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Summary record of the 280th meeting

Topic:
Other topics

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to the questions studied by both bodies, and further, to take all appropriate measures with a view to closer co-operation between them. Such action would not involve any additional expenditure as enough copies of the documents of the Commission were reproduced in any case.

71. Mr. LIANG, Secretary to the Commission, pointed out that there was already in practice a certain degree of co-operation between the Secretariat of the United Nations and that of the Pan American Union. It was no doubt desirable that the co-operation should become closer, provided that it had no major financial implications.

72. Mr. HSU supported Mr. García-Amador's proposal. Inter-American bodies were doing splendid work, at the regional level, in the matter of the codification of international law, and the Commission's co-operation with them should be closer.

13. The CHAIRMAN put the draft resolution to the vote.

Mr. García-Amador's draft resolution was adopted unanimously.

Representation of the Commission at the ninth session of the General Assembly of the United Nations

74. Mr. HSU submitted the following proposal: "The Commission decides that it shall be represented at the ninth session of the General Assembly by its Chairman, Mr. A. E. F. Sandström, for purposes of consultation."

Mr. Hsu's proposal was adopted unanimously.

The meeting rose at 1 p.m.

280th MEETING

Tuesday, 27 July 1954, at 4 p.m.

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Chairman: Mr. A. E. F. SANDSTRÖM

Rapporteur: Mr. J. P. A. FRANÇOIS

Present:

Members: Mr. R. CÓRDOVA, Mr. D. L. EDMONDS, Faris Bey el-KHOURI, Mr. F. GARCÍA-AMADOR, Mr. S. HSU, Mr. H. LAUTERPACHT, Mr. R. PAL, Mr. C. SALAMANCA, Mr. J. 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 sixth session (*continued*)

CHAPTER IV: RÉGIME OF THE TERRITORIAL SEA (A/CN.4/L.48/Add.4) (*continued*)

1. The CHAIRMAN invited the Commission to vote on the provisional articles concerning the régime of the territorial sea, as a whole.

2. He explained that he would vote in favour of the articles, subject to a reservation with regard to article 5 for it laid down a system for determining the breadth of the territorial sea which was more rigid than that recognized by existing law as interpreted by the International Court of Justice, and which did not sufficiently take into consideration the geographical characteristic of certain archipelagoes such as those in the Scandinavian countries (the *skjaergaard*).

3. Mr. LAUTERPACHT proposed that the vote on the provisional articles should be postponed until after the Commission had considered the comments to the articles.

4. Mr. HSU thought that the vote could be taken at the following meeting. Since, however, he would be unable to attend, he wished the Commission to note that he had intended to abstain from such a vote.

5. The provisional articles on the régime of the territorial sea had been drawn up before the pivotal question of the breadth of the territorial sea had been decided upon. The procedure was illogical and could not but have had consequences. The first was the need to assume, for the sake of drafting, the out-of-date three-mile rule. That, in turn, would produce the second; namely, a prejudicial effect on the minds of the Governments in their consideration of the problem of the breadth of the territorial sea, now referred to them for their opinions. Those two consequences would make the revision of the articles at the following session necessarily more drastic and time-consuming.

6. The CHAIRMAN said that the vote on the provisional articles concerning the régime of the territorial sea would be postponed until the next meeting.

CHAPTER III: DRAFT CODE OF OFFENCES AGAINST THE PEACE AND SECURITY OF MANKIND (A/CN.4/L.48/Add.1) (*resumed from the 276th meeting*)

7. The CHAIRMAN invited the Commission to continue its consideration of the draft Code of Offences against the Peace and Security of Mankind as contained in chapter III of the draft report covering the work of the Commission's sixth session (A/CN.4/L.48/Add.1).¹

8. Mr. ZOUREK said he did not wish to withdraw his earlier objections to article 2, paragraphs 2 and 10. The draft Code was still a very imperfect document. For example, the Nürnberg principles were only very imperfectly reflected in it, particularly in articles 3 and 4. The draft Code did not condemn the use of poison gas, it did not outlaw bacterial warfare, nor did it ban the use of weapons of mass destruction, despite the fact that the latter were condemned by existing law. It also failed to condemn racial and national hatred. He hoped it would be possible to improve its provisions once a definition of aggression had been devised. However, despite his criticism he would vote in favour of the draft Code, because its purpose was honourable and humanitarian.

