

Document:-  
**A/CN.4/SR.112**

**Summary record of the 112th meeting**

Topic:  
**Other topics**

Extract from the Yearbook of the International Law Commission:-  
**1951 , vol. I**

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of Member States to express their observations on the formulation, and requested the Commission

'In preparing the draft code of offences against the peace and security of mankind, to take account of the observations made on this formulation by delegations during the fifth session of the General Assembly and of any observations which may be made by governments.'"

172. Mr. HUDSON explained that he had become convinced during discussion of the need to quote the text of resolution 177 (II).

173. The CHAIRMAN agreed that it would be an improvement.

174. Mr. KERNO (Assistant Secretary-General) pointed out that the text proposed by Mr. Hudson was to replace only paragraph 1 of the introduction and he was surprised to find that paragraph 1 referred to the second session of the Commission while paragraph 2 referred to the first session.

175. Mr. HUDSON replied that the difference was admissible, since the two paragraphs did not refer to the same part of the General Assembly resolution.

176. The CHAIRMAN pointed out that paragraph 4 of the introduction would also have to be deleted.

*The redraft proposed by Mr. Hudson was adopted.*

177. The CHAIRMAN announced that, in view of the number of amendments to the draft code, voting must be delayed until all had been issued in documentary form by the Secretariat. There would be no further discussion on the text.

*The meeting rose at 1 p.m.*

## 112th MEETING

Wednesday, 27 June 1951, at 9.45 a.m.

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*Chairman:* Mr. James L. BRIERLY

*Rapporteur:* Mr. Roberto CORDOVA

### Present:

*Members:* Mr. Ricardo J. ALFARO, Mr. Gilberto AMADO, Mr. J. P. A. FRANÇOIS, Mr. Shuhsi HSU, Mr. Manley O. HUDSON, Mr. Faris EL KHOURY, Mr. A. E. F. SANDSTRÖM, Mr. Georges SCELLE, 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.

### Communication concerning the next session of the Commission

16. The CHAIRMAN proposed that a reply be transmitted to Mr. Lall, Assistant Secretary-General in charge of the Department of Conference and General Services, informing him that, after considering his telegram, the Commission was still convinced that, in the interests of its work, its next session should be held at Geneva.

17. Mr. LIANG, Secretary to the Commission, suggested that a paragraph of the general report to the General Assembly be devoted to the subject.

*The Chairman's proposal was adopted unanimously.*

**General Assembly resolution 484 (V) of 12 December 1950: Review by the International Law Commission of its Statute with the object of recommending revisions thereof to the General Assembly (item 1 of the agenda)**

**DRAFT REPORT TO THE GENERAL ASSEMBLY PROPOSED BY THE SUB-COMMITTEE (A/CN.4/L.21)<sup>1</sup>**

22. Mr. HUDSON, Chairman of the sub-committee,<sup>2</sup> explained that the latter had considered that it had received a twofold instruction from the Commission. First, it had been directed to express the view that members of the Commission should devote their full time to its work; that was done in Part I of its report. Secondly, it was to consider the advisability of making certain amendments of detail to the present statute.

23. The sub-committee had carefully considered both questions and decided that the Commission would perhaps create a false impression if it assumed that the General Assembly would deal with amendments to the statute that year and with the question of full-time membership and with further amendments in the following year. The sub-committee had considered that the General Assembly might be disinclined to discuss those questions in two consecutive years. In addition, should the Assembly consider amendments to the statute that year and full-time membership of the Commission in the following year, its views might change in the interval. Such were the grounds on which the conclusion at the end of paragraph 12 in Part II of the report had been reached.

24. The sub-committee had dealt with a question which had not been mentioned during the general discussion, namely, the staggering of the terms of office of members of the Commission as a means of promoting continuity in its work. If, for example, the composition of the Commission were completely changed at the end of the five-year term of office the new members of the Commission

<sup>1</sup> Mimeo graphed document only, the text of which corresponds with drafting changes to chapter V of the *Report of the International Law Commission covering the work of its third session*. (See text in vol. II of the present publication.) The drafting changes are indicated in the present summary record.

<sup>2</sup> Set up at the 96th meeting. See summary record of that meeting, para. 148.

would have to begin all over again. The sub-committee suggested that the terms of office of the members should be staggered, as was done in the International Court of Justice. That change had only been introduced in 1945 for the Court; but when terms of office had expired in 1930 several judges had been re-elected. If the Commission were regarded as a continuing body, which it was, its terms of office must be staggered. A recommendation to that effect was therefore made in paragraphs 13 and 14 of the Report.

25. He suggested that the report be examined paragraph by paragraph. Mr. François had submitted amendments to paragraphs 9 and 10. He himself readily accepted these amendments; but he could not speak for Mr. Córdova and Mr. Sandström.

26. He did not know whether the Commission intended to re-open the question as to whether its members should devote their full time to its work. The sub-committee had assumed that most of the members of the Commission were in favour of the solution which it had proposed. He himself was doubtful whether that was the case.

27. Mr. EL KHOURY pointed out that the principle that members of the Commission should devote their full time to its work had been adopted with one dissentient voice, namely, his own.<sup>3</sup>

28. The CHAIRMAN said that he also was opposed to the full-time principle; but, at all events the majority of the members of the Commission could be said to have supported it.

