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Summary record of the 179th meeting

Topic:
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Extract from the Yearbook of the International Law Commission:-
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subject, although he had already explained that he was loath to do so.

70. Mr. LIANG (Secretary to the Commission) recalled that he had frequently expressed the view that it was undesirable for the Commission to submit texts to the General Assembly piecemeal. It had always been the practice of the Commission, however, to consider the various aspects of a subject separately and one, or a few, at a time, and he thought it was desirable that it should abide by that practice. Consequently, he suggested that the special rapporteur be asked to submit to the Commission at its next session a reasoned plan of work for dealing with the subject as a whole. The Commission could discuss that plan and, if sufficient time remained after other subjects which were further advanced had been dealt with, it might also consider one aspect of the law of treaties, such as the question of their interpretation, on the basis of a report submitted by the special rapporteur in whatever form he thought fit.

71. Mr. KERNO (Assistant Secretary-General) recalled that the Commission had not only given priority to the subject of the law of treaties; it had given it top priority. Ever since the Commission's first session, he had hoped that work on the whole of that subject would be completed by the end of the Commission's first five years of existence; it would certainly be very disappointing if that period ended with nothing to show for their efforts.

72. He quite understood that the special rapporteur could not simply step into the shoes of Mr. Brierly. What had been done so far was not, however, just the personal work of Mr. Brierly. The Commission had discussed the whole subject twice at considerable length. There was, therefore, no question of making a new start. He was confident that it would be possible for Mr. Brierly's successor as special rapporteur to submit to the Commission at its next session a report which, in some respects, would be a final report, but in others not.

73. Mr. HSU moved the adjournment of the discussion in order to permit Mr. Lauterpacht to consider further the views which had been expressed. He did so the more hopefully because he felt that Mr. Lauterpacht's present hesitations sprang largely from the fact that he thought a detailed and exhaustive commentary, along the lines of those prepared by the Harvard Research, essential. But the truth was that, however much the Commission might wish otherwise, it could not produce such a commentary. Fortunately, to command respect it was not obliged to depend so much on documentation as on the soundness and usefulness of its recommendations.

74. Mr. HUDSON supported the motion for adjournment.

The motion for adjournment of the discussion was adopted.

The meeting rose at 6.25 p.m.

179th MEETING

Monday, 4 August 1952, at 2.45 p.m.

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* The number within brackets indicates the article number in the Special Rapporteur's Report (A/CN.4/46).

Chairman : Mr. Ricardo J. ALFARO

Rapporteur : Mr. Jean SPIROPOULOS.

Present :

Members : Mr. Roberto CORDOVA, Mr. J. P. A. FRANÇOIS, Mr. Shushi HSU, Mr. Manley O. HUDSON, Faris Bey el-KHOURI, Mr. F. I. KOZHEVNIKOV, Mr. H. LAUTERPACHT, Mr. Georges SCELLE, Mr. J. M. YEPES, Mr. J. ZOUREK.

Secretariat : Mr. Ivan S. 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).

Law of treaties (item 3 of the agenda) (*continued*)

1. The CHAIRMAN recalled that, at the previous meeting, Mr. Lauterpacht had been proposed as Mr. Brierly's successor as special rapporteur on the law of treaties but that, following an exchange of views, further consideration of the question had been adjourned in order to give him time for reflection.

2. Mr. LAUTERPACHT said that he had given further thought to the question in the light of the discussion at the previous meeting and had come to the conclusion that there was, after all, no imperative objection to the report on the law of treaties being presented in instalments. If he were elected, therefore, he would submit to the Commission at its next session a report covering one aspect of the subject together with an outline of the whole work.

3. Mr. HUDSON said that he welcomed Mr. Lauterpacht's statement, but wondered whether the

Commission, with its present membership, was competent to make any appointments extending beyond the end of 1953, when the present members' term of office would expire.

4. The CHAIRMAN said that clearly Mr. Lauterpacht could be appointed rapporteur only for as long as he was a member of the Commission. If he were not re-elected by the General Assembly for a further five years, other arrangements would have to be made.

