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A/CN.4/SR.127

Summary record of the 127th meeting

Topic:
Other topics

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115. At the suggestion of the CHAIRMAN, it was decided in the last sentence to delete the word "specified" before "period".

116. Mr. SCALLE considered that the expression "such period may be extended" was vague. In paragraph 18, the Commission was proposing that the time-limit within which an objecting State could effect its ratification be fixed at 12 months. Surely the extension which could be granted by the depositary under paragraph 19 (4) should not in any circumstances exceed a further 12 months.

117. Mr. KERNO (Assistant Secretary-General) said that it would be very difficult to fix in advance a time-limit appropriate to all circumstances. In any case, the period in question must necessarily be short. The Convention on Genocide, for example, allowed a time-limit of 90 days after ratification for entry into force. It was something of that sort that appeared to be called for in the present instance. Reliance must be placed on the depositary, on the assumption that in each particular case he would bear in mind the interests of the State concerned, as well as those of the international community generally in regard to the treaty.

118. He suggested that the passage of the draft report be left as it stood. The summary records would make it clear that the Commission had raised the question and had intended that the time-limit was to be short.

119. Mr. SCALLE thought it was important for the length of the time-limit to be specified. He could not help feeling that governments might consider that they were laying themselves open to arbitrary decisions.

120. Mr. CORDOVA supported Mr. Scelle. There must be no question of giving the Secretary-General discretionary powers in the matter. The General Assembly would hardly agree to that.

121. Mr. HUDSON pointed out that, more often than not in the sense in which the expression was used, the "Secretary-General" was not an individual, but an organ which by its very nature offered adequate safeguards.

122. Mr. SCALLE withdrew his proposal.

Sub-paragraph 5 (sub-paragraph 3 in the "Report")

123. The CHAIRMAN thought it would be better in the third line to say "which are or which become..." instead of "which are or may become...".

124. Mr. HUDSON preferred "which are or which are entitled to become...". The same would apply to the last line of sub-paragraph 6. He also asked for the words "its communications" to be substituted for "his communications".

It was so decided.

Sub-paragraph 6²²

125. The CHAIRMAN, replying to an observation by Mr. LIANG (Secretary to the Commission) noted that

²² Sub-paragraph 6 read as follows:

"(6) A duly accepted reservation to a multilateral convention limits the effect of the convention in the relations between the reserving State and the other States which have become or may become parties to the convention."

the text of the sub-paragraph did not constitute part of the practice which the Commission was recommending for adoption. It was a statement of fact.

126. Mr. HUDSON agreed that it was simply a principle of law which the Commission had felt that it would be useful to mention, and suggested either devoting a separate paragraph to it or else deleting it on the grounds that all it did was to recall that when State A made a reservation and State B accepted it, that reservation would have to be observed in the relations between State A and State B.

127. After a discussion, in which Mr. KERNO (Assistant Secretary-General), the CHAIRMAN and Mr. SANDSTRÖM took part, Mr. HUDSON suggested that the Commission revert to the subject at a later stage.²³

It was so decided.

128. Mr. HUDSON was of the opinion that the study which the Commission had devoted to reservations would be considered by the General Assembly as one of the most important pieces of work accomplished at the present session.

The meeting rose at 1.20 p.m.

127th MEETING

Wednesday, 18 July 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 SCALLE, Mr. Jean SPIROPOULOS, Mr. Jesús María YEPES.

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

²³ See summary record of the 127th meeting, para 97.

Examination of the draft report of the Commission covering its third session (*continued*)

CHAPTER III: QUESTION OF DEFINING AGGRESSION (A/CN.4/L.20, A/CN.4/L.25)¹

1. Mr. HUDSON pointed out that the form given to the chapter was entirely in line with the views expressed by Mr. Yepes at the 125th meeting,² in connexion with the examination of chapter II of the report, dealing with reservations to multilateral conventions (A/CN.4/L.22). The phrase "some Members of the Commission were of the opinion . . ." occurred several times. The theses not accepted by the majority of the Commission had, therefore, been discarded. If he had seen that chapter of the report at the time when Mr. Yepes was advocating such a drafting method, he would, no doubt, have been more disposed to support his point of view.

2. Mr. YEPES thanked Mr. Hudson for his remarks. He considered that the drafting procedure adopted for chapter III of the report was the most suitable for that type of document. He regretted that chapter II on reservations to multilateral conventions had not been presented with the same objectivity. The General Assembly would not fail to note the difference in method.

3. Mr. AMADO compared the draft of chapter III (A/CN.4/L.25) with a previous text on the same subject, dated 21 June of the same year (A/CN.4/L.20).³ The first text recorded, in some detail, the opinions expressed by the various members of the Commission, whereas the second had been severely cut.