29. Mr. AMADO, explaining his own position, said that the Commission should not overlook the need to ascertain whether the General Assembly considered the task of codification as important at the present time, in the present international situation, as immediately after the War, when the Charter was adopted and faith in co-operation between the victorious nations was still alive. Generally speaking, codification was peace-time work. When countries settled down after vast conflicts they contemplated giving their legislation a more precise and more final form. He asked whether the members of the Commission felt sufficiently sure of themselves to embark on such a work. They were all specialists, and specialists' ideas were apt to be moulded by their own particular cast of mind.

30. Most members of the Commission considered that they should devote their full time to its work; but the Assembly should be asked whether it was prepared to shoulder the burdens entailed in such a long-term undertaking. It was hard to say whether it could be accomplished under existing conditions. The Assembly should state whether it still wished the work of codification to be completed. The international climate had changed. The Commission had been set up at a time when it had been believed that an era of co-operation between the nations was beginning. If the General Assembly was really prepared to attach to codification the same importance as it had attached to it when the Commission had begun its work, the question was different. But he himself was opposed to a permanent Commission and

did not believe that the time had yet come to carry out the necessarily vast task of codification. Nevertheless, if the work was to be done, the Commission must be given the necessary means to do it and its members would have to devote their full time to it.

31. Mr. HUDSON explained that, although he had been prepared to fall in with the majority of the Commission on that point, he could hardly believe, that it would be possible to find fully qualified persons who would be prepared to give up all other activities in order to devote themselves to the work of the Commission.

32. The CHAIRMAN thought that the proposal was impracticable on those grounds.

33. Mr. CORDOVA thought that the General Assembly would be very reluctant to accept a report on those lines. The report should state no more than that the Commission considered it would be a more efficient body if its members devoted their full time to its work.

*Paragraph 1 (paragraph 60 of the "Report")*

*Paragraph 1 was adopted without comment.*

*Paragraph 2 (paragraph 61 of the "Report")*

34. Mr. FRANÇOIS read out the last sentence of paragraph 2, as follows:

" Yet hopes for ' rapid results ' are to be indulged only with appreciation of the magnitude of the task of developing or codifying international law in a manner which will command general acceptance."

35. He wondered whether the statement was not unduly optimistic and whether it would not be preferable to conclude with the words "in a manner which will give the greatest possible satisfaction", since general acceptance would never be achieved.

36. Mr. HUDSON pointed out that the meaning of the English phrase "general acceptance" was slightly different from that of the French phrase "*approbation générale*".

37. The CHAIRMAN explained that "general" did not mean "universal".

38. Mr. HUDSON proposed the phrase "in a manner giving general satisfaction".

39. Mr. FRANÇOIS agreed.

40. Mr. SCELLE suggested the phrase "in a manner which will command a measure of general acceptance". It was the words "general satisfaction" which might arouse a doubt in the mind of the reader. The same difficulties would not arise with the phrase "a measure of general acceptance".

41. Mr. HUDSON thought that Mr. François' criticism was somewhat finicking, since the word used was not "universal" but "general". The continental shelf doctrine, for example, had commanded general acceptance; but that did not mean universal acceptance.

42. Mr. AMADO looked at the question from another angle. What mattered was that the work should give satisfaction to the Commission, even though it were composed of specialists. It should be stated that the Commission could not be satisfied with its work so long

<sup>3</sup> See summary record of the 96th meeting, para. 153.

as that work continued to be carried on by the present methods.

43. The Commission should bear in mind the importance and the quality — he did not expect perfection — of its work. When asked what it had done, it would have to explain that the General Assembly had given it additional tasks, such as the formulation of the Nürnberg Principles and the Draft Declaration on the Rights and Duties of States. It would be noted that the Commission had prepared eight articles on treaties and that it had produced nothing on either the régime of the high seas, or arbitral procedure, which was a question on everybody's lips. It was the members of the Commission who must be satisfied. He was opposed to the expression "general acceptation", but must confess that he had no alternative to propose.

44. Mr. HUDSON proposed the phrase "in a manner which will give general satisfaction".

45. Mr. AMADO failed to see how Mr. Hudson's proposal met the objection.

46. Mr. HUDSON then proposed the phrase "in a satisfactory manner".

47. Messrs. AMADO, SANDSTRÖM and FRANÇOIS supported Mr. Hudson's proposal, but Mr. EL KHOURY considered it too weak.

*Paragraph 2 was adopted as thus amended.*

*Paragraph 3 (paragraph 62 of the "Report")*

*Paragraph 3 was adopted without comment.*

*Paragraph 4 (paragraph 63 of the "Report")*

48. Mr. AMADO read out the first sentence of paragraph 4 namely: "The members of the Commission elected in 1948 are, without exception, men engaged in professional activities which are not directly concerned with the work of the Commission", and asked whether it was not somewhat too sketchy. It was to be feared that it might be said that the General Assembly had appointed persons not well-versed in questions of international law.

49. He really could not understand the beginning of the paragraph. The second sentence ran: "Some of the members, indeed a majority of them have responsibilities as permanent officials of their Governments; some of them are professors of international law in universities; some of them are engaged in the private practice of the law". All of them therefore, exercised professions which were directly concerned with the work of the Commission.

