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Summary record of the 123rd meeting

Topic:
<multiple topics>

Extract from the Yearbook of the International Law Commission:-
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the question of the safety of life at sea was a technical point which had been thoroughly examined by the London Conference, and that the Commission was not called upon to deal with it.

113. He agreed with Mr. FRANÇOIS, who observed that if the Commission adopted that course it would be going back on the decision it had taken at its second session.

114. Mr. HUDSON said that the Rapporteur had reviewed the international regulations concerning navigation and the relevant texts, which did not constitute a convention. If they wished to bind themselves on the strength of those texts, States would have to enact a uniform national law on the subject. That being so, there was no occasion to deduce a principle from annex B to the London Final Act, even though that document laid down a number of important rules on equipment and signals, which the Rapporteur had carefully reproduced on page 18 (mimeographed English text; para. 34, printed French text), of his report. Turning to the Brussels Convention of 1910, from which he quoted extracts on page 19, (*ibid*, para. 35, printed French text), the Rapporteur had deduced a principle which he had submitted to the Commission.

115. If the Rapporteur concluded that there was no general principle to be deduced from annex B to the London Final Act, he personally would support that view, but a satisfactory formula could be extracted from the Brussels Convention, even though there had been only a small number of ratifications; and the text submitted by the Rapporteur would be useful in drafting that formula.

116. Mr. FRANÇOIS wondered whether Mr. Hudson had fully understood his previous remarks, the main point of which was that the Commission would be hampered in its study of the relevant section of the report by not having the complete text of the Final Act of 1948 before it.

117. Mr. HUDSON said he was quite willing that examination of the question should be postponed until the following session; but he saw no reason why the Commission should not try there and then to discover the principle behind the Brussels Convention. The rules on navigation contained in the Washington Convention of 1889, and the London rules of 1929 and 1948, could not be subjected to the same scrutiny, but that did not apply to the Brussels Conference. He hoped, therefore, that the members of the Commission would make known their views on the principle which the Rapporteur had deduced from that instrument.

118. Mr. KERNO (Assistant Secretary-General) said that as Mr. François' report had been available for several months, all members who had read it could have obtained the complete text of the London Final Act. If asked to do so, the Secretary could perfectly easily provide members with the text. That was no good reason for postponing until the following session the study of the question of safety of life at sea.

119. Mr. FRANÇOIS said that the Commission would find itself hampered for want of time. He did not think members could possibly carry out the necessary checking of the text by the end of the session, either on the topic under discussion or on the other two topics. Hence, he suggested that the Commission take a cursory glance at the topic, reserving the possibility of studying the texts in question between sessions.

120. Mr. SPIROPOULOS pointed out that, at the beginning of the section devoted to the safety of life at sea, the Rapporteur had quoted a paragraph from the Commission's report on its second session to the effect that " the Commission ascribed great importance to the international regulations for preventing collisions at sea, which constituted Annex B to the Final Act of the London Conference of 1948 ". Was that question actually one which lent itself to codification? It was a purely technical matter, unrelated to the international régime of the high seas. While it was important that a question of that kind, relating to national laws, should be unified, the unification should surely be left to legislators. A code of international law should contain only general principles. An international convention could perhaps be drawn up for the purposes of standardizing the rules relating to the safety of life at sea; but such rules had nothing in common with the other topics dealt with by the Commission, and hence had no place in the code.

The meeting rose at 1 p.m.

123rd MEETING

Thursday, 12 July 1951, at 9.45 a.m.

CONTENTS

Chairman: Mr. James L. BRIERLY
Rapporteur: Mr. Roberto CORDOVA

Present:

Members: Mr. Ricardo J. ALFARO, Mr. Gilberto AMADO, Mr. J. P. A. FRANÇOIS, Mr. Shuhsi HSU, Mr. Manley O. HUDSON, Mr. Faris EL KHOURY, Mr. A. E. F. SANDSTRÖM, Mr. Georges SCELLE, Mr. Jean SPIROPOULOS, Mr. Jesús María YEPES.

Secretariat: Mr. Ivan KERNO, Assistant Secretary-General in charge of the Legal Department; Mr. Yuen-li LIANG, Director of the Division for the Development and Codification of International Law, and Secretary to the Commission.

Programme of work

1. On the CHAIRMAN's proposal, the Commission agreed to consider items 8, 9, 10 and 11 of its agenda (A/CN.4/40) at its meeting on the following day.

Régime of the high seas: report by Mr. François (item 6 of the agenda) (A/CN.4/42) *(continued)*

CHAPTER 11: CONTINENTAL SHELF (*resumed from the 117th meeting*)

2. The CHAIRMAN asked Mr. François to report on the findings of the sub-committee set up at the 117th meeting in connexion with the study of the continental shelf.[1]

3. Mr. FRANÇOIS recalled that, at its 117th meeting the Commission had, by a small majority, adopted a text submitted by Mr. Yepes and amended by Mr. Hsu[2] granting coastal States not having a continental shelf as defined in article 1 of the draft, rights of control and jurisdiction up to a distance of 20 miles beyond territorial waters. Since the text had been severely criticized by the minority and had been regarded by the majority as poorly worded, a sub-committee had been set up to prepare a new draft which would take into account the case mentioned by Mr. Córdova and not covered by article 1 as adopted by the Commission, where the sea-bed lay at a depth of 250 metres so that its mineral resources could not be worked vertically, but could be worked from a point on the mainland. Such a part of the sea-bed would not belong to the continental shelf as defined in article 1.

