

Document:-  
**A/CN.4/SR.129**

**Summary record of the 129th meeting**

Topic:  
**Other topics**

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*Observations on chapter III of the report as a whole*

127. Mr. HUDSON announced his intention of expressing his personal attitude in a footnote which, with the consent of the Commission, would be included in the report in the following form:

“Mr. Hudson voted against this chapter of the report on the ground that, in resolution 378 B (V), the General Assembly did not request the Commission to formulate a definition of aggression”.

*The above footnote was approved.*

128. Mr. SANDSTRÖM observed that Mr. Hudson might tender his reservation on paragraph 7.

129. Mr. SPIROPOULOS doubted whether members of the Commission were entitled to vote on a part of the report in which no concrete proposal was formulated.

130. In addition, he reserved the right to communicate at a later stage the text of a note with a request for its insertion in Chapter III.<sup>21</sup>

131. Mr. AMADO requested the insertion in the summary record of the following statement:

“Mr. AMADO explained that he did not think a definition of aggression possible, but thought that it should be attempted. It was in that spirit that he had submitted his memorandum (A/CN.4/L.6) and that he had spoken during the discussion of the report.”

132. Mr. HSU requested the insertion of the following reservation in the summary record:

“Mr. HSU voted against the draft definition which he considered inadequate since, in his view, it had no practical value. He had also objected to the form of the draft definition, which he considered confused and verbose.”

133. Mr. EL KHOURY pointed out that he would not vote for Chapter III of the report.

The meeting rose at 1.10 p.m.

## 129th MEETING

Friday, 20 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.

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

#### CHAPTER I: INTRODUCTION (A/CN.4/L.24)<sup>1</sup>

*Paragraphs 1–6 inclusive (paragraphs 1–6 of the “Report”)*

*Paragraphs 1–6 were adopted without comment.*

*Paragraph 7 (paragraph 7 of the “Report”)*

1. After an exchange of views with Mr. CORDOVA, Mr. SCALLE and Mr. LIANG, Mr. HUDSON proposed that the second sentence of the paragraph, “This is one of the topics of international law selected by the Commission for codification” be deleted, and that the last sentence of the paragraph read as follows: “This report is held over for consideration by the Commission at its next session”, instead of “Owing to the lack of time, however, the Commission had not been able to discuss this report which was therefore held over for consideration by the Commission at its next session.”

*It was so decided.*

*Paragraph 7 was adopted as thus amended.*

*Paragraph 8 (paragraph 8 of the “Report”)*

2. After a discussion as to the heading of paragraph 8, it was decided to leave it as it stood.

*Paragraph 8 was adopted.*

*Paragraph 9 and 10 (paragraphs 9 and 10 of the “Report”)*

*Paragraphs 9 and 10 were adopted without comment.*

*Paragraph 11 (paragraph 11 of the “Report”)*

3. Mr. HUDSON proposed that paragraph 11 be deleted.

*It was decided by a vote to allow the paragraph to stand.*

4. On a proposal by Mr. HUDSON, it was decided to delete the word “also” as superfluous, in the phrase “the Commission also gave consideration”.

*Paragraph 11 was adopted as thus amended.*

#### CHAPTER III: QUESTION OF DEFINING AGGRESSION (A/CN.4/L.25) (*resumed from the 128th meeting*)

5. In accordance with a decision taken at the previous meeting, Mr. SPIROPOULOS read out the following

<sup>1</sup> Mimeographed document only, the text of which corresponds, with drafting changes, to chapter I of the Report of the Commission. (See vol. II of the present publication.) The drafting changes are indicated in the present summary record.

<sup>21</sup> See summary record of the 129th meeting, para. 5.

statement which he wished to have inserted in Chapter III of the Commission's report in the form of a footnote.<sup>2</sup>

"While paying tribute to the Commission's efforts, Mr. Spiropoulos felt that it had mistaken its instructions from the General Assembly. Instead of examining systematically, as the special Committee of the Temporary Mixed Commission and the Permanent Advisory Commission of the League of Nations had done, whether a definition was possible, the Commission had tried to produce a definition of aggression. This was so general that it could have no practical value, and therefore the General Assembly could not be deemed to have asked for such a definition.

"Moreover, the Commission's report did not contain any conclusion, either positive or negative, on the subject in question, but merely gave an account of the discussion which had taken place in the Commission, thus leaving it to the General Assembly to decide whether a definition of aggression was possible or not".