5. Mr. KERNO (Assistant Secretary-General) said that the General Assembly would doubtless make all the necessary transitional arrangements to bridge the gap between the close of the fifth session and the opening of the sixth. At present the Commission obviously could not look further ahead than the end of 1953.

Mr. Lauterpacht was unanimously elected special rapporteur on the law of treaties to succeed Mr. Brierly.

Development of a twenty-year programme for achieving peace through the United Nations

10.* Mr. LIANG (Secretary to the Commission) recalled that the Commission's report, covering the work of its third session, included the following paragraph :

"The Commission took note of General Assembly resolution 494 (V) of 20 November 1950 and, pursuant to paragraph 2 thereof, gave consideration to point 10 of the 'Memorandum of Points for Consideration in the Development of a Twenty-Year Programme for Achieving Peace through the United Nations', submitted by the Secretary-General. As will be seen from the present report as well as from its previous reports to the General Assembly, the Commission is making every effort to speed up its work for the progressive development and codification of international law."¹

11. He had now been asked to communicate to the Chairman of the Commission the following letter from the Secretary-General, dated 19 May 1952 :

"I have the honour to transmit, for the information of the International Law Commission, the text of the enclosed resolution entitled 'Development of a Twenty-Year Programme for Achieving Peace through the United Nations', adopted by the General Assembly at its 368th plenary meeting on 31 January 1952."²

"This resolution requests the appropriate organs of the United Nations to give consideration to those portions of the Secretary-General's memorandum on this subject with which they are particularly

concerned, and to inform the General Assembly, at its seventh regular session, through the Secretary General, of any progress achieved through such consideration.

"I also enclose a copy of my report to the sixth session of the General Assembly and the text of the memorandum referred to in the resolution, to which your attention was drawn in my letter of 12 December 1950, in particular to point 10, concerning the active and systematic use of all the powers of the Charter and all the machinery of the United Nations to speed up the development of international law towards an eventual enforceable world law for a universal world society."

He accordingly suggested that the Commission request the General Rapporteur to include in his draft report covering the work of the present session a passage dealing with that question.

It was so agreed.

Representation at the General Assembly

12. Mr. LIANG (Secretary to the Commission) recalled that the Commission had decided, at its first session, "that it would be represented, for purposes of consultation, by its Chairman during the fourth regular session of the General Assembly."³ In view of the Commission's decision, the Secretariat had always made special provision in the budget for the expenses of such consultation. During the past two years, however, the Chairman had not attended the General Assembly and had not, indeed, been requested by the Commission to do so. He suggested that the Commission should consider whether it wished to be represented, for purposes of consultation, by its Chairman during the seventh regular session of the General Assembly.

13. Mr. CORDOVA said he believed it to be most desirable that the Commission should be represented at the General Assembly by its Chairman. Several members of the Commission sat on the Sixth Committee of the General Assembly but they sat as representatives of their governments and therefore could not defend the Commission's decisions.

14. Mr. SPIROPOULOS said that his experience in attempting to defend the Commission's decisions in the Sixth Committee of the General Assembly led him to endorse Mr. Córdova's view most warmly. There was no doubt that one member of the Commission, not attending as a government representative, ought to be given the task of defending the Commission's decisions in the Sixth Committee, and provided he was willing, that task was best undertaken by the Chairman of the Commission.

* Paras. 6—9 concerned the confirmation of Mr. Hudson's resignation as special rapporteur on the question of nationality, including statelessness.

¹ *Official Records of the General Assembly, Sixth Session, Supplement No. 9 (A/1858)*, para. 89. Also in *Yearbook of the International Law Commission, 1951*, vol. II, p. 140.

² See *Official Records of the General Assembly, Sixth Session, Resolutions, Resolution 608 (VI)*.

³ *Official Records of the General Assembly, Fourth Session, Supplement No. 10 (A/925)* para. 41. Also in *Yearbook of the International Law Commission, 1949*, p. 284.

15. Mr. SCELLE agreed with the views expressed by Mr. Córdova and Mr. Spiropoulos.

16. Mr. HSU asked whether the Chairman would in fact be able to attend the seventh session of the General Assembly. If so, he ought to do so, not perhaps so much to defend the Commission as to provide any necessary additional information which was not to be found in its report.