4. The sub-committee had reached the conclusion that the best way of avoiding any difficulty would be to omit from article 1 the reference to a depth of 200 metres and to substitute for the phrase " does not exceed 200 metres " the phrase " is such as to permit the exploitation of the natural resources of the sea-bed and subsoil ". That solution had been unanimously approved by the sub-committee. Mr. Yepes had withdrawn the text he had previously submitted and Mr. Córdova had expressly intimated his agreement. The comment on article 1 would contain the necessary explanations.

5. Mr. YEPES said that he had welcomed that solution, which had been proposed by Mr. Hudson. He was fully satisfied with the new draft, which granted the same rights to States having no continental shelf in the geological sense of the term as to other States, and restored equality among all States, whatever their situation in that respect. Whether a continental shelf existed or not, under the text adopted all States would be entitled to exercise control and jurisdiction over the stretch of sea contiguous to their shores, so long as it was possible for them to exploit the resources of the subsoil.

6. Mr. SCELLE said that since he rejected the concept of the continental shelf, he did not accept the new definition of it.

The sub-committee's draft for the new article was adopted.

CHAPTER 3: SAFETY OF LIFE AT SEA (*resumed from the 122nd meeting*).

7. Mr. YEPES said that, while he did not underrate the importance of the Final Act of the London Conference of 1948, he thought that the rules which it contained could not be included in a code of international law. Those rules concerned navigation signals and other technical points, but did not constitute principles of international law. It would be a retrograde step for the Commission to discuss the regulation of shipping at sea after dealing with such comprehensive questions as the continental shelf and the exploitation of the resources of the sea.

8. Mr. SANDSTRÖM also doubted whether such rules were really principles of international law.

9. The CHAIRMAN pointed out that the proposed rules applied to individuals. It was not customary to enunciate principles of international law in the form of obligations imposed on individuals. He was impressed by the observations of Mr. Yepes and by those of Mr. Spiropoulos at the end of the previous meeting.[3]

10. Mr. HUDSON proposed that the principle derived by the Rapporteur from article 11 of the Brussels Convention of 1910 should be introduced by some such phrase as: " Each State is bound to provide by its legislation that... "

11. The United States had laws under which such obligations were imposed on masters of vessels. Similar regulations were to be found in the laws of other countries. A study of national laws should be made; if they were found to be concordant, the text which he had just proposed would be fully justified.

12. Mr. EL KHOURY observed that no sanction would be applied for non-observance of such international rules. Observance would be dependent upon the goodwill of States.

13. In the CHAIRMAN's view, Mr. el Khoury's observation supported the conclusions of other speakers, from another angle.

14. Mr. SPIROPOULOS, stressing the importance of the point made by Mr. el Khoury, said that whereas all the principles so far formulated by the Commission were to be binding on States, the rules then before the Commission concerned instructions to masters of vessels. Such provisions did not specify the rights or duties of States, nor were they designed to delimit the latter's sovereignty; responsibility for non-observance of them would lie solely with the master of the vessel. It was a question of administrative international law and, while that particular branch of international law might, of course, also be codified at a more advanced stage of the work, he thought that the Commission should meanwhile confine itself to determining the rights and duties of States, and delimiting their sovereignty. The reader would be surprised to find technical rules of a purely administrative character in a code of international law.

[1] See summary record of the 117th meeting, para. 88.

[2] *Ibid.*, para. 65.

[3] See summary record of the 122nd meeting, para. 117.

15. Mr. FRANÇOIS, supported by Mr. SCELLE, disagreed with Mr. el Khoury and Mr. Spiropoulos. The Brussels Convention itself had merely imposed an obligation on masters of vessels, and all that had to be done was to give general application to a provision of that Convention.

16. It might of course be asked, as Mr. el Khoury had asked, who would be liable should the master of the vessel fail to observe the regulations. In his view, international law not only applied to States; obligations under it could be imposed directly on individuals. He could see no objection of principle to the inclusion in a code of international law of provisions directly imposing obligations on individuals.

17. Mr. ALFARO agreed. He thought that the Commission should define the rules concerning the safety of life at sea and formulate the principle that States were bound to include them in their laws so that, as rules of a humanitarian character, they might be compulsorily implemented throughout the world.

18. The preamble and Article 1, paragraph 3, of the Charter of the United Nations specifically referred to problems of a humanitarian character, so that a stipulation that States should include in their laws minimum rules governing the safety of life at sea, such as those proposed by the Rapporteur, would be in accordance with the provisions of the Charter.

19. Mr. HSU, supporting Mr. François and Mr. Alfaro, said that international law contained many rules of a humanitarian character. It was untrue to say that States were not bound by the rules proposed; they would, in fact, be obliged to enact the necessary legislation. If any States had not yet legislated on those questions, it was time they were asked to repair the omission. He thought that the Commission need have no misgivings in framing such a recommendation.

20. Mr. EL KHOURY said that he had not intended to suggest that the Commission refrain from dealing with the codification of rules concerning the safety of life at sea, but merely to emphasize that no sanctions corresponding to such rules so far existed and that it was desirable, if possible, to provide some form of sanction for non-observance. Generally speaking, he thought that no obligation could exist where there was no sanction.

21. Furthermore, the liability of the master of a vessel increased if his vessel had caused a collision endangering human life. The same applied to collisions between motor vehicles, where failure to stop was regarded as an aggravating circumstance.

22. Mr. YEPES pointed out that the actual principle of the proposals was not at issue. All members of the Commission agreed in recognizing their very lofty humanitarian character. He thought that shipping regulations should properly be included in a special convention, but did not come under international law and were on a lower level than the code which the Commission was drafting. It was as if rules concerning road signs and signals were to be incorporated in a civil code. Could rule 16 of Annex B to the Final Act of the London Conference of 1948, as reproduced by the Rapporteur (A/CN.4/42, p. 18, mimeographed English text; para. 34, printed French text), be regarded as a principle of international law? No common denominator existed between such a rule and the principles adopted by the Commission with respect to the continental shelf, for example. The difficulty was one, not of substance, but of method, of *modus operandi*.