4. It was not pique that prompted him to point out that the memorandum which he himself had contributed to the discussion (A/CN.4/L.6) was quoted only once in the second draft, and then only indirectly. No great harm would, however, have been done if the sense and scope of that memorandum's conclusions had been adequately reported; but paragraph 5 of the second report merely mentioned the existence of the formula contained in the memorandum, whereas in the previous draft it had been reproduced in full.

5. The draft report did not treat his study any differently from the formulae evolved during the discussion.

6. He was surprised to find the term "abstract definition" used in the report. That might make the General Assembly smile, but would not make it any the wiser. The fact that it had been used, for the sake of convenience, during the discussions was no reason to use it in a written report.

7. Similarly, the formula submitted by Mr. Scelle had not been reproduced in its entirety. It was only referred to in general terms in paragraph 17. That formula, however,

¹ Mimeographed document only, the text of which corresponds, with drafting changes, to chapter III of the *Report of the International Law Commission covering the work of its third session*. (See vol. II of the present publication.) The drafting changes are indicated in the summary records of the 127th to 129th meetings.

² See summary record of the 125th meeting, para. 91.

³ Mimeographed document only, of which paras. 1-4 are identical to paras. 1-4 of doc. A/CN.4/L.25, paras. 5-9 are identical to paras. 40-44 of the Report of the Commission, and paras. 10-19 are identical to paras. 7-16 of doc. A/CN.4/L.25.

represented a contribution to the study of the question which should have been recorded, as characteristic of the attitude of a professor with an established reputation in international law.

8. No more was said of his own definition in paragraph 5 than that it was "in general terms". No mention was made of its substance. In such circumstances, the General Assembly could hardly be well informed.

9. It was a matter of indifference to him whether the texts were reproduced in the form of footnotes, or included in the body of the report. He reserved the right to supplement those observations of a general nature by others on points of detail.

10. Mr. CORDOVA, speaking as general Rapporteur, recalled that the preparation of the two documents was his work, and that he took full responsibility for it. He did not wish to leave the Commission under the impression that certain of the proposals made in the course of the discussion had been given preferential treatment in one or other of the reports. Document A/CN.4/L.20 had been prepared as far back as 21 June, as it then appeared that the Commission had ended its discussion on the question of defining aggression. When its resumption,^{3a} at Mr. Scelle's request, had led to the decision to include a new text in the draft code of offences against the peace and security of mankind,^{3b} it had become necessary to amplify the first report. As a result, some cuts had had to be made in order to find room for the statements of certain members. Thus, for instance, his own formula (A/CN.4/L.10), which had appeared in paragraph 9 of document A/CN.4/L.20, was no longer to be found in document A/CN.4/L.25. The same applied to the formula proposed by Mr. Yepes (A/CN.4/L.7). On the other hand, he had retained the text of Mr. Alfaro's formula (A/CN.4/L.8) as it was the one on which the Commission's work and decisions had been mainly based.

11. It was only fair to add that Mr. Amado's memorandum had also proved a very valuable contribution to the work of the Commission.

12. Mr. ALFARO associated himself completely with Mr. Amado's remarks, which were also in line with those made previously by Mr. Yepes. The report should supply an accurate record of what had taken place during the meetings. At the very least, those proposals should be reproduced that had served as a basis for the Commission's decision. The General Assembly would not be able to appreciate correctly the results of the vote taken by the Commission, if it had no knowledge of the various proposals that had been rejected by that vote.

13. Mr. Amado had, in the first place, submitted a brilliant memorandum on the definition of aggression (A/CN.4/L.6) in which he had suggested the adoption of a formula, the substance of which, apart from some differences of wording accurately reflected the point of view of some others of the members. Similarly, Mr. Yepes' formula was of historical value and was an example of

^{3a} Summary record of the 108th meeting, paras. 115 *et seq.* and of the 109th meeting, paras. 1-91.

^{3b} Summary record of the 109th meeting, para. 89.

the spirit of conciliation obtaining amongst members of the Commission. It, also, should be reproduced in chapter III. The same applied to Mr. Scelle's proposal (A/CN.4/L.19 and Corr. 1); it was illuminating, original and of real intrinsic value.

14. He made a formal proposal that the various formulae, submitted to the Commission, be reproduced in the report.

15. Mr. YEPES pointed out that his formula had not been reproduced in the draft, although he had specifically asked that it should be mentioned in the report.^{3a}

16. In Mr. HUDSON's view such a procedure would have been justified if the members of the Commission had been the delegates of Governments. Its purpose would then have been to provide evidence that they had carried out their instructions. He had himself proposed a text, but had no desire whatsoever to see it reproduced.

17. So far as he was concerned, he would have preferred chapter III of the report, on the question of the definition of aggression, to be much shorter. By cutting out the definitions proposed and all details regarding the votes, the chapter could be reduced to approximately a page and a half.

