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Summary record of the 226th meeting

Topic:
<multiple topics>

Extract from the Yearbook of the International Law Commission:-
1953 , **vol. I**

that the conventions did not relate to existing statelessness; his vote did not, however, mean that he approved them.

66. Mr. ALFARO said that, although he had voted in favour of the proposition, he considered that it was still open to the Commission to add an article to either convention with the object of enabling existing statelessness to be reduced.

67. Mr. SCELLE agreed with Mr. Zourek that the time had now come for the Commission to vote on the titles to be given to the two conventions. He formally proposed that the titles used in the Special Rapporteur's draft be adopted.

68. Mr. LAUTERPACHT said that if the Commission accepted Mr. Scelle's proposal it would be stopped from accepting later the proposal that he (Mr. Lauterpacht) had made concerning the further study of existing statelessness.

69. Mr. SCELLE thought that any result that might spring from the Special Rapporteur's study of existing statelessness could be comprehended in the title proposed.

70. Mr. SANDSTRÖM approved the suggestion that the Special Rapporteur should make a study of existing statelessness, but said that if an article was to be added to one of the conventions already drafted it would be better to postpone the decision on the title to be given to that convention.

71. Mr. KOZHEVNIKOV asked whether the Commission had before it any proposal that the titles of the conventions should be other than those contained in the draft; if not, was there anything to be put to the vote?

72. The CHAIRMAN said that there was no suggestion before the Commission that the titles should be modified. The vote, therefore, was merely on their adoption.

It was decided by 6 votes to 4, with 3 abstentions, that the two conventions that had been drafted should be entitled "Convention on the Elimination of Future Statelessness" and "Convention on the Reduction of Future Statelessness" respectively.

73. The CHAIRMAN said that the Commission should decide whether or not to ask the Special Rapporteur to make an immediate study of the elimination or reduction of existing statelessness with a view to the presentation of a report for discussion at the present session if time allowed.

74. Mr. KOZHEVNIKOV asked the Special Rapporteur whether he did not agree that it would be advantageous to draw up a report on existing statelessness only after the receipt of the comments of governments on the two conventions that the Commission had just drafted.

75. Mr. CÓRDOVA was sure that any discussion of a preliminary report would be protracted. He felt that the urgency of the matter was such, however, that he should make an effort to meet the request.

It was decided by 9 votes to none, with 4 abstentions, to ask the Special Rapporteur to study the elimination or reduction of existing statelessness and to submit a report for discussion at the present session, time permitting.[5]

The meeting rose at 1.5 p.m.

226th MEETING

Wednesday, 29 July 1953, at 9.30 a.m.

CONTENTS

Chairman: Mr. J. P. A. FRANÇOIS.

Rapporteur: Mr. H. LAUTERPACHT.

Present:

Members: Mr. Ricardo J. ALFARO, Mr. Gilberto AMADO, Mr. Roberto CÓRDOVA, Mr. Shuhsi HSU, Faris Bey el-KHOURI, Mr. F. I. KOZHEVNIKOV, Mr. A. E. F. SANDSTRÖM, Mr. Georges SCELLE, Mr. Jean SPIROPOULOS, 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

CHAPTER II: ARBITRAL PROCEDURE (A/CN.4/L.45)*

1. The CHAIRMAN, inviting discussion of the chapter on arbitral procedure in its draft report covering the work of its fifth session, congratulated the General Rapporteur on having provided an accurate account of the Commission's discussions which was at the same time a scientific work of great value.

2. Mr. YEPES suggested that the report be read paragraph by paragraph.

3. Mr. LAUTERPACHT wondered whether time would permit of that procedure.

4. Mr. SANDSTRÖM thought there was no need to read the report aloud. It was an excellent piece of work, on which he would have few comments.

[5] See *infra*, 237th meeting, para. 90.

* Mimeographed document only. Incorporated with drafting changes in the "Report" of the Commission as Chapter II. (See vol. II of the present publication).

5. Mr. ZOUREK suggested that the Commission might follow the same procedure as it had adopted during its consideration of its draft report on its fourth session.

6. Mr. LAUTERPACHT reminded the Commission that the introductory report to the draft on Arbitral Procedure presented by Mr. Scelle and himself at the fourth session had been adopted without the reading or discussion of individual paragraphs.

