

Document:-  
**A/CN.4/SR.178**

**Summary record of the 178th meeting**

Topic:  
**<multiple topics>**

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*Fourth paragraph*<sup>11</sup>

72. Mr. HUDSON proposed the deletion of the fourth paragraph.

*It was so agreed.*

*Comment on article 16 [27]*<sup>12</sup>*First paragraph*

73. Mr. SCELLE proposed that, in view of the changes which had been made in the text of article 16, the first sentence of the comment be amended to read as follows :

“The article on counter-claims is designed to enable the tribunal to rule on all questions bearing on the subject of the dispute and to make a complete settlement of the dispute.”

74. He also proposed the deletion of the second sentence, which bore on a point on which the Commission had not reached agreement.

*Mr. Scelle's proposal were adopted.*

*Second paragraph*

75. Mr. SCELLE proposed the deletion of the second paragraph, which was no longer necessary in view of the changes made in the text of the article.

*It was so agreed.*

*Comment on article 17 [26]*<sup>13</sup>

76. Mr. SCELLE proposed that, in view of the changes made in the text of article 17, the second sentence of the comment on that article be amended to read as follows :

“The word ‘prescribe’ implies an obligation on the parties to take the measures prescribed.”<sup>14</sup>

*It was so agreed.*

*Comment on article 18 [29]*<sup>15</sup>

No observations.

<sup>11</sup> The fourth paragraph read as follows :

“The Commission deleted all reference to presumptions.”

<sup>12</sup> Corresponds to article 15 in document A/CN.4/L.35.

The comment read as follows :

“The article on claims and counter-claims is designed to enable the tribunal to rule on all questions bearing on the subject of the dispute. It partly reverses the Commission's rejection of the principle laid down in article 13 of the League of Nations Covenant and even uses the words ‘complete settlement of the dispute’.

“The fact that the English and French texts are not in complete conformity is due to the technical peculiarities of Anglo-Saxon or Latin procedure ; the sense and scope of the articles are, however, identical in the two texts.”

<sup>13</sup> Corresponds to article 16 in document A/CN.4/L.35.

<sup>14</sup> Instead of “The article reaffirms the duty of the parties to take the measures indicated”.

<sup>15</sup> Corresponds to article 17 in document A/CN.4/L.35.

*Comment on article 19 [30]*<sup>16</sup>

77. Mr. HUDSON suggested that, for the sake of consistency, the comment on article 19 be amended to read as follows :

“This article requires no comment.”<sup>17</sup>

*It was so agreed.*

The meeting rose at 1.5 p.m.

<sup>16</sup> Corresponds to article 18 in document A/CN.4/L.35.

<sup>17</sup> Instead of “These necessary provisions, particularly that in paragraph 2, are self-explanatory”.

**178th MEETING**

*Friday, 1 August 1952, at 3.15 p.m.*

**CONTENTS**

	<i>Page</i>
Law of treaties (item 3 of the agenda) . . . . .	220
Régime of the high seas (item 4 of the agenda) . . . . .	222
Law of treaties (item 3 of the agenda) ( <i>resumed from above</i> ) . . . . .	224

*Chairman* : Mr. Ricardo J. ALFARO.

*Rapporteur* : Mr. Jean SPIROPOULOS.

*Present* :

*Members* : Mr. Roberto CORDOVA, Mr. J. P. A. FRANÇOIS, Mr. Shushi HSU, Mr. Manley O. HUDSON, Faris Bey el-KHOURI, Mr. F. I. KOZHEVNIKOV, Mr. H. LAUTERPACHT, Mr. Georges SCELLE, Mr. J. M. YEPES, Mr. J. ZOUREK.

*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).