6. Mr. HUDSON thought Mr. Spiropoulos' criticism of the Commission was improper. Members of the Commission should confine themselves to stating their own personal views.

7. Mr. ALFARO also felt that footnotes to a report while they might express opinions, should not express criticism.

8. While Mr. SPIROPOULOS did not see any essential difference between his note and that which Mr. Hudson had asked to have inserted,<sup>3</sup> he agreed to withdraw it and to replace it by a text which he would communicate to the Commission in due course, and which would be practically identical with Mr. Hudson's.<sup>4</sup>

#### CHAPTER II: RESERVATIONS TO MULTILATERAL CONVENTIONS (resumed from the 128th meeting)

9. Mr. YEPES said he had given a good deal of thought to the discussion at the previous day's meeting,<sup>5</sup> and had come to the conclusion that the Commission was absolutely right. It was not practicable for a statement as detailed as the one he had submitted to be inserted in the report to the General Assembly. That was why he had supported Mr. François' proposal that in future the only insertions to be made in summary records should be explanations of votes in the Commission. He only regretted that he had been rather heated in defence of his attitude, and he would like to apologize. He did so as an earnest of his complete good faith and the sincerity of his convictions.

9a. He had studied all that had been written on the problem of reservations, and had carefully scrutinized all the documentation submitted to the Commission. Having thus steeped himself in that matter, he had drawn the conclusions set forth in his statement. He only hoped that the future would prove that it was he who had been

<sup>2</sup> Summary record of the 128th meeting, para. 130.

<sup>3</sup> Summary record of the 128th meeting, para. 127.

<sup>4</sup> Mr. Spiropoulos subsequently informed the Secretariat that he no longer wished to have a footnote included in the report.

<sup>5</sup> See summary record of the 128th meeting, paras. 1-56. See also summary record of the 133rd meeting, para. 22.

wrong in his assessment and that the majority of the Commission had been right. That would be the best possible outcome for the prestige and authority of the Commission, which were his sole concern.

9b. With regard to the statement he had made the previous day, he left it entirely to his good friends the Chairman and the general rapporteur, to summarize it as they thought fit. He had perfect confidence in their honesty of purpose and sense of fair play, and he was quite sure that whatever they did would be well done and would be acceptable to the Commission. He would now dismiss it from his mind and leave it entirely to them. With the Commission's consent, he would have no further say in what happened to his statement, which was in excellent hands with Mr. Briery and Mr. Córdova.

10. The CHAIRMAN, on behalf of the members of the Commission, thanked Mr. Yepes for the conciliatory spirit he had just shown and the confidence in the Commission which his words implied.

#### CHAPTER IV: DRAFT CODE OF OFFENCES AGAINST THE PEACE AND SECURITY OF MANKIND (A/CN.4/L. 26)<sup>6</sup>

11. On the proposal of the CHAIRMAN, it was decided to deal only with the passages in the document which were additional to document A/CN.4/L.15 examined by the Commission at its 106th and 111th meetings.

##### *Paragraph 5, sub-paragraphs (c) and (d) (paragraph 58 sub-paragraphs (c) and (d) of the "Report")*

12. Regarding sub-paragraph (c), Mr. CORDOVA explained that in order to justify the decision taken by the Commission to deal with the criminal responsibility of individuals only, he had felt it advisable to refer to the comment on that point made in the judgment of the Nürnberg Tribunal.

13. Referring to sub-paragraph (d), Mr. HUDSON suggested that, in the second line, the expression "to deal with the various methods" should read "to propose methods".

*It was so decided.*

*Paragraph 5, sub-paragraphs (c) and (d) were adopted.*

*Comment on article 2, paragraph 1 of the Draft Code.*

14. Mr. CORDOVA asked the Commission if there were any observations on the first five sub-paragraphs, which were new.

##### *First and second sub-paragraphs*

*The first and second sub-paragraphs were adopted without comment.*

##### *Third sub-paragraph*

15. Mr. HUDSON said that at the previous meeting<sup>7</sup> the Commission had decided to transfer to chapter IV

<sup>6</sup> Mimeographed document only, the text of which corresponds, with drafting changes, to chapter IV 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 present summary record.

<sup>7</sup> Summary record of the 128th meeting, paras. 126-127.

the comment which formed the final sub-paragraph of paragraph 17 of the draft chapter III (Question of Defining Aggression). In accordance with that decision he proposed that the end of the third sub-paragraph be replaced by the words "that aggression can be committed by other acts, including some of those referred to in other paragraphs of this article".

