

Document:-  
**A/CN.4/SR.124**

**Summary record of the 124th meeting**

Topic:  
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Extract from the Yearbook of the International Law Commission:-  
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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.*

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*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

agenda of the Commission's permanent activities was not overloaded.

5. It was considered, in the quarters directly affected, that the question of statelessness was one of great urgency, and the time limit laid down by the Secretary-General for the receipt of observations from Governments, *viz.* 1 November 1951, showed that he was of the same opinion. It was no answer that the Commission proposed to study the problem of nationality as a whole. It was not in fact intended to do so before 1953, and the Economic and Social Council had said that the question was urgent. The Commission should therefore attach just as much importance to that resolution as to a resolution by the General Assembly.

6. He suggested that the Chairman appoint a rapporteur to take over the work of preparing a draft convention on the question of statelessness, so that the Commission might be in a position to submit a proposal to the Economic and Social Council in 1953.

7. The CHAIRMAN said that, if a rapporteur was to be appointed, it should be done forthwith, and by the Commission itself, not by the Chairman. The rapporteur would not be able to make a start before 1 November 1951.

8. Mr. HUDSON pointed out that seventeen Governments had already sent in their observations and that, furthermore, summary records were available of the meetings of the *ad hoc* Commission on Statelessness, set up by the Economic and Social Council.

9. Mr. ALFARO and Mr. SANDSTRÖM considered that the Commission should follow Mr. Hudson's suggestions.

10. Mr. EL KHOURY asked whether it would not be preferable to study the question of statelessness at the same time as that of nationality. It was, in fact, not easy to discuss the one without the other.

11. Mr. SPIROPOULOS observed that, since the Economic and Social Council had expressed its desire for a draft convention for the reduction as far as possible of the number of cases of statelessness, the problem should be studied together with that of nationality.

12. The CHAIRMAN read out the following passage from Council resolution (319 B (XI), Section II):

“Considering that statelessness entails serious problems both for the individual and for States; and that it is necessary both to reduce the number of stateless persons and to eliminate the causes of statelessness . . .”

13. Mr. LIANG (Secretary to the Commission) thought that due account should be taken of the Commission's statute. The question should be considered in its proper context. It was related to the progressive development of law, both under the Commission's terms of reference, since the Council had requested it to draw up a convention for the elimination of statelessness, and as regards substance, since there were not many rules of international customary law concerning statelessness.

14. It therefore appeared to him that the Commission should apply article 17 of its statute,<sup>1</sup> as it was a question

of a request by one of the principal organs of the United Nations. So as to obviate unnecessary criticism, and avoid wasting the General Assembly's time, he suggested that a paragraph be inserted in the general report to the effect that the Commission was well aware of the urgency of the work with which it had been entrusted by the Council and hoped that replies would be received from all Governments by 1 November 1951, when it could proceed with the drafting of a convention on statelessness. The General Assembly would, in all probability, give the Commission the approval referred to in article 17, paragraph 2 (*d*), and the Commission could then carry out the procedure laid down in article 16. By so doing, the Commission would protect itself against all criticism. He doubted whether it would be advisable to appoint a rapporteur before the provisions of article 17 had been complied with.

15. Mr. SCALLE did not consider it advisable to take on further work until a decision had been arrived at regarding the Commission's future status. A good deal of the criticism directed against the Commission was on the grounds that it had taken up a large number of questions and not pursued any of them to a conclusion. If it continued on that course it would never get definite results. Contrary to the opinion expressed by Mr. Hudson and Mr. Liang, who considered that the Commission's work was clearly laid down in article 17, he himself considered that the provisions of that article were amongst those most open to criticism.

16. Mr. HUDSON felt that article 17, paragraph (*d*) could hardly be a source of embarrassment to the Commission, as all it had to do was to state in its report that it had the matter in hand. He considered that the Commission had the opportunity of doing useful work and that it could be accomplished within two years.

17. He agreed with Mr. EL KHOURY that it was difficult to consider statelessness and nationality independently, but the problem could be examined. He would not like to see the Commission wait for a request from the General Assembly before taking the question in hand at its next session. A year would not be long enough to reach any result.