**Law of treaties (item 3 of the agenda)**

1. The CHAIRMAN stated that, at the third session of the Commission, the special rapporteur on the law of treaties, Mr. Brierly, had presented a second report (A/CN.4/43) which included a number of draft articles ; those articles had been considered at eight meetings and tentative texts provisionally adopted. He had then been asked to present to the Commission at its fourth session a final draft, together with a commentary, and to “do further work on the topic of the law of treaties as a whole and to submit a report thereon to the Commission.”<sup>1</sup> Mr. Brierly had accordingly prepared a third report on the law of treaties (A/CN.4/54), con-

<sup>1</sup> Report of the International Law Commission covering the work of its third session (A/1858) para. 75, *Official Records of the General Assembly, Third Session, Supplement No. 9*. Also in *Yearbook of the International Law Commission, 1951*, vol. II, p. 139.

taining the text tentatively adopted by the Commission at its third session and a commentary thereon. He had subsequently, however, tendered his resignation as a member of the Commission and his report had not been discussed at the present session.

2. It was therefore necessary for the Commission to elect a successor to Mr. Brierly and to refer to him all the material relating to the law of treaties, with a request that he present the whole subject to the Commission in such manner as he might deem advisable for the continuation and conclusion of the work on that subject at the fifth session.

3. Mr. YEPES reminded the Commission that, when the election of a special rapporteur on the law of treaties had first been discussed, he had proposed that such a vast subject should be entrusted to several members;<sup>2</sup> he now repeated his proposal. That procedure would have the additional advantage of enabling more members of the Commission to enjoy the honour of acting as special rapporteur.

4. Mr. SPIROPOULOS pointed out the disadvantages of a report written by several authors, each of whom would inevitably approach the subject from a different angle. It would be preferable to elect one special rapporteur, provided he was prepared to accept the burden which the work entailed.

5. Mr. YEPES explained that his proposal was based on his conviction that the law of treaties involved a number of quite distinct and separate subjects which could conveniently be treated by different members.

6. Mr. FRANÇOIS agreed that the law of treaties was a subject of vast scope, but the appointment of several special rapporteurs would not ensure that the Commission would have time to discuss the problem as a whole at its next session. At the third session it had recognized that the special rapporteur would have to restrict his study to certain definite aspects. He therefore proposed that Mr. Brierly's successor should confine himself at the present stage to the topics selected.

7. Mr. YEPES pointed out that, at its first session, the Commission had decided to deal with the law of treaties as a whole. Was it therefore justified in narrowing the field of study?

8. The CHAIRMAN drew the attention of the Commission to the last sentence in paragraph 75 of the report on its third session,<sup>3</sup> which read:

“The special rapporteur was also requested to do further work on the topic of the law of treaties as a whole and to submit a report thereon to the Commission.”

9. Mr. LIANG (Secretary to the Commission) said he had understood Mr. François' proposal to mean that, so far as the next session was concerned, the new special rapporteur should confine himself to the topics already

taken up by Mr. Brierly, and not that the work on the law of treaties in general should be done in a piecemeal fashion. It was incontestable that only a complete draft on the law of treaties should be submitted to the General Assembly in conformity with article 16, paragraph (j) of the Commission's Statute, but that could not be achieved at the moment. Mr. François had indicated the only practical course.

10. Mr. SPIROPOULOS agreed with Mr. François that the new special rapporteur would have first to complete Mr. Brierly's work, which could not be left unfinished. He would then be in a position to assess how the work could be continued.

11. Mr. KERNO (Assistant Secretary-General) agreed with Mr. Spiropoulos. The law of treaties was no more vast a subject than the régime of the high seas or of the territorial sea, both of which had been entrusted to Mr. François. It was not desirable to divide the work on the law of treaties among several members.

12. Mr. HSU suggested that the Commission should first elect a successor to Mr. Brierly, in order to ascertain how much he would be able to do by the next session.

13. He considered Mr. François' proposal to be too restrictive but recognized the force of the practical considerations on which it was based. Mr. François should be given an assurance that discussion of the two subjects on which he was special rapporteur would be concluded at the next session.