18. Mr. SANDSTRÖM, supported by Mr. SCELLE and the CHAIRMAN, did not see any necessity for giving all the chapters of the report the same form. In the case of the definition of aggression, the various attempts made by the Commission might well go on record. In his opinion, the draft report provided a satisfactory basis for discussion.

19. Mr. KERNO (Assistant Secretary-General) recalled that the United Nations Secretariat often brought pressure to bear on committees to refrain from including in their texts extracts from previous documents. They maintained that it was sufficient to give the reference to the document in question. On the other hand, a document that was self-sufficient had many advantages.

20. Mr. ALFARO observed that the elimination of the various formulae proposed had been justified on the grounds that the report would otherwise be too long; but, he would point out, in support of his previous proposal document A/CN.4/L.20 was only one page longer than document A/CN.4/L.25.

21. Mr. SCELLE asked whether it would not be sufficient to include the various formulae in footnotes. The Commission's object of saving the members of the General Assembly the trouble of looking up back references would thereby be fully attained.

22. It would be advisable to submit all the texts to the General Assembly, so that it could appreciate what the Commission had done; otherwise he was afraid that the readers' laziness would get the better of their curiosity. Fortunately the Assembly would find that the various formulae were not very far apart.

23. Mr. YEPES thoroughly approved of Mr. Scelle's proposal and would support it.

24. Mr. ALFARO preferred that the formulae should be inserted in the body of the report.

25. Mr. CORDOVA stated that formulae which had not directly contributed to the solution adopted by the Commission had not been included in the report. He admitted, however, that it would be a good thing to bring those proposed definitions to the notice of the members of the General Assembly.

26. On the CHAIRMAN's proposal, *it was decided* to examine the draft of chapter III paragraph by paragraph.

Paragraph 1 (paragraph 35 of the "Report")

Paragraph 1 was adopted without comment.

Paragraph 2 (paragraph 36 of the "Report")

27. Mr. KERNO (Assistant Secretary-General) pointed out that the Soviet Union proposal was not given in full. The General Assembly might consider it inconvenient not to have a complete text.

28. Mr. HUDSON was also of the opinion that the Soviet Union delegation would probably wish to see its proposal reproduced in full, but Mr. YEPES observed that the complete text was to be found in one of the General Assembly's own documents.

Paragraph 2 was adopted without amendment.

Paragraph 3 (paragraph 37 of the "Report")

29. *Paragraph 3 was adopted after substituting the words "in that connexion, studied" for the words "in that connexion, had reference to".*

Paragraph 4 (paragraph 39 of the "Report")

30. Mr. YEPES pointed out that the synopsis of Mr. Spiropoulos' report, given in the paragraph in question, omitted his observations on *animus aggressionis*. That could be remedied by a short sentence.

31. Mr. SPIROPOULOS agreed to suggest to the general Rapporteur after the meeting a very brief text to cover the point raised by Mr. Yepes.

Paragraph 4 was adopted subject to the above-mentioned addition.⁴

32. Mr. HSU pointed out that the report passed from paragraph 4, which stated Mr. Spiropoulos' point of view, to paragraph 5, which referred to Mr. Amado's and Mr. Alfaro's memoranda, without any sort of transition. He asked for the insertion between the two texts of a clause, recording the position taken by those members who had opposed Mr. Spiropoulos' conclusions. Such an addition appeared to him necessary, to counter-balance the amount of space given to Mr. Spiropoulos' opinion, and to ensure that the two theses were treated alike.

33. The subsequent paragraphs of the report encouraged the view that a definition of aggression could be found, so it should be stated why it was considered that was so. The report seemed to indicate that the Commission had

⁴ The text of paragraph 4 was shorter; after "... legal constructions", it read "He further expressed the opinion that this 'natural notion' of aggression is a 'concept *per se*', which 'is not susceptible of definition'. A 'legal' definition...".

^{3a} Summary record of the 94th meeting, para. 5.

ended by admitting that aggression could not be defined. Actually, the Commission's efforts had failed, not because the definition of aggression was intrinsically impossible, but for quite other reasons.

34. Unless the statement of Mr. Spiropoulos' views were omitted (A/CN.4/44, chapter II), the contrary view expressed by other members should also be included in the report. He proposed the addition of a paragraph 4 (a), wherein the contrary view, advocated by Mr. Scelle, himself, and other members could be expounded in the well-chosen and clear terms used by Mr. Scelle.

35. Mr. SCELLE thought that Mr. Hsu was right. The Commission, as a whole, had never accepted Mr. Spiropoulos' negative hypothesis. It had made every effort to find a definition, but had not succeeded.

36. Mr. KERNO (Assistant Secretary-General) understood Mr. Hsu's concern, but considered the answer was to be found in the succeeding paragraph as a whole. The fact that solutions other than that advocated by Mr. Spiropoulos were mentioned in paragraph 5 showed, in itself, that divergent opinions had been expressed. The very existence of those other proposals constituted a rebuttal of Mr. Spiropoulos' thesis.