7. Mr. LIANG (Secretary to the Commission) said that it was not the practice of the Committees of the General Assembly to have their reports read aloud.

8. Mr. KOZHEVNIKOV suggested that it might be advisable to have some of the more controversial parts, rather than the whole report, read aloud.

9. He wondered whether the Commission had not exceeded its terms of reference in its discussions and decisions on arbitral procedure. The Commission was entrusted primarily with the codification of international law; its work on arbitral procedure had gone much further than that. The Commission's competence should be discussed before its report was transmitted to the General Assembly.

It was agreed by 4 votes to 3, with 4 abstentions, that the introductory section of the chapter on arbitral procedure be read aloud, paragraph by paragraph.

10. Mr. KOZHEVNIKOV said that it was evident that Mr. Lauterpacht had spent much time and taken much trouble in the preparation of an interesting report. The task of the Commission was, however, the codification of existing law; that meant, in the present instance, the systematization and confirmation of existing law and practice on arbitral procedure. The draft under discussion indicated, however, that the Commission had been more concerned with what some members regarded as the development of international law rather than with its codification. He maintained that the Commission had thereby exceeded its terms of reference.

11. Mr. ALFARO disagreed with Mr. Kozhevnikov. The Commission could not, at that stage of its work, discuss whether or not it had exceeded its terms of reference. The object of the report was to provide an account of what the Commission had done, and a summary of its significance and purpose. It was open to Members of the Commission to draw attention to any lack of harmony between the draft report and the text of the final draft on Arbitral Procedure, but the substantive discussion should not be reopened.

12. Faris Bey el-KHOURI, referring to the mention in paragraph 1 of section I that the Commission had at its first session "selected arbitral procedure as one of the topics of codification of international law", suggested that a sentence be inserted to the effect that, although the Commission had so decided, it had found it desirable to suggest certain new rules in the field of arbitral procedure; for that was, in fact, what the Commission had done.

13. Mr. HSU drew a distinction between the re-statement of international law and its codification, in the sense in which the Commission used the latter word. The former was essentially the work of scientific experts and would be more appropriate for a research institute than for the Commission. The latter involved recommendations for the filling of gaps in the law, where they were found. He felt that the Commission was competent to make recommendations for the completion of the law.

14. He considered that, under the guidance of Mr. Scelle, the Commission had done a good job. Certain departures from and additions to existing law had been shown to be necessary, and the Commission had not exceeded its terms of reference. Indeed, it would have laid itself open to criticism had it acted otherwise. It should be remembered that the Commission was not the final authority: its task was only to make appropriate recommendations.

15. Mr. SCELLE pointed out that the law was an organic entity, and that its codification was more than a mere recording of past and present practice.

16. The CHAIRMAN supported Mr. Alfaro. The General Rapporteur's task had been to describe what the Commission had done. It was not now open to the Commission to discuss whether or not it had exceeded its competence, though members were at liberty to suggest additions to, or deletions from, the draft report.

17. Mr. SANDSTRÖM, too, agreed that Mr. Kozhevnikov's suggestion that the Commission had exceeded its competence came too late. There was, however, a possible — and justifiable — misunderstanding of the word "codification".

18. Mr. ZOUREK said that the very detailed draft report was a true expression of the General Rapporteur's great experience. He could not, however, agree with the basic assumption underlying it, for some of the articles in the final draft on Arbitral Procedure were not concerned with arbitral procedure *stricto sensu* but with other aspects of international arbitration. Evidently the General Rapporteur was aware of that fact, since he had commented in section I on the wider connotation of the term "arbitral procedure" as it was used in the title of the final draft.

19. He agreed with Mr. Kozhevnikov that the Commission had exceeded its terms of reference. On the other hand, he thought that the suggestion that the Secretariat might draft a model code of rules of arbitral procedure in the more limited and technical sense of the term was useful.

20. The concept of arbitral procedure on which the draft report was based differed from the generally accepted notion. The General Rapporteur's action in making a distinction between the formulation of desirable developments in the field of arbitral procedure and the codification of existing law was open to question, for although that method told in favour of the theses of the majority of the Commission, it caused the inadequacies of the final draft to be overlooked.

21. As an example, he referred to the traditional view

that international arbitration rested on the free will and consent of the parties to choose whichever method of arbitration and arbitrators they wished. The final draft, however, would make it possible for the President of the International Court of Justice to appoint arbitrators; in such circumstances it was evident that the liberty of action of the parties no longer existed.