17. Mr. CORDOVA said that, as the question had been raised, he wished to point out how difficult it was for any member of the Commission, appointed in his personal capacity as an expert, to sit on the Sixth Committee as a representative of his government. If his government disagreed with the Commission's decisions, he must dissociate himself from those decisions. If he personally disagreed with the Commission's decisions, his position was no less difficult. In either case a queer impression was produced. For those reasons the Commission should recommend that none of its members be asked to sit on the Sixth Committee as government representatives.

18. Mr. SPIROPOULOS felt that Mr. Córdova's proposal was as undesirable as it was unnecessary. The authority of the members of the Commission should not be derived solely from the classroom. Moreover, when the Sixth Committee considered the International Law Commission's report — which, he pointed out, was only part of its work — there was nothing unusual in the fact that members of the Committee who were also members of the International Law Commission should speak against the Commission's decisions for the following reasons; first, they were not expressing their own views but the views of their governments, and secondly, there was no reason why even their own views should coincide with those of the Commission, whose decisions were taken not unanimously, but by a majority vote.

19. Mr. el-KHOURI, on a point of order, observed that the question raised by Mr. Córdova was not on the Commission's agenda, which was already sufficiently full to absorb all the time at its disposal.

20. The CHAIRMAN agreed that the Commission had only to decide whether to take a similar decision to that contained in paragraph 41 of its report on its first session.

21. With regard to the point raised by Mr. Hsu, he regretted that owing to his other commitments he was not in a position to give an assurance that he would be able to attend the General Assembly, even if the Commission wished him to do so, although he would of course make every effort to comply with the Commission's wishes.

22. Mr. SPIROPOULOS said that, if the Chairman was unable to attend, then the First Vice-Chairman, or failing him the Second Vice-Chairman, might be able to attend instead.

23. Mr. CORDOVA suggested that, if the Chairman

was unable to attend, the Commission could be represented by its general rapporteur.

It was decided by 9 votes to none with 2 abstentions that the Commission should, if possible, be represented, for purposes of consultation, by its Chairman at the seventh regular session of the General Assembly.

Arbitral procedure (item 2 of the agenda) (A/CN.4/L.35) (resumed from the 177th meeting)

CONSIDERATION OF THE DRAFT COMMENTS SUBMITTED BY THE SPECIAL RAPPORTEUR (resumed)

24. The CHAIRMAN invited the Commission to resume consideration of the comment on the articles in the Draft on Arbitral Procedure (A/CN.4/L.35).⁴

Comment on article 20 [28]⁵

First paragraph

25. Mr. HUDSON considered it undesirable to state that the Commission had accepted anything virtually without discussion. Moreover, the power of the tribunal to give judgment by default was not self-evident. He accordingly proposed that the first sentence of the first paragraph of the comment on article 19 be amended to read as follows:

“The power of the tribunal to give judgment by default was accepted by the Commission on analogy with article 53 of the Statute of the International Court of Justice.”

26. The second sentence of the paragraph, as at present worded, was redundant.

27. Mr. SCELLE did not think it was sufficient to say that the power of the tribunal to give judgment by default had been accepted on analogy with article 53 of the Statute of the International Court of Justice. The extension to arbitration procedure of the scope of application of that principle did represent definite progress.

28. Mr. LAUTERPACHT felt it was hardly worthwhile merely to say that the power of the tribunal to give judgment by default had been accepted on analogy with a provision of the Statute of the International Court of Justice.

Mr. Hudson's amendment to the first sentence of the first paragraph was adopted by 5 votes to 3 with 2 abstentions.

⁴ Mimeographed document only. It was incorporated, with drafting changes, in the “Report” of the Commission as Chapter II (see vol. II of the present publication). Drafting changes are given in the present summary records.

⁵ Corresponds to article 19 in document A/CN.4/L.35. The comment read as follows:

“The power of the tribunal to give judgment by default was accepted by the Commission virtually without discussion and as being self-evident. This again is proof of the continuous progress of arbitration procedure.

“The purpose of paragraph 2 is merely to put the tribunal on its guard against any hasty decision.”