37. Mr. CORDOVA pointed out that paragraphs 4, 5 and 6 of the draft report were concerned with the various proposals; it was only from paragraph 7 onwards that reference was made to the work of the Commission.

38. It would be difficult to adopt Mr. Hsu's suggestion. Paragraph 7 and the first sentence of paragraph 8 made it clear that the Commission had not adopted Mr. Spiropoulos' views.

39. The CHAIRMAN considered that Mr. Spiropoulos' thesis had not been rejected; the Commission had merely tried to find another solution.

40. Mr. SPIROPOULOS proposed the insertion of a paragraph 7 (a) to include the sentence: "The Commission considered that it might attempt to define aggression."

41. After consultation with Mr. ALFARO, Mr. CORDOVA proposed the addition of the following text at the end of paragraph 4: "The majority of the members of the Commission expressed a contrary opinion, and it was decided that the Commission should try to find a definition of aggression."

42. Mr. HSU said that such an addition would meet his point completely. Mr. SCELLE and Mr. AMADO concurred, and the latter added that, without such an addition, the Commission would be giving the impression that it had allowed itself to be convinced by the eloquence of one of its members.

Mr. Córdova's proposal was adopted.

Paragraph 5 (paragraph 40 of the "Report")⁵

43. Mr. AMADO said that he had nothing to add to

⁵ Paragraph 5 read as follows:

"5. The Commission had also before it memoranda on the question submitted by Mr. G. Amado (A/CN.4/L.6) and Mr. R. J. Alfaro (A/CN.4/L.8). Each of these memoranda expressed the opinion that a definition of aggression based on an enumeration of aggressive acts would not be satisfactory, and contained a formula for a definition of aggression in general terms."

his earlier comments on the paragraph during the general discussion.

44. Mr. KERNO (Assistant Secretary-General) pointed out that Mr. Amado had not asked for his formula to be reproduced in full, but had only said that the exposition of his definition was inadequate. He suggested that Mr. Amado submit an amendment to paragraph 5, providing for fuller treatment of his formula.

45. Mr. YEPES considered that the paragraph in question should be entirely redrafted. The memoranda presented by Mr. Amado and Mr. Alfaro deserved more than a three-line commentary covering them both.

46. Mr. ALFARO considered that a course which would satisfy both Mr. Amado and himself would be to substitute paragraph 5 of document A/CN.4/L.20 for the existing paragraph 5 of document A/CN.4/L.25.

47. Mr. AMADO accepted Mr. Alfaro's suggestion, which would fill an obvious gap.

It was decided to replace paragraph 5 of the draft by paragraph 5 of document A/CN.4/L.20.⁶

Paragraph 6⁷

48. Mr. YEPES urged the adoption of the proposal put forward earlier by Mr. Scelle to include in a footnote all the proposed definitions mentioned in paragraph 6.

49. Mr. FRANÇOIS asked why the Commission should not adopt the same course as with the previous paragraph, and replace paragraph 6 by paragraphs 6, 7, 8 and 9 of the first draft report (A/CN.4/L.20).

50. Mr. CORDOVA pointed out how important it was to treat all the proposed definitions alike. If some were included in the text and others in footnotes, the Commission would give the impression that it drew a distinction between them.

51. Mr. SPIROPOULOS did not consider that there was any harm in the interpretation suggested by Mr. Córdova. A distinction should be drawn between proposals for definitions formulated in memoranda, and texts submitted to the Commission during the discussion itself. A difference in printing was therefore entirely justified. He supported Mr. Yepes' proposal.

52. In reply to a question by the CHAIRMAN, Mr. CORDOVA thought that a distinction, such as the one referred to by Mr. Spiropoulos, was only justifiable if explained in the report.

53. Mr. AMADO believed that the problem of the definition of aggression would take up more of the General Assembly's time than the Commission's work

⁶ See footnote, 3, above.

⁷ Paragraph 6 read as follows:

"6. Mr. J. M. Yepes submitted a proposal (A/CN.4/L.7) for the determination of the aggressor based on the enumerative method. This proposal was subsequently superseded by another proposal (A/CN.4/L.12) of the same author which defined aggression in general terms. A further draft definition (A/CN.4/L.11 with Corr. 1) was presented by Mr. Shuhsi Hsu in which particular stress was laid on indirect aggression. Mr. R. Córdova, finally, submitted a proposal (A/CN.4/L.10) which had in view to include aggression and the threat of aggression as crimes in the draft code of offences against the peace and security of mankind."

on treaties, or on the régime of the high seas. The members of the Sixth Committee would all be tempted to express their opinion on the matter. He himself, should he represent Brazil on the Sixth (Legal) Committee of the General Assembly, would find it necessary to inform his colleagues of the conclusions contained in his memorandum. He would approve any decision by the Commission for the inclusion in the report of the proposed definitions.

