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**Summary record of the 237th meeting**

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## 237th MEETING

Tuesday, 11 August 1953, at 9.30 a.m.

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*Chairman*: Mr. J. P. A. FRANÇOIS.

*Rapporteur*: Mr. H. LAUTERPACHT.

*Present*:

*Members*: Mr. Ricardo J. ALFARO, Mr. Gilberto AMADO, Mr. Roberto CORDOVA, Mr. Shuhsi HSU, Faris Bey el-KHOURI, Mr. F. I. KOZHEVNIKOV, Mr. A. E. F. SANDSTRÖM, Mr. J. M. YEPES, Mr. Jaroslav ZOUREK.

*Secretariat*: Mr. Yuen-li LIANG, Director of the Division for the Development and Codification of International Law, and Secretary to the Commission.

**Consideration of the draft report of the Commission covering the work of its fifth session (*continued*)**

CHAPTER III: RÉGIME OF THE HIGH SEAS  
(A/CN.4/L.45/Add.1) \* (*continued*)

1. The CHAIRMAN invited the Commission to continue its consideration of the chapter on the régime of the high seas in the draft report covering the work of its fifth session (A/CN.4/L.45/Add.1). Since not all the amendments to paragraph 48 had been distributed, he suggested that further consideration of that paragraph be held over and that the Commission proceed to consider paragraph 49.

*It was so agreed.*

*Paragraph 49 (101)\*\**

2. Mr. SANDSTRÖM said he had proposed the deletion of the first and the last three sentences of paragraph 48 and that if his amendment were adopted, it would be necessary to insert the second part of the last sentence, namely, "The Commission is of the opinion that the articles adopted fall generally within the category of Development of International Law", at the beginning of paragraph 49. He did not object to the Commission's voting on paragraph 49 at once, provided it was understood that he would have the right to pro-

\* Mimeographed document only. Incorporated with drafting changes in the "Report" of the Commission as Chapter III.

\*\* The number within parentheses indicates the paragraph number in the "Report" of the Commission.

pose that insertion in the event of his amendment to paragraph 48 being adopted.

*On that understanding, paragraph 49 was approved by 6 votes to 2.*

*Paragraph 50 (102)*

3. The CHAIRMAN said that, as paragraphs 50, 51 and 52 dealt with a matter which the Commission had not yet discussed, he felt that it should waive the rules which it had adopted at the beginning of the preceding meeting,<sup>1</sup> so as to permit a free discussion. He would only point out, however, that what the General Rapporteur proposed was in exact conformity with what the Commission had decided concerning the draft articles on the continental shelf itself.

4. Mr. SANDSTRÖM and Mr. YEPES supported the General Rapporteur's proposals.

5. Mr. ZOUREK felt that it would be preferable to delete any mention of the United Nations Food and Agriculture Organization, since many States were not members of it, and the aim which the Commission had in mind in the draft articles on fisheries could not therefore be achieved by entrusting that organization with the preparation of a draft convention. He therefore proposed that paragraph 50 should read simply:

"With respect to the action which may appropriately be taken by the General Assembly in the matter of the present report incorporating the final draft of articles on fisheries, the Commission recommends that the General Assembly adopt the report and the articles by resolution."

*Mr. Zourek's proposal was rejected by 6 votes to 2, with 2 abstentions.*

6. Mr. LIANG (Secretary to the Commission) pointed out that the General Rapporteur proposed that the Commission recommend:

"(a) That the General Assembly adopt the report and the articles [on fisheries] by resolution, and (b) that it entrusts the United Nations Food and Agriculture Organization with the preparation of a draft convention based on the principles incorporated in the articles adopted by the Commission".

7. In view of the fact that article 4 of the Agreement between the United Nations and the Food and Agriculture Organization made it clear that the former could only submit *recommendations* to the latter, and that such recommendations had to be approved by the appropriate organs of the Food and Agriculture Organization, the wording used in paragraph 50 seemed inappropriate. The words "entrusts the United Nations Food and Agriculture Organization with the preparation of a draft convention" might be replaced by the words "recommends the United Nations Food and Agriculture Organization to prepare a draft convention". Alternatively, the Commission might think it preferable that the convention should be prepared by the General

<sup>1</sup> See *supra*, 236th meeting, para. 1.

