

Document:-
A/CN.4/SR.71

Summary record of the 71st meeting

Topic:
<multiple topics>

Extract from the Yearbook of the International Law Commission:-
1950 , vol. I

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78. Mr. HUDSON said he had difficulty in following Mr. Scelle's reasoning. Many examples existed of successful arbitration by Heads of States. In every case the arbitral award had been drawn up by legal experts, and not by the Head of the State, who had merely signed it.

79. Mr. SCELLE replied that in such cases the legal experts concerned were nearly always diplomats as well.

80. Mr. SPIROPOULOS thought that this sub-paragraph went into too much detail with regard to the persons entitled to be appointed as arbitrators. It was self-evident that the persons appointed as arbitrators would always be properly qualified. It was preferable to say nothing on this point.

81. Mr. CORDOVA said that Mr. Scelle's text in no way debarred the Head of a State from being appointed as arbitrator, but merely said that arbitrators should be selected in the light of experience, which was an excellent principle. Nevertheless, he shared Mr. Scelle's view with regard to the Heads of States. The latter would always be inclined to base their decisions on political considerations, and it was essential to avoid arbitral judgments of that type.

82. Mr. el-KHOURY observed that in the previous year certain Eastern countries had appointed two kings to arbitrate and they had rendered a fair and true judgment which, when submitted to the tribunals in the contending countries, had been accepted by them and implemented by the parties. He saw no need to lay down such conditions regarding the appointment of arbitrators, and was even inclined to think that jurists regarded disputes as more complicated than they really were.

83. The CHAIRMAN thought that the Rapporteur had had no intention of restricting the number of persons eligible for appointment as arbitrators.

84. Mr. SCELLE confirmed this view and said that here again he was not proposing the text of an article, but had merely expressed an idea, so that the Commission could amend his text in accordance with its preference for a particular procedure. He personally thought that the arbitration provided for should be jurisdictional rather than diplomatic or political. He had thought so for a long time, and considered that arbitration procedure should be developed along those lines. An arbitral judgment which was a model of its kind was that rendered by Professor Huber in the case of Las Palmas Island. It was a true example of jurisdictional arbitration, and that way lay progress.

85. Mr. HUDSON agreed with Mr. Scelle that it was advisable to restrict the number of arbitrators. It was obvious that in very important cases five arbitrators might be of great value, but in most cases a smaller number seemed preferable. Some consideration should also be given to the financial aspect of the problem, i.e. to the arbitrators' fees, which were usually very high. Some States would hesitate to have recourse to arbitration if it cost them too much. That material aspect of the problem occurred to him because he would not like to see arbitration limited to important international

disputes, but would prefer it to form the basis for the settlement of disputes even of lesser importance.

86. Mr. ALFARO pointed out that the term "direct interest" was used in the fifth sub-paragraph. He thought that the reference should be not only to direct interest, but also to indirect interest, and he therefore proposed the addition of the word "indirect".

87. Mr. SCELLE thought it would be simpler to delete the word "direct" leaving the word "interest" unqualified.

88. Mr. HUDSON said he would prefer the term "special interest".

89. Mr. KERNO (Assistant Secretary-General) recalled that the Economic and Social Council had referred to the Commission a proposal concerning the question of the nationality of married women, and that the General Assembly had referred to the Commission the question of territorial waters. He requested the Commission to take up these questions with a view to advising the Economic and Social Council and the General Assembly thereon.

90. The CHAIRMAN said that the two questions would be placed on the agenda of the Commission's next meeting.

The meeting rose at 12.55 p.m.

71st MEETING

Wednesday, 19 July 1950, at 10 a.m.

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Chairman: Mr. Georges SCELLE.

Rapporteur: Mr. Ricardo J. ALFARO.

Present:

Members: Mr. Gilberto AMADO, Mr. James L. BRIERLY, Mr. Roberto CORDOVA, Mr. J. P. A. FRANÇOIS, Mr. Shuhsi HSU, Mr. Manley O. HUDSON, Mr. Faris el-KHOURY, Mr. A. E. F. SANDSTRÖM, Mr. Jean SPIROPOULOS, Mr. Jesús María YEPES.

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

Nationality of married women (Letter from the Secretary-General) (A/CN.4/33)

1. The CHAIRMAN read document A/CN.4/33, in

which the Economic and Social Council requested the Commission to state whether it could deal with that question and when it would do so.

2. Mr. ALFARO thought that the only reply to make was that the Commission was prepared to proceed with the drafting of the Convention, that it could do so at its next session, and would give that task such priority as the other items on its agenda permitted.

3. Mr. HUDSON felt that any reply to the fourth paragraph of the Council's resolution would have to take into account the fact that the Commission, as at present constituted, had only eighteen months of life before it. The procedure provided for in article 17, paragraph 2, of the Statute was complicated but it had to be followed. Sub-paragraph (b) appeared to call for the issue of a questionnaire, but that questionnaire need not perhaps be sent to the Economic and Social Council, since the latter had already laid down the main lines which it thought the Commission should follow. In virtue of sub-paragraph (c), however, the Commission would have to submit a report to the Assembly and perhaps even an interim report to the Council. Under sub-paragraph (d), the Commission would apparently have to wait for the Assembly to invite it to proceed in accordance with article 16. He felt that the whole procedure was ill-suited to the case in hand.

3 a. If the Commission knew exactly what was wanted, it was faced with a problem of drafting. The convention containing the proposal of the Commission on the Status of Women would be very short, and would not take long to draft. It would be remembered that the Pan-American Convention adopted in 1933 had consisted of only one article. He thought that the Commission could draft the required Convention with its present membership, but it had to submit a report to the General Assembly and await the latter's reply.

