

Document:-  
**A/CN.4/SR.1299**

**Summary record of the 1299th meeting**

Topic:  
**Other topics**

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44. Sir Francis VALLAT (Special Rapporteur) pointed out that the quoted passage, beginning with the words "In ascertaining" and ending with the words "bound by it", should be in inverted commas.

*It was so agreed.*

*Paragraph (7), as amended, was approved.*

*Paragraphs (8)-(12)*

*Paragraphs (8)-(12) were approved.*

*Paragraph (13)*

45. Sir Francis VALLAT (Special Rapporteur) said that certain changes would be necessary in paragraph (13) to bring it into conformity with preceding decisions.

*Paragraph (13) was approved subject to the necessary changes.*

*Paragraphs (14)-(15)*

*Paragraphs (14)-(15) were approved.*

*The commentary to article 12, as amended, was approved.*

#### *Commentary to article 13*

(Participation in treaties not in force at the date of the succession of States) (A/CN.4/L.217/Add.4)

*Paragraphs (1)-(8)*

*Paragraphs (1)-(8) were approved with editorial changes.*

*Paragraph (9)*

46. Sir Francis VALLAT (Special Rapporteur) said that paragraph (9) would be adjusted in the light of the commentary to article 12.

*Paragraph (9) was approved subject to the necessary adjustment.*

*Paragraph (10)*

*Paragraph (10) was approved, subject to correction of a typographical error.*

*The commentary to article 13, as amended, was approved.*

The meeting rose at 6.05 p.m.

### 1299th MEETING

Wednesday, 24 July 1974, at 10.05 a.m.

Chairman: Mr. Endre USTOR

*Present:* Mr. Ago, Mr. Bilge, Mr. Calle y Calle, Mr. El-Erian, Mr. Elias, Mr. Hambro, Mr. Kearney, Mr. Quentin-Baxter, Mr. Ramangasoavina, Mr. Šahović, Mr. Sette Câmara, Mr. Tabibi, Mr. Tammes, Mr. Thiam, Mr. Tsuruoka, Mr. Ushakov, Sir Francis Vallat, Mr. Yasseen.

### Draft report of the Commission on the work of its twenty-sixth session

(A/CN.4/L.217/Add.4-6 and Add.8 and 9; A/CN.4/L.220; A/8710/Rev.1)

*(continued)*

#### Chapter II

#### SUCCESSION OF STATES IN RESPECT OF TREATIES

*(continued)*

1. The CHAIRMAN invited the Commission to continue its examination of the commentaries to the draft articles on succession of States in respect of treaties, beginning with article 14.

#### *Commentary to article 14*

(Participation in treaties signed by the predecessor State subject to ratification, acceptance or approval) (A/CN.4/L.217/Add.4)

*The commentary to article 14 was approved.*

#### *Commentary to article 15*

(Reservations) (A/CN.4/L.217/Add.6)

*Paragraphs (1)-(17)*

*Paragraphs (1)-(17) were approved.*

*Paragraph (18)*

2. Mr. KEARNEY proposed that the words "having regard to", in the second sentence, should be replaced by the words "in view of".

*It was so agreed.*

*Paragraph (18), as amended, was approved.*

*Paragraph (19)*

*Paragraph (19) was approved.*

*Paragraph (20)*

3. Mr. KEARNEY proposed that the words "anxious to continue the participation of its territory in the régime of the treaty", in the fifth sentence, should be amended to read "which wishes to continue to participate in the treaty".

*It was so agreed.*

*Paragraph (20), as amended, was approved.*

*Paragraphs (21)-(22)*

*Paragraphs (21)-(22) were approved.*

*Paragraph (23)*

4. Mr. KEARNEY proposed that a full stop should be placed after the words "of the 1972 article 15", in the third sentence, and that the following word, "but", should be replaced by the word "However"; that the word "normal" at the end of the same sentence should be replaced by the word "general"; and that in the interests of clarity the words "the limitation of the reference to article 23, paragraphs 1 and 4 in the 1972 draft has been amended", in the last sentence, should be amended to read "the reference in the 1972 draft to article 23, paragraphs 1 and 4 has been amended".