9. The CHAIRMAN said that he would vote in favour of the adoption of the draft Code but would make a reservation with regard to article 2, paragraph 9, as the latter condemned certain manifestations of international life which, in his opinion, were in no way illicit.

10. Mr. CORDOVA said he would vote in favour of the draft Code in the hope that it would, in the future, be possible to improve its provisions, particularly by including in it a condemnation of the use of weapons of mass destruction.

11. Mr. LAUTERPACHT said that a code which laid down individual responsibility in international law for crimes committed was in itself an important and beneficent document. However, he could not associate himself with the draft Code as adopted by the Commission. Certain articles, such as those relating to superior orders, impaired or even destroyed the purpose of the draft. Others, for example, those dealing with intervention and civil strife, were loosely drafted to the point of being extravagant. He would therefore abstain from the vote. He requested that the report covering the work of the Commission's sixth session should note his dissent with regard to article 2, paragraphs 5 and 9, and article 4, for the reasons he had stated at a previous meeting.

12. Mr. PAL recalled that he had already stated his reasons for abstaining from the vote; he requested that a suitable note should be included in the report of the Commission.

13. Mr. EDMONDS recalled that on an earlier occasion he had explained why he would abstain. He would not

repeat his reasons but would merely say that they were very similar to those given by Mr. Lauterpacht.

14. Faris Bey el-KHOURI said he had in principle intended to vote in favour of the draft Code. He had decided, however, to abstain from the vote because of the provisions of article 2, paragraph 7, which obliged a State to comply with the conditions of a treaty which was forced on it and which might be unjust. He was also opposed to the new paragraph 9 of article 2 dealing with the intervention which, in his opinion, was too general.

15. Mr. GARCIA-AMADOR said he was not entirely satisfied with the draft code as a whole and was opposed to certain of its more detailed provisions. He had been personally responsible for the text of one of the clauses adopted and was surprised that it had been so adversely criticized. He pointed out that the provision in question had been accepted by twenty-one of the members of the United Nations. He approved of the fundamental purpose of the code and would, therefore, despite his reservations, vote in favour of it. He regretted that certain other members of the Commission were unable to do the same.

16. Mr. SALAMANCA said the task of the Commission was not an easy one. The intention of the draft Code was praiseworthy, but it did not specify who would be responsible for giving it effect. He agreed with Mr. Zourek in regretting that it had not been possible to define aggression; he thought that the draft Code would, for that reason precisely, serve no useful purpose. He would therefore abstain from the vote.

Voting on the draft Code as a whole

17. The CHAIRMAN requested the members of the Commission to submit their reservations to the Secretariat in writing for inclusion in the general report.

18. He put to the vote the draft Code of Offences against the Peace and Security of Mankind as contained in chapter III of the Commission's draft report on the work of its sixth session and modified by the Commission.

The draft Code was adopted as a whole by 6 votes to none, with 5 abstentions.

19. Mr. LAUTERPACHT said that, time permitting, he would at the next meeting formally propose that the Commission should not, in future, be bound by the rigid rules of procedure which applied in the General Assembly. Experience showed that the application of such rigid rules stifled discussion. In particular, at the present session, through the operation of the two-thirds majority rule governing reconsideration, four members of the Commission had been able to prevent the reconsideration of a question despite the fact that seven other members had been in favour of such reconsideration. Rules of procedure allowing for such situations to develop were suited to a political rather than to a scientific body.

¹ *Vide supra*, 276th meeting, para. 30 and footnote.