23. Mr. CORDOVA said that the Rapporteur did not propose the inclusion, in the draft international code, of technical rules such as those just quoted by Mr. Yepes. He merely proposed that the Commission adopt the general principle concerning safety of life at sea which he had enunciated in his report. Since the Commission was dealing with the régime of the high seas, its study could include navigation rules, the high seas being mainly used, after all, for navigation.

24. He had no objection to the re-casting of the text proposed by the Rapporteur in accordance with the suggestions submitted by Mr. Hudson and Mr. Alfaro.

25. Mr. SPIROPOULOS repeated his view that the general principles of public international law and special rules should be carefully differentiated. It would be just as abnormal to mix them together as, for example, to include road traffic regulations in a civil code. For the time being, at any rate, the Commission was solely concerned with the codification of principles of public international law and all the rules which it formulated must define relations between States. Having no desire to open a discussion as to whether the master of a vessel could be the subject of international law or not — a question which he himself would answer in the negative — he would merely point out that such special rules had no place in the code to be drafted by the Commission.

26. Mr. SCELLE thoroughly disagreed with the point of view just expressed by Mr. Yepes and Mr. Spiropoulos and considered the rules governing safety of life at sea so important that they could be included in the code. Regulations were just as much a part of international law as any principle.

27. It was still too early to consider whether, as he himself believed, there were other subjects of international law besides States. The question was whether the master of a vessel could allow human beings whom he might have saved to perish at sea. In view of the humanitarian bearing of the problem he fully supported the views expressed by the Rapporteur.

28. The CHAIRMAN thought that it might be of value to ascertain the nature, from country to country, of the laws governing the responsibility of the master of a vessel for safety of life at sea, in order to bring out the general practice of States. He asked whether the Rapporteur would accept a formula binding States to legislate.

29. Mr. SPIROPOULOS and Mr. YEPES said that they would be prepared to accept that procedure.

30. Mr. FRANÇOIS, speaking as Rapporteur, said that the information requested by the Chairman could be compiled, but he doubted the need for it. The rules concerned had already been included in a convention. Must the Commission study the legislation of all the countries in the world before assuming the right to

codify rules which were so important and so natural? He would be surprised if the Commission requested him to undertake such research.

31. Mr. LIANG (Secretary to the Commission) pointed out that collation of the texts whereby States had implemented the 1948 Convention was recognized as a part of the documentation work of the Secretariat.

32. He doubted, however, whether the existence of such a convention could be said to constitute a principle of international law under which States were bound to enact legislation, and whether States that were not parties to the convention would be guilty of a breach of international law if they failed to do so. It was a moot point whether it was the existence of domestic regulations that had led to the preparation of conventions or whether it was diplomatic instruments that had inspired domestic legislation.

33. But the Commission might consider whether, apart from the relevant conventions, a principle of international law did exist.

34. Mr. HUDSON thought that, for the guidance of the Rapporteur, the Commission might adopt a formula on the lines of article 11 of the Brussels Convention; but it would be advisable to study State practice in the matter.

35. Mr. FRANÇOIS was not clear as to the Commission's intentions. While the desirability of including the principles under discussion in the code to be drafted by the Commission might be questioned, there was no doubt that they were principles of international law, and he himself regarded them as provisions which any code of international law should naturally contain.

36. Furthermore, he did not see the necessity for ascertaining whether similar provisions existed in the laws of the various States. Whereas, when studying the question of the continental shelf, the Commission had adopted decisions, although but little national legislation on the subject existed, it now wished to make any action it might take conditional upon research into national laws and would include rules in its code only if they were to be found in all such bodies of law. In his view, the Commission's attitude was illogical.

37. Mr. KERNO (Assistant Secretary-General), agreed with the Rapporteur that the Commission should not be too pusillanimous. International rules for the safety of life at sea were less open to discussion than rules concerning the continental shelf. They had given rise to the Brussels Convention of 1910 and to the Final Act of the London Conference of 1948, which was likely to come into force in the near future. The Commission would be doing useful work if it stated the principle brought out by the Rapporteur.

38. Mr. ALFARO thought that the Commission should ask the Rapporteur to prepare a draft binding States to enact legislation to ensure safety of life at sea and stating the minimum provisions that such legislation should contain.

39. Mr. HUDSON thought that Mr. e Khoury's request might be met by a provision that any master of a vessel who failed to observe the relevant regulations could be prosecuted in the State of which he was a national.

40. Mr. SPIROPOULOS asked what purpose such refinements would serve. The Brussels Convention laid no direct obligation on the master of a vessel. It provided for the enactment of domestic legislation which made the master liable and, hence, subject to prosecution in his own country. To make the master directly answerable under international law was an entirely new departure.

41. The CHAIRMAN put Mr. Alfaro's proposal to the vote.

Mr. Alfaro's proposal was adopted by 8 votes to none with 4 abstentions.

42. Mr. FRANÇOIS pointed out that the only further action the Commission would have to take on the recommendation just adopted would be to add an " umbrella clause " to its conclusion in 1952.

43. Mr. KERNO (Assistant Secretary-General) thought that a more optimistic view was possible. The decision adopted showed that the Commission was in favour of the principle, that it recognized it as a principle of international law, and that it recommended the ratification of the Final Act of the London Conference of 1948.

44. Mr. FRANÇOIS asked whether the Commission wished him to go into details in his report, or merely to state a vague principle, which would, in his view, not be worth the paper on which it was written.

