

before the Commission could request Member States for information. Moreover, Government officials should not be asked for information on topics the codification of which had not yet been approved by the General Assembly.

20. Finally, the Commission had no right to delegate its powers in that matter to any one of its members, whether it were the Chairman or the Rapporteur. All decisions on the procedure laid down in article 19, paragraph 2, should be taken by the Commission as a whole.

21. For those reasons, he thought that it would be not only premature but also contrary to the Commission's Statute to adopt Mr. Spiropoulos' proposal. It would be useless to address requests to Governments at the existing stage of the work, since the Rapporteurs had been entrusted with the limited task of stating the reasons for the recommendations which the Commission intended to formulate and of drawing up a programme of work. The material which could be found in libraries would amply suffice for that task.

22. The CHAIRMAN reminded Mr. Koretsky that the Commission had already come to a decision³ on the question of principle and that the point at issue was to define the best method of applying article 19, paragraph 2. The report which the Commission was to submit to the General Assembly indicated that it had decided by 10 votes to 3 that "the Commission was competent to proceed with the work of codification under articles 19 to 23 without awaiting action by the General Assembly on recommendations made by the Commission. . ."⁴

23. Mr. KORETSKY rejoined that the Commission had not yet submitted any recommendations to the General Assembly and that the decision in question could not, therefore, be applied for the moment.

24. The CHAIRMAN said that without formulating precise recommendations the Commission had indicated in its first report what questions it intended to study first. Whether or not its choice was approved by the General Assembly, the appearance of those questions in the report was enough to justify a request to Governments for information.

25. Mr. CORDOVA also thought that the list of topics in the draft report could be considered as a recommendation, and that the Commission was therefore perfectly justified in putting its decision into effect forthwith.

26. Mr. KORETSKY did not agree. It would be a lack of respect to the General Assembly and the Sixth Committee to submit to them a mere list of questions in the report, instead of making

a formal recommendation. When a recommendation was submitted, reasons should be given for it; it was precisely that task which had been entrusted to the Rapporteurs. Until that had been done, it was impossible to speak of recommendations.

27. The CHAIRMAN put the following question to the vote:

"In view of the decision taken with regard to paragraph 2 of article 18, could the Commission adopt a procedure such as that proposed by Mr. Spiropoulos for paragraph 2 of article 19?"

By 12 votes to 1, the Commission replied to that question in the affirmative.

28. Mr. HSU stated that he had voted in the affirmative, although he had voted against the interpretation given by the majority of the Commission to paragraph 2 of article 18. In his opinion, that earlier decision bound the Commission with regard to the interpretation of paragraph 2 of article 19.

29. The CHAIRMAN put Mr. Spiropoulos' proposal to the vote.

The proposal was adopted by 9 votes to 1, with 3 abstentions.

30. The CHAIRMAN announced that Mr. Scelle, Mr. François and Mr. Brierly would be instructed to draft specific requests to be addressed to Governments through the Secretary-General.

31. The CHAIRMAN read the text which Mr. Amado, Rapporteur, had suggested for insertion in the Commission's report to the General Assembly.

32. A brief exchange of views followed.

*It was decided by 11 votes to 2 to insert that text in the report, subject to certain amendments of detail.*⁵

The meeting rose at 1 p.m.,

⁵ *Ibid.*, para. 42.

34th MEETING

Monday, 6 June 1949, at 3 p.m.

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³ See A/CN.4/4, para. 15.

⁴ See *Report of the International Law Commission covering its first session, 12 April—9 June 1949*, para. 12.

Chairman: Mr. Manley O. HUDSON.

Rapporteur: Mr. Gilberto AMADO.

Present:

Members: Mr. Ricardo J. ALFARO, Mr. James L. BRIERLY, Mr. J. P. A. FRANÇOIS, Mr. Shuhsi HSU, Mr. Vladimir M. KORETSKY, Sir Benegal RAU, Mr. Georges SCELLE, Mr. Jean SPIROPOULOS, Mr. Jesús María YEPES.

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

Draft Report to the General Assembly on the Work of the First Session (*resumed*)

1. The CHAIRMAN suggested to the Commission that it should examine chapter III of the Rapporteur's draft report.¹

CHAPTER III. DRAFT DECLARATION ON THE RIGHTS AND DUTIES OF STATES

2. Mr. AMADO, speaking as Rapporteur, said that chapter III of the draft report was both comprehensive and concise; he was prepared however to accept any amendments the members of the Commission might think necessary in order to make the report more precise.