22. Again, the General Rapporteur had assumed that international arbitration was similar to arbitration procedures under municipal law. In fact, however, since arbitration in any State was dependent on the local courts, there was an essential difference, which was not averted by the Commission's recognition that the International Court of Justice could intervene in procedural matters when the parties were unable to reach agreement. Further, the statement in paragraph 20 of the draft report that an obligation freely undertaken was no derogation from sovereignty was very questionable, for if two States could, in full exercise of their sovereignty agree on the conclusion of a *compromis* they were surely equally competent to bring their undertaking to an end. Again, according to existing international law, two States accepting a recommendation of the United Nations that they should submit a difference to arbitration were free to agree on the exact procedure to be adopted. If the final draft on Arbitral Procedure were chosen, the two States concerned would not be free in the matter but would be forced to follow the procedure laid down. Their sovereignty would thereby be considerably affected.

23. Mr. YEPES said that the object of the discussion was to decide whether the report faithfully reflected the Commission's deliberations. In his view, the answer was clearly in the affirmative. The report confined itself to recalling what the Commission had done and said, and set forth the Commission's aims and results clearly and scientifically. It was irrelevant that some members disagreed, as indeed he did himself, with certain of the articles in the final draft.

24. Mr. KOZHEVNIKOV thought it very desirable in the last stages of the Commission's work for members to summarize their attitudes on the substance of the matters contained in the draft report.

25. In the case of its work on arbitral procedure, he was still convinced that the Commission had exceeded its terms of reference. He agreed that codification involved more than mere transcription; but it was none the less no more than a systematization of existing law and practice. Article 2 of the final draft on Arbitral Procedure was a case in point. It was a fundamental principle of international arbitration that States should be free to arrange arbitration in accordance with their joint will. The final draft, however, would permit a State to be brought before the International Court of Justice against its will. A situation could arise in which, although only one of the parties affected alleged that a dispute existed, that party might, by appeal to the International Court, drag the other party unwillingly into the dispute. The General Rapporteur had stated in paragraph 19 of his draft report that one of the Commission's aims was to safeguard the principle of good faith, but it was possible that the party lacking good faith would be the one to allege that a dispute existed. Thus the final draft could be a source of international conflict, as it quite clearly permitted violations of national sovereignty.

26. Many of the Commission's decisions on arbitral procedure had been taken by very small majorities. That, perhaps, did not much matter; but it was important to recognize, with all respect to the General Rapporteur and while admiring his conscientious work, that the draft report was not objective. Clearly, the Rapporteur had been unduly influenced by certain views expressed in the Commission, for the report gave insufficient weight to the opposite point of view. The report should have maintained a judicious balance between the two schools of thought; as it was, it was tendentious.

27. Mr. SCELLE, speaking as Special Rapporteur on arbitral procedure, warmly congratulated the General Rapporteur on his draft report, which was realistic and objective.

28. The CHAIRMAN then invited discussion on the draft report paragraph by paragraph.

*Paragraph 1 (9)**

29. Mr. KOZHEVNIKOV said that the statement that the Commission had "selected arbitral procedure as one of the topics of codification of international law" clearly supported his contention that the Commission had exceeded its terms of reference.

30. Faris Bey el-KHOURI said that the draft report gave a complete and correct account of the Commission's discussions. He withdrew his earlier suggestion that paragraph 1 should contain a mention of the fact that the Commission had considered it to be desirable to include in the final draft certain formulations of desirable developments in the field of arbitral procedure.

31. Mr. LAUTERPACHT thanked the Chairman, the Special Rapporteur and the Secretariat for the assistance they had given him in preparing the draft report. He proposed that the comments of governments on the "Draft on Arbitral Procedure", adopted by the Commission at its fourth session, should be annexed to the report under discussion.

Paragraph 1 was approved by 9 votes to none, with 2 abstentions.

Paragraph 2 (10)

Paragraph 2 was approved without comment.

Paragraph 3 (11)

32. Mr. KOZHEVNIKOV, referring to the statement that the comments of governments had been of great value, said that a number of governments had expressed themselves against the very principles of the "Draft on

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

Arbitral Procedure". That disapproval should surely be mentioned.

