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**A/CN.4/SR.1298**

**Summary record of the 1298th meeting**

Topic:  
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persons employed to carry out certain missions in foreign territory”.

*It was so agreed.*

*Paragraph (3), as amended, was approved.*

*Paragraph (4)*

53. Mr. USHAKOV said he thought that in both paragraph (4) and paragraph (5) it would have been preferable not to quote disputes occurring in time of war, because of the difficulties such situations involved.

*Paragraph (4) was approved.*

*Paragraphs (5)-(8)*

*Paragraphs (5)-(8) were approved without comment.*

*Paragraph (9)*

*Paragraph (9) was approved subject to correction of a typographical error.*

*Paragraph (10)*

*Paragraph (10) was approved.*

*Paragraph (11)*

54. Mr. KEARNEY said he found the argument set out in the third sentence difficult to follow.

55. Mr. AGO (Special Rapporteur) said he thought that was a translation problem which could be solved in consultation with the Secretariat.

*Paragraph (11) was approved.*

*Paragraphs (12) and (13)*

*Paragraphs (12) and (13) were approved without comment.*

*The commentary to article 8, as amended, was approved.*

The meeting rose at 6.20 p.m.

## 1298th MEETING

*Tuesday, 23 July 1974, at 3.10 p.m.*

*Chairman: Mr. Endre USTOR*

*Later: Mr. José SETTE CÂMARA*

*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. 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.1-4 and Add.7; A/CN.4/L.223; A/8710/Rev.1)

*(continued)*

## Chapter II

### SUCCESSION OF STATES IN RESPECT OF TREATIES

1. The CHAIRMAN invited the Commission to consider chapter II of the draft report on the work of its twenty-sixth session (A/CN.4/L.217 and addenda).

2. As authorized by the Commission, the Drafting Committee had carried out the final editing of the draft articles on succession of States in respect of treaties approved by the Commission during the current session. The results of its work were contained in document A/CN.4/L.223, entitled “Draft articles on succession of States in respect of treaties, as adopted in final form by the Drafting Committee”. The texts of the draft articles themselves were not reproduced in the draft of chapter II contained in document A/CN.4/L.217 and the addenda thereto.

3. He suggested that consideration of the introduction (A/CN.4/L.217) should be deferred until the Commission had examined the commentaries to the individual articles.

#### *Commentary to article 1*

(Scope of the present articles) (A/CN.4/L.217/Add.1)

*Paragraphs (1) and (2)*

*Paragraphs (1) and (2) were approved.*

*Paragraphs (3) and (4)*

4. Mr. USHAKOV proposed that, in the first sentence of paragraph (3), the reference to “succession of States” should be replaced by a reference to “the effects of a succession of States” and that the same change should be made in the first sentence of paragraph (4). In the second sentence of paragraph (4), the words in quotation marks, “the effects of succession of States”, should be amended to read: “succession of States”.

5. Sir Francis VALLAT (Special Rapporteur) said that the foot-note referring to the title of the article should be deleted, since a title had now been adopted.

6. The CHAIRMAN said that, if there were no further comments, he would take it that the Commission agreed to approve paragraphs (3) and (4) with the changes indicated by Mr. Ushakov and the Special Rapporteur.

*It was so agreed.*

*The commentary to article 1, as amended, was approved.*

#### *Commentary to article 3*

(Cases not within the scope of the present articles) (A/CN.4/L.217/Add.1)

*The commentary to article 3 was approved.*

#### *Commentary to article 4*

(Treaties constituting international organizations and treaties adopted within an international organization) (A/CN.4/L.217/Add.1)

*Paragraphs (1)-(7)*

*Paragraphs (1)-(7) were approved.*

*Paragraph (8)*

7. Sir Francis VALLAT (Special Rapporteur) said that paragraph (8), like the earlier paragraphs, had been taken from the 1972 commentary (A/8710/Rev.1, chapter II, section C). Very careful consideration had been given to the question of ILO conventions and the conclusion had been reached that paragraph (8) as it stood covered that question. It did not, however, cover the question of the humanitarian or "Red Cross" conventions, which would be dealt with in the introduction.