18. Mr. FRANÇOIS asked what, apart from Mr. Scelle's report on arbitration and the second reading of that part of his own report which had not yet been examined, would be the items for the 1952 session's agenda.

19. The CHAIRMAN pointed out that there was still a great deal to be done in the field of treaties.

20. Mr. SCALLE recalled that the code of offences against the peace and security of mankind would again be before the Commission. He agreed with Mr. Hudson that the statelessness problem was one of the most important subjects with which they had to deal, as it concerned the whole social order of the human race. Bearing in mind the work of the codification conferences, it would seem prudent to wait and see what the Commission's new statute was to be, instead of relying on the existing statute, particularly article 17.

21. Mr. LIANG (Secretary to the Commission) said

<sup>1</sup> United Nations publication, Sales No. 1949.V.5.

that, in his opinion, the Commission should follow a more diplomatic course and keep more rigidly to its statute. Article 17 enabled it to continue its work, while awaiting the General Assembly's permission to proceed with the study requested by the Economic and Social Council. The Department of Social Affairs had already published a study on statelessness<sup>2</sup> and the Secretariat had received a number of replies from Governments, which would be very useful. The preparatory work could go on but should conform with article 17, paragraph 2 (d).

22. Mr. CORDOVA feared that the General Assembly and the Economic and Social Council would be at a loss to understand the Commission's inaction in the matter. The question had been referred to the Commission the previous year, but it had not yet even appointed a Rapporteur. Why should they not make a start, while waiting for replies from Governments, and appoint a Rapporteur to study the question and submit a report for consideration in first reading at their next session? If that were done, the Commission would probably be in a position to adopt a proposal during the last year of its term of office. If, on the other hand, no Rapporteur were appointed that year, the Commission would not be able to do anything.

23. So far as the other items on the agenda for the next session were concerned, the code of offences would be referred back to the Commission after examination by the Assembly. The régime of the high seas and the study of arbitration procedure would have to be concluded. He hoped that in 1952 the Commission would be able to devote a certain amount of time to the study of the question of nationality.

24. Mr. FRANÇOIS was also of the opinion that the agenda was not so overloaded as to make it impossible to include any other question. He recalled that the General Assembly had requested that priority be accorded to another problem, to wit, the régime of territorial waters.

25. In reply to an observation by Mr. SCALLE, who had again said that the question should be considered in connexion with the revision of the Commission's statute, Mr. HUDSON pointed out that the new statute could not come into force before the 1954 session. They had therefore two years to deal with the matter.

26. He proposed the following draft resolution:

"Having before it the two resolutions of the Economic and Social Council, the Commission have now proceeded under paragraph 2 of article 17, and deem it is appropriate to proceed with the preparation of the draft Convention on statelessness, and request Mr. X to act as special Rapporteur on the subject, and present a report for the next session."

27. An exchange of views followed between Mr. HUDSON, Mr. KERNO (Assistant Secretary-General) and Mr. LIANG (Secretary to the Commission) on the various procedural stages to be gone through under articles 16 and 17, particularly on the question whether the Commission could appoint a rapporteur on the

question of statelessness (article 16, sub-paragraph (a)) without waiting for a formal invitation from the General Assembly to take the matter up under article 17, paragraph 2 (d).

28. Mr. SPIROPOULOS said that the question could be considered either from the point of view of procedure or from that of substance. There could be no doubt that, from the point of view of procedure, the Commission was not entitled to appoint a rapporteur at that stage. That was, of course, the purely procedural point of view, and in practice the formalistic aspect could be disregarded. The Commission could, therefore, appoint a rapporteur provisionally, pending the General Assembly's decision.

29. There was, however, one conclusive point to be considered. Had the Commission the time to study the problem? It had, first of all, to complete the study of Mr. François' report and draw up a code for the high seas. It had also to examine Mr. Brierly's report on treaties, and that of Mr. Scelle on arbitration procedure which had, as yet, not received much attention. Its principal task was the conclusion of the study of those three reports. He did not believe that his report on the Code of Offences against the Peace and Security of Mankind would be sent back to the Commission in 1952.