Paragraph 14 of chapter III (resumed)

20. The CHAIRMAN said that the Rapporteur had proposed² that paragraph 14 of the draft report on the draft Code should be replaced by the following text:

“The duties which these provisions impose on States apply also to territories under an international régime, and the rights which relate to the territories of States may also be invoked in favour of territories under an international régime.”

21. Mr. FRANÇOIS, Rapporteur, explained that the Commission had discussed the drafting of paragraph 14 at some length. His new draft was intended to cover both territories under an international régime administered by a State, and territories, such as Trieste, not administered by any one State.

22. Mr. CORDOVA agreed that the text of paragraph 14 should be revised. The Commission had been dealing only with crimes committed by individuals and by the authorities of a State, but crimes committed by members of the administration of territories under an international régime should also be covered.

23. The CHAIRMAN felt that it was difficult to speak of territories as having rights and duties.

24. Mr. SALAMANCA said the draft left in doubt whether aggression against a colonial territory, as distinct from a Trust Territory, was an international offence.

25. Faris Bey el-KHOURI said the expression “under an international régime” was too vague.

26. Mr. LAUTERPACHT proposed that paragraph 14 should be replaced by the following draft:

“The provisions of this draft can apply also to acts of State authorities and the individuals in and in relation to territories under international régime.”

27. Mr. GARCÍA-AMADOR and Faris Bey el-KHOURI proposed that in order to avoid any misunderstanding paragraph 14 should be entirely omitted and the remaining paragraph renumbered accordingly.

28. The CHAIRMAN put to the vote the proposal made by Mr. García-Amador and Faris Bey el-Khourri that paragraph 14 should be deleted.

The proposal was adopted by 7 votes to 1, with 3 abstentions.

Voting on chapter III

29. The CHAIRMAN put to the vote chapter III of the draft report covering the work of the Commission's Sixth Session (A/CN.4/L.48/Add.1) as modified by the Commission.

² *Vide supra*, 276th meeting, paras. 78-84.

Chapter III of the draft report covering the work of the Commission's sixth session was adopted, as amended, by 5 votes to none, with 6 abstentions.

CHAPTER II: NATIONALITY INCLUDING STATELESSNESS (A/CN.4/L.48/Add. 2, 3 and 5) *(resumed from the 276th meeting)*

PART II: PRESENT STATELESSNESS (A/CN.4/L.48/Add.3) *(resumed from the 276th meeting)*

30. Mr. CORDOVA, Special Rapporteur, said that he and the Rapporteur had redrafted paragraphs 6, 7 and 8 of part II (Present statelessness) of chapter II on the draft report.³

*Paragraph 8 (31) **

31. The CHAIRMAN, after allowing for some drafting changes suggested by Mr. Lauterpacht which had been agreed to, put to the vote paragraph 8 drafted in the following terms:

“In formulating its proposals relating to present statelessness, the Commission considered that present statelessness could only be reduced if stateless persons acquired a nationality which would normally be that of the country of residence. Since, however, the acquisition of nationality is in all countries governed by certain statutory conditions including residence qualifications, the Commission considered that for the purpose of improving the condition of statelessness, it would be desirable that stateless persons should be given the special status of ‘protected person’ in their country of residence prior to the acquisition of a nationality. Stateless persons possessing this status would have all civil rights accorded to nationals with the exception of political rights, and would also be entitled to the diplomatic protection of the Government of the country of residence; the protecting State may impose on them the same obligations as it imposes on nationals.”

Paragraph 8 was adopted as above by 7 votes to 1, with 2 abstentions.

Paragraphs 6 and 7 (32, 33 and 34)

32. Mr. CORDOVA, Special Rapporteur, said that the two paragraphs numbered 6 and 7 in the draft of chapter II, which he now proposed to replace by three paragraphs, raised a somewhat delicate issue. He feared that the Conference of Plenipotentiaries which was to meet later in 1954 might note that the Commission's drafts were more generous to stateless persons than the proposals likely to come before that Conference. That might lead the Conference to reject the Commission's drafts. He would suggest that a sentence should be added to say that the Commission was not putting

³ *Vide supra*, 275th meeting, paras. 20-29.