*Paragraph (8) was approved.*

*Paragraphs (9)-(14)*

*Paragraphs (9)-(14) were approved.*

*The commentary to article 4 was approved.*

*Commentary to article 5*

(Obligations imposed by international law independently of a treaty) (A/CN.4/L.217/Add.1)

*The commentary to article 5 was approved.*

*Commentary to article 6*

(Cases of succession of States covered by the present articles) (A/CN.4/L.217/Add.7)

*Paragraph (1)*

*Paragraph (1) was approved.*

*Paragraph (2)*

8. Mr. CALLE Y CALLE proposed the addition, at the end of the last sentence, of the words "and, in particular, the principles of international law embodied in the Charter of the United Nations".

*Paragraph (2) was approved with that amendment.*

*Paragraph (3)*

9. Mr. AGO said that the penultimate sentence of paragraph (3), which stated that "it would not be feasible to distinguish between rights and obligations in the context of the present draft articles", might give a wrong impression, since the sentence went on to say that it was right in principle to restrict the application of the articles to situations occurring in conformity with international law. The passage could be interpreted to mean that, if a succession of States occurred in violation of international law, the successor State would be free of all international obligations.

10. Sir Francis VALLAT (Special Rapporteur) said that that point had not been explained in the commentary, because the Commission had taken the view that an unlawful event did not constitute a succession of States at all.

11. Mr. AGO proposed the deletion of the words "it would not be feasible to distinguish between rights and obligations in the context of the present draft articles".

*Paragraph (3) was approved with that amendment.*

*The commentary to article 6, as amended, was approved.*

*Commentary to article 6bis*

(Non-retroactivity of the present articles)  
(A/CN.4/L.217/Add.7)

*Paragraph (1)*

*Paragraph (1) was approved.*

*Paragraph (2)*

12. Mr. ELIAS said that the statement in the first sentence, that the decision to include article 6bis had been "adopted by a narrow majority vote", was not sufficiently explicit. In fact, only eight members had voted in favour of the article out of 17 members present.

13. Mr. CALLE Y CALLE proposed the deletion of the adjective "serious" before the words "criticism had been expressed by several members" in the same sentence.

14. After a brief discussion in which Mr. EL-ERIAN, Mr. RAMANGASOAVINA and Mr. AGO took part, Sir Francis VALLAT (Special Rapporteur) proposed that the adjective "serious" should be dropped and that a footnote should be attached to the words "majority vote", explaining that the article had been adopted by 8 votes to 4, with 5 abstentions.

*Paragraph (2) was approved with those amendments.*

*Paragraphs (3) and (4)*

*Paragraphs (3) and (4) were approved.*

*The commentary to article 6bis, as amended, was approved.*

*Commentary to article 7*

(Agreement for the devolution of treaty obligations or rights from a predecessor State to a successor State)  
(A/CN.4/L.217/Add.2)

*Paragraphs (1)-(4)*

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

*Paragraph (5)*

15. Mr. CALLE Y CALLE proposed that, in the first sentence, the words "the former sovereign" should be replaced by the words "the predecessor State", since it was open to discussion whether an administering Power was in fact sovereign over a dependent territory. He proposed that the same change should be made wherever the expression "former sovereign" appeared in the commentaries.

*It was so agreed.*

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

*Paragraph (6)*

*Paragraph (6) was approved.*

*Paragraph (7)*

16. Mr. AGO said he found the French translation of the expression "moving treaty-frontiers" unsatisfactory. He would be glad if the Special Rapporteur would explain exactly what that expression meant.

17. Sir Francis VALLAT (Special Rapporteur) said that the expression "moving treaty-frontiers" was used for convenience to describe the application of a treaty to the territory of a State even if the frontiers of that State varied.

18. Mr. AGO proposed that the expression should be translated into French as "*variabilité des limites territoriales de l'application des traités*".

19. Mr. CALLE Y CALLE said that no change was needed in the Spanish translation.

20. The CHAIRMAN said that, if there were no further comments, he would take it that the Commission agreed to adopt the French translation proposed by Mr. Ago wherever the expression "moving treaty-frontiers" appeared in the text of the report. The Russian version would be revised by Mr. Ushakov. The Spanish version would remain unchanged.