Assembly itself, in consultation with the Food and Agriculture Organization, since, as Mr. Zourek had already pointed out, not all States Members of the United Nations were Members of the Food and Agriculture Organization.

8. Mr. LAUTERPACHT suggested that the operative passage should read: "(b) that it enters into consultation with the United Nations Food and Agriculture Organization, with a view to the preparation of a draft convention". That would leave open the question of how and by whom the draft convention should be prepared.

*Mr. Lauterpacht's suggestion was adopted.*

9. Mr. CORDOVA suggested that the words "based on the principles incorporated in the articles adopted by the Commission" meant very little, and should be replaced by the words "incorporating the principles adopted by the Commission".

10. Mr. LAUTERPACHT accepted Mr. Córdova's suggestion.

*Paragraph 50, as amended, was approved by 6 votes to 2, with 2 abstentions.*

*Paragraph 51 (103)*

11. Mr. ZOUREK felt that the terms used in paragraph 51 to lay down the course of action which the General Assembly should follow were inappropriate, particularly in the sentence reading: "In particular, endorsement should be given to the view that..."

12. Mr. LAUTERPACHT said that he was never impressed by the argument that the Commission should refrain from telling the General Assembly what course of action it should, in its opinion, follow. He thought that the text proposed for paragraph 51 was perfectly acceptable.

13. Mr. YEPES agreed. The Commission was not presuming to give the General Assembly orders; it was merely making a recommendation as to what, in its opinion, it should do.

*Paragraph 51 was approved by 7 votes to 2, with 1 abstention.*

*Paragraph 52 (104)*

14. Mr. CORDOVA pointed out that the words "... the General Assembly should instruct the Food and Agriculture Organization to study the matter and prepare drafts of a convention, or conventions" should be brought into line with the text approved for paragraph 50.

15. Mr. LAUTERPACHT agreed.

*On the understanding that that would be done, paragraph 52 was approved by 7 votes to 2.*

*Paragraph 53 (105)*

16. Mr. YEPES said that he would be unable to support any of the paragraphs (53-61) relating to the

contiguous zone since, as he had stated during the relevant discussions, he was opposed to the whole fictitious concept of the contiguous zone, and considered that the only honest solution to the difficulties which had given rise to it was to extend the width of the territorial sea.

17. The CHAIRMAN stated that, as paragraph 53 merely reproduced the text of the article on the contiguous zone, there was no need to vote on it.

18. Mr. ZOUREK said that he had submitted an amendment for the addition to the section on the contiguous zone of a paragraph giving the views of the minority, but his amendment had not yet been distributed.

19. The CHAIRMAN said that the Commission would take up the amendment as soon as it was distributed.

*Paragraph 54 (106)*

*Paragraph 54 was approved by 6 votes to 1, with 2 abstentions.*

*Paragraph 55 (107)*

*Paragraph 55 was approved by 5 votes to 2, with 1 abstention.*

*Paragraph 56 (108)*

*Paragraph 56 was approved by 6 votes to 2, with 1 abstention.*

*Paragraph 57 (109)*

*Paragraph 57 was approved by 7 votes to none, with 3 abstentions.*

*Paragraph 58 (111)*

*Paragraph 58 was approved by 6 votes to none, with 4 abstentions.*

*Paragraph 59 (112)*

*Paragraph 59 was approved by 6 votes to 2, with 1 abstention.*

*Paragraph 60 (113)*

*Paragraph 60 was approved by 7 votes to none, with 3 abstentions.*

*Paragraph 61 (114)<sup>2</sup>*

20. Mr. SANDSTRÖM appreciated the difficulties with which the General Rapporteur had been beset in his

<sup>2</sup> Paragraph 61 read as follows:

"61. With regard to the action to be recommended by the Commission to the General Assembly, in accordance with Articles 16 and 23 of its Statute, on the subject of this Article the Commission believes that no action is required

attempt to draft a recommendation on the contiguous zone in accordance with the provisions of the Commission's Statute. The result was a slight contradiction between the first sentence and the third and fourth sentences of paragraph 61.

That contradiction could be removed by deleting the first sentence.