*It was so agreed.*

*Paragraph (23), as amended, was approved.*

*Paragraph (24)*

*Paragraph (24) was approved.*

*The commentary to article 15, as amended, was approved.*

*Commentary to article 16*

(Consent to be bound by part of a treaty and choice between differing provisions) (A/CN.4/L.217/Add.5)

*The commentary to article 16 was approved.*

*Commentary to article 17*

(Notification of succession) (A/CN.4/L.217/Add.6)

*Paragraph (1)*

*Paragraph (1) was approved.*

*Paragraph (2)*

*Paragraph (2) was approved with a minor editorial change.*

*Paragraphs (3)-(6)*

*Paragraphs (3)-(6) were approved.*

*Paragraph (7)*

5. Mr. KEARNEY proposed that the words "very particular", in the first sentence, should be amended to read "very unusual", and that the word "must" in the fifth sentence should be replaced by the word "should".

*It was so agreed.*

*Paragraph (7), as amended, was approved.*

*Paragraph (8)*

6. Mr. KEARNEY said he was not sure that the statement made in the third sentence of paragraph (8) was entirely accurate, since the paragraph later referred to the need for certain formal requirements to be met. Although he did not wish to press the point, he thought that any document which had to be signed by a Head of State, Head of Government or Minister for Foreign Affairs could hardly be called an informal instrument.

7. Sir Francis VALLAT (Special Rapporteur) said he thought that if the sentence was read in conjunction with the following passage, the situation was clear. Mr. Kearney's comment had, however, drawn his attention to the fact that some important words in paragraph (8) of the 1972 commentary (A/8710/Rev.1, chapter II, section C) had been omitted from the third sentence of the present text, the last part of which should read: "that assumption is fully confirmed by the analysis of the practice which has been given in the preceding paragraphs of the present commentary".

*Paragraph (8) was approved with that correction.*

*Paragraph (9)*

8. Sir Francis VALLAT (Special Rapporteur) proposed that the phrase "is inspired by", in the first sentence, should be replaced by the word "reflects".

*It was so agreed.*

*Paragraph (9), as amended, was approved.*

*Paragraph (10)*

9. Mr. KEARNEY proposed that, in the first sentence, the word "intended" should be replaced by the words "was drafted" and the word "shall" by the word "should".

*It was so agreed.*

*Paragraph (10), as amended, was approved.*

*Paragraphs (11) and (12)*

*Paragraphs (11) and (12) were approved.*

*Paragraphs (13) and (14)*

10. Mr. KEARNEY said he had hoped that paragraphs (13) and (14) of the commentary would clarify certain obscurities in article 17, especially the relationship between paragraphs 3(b) and 5 of the article, but they did not seem to do so. He was concerned, in particular, about the use of the phrase "legal nexus" in the second sentence of paragraph (13), which he thought was ambiguous.

11. Sir Francis VALLAT said that the phrase "legal nexus" had been used deliberately in order to avoid referring to the date of the establishment of consent to be bound. He would, however, be glad to substitute a better expression, if one could be found. He thought that the problem of relationship raised by Mr. Kearney might be solved by adding a passage to explain that the provisions of paragraph 5 of the article had no connexion with the machinery established under paragraph 3.

12. The CHAIRMAN suggested that the Commission should approve paragraphs (13) and (14), subject to changes to be made by the Special Rapporteur and considered by the Commission at a later stage.

*It was so agreed.*

*The commentary to article 17, as amended, was approved.*

*Commentary to article 19*

(Conditions under which a treaty is considered as being in force in the case of a succession of States) (A/CN.4/L.217/Add.5)

*The commentary to article 19 was approved with minor editorial changes.*

*Commentary to article 20*

(The position as between the predecessor State and the newly independent State) (A/CN.4/L.217/Add.5)

*Paragraph (1)*

13. Mr. KEARNEY proposed that the words "by agreement" should be inserted after the words "bilateral relations" in the third sentence, the phrase "by agreement between them", at the end of the sentence, being deleted.