29. Mr. YEPES thought that, in view of the adoption of Mr. Hudson's amendment, the second sentence no longer made sense; he proposed that it be deleted.

30. Mr. LIANG (Secretary to the Commission) suggested that it be amended to read:

"The adoption of this provision would represent a step forward in the law of arbitral procedure."

31. Mr. HUDSON said that the wording suggested by the Secretary would be acceptable to him.

32. The CHAIRMAN pointed out that he must first put to the vote Mr. Yepes' proposal that the second sentence as at present worded be deleted.

Mr. Yepes' proposal was adopted by 6 votes to 3 with 3 abstentions.

The amendment suggested by the Secretary was adopted by 7 votes to 2 with 2 abstentions.

Second paragraph

33. Mr. HUDSON suggested that the second paragraph be deleted.

34. Mr. LAUTERPACHT said that he could agree to Mr. Hudson's suggestion, but if the paragraph were to be retained, it might be re-worded as follows:

"The purpose of this article is to ensure that no decisive importance would be attached by the tribunal to the fact of default and that the award must be based on a full examination of the jurisdiction of the tribunal and of the merits of the case."

35. Mr. SCELLE felt that the wording suggested by Mr. Lauterpacht added nothing of substance to the wording he himself had proposed. It went without saying that the tribunal must be satisfied that it had jurisdiction and that the claim was well-founded in fact and in law, and the only purpose of paragraph 2 which he could conceive was the one he had stated in the second paragraph of the comment.

36. Mr. FRANÇOIS said that he could not agree with Mr. Scelle, since in some systems of law the judge's rôle was so passive that he was bound, in such cases, to give an award in favour of the claimant without considering whether the claim was well-founded.

37. Mr. YEPES said that he would vote against the wording suggested by Mr. Lauterpacht, which was more cumbersome than that proposed by Mr. Scelle without adding anything of substance to it.

The wording suggested by Mr. Lauterpacht for the second paragraph was adopted by 4 votes to 1 with 4 abstentions.

38. Mr. LAUTERPACHT suggested that the sentence just adopted and the one adopted just previously at the suggestion of the Secretary be transposed.

Mr. Lauterpacht's suggestion was adopted by 5 votes to none with 4 abstentions.

Comment on articles 21 and 22 [16, 17 and 18]⁶

First paragraph

39. Mr. LIANG (Secretary to the Commission) recalled that the Commission had decided to combine articles 20 and 21.⁷ The first sentence of the comment might, therefore, be amended to read simply:

"These two articles form a complete whole," instead of "These three articles form a complete whole and could have been combined in one".

It was so agreed.

40. Mr. HUDSON observed, in connexion with the third sentence, that the words "in particular with a view to adopting some other method of settlement" added something which was not in the article. He suggested their deletion.

41. Mr. LAUTERPACHT pointed out that the words were intended only as an example. He saw no objection to them.

Mr. Hudson's suggestion was rejected by 4 votes to 3 with 1 abstention.

42. Mr. HUDSON said that he failed to understand the meaning of the reference in the last sentence to article 9 (a).

43. Mr. SCELLE said that its meaning was perfectly clear to him, but if the Commission wished to delete it, he would not object.

44. Also with reference to the last sentence, Mr. LAUTERPACHT asked whether the special rapporteur was sure that there did exist the difference indicated between arbitration and proceedings in a court of law.

45. Mr. SCELLE said that the difference was that the parties could not withdraw a case before a court of law with a view to submitting it to some other method of settlement.

46. Mr. LAUTERPACHT pointed out that they could withdraw it with a view to submitting it to arbitration.

47. Mr. HUDSON said that, in order to shorten the discussion, he would propose deletion of the whole of the last sentence.

Mr. Hudson's proposal was adopted by 7 votes to none.

Second paragraph

48. Mr. HUDSON proposed the deletion of the fourth sentence. He could not agree that the tribunal should be called upon to verify the "legality" of the settlement.

49. Mr. CORDOVA considered it important to enable the parties to reach a settlement. All that remained for the tribunal was to give it the authority of *res judicata*.