14. Mr. FRANÇOIS said that his principal concern was that the Commission should not attempt to overload its agenda for the fifth session. It would be unrealistic to suppose that it could consider more aspects of the law of treaties than those on which Mr. Brierly had already begun work.

15. Mr. LIANG (Secretary to the Commission) pointed out that Mr. Brierly had prepared a commentary on the articles tentatively adopted by the Commission at its third session. His state of health, however, had prevented him from carrying out the remainder of the task entrusted to him by the Commission and that would have to be completed by his successor. At the same time it would be unwise to tie the new special rapporteur's hands too much, because, until he had studied all the material, he would not be in a position to foresee how the work could develop.

16. There were no grounds for Mr. François' fear that the agenda of the fifth session would be overburdened, since the new special rapporteur would obviously be unable to submit a draft covering the whole subject by then.

17. Mr. SPIROPOULOS observed that at the fifth session, priority would have to be given to discussion of the régime of the high seas and the territorial sea.

18. Mr. FRANÇOIS stated that the disposition of agenda items for the fifth session had not been his only preoccupation. He was also anxious not to impose too heavy a burden on Mr. Brierly's successor. If the latter

<sup>2</sup> See summary record of the 32nd meeting, para. 57.

<sup>3</sup> Report of the International Law Commission covering the work of its Third Session, *op. cit.*, para. 75.

were to prepare material on parts of the law of treaties other than those dealt with by his predecessor, his work might be wasted since the Commission would undoubtedly have no opportunity of discussing it at the next session.

19. Mr. KERNO (Assistant Secretary-General) wondered whether it was wise to try to bind the hands of the special rapporteur in advance in the manner proposed by Mr. François.

20. The CHAIRMAN put to the vote Mr. François' proposal that the special rapporteur on the law of treaties should confine himself to the subjects already dealt by Mr. Briery.

*Mr. François' proposal was rejected by 5 votes to 2 with 4 abstentions.*

*Mr. Yepes' proposal was rejected by 5 votes to 2 with 3 abstentions.*

21. Mr. el-KHOURI, referring to Mr. Yepes' proposal, pointed out that in accordance with article 16 (d) of its Statute, the Commission could always appoint some of its members to work with the special rapporteur.

22. The CHAIRMAN suggested that the Commission should refer to the special rapporteur elected to succeed Mr. Briery all the material relating to the law of treaties, together with a request that he present the whole subject to the Commission in such manner as he deemed advisable for the continuation of the work on that subject at the fifth session.

23. Mr. CORDOVA said that such instructions would give sufficient latitude to the special rapporteur.

*The Chairman's suggestion was adopted.*

#### Régime of the high seas (item 4 of the agenda)

24. The CHAIRMAN invited the Commission to consider first what action should be taken with regard to the draft articles prepared by the Commission on the continental shelf, and related subjects.<sup>4</sup> He proposed the following text, which could either be included in the Commission's report to the General Assembly concerning its fourth session or reproduced as a separate resolution, as the special rapporteur preferred:

"The International Law Commission,

"*Considering* that the drafts prepared in the course of its third session on the continental shelf and other kindred matters have been given the publicity contemplated in paragraph (g) of article 16 of the Statute of the Commission, and, particularly, that such drafts have been communicated to governments for presentation of their comments in accordance with paragraph (h) of the same article,

"*Considering* that a certain number of governments have submitted their comments on the said matters, and that the comments of other governments should be deemed to be forthcoming,

"*Considering* that certain scientific institutions

and non-governmental organizations have likewise undertaken to study the drafts prepared by the Commission and that publications have already appeared and may continue to appear as the result of such a study,

"*Invites* the Secretary-General of the United Nations to request those governments which have not yet replied to the questionnaire submitted to them to present their comments within the shortest possible time; and

"*Invites* the special rapporteur to study the replies of governments, as well as other comments brought about by the publication of the above-mentioned drafts, and to present another report, dealing with these matters, so that the Commission may discuss it during its fifth session and modify the drafts insofar as may be deemed necessary by reason of such comments."