45. Mr. HUDSON hoped that the Rapporteur's subsequent work would bring out the substance of the relevant articles of the Brussels Convention. He would even go so far as to hope for the drafting of a declaration providing a compulsory framework for domestic legislation on shipping regulations, and stipulating that the regulations for shipping on the high seas prescribed by any maritime State for its own vessels should be prepared in consultation with all other maritime States, in order to avoid contradictory sets of regulations.

46. It could not be stated that any particular set of rules, such as those reproduced on page 18 of the report (mimeographed English text; para. 34 printed French text) should be recommended; but in order to prevent chaos in maritime traffic it could be stated that maritime States must bring the law applicable to their own vessels into conformity with that applicable to the vessels of other States. Without going so far as to codify the principles of 1948 or of 1929, the Commission should take steps to avoid the confusion that would prevail and the dangers that would arise if every maritime State established whatever regulations it thought fit for its own vessels.

47. Mr. SCELLE considered Mr. Hudson's proposal of great value. France and the United Kingdom, though they had not always maintained friendly relations through the ages, had nevertheless long recognized that it was highly desirable that the shipping of both countries should be subject to the same rules.

48. There was an element of danger in following Mr. Hudson's suggestion, which might, however, be avoided by careful drafting, namely, that the main maritime powers might set themselves up as shipping controllers. There was less danger of such an eventuality at the

present time, since seaborne trade was shared among a fairly large number of countries. At all events, who could be entrusted with the task of preparing such rules, if not those who possessed the necessary experience?

49. The text suggested by Mr. Hudson was in line with the principle of " dissociation of functions " to which he (Mr. Scelle) had often referred. That was always the method, although not an ideal method, by which international law was made. Mr. Hudson's proposal should be adopted and examined later with complete objectivity and without regard to the fears which it might arouse from the political aspect.

50. Mr. ALFARO thought that Mr. Hudson's proposal would provide an excellent basis for the Rapporteur. In his view, most of the articles taken by the Rapporteur from the Final Act of the London Conference of 1948, apart from rule 16 (*ibid.* p. 18, or para. 34), were of an international character and could be adopted. That was particularly true of rule 1, under which vessels upon the high seas were obliged to carry internationally recognized lights and shapes. The articles in question would provide a sound and logical basis for the principles governing safety of life at sea.

51. The CHAIRMAN pointed out that the Commission had given an affirmative answer to the question whether the principle of safety of life at sea should be incorporated in the code, and that it apparently supported Mr. Hudson's idea. It remained to be decided for the benefit of the Rapporteur, whether technical details should also be codified. His own view was that such details were a matter for maritime experts.

52. Mr. KERNO, (Assistant Secretary-General) thought that the Rapporteur should pay special attention to the activities of the competent bodies either already in existence or about to be established. It was stated in a memorandum by the Secretariat (A/CN.4/30) that the Economic and Social Council had recommended the co-ordination of the activities of the International Civil Aviation Organization, the Intergovernmental Maritime Consultative Organization, the World Meteorological Organization and the International Telecommunication Union. Information from the Rapporteur as to the progress so far achieved by those organs would help the Commission to decide what part it could play in the joint effort.

53. Mr. FRANÇOIS, referring to the suggestion by certain members of the Commission that the technical data reproduced in his report were too detailed, considered that a general rule by itself would be too vague. The Commission's objective was true codification, and not just the drafting of recommendations concerning the development of international law and co-operation between States.

54. Mr. HUDSON thought that a recommendation to States to refrain from issuing regulations which conflicted with regulations jointly agreed by other maritime States would come under the head of codification. A recommendation of that kind, which had never been made hitherto, would be of real value.

55. Mr. SANDSTRÖM said that, in that connexion, it would be particularly useful to know whether there was much difference between the various sets of national shipping regulations.

56. Replying to an observation by Mr. CORDOVA, Mr. ALFARO explained that his suggestion was that the negative rule recommended by Mr. Hudson should be supplemented by obligations of a positive character. The Commission's draft should state the minimum rules to be included in the laws of all countries, and select for that purpose certain essential rules such as rule 1, which he had previously quoted.

57. Mr. AMADO pointed out that the Secretariat memorandum (A/CN.4/32) contained material exactly on the lines of Mr. Hudson's idea, including the following passage on page 19 (mimeographed English text; para. 53, printed French text):

> " . . . It is essential, on some points at least, that there should be strict uniformity in the regulations adopted — sailing routes, navigation lights, signals between ships etc.
>
> " Even in the case of matters already covered by regulations which, by their nature, do not require that those regulations shall be absolutely uniform, uniformity is always desirable.
>
> " On a considerable number of points which concern the regulation of the use of the high seas, it is thus either necessary or desirable that States should establish identical rules and that those rules should if possible be binding upon all who use the sea. Marked progress would be achieved if a single agency could be entrusted with the task of establishing, or causing to be established, common regulations.
>
> " Hitherto, such common regulations have been established by two different procedures: Conventions . . . Concordant national regulations . . ."

58. The Rapporteur might be guided by the above passage, which covered all the questions before the Commission, in extracting a conspectus of international rules from conventions or concordant national regulations.

59. Mr. KERNO (Assistant Secretary-General) replying to an observation by Mr. SCELLE, pointed out that the General Assembly had already approved the agreement entered into between the Economic and Social Council and the specialized agency responsible for maritime questions.[4] The composition of the latter had been worked out by a Preparatory Committee, and its very title " Intergovernmental Maritime Consultative Organization ", showed that it was perhaps less developed than the International Civil Aviation Organization. Information as to the present and future programme of the new organ would be of value in connexion with the question then before the Commission.

60. The CHAIRMAN said that, in the absence of adequate information, further discussion of the question should be postponed until the Commission had Mr. François' later report.