⁶ Correspond to articles 20, 21 and 22 in document A/CN.4/L.35.

⁷ See summary record of the 174th meeting, paras. 38—40.

50. Mr. LAUTERPACHT wondered whether the purport of the third sentence would be clear if the fourth were deleted.

51. Mr. SCELLE said it was vital to prevent the tribunal from being compelled to sanction a settlement that was contrary to international law or devoid of content.

52. Mr. KERNO (Assistant Secretary-General) said that if Mr. Hudson's proposal were accepted, the fifth sentence would also have to be deleted.

53. Mr. LAUTERPACHT considered that the fourth sentence should be maintained since it was inadmissible that the tribunal should give binding force to a settlement reached under duress.

54. Mr. HUDSON said he was unable to understand the meaning of the words "the legality and effective scope".

55. Mr. LAUTERPACHT agreed that the expression "effective scope" was somewhat obscure. The meaning of the word "legality" on the other hand was perfectly clear; it was essential that the settlement should not be contrary to international law and should not violate treaty obligations which one of the parties might have with a third party. In order to meet Mr. Hudson's point, he would propose the deletion of the words "and effective scope" and the addition of the words "reached by the parties" at the end of the sentence.

Mr. Hudson's proposal for the deletion of the fourth sentence was rejected by 5 votes to 4 with 1 abstention.

56. Mr. HUDSON said that, as his proposal had been rejected, he would support Mr. Lauterpacht's amendment.

4 votes were cast in favour of Mr. Lauterpacht's amendment, and 4 against with 1 abstention; it was accordingly rejected.

57. Mr. YEPES proposed the addition of the words "an illegal or" after the words "to give binding force to" in the fifth sentence.

Mr. Yepes' amendment was adopted by 5 votes to 1 with 4 abstentions.

Comment on article 23 [31]

First paragraph

58. Mr. LAUTERPACHT said that there was some inconsistency in the first paragraph. Article 9 contained no provision concerning the extension of the time-limit by the parties.

59. Mr. HUDSON suggested that Mr. Lauterpacht's point would be met by placing a fullstop after the word "parties" and substituting for the word "and" which followed it immediately, the word "It".

It was so agreed.

Second paragraph

60. Mr. HUDSON proposed the deletion of the word

"actually" before the word "variance" in the second sentence. He also proposed the deletion of the fourth and fifth sentences, since it was undesirable to draw attention to differences of opinion between the Commission and its special rapporteur.

61. Mr. SCELLE agreed to the deletion of the fourth and fifth sentences; he had intended to propose that himself.

62. Mr. LAUTERPACHT proposed the deletion of the third sentence, which seemed to imply a criticism of the solution adopted by the Commission.

63. Mr. HSU observed, with regard to the second sentence, that there was some contradiction between the purpose of article 12, paragraph 2, and that of article 23, inasmuch as the former was designed to eliminate the possibility of a finding of *non liquet*, whereas the provisions of the latter would enable the tribunal to refrain from rendering its award. There were grave objections to allowing such an inconsistency in the draft and the Commission might be well-advised to reconsider the substance of article 23.

64. Mr. LAUTERPACHT said that certain members of the Standing Drafting Committee had had misgivings about the second paragraph. It was the view of the special rapporteur however — and that was the force of the word "actually" in the second sentence — that while there was a contradiction in spirit between article 12, paragraph 2 and article 23, there was not in form.

65. Mr. YEPES said he could not support Mr. Lauterpacht's proposal for the deletion of the third sentence, since it contained a useful warning to parties of a possible contingency.

66. Mr. LAUTERPACHT, supported by Mr. HSU, pointed out that retention of the third sentence would not secure the result desired by Mr. Yepes.

It was agreed to delete the word "actually" in the second sentence and the third, fourth, and fifth sentences in their entirety.⁸

Comment on article 24 [32]

67. Mr. HUDSON pointed out that the requirements laid down in article 24 did not have to be complied with in order to make the award legal. Either then the comment should end at the words "in the matter", or the latter part should be amended by substituting the words "the necessary content and form of the award" for the words "the requirements as to content and form necessary to make the award legal".