21. Mr. LAUTERPACHT said that he would have no objection to the deletion of the first sentence.

22. At the suggestion of Mr. AMADO, he also agreed to the deletion of the word "inherently" from the sentence reading:

"It is useful that some such acknowledgment of the legality of practices which are not inherently unreasonable and which have been followed".

23. Mr. ZOUREK pointed out that the recommendation contained in paragraph 61 had not been discussed by the Commission. In the form in which it was drafted, paragraph 61 was unacceptable for the reason that, as was recognized by many members of the Commission, the problem of contiguous zones was closely connected with the problem of the territorial sea, and it was therefore inappropriate to recommend the General Assembly to approve an article which would prejudice the Commission's consideration of one important aspect of that latter problem.

24. Mr. KOZHEVNIKOV shared Mr. Zourek's views. It would be premature to ask the General Assembly to approve the article on the contiguous zone. If the Commission, nevertheless, wished to make such a request, it was at least essential that the latter part of the paragraph should be deleted, since, although the wording used was far from clear, it gave the false impression that the Commission had to all intents and purposes already made up its mind concerning the limits of the territorial sea.

25. Mr. LAUTERPACHT pointed out that the whole section on the contiguous zone stressed the provisional nature of the Commission's recommendations. He would

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by the General Assembly other than taking note of or giving approval to this part of the Report of the Commission. Although the Article as here proposed is substantially in the nature of a codification of the existing practice, its subject matter forms part of the wider topics of both the territorial sea and the régime of the high seas. For this reason it may be desirable, for the time being, not to give it any impress of finality. On the other hand, approval on the part of the General Assembly, in any form that may be deemed expedient, would be of distinct usefulness. It would finally remove from what has been a very widely accepted practice any reproach of arbitrariness or of mere unilateral action. It is useful that some such acknowledgment of the legality of practices which are not inherently unreasonable and which have been followed in good faith should take place in the course of the accomplishment of the task of codifying international law. Above all, the authoritative declaration of the existing legal position in the matter of contiguous zones may draw attention to the possibility that the principle implied in the practice of contiguous zones may provide one of the means of the solution of the question of the limits of the territorial sea."

regret the deletion of the latter part of paragraph 61, which dealt with a question of substance. He had endeavoured to word that part in such a way as to make it clear that the article on the contiguous zone did not prejudice consideration of the question of the limits of the territorial sea. In any case, the paragraph could not be deleted in its entirety, since that would leave the foregoing seven paragraphs without a conclusion.

26. Mr. CORDOVA said that in his view the whole of paragraph 61 was unnecessary. Paragraph 57 clearly stated that:

"In adopting the limit of twelve miles for the exercise of the protective rights of States within the contiguous zone, the Commission does not intend to prejudice, in any direction, the results of its examination of the question of the territorial sea and of its limits".

The last sentence of paragraph 61 appeared, however, to have precisely that effect; it read:

"Above all, the authoritative declaration of the existing legal position in the matter of contiguous zones may draw attention to the possibility that the principle implied in the practice of contiguous zones may provide one of the means of the solution of the question of the limits of the territorial sea."

That sentence, in fact, expressed the opposite of what the Commission had agreed, since it had agreed that the principle applied in the practice of contiguous zones could not possibly be applicable to the question of the territorial sea. At the very most, only the first sentence of paragraph 61 should be retained.

27. Mr. YEPES agreed that it was unnecessary to make any recommendation with regard to the article on contiguous zones, since it was agreed that that article represented no more than a provisional solution, pending consideration of the question of the territorial sea.

28. After further discussion, Mr. LAUTERPACHT said that he still felt it essential to retain the first sentence of paragraph 61, but that if other members of the Commission thought that the remainder implied that the article on the contiguous zone prejudged, however remotely, the question of the limits of the territorial sea, he agreed that it should be deleted.

29. Mr. ZOUREK suggested that paragraph 61 be replaced by the following text:

"As the Commission has not yet adopted draft rules on the territorial sea, it recommends the General Assembly to take no action with regard to the article on the contiguous zone, the report having already been published (article 23, paragraph 1(a) of the Commission's Statute)".

30. Mr. LAUTERPACHT accepted Mr. Zourek's suggestion.

*Mr. Zourek's suggestion was adopted by 7 votes to none, with 2 abstentions.*

31. Mr. KOZHEVNIKOV, explaining his vote, said that, although he could support Mr. Zourek's proposal in principle, it contained some hint of approval of an article which he could not approve, and he had therefore been obliged to abstain from voting on it.