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[4] General Assembly resolution 204 (III) of 18 November 1948.

CHAPTER 4: RIGHT OF APPROACH; and
CHAPTER 5: SLAVE TRADE

61. Mr. FRANÇOIS had misgivings with regard to the right of approach and wondered whether the importance of the question was such as to warrant the kind of rule which he had submitted at the end of the section on the subject (p. 22 or para. 43). The Commission had asked him to formulate a rule and he had done so;[5] it was now up to the Commission to decide whether the rule should be included in the code.

62. Mr. AMADO thought that with modern means of communication the right of approach had lost much of its importance. The possibility should be explored of framing a minimum provision which would not create the impression that the Commission was behind the times. The Rapporteur had very shrewdly stated that "wireless telegraphy has almost eliminated the reasons for which formerly vessels were induced to make material contact with each other on the high seas" (p. 19 or para. 40).

63. He did not go so far as to suggest the deletion of the text. He submitted preliminary comments to show the doubts in his mind. He had not yet reached a conclusion.

64. He would add that in the history of international law the right of approach was linked with piracy and the slave trade. Legislation in that field must take into account the comparative rarity of piracy at the present day. He could see no reason for seriously suspecting a vessel of being engaged in piracy or the slave trade; nor did he believe that a warship would expose itself to the risk of paying damages for wrongly stopping a merchant ship.

65. Mr. HUDSON said that he personally saw no objection to adopting the principle stated by Mr. François on page 22 (or para. 43, printed French text). He even thought it advisable, but would like the question to be linked if possible with the question of the slave trade.

66. He did not believe that piracy had entirely disappeared. A very important case had recently been tried in Hong Kong, and he could recall another.

67. The CHAIRMAN pointed out that warships were not normally entitled to stop merchant ships. Piracy was exceptional. It was less frequent than formerly, but it had not entirely disappeared. It was advisable to state that the general principle still held and that warships were not entitled to undertake the general policing of the high seas.

68. Mr. YEPES, while agreeing that the right of approach was out-of-date and that piracy was tending to disappear, thought that the article proposed by Mr. François was so well drafted that its absence would leave a gap in the code. It was not essential, but it was valuable.

69. Mr. ALFARO agreed with his colleagues that piracy was less common than in the 17th and 18th centuries. It had disappeared, at least from the Atlantic and Pacific; but it still occurred in other seas. The rule proposed by Mr. François was very well drafted. It was based on the ruling of Judge Story in the *Marianna Flora* case (A/CN.4/42, p. 20 or para. 41). The right of approach only applied where there was a very strong suspicion that the vessel was engaged in piracy. If interference by the warship was not justified, damages would have to be paid in compensation for the loss sustained by the merchant vessel as a result of being compelled to stop. That was a perfect example of a principle of customary international law which should be included in the code.

70. Messrs. AMADO and YEPES agreed.

71. The CHAIRMAN asked the Commission, since it approved the principle, to proceed to draft the text of the rule.

72. Mr. HUDSON said that he did not like the first sentence and preferred the French text.

73. Mr. YEPES proposed that the first sentence be re-arranged as follows:

> "A warship which encounters a foreign merchant vessel at sea is not justified in boarding her or in taking any further action unless there is reasonable ground for suspecting that the vessel is engaged in piracy, except where acts of interference are done under powers conferred by treaty."

74. The CHAIRMAN said that he preferred the wording proposed by Mr. Yepes.

75. Mr. CORDOVA asked whether the right of approach should not also be regulated in relation to the slave trade.

76. Mr. FRANÇOIS explained that States were not prepared to go nearly so far in the case of the slave trade as in the case of piracy. In the one case they had limited the right of approach to specified zones, but not in the other. He did not think that the two questions could be lumped together, unless the law governing the slave trade were substantially widened, in which case the Commission would no longer be codifying existing law.

77. The CHAIRMAN thought it would be preferable to discuss the slave trade before adopting a decision on the right of approach. The Rapporteur had treated the two questions differently and, in particular, had proposed a very elaborate text in regard to the slave trade.

78. There would have to be some discussion as to whether the right of approach in regard to the slave trade and piracy could be dealt with in one and the same text. Both cases were exceptions to the general rule that a warship should not board a merchant vessel belonging to another power.

79. Mr. FRANÇOIS explained that, as the Chairman had already said, the provisions which he proposed with regard to the slave trade were basically different from those which he had proposed for piracy, because unlike the slave trade, piracy was universally recognized as a crime. So far as concerned the slave trade, the right to stop a ship was limited to a specific maritime zone and had, as was well known, been the source of many difficulties. Some States, among them France, had never been willing to permit unrestricted boarding of vessels suspected of being engaged in the slave trade.

[5] Summary record of the 64th meeting, paras. 120–138; and of the 65th meeting, paras. 1–20.

80. He had taken the view that, if it were intended to include in the code a provision concerning the application of the right of approach to the slave trade, that right should be limited to a special zone, a definition of which, based on article XXI of the General Act of Brussels of 2 July 1890,[6] was contained in article 2 (p. 27 mimeographed English text or para. 56, printed French text, of the report). Perhaps, however, that zone should be modified, now that circumstances had changed. Members of the Commission were not experts on the subject, which was why the same objection might be raised to those articles as to the article proposed in the preceding section of the report. Nevertheless, he thought that the Commission was at least entitled to state a principle. It was to be noted that, like piracy, the slave trade was no longer of much practical importance.

81. Paragraph 191 of the *Report of the International Law Commission covering its second session* (A/1316) stated that:

> " The Commission requested the special rapporteur to study treaty regulations in this field with a view to deriving therefrom a general principle applicable to all vessels which might engage in slave trade ".