54. Mr. EL KHOURY recalled that, during the discussion of the question of the definition of aggression, he had made a proposal⁸ which Mr. Hudson had slightly amended, whereafter its underlying principle had been finally adopted by the Commission. That proposal was for the inclusion of the definition of aggression in the draft code of offences against the peace and security of mankind.

55. He did not see why texts which did not bear any direct relation to the final resolution should be reproduced *in extenso*. If they were reproduced, all other proposals should also be included.

56. Mr. CORDOVA recalled that Mr. Hsu, in his formula (A/CN.4/L.11 and Corr. 1), had attempted to introduce a new factor, to wit the definition of indirect aggression, whilst he himself had wished to include the idea that aggression was a crime. Those points might also be the subject of a footnote.

57. Mr. SANDSTRÖM pointed out that those matters were already mentioned in the Report, it being stated that Mr. Córdova had submitted a proposal (A/CN.4/L.10) for the inclusion of aggression and the threat of aggression as crimes in the draft code of offences (A/CN.4/L.25, paragraph 6).

58. The CHAIRMAN recalled that Mr. Scelle, supported by Mr. Yepes, had suggested that all proposals for definitions should be included in the form of footnotes. He was under the impression that Mr. Alfaro proposed to include them in the body of the report.

59. Mr. YEPES was prepared to accept Mr. Alfaro's proposal, provided that a comment on the proposals submitted were included in the report. He noted the failure to implement the decision taken by the Commission to include his enumerative definition of aggression (A/CN.4/L.7). If the Commission would agree to the inclusion of that definition, either in a footnote, or in the body of the report, thus enabling the Assembly to take cognisance of all the notions that had been advocated in the Commission, he would accept the text.

60. Mr. ALFARO supported Mr. François' proposal⁹ to substitute paragraphs 6, 7, 8 and 9 of document A/CN.4/L.20 for paragraph 6 of the report (A/CN.4/L.25).

Mr. François' proposal was adopted.

Paragraphs 6, 7 and 8 (A/CN.4/L.20) (paragraphs 41-43 of the "Report")

Paragraphs 6, 7 and 8 were adopted without comment.

⁸ See summary record of the 94th meeting, paras. 32-36, and of the 96th meeting, paras. 34-36.

⁹ Para. 49 above.

Paragraph 9 (A/CN.4/L.20) (paragraph 44 of the "Report")

61. At the suggestion of Mr. LIANG (Secretary to the Commission) the following text was adopted:

"With a view to making aggression an offence and to having a definition of it included in the draft code of offences against the peace and security of mankind, Mr. Córdova submitted the following text . . ."¹⁰

CHAPTER II: RESERVATIONS TO MULTILATERAL CONVENTIONS (A/CN.4/L.22)¹¹ (resumed from the 126th meeting)

62. Mr. YEPES said that, during the discussions at previous meetings, he had done what he could to improve the chapter of the report in which the Commission dealt with the question of reservations to multilateral conventions. A great deal, however, still remained to be done in that connexion, and the Commission should continue to give the text its most careful attention, as the General Assembly would take it as the outstanding example of the value of the Commission's work.

63. He desired to make it clear however that, while he had taken an active part in the discussion in a spirit of solidarity, he was not, basically, in agreement with the statements and conclusions of that chapter of the report.

Paragraph 20 (paragraph 34 of the "Report") (Resumed from the 126th meeting)

Sub-paragraph (1) (sub-paragraph (4) in the "Report")

64. The CHAIRMAN said that the Commission had before it the proposals which Mr. Hudson and he himself had submitted at its request in regard to chapter II. Section I merely dealt with mention of redrafting and read as follows:

"Paragraph 20 of Document A/CN.4/L.22, sub-paragraph (1), line 4; delete the words 'if not' and substitute the words 'in the absence of' and delete the words 'is made'. In line 5 of the same paragraph delete the word 'or' and substitute the word 'and'."

65. The text of sub-paragraph (1) should therefore read as follows:

"(1) If a multilateral convention is intended to enter into force as a consequence of signature only, no further action being requisite, a State which offers a reservation at the time of signature may become a party to the convention only in the absence of objection by any State which has previously signed the convention, and, when the convention is open to signature for a limited fixed period, if no objection is made by any State which may become a signatory during that period."

Sub-paragraph (1) was adopted.

Sub-paragraph (2) (sub-paragraph (5) in the "Report")

66. The CHAIRMAN read out section II.

"Proposed text of paragraph 20, sub-paragraph (2), of the same document:

¹⁰ However the text of paragraph 44 of the "Report" is identical to that of paragraph 9 of document A/CN.4/L.20.

¹¹ See summary record of the 125th meeting, footnote 6.