*It was so agreed.*

*Paragraph (7) was approved with that amendment to the French text.*

*Paragraph (8)*

*Paragraph (8) was approved.*

*Paragraph (9)*

21. Mr. AGO proposed that, in the French text, the words "pour le territoire" should be replaced by the words "à l'égard du territoire", which corresponded better to the words "in respect of the territory" in the English text.

*Paragraph (9) was approved with that amendment to the French text.*

*Paragraph (10)*

*Paragraph (10) was approved.*

*Paragraph (11)*

22. Mr. AGO proposed that, in the third sentence of the French text, the words "maintenir les traités" should be replaced by the words "assurer la continuité des traités", which corresponded better to the words "to continue the treaties" in the English text.

*Paragraph (11) was approved with that amendment to the French text.*

*Paragraphs (12)-(23)*

*Paragraphs (12)-(23) were approved.*

*The commentary to article 7, as amended, was approved.*

*Commentary to article 8*

(Unilateral declaration by a successor State regarding treaties of the predecessor State) (A/CN.4/L.217/Add.2)

*Paragraphs (1) and (2)*

*Paragraphs (1) and (2) were approved.*

*Paragraph (3)*

23. Sir Francis VALLAT (Special Rapporteur) explained that the long foot-note,<sup>5</sup> which set out the 1970 declaration by the Kingdom of Tonga, had been included to comply with a request by the Government of that country.

*Paragraph (3) was approved.*

*Paragraphs (4)-(12)*

*Paragraphs (4)-(12) were approved.*

*Paragraph (13)*

24. Mr. AGO said the readers of the long commentary to article 8 would certainly be struck by the fact that,

with the exception of a few Belgian examples, all the cases of succession mentioned were drawn from the practice of the United Kingdom regarding its former dependent territories. There was, for example, no reference to French practice.

25. The CHAIRMAN pointed out that the examples appearing in the commentary, which were taken from the 1972 report (A/8710/Rev.1, chapter II, section C), had been given by the former Special Rapporteur on the basis of documents submitted by the Secretariat. Those documents, in turn, were based on the information supplied by Governments.

26. Sir Francis VALLAT (Special Rapporteur) said that, since the reader would no longer refer to the 1972 commentary, there was every reason for reproducing in the present commentary all the examples given there. That being said, he agreed that Mr. Ago's point was a valid one.

*Paragraph (13) was approved.*

*Paragraphs (14)-(22)*

*Paragraphs (14)-(22) were approved.*

*The commentary to article 8 was approved.*

*Commentary to article 9*

(Treaties providing for the participation of a successor State) (A/CN.4/L.217/Add.4)

*The commentary to article 9 was approved.*

*Commentary to article 10*

(Succession in respect of part of territory)  
(A/CN.4/L.217/Add.3)

*Paragraphs (1)-(4)*

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

*Paragraph (5)*

27. Mr. TAMMES said that the case of Newfoundland, mentioned at the beginning of paragraph (5), did not appear to be a good example of the application of article 10, because Newfoundland had already been as much an independent State as Canada before its union with that country.

28. Sir Francis VALLAT (Special Rapporteur) said that, in his own opinion, the normal rules of State succession did not apply to the dissolution of the Commonwealth of Nations, but he had had no option but to retain all the examples given in the 1972 commentary.

29. Mr. KEARNEY said that the case of Newfoundland was further complicated by the fact that its incorporation into Canada had been the subject of a plebiscite.

30. Mr. ELIAS said that, as a matter of constitutional law, it had always been doubtful whether the Statute of Westminster, which had established Dominion status, could be said to apply to Newfoundland, because that country had not been listed among the Dominions. He therefore considered that it would be correct to retain the example in paragraph (5).

31. The CHAIRMAN said he would take it that, subject to those views being noted in the summary

record of the meeting, the Commission agreed to approve paragraph (5) as it stood.