3 b. The Commission could say that it was prepared to draft the Convention as recommended by the Economic and Social Council. It was not bound by that recommendation, however, as its third paragraph stated that: "The Economic and Social Council . . . proposes to the International Law Commission that it undertake . . ." Since it consisted in embodying the principles which formed the subject of the recommendation, the task would not be difficult. The Hague Convention of 1930 on the same subject was also available, but it was based on different principles. He therefore thought that the Commission would be able to do the work quickly and easily, but that if it wished to complete it the following year, it should include the question in its report to the Assembly on the work of the current session.

4. Mr. HSU thought that Mr. Hudson was right to consider that the question was a simple one, and that the Convention would contain only one or two articles. That was precisely why he was not sure that the Commission should agree to the Council's request. The Council proposed that the Commission should endorse the principles contained in the recommendation issued by the Commission on the Status of Women and reproduced in sub-paragraphs (i) and (ii) of that Commission's resolution. Those principles were clear, so that drafting

was all that was necessary; it was, however, important to decide whether the International Law Commission had been set up for the purpose of drafting conventions for the other organs of the United Nations, or whether it had a different task.

4 a. Article 17, paragraph 1, of the Statute did not give a complete picture of the Commission's work. Reference to article 16 showed that "When the General Assembly refers to the Commission a proposal for the progressive development of international law . . ." Article 1, paragraph 1, stated that "The International Law Commission shall have for its object the promotion of the progressive development of international law and its codification." It had to be decided whether the Commission's task was to develop international law and, where necessary, to draft conventions, or whether the Commission had been set up for the purpose of drafting conventions for other bodies. He thought that the latter task did not belong to the Commission. That body was being told that a certain principle had been adopted, and was being asked to draw up a convention. Inasmuch as the mere drafting of a convention could not constitute the Commission's principal task, the only solution was for the Commission to refer the question back to the Economic and Social Council, stating that it could not undertake the task.

5. Mr. SANDSTRÖM wondered what interpretation should be given to the communication which the Commission had received. The Economic and Social Council resolution stated that: "The Economic and Social Council, noting further that the International Law Commission, at its first session, included among the topics selected for study and codification 'nationality, including statelessness', proposes to the International Law Commission that it undertake as soon as possible the drafting of a Convention to embody the principles recommended by the Commission on the Status of Women." That recommendation could be interpreted as a request to the Commission to undertake the study of the question of nationality as soon as possible. If that was so, the request was not open to objection, and the question was when the Commission would study the matter.

6. Mr. YEPES considered that the Commission should give the highest possible priority to the Economic and Social Council's recommendation and should proceed with the problem at once if the rules of procedure could be interpreted in such a way as to permit this, since the problem of the nationality of married women was one of extreme importance. He proposed that the Commission should at once consider the two principles adopted by the Commission on the Status of Women, and should inform the General Assembly that it was prepared to draft a convention on the basis of the principles contained in sub-paragraphs (i) and (ii). The Commission would thus perform a useful task, and would have time to announce a decision before the end of the session. He proposed that the Commission should study the substance of the problem, and should come to some conclusion in regard to it.

7. Mr. CÓRDOVA stated that if the request made by

the Council really was that the Commission should draft a convention, the latter could do so immediately, but it was bound under article 17 of its Statute to consider proposals submitted by other organs, and so on. The Commission could say that it would consider the question submitted to it when it took up the general problem of nationality. As Mr. Hudson had pointed out, however, the agenda for the following year was already very heavy, and he himself did not think that the Commission could embark upon a study which would take longer than the term for which its members had been elected. Before taking up any new question, the Commission should complete its study of the questions already before it.

8. Mr. FRANÇOIS shared the apprehension of Mr. Hsu and Mr. Córdova. It was inadmissible that the Commission should be given a mere task of drafting, but it was perhaps unnecessary for the Council's resolution to be interpreted in that manner, and it could perhaps be said that it was a question of examining the problem, taking into account the recommendations of the Commission on the Status of Women. He wondered whether the Commission had the time to deal with that question, since it had been appointed for a term of three years, and sat for a few weeks each year. In those conditions it was better to draw up a programme for three years, since it was uncertain that the future membership of the Commission would remain the same. It was not practical to initiate a study which would be completed by a commission composed of different members. Since the Commission had sufficient work for the following year, the Commission would be unable to deal with the matter which had just been submitted to it before the expiry of its term of office.

9. Mr. el-KHOURY observed that the Council was aware that the Commission had placed nationality, including statelessness, on the list of topics to be studied, and that it was with this knowledge that it proposed that priority should be given to the question of the status of married women. The Council was asking the Commission to separate a particular question from the more general problem of nationality. The point to be decided was whether the Commission would agree to make a separate study of the problem of the nationality of married women. If so, it would take up the question and reply to the Council. If not, it would reply that the question of nationality was already on the agenda for its next session, and that the nationality of married women would be studied within the framework of that more general problem. He understood Mr. Yepes' point of view, but did not think that the matter was so urgent. He thought that the Commission should take a vote to decide whether it agreed to make a separate study of, and give priority to, the question of the nationality of married women.

10. Mr. KERNO (Assistant Secretary-General) noted that one speaker had said that the Commission had been set up for a period of three years, and that too much could not be undertaken in that period. It was true that article 10 of the Statute stated that "the members of the Commission shall be elected for three years", but

it added that "they shall be eligible for re-election". The Commission was a permanent body, and it was on that basis that it had drawn up its programme of work and selected fourteen topics for codification.