“(2) If ratification or acceptance in some other form, after signature, is requisite to bring a multilateral convention into force,

“(a) A reservation made by a State at the time of signature should have no effect unless it is repeated or incorporated by reference in the later ratification or acceptance by that State;

“(b) A State which tenders a ratification or acceptance with a reservation may become a party to the convention only in the absence of objection by any other State which, at the time the tender is made, has signed, or ratified or otherwise accepted the convention, and when the convention is open to signature during a limited fixed period, also, in the absence of objection of any State which signs, ratifies, or otherwise accepts the convention after the tender is made but before the expiration of this period; provided, however, that an objection made by a State which has merely signed the convention should cease to have the effect of excluding the reserving State from becoming a party, if within a period of twelve months from the time of the making of its objection, the objecting State has not ratified or otherwise accepted the convention.”

67. Mr. HUDSON said he had thought over Mr. Yepes' comments and was more and more convinced of their rightness. He felt that Mr. Kerno had been well-inspired in suggesting that the various points in sub-paragraph (2) should be brought out clearly. Mr. Alfaro also had been kind enough to communicate to him some carefully considered suggestions, of which due account was taken in the above provisions.

68. Mr. KERNO (Assistant Secretary-General) said that under a new practice conventions were very often left open to signature during a limited fixed period, specifically stated in each individual case. Not only States that had signed, ratified or otherwise accepted the convention before the reservation was tendered, but, also, States signing before the expiration of the above period, had the right to present an objection. Where a time limit was not stated, it was the time of presenting the reservation that counted. The point had been discussed during the first reading of the text, and the Commission had taken the above position.

Sub-paragraph (2) was adopted.

68a. Mr. YEPES pointed out that the formula for sub-paragraph (2) (b) was precisely the same as the Pan-American formula he had advocated. Thus the Commission, after contesting that formula in its report, had ended by adopting it.

69. Mr. EL KHOURY pointed out, in connexion with sub-paragraph (2) (b), that no objection could be lodged at the time when a State formulated its reservation and that it was, therefore, necessary to lay down a time limit, during which it would be possible to object to the reservation, since otherwise the formulating State would become a party immediately. It should be stated that the State did not become a party until the formalities laid down in sub-paragraphs (3) and (4) had been completed.

70. Mr. KERNO (Assistant Secretary-General) said that in practice, if a State came forward and accepted or ratified the convention subject to reservation, the procedure laid down in sub-paragraph (4) was applicable, and the words “in the absence of objection” should be understood to mean in the absence of objection after completion of the formalities mentioned in sub-paragraphs (3) and (4).

71. Mr. HUDSON said that it should be stated that the objection was not reasonable if submitted after the expiration of the time limit laid down in sub-paragraph (4).

72. The CHAIRMAN pointed out that there could be no objection to the reservation at the time of its tender.

73. Mr. CORDOVA explained that the State entitled to submit an objection was informed by the Secretary-General of the tender of the reservation and given a time-limit within which to make known its attitude. Sub-paragraph (4) stated a general rule.

74. Mr. EL KHOURY suggested the addition to sub-paragraph (2) (b) of the phrase “without prejudice to the formalities mentioned in sub-paragraph (4) below”.

75. Mr. ALFARO had to admit that he had had great difficulty in understanding sub-paragraph (2) (b). He was under the impression that the opening sentence of sub-paragraph (2) served as an introduction to sub-paragraphs (2) (a) and (b), but (2) (b) envisaged two different situations: the first being that of the absence of objection by a State which, at the time of the tender of the reservation had signed, ratified or otherwise accepted the convention, and the second, that where the convention was open for signature during a limited fixed period.

76. Mr. KERNO (Assistant Secretary-General) gave a concrete example of the latter situations, a convention open for signature from 1 January to 31 December 1951. A State came forward on 1 July and ratified it subject to a reservation; that reservation might be the subject of an objection, not only on the part of all States that had accepted the convention before 1 July, but also of those signing, ratifying or otherwise accepting it between 1 July and 31 December.

77. Mr. ALFARO observed that sub-paragraph (2) (b) introduced a different rule, that of limitation. An objection by a State which had merely signed the convention would be excluded, if the State did not ratify it before the expiry of the time limit. In his opinion sub-paragraph (2) (b) should be re-numbered (3) as it referred to the whole of the situation described in sub-paragraph (2).

78. Mr. HUDSON explained that the sub-paragraph (2) (b) had no reference to sub-paragraph (1). It had therefore been drafted in its existing form in order to make it clear that it referred to sub-paragraph (2). He said that the period of twelve months ran as from the tender of the reservation.

79. Mr. SANDSTRÖM proposed that, to meet Mr. el Khoury's objection, sub-paragraphs (3), (4) and (5), which consisted of rules of procedure, should be placed at the beginning, and that sub-paragraphs (1) and (2), which comprised the basic rules, should follow them, since they pre-supposed the completion of the procedure described in sub-paragraphs (3), (4) and (5).