16. Mr. ALFARO thought the expression "but the possibility is left open" in the fifth line of the third sub-paragraph was not satisfactory.

After a discussion in which Mr. CORDOVA, Mr. SCALLE and Mr. HUDSON took part, Mr. ALFARO proposed that the second sentence end with the word "aggression" in the fourth line, and that the next sentence begin with the words "It is, however, possible..." instead of reading as follows: "but the possibility is left open that aggression can be committed also in other forms...".

*It was so decided.*

#### *Fourth sub-paragraph*

17. Mr. YEPES, supported by Mr. ALFARO, asked to have the Inter-American Treaty of Reciprocal Assistance signed in Rio de Janeiro on 2 September 1947, added to the list of international instruments mentioned, as being equally important.

18. Mr. SPIROPOULOS thought it would be better to delete the fourth sub-paragraph entirely. When it was engaged in formulating the Nürnberg Principles, the Commission had felt it desirable to quote the texts to show that the Principles had been taken from positive law. It was no longer necessary to justify in the same manner the prohibition in the draft Code of the use of force.

19. Mr. CORDOVA said that article 2, paragraph 1 was based on the Charter of the United Nations, which was not very explicit on the point, and on the Draft Declaration on the Rights and Duties of States, prepared by the Commission. To give still more substantial backing to the Commission's argument, he had thought fit to indicate in the draft report that on a number of occasions already, man had proclaimed that aggression was a crime under international law.

20. Mr. HUDSON proposed that the words "is... prohibited" be replaced by "has been... prohibited", so as to make it clear that some of the international instruments mentioned were no longer in force. He was in favour of Mr. Yepes' proposal that the Rio de Janeiro Treaty of 1947 be included in the list.

21. Mr. SCALLE supported Mr. Hudson's proposal, though, unlike Mr. Spiropoulos, he felt that the list given in the sub-paragraph should be kept as illustrating the fact that international legislators had been constantly concerned with prohibiting the use of force.

22. Mr. CORDOVA, replying to Mr. Yepes, said that the Rio de Janeiro Treaty of 1947 did contain a sort of definition of cases of aggression, but merely systematized self-defence.

23. Mr. ALFARO said that the treaty in question expressly prohibited the use of force.

*It was decided to mention the Rio de Janeiro Treaty in the list.*

24. Mr. KERNO (Assistant Secretary-General) pointed out that the Covenant of the League of Nations did not prohibit the use of force in all circumstances. In the interests of accuracy he suggested that the beginning of the fourth paragraph be worded as follows: "Provisions against the use of force are to be found in...".

25. Mr. HUDSON preferred the following formula: "Limitations on the use of force have been contained in many international instruments of recent years".

26. Mr. SANDSTRÖM was in favour of changing the order of the various sub-paragraphs. The fourth and fifth sub-paragraphs, relating to the use of force, should come before those dealing with aggression, which was a very much broader concept.

27. Mr. HUDSON proposed for similar reasons that the order of the fourth and fifth sub-paragraphs be inverted, so as to give greater emphasis to the sub-paragraph dealing with the Charter and the draft Declaration on the Rights and Duties of States.

28. Mr. SANDSTRÖM agreed, but Mr. CORDOVA was in favour of keeping the chronological order, which had the further advantage of putting the most important passages at the end.

*It was decided, by 7 votes to 3, to keep the order of the sub-paragraphs as it stood.*

29. After a discussion in which Mr. AMADO, Mr. ALFARO and the CHAIRMAN took part, *it was decided* that the fourth sub-paragraph begin with the words "Provisions against the use of force have been included in many international instruments of recent years" instead of "The use of force is prohibited by many international instruments".

#### *Fifth sub-paragraph*

30. Following an observation by Mr. HUDSON, Mr. ALFARO proposed that the word "moreover" in the first line (The use of force is, moreover, prohibited...) be replaced by "above all".

*After some discussion it was decided to delete the word "moreover."*

*The fifth sub-paragraph was adopted as thus amended.*

#### *Comment on article 2, paragraph 2*

##### *First sub-paragraph*

31. Mr. HUDSON, supported by Mr. YEPES, pointed to a certain lack of cohesion between the text of the first sub-paragraph and that of chapter III, paragraph 12, (Question of Defining Aggression) of the draft report (A/CN.4/L.25), adopted by the Commission at the previous day's meeting.<sup>8</sup> He proposed, therefore, that the expression "actual aggression" in the second line be replaced by "acts of aggression".