10 a. With regard to the proposal submitted by the Economic and Social Council, the Commission need not confine itself to a mere task of drafting, since the question was one of substance. In accordance with article 17, paragraph 2, the Commission should state whether it deemed it appropriate to undertake the study proposed by the Economic and Social Council and, in the affirmative, should state when it would proceed to that study.

10 b. He agreed with Mr. Hudson that articles 16 and 17 were clumsy and complicated, but thought that article 17 could be made more flexible, since it stated that the Commission "shall follow in general procedure on the following lines". The Commission could therefore adapt its procedure to each individual case. Article 17, paragraph 2 (b), provided for the issue of a questionnaire, but a questionnaire had already been circulated, and it was on the basis of the replies received that the Commission on the Status of Women and the Economic and Social Council had studied the question. A great part of the procedure outlined in article 17 had already been followed, and it was perhaps possible to ask the General Assembly forthwith whether the Commission could go ahead. Hence, the first question to be decided was whether the Commission deemed it appropriate to proceed with the study of that proposal.

11. The CHAIRMAN read the proposal which Mr. Hudson had submitted to him in the following terms:

"The Commission deems it appropriate to entertain the proposal of the Economic and Social Council in connexion with its contemplated work on the subject of 'nationality, including statelessness'.

"The present agenda is so charged that the Commission does not contemplate the initiation of that work before 1952."

12. Mr. AMADO recalled that during the discussion on Mr. Scelle's report the previous evening, the expression "the more diligent party" had been used on several occasions. He had attended the Montevideo Conference in 1933, and he was able to state that the representatives of the women's organizations were extremely diligent. They would certainly persuade the Commission to decide the question submitted to it. Mr. Hudson had perceived that the problem to be decided was one of expediency. The Council had at once realized that the task formed part of the general study of nationality. It had then proposed to the International Law Commission "... that it undertake as soon as possible the drafting of a convention" and requested the International Law Commission "to determine at its present session whether it deems it appropriate to proceed with this proposal". It was therefore for the Commission to decide the question of expediency and to make known the approximate time when it would proceed to a study of the question. He supported Mr. Hudson's proposal.

13. Mr. SPIROPOULOS found it difficult to express an opinion and thought that the Commission should not

interpret its task in a narrow sense. Although the Commission had met for the purpose of developing and codifying the law, he wondered whether the proposal should be rejected. The Commission was an expert organ of the United Nations, and should assist the other organs of the United Nations. He did not think that it should say that it refused to do anything but develop and codify the law. The work which the Economic and Social Council was asking the Commission to do was connected with the progressive development of law on a limited subject, and was not solely a matter of drafting. The Council was not asking the Commission to do this thing or that but to assist it in drawing up a convention, as was fitting. It was a question of progressive development. He did not know whether the Commission would create a good impression by refusing to deal with the question, since the Council would not understand such a refusal of assistance. There was no need to consider whether the principles involved were principles of international law; the Economic and Social Council wished to make them principles of international law, and wanted to know whether the Commission would assist it in that task.

13 a. Although the problem was complicated, the Commission would have time to study it. He agreed with Mr. Kerno that although the members of the Commission had been elected for three years, the Commission itself was permanent. The Commission could try to study the question as soon as possible, but even if it did so, it would be unable to complete the study the following year, since, in accordance with article 16 (h) the draft would have to be submitted to governments. All that the Commission could say was that it would study the question but it could not say exactly when it would complete that study. He thought that, from the practical point of view, some action should be taken.

14. Mr. AMADO proposed that Mr. Hudson's suggestion should be amended as outlined by Mr. Spiropoulos.

15. The CHAIRMAN said that the only difference was a slight shade of meaning.

16. Mr. HUDSON had been shaken by the arguments of Mr. Hsu, Mr. Córdova and Mr. François but thought that Mr. Sandström had found the solution to the problem in drawing the Commission's attention to the second paragraph of the Council's resolution. It was conceivable that the Council had in mind the incorporation of the recommendation of the Commission on the Status of Women within a wider framework, and Mr. François appeared to think the principles relating to nationality of married women would not be studied without examining the question of nationality as a whole. The Commission wished to be polite to the Council and since the organs of the United Nations thought it the Commission's duty to deal with legal problems, he felt that the reply to the Council should not be discouraging.

17. Mr. KERNO (Assistant Secretary-General) quoted two extracts from statements made by the United States representative during the discussion on the reso-

lution in question in the Social Committee. "The International Law Commission had already discussed the question of nationality and, though it had not included it among the three to which it was giving top priority, it evidently intended to give consideration to such problems of nationality as statelessness and the nationality of married women. His delegation did not ask that the International Law Commission should necessarily frame a separate convention on the nationality of married women but would be satisfied if that question were included in a general convention on nationality." (E/AC.7/SR.133, pp. 8 - 9)

17 a. In another statement concerning an amendment submitted to the Economic and Social Council by the representative of Mexico, the United States representative had said: "Yet the International Law Commission might find it preferable to include these principles in an entirely separate convention, dealing only with the nationality of married women. In any case, the International Law Commission should not be tied down to one course of action alone." (E/SR.389, pp. 7 - 8) It was therefore clear, he concluded, that the Commission was not bound to adopt any particular course.