80. Mr. HUDSON thought that was a very good solution.

It was decided to place sub-paragraphs (3), (4) and (5) in front of sub-paragraphs (1) and (2).

New sub-paragraph (3)

81. The CHAIRMAN read out section III of the text :

“ Insert after sub-paragraph (2) a new sub-paragraph (3) with the following text :

“ 3. If a multilateral convention is not open to signature but is open only to accession, a State which tenders an accession with a reservation may become a party to the convention only in the absence of objection by a State which, at the time the tender is made, has acceded to the convention.”

82. He said that he had proposed the above text in order to satisfy Mr. Liang, who had pointed out that the case of conventions that did not require signature, and to which States became parties by accession, had not been provided for.

83. Mr. HUDSON quoted, as examples, the Geneva General Act of 26 September 1928 and the Convention on the Privileges and Immunities of the United Nations.

84. Mr. KERNO (Assistant Secretary-General) pointed out that paragraph 20, sub-paragraph (2), commencing with the words: “ If ratification or acceptance in some other form, after signature, is requisite to bring a multilateral convention into force . . . ” did not cover such cases as the Geneva General Act.

85. Mr. SCELLE said that the text meant that any State which was the first to accede to a convention could make any sort of reservation and thereby prevent the accession of any other State.

86. Mr. YEPES considered that such a State could veto the accession of all other States.

87. Mr. SCELLE observed that he was not concerned so much about the veto, as by the fact that, in the case of a convention prepared by the United Nations General Assembly, one of the Member States might tender a reservation on the morrow of the convention's acceptance, which would have the effect of wrecking it completely. Such a solution was unacceptable.

88. Mr. KERNO (Assistant Secretary-General) said that it was quite true that the first State could formulate a reservation without any other party being able to object to it. He admitted that the system was not perfect but feared that if too much attention were paid to very exceptional theoretical cases, it would be impossible to achieve anything. He did not think that it would do any harm if Section III were omitted. The loop-hole would only be small. Actually, the great majority of cases would be covered by the paragraphs already adopted.

89. Mr. LIANG (Secretary to the Commission) recalled that the most recent case was that of the Convention on the Privileges and Immunities of the United Nations. Section III merely recorded existing practice.

90. Mr. SCELLE would prefer to discard the article and leave practice to develop as it wished.

It was decided, by 7 votes to 2 with 3 abstentions, to include section III.

91. Mr. SCELLE pointed out that the decision taken in regard to Section III ran completely counter to the International Labour Organisation's practice; for him that was an incredibly retrograde step. He, himself, would, in the case in question, have prohibited all reservations instead of giving them free rein. In the case of a law passed by an assembly, it would be out of all reason for it to be possible for one of those who had voted for it to be in a position to take immediate steps to wreck it. In his opinion, the decision arrived at was entirely unacceptable.

New paragraph 18 (a) proposed by Mr. Hudson.

92. Mr. HUDSON proposed the insertion after paragraph 18 and before the conclusions (A/CN.4/L.22) of a paragraph 18 (a) worded :

“ 18 (a). The case is relatively rare in which a multipartite convention is not open to signature, but is open only to accession or acceptance, in some other form, as, for example, the Convention on Privileges and Immunities of 1946. The Commission has therefore refrained from any special mention of such possible cases.”

There would then be a passage in the report preceding the conclusions and explaining section III.

93. Mr. KERNO (Assistant Secretary-General) wondered whether Mr. Hudson's text was really necessary.

94. Mr. AMADO said that, while it had, up till then, been relatively rare for a multilateral convention not to be open to signature, cases might become more frequent. He did not see why Mr. Hudson was pressing for the inclusion of those words.

95. Mr. LIANG (Secretary to the Commission) thought that if the text proposed by Mr. Hudson provided for acceptance, it was not enough to mention only the 1946 Convention, which provided for accession. There were conventions which provided for acceptance; in fact, they were fairly numerous.

96. Mr. HUDSON was prepared to delete the word “ acceptance ”; he added that he had been studying the subject for thirty years and was aware that the case was exceptional. It was, in his opinion, advisable to adopt the text in order to provide in the body of the report an explanation of the Section III which the Commission had just adopted.

There being 4 votes for and 4 against, Mr. Hudson's proposal was not adopted.

Sub-paragraph (6) (resumed from the 126th meeting)

97. The CHAIRMAN asked the Commission where it thought sub-paragraph (6) should appear. Mr. Liang had expressed the opinion that it was out of place where it stood.¹² It might be turned into a paragraph 21, or put somewhere else in the report.