32. The CHAIRMAN noted that the Commission had reached the end of the 61 paragraphs contained in the chapter on the régime of the high seas in its draft report covering the work of its fifth session. He suggested that consideration of those paragraphs which had been reserved, and of the various proposals for additional paragraphs, should be deferred until the next meeting.

*It was so agreed.*

#### Arrangements for the next session

33. The CHAIRMAN said that, although it was not the Commission's task to draw up the agenda for the next session, it was its duty to ensure that the necessary reports would be available, in order that the session might be as fruitful as possible. At its next session the Commission would have to consider Mr. Lauterpacht's report on the law of treaties (A/CN.4/63), his own second report on the régime of the territorial sea (A/CN.4/61) and his third report on the régime of the high seas (A/CN.4/51); that report did not exhaust all aspects of the question, but he recalled that the Commission had previously agreed to leave certain aspects on one side. It did not seem, therefore, that any further work needed to be done before the next session in connexion with those three reports. In addition, there appeared to be agreement that Mr. Spiropoulos should submit a further report on the draft Code of Offences against the Peace and Security of Mankind to the next session, when the Commission would also have to consider the question of diplomatic intercourse and immunities, which the General Assembly had requested it to codify as soon as possible. In that connexion, the Commission had to decide whether it was necessary to appoint a Special Rapporteur on diplomatic intercourse and immunities forthwith; in his view, the appointment of a Special Rapporteur could be left till the next session, since it was clear that the Commission would have sufficient to keep it occupied without any reports over and above the four he had mentioned. For the same reason, and also because the funds available for the remuneration of Special Rapporteurs were limited, he thought there was no point in asking Mr. Córdova to submit his report on existing statelessness to the next session, or in asking Mr. Lauterpacht to submit to it the next instalment of his report on the law of treaties.

34. In connexion with the question of the remuneration of Special Rapporteurs, he recalled that the figure had so far been the same in every case, regardless of the amount of work involved. Special Rapporteurs received their remuneration in two instalments, half being charged against the budget of one year for the work done in that year and half against the budget of the next year for the work done in that year. Since the further report which Mr. Spiropoulos was to submit on the draft Code of Offences against the Peace and Security of Mankind

would entail very little work for the reason that it would be limited to analyzing the fourteen replies received from governments he suggested that it might perhaps be possible to invite Mr. Spiropoulos to submit that report by the end of the current year, in which case he would of course receive only half the normal remuneration.

35. Mr. YEPES said that while he agreed with all the Chairman's other suggestions he would take no part in the discussion on the remuneration of Special Rapporteurs, since he had never realized before that they received any remuneration at all.

36. Mr. ALFARO suggested that in order to facilitate the discussion, the Chairman's suggestions should be considered one by one.

*It was so agreed.*

#### DIPLOMATIC INTERCOURSE AND IMMUNITIES

37. The CHAIRMAN drew attention to the note by the Secretariat (A/CN.4/73), which reproduced resolution 685 (VII), by which the General Assembly had requested the International Law Commission "as soon as it considers it possible, to undertake the codification of the topic 'Diplomatic Intercourse and Immunities' and to treat it as a priority topic". As was pointed out in the Secretariat's note, it was left to the Commission "to decide when it considers it possible to undertake the codification of the topic in question". The subject was a broad one, and in addition to the considerations which he had already advanced, it seemed inappropriate for the present members of the Commission, in the last year of their term of office, to elect one of their number as Special Rapporteur, since they could not know whether he would be re-elected or not. He therefore proposed that the Commission should not appoint a Special Rapporteur on the subject of diplomatic intercourse and immunities at the present session.

38. Mr. KOZHEVNIKOV said that, although the question of diplomatic intercourse and immunities was extremely complex, he had no objection in principle to the Commission's studying it. Its study could not, however, be regarded as urgent, and as the Chairman had pointed out, the General Assembly left in to the Commission "to decide when it considers it possible to undertake the codification of the topic". The agenda for the next session would be very full, and he therefore supported the Chairman's proposal that the Commission should not appoint a Special Rapporteur on diplomatic intercourse and immunities at the present session.