18. Mr. LIANG (Secretary to the Commission) thought that Mr. Hudson's draft resolution would be strengthened by the fact that the question of statelessness had been considered by an *ad hoc* Committee of the Economic and Social Council, and that the latter's recommendation also requested the Commission to undertake the drafting of a convention as soon as possible. The Economic and Social Council had not yet studied that recommendation, and it was possible that it would submit to the Commission a recommendation on the same lines as the one at present under discussion. Those questions could be considered within the framework of a general convention on nationality.

19. Mr. AMADO agreed that the Commission should make every effort to meet the Economic and Social Council's request, and should understand that it was obliged to take action. It should not be forgotten that the Council was well aware of what it was asking and had indicated that the question should be considered in the light of related problems. The Commission should state whether it was prepared to undertake the work and should announce the approximate time when it might proceed to do so.

20. The CHAIRMAN pointed out that Mr. Hudson's proposal could be split into two parts, the first of which could state: "The Commission deems it appropriate to entertain the proposal of the Economic and Social Council in connection with its contemplated work on the subject of nationality, including statelessness." That wording was satisfactory.

21. Mr. HSU also thought that the Commission should be very polite to the other United Nations organs and should co-operate with them. There should, however, be a delimitation of functions and those of the Commission should be defined. Should the Commission develop and codify law, or should it help the other organs to draw up conventions? The Council's resolution should be carefully examined to see what the

Council was asking, and it should not be overlooked that the Commission could take certain liberties with the principles set out in the recommendation of the Commission on the Status of Women.

22. The CHAIRMAN pointed out that Mr. Hudson's proposal took care of all Mr. Hsu's scruples.

23. Mr. HSU said that in that case he accepted Mr. Hudson's proposal.

24. Mr. CÓRDOVA said that the Economic and Social Council had shown great wisdom in doing no more than transmit the resolution of the Commission on the Status of Women. That Commission wanted those principles to become principles of international law, but the International Law Commission was entitled to study them and estimate their intrinsic value.

25. The CHAIRMAN and Mr. HUDSON replied that that went without saying.

26. Mr. YEPES disagreed with the manner in which the Commission had dealt with the question. The mere fact that the Economic and Social Council had devoted four meetings to that problem showed that it had not referred the matter to the Commission in order to get rid of it. It had done so because the Commission was the body competent to deal with the problem. Moreover, it was not a new problem; many books and articles had dealt with it, including James Brown Scott's book on the equality of the sexes. The Commission could at least devote one meeting to the principles adopted by the Commission on the Status of Women, accept those principles, and so inform the General Assembly; the following year it could give priority to the study of the question.

27. Mr. BRIERLY was also unable to support the proposal. He agreed with Mr. Yepes that the Economic and Social Council was making a very limited request to the Commission — it was asking the Commission to give priority to part of a more general question.

28. The CHAIRMAN thought that it was merely a question of referring a subject to the Commission for later consideration, but he might be mistaken. He had never interpreted the Council's decision as Mr. Yepes and Mr. Brierly had just done.

29. Mr. CÓRDOVA quoted a passage from the Council's resolution:

“Requests the International Law Commission to determine at its present session whether it deems it appropriate to proceed with this proposal and, if so, to inform the Economic and Social Council as to the approximate time when the International Law Commission might proceed to initiate action on this problem.”

The Council was already aware that the Commission intended to give priority to the study of nationality and statelessness, and was asking what the Commission could do with regard to the nationality of married women.

30. The CHAIRMAN pointed out that his interpretation of the resolution was based on a conversation he had had with a member of the French delegation. The

latter had said that the Council intended to submit that resolution to the Commission for consideration when studying the question of nationality.

31. Mr. AMADO thought that the previous history of the question should be taken into account. The Commission on the Status of Women had already made a certain amount of progress. He hoped that the Commission would perform its task to the general satisfaction.

32. The CHAIRMAN indicated, with regard to Mr. Yepes' proposal, that the agenda was already very heavy, and that the Commission would probably not be able to devote sufficient time to so important a question the following year. He did not think that time should be spent on questions which were not on the agenda.

33. Mr. SPIROPOULOS could only reiterate that the Council had not asked the Commission to incorporate various provisions in the general convention on nationality, but had asked it to submit a draft convention on a limited subject. The Economic and Social Council “proposed to the International Law Commission that it undertake as soon as possible the drafting of a convention to embody the principles recommended by the Commission on the Status of Women”. He could only interpret that in the following way: the Council was asking the Commission to take up certain principles; this constituted progressive development of law, but the Council did not interpret this in the same way as the Commission; the Council was saying that it wanted a convention and was not asking the Commission for its views.

34. The CHAIRMAN pointed out that Mr. Kerno had quoted passages from the records which contradicted what Mr. Spiropoulos had just said.

35. Mr. SPIROPOULOS replied that they had to go by the decision itself and not by what certain representatives had said.

36. The CHAIRMAN said that in that case he was in favour of rejecting the request, since the Commission had not met to do drafting work.

37. Mr. SPIROPOULOS asked whether the task was a humiliating one. The Council was telling the Commission that it was the most competent body to deal with that question. There was nothing humiliating in drafting a text; he considered it a scientific operation of great delicacy, it was not at all easy to formulate these principles properly. The Council was asking the Commission for its collaboration.

38. Mr. YEPES recalled that the General Assembly had made the same request to the Commission with regard to the Nürnberg Principles.

39. Mr. AMADO asked Mr. Spiropoulos why the Economic and Social Council had used the following words: “Noting the recommendation of the Commission on the Status of Women (fourth session) in regard to the nationality of married women, and noting further that the International Law Commission, at its first session, included among the topics selected for study and codification ‘nationality, including statelessness’.” If the Council were asking the Commission to

deal merely with the nationality of married women, it would not have inserted in its resolution that second and more important paragraph.