*It was so agreed.*

*Paragraph (6)*

*Paragraph (6) was approved.*

*Paragraph (7)*

32. Mr. TAMMES objected to the reference, in the second sentence of paragraph (7), to the case of “the incorporation of the entire territory of a State into the territory of an existing State”.

33. Sir Francis VALLAT (Special Rapporteur) drew attention to paragraph 1 of article 26, which dealt with the problem mentioned by Mr. Tammes as one of uniting of States.

34. Mr. USHAKOV said the essential point was that, in the case covered by article 26, all the treaties of both the States concerned continued in force, whereas in the case covered by article 10, there was a change of treaty régime.

35. Mr. TAMMES said he would revert to the matter in connexion with article 26.

*Paragraph (7) was approved.*

*Paragraphs (8)-(12)*

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

*Paragraphs (13) and (14)*

36. Sir Francis VALLAT (Special Rapporteur) suggested that consideration of paragraphs (13) and (14) should be deferred, because an additional paragraph would be introduced between them.

37. The CHAIRMAN suggested that the Commission should approve the commentary to article 10, subject to subsequent approval of paragraphs (13) and (14) and the proposed additional paragraph.

*It was so agreed.*

*Mr. Sette Câmara took the Chair.*

*Commentary to article 11*

(Position in respect of the treaties of the predecessor State) (A/CN.4/L.217/Add.3)

*Paragraphs (1) and (2)*

*Paragraphs (1) and (2) were approved.*

*Paragraphs (3)-(6)*

38. Mr. KEARNEY said it seemed to him that paragraphs (3)-(6) needed some revision in the light of the position which the Commission had adopted in article 27, on succession of States in cases of separation of parts of a State. Many of the examples of practice quoted were not in accordance with that position.

39. Sir Francis VALLAT (Special Rapporteur) said that the provisions of article 27 were not based entirely on practice, but also on what was thought to be the correct solution in a modern context. The difficulty, of course, was to distinguish between cases of dissolution of a State and cases of separation of parts of a State. One improvement he would suggest was the replacement of the words “a new State” in the first sentence of

paragraph (6) by the words “a newly independent State”.

40. After a further discussion of the examples in paragraphs (3)-(5), in which Mr. KEARNEY, Mr. USHAKOV, Sir Francis VALLAT (Special Rapporteur) and Mr. TABIBI took part, Mr. KEARNEY said that, although he still thought the position, as stated in the commentary to article 11, ran counter to the position which the Commission had taken in article 27, he would not press his objection.

*Paragraphs (3)-(5) were approved.*

*Paragraph (6) was approved with the change in the first sentence suggested by the Special Rapporteur.*

*Paragraphs (7)-(13)*

*Paragraphs (7)-(13) were approved.*

*Paragraph (14)*

41. Sir Francis VALLAT (Special Rapporteur) proposed that the words “appears to be unequivocally in conflict”, in the first sentence, should be replaced by the words “is in conflict”.

*Paragraph (14) was approved with that amendment.*

*Paragraphs (15)-(21)*

*Paragraphs (15)-(21) were approved with minor drafting changes.*

*The commentary to article 11, as amended, was approved.*

*Commentary to article 12*

(Participation in treaties in force at the date of the succession of States) (A/CN.4/L.217/Add.4)

*Paragraph (1)*

*Paragraph (1) was approved.*

*Paragraph (2)*

42. Sir Francis VALLAT (Special Rapporteur) said that the figure 11 should be inserted in the square brackets following the word “article” in the first sentence.

*Paragraph (2) was approved with that addition.*

*Paragraphs (3)-(5)*

*Paragraphs (3)-(5) were approved.*

*Paragraph (6)*

*Paragraph (6) was approved.*

*Paragraph (7)*

43. Mr. KEARNEY said he could not agree to the statement in the second sentence that the governing principle was expressed in article 29 of the Vienna Convention on the Law of Treaties, since in his opinion article 29 of that Convention was really used as a residual rule. He suggested that the second sentence should be amended to read: “This is simply a question of the interpretation of the treaty and of the act by which the predecessor State established its consent to be bound, and of the principle expressed in article 29 of the Vienna Convention on the Law of Treaties”.

*It was so agreed.*

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.*