*The Chairman's proposal was unanimously adopted.*

#### LAW OF TREATIES

39. The CHAIRMAN asked members for their views on whether Mr. Lauterpacht, the Special Rapporteur for the subject, should be asked to continue his report on the law of treaties.

40. Mr. CORDOVA said that the Special Rapporteur had so far completed only part of the whole projected

report on the law of treaties (A/CN.4/63). He should be given an opportunity of finishing the work, so that even if he were not re-elected to the Commission, a relatively complete study would be available.

41. Mr. LAUTERPACHT said that there was no question of his being able to finish the whole projected report during the next year. Four topics remained to be covered, namely: operation and enforcement of treaties; interpretation of treaties; termination of treaties; and rules and principles applicable to particular types of treaties.

42. Mr. ALFARO agreed with Mr. Córdova that the Special Rapporteur should be asked to continue his work and to complete as much as he could, for the benefit of the re-constituted Commission.

43. Mr. SANDSTRÖM considered that the Special Rapporteur should not only be asked to continue his work, but also be given full freedom to decide how much of it he could undertake in the next year. He (Mr. Sandström) suggested that the Commission might establish a time-table for the consideration of the law of treaties, dependent on the time estimated to be available for consideration of the subject during the sixth session.

44. The CHAIRMAN said that even the section that had already been prepared would probably take six weeks to discuss.

45. Mr. YEPES said that the Special Rapporteur should be asked to continue his valuable work, and in addition suggested that members might care to let the Special Rapporteur have their opinions in writing on the section of the report already completed. That would surely enhance the value of the work.

46. Mr. KOZHEVNIKOV said that in his view the law of treaties was an important subject in contemporary international law, partly because, as treaties rested on the will of the parties, they were the most important source of international law, and partly because treaties determined the relationships between States. The Commission should discuss the subject at its next session.

47. He hoped, however, that the Special Rapporteur would bear in mind the opinions expressed by certain members of the Commission at the present session to the effect that the subject of international law was the State rather than the individual, and that the State had a sovereign right to enter reservations to international instruments. He hoped that subsequent sections of the report on the law of treaties might take account of a very wide range of practice so as to make it acceptable to as many members as possible.

48. The CHAIRMAN said that the Commission appeared to be unanimous in agreeing that the Special Rapporteur should present to the sixth session of the Commission a first instalment of the continuation of his report on the law of treaties.

*It was so agreed.*

49. Mr. LAUTERPACHT said that he willingly accepted the task that the Commission had laid upon him. He hoped that the Commission to be elected at the next regular session of the General Assembly might be able to consider a comprehensive report on the law of treaties within its term of office.

#### TERRITORIAL WATERS

50. The CHAIRMAN said that there seemed to him, as Special Rapporteur for the subject, to be no need for the Commission to undertake any further work on the subject of territorial waters.

*It was so agreed.*

#### RÉGIME OF THE HIGH SEAS

51. The CHAIRMAN said that, in the Commission's report covering the work of its second session,<sup>3</sup> it was stated that it did not wish to concern itself immediately with all questions concerning the régime of the high seas, but only with the more important ones. Nevertheless, if the Commission thought that a complete codification of the régime of the high seas was desirable, he, as Special Rapporteur, should be asked to continue his report on the matter. In his personal capacity, however, he thought there was no need for the Commission to undertake any further codification of the régime of the high seas.

52. Mr. LAUTERPACHT said that his ambition was to see the Commission complete its treatment of three major subjects in international law during the next three years. Those subjects were: the régime of the high seas; nationality, including statelessness; and the law of treaties. If that were achieved, it would be possible to say that, in its first decade, the Commission had treated perhaps one half of the whole body of international law.

53. In consequence, he thought that the Special Rapporteur should be asked to continue his study of the régime of the high seas. The excellent report so far submitted had been concerned with wide but disjointed aspects of the matter. Their completion, co-ordination and systematization was essential.