40. The CHAIRMAN felt that a vote should be taken on Mr. Hudson's proposal.

41. Mr. YEPES submitted the following amendment:

"The International Law Commission decides to give priority at its next session to the problem of the nationality of married women and to examine, in particular, the two principles in regard to the nationality of women which were adopted by the Commission on the Status of Women and transmitted by the Economic and Social Council."

42. The CHAIRMAN put Mr. Yepes' amendment to the vote.

Six votes were cast in favour of the amendment, and six against.

43. The CHAIRMAN accordingly declared the amendment rejected.

44. Mr. AMADO asked whether, in the event of priority being given to the problem of the nationality of married women, a report would have to be submitted to the General Assembly at the next session.

45. Mr. HUDSON thought that Mr. Yepes' amendment would have the effect of instructing the Commission to study at its next session the preliminary draft convention on the nationality of women without including in it the question of statelessness.

46. Since a number of members had queried the result of the voting on Mr. Yepes' amendment, the CHAIRMAN put that proposal to the vote a second time.

Six votes were cast in favour of the proposal and six against.

The proposal was rejected.

47. The CHAIRMAN proposed that the Commission should vote on Mr. Hudson's resolution, which was worded as follows:

"The Commission deems it appropriate to entertain the proposal of the Economic and Social Council in connexion with its contemplated work on the subject of 'nationality, including statelessness'.

"The present agenda is so charged that the Commission does not contemplate the initiation of that work before 1952."

48. Mr. ALFARO thought that the proposal should be split up for voting purposes. He considered that the Commission should begin its study of the question at its next session, and he would therefore vote for the first part of Mr. Hudson's proposal which did not state when the Commission would undertake that study.

49. The CHAIRMAN put to the vote the first half of the first sentence of Mr. Hudson's proposal, ending with the words "Economic and Social Council".

The half-sentence was adopted unanimously.

50. The CHAIRMAN put to the vote the second half of the sentence "in connexion with its contemplated work on the subject of 'nationality, including statelessness'".

The half-sentence was adopted by 8 votes to 4.

51. Mr. YEPES explained that he had voted against that half-sentence because its effect would be to defer consideration of the question of the nationality of women indefinitely. Once that question was linked with that of nationality in general, years would pass before it would be possible to reach specific conclusions. The nationality of women was the most important aspect of the problem and should be dealt with as quickly as possible.

52. Mr. AMADO had voted in favour of the half-sentence. He thought that the question of statelessness was as urgent as that of the nationality of married women, it not more so. He shared the Chairman's doubts as to whether the Commission's function was merely to draft the texts submitted to it by the United Nations or a specialized agency. Pure drafting work of that kind should be done by the Secretariat. In his view, the Commission's functions went much further than that and it was competent to pronounce on the substance of the principles contained in resolutions submitted by other agencies and to amend or amplify them.

53. Mr. KERNO (Assistant Secretary-General) drew attention to the fact that the Commission had applied article 17 of its Statute for the first time. It was therefore important that the interpretation of that article should be clear. The various organs referred to in article 17, paragraph 1, could submit proposals and drafts. Hence, in the first instance it was for them to decide whether the proposed study would be useful and desirable for the development or codification of international law. Under article 17, paragraph 2, however, it was for the Commission to decide, in the second instance, as to the utility of the proposed study. The Commission therefore had the last word. It could state that it did not consider the study useful, but it could not, of course, reply that it had no time to deal with the question proposed. He wished to ask Mr. Hudson what he meant by the expression "initiation" in his proposal. Did it mean that the Commission would not be able to apply the procedure outlined in articles 16 and 17 until its 1952 session?

54. Mr. HUDSON replied in the affirmative.

55. Mr. CORDOVA thought that the second sentence of Mr. Hudson's proposal was unnecessary. He saw no reason why the Commission should indicate a date.

56. Mr. HUDSON replied that the Economic and Social Council had asked the Commission to do so. He thought that the agenda for the Commission's coming sessions was extremely heavy and that therefore the Commission could not possibly consider the question before 1952.

57. Mr. ALFARO remarked that at the beginning of the discussion, Mr. Hudson had stated that the question at issue was extremely simple and could easily be dealt with at the current session. He shared that view, which Mr. Hudson appeared to have discarded. The Commission was not justified in deferring until 1952 consideration of a question which had to be studied in relation to the general problem of nationality. The Commission had just decided that it wished to deal with the matter, and it was only a question of deciding when

it would do so. He thought that the Commission should take up that study the following year. He proposed to submit a new resolution stating that the Commission would deal with the question at its next session in 1951, and he intended to draft a text to enable the Commission to decide with a full knowledge of the facts.

58. The CHAIRMAN stated that the Commission had two texts before it. There was first of all the second sentence of Mr. Hudson's proposal, the first sentence of which the Commission had already adopted. A decision still had to be taken on the second sentence. Secondly, there was the amendment submitted by Mr. Alfaro in the following terms:

"The Commission will consider the proposal to draft a Convention as a specially important part of the topic of nationality and will initiate discussion on the problem referred to it by the Economic and Social Council at the 1951 session of the Commission."

59. Mr. SANDSTRÖM asked Mr. Alfaro whether he intended his amendment to mean that the question of the nationality of married women should be studied separately.

60. Mr. ALFARO having replied in the affirmative, Mr. SANDSTRÖM said that that was contrary to the decision taken by the Commission.

61. The CHAIRMAN felt that the Commission agreed with him in thinking that he could not put that proposal to the vote, inasmuch as it was contrary to a decision already taken.