⁸ These three sentences read as follows:

"In practice, however, this provision may result in maintenance of the *status quo ante* and the continuance of the dispute which it was intended to settle by recourse to arbitration. The rapporteur suggested that in such a case the parties should be permitted to depart from the provisions of the *compromis*. The Commission decided that they should not."

68. Mr. KERNO (Assistant Secretary-General) suggested that the French text was perfectly satisfactory. It was only necessary to find the English equivalent for the expression "*un acte authentique*".

69. The CHAIRMAN suggested that the words "to make the award legal" be replaced by the words "to establish the authenticity of the award".

70. Mr. SCELLE said that the second amendment suggested by Mr. Hudson would render the comment entirely useless. Some explanation had to be given of the reasons for the requirements laid down in article 24.

71. Mr. LAUTERPACHT said he could not support the first of Mr. Hudson's suggested amendments since he regarded the latter part of the comment as important. He therefore proposed the substitution of the words "the essential requirements as to the content and form of the award" for the words "the requirements as to content and form necessary to make the award legal".

72. Mr. HUDSON and Mr. SCELLE accepted Mr. Lauterpacht's amendment.

Mr. Lauterpacht's amendment was adopted.

Comment on article 25 [34]

73. Mr. HUDSON said that it was not for the Commission to declare that some particular provision confirmed the traditional practice of the International Court. He accordingly proposed the substitution of the words "is in accord with" for the word "confirms".

Mr. Hudson's amendment was accepted.

Comment on article 26

74. Mr. SCELLE withdrew the last sentence which read "This is contradictory".

Comment on article 27 [35]⁹

First paragraph

75. Mr. SCELLE withdrew the second sentence.

76. Mr. FRANÇOIS pointed out that the first paragraph required modification as a result of the amendment to article 27 adopted during the second reading.¹⁰

⁹ The comment read as follows:

"The Commission thought it necessary to specify that the award is binding from the very day on which it is rendered and to repeat that it must be carried out in good faith and, it would seem, forthwith. The latter conclusion, however, appears to be at variance with Article 32 (see below).

"The Commission did not decide the question of the extent of the authority of *res judicata* when the dispute entails interpretation of a multilateral treaty. On this point, the Commission did not go so far as the 1907 Convention for the Pacific Settlement of International Disputes. It appears that in implicitly deciding in favour of the relative authority of the award, the Commission was only considering the case of a dispute between two States alone."

¹⁰ See summary record of the 174th meeting, paras. 52—56.

77. Mr. SCELLE proposed that Mr. François' point be met by the substitution of the words "when it is rendered" for the words "from the day on which it is rendered" and by the deletion of the words "it would seem".

It was so agreed.

78. Mr. HUDSON proposed the substitution of the word "assert" for the word "repeat", since no previous mention had been made of that matter.

It was so agreed.

Second paragraph

79. Mr. HUDSON proposed the deletion of the paragraph; it seemed unnecessary to refer to a question on which the Commission had taken no decision.

80. Mr. LAUTERPACHT supported Mr. Hudson's proposal.

81. Mr. SCELLE said it would be wrong for the Commission to present the draft to governments without explaining why it had not dealt with one of the most important issues connected with arbitration.

82. Mr. YEPES endorsed the special rapporteur's view. It would be remembered that, during the first reading of the draft, he had submitted a draft article on intervention.

83. Mr. LIANG (Secretary to the Commission) said that if the paragraph were retained, some amendment of the second sentence in the English text would be necessary in order to explain the meaning of the expression "the relative authority of the award".

84. Mr. SCELLE explained that the authority of an award was absolute when applicable to all possible parties to a dispute.

85. Mr. LAUTERPACHT said that it had not been immediately apparent to him that the paragraph dealt with the question of intervention. After the explanation by the special rapporteur he now felt that it should be retained with some explanatory words of introduction. As at present drafted it was not clear what the paragraph was about: he would submit an amended draft.

Mr. Hudson's proposal for the deletion of the second paragraph was rejected by 4 votes to 3, with 2 abstentions.

86. Mr. YEPES proposed the deletion of the words "in implicitly deciding in favour of the relative authority of the award", in the second sentence.