54. Mr. LIANG (Secretary to the Commission) believed that Mr. Spiropoulos and himself, as representative of the Secretary-General, had for two years been urging the necessity for consolidating the régime of the high seas. At its second session, the Commission had decided to give priority to certain matters, for example, the continental shelf and related subjects, but there had been no decision that other subjects—the right of pursuit, the nationality of ships, collision and so forth—should not be treated in due course. In his view, therefore, the Commission's work on the régime of the high seas should be continued, and other aspects of the subject examined during the next year or two. There was no need to await the completion of the whole

<sup>3</sup> Official Records of the General Assembly, Fifth Session, Supplement No. 12 (A/1316) Part VI, Chapter III. Also in Yearbook of the International Law Commission, 1950, vol. II.

study before submitting parts of it to the General Assembly; but the finished work would in the end, he hoped, be a most adequate presentation of the subject.

55. Mr. SANDSTRÖM agreed with the Secretary that the Commission had not previously taken any decision to limit its work on the régime of the high seas; it had merely given priority to certain aspects of the subject. He thought the work should be continued.

56. The CHAIRMAN, speaking as a member of the Commission, drew attention to paragraph 184 of the Commission's report covering its second session (A/1316),<sup>4</sup> where it was stated that:

"The Commission thought that it could, for the time being, leave aside... subjects which were being studied by other United Nations organs... subjects which, because of their technical nature, were not suitable for study by it... [and] subjects, the limited importance of which did not appear to justify their consideration by the Commission in the present phase of its work".

57. In his view, those considerations still applied. A complete codification of the régime of the high seas would be extremely difficult, on account of the technical nature of the subject.

58. Mr. LAUTERPACHT said that the Commission should concern itself with the systematization of the régime of the high seas. Other United Nations organs were not concerned in the same way. Systematization would not necessarily involve the Commission in a study of questions so technical that they fell outside its professional competence.

59. He therefore formally proposed that the Commission should request the Special Rapporteur to continue his work on the régime of the high seas with a view to the eventual presentation of a systematic treatment of the whole subject.

*Mr. Lauterpacht's proposal was approved by 9 votes to 1.*

60. The CHAIRMAN, speaking as Special Rapporteur for the régime of the high seas, said that he had opposed Mr. Lauterpacht's proposal because of the difficulty of the task. However, he was, naturally, at the Commission's disposal.

#### NATIONALITY, INCLUDING STATELESSNESS

61. Mr. LAUTERPACHT observed that the Commission's study of nationality had so far been limited to the problem of statelessness. There were, however, other matters comprised in the general subject which ought to be studied in detail, even though they had been touched on in their relation to statelessness, for example: dual nationality, naturalization, marriage, and the conferment of nationality.

62. In his view, nationality, including statelessness, was one of the topics on which the Commission should con-

centrate during its first seven or eight years of life. The Special Rapporteur should be asked to take up forthwith the entire subject, to decide on the topics which should next be studied, and to present the results of his study to the next two sessions of the Commission.

63. Mr. CORDOVA said that it was unlikely that his second report on the elimination or reduction of statelessness (A/CN.4/75) would be discussed at the present session; there was, indeed, still work for him to do on that report which he had been obliged to prepare in some haste. He proposed accordingly to revise and extend it before the sixth session, and hand it over to the Secretariat if he were not re-elected.

64. The Commission as a whole should decide the course which it wished to follow in continuance of its general study of nationality; he personally would be unable to produce any important new work before the end of the year.

65. Mr. LIANG (Secretary to the Commission) said that the subject of nationality, including statelessness, should be further studied, so as to enable a complete report on the entire subject to be presented to the General Assembly in due course.

66. It was not necessary to renew the Special Rapporteur's terms of reference. Mr. Córdova remained Special Rapporteur on nationality and statelessness unless and until a new appointment was made.

67. Mr. ALFARO agreed that the Special Rapporteur would continue in office until he ceased to be a member of the Commission or until a successor was appointed. He supported Mr. Lauterpacht's suggestion that the study on nationality including statelessness be continued.

*Mr. Lauterpacht's suggestion that the Special Rapporteur (Mr. Córdova) should continue to study the whole subject of nationality, including statelessness, was approved by 6 votes to none, with 2 abstentions.*

68. Mr. KOZHEVNIKOV explained that he had abstained from the vote because the scope of the proposed study was not clear. His abstention had no personal implications whatsoever.

69. Mr. ZOUREK emphasized that his abstention, too, had no personal implications; in his view, Mr. Córdova had every qualification for presenting a report on nationality, including statelessness.

