present articles) [1] (A/CN.4/L.187/Add.2)

The commentary to article 0 was approved.

Commentary to article 1 (bis) (Cases not within the scope of the present articles) [3] (A/CN.4/L.187/Add.2)

The commentary to article 1 (bis) was approved.

Commentary to article 1 (ter) (Treaties constituting international organizations and treaties adopted within an international organization) [4] (A/CN.4/L.187/Add.2)

26. The CHAIRMAN, speaking as a member of the Commission, suggested that, in the seventh sentence of paragraph (10), the words "applies to treaties" should be replaced by the words "applies in the case of treaties".

It was so agreed.

The commentary to article 1 (ter), as amended, was approved.

Commentary to article 1 (quater) (Obligations imposed by international law independently of a treaty) [5] (A/CN.4/L.187/Add.2)

The commentary to article 1 (quater) was approved.

Commentary to article 1 (quinquies) (Cases of succession of States covered by the present articles) [6] (A/CN.4/L.187/Add.12)

27. Mr. AGO said he thought the statement in the first sentence of paragraph (1) was too categorical. He also

thought that in the fourth sentence of that paragraph reference should perhaps be made to other cases of invalidity besides treaties procured by coercion.

28. Sir Humphrey WALDOCK (Special Rapporteur) suggested that, in order to meet the first point raised by Mr. Ago, the word "necessarily" in the first sentence of paragraph (1) should be replaced by the word "normally", and that the word "normally" in the second sentence should be replaced by the words "as a rule". He further suggested that the second point raised by Mr. Ago could be met by inserting the words "*inter alia*" after the word "included" in the fourth sentence of paragraph (1).

It was so agreed.

The commentary to article 1 (quinties), as amended, was approved.

Commentary to article 2 (Transfer of territory) [10] (A/CN.4/L.187/Add.4)

29. Sir Humphrey WALDOCK (Special Rapporteur) in reply to a question by the Chairman regarding the pertinence of the precedents cited in paragraph 4 of the commentary, proposed that paragraph 4 should be deleted.

It was so agreed.

The commentary to article 2, as amended, was approved.

Commentary to article 3 (Agreements for the devolution of treaty obligations or rights from a predecessor to a successor State) [7] (A/CN.4/L.187/Add.2)

30. The CHAIRMAN, speaking as a member of the Commission, said he thought the statement in the penultimate sentence of paragraph (5) of the commentary was rather too categorical, and suggested that the word "normally" be inserted before the word "admit".

It was so agreed.

The commentary to article 3, as amended, was approved.

Commentary to article 4 (Successor State's unilateral declaration regarding its predecessor State's treaties) [8] (A/CN.4/L.187/Add.4)

The commentary to article 4 was approved.

Commentary to article 5 (Treaties providing for the participation of a successor State) [9] (A/CN.4/L.187/Add.3)

The commentary to article 5 was approved.

Commentary to article 6 (Position in respect of the predecessor State's treaties) [11] (A/CN.4/L.187/Add.4)

The commentary to article 6 was approved.

Commentary to article 7 (Participation in treaties in force) [12] (A/CN.4/L.187/Add.5)

The commentary to article 7 was approved.

Commentary to article 8 (Participation in treaties not yet in force) [13] (A/CN.4/L.187/Add.5)

The commentary to article 8 was approved.

Commentary to article 8 (bis) (Ratification, acceptance or approval of a treaty signed by the predecessor State) [14] (A/CN.4/L.187/Add.5)

The commentary to article 8 (bis) was approved.

Commentary to article 9 (Reservations) [15] (A/CN.4/L.187/Add.6)

The commentary to article 9 was approved.

Commentary to article 10 (Consent to be bound by part of a treaty and choice between differing provisions) [16] (A/CN.4/L.187/Add.7)

The commentary to article 10 was approved.

Commentary to article 11 (Notification of succession) [17] (A/CN.4/L.187/Add.7)

The commentary to article 11 was approved.

Commentary to article 12 (Effects of a notification of succession) [18] (A/CN.4/L.187/Add.8)

The commentary to article 12 was approved.

Commentary to article 13 (Conditions under which a treaty is considered as being in force) [19] (A/CN.4/L.187/Add.9)

The commentary to article 13 was approved.

Commentary to article 15 (The position as between the predecessor and the successor State) [20] (A/CN.4/L.187/Add.10)

The commentary to article 15 was approved.

Commentary to article 17 (Termination, suspension of operation or amendment of the treaty as between the predecessor State and the other State party) [21] (A/CN.4/L.187/Add.10)

The commentary to article 17 was approved.

Commentary to article 17 (quinties) (Newly independent States formed from two or more territories) [25] (A/CN.4/L.187/Add.11)

The commentary to article 17 (quinties) was approved.

Commentary to article 21 (Separation of part of a State) [28] (A/CN.4/L.187/Add.13)

31. The CHAIRMAN, speaking as a member of the Commission, said that he, Mr. Ushakov and Mr. Ustor had all expressed some concern about the scope and effect of paragraph 2 of article 21. He therefore suggested that, in paragraph 12 of the commentary, it should be stated that some members of the Commission had raised the question whether the provision contained in paragraph 2 should apply automatically and in all circumstances to cases of separation of part of the territory of a State.

It was so agreed.

The commentary to article 21 was approved, subject to the addition proposed by the Chairman.

Commentary to article X (Cases of military occupation, State responsibility and outbreak of hostilities) [31] (A/CN.4/L.187/Add.14)

The commentary to article X was approved.

The meeting rose at 12.55 p.m.