30. They would then have to consider whether it was possible to take a position on the problem of the elimination of statelessness, without, at the same time, laying down rules in regard to nationality. In his opinion it could not be done, as it was not possible to abolish statelessness without establishing rules on nationality which would leave no room for it. It was a very wide problem and could not be solved in two years.

31. The above considerations seemed to him decisive; he added that it was necessary to take up the question of the régime of territorial waters, in regard to which the General Assembly had already taken a decision.

32. Mr. HUDSON recalled that the General Assembly had only decided to include that question in the list of priorities for subjects for codification.

33. Mr. HSU asked why the Secretariat should not be requested to submit a proposal. It must not be overlooked that the Commission had only two years to run, and that the Assembly might, in the meantime, ask it to undertake other work. If a rapporteur were appointed, he would probably not be able to finish the work before the expiration of his term of office as a member of the Commission. On the other hand, if the Secretariat were made responsible for putting up a proposal and if the study of the question had not been concluded before the expiry of the Commission's term of office, it could be put on one side and taken up again after the appointment of the new Commission. The Secretariat had already undertaken the study of a number of questions, particularly during the first year of the Commission's existence.

34. Mr. KERNO (Assistant Secretary-General) pointed out that the Commission was not required, under article 17, to draw up a detailed plan. It was only a question of a decision on principle. The Commission should state that it considered it desirable to comply with a request from a United Nations organ other than the

<sup>2</sup> *A study of statelessness*, United Nations publication, Sales No. 1949.XIV.2.

General Assembly, decide that article 17, sub-paragraph (d), was applicable, and request the General Assembly to instruct it to proceed. It was not necessary, for that purpose, that the Secretariat carry out a study or the Commission appoint a rapporteur.

35. The question of the elimination of statelessness was closely linked to that of nationality. When the General Assembly's authorization had been received, the Commission should examine the problem of statelessness in conjunction with that of nationality. That consideration led him on to another idea. He was concerned at the fact that the interval between sessions was not fully utilized. Perhaps the Commission could ask the Secretariat to begin preliminary studies on certain subjects, such as nationality, including statelessness, and the régime of territorial waters. That would enable the Commission to make more rapid progress.

36. Mr. EL KHOURY said that the Commission should deal with the problem of statelessness under article 17. It was now at the stage referred to in sub-paragraph (c) which read: "The Commission shall submit a report with its recommendations to the General Assembly...". Briefly, it was a question of asking the Assembly for permission to carry out a study that the Commission considered desirable. If the reply were in the affirmative, a rapporteur would be appointed under article 16. That was clearly the procedure to follow, but the question of statelessness was so closely connected with that of nationality that no rules could be drawn up for it without consideration of the latter question. But the problem of statelessness came under the progressive development of law, whereas that of nationality was included under codification. The latter subject was therefore governed by article 18.

37. Should the Commission consider that the question of nationality was ready for codification, it might propose to deal with it under article 18, paragraph 2. It might also ask the Assembly to authorize it to examine the problem of statelessness in conjunction with that of nationality. If the Assembly agreed, the Commission would appoint a rapporteur to study both problems; that was quite feasible, even though the two questions belonged to different spheres of the Commission's activities. The Secretariat could, in the meantime, be asked to prepare the necessary documentation.

38. Mr. Spiropoulos' and Mr. Kerno's remarks had led Mr. SCELLE to speak again. He was not interested in the question as to whether the Commission should comply with articles 16, 17 and 18. A matter of principle was involved. Was the Commission prepared to take on still more work?

39. If it were considered advisable to examine the Commission's working methods in detail, it could be done. Consideration could be given to the question whether it would not be possible to make better use of the interval between sessions, and whether the principle that members of the Commission devote their whole time to it should not be regarded from a slightly different angle, and interpreted to mean continuous work, but not necessarily continuous attendance. If the Commission had more

time and means available in future, Mr. Hudson's proposal would, in his opinion, be less open to objection.

40. The Commission had before it the problem of treaties, and Mr. Hudson was well aware of the amount of work that topic had imposed on the Harvard Group, even with the co-operation of nearly all the law professors in the United States. The Commission had also to finish with Mr. François' study on the high seas and should study the régime of territorial waters, about which the 1930 Conference had not been able to reach agreement. He proposed that the study of the question of statelessness be deferred until such time as there were reasonable prospects of being able to finish it.