33. Mr. LAUTERPACHT thought that to describe the views of individual governments in paragraph 3 would overload the introductory section of the report. Mr. Kozhevnikov's point might be met by printing the comments of governments *in extenso* as an annex to the report. He reminded the Commission that the only critical observations received, and they had not been entirely negative, had been those from the Belgian Government.[1]

34. He was particularly anxious to draw attention to the usefulness of the comments submitted by governments. The Commission might attach importance to expressing a formal view to that effect, in order to encourage governments to comment on any future drafts the Commission might submit to them. On the other hand, he regarded the absence of governmental comments as a great handicap, and suggested that mention should be made in chapter V of the report of the desirability of increased co-operation between governments and the Commission in that respect.

35. Mr. LIANG (Secretary to the Commission) drew attention to General Assembly resolution 593 (VI), entitled "Control and Limitation of Documentation". The comments of governments on the "Draft on Arbitral Procedure" had already been mimeographed and circulated to all concerned by the Secretariat. Whether or not they were to be printed was, of course, a matter for the Commission; but if it decided that they should be, a paragraph ought to be inserted in the report requesting the Secretariat to take the necessary steps to append the comments as an annex. That was particularly important if the same arrangement was to be followed in the case of other topics dealt with by the Commission.

36. He had the previous day received a letter from the Government of Uruguay, to which were attached the comments of the Faculty of Law and Social Sciences of the University of Montevideo, and those of the Uruguayan Institute of International Law, on the "Draft on Arbitral Procedure".[2] He doubted whether the Commission would have time to consider those comments at its present session, but he suggested that it might be stated in paragraph 3 that a communication had been received from the Uruguayan Ministry of Foreign Affairs, which on account of its lateness, it had not been possible to take into consideration.

37. Mr. ALFARO supposed that the reference to paragraph 22 of the report, at the end of paragraph 3, should read "paragraph 21". It would not, he thought, be practical to set forth *seriatim* the changes that had been made in the "Draft on Arbitral Procedure" at the instance of various governments. Any interested student would, however, be able to compare the "Draft on Arbitral Procedure", the comments of governments, the summary records of the fifth session, and the "Final Draft on Arbitral Procedure" and judge the great usefulness of the comments.

38. Mr. LAUTERPACHT said that he was prepared to draft a passage of a general character advocating the desirability of annexing the comments of governments to the report.

39. However, the letter from the Government of Uruguay could not, in his view, be mentioned in the report; as the report was a record of certain discussions, and the letter from Montevideo had only been received after their termination.

40. Mr. SCELLE asked whether the comments in question had been officially transmitted by the Government of Uruguay.

41. Mr. LIANG (Secretary to the Commission) confirmed that they had been so transmitted, although they were not necessarily those of the Uruguayan Government itself.

42. The CHAIRMAN said that receipt of the communication might be mentioned in a footnote.

43. Mr. YEPES agreed with the Chairman's suggestion. He also agreed with Mr. Lauterpacht that governments' comments on the "Draft on Arbitral Procedure" should be annexed to the Commission's report. He therefore suggested the insertion of a sentence in paragraph 3 reading: "Those comments will be found in the annex to this report".

44. Mr. LAUTERPACHT agreed with Mr. Yepes' suggestion.

45. Mr. KOZHEVNIKOV said that the comments forwarded by the Government of Uruguay did not necessarily represent that government's views, nor were they even necessarily supported by it.

46. In his previous remarks he had drawn attention to the fact that appreciation of the comments of governments had been expressed; but that inadequate attention had been paid to those comments which expressed fundamental disagreement with the basis of the "Draft on Arbitral Procedure".

It was agreed by 8 votes to none, with 5 abstentions, to insert in paragraph 3 a sentence reading: "Those comments will be found in the annex to this report."

The text of paragraph 3, as amended, was approved by 8 votes to none, with 3 abstentions.

Paragraph 4 (12)

47. Mr. KOZHEVNIKOV felt that it was not correct to say that the Commission had considered the final draft "in the light of" the comments of governments, or that it had adopted "a number of substantial changes".

48. Mr. LAUTERPACHT and Mr. SCELLE said that in their view the changes which had been made were "substantial".

[1] See Annex I of the "Report" of the Commission (A/2456) in vol. II of the present publication.