25. Mr. KERNO (Assistant Secretary-General) said that at its recent Conference in Madrid the International Bar Association, which was a non-governmental organization, had given close attention to the question of the continental shelf, and in particular to the Commission's work thereon.<sup>5</sup> After discussion, it had adopted a resolution approving the draft articles prepared by the Commission at its third session, with the sole exception of article 1, defining the term "continental shelf". The view had been expressed that that definition should be geographical, rather than based upon the exploitability of the submarine areas in question. He thought the Commission could be confident, however, that the members of the International Bar Association would do all in their power to encourage their respective governments to reply to the questionnaire submitted to them by the Commission, where they had not already done so.

26. Mr. HUDSON asked whether the text proposed by the Chairman meant that the Commission would not consider the question of the continental shelf at all at the present session.

27. The CHAIRMAN replied in the affirmative.

28. Mr. HUDSON said that, that being so, he must express his regret that it was considered impossible for the Commission to examine, at the present session, such replies as had already been received from governments.

29. Mr. FRANÇOIS said that it seemed obvious that the Commission had not time at the present session to examine in any detail the replies already received from governments. Apart from that, to do so would be premature, first because several governments with a great interest in the question had not yet replied, and secondly because the majority of scientific institutions had not yet expressed their views on the articles drafted by the Commission; the International Bar Association had done so, but he had not had an opportunity to study

<sup>5</sup> See International Bar Association, *Fourth Conference Report, Madrid 1952* (The Hague, Martinus Nijhoff, 1954) p. 295.

<sup>4</sup> *Ibid.* Annex.

the records of its discussions. For all those reasons, he supported the Chairman's proposal.

30. Mr. SPIROPOULOS said that the Commission had in fact no choice but to accept the Chairman's proposal, which was in complete conformity with the provisions of its Statute.

31. Mr. LAUTERPACHT said that he would have welcomed the Chairman's proposal even more warmly if it had contained some assurance that work on the continental shelf would be completed at the fifth session. The question was still topical, and the Commission's work on it had been generally appreciated. But it would not necessarily remain topical once it had been shown that the practical potentialities of the doctrine of the continental shelf were limited. The Commission should therefore aim at finishing its work on the continental shelf in 1953. There was no reason why it should not do so. It was unrealistic to expect that many more replies would be received from governments, and he did not think that any comments by non-governmental organizations would affect fundamentally the work the Commission had already done.

32. Mr. CORDOVA thought all members of the Commission were in substantial agreement with Mr. Lauterpacht, and suggested that the text proposed by the Chairman be amended so as to make it clear that the report presented by the special rapporteur at the next session would be a final report, and that the action taken by the Commission on it would be final.

33. Mr. KERNO (Assistant Secretary-General) suggested that, in order to meet the point made by Mr. Lauterpacht and at the same time conform with the wording of the Statute, the second part of the last paragraph of the text proposed by the Chairman be amended to read as follows:

"and to present a final report dealing with these matters, so that the Commission may, after considering and modifying it so far as may be deemed necessary, adopt it with a view to submission to the General Assembly."

*It was so agreed.*

*The text proposed by the Chairman was adopted as amended.*

34. The CHAIRMAN then invited the Commission to consider what action should be taken with regard to other questions pertaining to the régime of the high seas. He proposed the following text, which, again, could either be included in the Commission's report to the General Assembly concerning its fourth session or reproduced as a separate resolution, as the special rapporteur preferred:

"Whereas pursuant to the recommendation contained in General Assembly resolution 374 (IV) of 6 December 1949, the Commission appointed Mr. J. P. A. François, special rapporteur on the subject of the régime of the territorial sea, and discussion of his report on the said subject was accordingly given priority over the subject of the régime of the high

seas so that it could be discussed by the Commission during its fourth session,

*"The International Law Commission*

*"Decides to refer to its fifth session the report of the special rapporteur on the régime of the high seas concerning the different points dealt with in Chapter VII of the report of the Commission covering the work of its third session; and, in particular,*