50. Mr. SCELLE agreed with Mr. Amado.

51. Mr. HUDSON could not say that his professional duties at Harvard University were directly concerned with the work of the Commission, since he dealt with many questions which the Commission would never take up. As adviser to the United States Government he had had occasion to act in a dispute between the Federal Government and the State of California. That activity was not directly related to the work of the Commission. Some members of the Commission, who were permanent officials of their Governments, did not always deal with questions studied by the Commission. Their activities

were therefore not directly concerned with the latter's work.

52. Mr. AMADO observed that if the Commission was studying treaties, for example, it could not be composed solely of specialists on treaties. He was surprised that his objection was not understood.

53. Mr. EL KHOURY proposed the deletion of the words "which are not directly concerned with the work of the Commission".

54. Mr. HUDSON thought that the words could not be deleted.

55. Mr. EL KHOURY asked to what professions members of the Commission must belong so that their activities might be directly concerned with the work of the Commission. If the persons referred to in the second sentence were not in that category, who was?

56. Mr. HUDSON explained that, if members of the Commission were devoting their full time to its work, they would fulfil those requirements.

57. Mr. EL KHOURY said that was another question, whereas the beginning of the paragraph seemed to be a criticism of members elected in 1948.

58. Mr. HUDSON denied that that was the case. The report was coloured by the desire expressed by the Commission that its members should devote their full time to its work.

59. Mr. CORDOVA pointed out that the beginning of the paragraph favoured the view that future members of the Commission would have to give up their other activities, which would be asking a great sacrifice of them.

60. Mr. LIANG (Secretary to the Commission) said he must confess that he shared the doubts of Messrs. Amado and Scelle. In his view, the words "directly concerned with the work of the Commission" were ambiguous. So far as both the public and the General Assembly were concerned, the work of the Commission consisted in the codification and development of international law, so that the professional activities of Mr. Scelle, Mr. Brierly and Mr. Hudson, for example, could not be said to be not directly concerned with the work of the Commission. He suggested the deletion of the words "without exception".

61. Mr. AMADO proposed the inclusion of the following sentence in paragraph 4:

"The members of the Commission elected in 1948 cannot, under present conditions, devote their full time to the work of the Commission."

62. Mr. HUDSON pointed out that that was already stated in the last sentence, and explained in the first sentence of the paragraph.

63. Mr. SANDSTRÖM was very satisfied with the proposed sentence, but thought that reference should be made to "their activities outside the Commission".

64. Mr. YEPES shared the misgivings expressed as to the effect of the paragraph under review. He proposed the deletion of the words "which are not directly concerned with the work of the Commission". There was no point in describing the professional activities of the members of the Commission. If his proposal was accepted the

meaning of the sentence would be clear and no misinterpretation possible.

65. The CHAIRMAN pointed out that Mr. Yepes' proposal was the same as Mr. el Khoury's.

66. Mr. EL KHOURY said that it was self-evident that professional activities were not directly concerned with work of the Commission.

*It was decided to delete the words "which are not directly concerned with the work of the Commission".*

67. The CHAIRMAN asked if the Commission wished to retain the words "without exception".

68. Mr. EL KHOURY said that the expression had been true in 1948.

*It was decided to retain the words "without exception".*

69. Mr. HUDSON, referring to the words "indeed a majority of them", pointed out that Messrs. Sandström, el Khoury, Françoise, Córdova, Hsu, Yepes, Amado, Spiropoulos, Koretsky and Sir Benegal Rau were permanent officials of their Governments.

70. Mr. LIANG (Secretary to the Commission) considered that the concluding words of the paragraph, "has the effect of negativing that course", lacked clarity.

71. Mr. HUDSON pointed out that the *per diem* allowance referred to in article 13 of the statute of the Commission, was not adequate to permit members of the Commission to abandon their other activities.

*Paragraphs 5 and 6 (paragraphs 64 and 65 of the "Report")*

*Paragraphs 5 and 6 were adopted without comment.*

*Paragraph 7 (paragraph 66 of the "Report")<sup>4</sup>*

72. Mr. FRANÇOIS said that he had two comments to make on paragraph 7. To begin with, the first sentence repeated itself.

73. Mr. HUDSON pointed out that there was a discrepancy between the French and the English texts. The English text read "much of the Commission's time", but the French rendering was "*la plus grande partie de son temps*". The words "more than half of the time of the Commission" were justified, because the Sub-Committee had actually counted the number of meetings with the aid of the chart prepared by the Secretariat.

74. Mr. FRANÇOIS thought that the words "more than half of the time... of such assignments" should be deleted.

75. Mr. SCELLE thought that the first sentence of the paragraph should read as follows:

<sup>4</sup> The original text of paragraph 7 read as follows:

"7. During each of the three sessions of the Commission, much of its time has been occupied in dealing with special assignments made by the General Assembly; more than half of the time of the Commission during each of the three sessions has been given to the consideration of such assignments. Some of these assignments have been cast in terms which require priority to be given to them by the Commission. All of the assignments to date have had relation to the progressive development of international law, but most of them have borne little relation to the Commission's task of codification; compliance with them has had some effect in retarding the Commission's work on the topics selected for codification, with the approval of the General Assembly."