[2] *Ibid.*

49. Mr. ZOUREK shared Mr. Kozhevnikov's views and proposed the deletion of the word "substantial".

50. Mr. KOZHEVNIKOV proposed that in addition the words "in the light of" should be replaced by the words "taking partly into account".

51. Mr. SCELLE was unable to accept either proposal. The Commission had considered the final draft in the light of all the comments, but that did not mean that it had been obliged to accept them all. The word "partly" implied unjustified criticism of the Commission.

Mr. Zourek's proposal was rejected by 8 votes to 3, with 1 abstention.

Mr. Kozhevnikov's proposal was rejected by 9 votes to 2, with 1 abstention.

Paragraph 4 was approved by 9 votes to 2, with 1 abstention.

Paragraph 5 (13)

52. Mr. LIANG (Secretary to the Commission) said that in connexion with paragraph 5, he wished to clarify a remark which he had made at a previous meeting,[3] and which had been referred to by Mr. Kozhevnikov. It was true that he had said that the commentary was not objective in the sense that a treatise or monograph on international law was objective. The commentary was frankly based upon the text prepared by the Commission. It was objective, however, in so far as the Secretariat had not consciously omitted arguments in favour of the opinion contrary to that which the Commission had expressed, or references to existing practice where that diverged from what the Commission proposed. Mr. Kozhevnikov had asked why no reference had been made to unfavourable comments by governments. One reason was that very few comments had been received at the time the commentary had been prepared; but the Secretariat had also felt that it was unnecessary and inappropriate, in a commentary which was intended to state practice and scientific views, to refer to *ad hoc* comments by governments, which would in any case be available in another form.

53. The Secretariat had endeavoured to carry out the Commission's instructions to prepare a commentary in accordance with the provisions of article 20 of the Commission's Statute, where it was stated that commentaries should contain:

"(*a*) Adequate presentation of precedents and other relevant data, including treaties, judicial decisions and doctrine;

"(*b*) Conclusions relevant to:

"(i) The extent of agreement on each point in the practice of States and in doctrine;

"(ii) Divergencies and disagreements which exist, as well as arguments invoked in favour of one or another solution."

[3] See *supra*, 194th meeting, para. 89.

54. It was a matter of opinion whether the commentary prepared by the Secretariat fully complied with article 20; the Secretariat itself did not claim that it met all the requirements stipulated in that article. The time at its disposal had not been ample. It had, however, worked on the basis of the text approved by the Commission, and had been in communication with Mr. Scelle, the Special Rapporteur, whose advice it had followed wherever possible. As Mr. Lauterpacht said in his draft report, the text should now be revised and supplemented by reference to the changes which had been made during the present session and in the light of the Secretariat's own further studies. For obvious reasons, however, it was difficult for the Secretariat to make a "critical" examination of the available practice, jurisprudence and doctrine, and the words "and critical", in the last sentence of the paragraph under discussion, might therefore be deleted.

55. Replying to a question by Mr. KOZHEVNIKOV, Mr. LAUTERPACHT said that in his view the present report, together with the commentary which the Secretariat had prepared, revised and supplemented as he had suggested, did constitute a commentary conforming with the provisions of article 20 of the Statute.

56. The CHAIRMAN agreed.

57. Mr. LAUTERPACHT said that by "critical examination" he had meant no more than "analytical examination", which term might indeed be used in order to avoid any misunderstanding. He also suggested that the correct translation of what he meant by "a valuable contribution" was not "*une contribution utile*" but "*une contribution précieuse*".

Mr. Lauterpacht's suggestions were adopted.

58. Mr. KOZHEVNIKOV felt that, in view of what the Secretary himself had said, it was going too far to say that the commentary prepared by the Secretariat was "a valuable contribution to the study and the application of the law of arbitral procedure", or that "such commentaries... may in themselves constitute a contribution of considerable practical and scientific value to the application and the study of international law". He also enquired what exactly was meant by the words "the commentary should be published".

59. Mr. LIANG (Secretary to the Commission) suggested that the words "by the Secretariat" should be inserted at that point in order that it should be quite clear that the Commission was making a recommendation to that effect; otherwise it might be difficult to arrange for publication.