* The number within parentheses refers to the corresponding paragraph number in the Commission's report on its sixth session.

forward its draft conventions for approval by the Conference of Plenipotentiaries.

33. The CHAIRMAN said that the Commission could not make such a statement. It was not for the Commission to speak of any possible overlapping of the work of two independent bodies such as the Conference and itself.

34. He put to the vote the three paragraphs drafted to replace paragraphs 6 and 7 in the following terms:

“The Commission welcomed the resolution of the Economic and Social Council endorsing the principles underlying the work of the Commission for the elimination or reduction of statelessness (resolution 526 B (XVII)) and also the decision of the Council to convene a conference of plenipotentiaries to review and adopt a protocol relating to the status of stateless persons by which certain provisions of the Convention relating to the Status of Refugees of 28 July 1951 would become applicable to stateless persons (resolution 526 A (XVII)).

“The Commission considered the question of the relation of its work on present statelessness to the subject of the forthcoming conference of plenipotentiaries. It was of the opinion that while the object of that conference was the regulation of the status of stateless persons by international agreement, the Commission was primarily concerned with the reduction of present statelessness.

“In considering the problem of present statelessness the Commission was aware of the fact that stateless persons who are refugees as defined in the statute of the Office of the United Nations High Commissioner for Refugees (UNHCR) receive international protection by the United Nations through the High Commissioner. The suggestions contained in the present report are without prejudice to the question of granting international protection by an international agency, as distinguished from diplomatic protection by States, to stateless persons pending their acquisition of a nationality.”

The three paragraphs were adopted as above.

Paragraphs 10, 11 and 12 (previously paragraphs 9, 10 and 11)

35. The CHAIRMAN said that paragraphs 9, 10 and 11 of A/CN.4/L.48/Add.3 would as a result of the foregoing vote be renumbered 10, 11 and 12.

35. He put them to the vote.

Paragraphs 10, 11 and 12 were adopted.

37. The CHAIRMAN put part II of chapter III to the vote.

Part II (Present statelessness) of chapter II of the draft report, as amended, was adopted by 6 votes to 2 with 2 abstentions.

PART I: FUTURE STATELESSNESS (A/CN.4/L.48/Add.2)

38. The CHAIRMAN invited the Commission to consider part I, on future statelessness, of chapter II of the draft report (A/CN.4/L.48/Add.2)⁴

*Paragraph 1 (10)**

39. The CHAIRMAN submitted paragraph 1 to the vote.

Paragraph 1 was adopted subject to the correction in the fifth line to replace “sixteen countries” by “fifteen countries”.

Paragraph 2 (11)

40. The CHAIRMAN put paragraph 2 to the vote.

Paragraph 2 was adopted.

Paragraph 3 (12)

41. Mr. LAUTERPACHT proposed that the word “precisely” be inserted after the word “attributable” in the third line. He further proposed that the fifth and sixth lines should be slightly re-drafted to read: “... decisive objection for if Governments adopted the principle of the elimination or at least the reduction of statelessness in the future...”

It was so agreed.

Paragraph 3 was adopted as amended.

Paragraphs 4, 5, 6 and 7 (13, 14, 15 and 16)

42. The CHAIRMAN put these paragraphs to the vote.

Paragraph 4 was adopted.

Paragraph 5 was adopted subject to the replacing of the word “to” after “preference” in the third line by the word “for”.

Paragraph 6 was adopted.

Paragraph 7 was adopted.

43. Mr. ZOUREK said he had not been present at the discussion of the articles during the current session. He therefore explicitly referred to the remarks made by him during the discussion of statelessness at the fifth session of the Commission.