*"Invites the special rapporteur to study the International Convention for the Unification of Certain Rules relative to Penal Jurisdiction in Matters of Collision on the High Seas and Other Risks of Navigation, signed at Brussels on 10 May 1952, and to complete his report by including all such observations as may be pertinent by reason of the aforesaid Convention."*

35. Mr. LAUTERPACHT pointed out that the questions belonging to the régime of the high seas and referred to in the Chairman's text had been before the Commission for even longer than the question of the continental shelf. He would be grateful to the special rapporteur if he could state whether he thought they could be finally disposed of at the next session.

36. Mr. FRANÇOIS said that in his view that would be impossible, since the Commission had not yet ascertained the views of governments on these points.

37. Mr. LAUTERPACHT said that the question he had asked raised once more the whole question of the Commission's methods of work.

38. Mr. SPIROPOULOS said that, if the Commission had been able to consider the special rapporteur's third report on the régime of the high seas at the present session, it could have submitted its conclusions to governments for comment. Unfortunately it had not been able to do so. The Commission would not come to an end, however, with the expiry of the term of office of its present members, and there was no reason why, after considering the special rapporteur's report at its next session, it should not then submit its conclusions to governments for their comments, which could be taken into account at the sixth session.

39. He felt obliged, however, to repeat what he had already said at the previous sessions, namely, that the special rapporteur had not so far evolved any general rules covering the whole subject of the régime of the high seas; he had only studied certain aspects of that régime, some of which, indeed, such as the nationality of ships, might be considered unconnected with it.

40. Mr. LIANG (Secretary to the Commission) said he was glad that Mr. Spiropoulos had again drawn attention to that question. The Commission had done a great deal of work on isolated aspects of the régime of the high seas, but had never considered it as a whole or the relationship between its various parts. That was a task which it might have to undertake at its next session. Moreover, he was sure that Mr. Lauterpacht would agree that the commentary on the régime of the high seas should be at least as exhaustive as that appended

to the draft articles on arbitral procedure. He wondered therefore whether Mr. Lauterpacht really felt it would be desirable to attempt to complete work on the régime of the high seas in 1953.

41. Mr. FRANÇOIS said that it was perfectly true that Mr. Spiropoulos had drawn attention at previous sessions to the incomplete nature of his reports. The Commission's views on that point were, however, clearly stated in paragraph 183 of its report on its second session, in the following sentence:

"The Commission was of the opinion that it could not undertake a codification of maritime law in all its aspects and that it would be necessary to select the subjects the study of which could be begun by the Commission as a first phase of its work on the topic."<sup>6</sup>

42. Mr. LAUTERPACHT said that he would merely point out that it seemed that the only fruits of the Commission's first five years' work in the field of codification would be the draft articles on arbitral procedure and, or so at least the Commission had just resolved, the draft articles on the continental shelf.

43. He shared the hope that the special rapporteur would submit to the Commission at its next session an exhaustive commentary on the régime of the high seas, comparable to the commentaries prepared by the Harvard Research. That would of course involve a great deal of work, and if the special rapporteur so desired, means should be found of providing him with research assistants, even if that entailed some additional expense for the United Nations. The Commission had already committed itself to what might prove to be considerable expense in authorizing the special rapporteur to obtain expert advice on certain aspects of the régime of the territorial sea; it had even better justification for committing itself to additional expense for the purpose he had suggested. The Commission could, in the present condition of the world, hope for no rapid progress in the field of codification through formal international conventions. Its main contribution might well prove to be in the field of scholarly and authoritative research and restatement of international law.