41. Mr. YEPES said that a narrow interpretation of the rules of procedure might be held to bar the Commission from applying Mr. Hudson's solution, but the problem was so important, and the Economic and Social Council's resolution so urgent, that the Commission could not disregard it. He supported Mr. Hudson's proposal to appoint a rapporteur and then submit the question to the Assembly. He was sure that the latter would endorse the decision to study the problem.

42. Mr. SPIROPOULOS wondered whether the Economic and Social Council really expected the Commission to draw up rules which would enable statelessness to be abolished, or whether it had not in mind rather special measures for dealing with existing cases of statelessness. There were at the moment many cases of statelessness which resulted from withdrawal of nationality. That was a very different question from the other and quite unconnected with the problem of nationality. He was afraid that the Council might have had the second question in mind, i.e. that of providing a nationality for persons who did not at the moment possess one. That would be a practical problem, to be solved by Governments after a general conference of the interested parties, and did not concern the Commission in any way.

43. Mr. AMADO said that Mr. Spiropoulos had clarified his ideas on the subject; he wondered whether the Commission was a suitable body to settle the question with the necessary speed, seeing that the characteristic features of its work were inevitably slowness and meticulousness.

43a. If it were possible to find an answer to that urgent problem, so much the better, but if the Commission were not able to solve it rapidly it should state the reason. If there were any certainty that the appointment of a rapporteur would lead to a rapid solution of the problem and that it could be dealt with apart from that of nationality; if a political — that was to say, a practical — solution could be found, by all means let the Commission appoint a rapporteur. But, if it were doubtful of being able to find a speedy solution, it should state as much and leave the matter alone.

44. The CHAIRMAN felt that the Commission might submit a proposal on the subject of the abolition of statelessness, a problem that came under the progressive development of law.

45. Mr. KERNO (Assistant Secretary-General) had thought the Commission was considering article 17,

sub-paragraph (d), but realized that it had only got as far as the first sentence of paragraph 2. It had to decide whether or not to take up the question.

46. He wished to draw the Commission's attention to the Economic and Social Council's resolution on the work of the Committee on Statelessness. The Secretary-General had submitted a memorandum on the elimination of statelessness (E/AC.32/4), the first page of which contained the following statement:

"The problem of statelessness raises two questions. If statelessness is to be eliminated, the causes of statelessness must be removed and the number of persons now stateless must be reduced. The first question is the more important and the more complicated."

47. The matter of reducing the present number of stateless persons was in hand. The International Refugee Organization was still functioning and a conference was at that moment engaged in regulating the legal status of refugees. What the International Law Commission was asked to do was to remove the causes of statelessness and that could only be done in conjunction with a study of nationality laws. The Commission could reply to that effect.

48. Mr. FRANÇOIS thought that the Commission could not refuse to begin the study of a question merely because it would not be finished before the expiry of the members' term of office.

49. Mr. AMADO believed that the Commission would assume a very grave responsibility if it decided not to tackle the question. A great deal was said about public opinion, but public opinion was not very much concerned with the questions with which the Commission had so far dealt. The problem of statelessness was, however, quite a different matter. The Commission could not leave it on one side.

*It was decided by 11 votes to 1 that the Commission should study the question of statelessness.*

50. After a discussion, in which the CHAIRMAN, Mr. HUDSON, Mr. AMADO, Mr. SANDSTRÖM and Mr. ALFARO took part, it was decided to appoint a rapporteur.

51. The CHAIRMAN said that it would be preferable for the appointment of the rapporteur to be decided in informal discussion.

52. Mr. SCELLE noted that the question had been decided, but wished to point out that, as he had been opposed to the question being taken up, he could not approve the appointment of a rapporteur.