32. Mr. CORDOVA said the Commission had decided to make the threat of aggression a special crime on the grounds that self-defence was a concept opposed to acts of

<sup>8</sup> Summary record of the 128th meeting, para. 107.

aggression exclusively. If self-defence in the face of mere threat of aggression were to be allowed, it would no longer be possible to distinguish between aggression and self-defence.

*Mr. Hudson's amendment and the first sub-paragraph as thus amended were adopted: it was also decided to make it clear in paragraph 12 of document A/CN.4/L.25, that the definition in question was Mr. Alfaro's draft.*

#### *Second and third sub-paragraphs*

*The second and third sub-paragraphs were adopted without comment.*

#### *Article 2, paragraph 3*

33. Mr. CORDOVA, supported by Mr. YEPES, thought that in order to bring the text of paragraph 3 into line with the new text of paragraph 5, the preparation of any act of aggression should be made a crime against the peace and security of mankind. He proposed therefore that the beginning of the paragraph be amended to read: "The preparation by . . . of any kind of act of aggression."

34. Mr. HUDSON, supported by Mr. AMADO, pointed out that generally speaking States made their preparations for self-defence, and then at the last moment, used their means of self-defence for aggressive purposes. While he appreciated Mr. Córdova's point, he was in favour of leaving article 2, paragraph 3, as it stood.

35. Mr. SANDSTRÖM, supported by the CHAIRMAN, also thought it would be better to keep the text. The most subtle forms of aggression, namely incursion and fomenting civil strife, were concepts more difficult to define at the preparation stage.

*The amendment submitted by Mr. Córdova and Mr. Yepes was rejected by 6 votes to 4.*

#### *Comment on article 2, paragraph 3*

##### *First sub-paragraph*

36. Mr. CORDOVA explained that he had added the last sentence of the first sub-paragraph of the comment in order to elucidate the previous sentence, which read "As used in this paragraph the term 'preparation' includes 'planning'." He had felt that that sentence could not stand alone and required further clarification.

37. Mr. HUDSON pointed out that the Commission had been of the opinion that the fact of drawing up plans was punishable.

38. The CHAIRMAN explained that the punishable element there was the plot.

39. Mr. CORDOVA said that, according to the summary records of the discussions,<sup>9</sup> the Commission's idea was that for the planning of aggression to be punishable, it must take the form of acts; if such acts could be regarded as the preparation of war, they were punishable.

*The first sub-paragraph of the comment on article 2, paragraph 3, was adopted.*

#### *Article 4*

40. Mr. CORDOVA thought the article was important

<sup>9</sup> Summary record of the 107th meeting, paras. 11-75.

in view of the criticisms expressed in the General Assembly. The only change made was in the second sub-paragraph of the comment.<sup>10</sup>

*Article 4 was adopted.*

#### *Comment on article 5*

41. Mr. CORDOVA said that the only change made was the addition of the second sentence of the comment. A principle used as a basis for the penalties to be prescribed should be inserted in the Code. The tribunal responsible for determining the penalty would base its decision on the authority of the Code.

42. Mr. AMADO said that he had voted against the article for reasons which would be found in the summary record of the discussions.<sup>11</sup>

43. The CHAIRMAN said that the same applied to him; the comment explained precisely how the majority had felt about the matter.

*The comment on article 5 was adopted.*

#### CHAPTER V: REVIEW BY THE COMMISSION OF ITS STATUTE (A/CN.4/L.23)<sup>12</sup>

44. The CHAIRMAN said he saw no reason why chapter V need be examined word by word. The Commission had before it an amendment submitted by Mr. Scelle, which read as follows:

"It should be noted that the principle of work on a full-time basis would not necessarily mean that the members of the Commission would have to have their fixed residence at the place where their meetings were held. The essential point would be the continuity of the work assigned to them. Various arrangements would be feasible. The Commission might, for instance, split up into several sections, each making a special study of one or more particular topics. Each section would be grouped about its special rapporteur, and the Commission would thus work in a series of teams, by correspondence, according to the method already tried and found practicable by the Institute of International Law and the International Law Association. The various sections would keep constantly in touch with the Legal Department of the Secretariat, to enable them to obtain at short notice any documentation or practical information required. The Development and Codification Division of the Secretariat would no doubt have to take on extra staff for the purpose.

"There is no question, however, that a system of this kind would be much less costly than one of permanent residence on the lines, say, of the International Court of Justice. It would not exclude the possibility of holding two or more special sessions or

<sup>10</sup> For the original text of the second sub-paragraph of the comment, see summary record of the 110th meeting, footnote 9 and para. 148.