He had performed that task, the importance of which had been urged by Mr. Hudson. [7]

82. Mr. HUDSON hoped that a generally applicable principle might be derived from the many conventions concluded on the subject. Between 1815 and 1890 the United Kingdom Government had signed many treaties on the slave trade. He himself would be opposed to restricting the application of the system to a specific zone. He might add that the zone in question had been the subject of a protest by the Iranian Government.

83. North Africa and Central Africa might be quoted as examples of areas where certain forms of slavery were still practised. He did not see why control should be confined to the Persian Gulf, for that would be tantamount to suggesting that the Gulf was the only place in the world where the slave trade existed. He did not know whether the United Kingdom Government, which had endeavoured to suppress the slave trade in the Persian Gulf, was taking similar steps in the Red Sea. The further question arose whether it would have any legal basis for doing so. He had no information as to the situation in Madagascar waters.

84. In view of the attitude of world opinion to slavery, he thought it should be laid down as a principle that the high seas might not be used by vessels of any State for the transport of slaves. Discussions on that question, which had been proceeding for thirty years, showed the extreme difficulty of defining what was meant by "slavery".

85. The text proposed by the Rapporteur took the form of an international convention. He was opposed to the Commission drafting such a convention, except on a practical basis. He had studied the deliberations of the Geneva Conference of 1925 and of the various Committees of the League of Nations. He considered that the Commission lacked the information required to prepare a convention based on such principles and that it should treat the subject more simply, by drafting a text on the lines of the section relating to piracy. The measures concerned had met with considerable opposition in the 19th century; but he doubted whether opposition was quite so strong at the present time.

86. The CHAIRMAN pointed out that the Economic and Social Council had set up an *ad hoc* Committee on Slavery, to which Mr. François referred on page 25 (para. 50, printed French text) of his report. Detailed proposals could hardly be submitted until the findings of that Committee were known.

87. Mr. YEPES considered that the question was one of regional international law. Action was limited to the shores of the Indian Ocean, the Persian Gulf and the Red Sea. The Commission might confine itself to general principles, on the lines of articles 1 and 4 of the text submitted by the Rapporteur. That was all that could be done in a general code of international law. The settlement of questions of detail, such as the tonnage of vessels etc. should be left to a special convention.

88. Mr. SPIROPOULOS said he would repeat what he had said on the question of safety of life at sea.[8] The question before the Commission was one which lent itself to the preparation of a special convention; but it would be out of place in a general code of laws concerning the high seas. The text proposed by the Rapporteur suggested a convention; but all that was required was a few very general rules which would be binding on States. He thought that the Commission should give the Rapporteur some guidance that would enable him to bring out basic principles for the treatment of the question of slavery within the régime of the high seas.

89. Mr. KERNO (Assistant Secretary-General) pointed out that Mr. François referred, on page 25 of his report (para. 50, printed French text), to a General Assembly resolution of 13 May 1949, which requested the Economic and Social Council to study the problem of slavery at its next session. The Council had set up an *ad hoc* Committee on Slavery, which had decided that some time would have to be devoted to interpreting and evaluating the documentary material, before specific recommendations could be submitted. The *ad hoc* Committee had met again in April 1951, so that its conclusions could not have been included in Mr. François' report, which had been published on 10 April 1951; but they were summarized in the *United Nations Bulletin* of 15 May 1951 (vol. X, No. 10). The *ad hoc* Committee had made certain recommendations, among them (1) that the International Slavery Convention of 1926 be brought, as soon as possible, within the framework of the United Nations, and (2) that a supplementary convention be drafted by the United Nations (page 487).

90. Mr. FRANÇOIS agreed with Mr. Kerno that information as to the decisions of the *ad hoc* Committee on Slavery would be of considerable value. He thought that the Commission should adjourn its discussion of the

[6] De Martens *Nouveau Recueil Général des Traités*, 2nd series, vol. XVI, p. 3.

[7] See summary record of the 65th meeting, para. 22.

[8] See paras. 14 and 25 above.

paragraph until the Committee's findings were known. Only a few principles should be adopted.

91. Replying to Mr. Yepes, who had proposed the retention of two articles and who had charged him with a fondness for detail, he would point out that, since his draft convention contained only 11 articles, there was not much difference. In the said articles he had dealt with the right of approach in regard to vessels suspected of being engaged in the slave trade, a question which was linked with the one previously discussed. It should, however, be understood that the right of approach in regard to the slave trade was more limited in nature, which explained why he had been obliged to deal more fully with it. The hesitancy of States to accept the right of approach as applicable to all seas and all vessels must not be overlooked. The tendency to widen the concept of slavery would have the effect of enabling vessels to be boarded at all times and in all places. The grounds for such action would be not only piracy, but the claim that a given ship was suspected of carrying persons who might be deemed to be slaves. There would be many difficulties in the way of the adoption of one and the same general formula to cover both piracy and slavery.

92. Mr. YEPES pointed out that his comments did not imply a criticism of the work of the Rapporteur, to which he paid full tribute. The question before the Commission, which he regarded as coming under regional international law, should be the subject of a convention confined to the States concerned, and the code which the Commission was to draft should include only a general principle.

93. The CHAIRMAN explained that the proposal concerning the right of approach provided for two exceptions to the general rule prohibiting warships from boarding merchant vessels, the one in the case of piracy and the other in pursuance of a treaty. The right of approach in the case of piracy was an exception to customary law. The same did not apply to the right of approach in the case of a vessel suspected of being engaged in the slave trade, since the latter was governed by conventions which gave warships the right to board merchant vessels. It might, therefore, be said that one example of the second exception to the general rule was precisely the slave trade.

94. Mr. FRANÇOIS observed that other conventions accorded the same right and that, from the practical point of view, texts relating to the slave trade were not the most important.