87. The CHAIRMAN ruled that further discussion on the second paragraph be deferred until Mr. Lauterpacht had submitted the text of his amendment in writing.

Comment on article 28 [37]

First paragraph

88. Mr. LAUTERPACHT considered the first sentence misleading, since article 28 was concerned with the

interpretation of the award. He accordingly proposed the substitution of the word "incidentally" for the word "again".

It was so agreed.

89. Mr. HUDSON proposed the deletion of the word "automatically" in the second sentence; that expression went too far.

90. The CHAIRMAN said that he would vote in favour of Mr. Hudson's proposal unless, as an alternative, the word "automatically" were replaced by the words "ipso facto".

91. Mr. YEPES opposed Mr. Hudson's proposal.

4 votes were cast in favour of Mr. Hudson's proposal and 4 against, with 4 abstentions; it was accordingly rejected.

92. Mr. SCELLE proposed that reference to the Standing Drafting Committee in the third sentence be eliminated by the deletion of the words "referred this article to the Drafting Committee to be put into final form, and the Committee" after the words "The Commission".

It was so agreed.

93. Mr. YEPES said that the reference to article 3 was unnecessary; he proposed the deletion of the words "it was impossible to apply article 3 of the preliminary draft, which involved too much delay for completion of the proceedings within a reasonable time".

94. Mr. HUDSON proposed the substitution of the words "it was necessary to provide for recourse to the International Court of Justice, unless the parties should agree otherwise" for the words "it was impossible to apply . . . hence the recourse to the International Court of Justice".

95. Mr. LAUTERPACHT suggested that Mr. Hudson's amendment went no further than to repeat the provisions of article 28.

96. Mr. YEPES proposed the deletion from Mr. Hudson's amendment of the words "unless the parties should agree otherwise".

97. Mr. SCELLE said he could accept Mr. Hudson's amendment as amended by Mr. Yepes. He had only referred to article 3 of the preliminary draft because it contained provisions on the constitution of the tribunal.

98. The CHAIRMAN thought that, if Mr. Yepes' amendment were accepted, there was a danger of inconsistency between article 28 and its comment.

Mr. Yepes' amendment to Mr. Hudson's text was rejected by 6 votes to 2, with 1 abstention.

Mr. Hudson's amendment was adopted.

The meeting rose at 6.10 p.m.

180th MEETING

Tuesday, 5 August 1952, at 9.45 a.m.

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Chairman : Mr. Ricardo J. ALFARO

Rapporteur : Mr. Jean SPIROPOULOS.

Present :

Members : Mr. Roberto CORDOVA, Mr. J. P. A. FRANÇOIS, Mr. Shushi HSU, Mr. Manley O. HUDSON, Faris Bey el-KHOURI, Mr. F. I. KOZHEVNIKOV, Mr. H. LAUTERPACHT, Mr. Georges SCELLE, Mr. J. M. YEPES, Mr. J. ZOUREK.

Secretariat : Mr. Ivan S. 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).

Arbitral procedure (item 2 of the agenda) (A/CN.4/L.35, A/CN.4/L.36, A/CN.4/L.37) (*continued*)

CONSIDERATION OF THE DRAFT COMMENTS SUBMITTED BY THE SPECIAL RAPPORTEUR (*continued*)

1. The CHAIRMAN invited the Commission to continue its consideration of the comments on the articles in the Draft on Arbitral Procedure (A/CN.4/L.35).¹

Comment on article 29 [30, 39 and 40]²

First paragraph

2. Mr. HUDSON suggested that the word "strongly" be deleted from the first sentence.

It was so agreed.

¹ Mimeographed document only. It was incorporated, with drafting changes, in the "Report" of the Commission as Chapter II (see vol. II of the present publication). Drafting changes are given in the present summary records.

² The first three paragraphs of the comment read as follows :

"With regard to the validity of the award and "remedies" for its shortcomings, the Commission was strongly in favour of allowing the award to be revised or an application to be made for its annulment (cassation), but deliberately ruled out appeals on the grounds of misapplication of the law. The Commission accordingly followed the traditional practice by which an arbitral award is final, subject, however, to the