44. Mr. LIANG (Secretary to the Commission) wished to make it clear that it would be extremely difficult to obtain authority to engage research assistants who were not regular members of the Secretariat, and even more difficult if such assistants were not to work at Headquarters, but to be placed at the disposal of the special rapporteur. He could give an assurance that the Secretariat would do its best to prepare an adequate commentary on the régime of the high seas within a reasonable time, under the guidance of the special rapporteur. The articles on that subject had not yet been adopted, however, unlike the articles on arbitral

procedure. It might therefore be considered premature to begin work on the commentary forthwith.

45. Mr. LAUTERPACHT said that he did not regret the time which had been devoted to the present discussion, since it bore on a question affecting the whole work of the Commission. With regard to the commentary, he wished to state frankly that, if it was to serve the purpose it was designed to serve, it should be substantially fuller than the brief comments accompanying the draft articles on the territorial sea, which had not been fully adequate to enable the Commission to form an opinion on the issue involved unless its members were prepared to undertake their own study and research.

46. The CHAIRMAN noted that no objections had been made to the text he had proposed. The special rapporteur had assured him that, so far as he was concerned, his report to the Commission in 1953 would be a final report. The Commission could not, however, now decide what further action it would have to take on the basis of that report.

*The text proposed by the Chairman was adopted.*

...

#### Law of treaties (item 3 of the agenda)

*(resumed from above)*

53.\* The CHAIRMAN called for nominations for a successor to Mr. Brierly as special rapporteur on the law of treaties.

54. Mr. SCELLE proposed Mr. Lauterpacht, who would be particularly well qualified to succeed Mr. Brierly in that post.

55. Mr. YEPES seconded, and Mr. el-KHOURI supported Mr. Scelle's proposal.

56. Mr. LAUTERPACHT said that he greatly appreciated Mr. Scelle's action in nominating him and that of those who had seconded and supported his nomination. Before a vote was taken, however, he felt obliged to point out, firstly, that he was under the disadvantage of not having attended the Commission's previous discussions on the subject. Secondly, although he would naturally take into consideration the material prepared by Mr. Brierly and treat with the utmost respect the articles which had already been tentatively adopted by the Commission, he could not be bound by them in advance. Thirdly, it would be his intention to approach the task in the manner he had recommended to the special rapporteur on the régime of the high seas, a manner which had not appeared to find favour with the Commission as a whole. Lastly, he would not wish to submit his report piecemeal, and could not therefore undertake to submit any part of it at the next session.

<sup>6</sup> Report of the International Law Commission covering its second session, *Official Records of the General Assembly, Fifth Session, Supplement No. 12 (A/1316)*, para. 183. Also in *Yearbook of the International Law Commission, 1950*, vol. II, p. 383.

\* Paras. 47—52 concerned the resignation of Mr. Hudson as special rapporteur on the question of nationality including statelessness.

57. Mr. SPIROPOULOS thought Mr. Lauterpacht had perhaps overlooked the fact that the term of office of all the present members of the Commission would expire at the close of the next session.

58. Mr. LIANG (Secretary to the Commission) suggested that what Mr. Lauterpacht had in mind, with regard to his last point, was his final and complete report. If the Commission decided to consider the subject of the law of treaties at its next session, it might be considered unnecessary for Mr. Lauterpacht to submit a report in the technical sense of the word; he could merely place before the Commission the results of his consideration, so far, of the material amassed.

59. Mr. HUDSON said he was beginning to be infected with the ambitious optimism which Mr. Lauterpacht had expressed with regard to other subjects on the Commission's agenda. He ventured to hope, in fact, that it would be possible for the special rapporteur on the law of treaties to submit to the Commission at its next session a final and exhaustive report on that subject, to which, he recalled, the Commission had decided to give priority. Even if that proved impossible, however, he thought it important that the present members of the Commission should be able to hand down to their successors at least some concrete achievements in that field.

60. On the other hand he agreed that the new special rapporteur on the law of treaties could not be bound by the tentative conclusions which had already been reached.