53. The CHAIRMAN thought the Secretariat might be asked to prepare appropriate documentation on nationality.

54. Mr. LIANG (Secretary to the Commission) pointed out that if the Commission decided to proceed with the study of nationality, including statelessness, there would be no further difficulty. It could then go ahead even without consulting the General Assembly. Since it had included nationality, inclusive of statelessness, in the provisional list of topics for codification given in its

report on its first session (A/925, para. 16), it would be a matter of codification and a rapporteur could be appointed immediately. His objection was only valid if the Commission decided to study statelessness separately.

55. He also drew attention to the previous decision, contained in paragraph 20 of the Commission's report on its second session (A/113). If the Commission confined itself to endorsing that decision, no difficulty was to be expected.

*It was agreed* that the decision the Commission had just taken meant that it would begin to study the question of nationality, including statelessness.

#### **Co-operation with other bodies (item 9 of the agenda)**

56. Mr. KERNO (Assistant Secretary-General) said that every time he had attended a meeting of an international non-governmental organization, whose work had points of contact with that of the Commission, he had found a real desire to assist the latter's work in every possible way. That applied particularly to the Copenhagen session of the International Law Association, and to the International Bar Association. The Commission could rest assured that, whenever it had occasion to consult such associations, it would meet with a most cordial response.

57. In reply to a question by Mr. CORDOVA, he recalled that, at its last session, the Commission had asked rapporteurs and the Secretariat to get in touch with international non-governmental organizations whose work might be of interest to the Commission, whenever they considered that a useful purpose would be served thereby. Mr. François, as rapporteur on the question of the régime of the high seas, had made considerable use of the International Law Association's work on the continental shelf. He himself had considered it his duty to attend the Copenhagen session of that Association with a view to strengthening existing ties, and had taken the opportunity to say that, whereas in its initial stages the codification of international law had been the work of private bodies, the situation had changed in that the work done by the Commission under the auspices of the United Nations was on parallel lines to that of the non-governmental organizations. He considered that the Commission should make more use of the said Associations for the future.

58. Mr. HUDSON wished the Secretariat to be instructed to prepare the text of a resolution, acknowledging the assistance the Commission had obtained from certain non-governmental organizations. He was of the opinion that the resolution in question should express the wish that copies of all reports published by such organizations on subjects connected with the Commission's work, be sent to the members of the Commission.

59. Mr. LIANG (Secretary to the Commission) pointed out that it would be less burdensome to those organizations if they were asked to communicate their reports to the Commission's Secretariat which would then circulate them to members. That was the procedure adopted by the International Law Association.

60. Mr. ALFARO hoped that the organizations concerned would be able to see their way to supply a sufficient number of copies of their reports, so as to facilitate the Secretariat's work.

61. The CHAIRMAN was of the opinion that the International Law Association, in particular, would greatly appreciate a resolution acknowledging the value of its work to the Commission.

*It was decided to instruct the Secretariat to prepare a draft resolution for examination when drafting the report to the General Assembly.*<sup>3</sup>

**General Assembly resolution 494 (V): development of a twenty-year programme for achieving peace through the United Nations (item 10 of the agenda)**

62. Mr. HUDSON considered that the Commission should take note of General Assembly resolution 494 (V) of 20 November 1950.

63. The CHAIRMAN read out a draft which, after a number of amendments had been made to it at the suggestion of Mr. HUDSON and Mr. LIANG (Secretary to the Commission) *was adopted* in the following form:

“The Commission took note of resolution 494 (V), adopted on 20 November 1950 by the General Assembly, and pursuant to paragraph 2 thereof, gave consideration to point (10) of the ‘Memorandum of points for consideration in the development of a twenty-year programme for achieving peace through the United Nations’ (A/1304) submitted by the Secretary-General.

“As related in the present report, as well as in its previous reports to the General Assembly, the Commission is making every effort to speed up its work on the progressive development and codification of international law.”

**General Assembly resolution 485 (V): Amendment to Article 13 of the Statute of the International Law Commission (item 11 (a) of the agenda)**

*It was noted* that there was no occasion to take a decision in the matter.

**General Assembly resolution 486 (V): extension of the term of office of the present members of the International Law Commission (item 11 (b) of the agenda)**

65. Mr. HUDSON said that, as a matter of courtesy, members of the Commission should be given the opportunity of stating whether or not they accepted the extension of their term of office as provided for by General Assembly resolution 486 (V) of 12 December 1950. He himself did accept the extension.