95. The CHAIRMAN thought that the Commission should display great caution on questions of detail. In his view, the best solution would be to state in the comment, without going into details, that the right of approach in regard to the slave trade was regulated by treaties.

96. Mr. HUDSON asked whether, in that case, it would suffice to state that the slave trade had been dealt with for centuries and had been the subject of several hundred treaties.

97. The CHAIRMAN replied that the question only arose at the regional level and was rather unimportant at the present time.

98. Mr. SANDSTRÖM thought that the best solution might be a quite general article, of the type proposed by Mr. Hudson, stating that the slave trade was forbidden on the high seas.

99. Mr. FRANÇOIS said that he was prepared to delete the section of his report concerning the slave trade. He would nevertheless point out that the adoption of the principle which he had propounded would make it possible to bind States which were unwilling to accept a convention.

100. Mr. YEPES proposed that articles 1 and 4 of the Rapporteur's draft be retained for inclusion in the Code and that the settlement of details be left to special conventions.

101. Mr. ALFARO supported Mr. Yepes' proposal, with the reservation that it should remain open to Mr. François to review his text and propose another. He preferred article 3, paragraph 1, of the Slavery Convention of 25 September 1926, which read as follows:

> " The High Contracting Parties undertake to adopt all appropriate measures with a view to preventing and suppressing the embarkation, disembarkation and transport of slaves in their territorial waters and upon all vessels flying their respective flags."

102. Mr. YEPES accepted the amendment proposed by Mr. Alfaro, who had voiced his own thoughts. It had also been his intention to leave the Rapporteur completely free on the basis of those principles.

103. Mr. FRANÇOIS asked whether the right of approach would be recognized in all seas.

104. Mr. ALFARO thought that it should only be recognized in the specified zone.

105. Mr. YEPES drew attention to the reference in article 1, as proposed by the Rapporteur, to the " maritime zone " in which the slave trade still existed.

106. Mr. FRANÇOIS pointed out that he had defined the zone in article 2 of his draft, so that if that article had to be deleted, the reference to the maritime zone in article 1 would also have to be deleted.

107. Mr. YEPES said that the special zones would be defined in individual conventions.

108. Mr. AMADO asked what conclusion had been reached by the Commission on Human Rights.

109. Mr. KERNO (Assistant Secretary-General) said that it was stated in the issue of the United Nations *Bulletin* which he had already quoted [9] that the *ad hoc* Committee on Slavery had also mentioned that, " In the Universal Declaration of Human Rights proclaimed by the United Nations on December 10, 1948, there is an article which reads: ' No one shall be held in slavery or servitude; slavery and slave trade shall be prohibited in all their forms '. This principle, in the Committee's opinion, was considerably more far-reaching in its implications than that which inspired the League of Nations to formulate the 1926 Slavery Convention." (p. 487).

[9] See para. 89 above.

110. Mr. HUDSON asked whether it would not be possible, on similar lines, to add to the paragraph concerning the right of approach a provision to the effect that the said right existed everywhere in respect of vessels suspected of being engaged in the slave trade. He saw no reason why warships should not be permitted to approach merchant vessels for that purpose.

111. The CHAIRMAN did not think that could be done, in view of the very strong objections which had been raised.

112. Mr. HUDSON pointed out that France, which had been the main objector in the past, now favoured such a provision.

113. Mr. HSU thought that the Commission should first decide whether it would deal with the slave trade separately, or in conjunction with the right of approach. In his view, the slave trade was a regional rather than a world problem. It was always regulated by special conventions. While he was naturally opposed to slavery, he thought that the Commission, in its work of codification, should not treat slavery separately, but examine it in connexion with the inspection of or approach to vessels on the high seas. The problem could easily be settled within the régime of the high seas. He was in favour of the Chairman's proposal.

114. Mr. KERNO (Assistant Secretary-General) thought that the Commission was generally agreed that the question of slavery as a whole could be left to the conventions in force or to the *ad hoc* Committee on Slavery. The Commission would deal only with areas of the high seas where regulations were required. The only point at issue was the bearing of the problem of slavery on the régime of the high seas, one aspect of which was the right of approach.

115. Mr. SPIROPOULOS said that the Commission was now making progress. The report submitted by Mr. François was excellent; but perhaps only a few of the general principles stated therein need be adopted, such as those stated in articles 1 and 4. Article 4, for example, read: " The signatory States undertake to adopt efficient methods to prevent the unlawful use of their flag and to prevent the transportation of slaves on vessels authorized to fly their colours ". That general principle imposed a duty on States and should be included in the code.

116. So far as concerned piracy it should be noted that it was a general problem, like slavery. The Commission was solely concerned with the right of approach, and not with the problem of piracy as such. In his view, the latter should be included in the high seas code, in the form of a few very general rules in keeping with the structure of the code. That was the appropriate place to refer to piracy and the slave trade, which should be dealt with and dealt with together and in connexion with which the right of approach and inspection would be mentioned.

117. Mr. EL KHOURY asked to what the " aforesaid " right, mentioned in article 3, referred.

118. Mr. FRANÇOIS explained that the intention had been to recognize the right to approach vessels suspected of being engaged in the slave trade only if such vessels were of a tonnage less than 500 tons, so that the right might apply only to natives' vessels, and not to large vessels which could not be forced to stop. In the case of piracy the solution was different. The right of pursuit applied to all vessels. He would repeat that he was prepared to delete that section of his report. The beginning of article 3 should read: " The exercise of the right of approach shall be limited . . .".

119. Mr. SANDSTRÖM said that article 3 was redundant since article 8 contained the same provision.

120. The CHAIRMAN recalled Mr. Yepes' proposal that only articles 1 and 4 should be retained. The Rapporteur was entitled to ask for guidance as to his treatment of the right of approach.