70. Nevertheless, he considered that in view of the draft conventions already prepared on the elimination and reduction of future statelessness, there remained very little for the Commission to do on that aspect of the subject. The decision whether or not fresh work should be undertaken ought to be left to the new members of the Commission.

#### DRAFT CODE OF OFFENCES AGAINST THE PEACE AND SECURITY OF MANKIND

71. The CHAIRMAN asked members whether in their view Mr. Spiropoulos should be asked to continue his

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

work on the draft Code of Offences against the Peace and Security of Mankind.

72. Mr. AMADO said that in his view he should.

73. Mr. YEPES agreed.

*It was unanimously agreed that the Special Rapporteur (Mr. Spiropoulos) should be requested to continue his work on the draft Code of Offences against the Peace and Security of Mankind.*

74. Mr. LIANG (Secretary to the Commission) said that, in considering whether to invite members to continue to act as Special Rapporteur at a time when it was not known whether or not any present member of the Commission would be re-elected, the Commission should ignore budgetary considerations.

75. It was normal practice in the United Nations for payment of remunerations to be authorized on the receipt of finished work. The Secretariat of the Commission had, however, followed a slightly different practice, which was to recommend payment to Special Rapporteurs at the end of each calendar year on the understanding that the results of their work would be presented to the Commission at its following session. That year, evidently, the normal practice would have to be observed; members who were not re-elected should present their work at the end of the year, when their appointments as Special Rapporteurs would lapse, so that payment could be made.

76. The CHAIRMAN wondered whether it was equitable that Special Rapporteurs engaged on limited tasks that took little time should receive the same remuneration as their colleagues engaged on more onerous tasks that called for a great deal of time. He himself could see no solution to the problem, and thought that unless the Commission could find one, it should continue to pay all Special Rapporteurs the same honorarium.

77. Mr. LAUTERPACHT agreed, adding that only small sums were involved. Equal payment for unequal work was, however, a principle that might raise some questions outside the Commission.

78. Mr. ALFARO said that the Commission had never previously been concerned with honoraria, which were fixed by the Advisory Committee on Administrative and Budgetary Questions with the Secretariat. The Commission should not go further than recommend that certain special reports be produced, the question of the remuneration of the Special Rapporteurs being left to the Secretariat.

79. Mr. YEPES agreed.

80. Mr. LIANG (Secretary to the Commission) said it was true that the Commission had never been concerned with the honoraria to be paid to the Special Rapporteurs; nor had the Advisory Committee on Administrative and Budgetary Questions or the Secretariat ever attempted to evaluate the time spent, or the value of the work done, by them. It was assumed that

all the subjects selected for special study required their undivided attention.

81. He earnestly reminded the Commission, however, that it bore a considerable responsibility whenever it entrusted a piece of work to a Special Rapporteur. The appointment of a Special Rapporteur could be justly criticized if little work was entailed. The present position was that no decision was or could be taken on the amount of work that a special study might entail, and that Special Rapporteurs were accordingly free to present as much or as little as they saw fit.

82. Mr. KOZHEVNIKOV asked the Chairman to list the subjects to be suggested for inclusion in the agenda of the sixth session.

83. The CHAIRMAN said that the list included consideration of the following reports:

(i) Report by Mr. Lauterpacht on the Law of Treaties;

(ii) Report by Mr. François on the Régime of the High Seas;

(iii) Report by Mr. François on Territorial Waters;

(iv) Report by Mr. Spiropoulos on the draft Code of Offences against the Peace and Security of Mankind; and

(v) Report by Mr. Córdova on Nationality including Statelessness.

84. As to the last subject, a decision on future studies would have to be taken by the new Commission.

85. Mr. YEPES asked whether the topic "Diplomatic Intercourse and Immunities" was to be discussed by the Commission pursuant to the General Assembly's request.

86. The CHAIRMAN said that it had already been agreed that the decision on that point should be left to the new Commission.

87. Mr. YEPES proposed that the matter be re-opened. He thought that a report on the subject should be presented to the new Commission, and that Mr. Zourek should be appointed special rapporteur.

*Mr. Yepes' proposal that the topic "Diplomatic intercourse and immunities" should be re-opened was rejected by 5 votes to 4.*

88. Mr. ZOUREK thanked Mr. Yepes for making his suggestion, but said that at the present time he would in any event have had to decline appointment as a Special Rapporteur.