66. Mr. KERNO (Assistant Secretary-General) proposed that members follow the same procedure as at their election by the General Assembly.

67. Mr. HUDSON pointed out that the Commission must not prejudice the decision of those of its members who had not been able to attend the present session.

68. Mr. HUDSON, Mr. CORDOVA and Mr. ALFARO proposed that it be stated in the Commission's report on its third session that the members taking part therein accepted the extension of their term of office on the conditions laid down by the General Assembly.

68a. Other members thought that the report was not the proper place to make such a statement.

*It was decided to make no mention of the point in the report on the third session.*<sup>3a</sup>

**General Assembly resolution 487 (V): ways and means for making the evidence of customary international law more readily available (item 11 (c) of the agenda)**

69. Mr. KERNO (Assistant Secretary-General) pointed out that General Assembly resolution 487 (V) of 12 December 1950 instructed the Secretary-General to submit a report to the General Assembly.

70. From that the CHAIRMAN inferred that there was no need for the Commission to take a decision in the matter.

71. A discussion followed during which Mr. LIANG (Secretary to the Commission) expressed the view that the Commission ought to take note of the General Assembly's resolution in order to show that it was aware of the decision — a view with which Mr. HUDSON disagreed — and Mr. KERNO (Assistant Secretary-General) remarked that there had really been no necessity for the Secretariat to include the item in the agenda. It had only wanted to remind the Commission of the action taken by the Assembly in regard to its own proposal.

72. Mr. ALFARO, supported by the CHAIRMAN, considered that, as a matter of courtesy, the Commission should take note of the resolution.

*It was so decided.*

**Régime of the high seas: report by Mr. François (item 6 of the agenda) (A/CN.4/42) (resumed from the 123rd meeting)**

**CHAPTERS 4 AND 5: RIGHT OF APPROACH AND THE SLAVE TRADE (resumed)**<sup>4</sup>

73. The CHAIRMAN recalled that, at its last meeting, the Commission had decided to put the slave trade on the same footing as piracy.<sup>5</sup>

74. Mr. YEPES proposed that the following text be substituted for the draft articles contained in the report (pp. 27–29, mimeographed English text; para. 56 printed French Text):

“All States are required to co-operate for the more effective repression of the slave trade, particularly in areas in which it still exists, such as the shores of the Indian Ocean, including the Persian Gulf and the Red Sea and the coast of Africa.

“To this end the signatory States undertake to adopt

<sup>3a</sup> See however summary record of the 133rd meeting, para. 37.

<sup>4</sup> See summary record of the 123rd meeting paras. 61–137.

<sup>5</sup> *Ibid.*, para. 132.

<sup>3</sup> See summary record of the 125th meeting, para. 1.

efficient measures to prevent the unlawful use of their flag and to prevent the transport of slaves on vessels authorized to fly their colours.

“In order to facilitate the repression of the trade on the high seas and to prevent the abuse of a State’s flag, a right of approach is recognized under the same conditions as in the case of pursuit for piracy.

“Any slave who has taken refuge on board a ship of war or a merchant vessel shall be *ipso facto* set free.”

That text was in part borrowed from articles 1, 2 and 4 of the report, but the latter part contained new matter.

75. He asked the Commission not to take a vote on the text, but to treat it as a guide for the rapporteur in drafting the new report to be submitted to the Commission at its 1952 session.

76. The CHAIRMAN said the Commission should decide whether it desired to tie the rapporteur to that extent, or whether it preferred just to state the principle of the assimilation of the slave trade to piracy.

77. Mr. HUDSON thought Mr. Yepes’ proposal, if adopted, would have the effect of obliging all States, whatever their size or geographical position, to send warships to the Persian Gulf.

78. The CHAIRMAN proposed that the Commission ask the Rapporteur to consider what action should be taken on Mr. Yepes’ proposal.