*It was so agreed.*

*Paragraph (1), as amended, was approved.*

*Paragraphs (2)-(5)*

*Paragraphs (2)-(5) were approved.*

*The commentary to article 20, as amended, was approved.*

*Commentary to article 21*

(Termination, suspension of operation or amendment of the treaty as between the predecessor State and the other State party) (A/CN.4/L.217/Add.5)

*Paragraphs (1)-(9)*

*Paragraphs (1)-(9) were approved.*

*Paragraph (10)*

14. Mr. KEARNEY proposed that the last part of the first sentence should be amended to read: "...the original treaty is amended as between the predecessor State and the other State party to take account of the new air route situation resulting from the emergence of the new State".

*It was so agreed.*

*Paragraph (10), as amended, was approved.*

*Paragraphs (11)-(15)*

*Paragraphs (11)-(15) were approved.*

*The commentary to article 21, as amended, was approved.*

*Commentary to article 22*

(Multilateral treaties) (A/CN.4/L.217/Add.9)

*Paragraphs (1)-(4)*

*Paragraphs (1)-(4) were approved.*

*Paragraph (5)*

15. Mr. KEARNEY proposed that the word "technically" should be inserted before the words "not in force" in the second sentence.

*It was so agreed.*

*Paragraph (5), as amended, was approved.*

*Paragraph (6)*

16. In reply to a question by Mr. KEARNEY, Sir Francis VALLAT (Special Rapporteur) said that the words "on balance", in the first sentence, had been included to meet the wishes of the Drafting Committee.

*Paragraph (6) was approved.*

*Paragraphs (7)-(9)*

*Paragraphs (7)-(9) were approved.*

*The commentary to article 22, as amended, was approved.*

*Commentary to article 23*

(Bilateral treaties) (A/CN.4/L.217/Add.9)

*The commentary to article 23 was approved.*

*Commentary to article 24*

(Termination of provisional application)  
(A/CN.4/L.217/Add.9)

*Paragraphs (1)-(5)*

*Paragraphs (1) to (5) were approved.*

*Paragraph (6)*

17. Mr. RAMANGASOAVINA proposed the deletion of the last sentence of paragraph (6), which he considered unnecessary. He also proposed that the

words "or makes a notification of succession" should be added after the words "gives notice of its intention not to become a party to the treaty", at the end of the second sentence.

18. Sir Francis VALLAT (Special Rapporteur) said that, in his view, the last sentence of paragraph (6) should be retained. In order to meet Mr. Ramangasoavina's point, however, he suggested that a sentence on the following lines should be added at the end of the paragraph: "However, as the article is not intended to be exhaustive, it was not considered necessary to provide, for example, for the case where notification of succession is made, although it is apparent that when status as a party is established, provisional application will terminate".

19. The CHAIRMAN said that, if there were no further comments, he would take it that the Commission agreed to approve paragraph (6) with the addition of a sentence on the lines suggested by the Special Rapporteur.

*It was so agreed.*

*The commentary to article 24, as amended, was approved.*

*Commentary to article 25*

(Newly independent States formed from two or more territories) (A/CN.4/L.217/Add.9)

*The commentary to article 25 was approved.*

*Commentary to article 29*

(Boundary régimes)

*and to article 30*

(Other territorial régimes) (A/CN.4/L.217/Add.8)

20. Sir Francis VALLAT (Special Rapporteur) explained that paragraphs (1) to (40) reproduced the commentary to articles 29 and 30 in the 1972 report (A/8710/Rev.1, chapter II, section C) with a few amendments. Those amendments took into account the comments made by certain Governments, such as those of Ethiopia and Somalia, and the observations made by members, in particular by Mr. Tabibi,<sup>1</sup> during the discussion at the present session. Paragraphs (41) to (49) of the commentary dealt with the consideration of the articles at the present session.

*Paragraphs (1)-(43)*

*Paragraphs (1) to (43) were approved.*

*Paragraph (44)*

*Paragraph (44) was approved with minor drafting changes.*

*Paragraphs (45)-(47)*

*Paragraphs (45) to (47) were approved.*

*Paragraph (48)*

21. Mr. HAMBRO, referring to the second sentence of paragraph (48), said it was not altogether satisfactory to say that "the reference to territory must in any event be read as including the people". It would be more

<sup>1</sup> See 1287th meeting, paras. 11-28.

appropriate to say that in the last resort all rights applied to individuals, although all treaties were concluded between States and not between individuals.