89. Mr. KOZHEVNIKOV maintained his view that the appointment of a special rapporteur on that subject would depend on the Commission's future composition.

**Nationality, including statelessness (item 5 of the agenda) (A/CN.4/75) (resumed from the 234th meeting and concluded)**

90. The CHAIRMAN requested the Special Rap-

porteur to introduce his second report on the elimination or reduction of statelessness (A/CN.4/75).

91. Mr. CORDOVA said that the Commission had decided at its fourth session that he should not draft a report on the elimination or reduction of existing statelessness. At the present session, however, he had emphasized that, in his view, the Commission should not neglect that subject, which was an important influence in international relations. He had, therefore, been asked<sup>5</sup> to draw up the second report in the preparation of which he had been materially assisted by Mr. P. Weis, of the Office of the United Nations High Commissioner for Refugees.

92. With regard to the elimination of present statelessness, he had thought it most appropriate to draft an additional protocol to the draft Convention on the Elimination of Future Statelessness, according to which the provisions of that convention might be applied to cases of present statelessness. Although there were some gaps, which it had been impossible to fill for lack of time, the protocol would, on the whole, eliminate present statelessness.

93. His proposals for the reduction of present statelessness were based on the assumption that States were likely to be more willing to amend their legislation so as to reduce future statelessness, than to amend it so as to reduce present statelessness, because in many States there were political, racial and religious difficulties in the way of the latter course. He had endeavoured, therefore, to make his suggestions as realistic as possible, and had drafted them in the form of a "convention on certain measures for the reduction of present statelessness". The provisions of the draft convention were not necessarily cumulative; States might select those which they wished to adopt, and exclude the others.

94. He had particular difficulty in adapting the Commission's proposals on arbitration to the needs of the draft protocol and the draft convention on present statelessness. In view of the very large number of cases with which it might be expected to be concerned, it was possible that a tribunal similar to those recommended in the draft Conventions on the Elimination and the Reduction of Future Statelessness would prove impracticable, but either the special agency recommended in those conventions or a similar institution ought, in his view, to be set up to protect the interests of existing stateless persons.

95. The suggestions he had made in his second report were tentative, rather than firm. They should therefore not be examined in detail. He would, however, welcome the views of members of the Commission by way of guidance for his further work on the subject.

96. Mr. KOZHEVNIKOV said that he had had no opportunity of studying the text of the second report on the elimination or reduction of statelessness. He recalled however, that the Commission had decided to

take the subject up only if time permitted. He had assumed that that decision meant that the matter would not be taken up until the agenda had been exhausted. He must therefore point out that certain other matters still remained to be disposed of.

97. Mr. SANDSTRÖM agreed with Mr. Córdova that it would not be possible to examine the second report in detail at the present session.

98. He hoped that Mr. Córdova might find it possible in his more extended study to give some attention to the relationship between the various drafts and recommendations on the elimination and reduction of statelessness. How far was their co-existence possible? What order or priority was desirable for them?

99. Again, he thought that Mr. Córdova should study the requirements of stateless persons themselves; they might not in fact wish to acquire the nationality that would be conferred on them by the terms of the various draft conventions in preparation.

100. The CHAIRMAN said that any full discussion of the elimination or reduction of present statelessness would have to be postponed to the sixth session. At the present session, nothing more could be done than to give the Special Rapporteur some guidance.

The meeting rose at 1.5 p.m.

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## 238th MEETING

Wednesday, 12 August 1953, at 9.30 a.m.

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*Chairman*: Mr. J. P. A. FRANÇOIS.

*Rapporteur*: Mr. H. LAUTERPACHT.

*Present*:

*Members*: Mr. Ricardo J. ALFARO, Mr. Gilberto AMADO, Mr. Roberto CORDOVA, Faris Bey el-KHOURI, Mr. F. I. KOZHEVNIKOV, Mr. A. E. F. SANDSTRÖM, Mr. Georges SCHELLE, Mr. J. M. YEPES, Mr. Jaroslav ZOUREK.

*Secretariat*: Mr. Yuen-li LIANG, Director of the Division for the Development and Codification of International Law, and Secretary to the Commission.

<sup>5</sup> See *supra*, 225th meeting, para. 75.