60. Mr. HSU pointed out that, by requesting the Secretariat to publish the commentary on its final draft on Arbitral Procedure, the Commission would be conferring an entirely new function upon it; and it was clearly intended that that function should be a continuing one, since the commentary was only designed as the first in a series. The Commission had therefore to decide whether it was justifiable to ask the General Assembly to make available the additional funds which

would be required, for he feared that the Commission had given insufficient consideration to the consequences of the decision which it had taken at the previous session. If, as he considered, that decision had been a mistaken one, the Commission should frankly admit the fact before it got further embroiled.

61. The CHAIRMAN suggested that further discussion of the draft chapter on Arbitral Procedure be deferred until the Commission had considered the urgent question of the date and place of its next session.

It was so agreed.

Date and place of next session

(resumed from the 189th meeting)

62. The CHAIRMAN recalled that at the 189th meeting the Commission had decided that it would hold its next session in Geneva for a period of approximately eight weeks, beginning in the third week of August 1954. In doing so, it had taken into account General Assembly resolution 694 (VII), which provided that "the International Law Commission would meet in Geneva only when its sessions could be held there without overlapping with the summer session of the Economic and Social Council". In the note bringing that resolution to its attention (A/CN.4/74), the Headquarters Secretariat had added that, according to a conference pattern recommended by the General Assembly, "the International Law Commission could, if it decided to meet in Geneva, hold a yearly session there, lasting eight weeks beginning with the third week in August".

63. Since the Commission's decision, however, the following teleprinter message had been received from United Nations Headquarters:

> "After discussion with Secretary-General point out the following:
>
> "1. 1954 budget estimates provide funds for ILC meeting at Headquarters. ILC meeting in Geneva would necessitate additional appropriation of approximately dollars 25,000 for eight weeks' session for temporary assistance and travel and subsistence of three HQ staff.
>
> "2. In view of wording of article 12 of ILC Statute and stress laid by Advisory and Fifth Committees on economy would consider it advisable that next ILC session take place in New York. Foresee difficulties obtaining supplemental appropriations as in previous years.
>
> "3. HQ able to service ILC in 1954 in May, June, July and early August.
>
> "4. If session held in Geneva in August it would overlap with General Assembly and not only ILC report could not be submitted to General Assembly session of same year but also Secretariat would be confronted with difficulty assigning adequate staff.
>
> Lall, Stavropoulos".

64. He would deal point by point with the three objections raised to the Commission's decision; first, that it would entail additional financial appropriations; secondly, that the Commission's report would not be ready for the General Assembly; and thirdly, that it would be difficult to assign adequate staff for the session if it overlapped the session of the General Assembly.

65. He did not think the objections of a financial nature need detain the Commission long. The Secretariat's estimate of the additional expense which a session in Geneva entailed was open to question, but that was beside the point. The General Assembly had agreed that the necessary expenditure could be incurred, since the only proviso which it had made about holding the Commission's sessions in Geneva was that they should not overlap the summer sessions of the Economic and Social Council.

66. The second objection was more important, but was not decisive. If a year were allowed to elapse before the Commission's report was considered by the General Assembly, that would at least have the advantage of enabling governments to digest it.

67. The third objection, however, was in his view decisive. He feared that the Commission had failed to take sufficiently into account the fact that if its session began in the third week of August and lasted approximately eight weeks, it would overlap the General Assembly by approximately one month, and that for that month not only would the Sixth Committee of the General Assembly be deprived of the services of Mr. Liang and the other members of the Secretariat who accompanied him to Geneva, but those members of the Commission who regularly attended the General Assembly would also be unable to do so.

68. What were the alternatives? The Commission could meet in Geneva during May and June, in which case it would not overlap with the Economic and Social Council; but it was almost impossible for those of its members who were university professors to get leave of absence during May. Alternatively, it could meet in New York, and the Secretariat had indicated that services could be made available for the Commission in May, June, July and early August; the Commission had already on a number of occasions, however, stated its objections to meeting in New York during July and August, and the same objections applied to a session there in May and June as to one in Geneva. The Commission could, of course, also say that, despite the terms of General Assembly resolution 694 (VII) it wished to meet in Geneva during June and July, even though it thereby overlapped with the Economic and Social Council; but in that case it was unlikely that the necessary additional funds would be made available. He wondered, therefore, whether it would not be possible to seek some compromise with the Economic and Social Council, whereby the Council's summer session opened somewhat later, in the second half of July or at the beginning of August. Six weeks were usually set aside for the Council's summer session, but it appeared that in the case of the present session the Council would exhaust its agenda in less than six weeks. If its session opened at the end of July or the beginning of August,

there would, therefore, be sufficient time for it to complete its work and for its report to be prepared in time for the General Assembly.