22. Sir Francis VALLAT (Special Rapporteur) said that a reference to the fact that treaties were concluded between States would not meet the point either. He would, however, be prepared to try to improve the wording of the sentence.

23. The CHAIRMAN said that, if there were no further comments, he would take it that the Commission approved paragraph (48) on the understanding that a redraft of the sentence would be submitted by the Special Rapporteur at a later stage.

*It was so agreed.*

*Paragraph (49)*

*Paragraph (49) was approved.*

*The commentary to articles 29 and 30, as amended, was approved.*

*Commentary to article 30 bis*

(Questions relating to the validity of a treaty)  
(A/CN.4/L.217/Add.8)

*Paragraph (1)*

24. Sir Francis VALLAT (Special Rapporteur) said that, at the end of the first sentence, the words "of the commentary to articles [29] and [30]" should be inserted before the word "above".

25. In reply to a remark by Mr. KEARNEY, he proposed that the concluding words of the third sentence, "it was necessarily cast in general form", should be replaced by the words: "it was cast in general form, as explained in paragraph (45) of the commentary to articles [29] and [30]".

*Paragraph (1) was approved with the amendments proposed by the Special Rapporteur.*

*Paragraph (2)*

*Paragraph (2) was approved.*

*The commentary to article 30 bis, as amended, was approved.*

### *Chapter V*

LEGAL PROBLEMS RELATING TO THE NON-NAVIGATIONAL  
USES OF INTERNATIONAL WATERCOURSES (A/CN.4/L.219)

*Chapter V was approved.*

### *Chapter VI*

OTHER DECISIONS AND CONCLUSIONS OF THE COMMISSION  
(A/CN.4/L.220)

*Paragraphs 1 and 2*

26. Mr. BILGE said that the phrase "Owing to the lack of time", in the second sentence of paragraph 1 and the second sentence of paragraph 2, was not sufficiently explicit and might even be misleading.

27. Mr. HAMBRO suggested that in both paragraphs the phrase should be replaced by a sentence on the following lines: "Due to the recommendation made by

the General Assembly, in its resolution 3071 (XXVIII), that the Commission should complete its work on the draft articles on succession of States in respect of treaties, the International Law Commission was unable to pursue this matter further during the present session".

28. Mr. USHAKOV said the sentence proposed by Mr. Hambro should be expanded to indicate that at the present session the Commission had considered the topics of State responsibility and treaties concluded between States and international organizations or between two or more international organizations.

29. The CHAIRMAN said that, if there were no further comments, he would take it that the Commission agreed to approve paragraphs 1 and 2 on the understanding that the phrase "Owing to the lack of time" would be replaced by a sentence on the lines indicated by Mr. Hambro and Mr. Ushakov.

*It was so agreed.*

*Paragraphs 3-20*

*Paragraphs 3-20 were approved with a drafting change in paragraph 19.*

*Paragraphs 21-27*

30. Mr. CALLE Y CALLE proposed that a new paragraph should be inserted before paragraph 21, explaining that the Inter-American Juridical Committee had invited the International Law Commission to be represented by an observer at its 1973 session, but that the then Chairman of the Commission had unfortunately been prevented at the last moment from attending the session and had not had time to request another member of the Commission to replace him.

*It was so agreed.*

*Paragraphs 21-27 were approved.*

*Paragraphs 28-35*

*Paragraphs 28-35 were approved.*

The meeting rose at 1 p.m.

## 1300th MEETING

*Thursday, 25 July 1974, at 9.40 a.m.*

*Chairman: Mr. Endre USTOR*

*Present: Mr. Ago, Mr. Bilge, Mr. Calle y Calle, Mr. El-Erian, Mr. Elias, Mr. Hambro, Mr. Kearney, Mr. Quentin-Baxter, Mr. Ramangasoavina, Mr. Šahović, Mr. Sette Câmara, Mr. Tabibi, Mr. Tammes, Mr. Thiam, Mr. Tsuruoka, Mr. Ushakov, Sir Francis Vallat, Mr. Yasseen.*

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

(A/CN.4/L.217 and Corr.1; A/CN.4/L.217/Add.10-14;  
A/CN.4/L.218/Add.3; A/CN.4/L.223 and Add.1)

*(continued)*