"During each of the three sessions of the Commission much, indeed more than half, of its time has been occupied in dealing with special assignments made by the General Assembly."

76. Mr. EL KHOURY thought that the special assignments should be enumerated.

77. Mr. HUDSON pointed out that the draft declaration on the rights and duties of States had occupied 16 meetings, the formulation of the Nürnberg Principles 11, the draft Code of offences against the peace and security of mankind 10, and the question of the possibility and desirability of establishing an International Criminal Court 5, or a total of 42 out of 81 meetings. That was certainly more than half, and the figures he had given related only to meetings held during the first two sessions.

78. Mr. FRANÇOIS said that he would not press the question of drafting. He was afraid that the sentence beginning with the words "All of the assignments to date..." might create the impression that the real work of the Commission was codification and that the progressive development of international law was less important. He would like to know the precise meaning of the paragraph, that was to say, whether it really meant that the proper task of the Commission was only the codification of international law.

79. Mr. HUDSON said that the report merely adopted the distinction which was very clearly drawn in article 15 of the statute, and stated that the Commission had two tasks, first, the progressive development, and, secondly, the codification of international law.

80. He proposed the insertion of the word "additional" between the words "Commission's" and "task" in the third sentence of paragraph 7.

81. Mr. LIANG (Secretary to the Commission) thought that all the special assignments had been dealt with as such. It was only at the previous meeting that the Commission had decided that the draft Code of offences against the peace and security of mankind should be regarded as a special assignment. If such assignments were regarded as relating to the progressive development of international law, as was suggested in paragraph 7 of the report, logic would demand that it also be stated that the whole procedure set forth in article 16 of the statute must be followed.

82. Mr. HUDSON saw no reason for adopting such a formalistic attitude.

83. Mr. LIANG (Secretary to the Commission) said that, from the technical point of view, such a distinction would be obvious only to persons who had studied the statute of the Commission, which was perhaps not true of all members of the General Assembly.

84. He proposed that the phrase "All of the assignments to date... the Commission's task of codification" be deleted and that the final sentence of paragraph 7 begin the words "Compliance with them...". That would avoid confusing the General Assembly.

85. Mr. AMADO did not understand the use of the words "cast in terms".

86. Mr. HUDSON replied that the words were used for stylistic reasons.

87. Mr. CORDOVA agreed that the word "cast" was perhaps rather affected; but the idea had to be expressed. The General Assembly had wished priority to be given to certain assignments. A mere statement to the effect that "some of these assignments required priority" would not indicate who was to decide the priority. He proposed that the second sentence begin with some such words as "The General Assembly has drafted some of these assignments in terms which . . .", or "Some of these assignments required priority because the General Assembly had so decided."

88. The CHAIRMAN proposed the wording: "The General Assembly has asked the Commission to give priority to some of these assignments".

89. Mr. SCELLE asked whether it would not be of more value to insert at that point a more precise reference to article 17 of the statute of the Commission, which stated that it was not only the General Assembly, but the principal organs of the United Nations, the specialized agencies, or official bodies established by inter-governmental agreement, that could submit proposals and drafts to the Commission. In his view, if the Commission were really obliged to receive proposals from these organs its work would never end.

90. Mr. CORDOVA explained that the report dealt only with the difficulties which the Commission had so far encountered. It had never received requests from bodies other than the General Assembly.

91. Mr. SCELLE pointed out that the Commission had received a request from the Economic and Social Council,<sup>5</sup> and, he might add, had left it on the table. He thought it should be stated that if the Commission were obliged to conform to all the provisions of article 17 of its statute it would be impossible for it to carry out its work. He was making that suggestion because he thought that the paragraph under review should be worded more forcibly.

92. Mr. CORDOVA said he would repeat that paragraph 7 dealt only with the difficulties which the Commission had encountered. There had been no difficulties so far with organs other than the General Assembly. Of course, he agreed with Mr. Scelle that, when the statute of the Commission was being revised, a statement such as Mr. Scelle proposed should be made concerning article 17. But the matter should not be discussed at that stage, when the Commission was solely concerned with requests to give priority to certain questions, and according to the statute, such priority could only be requested by the General Assembly.

93. Mr. SCELLE said that he would not press the point, which he had made only in passing.

94. Mr. HUDSON proposed the following sentence as an alternative to the second sentence of paragraph 7:

<sup>5</sup> See the "Report of the Commission covering its second session" paras. 19-20 in *Official Records of the General Assembly, Fifth Session, Supplement No. 12 (A/1316)*, or in *Yearbook of the International Law Commission 1950*, vol. II.

"The General Assembly has required of the Commission that some priority be given to some of its assignments."

95. Mr. KERNO (Assistant Secretary-General) pointed out that the purpose of paragraph 7 was to indicate that the special assignments had substantially delayed the work of the Commission. The statement that codification was the Commission's main task was superfluous. All that need be said was that the General Assembly had requested that priority be given to certain questions and that compliance with such requests had delayed the Commission's work of codification. He thought that the penultimate sentence of paragraph 7 might be deleted.

96. Mr. EL KHOURY repeated that paragraph 7 should mention the special assignments in question for the information of delegates.