61. Mr. CORDOVA thought it was clear that the Commission must act on the assumption that none of its present members would be re-appointed in 1953 and that the special rapporteur on the law of treaties must therefore submit some kind of report to the fifth session. With Mr. Lauterpacht's other observations he thought all members of the Commission would agree.

62. Mr. SPIROPOULOS pointed out that the same question would arise at the next session in respect of all subjects on which final recommendations had not been made, since it would not then be known whether or not the special rapporteurs on those subjects would be re-appointed by the General Assembly. If, in those circumstances, the Commission refrained from instructing the special rapporteurs to continue their work just as though their re-appointment were assured, a year would be lost. If they were not re-appointed, *ad hoc* arrangements could be made. He agreed that it was most undesirable for the Commission to report piecemeal on a subject, but that was no reason why it should not itself consider the various aspects separately. Indeed, he did not see how it could proceed otherwise.

63. Mr. YEPES felt that the Commission owed it to itself to devote further consideration at its next session to the subject of the law of treaties, to which it had always given priority and had already devoted the greater part of two sessions.

64. Mr. CORDOVA agreed with Mr. Spiropoulos that

the fact that the Commission should not report piecemeal to the General Assembly on a subject did not prevent it from considering various aspects of a subject a few at a time. The Commission's report to the General Assembly at its next session would therefore be merely a progress report so far as the law of treaties was concerned, and the Commission should make it clear that it was intended as such, and did not require any action by the General Assembly.

65. Mr. LAUTERPACHT said that he would have no great difficulty in preparing a report on certain aspects of the law of treaties for submission to the Commission at its next session. However, that was beside the point. It was contrary to all his methods of work to state his views on a subject before he had considered it in all its aspects. Moreover, he did not understand how it was thought that the Commission would have time to consider the law of treaties at its next session, when it had already been decided that it should consider the régime of the high seas, the régime of territorial waters, the question of the continental shelf and the question of statelessness.

66. He appreciated the technical difficulty in appointing a special rapporteur who would not report during his term of office as a member of the Commission but, as Mr. Spiropoulos had pointed out, that difficulty was not confined to the present case. If the Commission attached importance to considering one or a few aspects of the law of treaties at its next session, he would support any proposal that another member of the Commission be appointed special rapporteur, or, alternatively, request more time to consider further the various observations that had been made.

67. Mr. el-KHOURI observed that, since the question under discussion was not confined to any particular case, the Commission ought to consider including in its Statute some provision similar to article 13, paragraph 3, of the Statute of the International Court of Justice, which read:

“The members of the Court shall continue to discharge their duties until their places have been filled. Though replaced they shall finish any cases which they may have begun.”

68. Mr. HSU agreed with the view that the present members of the Commission should be able to hand down to their successors at any rate a provisional text on the law of treaties. He asked, therefore, whether Mr. Lauterpacht believed that it would be impossible for him to submit even a preliminary report to the Commission at its next session.

69. Mr. LAUTERPACHT pointed out that to prepare a preliminary report covering the whole subject entailed covering the whole subject. He regretted that his other commitments would make it quite impossible for him to do that by the opening of the next session. If the Commission could not agree to appoint another special rapporteur, he would have to consider whether he could, after all, present a report on one aspect of the

subject, although he had already explained that he was loath to do so.

70. Mr. LIANG (Secretary to the Commission) recalled that he had frequently expressed the view that it was undesirable for the Commission to submit texts to the General Assembly piecemeal. It had always been the practice of the Commission, however, to consider the various aspects of a subject separately and one, or a few, at a time, and he thought it was desirable that it should abide by that practice. Consequently, he suggested that the special rapporteur be asked to submit to the Commission at its next session a reasoned plan of work for dealing with the subject as a whole. The Commission could discuss that plan and, if sufficient time remained after other subjects which were further advanced had been dealt with, it might also consider one aspect of the law of treaties, such as the question of their interpretation, on the basis of a report submitted by the special rapporteur in whatever form he thought fit.