3. Chapter III consisted of eight paragraphs: the first recalled the terms of General Assembly resolution 178 (II) which instructed the International Law Commission to prepare a draft declaration on the rights and duties of States; the second paragraph listed the material which had enabled the Commission to draw up the draft declaration; the third explained how the Commission had proceeded with its work, and gave the complete text of the draft declaration which had been adopted; the fourth set out the principles by which the Commission had been guided; the fifth gave a summary of the draft declaration; the sixth a comparison between the Panamanian draft and the one adopted by the Commission; the seventh was devoted to the right of asylum; the eighth and final paragraph summarized the discussions on the procedure to be followed in submitting the draft declaration to the General Assembly; that paragraph also set forth Mr. Koretsky's opinion, which was at variance with the conclusions of the other twelve members of the Commission.

4. The CHAIRMAN proposed that chapter III should be examined paragraph by paragraph.

5. Mr. YEPES thought that the heading of chap-

ter III, in the English text, should be amended to read "Draft Declaration on Rights and Duties of States."

*Paragraph 21*²

There were no amendments to that paragraph.

*Paragraph 22*³

6. Mr. KORETSKY thought that paragraph 22 conveyed the impression that the Commission had considered the Secretary-General's memorandum only, and that it had become aware of the Panamanian draft only through that document. That was not the case; it was well known that the Panamanian draft was known long before the publication of the memorandum and that it had been submitted to the General Assembly, as could be seen from resolution 178 (II).

7. The history of the Panamanian draft should, therefore be given in the report: the date on which it was communicated to the General Assembly and of its transmission to the governments of Member States, and replies received from the latter. Other documents and drafts such as the Ecuadorian draft, drafts and statements from legal institutions or jurists, etc., which the General Assembly had instructed the Commission to take into consideration, should be explicitly mentioned also.

8. The Secretary-General's memorandum should be considered only as a most useful reference document, which should not have been mentioned in the report in preference to the original documents to which it referred. It should be pointed out to the General Assembly that the Commission had studied, and taken into consideration, all the official and non-official drafts and documents at its disposal; and to do that all the documents which had served as a basis for the Commission's work should be mentioned in detail, as well as the Panamanian draft, by title, date and registration number.

² Para. 44 of the *Report*.

³ Para. 22 read as follows:

Preparation by the Commission of the Draft Declaration

"22. The Commission had before it a memorandum entitled "Preparatory Study concerning a Draft Declaration on the Rights and Duties of States", submitted by the Secretary-General (A/CN.4/2). This memorandum, after a brief survey of the history of declarations on the rights and duties of States, set out: (a) the text of the Declaration on Rights and Duties of States presented by Panama, together with the explanatory note prepared by the Foreign Minister of Panama, Mr. Ricardo J. Alfaro; (b) a detailed analysis of United Nations discussions and decisions on the matter; (c) comments and observations communicated by Member States on the Panamanian Draft Declaration; and (d) the relevant texts of treaties and conventions, resolutions, declarations and projects adopted by inter-governmental bodies, other draft declarations proposed by Governments, declarations by non-governmental organizations and scientific institutions, and statements by jurists and publicists."

¹ See A/CN.4/SR.31, footnote I. Chapter III of the draft report (paras. 21-28) was later changed to part II of the *Report* (paras. 44-53).

9. The CHAIRMAN pointed out that the Secretary-General's memorandum contained all the texts Mr. Koretsky wished to see mentioned separately in the report. The fact that the Commission had studied and used the memorandum showed clearly that it had taken account of: (a) the Panamanian draft; (b) United Nations discussions and decisions; (c) comments of governments of Member States on the Panamanian draft; (d) all drafts, treaties or conventions, declarations and statements published by governments, organizations, institutions and jurists. He felt, therefore, that it was unnecessary for paragraph 22 to be amended; that paragraph was absolutely in keeping with the provisions of the last sub-paragraph of resolution 178 (II).