69. Mr. LIANG (Secretary to the Commission) feared that the summer session of the Economic and Social Council could not be put back any later than the dates at present fixed for it. In any case, the Council was one of the principal organs of the United Nations, and its wishes had therefore to be respected in establishing the pattern of conferences. It was obviously the intention of the Special Pattern of Conferences that the International Law Commission should adjust the dates for its session to those chosen by the Council.

70. As the Chairman had said, there might be some advantage in allowing a year to elapse between the Commission's adoption of its report and their consideration by the General Assembly. Experience had shown, however, that, except in a few cases where the General Assembly had decided that it was inappropriate to do so, it had wished to take up and discuss the Commission's reports as soon as they appeared. For example, the chapters of the report of the International Law Commission covering the work of its third session dealing with reservations to multilateral conventions and the definition of aggression had, among others, been considered by the General Assembly during the same year. Moreover, if a year elapsed between the time when the Commission considered a question and the time when its conclusions were discussed by the General Assembly, that lapse of time might cause the General Assembly to lose interest in the work of the Commission.

71. As the representative of the Secretary-General, it was his duty, however, to draw attention to certain other considerations in favour of holding the next session in New York. The Commission had held its first session in New York, but had held the four subsequent sessions in Geneva. For a number of reasons it seemed particularly desirable that its next session, when its membership would have been renewed, should again be held at United Nations Headquarters. The Commission needed the interest and support of the experts in international law and also of the general public, and it seemed high time that the experts and public of North America should be given another opportunity of seeing the Commission at work. From the Commission's own point of view it would seem to be appropriate to renew closer contact with the Headquarters of the organization of which it formed a part. It was, he supposed, mainly with that consideration in mind that the authors of the Commission's statute had provided in article 12 that it should, in principle, sit at the Headquarters of the United Nations.

72. The CHAIRMAN asked whether the Secretary considered the objections to a session beginning in August well-founded and, if so, why it was that they had not been made before the Commission took its decision.

73. Mr. LIANG (Secretary to the Commission) said that in his view the objections were decisive. He thought that at the time when the Commission had taken its decision it might have had in mind the possibility that the date of the General Assembly sessions would be changed to the spring, in which case the objections possibly would not apply. But that was a matter which had not been decided by the General Assembly and therefore could not be made the basis of a decision.

74. Mr. CÓRDOVA said that the Commission's sole concern was to carry out its task to the best of its ability, and experience had shown that that was impossible in New York. The logical way of overcoming the practical difficulties which had arisen would be to advance the date of the session. If that were done, those members who were also university professors would find it very difficult to attend the early part of the session, but whatever date was chosen would create difficulties for some members, and in view of their interest in the Commission's work, it was possible that the universities might be willing to grant the two or three members concerned leave of absence before the end of the academic year. If not, the Commission could arrange its agenda in such a way as to take up first those questions with which the absent members were not specially concerned.

75. Mr. SPIROPOULOS thought that all members of the Commission agreed that its sessions should be held at Geneva. They were also bound to agree that there were insuperable objections to the sessions overlapping the General Assembly; in that connexion he agreed with the Secretary that it was essential, in view of the rapidity with which developments were now apt to occur, that the Commission's reports should be submitted to the General Assembly the same year as they were written. One solution might be to make the sessions shorter; the present one had been particularly long. If the Commission met in mid-May and arranged its agenda as Mr. Córdova suggested, it would have six weeks for its work before the Economic and Social Council opened, or seven if the Council could be persuaded to postpone its session for a week.

76. Mr. ALFARO pointed out that the Secretariat now stated that a session in Geneva would entail an additional appropriation of approximately $25,000, whereas previously the Commission had always been given to understand that the sum involved was $11,000 to $12,000. It was true that article 12 of the Commission's Statute stated that the Commission should sit at Headquarters, but it added that it should have the right to hold meetings elsewhere after consultation with the Secretary-General. When the Special Committee on Programme of Conferences had been preparing the long-term pattern of conferences for Headquarters and Geneva, he as the Commission's Chairman at that time, had sent the Secretary a memorandum to present to that Committee, setting out the Commission's reasons for wishing to hold its session in Geneva. That memorandum, dated 9 December 1952, had read as follows:

> "The International Law Commission held its second session in Geneva during the summer of 1950 pursuant to a decision taken by the Commission at

the end of its first session, held in New York in the spring of 1949.