⁴ This document was mimeographed only. It was incorporated, with modifications, in the Commission's report on its sixth session as chapter II, part one. This report is included in volume II of *Yearbook of the International Law Commission, 1954*. It was also published separately in *Official Records of the General Assembly, Ninth Session, Supplement No. 9 (A/2693)*. The modifications made in chapter II, part one, of the draft report are given in the present summary record.

* The number within parentheses refers to the corresponding paragraph number in the Commission's report on its sixth session.

PART III : OTHER ASPECTS OF THE SUBJECT
OF NATIONALITY (A/CN.4/L.48/Add.5)

Paragraph 8 (17)

44. Mr. LAUTERPACHT proposed that the word "because" in the seventh line of the paragraph should be replaced by "seeing that".

It was so agreed.

Paragraph 8 was adopted as amended.

Paragraph 9 (18)

45. Mr. LAUTERPACHT proposed that in the sixth line the words "interest in his country..." should be replaced by "attachment to his country of adoption". In the same line, he proposed that the words "after mature consideration and" should be deleted so that the sentence would read: "The Commission, keeping in mind..."

It was so agreed.

Paragraph 9 was adopted as amended.

Paragraphs 10, 11, 12, 13 and 14 (19, 20, 21, 22 and 23)

46. The CHAIRMAN submitted these paragraphs to the vote.

Paragraph 10 was adopted.

Paragraph 11 was adopted.

Paragraph 12 was adopted.

Paragraph 13 was adopted.

Paragraph 14 was adopted.

Paragraphs 15 and 16 (24 and 25)

47. Mr. LAUTERPACHT proposed that the word "if" after "International Court of Justice" in the penultimate line of the paragraph should be replaced by "in case".

It was so agreed.

Paragraph 15 was adopted as amended.

Paragraph 16 was adopted, subject to the insertion of a comma after the word "session".

48. The CHAIRMAN put part I, as a whole, to the vote.

Part I of chapter II of the draft report was adopted as a whole as amended by 9 votes to 1, with one abstention.

49. Mr. ZOUREK said he had voted against part I of chapter II for the reasons he had given during the discussion.

50. The CHAIRMAN invited the Commission to consider part III, on other aspects of the subject of nationality, of chapter II of the draft report (A/CN.4/L.48/Add.5)⁵

Paragraph 1 (38)*

51. Mr. CORDOVA, Special Rapporteur, proposed that the words "now" at the end of the second sentence and "for the time being" before the word "content" should be deleted. The Commission had decided to set aside the subject of multiple nationality, some members having said that dual nationality was no evil. He did not wish the report to give the impression that the Commission had only postponed the subject of multiple nationality to the following session.

52. Mr. LAUTERPACHT said that any decision taken by the Commission not to deal with a subject could only be valid for the session at which it was taken. It did not and could not bind the Commission not to take up the subject at the following session.

53. Mr. ZOUREK said the intention of the majority who had voted for the adjournment of the subject of multiple nationality had clearly been to set it aside altogether. That intention should appear from the report so that Governments could adopt a considered attitude.

54. Mr. LIANG, Secretary to the Commission, suggested that the last sentence of the paragraph be deleted as it might be construed as suggesting that the Commission was expressing satisfaction with its own work on nationality.

55. Mr. PAL made a formal proposal that the last sentence of paragraph 1 should be deleted.

56. The CHAIRMAN said that according to the summary records of the meeting in question⁶ the decision taken had been "for the time being" and he could not see how any other decision could have been taken. All that the Commission had decided was that multiple nationality was not so urgent a problem as some other items on the agenda; it had therefore given priority to other topics. It had accordingly adjourned discussion on multiple nationality, and that decision was naturally not valid for any future sessions.

⁵ This document was mimeographed only. It was incorporated, with modifications, in the Commission's report on its sixth session as chapter II, part three. This report is included in volume II of *Yearbook of the International Law Commission, 1954*. It was also published separately in *Official Records of the General Assembly, Ninth Session, Supplement No. 9 (A/2693)*. The modifications made in chapter II, part three of the draft report are given in the present summary record.