97. Mr. SANDSTRÖM opposed the deletion proposed by Mr. Kerno. When the effects of such special assignments were mentioned it should be remembered that they were nevertheless part of the Commission's work, which was the burden of the sentence which Mr. Kerno proposed should be deleted.

98. Mr. FRANÇOIS supported Mr. Kerno's suggestion. He drew the Commission's attention to a further inaccuracy in the last sentence of paragraph 7. The words "compliance with them has had some effect in retarding the Commission's work . . ." suggested that all the topics which it had selected concerned only codification, whereas the régime of the high seas, for instance, was far more closely connected with the progressive development than with the codification of international law.

99. Mr. CORDOVA said that a new text might be drafted in accordance with the suggestions submitted.

100. Mr. HUDSON suggested the insertion of the words "may have had" between ". . . compliance with them" and "some effect" in the last sentence of paragraph 7. That had, in fact, been the precise effect of the assignments. The first half of the same sentence might be deleted, if the Commission so desired; but the second half must be retained.

101. Mr. CORDOVA agreed that paragraph 7, as it stood, seemed to exaggerate the importance of codification. The General Assembly had criticized delays, not in the work of codification, but in the work of the Commission, which also included the progressive development of international law.

102. Mr. HUDSON observed that speakers in the Sixth Committee had had codification in mind and had believed that the Commission could complete in two years the codification of the three topics to which priority had been given.

103. After some discussion, in which the CHAIRMAN, Mr. CORDOVA, Mr. EL KHOURY and Mr. HUDSON, took part, on the wording required to meet the objections to the passage in question, Mr. HUDSON proposed that the following text be substituted for the last two sentences of paragraph 7:

"The General Assembly has requested the Commission to give priority to some of these assignments. The Commission has endeavoured to comply with all

of these assignments promptly and such compliance may have had some effect in retarding the Commission's work."

Such a text would indicate that the Commission had achieved rapid results "on the topics selected by the General Assembly for codification".

*Mr. Hudson's proposal and paragraph 7 as thus amended were adopted.*

*Paragraph 8 (paragraph 67 of the "Report")*

104. Mr. KERNO (Assistant Secretary-General) pointed out that paragraph 8 was extremely important on account of the recommendation it contained. In that connexion he wondered whether it would not be advisable to amend the last sentence, which read: "The Commission is convinced that the adoption . . .". Was the Commission really "convinced"?

105. The CHAIRMAN said that the word "Commission" should be understood to mean the majority of the members of the Commission.

106. Mr. CORDOVA also thought that the expression was somewhat too strong.

107. Mr. HUDSON proposed the substitution for "Commission" of the words "Commission as a whole", since two members had opposed the recommendation in question and two others had no strong feelings on the matter.

108. Mr. SCELLE wondered whether the Commission could request the General Assembly to adopt a recommendation of whose desirability it was not itself convinced.

109. Mr. EL KHOURY asked whether majority decisions were binding on the Commission as a whole, and if so, whether members of the Commission who were also members of the Sixth Committee of the General Assembly could state in that Committee that they had opposed the recommendation.

110. Mr. HUDSON said that the members concerned, as governmental representatives in the Sixth Committee, were entitled to state that they had opposed such a recommendation.

111. Mr. CORDOVA said that the members concerned would then be able to explain their viewpoint before the General Assembly, whereas other members of the Commission could not.

112. Mr. AMADO pointed out that members of the International Law Commission who were also members of the Sixth Committee had always defended the Commission in the General Assembly.

113. Mr. HUDSON proposed that the words "It is thought by a preponderant majority of the members of the Commission" be substituted for the words "The Commission is convinced . . .".

*It was so agreed.*

*Paragraph 9 (paragraph 68 of the "Report")*

114. Mr. FRANÇOIS proposed the substitution of the following text for the last sentence of paragraph 9:

"The vast majority of the present members of the Commission have a decided preference for Geneva over New York, where the climate, during the months when the Commission has to meet, is detrimental to the sustained work of the Commission. Another argument in favour of the change, especially should members of the Commission have to sit permanently, is that the seat of the International Law Commission should not be at the headquarters of the United Nations, for the same reasons as induced States to establish the seat of the International Court of Justice elsewhere than at United Nations headquarters or at one of the other important international political centres."

115. Mr. HUDSON said that he personally supported the amendment submitted by Mr. François; but he thought that the words "should not", in the second sentence were perhaps too strong. The members of the Sub-Committee had sought to avoid a definite statement on the question whether the seat of the International Law Commission should or should not be at the headquarters of the United Nations. He proposed some such wording as: "It is to be considered whether the seat of the International Law Commission ought not to be different from that of the United Nations, for the same reasons . . .".

116. Mr. FRANÇOIS accepted the above amendment.

117. Mr. KERNO (Assistant Secretary-General) had some misgivings concerning the amendment proposed by Mr. François, even in its present milder form, since it seemed to imply that the establishment of the seat of the International Court of Justice at The Hague had been due to a desire to separate the Court from the seat of the political organs of the United Nations. So far as he was aware, when the question of the seat of the new Court had been discussed at the San Francisco Conference, the main consideration had been the need to ensure continuity between the old and the new Courts. If he were also asked to say why the Permanent International Court of Justice had had its seat at The Hague, and not at Geneva, he would reply that it had been established there, not in order to separate the Court from the political headquarters of the League of Nations, but in recognition of the work for peace done at The Hague and of the existence of the Peace Palace in that city. Even assuming that the intention had been to remove the International Court of Justice from an important international political centre, such a reason did not, in his view, hold good in the case of the International Law Commission.