"When the question of deciding the date and place of the third session came up in 1950 there was some discussion with regard to the place, and the opinion of the great majority of the members of the Commission was that the third session, or rather all sessions of the Commission, should be held in Geneva. The only reason taken into account for holding the meetings in New York was the information given by the Office of the Secretary-General that holding the meetings in Geneva caused an extra expenditure of some ten or twelve thousand dollars in transportation of personnel and material. In favour of Geneva it was maintained that the quiet atmosphere of the city was more propitious to the kind of work the members of the Commission have to perform; that the meetings were held far away from the disturbing agitation of political debates in the General Assembly and in the First Committee; that library facilities at the European Office of the United Nations, with material gathered and organized since the days of the League of Nations, had proved to be unsurpassed; that inasmuch as it was necessary to hold the meetings during the summer, consideration should be given to the fact that climatic conditions in New York at that time were exacting to the point of interfering with the health and working capacity of the members of the Commission, whereas climatic conditions in Geneva were quite healthy and agreeable; and finally, that any added expenditure caused by meeting in Geneva would be fully compensated by more fruitful labours and more satisfactory results.

"It could be seen during this discussion that no member of the Commission had any objection against holding the meetings in Geneva, while on the other hand some members did object to New York, in terms which showed that holding the meetings at Headquarters would certainly lead to absences which would seriously affect the work of the Commission. Two or three members stated that they would not object to the meetings being held in New York, but that they were satisfied if the majority decided to hold them in Geneva. Finally, at the fourth session, when the matter was first discussed two or three members abstained from voting one way or the other, but at the meeting at which the question was finally decided, they voted in favour of Geneva and no vote was cast in favour of New York. It may thus be averred that the unanimous view of the members of the Commission today is that all meetings of the Commission should be held in the city of Geneva."

77. That statement had arrived in New York too late for presentation to the Committee, but the Secretary had previously submitted similar observations in response to a request by the Committee.

78. As, in the Commission's view, those reasons were still valid, the only question now was that of adjusting the date of the session so that it did not overlap with the Economic and Social Council.

79. Mr. SANDSTRÖM said that, although he realized that he might well not be re-elected, he felt it his duty to draw attention to the particular difficulty with which he was faced. He had to attend the meetings of the Board of Governors of the League of Red Cross Societies. In 1954 the meeting would take place in Oslo, and it had been suggested that it should be held in June. At his request, in order to avoid clashing with the start of the International Law Commission's session, the date of the Oslo meeting had been brought forward to the last ten days of May. If, after all, the session of the International Law Commission began in mid-May, and not at the beginning of June, he would therefore be unable to attend during the first fortnight.

80. Mr. SCELLE said that the Commission had a duty to consult the Secretary-General on the place of its sessions, but that it was for it itself to decide. The Commission had taken a decision to which the Secretary-General now raised objections. Some of those objections were perhaps valid, although the estimate of the additional financial implications of the Commission's decision was, to put it mildly, open to question. The Commission could, if it wished, change its decision, and from his point of view it would be more convenient if the session began at the end of May. The length of the session could perhaps be cut. Once taken, however, the new decision must stand.

81. Mr. KOZHEVNIKOV pointed out that the whole question was complicated by the fact that the Commission did not know who would be the members, or what would be their views, in a year's time. He personally was still in favour of sessions in Geneva, but at the same time he would not have any objections to meeting in New York if the Commission so decided.

82. Mr. AMADO wondered whether, in comparing the cost of sessions in Geneva and New York, Headquarters had taken into account the travel expenses of the Commission's members as well as those of its Secretariat.

83. Faris Bey el-KHOURI said that he understood the only objection to the Commission's session overlapping with that of the Economic and Social Council was that it necessitated the engagement of a few temporary staff. That was surely a small matter when viewed in the light of the Commission's clearly expressed opinion as to how it could most effectively perform the tasks for which it had been established.

The meeting rose at 1.5 p.m.

227th MEETING

Thursday, 30 July 1953, at 9.30 a.m.

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