62. Mr. AMADO thought that account should be taken of the argument that the members of the Commission would reach the end of their term in 1951, and that it was therefore difficult for them to initiate the study of so important a subject during the last session for which their terms were valid.

63. At Mr. Alfaro's request, the CHAIRMAN put to the vote the question whether a vote should be taken on Mr. Alfaro's proposal.

Two votes were cast in favour of a vote being taken.

64. The CHAIRMAN regretted that in view of the voting he could not put Mr. Alfaro's proposal to the vote. He proposed that a vote be taken on the second sentence of Mr. Hudson's proposal.

65. Mr. ALFARO pointed out that that part of Mr. Hudson's proposal did not answer the question put to the Commission by the Economic and Social Council. If the Commission stated that it could not initiate work on that question before its 1952 session, that meant that the work would perhaps not be begun before 1953 or 1954, or even later. If, on the other hand, the Commission gave no date, that might be taken to mean that it was rejecting the Economic and Social Council's request. He therefore felt that the Commission should not give an evasive answer but should name a date, which, he thought, should be the following year.

66. Mr. BRIERLY asked whether adoption of Mr. Alfaro's proposal would prevent the Commission from holding a general discussion on the question and appointing a rapporteur in 1951. He thought that the first step was to appoint a rapporteur.

67. Mr. HUDSON thought that it would be very difficult for the Commission to appoint a rapporteur, as it would not be sure that the person it selected would be re-elected to membership of the Commission by the General Assembly in 1951.

68. Mr. SPIROPOULOS considered that a rapporteur should be appointed forthwith, as this would provide the Commission the following year with a working document which it could study without delay.

69. Mr. CÓRDOVA recalled that the Commission had decided to study the question of the nationality of women in relation to the question of nationality in general. It should therefore appoint a rapporteur for the question as a whole.

70. Mr. HUDSON was opposed to accepting decisions taken by other United Nations organs or specialized agencies to the effect that a certain subject should be given priority over other work of the Commission. The Commission should itself determine the order of priority. Even the General Assembly was not entitled to tell the Commission which topics should be given priority. The decision rested with the Commission.

71. The CHAIRMAN pointed out that if the Commission wished to appoint a rapporteur, the latter would, in accordance with the Commission's decision, have to deal with the whole question of nationality. He thought that Mr. Hudson's argument about the difficulty of appointing a rapporteur was pertinent. The Commission should take into account the fact that the rapporteur it appointed the following year would perhaps not have his term of office renewed by the General Assembly. He also agreed with Mr. Hudson that no other organ could determine the priority of the topics which the Commission was to codify.

72. Mr. CÓRDOVA thought that the General Assembly was entitled to tell the Commission which topics had priority, but that other organs or agencies, such as the Economic and Social Council, were not so entitled.

73. The CHAIRMAN agreed.

74. Mr. SPIROPOULOS thought that no one could claim that the Economic and Social Council was asking the Commission to change the order of priorities. If, however, an urgent question were submitted to the Commission, the latter could alter the priority of the topics on its agenda. He even thought that it should change that order if for any special reasons or practical considerations a particular topic required urgent study. The Commission undoubtedly had control over its agenda and its system of priorities, but it should take special cases into account.

75. The CHAIRMAN reminded the Commission that it was only being asked to inform the Economic and Social Council as to the approximate date when it might proceed to initiate action on the problem referred to.

76. Mr. CÓRDOVA noted that the English version of the resolution said "approximate time", and not "approximate date".

77. Mr. YEPES said that the Economic and Social Council had just submitted to the Commission the broad outline of a draft convention as drawn up by the Com-

mission on the Status of Women. Under article 17 of its Statute, the Commission was required to consider draft conventions submitted by the principal organs of the United Nations or by specialized agencies. That being so, the Commission could not reply that its agenda was too heavy for it to be able to consider that question. In his view, the Commission should tell the Economic and Social Council when it would initiate that study.

78. The CHAIRMAN observed that the Commission had already decided that it would make the study.

79. Mr. el-KHOURY pointed out that the Commission had decided to study the question in relation to that of nationality in general. He suggested that Mr. Hudson's proposal be amended to say that the Commission had a heavy agenda, but would nevertheless be able to initiate the study of the question in the course of its next session. Mr. Spiropoulos had proposed the appointment of a rapporteur. If the Commission appointed a rapporteur the following year, that would mean that it would actually initiate the study in the current year. Lastly, he thought that the question of the nationality of married women could be separated from the general problem of nationality. That would enable the Commission to study the former question without excessive delay.

80. The CHAIRMAN asked Mr. Hudson whether he agreed to Mr. el-Khoury's amendment.

81. Mr. HUDSON thought that it would not make sense to appoint a rapporteur the following year, since the Commission was not certain that the person it selected would be re-elected by the General Assembly.

82. Mr. el-KHOURY explained that he had not proposed that the Commission should appoint a rapporteur at its next session, but should hold a general discussion.

83. Mr. AMADO said that the Commission was not a political body, and that its function was not to settle immediate problems, but to codify and develop international law. Work of that kind was always of a long-term nature, and could extend over many years. The Commission worked steadily for future generations, and it was not proper for it to decide questions hastily; the work it did should be as perfect as possible. Moreover, the question at issue, although serious, was not absolutely urgent.

84. Mr. el-KHOURY recalled that he had proposed an amendment to Mr. Hudson's text. He had not meant by that amendment that the Commission should appoint a rapporteur forthwith, but that it should take up the question of the nationality of women without too much delay.