<sup>11</sup> See summary record of the 111th meeting, paras. 86-170.

<sup>12</sup> Mimeographed document only, the text of which corresponds to chapter V of the *Report of the International Law Commission covering the work of its third session*. (See vol. II of the present publication.)

annual plenary sessions, especially if the Commission's official headquarters were established at Geneva."

45. Mr. SCELLE said that his amendment was based on the fact that, as all the members of the Commission had found, it was practically out of the question for them to take up their fixed residence at Geneva, and particularly, to think in terms of more than two months of sessions in the year. In his opinion, work on a full-time basis did not mean that the members of the Commission must be continuously in session and resident at the place where the meetings were held. It meant that they would devote the whole of their time to the work of the Commission. The idea of full-time in the scheme referred to the full-time nature of the work.

46. Full-time work could be achieved in several ways: the Commission might split up into a number of committees on special topics, a definite piece of work being allotted to rapporteurs who would carry it out, but keep in contact throughout with the other members of the committees. That was the method followed by the Institute of International Law and the International Law Association. Their rapporteurs remained constantly in touch with the members of their particular sub-committee, and arrived at the meetings of those bodies armed with reports which they knew were bound to be acceptable to them. That method would save a great deal of time, since a rapporteur coming to a session of the Commission with a report which was his own personal work was liable to find himself at loggerheads with his colleagues, each one of whom had his own views; and time was thus lost in producing a text acceptable to the majority of members. If, on the other hand, the Rapporteur was already in agreement with four or five of his colleagues who were prepared to support a common point of view, much time could be saved. Still more time could be saved if the Rapporteur remained constantly in touch with the Secretariat.

47. The Secretariat was invariably extremely helpful to the members of the Commission. On that point he disagreed with Mr. Koretsky, who at the first session had been prejudiced in his criticism of the help given by the Secretariat. The Rapporteur ought to keep constantly in touch with the Secretariat to obtain such day-to-day information as he required. It would enable him to produce far more significant results.

48. If the principle of a full-time Commission were applied, each member would undertake in principle to work exclusively for the International Law Commission. Obviously there would have to be a gentleman's agreement, since there was no way of keeping a check. It would nevertheless be a great step forward.

49. As to the principle of permanence as discussed at the beginning of the session,<sup>13</sup> he had gone over the matter with Mr. Kerno and several of the members of the Commission, including the Rapporteur and Mr. Spiropoulos, and he felt that the idea of continuous residence for seven or eight months in the year, with a status similar to that of the Hague judges, should be abandoned. It was entirely out of the question. From

an examination of the earlier instances of codification work by the League of Nations and the permanent commission at Rio de Janeiro, it was clear that the principle of full-time work had not been conceived in that manner. The Rio commission had held sessions. Experience showed that it was an illusion to think of working in a vacuum, and on the basis of a session continuing for more than two months. In any case the cost would be prohibitive. Salaries at least as high as those of the judges of the Hague Court would be necessary, and the Fifth Committee of the General Assembly would never agree to that. On the other hand, a compromise arrangement by which the members of the Commission would live in their own homes would involve much lower salaries.

50. Mr. Hudson had pointed out to him that his suggestion might be expressed more briefly. The text he had submitted was somewhat lengthy in the interests of clarity, and not with the idea of its being incorporated in the report in its entirety. He was quite prepared to have it abridged, and he had no strong feelings about the wording he had used being kept as it stood.

51. Mr. HUDSON thought it would be a good thing to cut Mr. Scelle's text down by omitting the reference to collaboration by correspondence according to the method already used by the Institute of International Law and the International Law Association, and by deleting the second paragraph.

52. Mr. AMADO asked Mr. Hudson why he was suggesting that the passage relating to work by correspondence should be cut out.

53. Mr. HUDSON thought the method used by the Institute of International Law was not practicable for the International Law Commission.

54. Mr. FRANÇOIS thought Mr. Scelle's amendment was a fundamental one, since it would completely change the nature of the recommendation which the Commission had decided to submit to the General Assembly. He wondered whether it was desirable to make such a change, even in the form of an observation by the way.

55. It seemed likely that the Commission's proposal would meet with very strong opposition on the part of the Assembly and perhaps of the Secretary-General; but the sight of Mr. Scelle's proposal would make the opposition still more obstinate. It would be suggested that the members of the Commission wanted high salaries for staying at home and doing nothing.