*It was so decided.*

79. Mr. KERNO (Assistant Secretary-General) referred to his remarks at the last meeting<sup>6</sup> in regard to the *ad hoc* Committee on Slavery and read out the following extract from the recommendations made in the Committee’s report on its second session (E/1988, p. 20):

“That slave raiding and slave trading on the high seas should be declared to be a crime similar to piracy in international law and that States acceding to the supplementary Convention should bind themselves to enact laws within a prescribed time declaring that all the attributes of and penalties for piracy shall attach to them.”

80. The CHAIRMAN was of opinion that the articles relating to the right of approach and to the slave trade should be combined.

81. Mr. SANDSTRÖM, supported by Mr. SPIROPOULOS, said that if the slave trade were included in the cases justifying the right of approach, the special draft articles relating to the slave trade became unnecessary.

82. Mr. HUDSON considered that the recommendation of the *ad hoc* Committee on Slavery read out by Mr. Kerno was very interesting. It might be embodied as a second paragraph.

83. Mr. FRANÇOIS agreed that the assimilation of slavery to piracy, from the point of view of the right of approach, rendered articles 8, 9, 10 and 11 of his report superfluous. The same could not be said, however, of the first few articles, in regard to which Mr. Yepes had proposed a new draft. The substance of those

articles should be included in any general principles adopted by the Commission.

84. He drew attention to the penultimate paragraph of the section in his report on the right of approach (p. 22 mimeographed English text; para. 43, printed French text). Most authors seemed to consider that the exercise of the right of approach did not give rise to any liability for compensation, provided there were reasonable grounds for suspicion. In his opinion, if that principle were admitted, it would render the right to compensation illusory. Since some reasonable ground for suspicion could always be found, he proposed a text by which the right to compensation was retained wherever suspicion proved to be unfounded, and unless the stopped vessel had itself given grounds for suspicion.

85. Mr. ALFARO supported Mr. François’ contention and considered that any dispensation from liability for compensation should be based on concrete facts.

86. The CHAIRMAN agreed with the Rapporteur that reasonable suspicion was not, in itself, sufficient to discharge a warship exercising the right of search from all liability for compensation to the stopped vessel. He asked the Commission whether it was prepared to accept the Rapporteur’s conclusions in regard to the right of approach.

*It was so decided.*

87. Replying to a question by Mr. HUDSON, the CHAIRMAN said that the Commission left it to the Rapporteur to give due consideration to the extract from the *ad hoc* Commission on Slavery’s recommendations, which Mr. Kerno had read.

88. Replying to Mr. HSU, he also confirmed that, in accordance with the decision taken by the Commission at its last meeting,<sup>7</sup> the right of approach in regard to the slave trade was recognized in respect of all warships and in all waters.

89. Mr. SPIROPOULOS and Mr. HUDSON wondered whether the Commission ought not to define piracy.

90. The CHAIRMAN, on the other hand, considered that the notion of piracy was sufficiently well established and familiar to States.

91. Mr. HUDSON considered that there was no pressing need for an international convention on piracy. To his knowledge, and that included the investigation made by the Harvard Research into national legislation in regard to piracy,<sup>8</sup> cases where an international dispute hinged on the question whether or not a case was one of piracy were rare. He did not think that it would be particularly difficult to define piracy, which was the use of violence at sea without a political motive as, for instance, for purposes of plunder or robbery. Nevertheless, in the *Ambrose Light* case, an American court had ruled that it was dealing with a case of piracy, even though the actions of the vessel named as a pirate had been inspired by political motives.<sup>9</sup>

<sup>7</sup> *Ibid.*, para. 132.

<sup>8</sup> *Research in international law*, Harvard Law School Cambridge, 1932, parts IV and V.

Cf. Fauchille, *Traité de droit international public*, Paris, 1925. Vol. 1, part, 2, bottom of p. 76.

<sup>6</sup> *Ibid.*, para. 89.

92. He hoped that the Rapporteur would be requested to deal with the subject of piracy without going into details, as the work of the Harvard Research had shown how difficult it was to draw up a definition applicable to all conceivable cases of piracy.

93. Mr. FRANÇOIS was prepared to study the question of piracy, although that had not hitherto been asked of him. In his opinion, the fact of having placed the slave trade on the same footing as piracy, from the point of view of the right of approach did not, in itself, make such a study necessary.