10. Mr. ALFARO thought that paragraph 22 was very comprehensive and that it mentioned all the material considered by the Commission. In order to meet Mr. Koretsky's wishes a sentence could be added to that paragraph to the effect that all the texts mentioned in the Secretary-General's memorandum had been carefully studied by the Commission, which had most carefully considered all the material provided.

11. Mr. AMADO said that paragraph 22 had been drafted in accordance with the provisions of resolution 178 (II), and particularly with the paragraph in which the General Assembly requested the Secretary-General to undertake the necessary preparatory work on the draft declaration on the rights and duties of States, according to the terms of resolution 175 (II). The preparatory work done by the Secretariat had been most useful, as it had considerably facilitated the Commission's work; it was therefore perfectly logical to refer to it in the report. Mr. Koretsky's amendment to paragraph 22 raised no substantial objections; he did not think, however, that there was any need for such an amendment.

12. Mr. KORETSKY remarked that his amendment raised a matter of principle, namely: the rule which should guide the Commission in mentioning the documents on which its work was based. He considered that it was imperative that the commission should mention original documents rather than the surveys which referred to such documents. Out of deference to the authors of the various documents which had served as a basis for the Commission's work, those documents should be specifically mentioned instead of being included in a very vague enumeration.

13. He again requested that paragraph 22 should be amended as he had indicated. The Commission could show its appreciation of the Secretary-General's preparatory work by stating, in a footnote, that his memorandum had greatly facilitated its work.

14. Mr. SPIROPOULOS reminded the Commission that the Secretary-General's memorandum had been presented to it as a working paper,

in accordance with the provisions of resolution 178 (II); a special place should, therefore, be given to the memorandum in the report. All the documents contained in the memorandum could also be mentioned, but such an enumeration would probably be very long and of no practical interest. He considered that paragraph 22 needed no amendment, he would not, however, oppose Mr. Koretsky's proposal if the latter thought it absolutely necessary.

15. Mr. YEPES agreed with Mr. Koretsky in principle. The report would gain in authority if it were to mention all the sources which had guided the Commission's work. He suggested that Mr. Koretsky should be entrusted with the redrafting of paragraph 22.

*It was so decided.*⁴

Paragraph 23

16. The CHAIRMAN read paragraph 23.⁵ He thought that it would be well to state that the Commission had adopted the final text of the draft declaration only after the third reading.

That amendment was adopted.

17. Mr. YEPES thought that to quote the complete text of the draft declaration was not enough: there should be an explanation of how each article had been adopted. To do that the preamble and each article should be followed by a commentary summarizing the discussion, listing the principal amendments submitted and giving the result of the voting. Such a history of each article would show with what care the

⁴ See A/CN.4/SR.36, paras. 1-13.

⁵ Para. 23 read as follows:

" 23. The Commission examined article by article the Draft submitted by Panama. On the basis of its deliberations, as recorded in its Summary Records,² the Commission prepared and adopted by 11 votes to 2³ ⁴ the following Draft Declaration consisting of fourteen articles:

" ² The expression of the views of the members of the Commission is embodied in the Summary Records of its meetings. Documents A/CN.4/SR.6 to A/CN.4/SR.16 and A/CN.4/SR.19 to A/CN.4/SR.25.

" ³ Document A/CN.4/SR.25.

" ⁴ After the vote on the Draft Declaration, Mr. Vladimir M. Koretsky and Mr. Manley O. Hudson, who voted against it, made the following statements in explanation of their votes. Mr. Koretsky declared that he voted against the Draft Declaration because its present text was even less satisfactory than the original text proposed by Panama. Certain shortcomings in the Panamanian Draft had not been met in the present Draft (A/CN.4/SR.22, pages 13, 14). Mr. Hudson stated that he voted against the Draft Declaration because the provisions of its article 6 went beyond the Charter of the United Nations and of international law at its present stage of development (A/CN.4/SR.25, pages 3, 6)."

Commission had accomplished the task entrusted to it.

18. He recalled that the draft declaration had been adopted only after three readings, some articles had even been given four or five readings each of which had given rise to very important amendments. It was not sufficient merely to announce the result of the voting on the draft declaration as a whole and explain the votes of the two members of the minority. In the case of each article the serial number of the summary record referring to that article should be indicated so that readers of the report might follow the debates.