56. He was not so sanguine as Mr. Scelle about the work of sub-committees. It frequently happened that all the work by a sub-committee was re-hashed in plenary. Moreover, when sub-committees were set up, it was impossible to ensure that the various legal systems would be represented. Again, from the practical point of view, the sub-committees would have to meet, and that would mean travelling expenses. While he was on that subject, since there might be three or four sessions of the plenary Commission, that would make the travelling expenses mount still higher.

<sup>13</sup> Summary records of the 83rd, 96th and 97th meetings.

57. He did not follow Mr. Scelle's argument that salaries would not be so high. If the best men were to be enlisted, they would have to be paid very high salaries, which would be just the same whether the experts lived at home or took up residence in Geneva, New York or Washington.

58. In his opinion there was very little to be said in favour of Mr. Scelle's proposal. It reduced the chance of having the recommendation for a full-time Commission accepted by the Assembly; it meant very little saving; and it would make for less efficient work.

59. It was not essential that every member of the Commission should remain twelve months of the year at the Commission's headquarters. The judges at the Hague court did not do so either. That was a matter of arrangement within the terms of the Statute; it was not a question that need be discussed at the moment. He would rather that Mr. Scelle's proposal were not included in the report.

60. Mr. SCELLE said his idea was that the emoluments of the members of the Commission would be very much lower than under the earlier suggestion for a full-time Commission. He had no wish to start an argument. But he did wish to ask Mr. François whether he thought it conceivable to find fifteen members chosen from among the most eminent jurists, who would be prepared to meet in any centre, anywhere in the world, for more than a month or two every year.

61. Mr. FRANÇOIS replied that so far it had not been so very difficult to find candidates for the position of judge at the International Court of Justice — far from it. The difficulty in finding properly qualified experts for the International Law Commission would not be any greater, provided the standing of the Commission was roughly the same as that of the Court.

62. Mr. KERNO (Assistant Secretary-General) said that when the question had been discussed,<sup>14</sup> he had explained the reasons which had led the General Assembly to vote against the principle of members of the Commission working on a full-time basis. The Assembly had felt that under such a system it would be impossible to obtain the services of the most competent persons, and secondly, that in the course of a few years, the members of the Commission would become bureaucrats.

63. Mr. Scelle's amendment had made it clear that some of the members of the Commission shared that same anxiety, at any rate to some extent. The version suggested by Mr. Hudson might well justify the impression mentioned by Mr. François — that members of the Commission wanted fat salaries without leaving their homes. Mr. Scelle's amendment on the other hand suggested a considerably lower salary scale. He would all the same be glad to see the mention of Geneva removed from Mr. Scelle's text. It had in fact been the Commission's view that at the present moment it was not politic to raise that particular issue.

64. Mr. YEPES was not opposed to the notion underlying Mr. Scelle's proposal. The system recommended

was calculated to improve the Commission's work. Nevertheless, he felt that it was neither wise nor desirable to insert in the Commission's report a recommendation that the Commission should work on a full-time basis though the members would not be required to take up their fixed residence at the place where the meetings were held. Such a suggestion would make a bad impression on the General Assembly and would result in the Commission's recommendation being unanimously voted down. Hence, while he was in favour of the underlying idea, he would oppose the insertion of the text in the Commission's report.

65. Mr. CORDOVA said that clearly the members of the Commission were roughly in agreement that the proposal for members of the Commission to work on a full-time basis, and with a salary scale at least equivalent to that of the judges at the International Court of Justice, would not easily pass the General Assembly. The impression would be conveyed that the members of the Commission were anxious to show how important they were.

66. He felt that there was nothing to lose by submitting a proposal which made it clear that the Commission was earnestly concerned with achieving the utmost efficiency in its work. It would thus prove that, even if the General Assembly did not give approval to its main proposal, it had in hand measures to improve its working methods and to reduce expense.

67. Under the present system, a few days before the beginning of each session the members of the Commission received a report they had never set eyes on before. Under the new system it would be possible to achieve greater collaboration and to obtain more assistance from the Secretariat. Up to the present, not all the members of the Commission had requested the Secretariat to work on their behalf in between sessions; if they did so, there was no doubt that the Secretariat would comply. Sub-committees would make it possible to work on given topics by correspondence.

68. Mr. HUDSON said he could not see himself examining any problem with his colleagues without meeting them. Meetings were essential. In the work of the Harvard Research on International Law, the reports had been studied in meetings, and that was where progress had been made. He was against the idea of working by correspondence as the Institute of International Law did.