71. Mr. KERNO (Assistant Secretary-General) recalled that the Commission had not only given priority to the subject of the law of treaties; it had given it top priority. Ever since the Commission's first session, he had hoped that work on the whole of that subject would be completed by the end of the Commission's first five years of existence; it would certainly be very disappointing if that period ended with nothing to show for their efforts.

72. He quite understood that the special rapporteur could not simply step into the shoes of Mr. Brierly. What had been done so far was not, however, just the personal work of Mr. Brierly. The Commission had discussed the whole subject twice at considerable length. There was, therefore, no question of making a new start. He was confident that it would be possible for Mr. Brierly's successor as special rapporteur to submit to the Commission at its next session a report which, in some respects, would be a final report, but in others not.

73. Mr. HSU moved the adjournment of the discussion in order to permit Mr. Lauterpacht to consider further the views which had been expressed. He did so the more hopefully because he felt that Mr. Lauterpacht's present hesitations sprang largely from the fact that he thought a detailed and exhaustive commentary, along the lines of those prepared by the Harvard Research, essential. But the truth was that, however much the Commission might wish otherwise, it could not produce such a commentary. Fortunately, to command respect it was not obliged to depend so much on documentation as on the soundness and usefulness of its recommendations.

74. Mr. HUDSON supported the motion for adjournment.

*The motion for adjournment of the discussion was adopted.*

The meeting rose at 6.25 p.m.

## 179th MEETING

Monday, 4 August 1952, at 2.45 p.m.

### CONTENTS

	<i>Page</i>
Law of treaties (item 3 of the agenda) ( <i>continued</i> ) . . .	226
Development of a twenty-year programme for achieving peace through the United Nations . . . . .	227
Representation at the General Assembly . . . . .	227
Arbitral procedure (item 2 of the agenda) (A/CN.4/L.35) ( <i>resumed from the 177th meeting</i> )	
Consideration of the draft comments submitted by the special rapporteur ( <i>resumed</i> ) . . . . .	228
Comment on article 20 [28] * . . . . .	228
Comment on articles 21 and 22 [16, 17 and 18] . . . . .	229
Comment on article 23 [31] . . . . .	230
Comment on article 24 [32] . . . . .	230
Comment on article 25 [34] . . . . .	231
Comment on article 26 . . . . .	231
Comment on article 27 [35] . . . . .	231
Comment on article 28 [37] . . . . .	231

\* The number within brackets indicates the article number in the Special Rapporteur's Report (A/CN.4/46).

*Chairman* : Mr. Ricardo J. ALFARO

*Rapporteur* : Mr. Jean SPIROPOULOS.

*Present* :

*Members* : Mr. Roberto CORDOVA, Mr. J. P. A. FRANÇOIS, Mr. Shushi HSU, Mr. Manley O. HUDSON, Faris Bey el-KHOURI, Mr. F. I. KOZHEVNIKOV, Mr. H. LAUTERPACHT, Mr. Georges SCELLE, Mr. J. M. YEPES, Mr. J. ZOUREK.

*Secretariat* : Mr. Ivan S. 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).

### Law of treaties (item 3 of the agenda) (*continued*)

1. The CHAIRMAN recalled that, at the previous meeting, Mr. Lauterpacht had been proposed as Mr. Brierly's successor as special rapporteur on the law of treaties but that, following an exchange of views, further consideration of the question had been adjourned in order to give him time for reflection.

2. Mr. LAUTERPACHT said that he had given further thought to the question in the light of the discussion at the previous meeting and had come to the conclusion that there was, after all, no imperative objection to the report on the law of treaties being presented in instalments. If he were elected, therefore, he would submit to the Commission at its next session a report covering one aspect of the subject together with an outline of the whole work.

3. Mr. HUDSON said that he welcomed Mr. Lauterpacht's statement, but wondered whether the