85. Mr. KERNO (Assistant Secretary-General) thought that the question of what the Commission would be able to do in 1951 was most important. The Commission could not and should not anticipate the General Assembly's decisions with regard to the election of the Commission's members, but the Commission's uncertainty in that regard should not result in its complete inactivity in the interval between its third and fourth sessions. Provision could be made, for example, for the Commission to hold a very short session after the

conclusion of the sixth General Assembly and adopt whatever decisions it had had to leave in suspense pending the appointment of its members by the Assembly. Be that as it may, the problem was a serious one. The Commission should nevertheless not allow itself to sink into inertia.

86. The CHAIRMAN said that two texts were awaiting decision by the Commission: Mr. el-Khoury's amendment to the effect that the Commission would initiate study of the question of the nationality of women in the course of its 1951 session, and the second part of the proposal submitted by Mr. Hudson who did not want to initiate that study before 1952. He first put to the vote Mr. el-Khoury's amendment, which read as follows:

"The Commission proposes to initiate study of the question of nationality at its 1951 session."

He added that by adopting that proposal the Commission would be undertaking to consider the general problem of nationality in 1951.

Six votes were cast in favour of the proposal, and six against.

87. The CHAIRMAN declared the proposal rejected.

He asked Mr. Hudson whether he was prepared to agree to the deletion from his proposal of the words: "The present agenda is so charged that..."

88. Mr. HUDSON agreed to the deletion.

89. Mr. AMADO was in favour of retaining those words, as they demonstrated the Commission's goodwill to the Economic and Social Council.

90. The CHAIRMAN put to the vote the whole of the second part of Mr. Hudson's proposal—i.e., including the words: "The present agenda is so charged that..."

Six votes were cast in favour of the proposal, and six against.

91. The CHAIRMAN declared the proposal rejected.

91 a. He noted that as a result of that vote, the Commission had adopted only the first sentence of Mr. Hudson's proposal, which read as follows:

"The Commission deems it appropriate to entertain the proposal of the Economic and Social Council in connection with its contemplated work on the subject of nationality, including statelessness."

92. Mr. HUDSON submitted a new text to replace the second sentence of the proposal which had just been rejected. That text was as follows:

"The Commission proposes to initiate that work as soon as possible."

93. The CHAIRMAN thought it unnecessary to take a vote on that text, as it certainly had the Commission's unanimous approval.

The proposal was adopted.

94. Mr. KERNO (Assistant Secretary-General) thought it appropriate that the Chairman should reply to the Economic and Social Council, informing it of the Commission's decision. He noted that the problem was settled as far as the Commission was concerned, but not

as far as he himself was concerned. The Economic and Social Council would undoubtedly ask him to explain the meaning of the decision and, above all, to indicate the probable date on which the Commission would initiate study of the question.

95. Mr. SANDSTRÖM thought that the outcome of the discussion was that the study would not be initiated in 1951, but would probably be undertaken in 1952. Mr. Kerno might find that a useful indication.

96. Mr. KERNO (Assistant Secretary-General) thanked Mr. Sandström.

Regime of territorial waters

97. The CHAIRMAN reminded the Commission that it had to decide another question, that of territorial waters, which had been referred to it by the General Assembly with a request that it be included in its list of priorities (resolution 374 (IV) of 6 December 1949).

98. Mr. KERNO (Assistant Secretary-General) thought that the Commission was acquainted with the problem. The General Assembly recommended the Commission to include that problem in its list of priorities. It was for the Commission to decide. It would have to decide whether it intended to study the question and to appoint a rapporteur.

99. The CHAIRMAN read the General Assembly resolution, and proposed that it be included in the list of priorities.

100. Mr. HUDSON supported that proposal, but pointed out that the Commission would be unable, before the expiry of its term of office in 1951, to complete all the topics already on its agenda or already begun. He therefore proposed the following text:

“The Commission decides to include in its list of priorities the topic of territorial waters, in response to the request emanating from the General Assembly.”

101. Mr. FRANÇOIS agreed with that proposal. He noted that if the Commission also initiated a study of the question of territorial waters in 1951, it would no longer have time to deal with other topics. The study of the report on the high seas which the Commission was to begin in 1951 would take up a great deal of its time, so that, with the question of territorial waters, the Commission would be devoting almost all its time to questions of maritime law. He thought that Mr. Hudson's proposal could give the General Assembly a certain measure of satisfaction. He thought it inexpedient to appoint a rapporteur on the question of territorial waters in 1951, for the reasons already given by Mr. Hudson.

102. Mr. HUDSON said that if the Commission decided to place the question of territorial waters on its agenda for 1951 in response to a request from the General Assembly, it would be faced with four items on which it would have to reach results in that year. It had, in particular, to complete its study of the vital question of the draft code of offences against the peace and security of mankind, and should not therefore think of dealing with any fresh topics whatsoever in 1951. It was better to leave open the question of studying the

problem of territorial waters, although the Commission could inform the General Assembly that it was including that topic in its list of priorities.

103. Mr. ALFARO and the CHAIRMAN supported Mr. Hudson's proposal.

104. Mr. SPIROPOULOS asked whether, despite the objections put forward by Mr. Hudson, it would not be possible for the Commission to take up the question of territorial waters at its 1951 session. It could appoint a rapporteur to deal with the question.

105. The CHAIRMAN said that he had been most impressed by Mr. Hudson's extremely pertinent arguments. The Commission could take up the question of territorial waters at a later date and, for the present, should merely inform the General Assembly that it was including the topic in its list of priorities.