118. After all, the members of the International Law Commission should not shut themselves up in an ivory tower. On the contrary, they should maintain contact with the outside world and therefore not be deprived of the right to meet at the headquarters of the United Nations.

119. Mr. HUDSON said that he was much impressed by the arguments of the Assistant Secretary-General.

120. Mr. FRANÇOIS said that Mr. Kerno was perhaps correct in stating that the need to ensure continuity between the old Court and the new had counted in 1945. But at the time of the establishment of the old Court after the first World War the main desire had been to

avoid having the seat of the new Court at the political centre of the League of Nations. The arguments adduced in favour of The Hague as the seat of the Court had been a secondary consideration.

121. As to the next argument submitted by Mr. Kerno, he would repeat that he attached considerable importance to it. But the experts elected for a given period to the International Law Commission would not lose all contact with the outside world just because they were living at The Hague, Geneva or elsewhere. What must be avoided was that members of the International Law Commission, or members of the International Court of Justice, should allow themselves to be influenced by the major political trends that always made themselves felt in important centres of international political life.

122. Mr. HUDSON said that the same point of view had been expressed by Mr. Sandström in the Sub-Committee, although the matter was not mentioned in the report, since it was extremely delicate.

123. Mr. SANDSTRÖM considered that the text submitted by Mr. François was not open to the same objections. For his part, he had not contemplated mentioning the International Court of Justice.

124. Mr. HUDSON pointed out that the Sub-Committee had sought to approach the question indirectly in view of its very delicate nature. It had, for example, originally intended to state that the Geneva atmosphere was more conducive to sustained work.

125. Mr. SCELLE was as convinced of the need for Mr. François' amendment as he was that New York was the least suitable place in the world for the work of the International Law Commission. At Geneva the members of the Commission did not have to report to their governments. But what would be their position at New York when the General Assembly or the main Commissions were meeting and they were in constant contact with their colleagues, friends or disciples, who would keep them informed of proceedings in the General Assembly or the Commissions?

126. There was, of course, much force in Mr. Kerno's argument that the members of the Commission should not cut themselves off from the outside world. Fortunately, most of the members of the Commission could not be described as abstract intellectuals or scholars shut off from the rest of the world. Their professional duties continually brought them down to the hard earth of political necessities.

127. On all the above grounds he fully supported the amendment proposed by Mr. François.

128. Mr. HUDSON said that, while wholly convinced by Mr. Scelle's argument, he wondered whether the time was ripe for such a decision. So long as its recommendation was expressed in general terms, the Commission could not adopt a formal decision on such a delicate question. It might perhaps be possible to go into the matter more fully next year.

129. Mr. HSU also considered that the time was not ripe for a decision on that question. Mr. François' amendment could not be adopted. In his view, the choice of headquarters was linked with the question

whether the Commission would sit permanently or not. In the former case, there would be no objection to sitting in New York, in the latter, Geneva would be more suitable considering that it was only during the summer months that sessions could be held.

130. Mr. HUDSON suggested the insertion, at the end of the last sentence of paragraph 9, after the words "less conducive to sustained work", of the words "especially in the summer months".

131. Mr. SANDSTRÖM doubted the value of such an amendment, since it weakened the argument. In addition the text submitted by the Sub-Committee suggested the possibility of members of the Commission devoting their full time to its work, whereas the amendment submitted by Mr. François was mainly based on the assumption that the Commission would not sit permanently.

132. Mr. HUDSON withdrew his proposal.

133. Mr. FRANÇOIS observed that the wording of the last sentence of paragraph 7 was rather unfortunate. Since ten million people were obliged to live and work in New York during the summer, it could hardly be said that the pace and atmosphere of that city were not conducive to sustained work. If that were so, perhaps the headquarters of the United Nations should never have been established at New York.

134. Mr. HUDSON said that the word "atmosphere" should be understood in its psychological rather than its physical sense.

135. He proposed the substitution for the words "sustained work" of the phrase "the kind of sustained work in which the Commission is engaged".

136. Mr. FRANÇOIS wondered whether the work of the Commission was of such a special character. International law was studied in New York in the same way as in other places. The summer climate was certainly less suitable at New York than at Geneva, but such an argument would not hold if the Commission sat permanently.

137. Mr. HUDSON proposed the substitution of the words "For the same reasons a change may perhaps be made" for the words "A change might also be made", at the beginning of the penultimate sentence in paragraph 9, since the aim was to facilitate recruitment to the Commission. But he thought that the last sentence aptly expressed the attitude of the present members of the Commission.

*Mr. Hudson's proposal was adopted*

138. The CHAIRMAN put Mr. François' amendment to the vote.

*Mr. François' amendment was rejected by 5 votes to 3.*

139. Mr. EL KHOURY proposed the deletion of the last sentence in paragraph 9.<sup>6</sup>

140. Mr. CORDOVA considered that the last sentence could not be deleted, since it explained the preference of the members of the Commission for Geneva.