69. Mr. SCELLE thought it would be useful for the sub-committees to meet from time to time, but it was not essential that they should do so several times a year. Mr. Hudson had had a great deal of experience in the Harvard Research on International Law, which had accomplished a great deal even though the research workers did not work on a full-time basis or in one particular centre.

70. Mr. EL KHOURY said that the Commission had decided to consult the General Assembly so as to find out whether it accepted the principle that members of the Commission should work on a full-time basis. When the new Statute was ready, it would be time enough

<sup>14</sup> Summary record of the 97th meeting, paras. 26-30.

to discuss the question raised by Mr. Scelle, and not till then. Personally he was against the full-time principle. At present the Commission met daily to study reports prepared beforehand. If the Commission sat daily the whole year round, who was to prepare the reports?

71. He proposed that the Commission take no decision on Mr. Scelle's text.

72. Mr. HUDSON shared Mr. el Khoury's view. The text proposed by Mr. Scelle would surely be incompatible with paragraph 11, (paragraph 70 of the "Report") the first sentence of which read: "The recommendation of a full-time Commission is placed before the General Assembly, at this time, in general terms only". It would be premature to decide how the new Commission was to work. Nevertheless he would be inclined to add a new paragraph in between paragraphs 10 and 11, to the effect that a full-time Commission might organize its work in many various ways, but that no attempt was being made at present to outline the possible ways in which it might be done.

73. If the first sentence of Mr. Scelle's amendment were inserted in the report, it would have to be reconciled with the statement in paragraph 8 (paragraph 67 of the "Report") that "no member of the Commission may exercise any political or administrative function, or engage in any other occupation of a professional nature". If a member of the Commission lived at home and gave up all other occupation, he would have to be paid accordingly. The first sentence of Mr. Scelle's proposal did not tally with the passage which stated that his system would be much less costly than one of permanent residence on the lines, say, of the International Court of Justice.

74. He agreed with Mr. François that to insert Mr. Scelle's text would upset the fundamental structure of the draft report.

75. Mr. SCELLE said he had submitted his proposal in the conviction that if the Commission was to deal seriously with the codification of international law, it could never hope to achieve that end by working for two-and-a-half months per year. If the full-time principle were adopted, it would mean having either young people — perhaps very able men, anxious to make a career — or retired jurists quite happy to find a comfortable niche for their retirement. In his opinion, the Commission should not consist of either. It should seek some method of enlisting men of the very first rank, men actually engaged in the profession, and capable of carrying out what was required of the International Law Commission, namely, the codification of international law in its entirety. That was no mean task, and at the same time it was one which had to be carried out quickly, otherwise the codified law would already be out of date by the time the texts were published. The essential feature of law was that it was born of social necessity, which was itself in a constant state of flux. If years had to be spent in codifying the régime of the high seas, for example, the work of the Commission would be quite useless; and the same could be said of other topics. He mentioned the high seas because the Commission had come up against the question of the continental shelf, which had crystallized

over a period of several years and might well collapse in the same way.

76. A two months' session every year was no way of ensuring that the Commission fulfilled its function. It was of course extremely difficult to hit upon an acceptable system — that he agreed. The object of the proposal he had submitted was to demonstrate that the statement that the Commission was anxious for its members to devote their full time to the work did not amount to a great deal. The important thing was not the full-time principle, but the matter in which the work of the Commission was organized.

77. Mr. HUDSON pointed out that, if the principle of a full-time Commission were challenged, the entire chapter would have to be re-written, paragraph 10 in particular, and an alternative method of reorganization suggested.

78. Mr. AMADO said that, when the Commission discussed the question of its Statute, he had had occasion to mention an important point.<sup>15</sup> He had reminded the Commission that when the General Assembly set up the Commission in 1947, it was interested in the question of codification. Hopes had then been high that the co-operation between the great powers might continue. At the present time, the Commission should find out whether the Assembly was still disposed to give the work of codification the necessary scope. If it decided that now was the moment to push on the work to completion, the decision could be implemented in the appropriate way. His own view was that it was out of the question to bring the task of codification to a successful conclusion without increasing the facilities at the Commission's disposal. That was why he had voted in favour of the principle that the work of the Commission should be on a full-time basis. His idea had been to postpone the examination of the practical issue, and to ask the General Assembly for authorization to go ahead. He was not in favour of accepting Mr. Scelle's proposal, which was concerned only with the actual completion of the task in hand, and which seemed to him premature.