106. Mr. YEPES thought that Mr. Spiropoulos' proposal was a reasonable one. By acting on it, the Commission would demonstrate its goodwill to the General Assembly.

107. Mr. CÓRDOVA felt that it would be wise to take account of Mr. Hudson's arguments, and agreed with the latter that it would be very difficult to appoint a rapporteur in 1951.

108. Mr. HUDSON observed that the question of territorial waters was of great importance, and recalled the failure of The Hague Conference of 1930 in dealing with that question. All that the Commission could do for the moment was to include the topic in its list of priorities.

109. The CHAIRMAN said that the general report would contain the text proposed by Mr. Hudson.

Per diem allowances of the members of the Commission

110. The CHAIRMAN raised a further administrative question. In its 1949 report, the Commission had dealt with the question of the allowances paid to its members. Since then a new factor had arisen—namely, the appointment of the members of the United Nations Administrative Tribunal, with allowances fifty per cent higher than those of the members of the Commission. He believed that he was expressing the view held by all members in saying that there was no reason why the members of the Tribunal should receive larger allowances than the members of the Commission. He thought that the question should be referred to in the report, with particular emphasis on the new development since the previous year, and with the additional observation that the Commission had the impression that it was being treated like a poor relation.

111. Mr. LIANG (Secretary to the Commission) said that the Secretary-General was required to submit to the General Assembly a report on the *per diem* allowances of the members of all the Commissions and that the aim was to achieve absolute equality.

112. Mr. AMADO noted that the position of the members of the Commission was prejudiced by the interpretation given by the General Assembly's Fifth Committee to the word “expert”. Mr. Brierly, rap-

porteur of the Commission for the Codification and Progressive Development of International Law (A/AC.10/51 and A/331) had emphasized that the members of the Commission were legal advisers. The present position of those members derived from a decision adopted by the General Assembly's Fifth Committee on the basis of article 13 of the Commission's Statute, which stated that: "Members of the Commission . . . shall receive a *per diem* allowance at the same rate as the allowance paid to members of commissions of experts of the Economic and Social Council." The Commission must endeavour to secure the amendment of article 13. If the Commission was to last, and if its work was worthy of perpetuation, it had to be recognized that the members of the Commission were not merely experts. He therefore proposed that they request that article 13 be revised so as to give the members of the Commission their due status.

113. Mr. HUDSON stated that Mr. Amado's contention was supported by the provisions of article 16 (e) of the Commission's Statute, which said that "it may consult with . . . individual experts . . ." Hence, the Commission could have experts at its disposal, and, consequently, its members could not themselves be experts.

114. Mr. SPIROPOULOS agreed with Mr. Amado and Mr. Hudson. The previous year, the General Assembly had decided that the members of the Commission were experts, and should be paid at the same rate as experts. He had been astonished to see the members of the Commission described as experts. Nowhere was that stated and, in any case, everyone was an expert in his own field: cooks, chauffeurs, judges were all experts. The members of the Commission, on the other hand, were legal advisers. The question had been discussed in the Sixth Committee and its sub-committee, whose verdict had been that the members of the Commission were legal advisers. Many delegates had shared that view. The matter had then been referred to the Fifth Committee which had mishandled it by studying it on the basis of article 13 of the Statute. It was essential to submit the question to the General Assembly once more, so that the members of the Commission should be recognized as having the status of legal advisers. If the General Assembly wished to have highly qualified persons as candidates for membership in the Commission, it must afford them a status which took due account of their abilities and competence.

115. The CHAIRMAN said that the Rapporteur would mention the matter in his report.

116. Mr. HUDSON announced that he had drafted a text for submission to the General Assembly, in the following wording:

"The Commission would again draw the attention of the General Assembly to the inadequacy of the *per diem* allowances provided for by article 13 of its Statute. The assimilation of its members to members of commissions of experts of the Economic and Social Council fails to take account of the position of the International Law Commission which is endowed with a formal Statute. The assimilation is invidious, moreover, by reason of the larger allowances

provided for members of the Administrative Tribunal of the United Nations."

It was decided that that text should be incorporated in the report.

117. Mr. KERNO (Assistant Secretary-General) said that before the discussion on that question came to an end, he wished to recall the efforts made by Mr. Hudson during the 1949 General Assembly. Despite the unfavourable atmosphere in the Fifth Committee, Mr. Hudson had persevered in his efforts to obtain recognition for the status due to the members of the International Law Commission. He could say that Mr. Hudson had left no stone unturned.

118. The CHAIRMAN thanked Mr. Hudson on behalf of all the members of the Commission.

The meeting rose at 1 p.m.

72nd MEETING

Thursday, 20 July 1950, at 10 a.m.

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Chairman: Mr. Georges SCELLE.

Rapporteur: Mr. Ricardo J. ALFARO.

Present:

Members: Mr. Gilberto AMADO, Mr. James L. BRIERLY, Mr. Roberto CORDOVA, Mr. J. P. A. FRANÇOIS, Mr. Shuhsi HSU, Mr. Manley O. HUDSON, Mr. Faris el-KHOURY, Mr. A. E. F. SANDSTRÖM, Mr. Jean SPIROPOULOS, Mr. Jesús María YEPES.

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

Advisory opinion of the International Court of Justice concerning the constitution of an arbitral tribunal

1. The CHAIRMAN observed that the members of the Commission had no doubt read in the newspapers extracts from the advisory opinion given by the International Court of Justice on 18 July.¹ The Assistant

¹ International Court of Justice, Reports of Judgments, advisory opinions and orders, 1950, p. 221.