<sup>6</sup> The last sentence read as follows: "Most of the present members of the Commission have a decided preference for Geneva over New York, as they have found the pace and atmosphere of the latter less conducive to sustained work."

141. Mr. EL KHOURY referred to article 12 of the statute of the Commission which stated: "The Commission shall sit at the headquarters of the United Nations. The Commission shall, however, have the right to hold meetings at other places after consultation with the Secretary-General." The article was excellent and, in view of its provisions, there was no need to select Geneva as the permanent seat of the Commission.

142. The CHAIRMAN put el Khoury's proposal to the vote.

*Mr. el Khoury's proposal was rejected by 6 votes to 4.*

143. Mr. HUDSON suggested that the last sentence of paragraph 9 be redrafted as follows: "Under present conditions most of the members of the Commission have a decided preference for Geneva over New York, as they have found the pace and atmosphere of the latter less conducive to the kind of sustained work in which the Commission is engaged".

144. Mr. AMADO thought that the phrase "pace and atmosphere" should be deleted. Some of the members of the Commission thrived on the pace and atmosphere of New York.

145. Mr. CORDOVA said that the Commission need not sit during the summer.

146. Mr. HUDSON pointed out, however, that some members of the Commission were otherwise engaged during the remainder of the year.

147. Mr. ALFARO thought that the personal comfort of members of the Commission should not be taken into account. Nor was the question of climate relevant, since the United Nations building was air-conditioned.

148. Since the Commission had decided to retain the last sentence of paragraph 9, the word "decided" might be deleted and the words "conditions in New York" substituted for the words "the pace and atmosphere of the latter".

*It was decided, by 6 votes, to delete the word "decided".*

149. Mr. EL KHOURY thought that the last sentence of paragraph 9 should begin with the words "For various reasons most of the present members of the Commission prefer Geneva to New York . . .".

*Mr. el Khoury's proposal was rejected.*

150. Mr. HUDSON thought it would be preferable to say merely: "Most of the present members of the Commission prefer Geneva to New York".

*Mr. Hudson's proposal was adopted by 7 votes.*

151. Mr. HUDSON proposed the insertion at the beginning of the sentence of the words "Under present conditions".

152. Mr. SANDSTRÖM thought Mr. Hudson's amendment would have the effect of weakening the argument.

153. Mr. HSU agreed with the proposal, although he thought that it was rather vague.

154. Mr. FRANÇOIS could not see the point of the addition, since even when the statute had been revised there would still be reasons against the Commission's meeting in New York.

*Mr. Hudson's proposal was rejected by 6 votes to 2.<sup>7</sup>*

<sup>7</sup> See summary record of the 113th meeting, paras. 9-13.

*Paragraph 10 (paragraph 69 of the "Report")*

155. On the proposal of Mr. HUDSON and Mr. SANDSTRÖM, *it was decided to amend the first sentence of paragraph 10 to read as follows:*

"Taking note of the fact that a proposal of a full-time Commission made in 1947 by the Committee on the Progressive Development of International Law and its Codification (A/AC.10/51, paragraph 5 (d)) was not adopted, the Commission has given careful consideration . . ."<sup>8</sup>

156. Mr. FRANÇOIS proposed the substitution for the phrase "It seems objectionable . . . and because it would present" of the following text:

"It seems objectionable, because the principle that representation of the main forms of civilization and of the principal legal systems of the world should be assured (article 8 of the statute) would be affected if all members were not elected to the Commission on the same basis. It would also present . . ."

157. He thought that the words "an invidious distinction between the members", which appeared in the text proposed by the sub-committee, were neither very clear nor very convincing, and that the idea should be expanded.

158. Mr. HUDSON did not think that the alternative suggested by the United Kingdom delegation in the Sixth Committee<sup>9</sup> would affect the principle that representation of the main forms of civilization and of the principal legal systems of the world should be assured, as set forth in article 8 of the statute. In addition, the phrase "invidious distinction" had been used during the discussion.

159. Article 8 stated that the persons to be elected to the Commission should individually possess the qualifications required, but that as a whole representation of the main forms of civilization and of the principal legal systems of the world should be assured. That condition could be fulfilled either by the group of members elected on a full-time basis or by the group not so elected. He therefore thought that the suggestion of the United Kingdom delegation might be accepted.

160. Mr. FRANÇOIS pointed out that, if the member for Asia, for example, were only elected on a part-time basis, geographical representation would not be assured.

161. Mr. AMADO, supported by Mr. KERNO (Assistant Secretary-General), proposed that the phrase under discussion be retained, but with the addition of the text proposed by Mr. François.<sup>10</sup>

*It was so agreed.*

162. Mr. ALFARO thought that the English word "invidious" — and probably its French and Spanish equivalents — might be a source of difficulty. It might be preferable to substitute the word "undesirable".

163. The CHAIRMAN and Mr. HUDSON pointed out that the word "invidious" clearly expressed what the Commission had in mind.

<sup>8</sup> Instead of "was not approved by the Sixth Committee in that year, the Commission . . .".