79. The CHAIRMAN said that the Commission was faced with several possibilities. It could either accept the proposal, or reject it, or adjourn discussion of it until the General Assembly had given its decision on the general principle. If the Assembly accepted the principle, Mr. Scelle's proposal could be used as a basis for discussion.

80. Mr. HUDSON suggested that the proposal to insert the text in the report be turned down. On the other hand, if it could be resubmitted in a year's time, it might be considered.

81. Mr. SCELLE said he would abide by any decision the Commission might take.

*It was decided by 8 votes to 2, with 2 abstentions, not to insert Mr. Scelle's amendment in the report.*

82. Mr. ALFARO explained that his reason for voting against the insertion of the amendment in the report was not that he was opposed to Mr. Scelle's idea, but

<sup>15</sup> Summary record of the 112th meeting, paras. 29-30.

that he felt the amendment would be an obstacle to the adoption by the General Assembly of the Commission's recommendation.

83. Mr. EL KHOURY said that the reason why he had voted against the amendment was that it seemed premature to discuss it at the present session. If the General Assembly accepted the principle that the members of the Commission should work on a full-time basis, he would be in favour of the system suggested by Mr. Scelle.

84. Mr. SPIROPOULOS thought that if the Assembly agreed to the principle of a full-time Commission, the rapporteur ought to prepare the Statute of the new Commission for discussion at the next session.

85. The CHAIRMAN said he was prepared to appoint a rapporteur if necessary.

86. Mr. HUDSON thought that, even if the General Assembly did not approve the principle, the Commission should nevertheless examine its Statute carefully, and it might be useful to have a rapporteur who would study the Statute with the help of the Secretariat and present a report. The Commission might nominate a rapporteur. He personally considered the Statute very unsatisfactory. Its interpretation in concrete instances was bound to give rise to lengthy discussion, and an attempt should be made to improve it.

87. Mr. SPIROPOULOS held the opposite view. If the Assembly did not agree to the proposed fundamental change, the amendments to be made to the Statute would be so insignificant that they would hardly justify a rapporteur being nominated. The Commission had discussed the question. It was not the provisions of the Statute that prevented the work from proceeding, but lack of time. He was not in favour of appointing a rapporteur.

*It was decided by 5 votes to 2, to nominate a rapporteur.*

Mr. HUDSON suggested that the Chairman put forward a nomination.

The CHAIRMAN pointed out that the rapporteur would not know what he was called upon to do until the General Assembly had taken a decision.

The meeting rose at 12.50 p.m.

## 130th MEETING

*Monday, 23 July 1951, at 3 p.m.*

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*Chairman:* Mr. James L. BRIERLY

*Rapporteur:* Mr. Roberto CORDOVA

*Present:*

*Members:* 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 from Mr. Jaroslav Zourek

1. The CHAIRMAN announced that Mr. Zourek had written expressing his regret at his inability to take part in the work of the Commission's third session as a result of "unexpected calls on his time and urgent work".

2. In reply to a remark by Mr. HUDSON, the CHAIRMAN observed that the Commission's members were not under any obligation to take part in its work.

3. Mr. EL KHOURY thought that the letter suggested that Mr. Zourek would take part in the work of the next session.

4. Mr. CORDOVA pointed out that, if the Commission's Statute did not oblige members to attend the sessions, advantage might be taken of the forthcoming revision to lay down rules for such a contingency.

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

#### CHAPTER VII. RÉGIME OF THE HIGH SEAS (A/CN.4/L.27) (*continued*)

5. Mr. HUDSON congratulated Mr. François on the valuable draft report he had submitted to the Commission; he wished to make two observations of a general nature.

6. In the first place the English text, although carefully translated, did not always present ideas in their simplest form. The General Rapporteur should be given the opportunity of touching it up from the point of view of style.

7. In the second place it was difficult for the reader to distinguish clearly between the part of the report which was to be included in the Commission's report to the General Assembly, and the draft articles for submission to governments for comment. The paragraphs following the various articles did not always consist of comment pure and simple, but contained matter which should be included in the general report. It would be better to include some of the paragraphs which came after the articles, in the report to the General Assembly. The articles themselves, together with those texts that constituted comments in the strict sense of the word and were intended for governments, should be included in an annex to the general report. As regards the consecutive numbering of commentary paragraphs, such a course might lead to confusion and complicate discussions in the General Assembly. It would be preferable to number the commentary paragraphs to each article separately.