94. The CHAIRMAN proposed that the Commission should not give the Rapporteur any special instructions but simply ask him to go into the question of piracy.

*It was so decided.*<sup>9a</sup>

#### CHAPTER 6: SUBMARINE TELEGRAPH CABLES

95. Mr. FRANÇOIS recalled that, at its last session, the Commission had adopted the principle that all States had the right to lay submarine cables in the high seas and had asked him to extend that rule to pipelines and also to go into the question of protective measures.<sup>10</sup>

96. The Convention of 14 March 1884 concerning submarine cables was no longer completely satisfactory. Technical developments had made it necessary to widen its provisions. The *Institut de droit international* had adopted certain recommendations for completing the Convention. It was questionable whether it was not a matter for a new convention rather than for the Commission. Consequently, in addition to leaving on one side certain factors which could only be dealt with in special conventions, he had only taken from the 1884 Convention and the resolutions of the *Institut de droit international* a number of provisions of a general nature, which appeared to him suitable for inclusion in the regulations the Commission proposed to adopt.

97. Mr. SPIROPOULOS complimented the Rapporteur on his study of the question, but considered that the Commission might follow the same procedure as adopted for other questions and keep strictly to general rules without going into detail. It might also refer to the obligation on States to punish offenders against those rules.

98. Mr. HUDSON wondered whether the preparation of a new convention on the question was really necessary under existing world conditions. The only dispute which, to his knowledge, had given rise to arbitration was one between the United States and the United Kingdom arising out of the cutting, during the Spanish-American War in 1898, of a cable between Manila and Hong Kong. The company owning the cable had claimed compensation from the United States but its claim had been disallowed by the arbitrator.<sup>11</sup> As to submarine

pipelines, there were none in existence at the moment. 99. It might be added that it was presumed that a State laying a cable had at its disposal the necessary landing points, either under its own sovereign rights or by previous agreement with the competent State.

100. The CHAIRMAN remarked that they were only dealing with the high seas. There was nothing to prevent a State laying a cable in the high seas.

101. Mr. HUDSON asked that the principle laid down in article 1 of the report should in that case be qualified by the words "on the bed of the high seas".

102. Mr. FRANÇOIS remarked that, while recognition of the right of all States to lay cables was nothing new, the extension of that right to pipelines had never before been envisaged.

103. Mr. AMADO said that the right in question had its origin in the principle of the freedom of the high seas. He was of the opinion that that principle should be proclaimed in a preliminary article followed by a list of the various consequences deriving therefrom.

104. According to the CHAIRMAN that method corresponded more or less to the one adopted by the *Institut de droit international*.

105. Mr. SCELLE was prepared to support Mr. Amado's proposal. He also considered that it should be stated that the freedom to lay cables and pipelines extended to the continental shelf as an integral part of the high seas.

106. Mr. SPIROPOULOS considered that the Commission should, at the end of its study of the régime of the high seas, correlate the special decisions taken on various points. A study of the régime of the high seas could not logically start with the question of the nationality of ships. If the exposition of the question were not stated in logical order, the Commission could only submit to the General Assembly "loose-leaves" of international law.

107. Mr. FRANÇOIS differed from Mr. Spiropoulos and considered that the Commission had decided against the systematic codification of the law of the high seas as a whole; it had simply adopted a number of points which appeared particularly suitable for codification. The order in which that work was done was of little importance.

108. The CHAIRMAN said that the question raised by Mr. Spiropoulos was of such importance that the Commission should come back to it at a later date.

#### Programme of work

*In view of the short time available it was decided, with the agreement of the Rapporteur (Mr. Scelle) not to take up the examination of the report on arbitral procedure (A/CN.4/46) during the present session.*

The meeting rose at 1.10 p.m.

<sup>9a</sup> See however summary record of the 133rd meeting, para. 27.

<sup>10</sup> See summary record of the 65th meeting, paras. 29-52.

<sup>11</sup> Award of 9 November 1923: case of "The Eastern Extension, Australia and China Telegraph Co. Ltd.", *American Journal of International Law*, Vol. 18 (1924) (pp. 835-842).