<sup>9</sup> See *Official Records of the General Assembly, Fifth Session, Sixth Committee*, 226th meeting, para. 3.

<sup>10</sup> The sentence "Moreover . . . be assured" did not exist in the original text.

*Paragraph 11 (paragraph 70 in the "Report")*

164. The CHAIRMAN thought that the words "finalized by the General Assembly in 1952" in the last sentence of paragraph 11, should be replaced by the words "considered by the General Assembly in 1952".

*It was so agreed.*

*Paragraph 12 (paragraph 71 in the "Report")*

165. Mr. KERNO (Assistant Secretary-General) thought that Mr. Scelle's suggestion that article 17 of the Commission's Statute be mentioned in paragraph 12 might usefully be examined.

166. Mr. SCELLE said he regarded article 17 of the Statute of the Commission as one of the most baneful. A statement to that effect might have been included in the paragraph, or in a footnote, in some such terms as the following: "The Commission has found, in particular that the provisions of article 17 were such as to hamper and delay its work".

167. Mr. HUDSON said that he would prefer no reference to a single article.

168. Mr. SCELLE did not press his proposal.

169. Mr. KERNO (Assistant Secretary-General) thought that the phrase "in the light of discussions in the General Assembly" might perhaps be inserted after the words "the present Statute" in the third line of paragraph 12, since the Commission had examined the various suggestions submitted in the General Assembly.

*Mr. Kerno's suggestion was rejected.*

*Paragraphs 13 and 14<sup>11</sup>*

170. Mr. AMADO was surprised at the recommendation contained in paragraph 13. So far as he was aware, the sub-committee's suggestion that the terms of office of the members should be staggered had not been discussed in the Commission. He also thought that the case of the International Court of Justice was different from that of the International Law Commission.

171. Mr. SCELLE also doubted the value of the suggestion contained in paragraph 13.

<sup>11</sup> Paragraphs 13 and 14 read as follows:

"13. There is one matter, however, with regard to which the Commission wishes to make a second general recommendation at this time. The continuous existence of the Commission seems to be envisaged by the provision in Article 10 of its Statute that its members 'shall be eligible for re-election'. Yet continuity in its work would be subject to interruption if upon the expiration of the term of office of one group of members, a group of wholly different composition should be elected by the General Assembly. In the view of the Commission, a solution of this problem may be sought along the lines adopted for a similar problem in 1945, in Article 13 of the Statute of the International Court of Justice; in other words, the terms of office of members should be staggered so that the terms of all members will not expire simultaneously. The application to be given to such a solution would, of course, depend on the length of the normal term of office once the staggering is fully inaugurated.

"14. This change in the Statute could be made whether or not the Commission is placed on a full-time basis. If it should commend itself to the General Assembly, the Commission would be prepared — if so requested — to draft precise amendments for giving effect to it."

172. Mr. HUDSON thought that the proposed staggering of the terms of office of members of the Commission so that the terms of all members would not expire simultaneously was extremely simple and would enable the continuity of the Commission's work to be assured.

173. Mr. LIANG (Secretary to the Commission) pointed out that the question had not been examined by the Commission itself, although another problem concerning the continuity of its work had been discussed in the Sixth Committee. The Yugoslav delegation had suggested, as a means of ensuring the continuity of a rapporteur's work in the event of his not being re-elected before completing his task, the introduction of the system in force at the International Court of Justice.<sup>12</sup>

174. He thought the second sentence of paragraph 13 might give the impression that the Commission might not continue in existence at the end of its initial period.

175. The CHAIRMAN was opposed to discussion of that question. Since the Commission made no detailed suggestion elsewhere in its report there was no reason for making one on that point.

176. Mr. CORDOVA explained that the change proposed in the report by the Sub-Committee might be adopted, even if the General Assembly did not decide that the members of the Commission should devote their full time to its work. The Commission must at all events request the General Assembly to adopt a substantive decision on the matter.

177. Mr. SCELLE thought that the question was very delicate and did not affect the Commission in the same way as it affected the International Court of Justice. The Commission was a pre-legislative organ. The introduction of the system proposed in paragraph 13 would be a retrograde step, since old members of the Commission would always be inclined to defend their work against the objections of new members. He hoped that the question would be given thorough consideration.

178. Mr. HUDSON thought that the first sentence of paragraph 14 might be more appropriately placed at the end of paragraph 13.

179. Mr. AMADO objected to the submission by the Sub-Committee of a suggestion concerning a matter which had not been discussed in the Commission.

180. Mr. SANDSTRÖM pointed out that the Sub-Committee's terms of reference had been very wide.

181. The CHAIRMAN proposed the deletion of paragraphs 13 and 14.

*There being 5 votes for and 5 against, the Chairman's proposal was rejected.*

182. Mr. KERNO (Assistant Secretary-General) pointed out that, although the Commission had just decided to retain paragraphs 13 and 14, if the Chairman had put the retention, instead of the deletion, of those paragraphs to the vote and the result of the vote had been the same, the two paragraphs would have been rejected. It might therefore be preferable if the members of the Commission thought the matter over before the next meeting.

*The meeting rose at 1.10 p.m.*

<sup>12</sup> See *Official Records of the General Assembly, Fifth session, Sixth Committee*, 227th meeting, paras. 35-36.