⁶ *Vide supra*, 252nd meeting, para. 53.

* The number within parentheses refers to the corresponding paragraph number in the Commission's report on its sixth session.

57. He put the various proposals to the vote.

Mr. Córdova's proposal for the deletion of the word "now" was adopted by 6 votes to 1, with 3 abstentions.

Mr. Pal's proposal for the deletion of the last sentence of paragraph 1 was rejected by 6 votes to 4, with 1 abstention.

Mr. Córdova's proposal for the deletion of the words "for the time being" was adopted by 5 votes to 2, with 3 abstentions.

Paragraph 1 as amended was adopted by 10 votes to 1, with 1 abstention.

Paragraph 2 (39)

58. Mr. CORDOVA, Special Rapporteur, proposed that paragraph 2⁷ should read: "The Commission decided not to deal with the problem of multiple nationality."

59. Mr. LAUTERPACHT said that the Commission could not possibly decide never to deal with a subject. At most it could adjourn discussion.

60. Mr. CORDOVA, Special Rapporteur, withdrew his proposal and proposed instead that the paragraph should read:

"The Commission decided to defer any further consideration of multiple nationality and other questions relating to nationality."

This proposal was adopted by 5 votes to 3, with 2 abstentions.

61. The CHAIRMAN put part III, as a whole and as amended, to the vote.

Part III of chapter II of the draft report was adopted as a whole as amended by 9 votes to none, with one abstention.

62. Faris Bey el-KHOURI said that his vote in favour of a chapter of the draft report did not imply approval of the articles contained therein.

63. Mr. CORDOVA, Special Rapporteur, wished the report to mention the valuable assistance he had received from Mr. Weis of the Office of the High Commissioner for Refugees in connexion with the work of the Commission on statelessness.

64. Faris Bey el-KHOURI proposed that the Special Rapporteur should draft a suitable paragraph to be inserted in the report.

It was so agreed.

⁷ In the draft report (A/CN.4/L.48/Add.5), paragraph 2 read:

"2. The Commission decided to defer for the time being, any further consideration of multiple nationality and of all other questions relating to nationality with the exception of those concerning the elimination or reduction of statelessness."

CHAPTER I: INTRODUCTION (A/CN.4/L.48)

65. The CHAIRMAN invited the Commission to consider chapter I of the draft report (A/CN.4/L.48).⁸

Paragraphs 1, 2 and 3

66. The CHAIRMAN put paragraphs 1, 2 and 3 to the vote.

Paragraph 1 was adopted.

Paragraph 2 was adopted.

Paragraph 3 was adopted.

Paragraph 4

67. Mr. LIANG, Secretary to the Commission, said reference should be made to the fact that Mr. Zourek attended the meetings from 21 June to the end of the session. Furthermore, the reference to Mr. Scelle having "ceased to attend" would have to be replaced by a more suitable expression.

Paragraph 4 was adopted, subject to drafting changes by the Secretariat.

Paragraphs 5 and 6

68. The CHAIRMAN put paragraphs 5 and 6 to the vote.

Paragraph 5 was adopted.

Paragraph 6 was adopted.

Paragraph 7

69. Mr. LAUTERPACHT said that item 8 of the agenda was given as "Request of the General Assembly" for the codification of state responsibility. He recollected a communication rather than a request on the subject from the General Assembly.

70. Mr. LIANG, Secretary to the Commission, said that the General Assembly gave instructions to the Commission, which was its subordinate body. It was therefore proper to talk of a request and not of a communication.

71. The CHAIRMAN put the paragraph to the vote.

Paragraph 7 was adopted.

Paragraphs 8 and 9

72. The CHAIRMAN put the paragraphs to the vote.

Paragraph 8 was adopted.

Paragraph 9 was adopted.

The meeting rose at 6.20 p.m.

⁸ This document was mimeographed only. It was incorporated, with the modifications given here in the Commission's report on its sixth session as chapter I. Cf. *supra*, footnote 5.