121. Mr. HUDSON agreed with Mr. François that the maritime zone could hardly be mentioned in article 1 unless it were defined later.

122. Mr. SPIROPOULOS thought that the reference should be deleted.

123. The CHAIRMAN asked the Commission to take a decision on Mr. Hudson's proposal that the right of approach in respect of the slave trade, as in that of piracy, could be exercised without restriction as to tonnage or zone, which would mean that any warship had the right to inspect merchant vessels which it suspected of being engaged in the slave trade. He did not know whether the Commission could go any further, but he himself would be glad to do so.

124. Mr. HUDSON said that the high seas could not be used for the exercise of that nefarious trade, in view of the texts which had been adopted. His proposal was quite compatible with the extract which Mr. Kerno had read from the Universal Declaration of Human Rights.

125. The CHAIRMAN suggested that the proposal be tentatively adopted and the comments of States awaited.

126. Mr. HSU proposed that the provision be expanded. The slave trade was only practised in one area. If the right of inspection was extended to cover the whole world the concept of the trade that it was intended to suppress should also be expanded.

127. Mr. FRANÇOIS also pointed out that, in that case, all vessels suspected of committing the crime in question could be stopped. To recognize that the slave trade was prohibited was one thing, to recognize the right to stop the suspected vessel was another. The argument did not strike him as very convincing.

128. Mr. SPIROPOULOS agreed with Mr. François. Mr. Hudson's argument did not apply. There was no relation between the Universal Declaration of Human Rights and the boarding of vessels. The conventions condemning slavery did not permit States to have merchant vessels inspected by their warships. The Commission might attempt to frame a uniform rule covering the slave trade and piracy; precedents were few in the practice of States.

129. Mr. LIANG (Secretary to the Commission) thought that it was still more important to ascertain whether the Draft International Covenant on Human Rights contained an article on the slave trade.

130. The Universal Declaration of Human Rights stipulated co-operation between States in ensuring respect for such rights. In addition, even a text like the Draft Covenant would require the enactment of legislation before it could be implemented.

131. He would like to point out that article 4 of the Universal Declaration of Human Rights was not sufficient ground for dealing with the special problem in connexion with the régime of the high seas and the right of approach. The problem was very fully examined in Mr. François' report. He was afraid that the Commission would have to await a decision by the General Assembly on the text of the Draft International Covenant on Human Rights. The Assembly might perhaps add some more positive provisions, which could be considered by Mr. François.

132. The CHAIRMAN asked the Commission to decide whether it wished to retain or to delete the text. He recalled Mr. Hudson's proposal that no distinction be drawn between the right of approach in the case of a vessel suspected of piracy and the same right in the case of a vessel suspected of being engaged in the slave trade.

Mr. Hudson's proposal was adopted by 7 votes to 4.

133. Replying to Mr. YEPES, the CHAIRMAN said that the Commission had not approved the two basic articles (articles 1 and 4).

134. Mr. KERNO (Assistant Secretary-General) pointed out that the decision just adopted by the Commission eliminated the special zone and the tonnage limit of 500 tons, and recognized an absolute right of approach in the matter of piracy.

135. Mr. CORDOVA pointed out that a vessel wrongfully stopped would be entitled to compensation.

136. Mr. EL KHOURY noted that the Commission did not intend to state that the Persian Gulf and the Red Sea were the only zones where the slave trade was practised.

137. The CHAIRMAN said that the Commission would continue discussion of the right of approach.

The meeting rose at 1 p.m.

124th MEETING

Friday, 13 July 1951, at 9.45 a.m.

CONTENTS

Chairman: Mr. James L. BRIERLY
Rapporteur: Mr. Roberto CORDOVA

Present:

Members: Mr. Ricardo J. ALFARO, Mr. Gilberto AMADO, Mr. J. P. A. FRANÇOIS, Mr. Shuhsi HSU, Mr. Manley O. HUDSON, Mr. Faris EL KHOURY, Mr. A. E. F. SANDSTRÖM, Mr. Georges SCELLE, Mr. Jean SPIROPOULOS, Mr. Jesús María YEPES.

Secretariat: Mr. Ivan KERNO, Assistant Secretary-General in charge of the Legal Department; Mr. Yuen-li LIANG, Director of the Division for the Development and Codification of International Law, and Secretary to the Commission.

Economic and Social Council resolution 319 B III (XI) requesting the International Law Commission to prepare the necessary draft international convention or conventions for the elimination of statelessness (item 8 of the agenda) (A/CN.4/47 and E/AC.32/4)

1. The CHAIRMAN recalled that, on 11 August 1950, the Economic and Social Council had adopted a resolution (319 B (XI), section III) inviting " States to examine sympathetically applications for naturalization submitted by stateless persons habitually resident in their territory and, if necessary, to re-examine their nationality laws with a view to reducing as far as possible the number of cases of statelessness created by the operation of such laws " and requesting " the Secretary-General to seek information from all States with regard to the above mentioned matters and to report thereon to the Council."

2. In accordance with that resolution, the Secretary-General had requested States to supply him with information on the matter, and up to 5 March 1951 had received replies from seventeen Governments. In its resolution 352 (XII) of 13 March 1951, the Economic and Social Council had noted that only a limited number of Governments had replied to the Secretary-General's inquiry of 27 September 1950, and had requested " the Secretary-General to address another communication to Governments inviting them to submit their observations at latest by 1 November 1951 " (A/CN.4/47, paras. 5–6).

3. It would not appear that anything further could be done at the moment.

4. Mr. HUDSON said that, if a layman were to examine carefully the Commission's three reports and its agenda, he would probably come to the conclusion that the