98. Mr. SANDSTRÖM proposed that, as it had been decided that sub-paragraph (3) was to become sub-paragraph (1), sub-paragraph (4) sub-paragraph (2),

¹² Summary record of the 126th meeting, paras. 124-126.

sub-paragraph (5) sub-paragraph (3), sub-paragraph (1) sub-paragraph (4), and sub-paragraph (2) sub-paragraph (5), sub-paragraph (6) should remain where it was.

99. Mr. KERNO (Assistant Secretary-General) recalled that the Commission had adopted Section III of the proposal submitted by the Chairman and Mr. Hudson, which would therefore become the last sub-paragraph relating to procedure.

100. Mr. HUDSON was unable to agree to Mr. Sandström's proposal, in view of the fact that the introduction to paragraph 20 read: "The Commission suggests that, in the absence of contrary provisions relating to reservations in any multilateral convention, especially one of which the Secretary-General of the United Nations is the repository, the following rules of practice should be applied."

101. That introduction had no reference to sub-paragraph (6), which should therefore have a place of its own. Mr. Liang's remarks at the last meeting had been very much to the point. If it were not desired to keep the sub-paragraph where it was, it might be inserted before the conclusions by way of a commentary. They might say: "The Commission points out that a duly accepted reservation . . ."

102. Mr. LIANG (Secretary to the Commission) agreed with Mr. Hudson.

103. Mr. SANDSTRÖM observed that, in paragraph 20, the Commission recommended certain rules which would be applicable in the absence of contrary provisions. He wished to know whether those rules included the Pan-American system.

104. The CHAIRMAN explained that, under Pan-American practice, contrary provisions were not included in individual agreements, but were provided for in an overriding convention.

105. At Mr. HUDSON's suggestion, *it was decided* to redraft the introduction to paragraph 20 to read:

"The Commission suggests that, in the absence of contrary provisions relating to reservations in any multilateral convention, and of any organizational procedure applicable, the following procedure should be applied, especially in a convention of which the Secretary-General of the United Nations is the repository."

Paragraph 18 (paragraph 30 of the "Report") (resumed from the 126th meeting)

106. Mr. YEPES wished the time-limit laid down in paragraph 18 to be increased from twelve to eighteen months. In view of its constitutional and administrative structure, twelve months was not sufficient for a country such as his own. He proposed that the decision which the Commission had taken at its last meeting be reviewed.¹³

107. The CHAIRMAN recalled that under the rules of procedure a decision to re-open a discussion required a two-thirds majority.

108. Mr. CORDOVA was against re-opening the discussion but considered that it was not fair to apply the provision for a two-thirds majority as the Commission had often re-opened questions without a two-thirds majority decision.

109. Mr. YEPES observed that it was the first time that the rules of procedure had been invoked against a member of the Commission. He would not, however, press for avote.

Paragraph 19 (paragraph 33 of the "Report") (resumed from the 126th meeting)

110. Mr. YEPES felt it his duty to point out that, in his opinion, paragraph 19 contradicted what was said elsewhere in the report and might be interpreted in a way the Commission had not intended. An ingenious commentator might maintain that the paragraph encouraged the tender of reservations. He had previously proposed the addition of the words "if necessary"¹⁴ alternatively the phrase might be worded: "relating to admissibility or inadmissibility, and effect of reservations".

111. In view of Mr. Yepes' wish to avoid anything that might encourage the formulation of reservations, Mr. HUDSON asked for the question to be reconsidered. Contrary to the course he had adopted on the day before, he would vote for the insertion of the word "inadmissibility".

112. Mr. CORDOVA had been in favour of the insertion of that word but had been convinced by the argument put forward by Mr. Hudson the day before, that consideration of admissibility involved consideration of inadmissibility.

113. Mr. AMADO was of the opinion that the reader might experience the same doubts as Mr. Yepes and gain the impression that the text was an invitation to formulate reservations. Mr. Yepes' hypothesis was not purely imaginary. He had voted against the latter's proposal, but was now disposed to reverse his vote.

114. Mr. SANDSTRÖM would also vote in favour of the proposal.

115. Mr. YEPES was pleased to note that four of his colleagues agreed with him in considering that paragraph 19 lent itself to an undesirable interpretation.

116. After an exchange of views between Mr. KERNO (Assistant Secretary-General), Mr. HUDSON, Mr. YEPES and the CHAIRMAN, *it was decided to adopt the wording: "the suitability of inserting therein provisions relating to the admissibility or inadmissibility of reservations and the effect to be given to them"*.

117. The CHAIRMAN ruled the discussion on chapter II of the draft Report (Reservations to Multilateral Conventions) closed.

118. Mr. YEPES announced that he would submit his reservation in regard to that chapter of the report at the next meeting.

The meeting rose at 1.15 p.m.

¹³ Summary record of the 126th meeting, para. 101.

¹⁴ Summary record of the 126th meeting, paras. 104-105.