19. Mr. SCELLE agreed entirely with Mr. Yepes. The report did not give a true idea of the way in which the various articles had been adopted after three readings; the report did not reflect the different attitudes which had succeeded one another, and the various lines of thought which had been expressed during the discussion. There should be some explanation of why certain articles of the Panamanian draft had been rejected, and others more or less drastically amended. He considered that the report as drafted was of no scientific interest.

20. Mr. AMADO, speaking as Rapporteur, said that he had followed the precedents established by other Commissions in their reports to the General Assembly: up to the present reports had always been brief and had never attempted to reflect the mood of the discussions.

21. He would have liked to give an outline of the very clear ideas expressed by certain members of the Commission, and to analyse the different opinions; he had, however, feared that he would be unable to give a faithful account of the theories and arguments advanced; moreover, it would have made the report disproportionately long.

22. Mr. CORDOVA agreed with Mr. Yepes and Mr. Scelle. The report should reflect the various points of view which had been expressed during the discussions, so that the General Assembly might understand the Commission's final attitude. He felt more particularly that the report should show clearly that each article of the draft declaration had been studied and voted upon separately, and that each vote had resulted in a different majority.

23. Mr. KORETSKY agreed with Mr. Yepes, that the draft declaration should be accompanied by comments explaining to the General Assembly how it had been drawn up. He had expressed his opposition to the Commission's decision to transmit the draft declaration directly to the General Assembly, contenting itself with merely attaching a brief report. The draft report under discussion contained only a few comments, on paragraphs 24, 25 and 26, which were not enough to give a complete picture of the work which had culminated in the draft declaration.

24. He felt that it was unnecessary to indicate all the successive votes on each article, particularly since the results of some of them had been contradictory; a precise commentary following the preamble and each of the articles was, however, indispensable. The purpose of those comments would be to indicate the principles which had guided the Commission and the reasons for the position it had taken in adopting each article, and also to show the changes in the views of the members of the Commission. The General Assembly should be able to understand the conditions under which the draft declaration had been adopted, and how some articles had been rejected, amended or adopted, sometimes under the influence of certain members who had been particularly persistent in defending their views.

25. In his view, some comments would be useful to clarify the exact meaning of all the articles, which was not precisely apparent from the text itself.

26. The CHAIRMAN asked the Commission to decide upon the question whether or not the report should contain a synthetic account and history of the articles in the draft declaration, including even articles which had not been accepted.

The proposal was rejected by 6 votes to 4.

27. Mr. ALFARO explained that he had not supported the proposal, although he approved of its principles, because in the short time remaining to the Commission the Rapporteur would not be able to make the necessary changes in paragraph 23.

28. Mr. KORETSKY drew attention to footnote 4 relating to paragraph 23. He pointed out that the observations which he had made at the twenty-second, twenty-fourth and twenty-fifth meetings had not been correctly interpreted by the Rapporteur. The latter should have reflected the chronological order of the explanations which Mr. Koretsky had made, and should as far as possible, have employed the same terms, which were to be found in the summary records.

29. He expressed his willingness to draft an amendment to footnote 4, based upon the summary records.⁶

30. Mr. YEPES regretted that the Commission had not accepted his proposal that each article of the draft declaration should be followed by a short commentary; he requested that a reference should be made, either immediately after each article or in a footnote to the relevant summary records.⁷

The proposal was accepted by 9 votes to 1.

⁶ See A/CN.4/SR.36, paras. 14-16.

⁷ In the draft report, the articles of the draft declaration were not followed by comments as in the *Report*. See *Report*, para. 46.

*Paragraph 24*⁸

31. The CHAIRMAN read the paragraph. He proposed a drafting amendment, which would not affect the French text, namely, that the words "it should" preceding each phrase should be amended to "that it should". He also suggested that the phrase "be applicable to all the States of the world" should be replaced by "envisage all the States of the world".

32. Mr. KORETSKY thought that the phrase "that it should be applicable only to fully sovereign States" should be deleted. The notion of sovereignty had not been sufficiently studied by the Commission, and it was difficult to say what was meant by "fully sovereign States"; it had even been maintained that, juridically speaking, some Member States were not "fully sovereign". If that phrase were retained the number of States to which the declaration of rights and duties would apply might be considerably reduced.

33. The phrase: "that it should be applicable to all the States of the world and not only to the Members of the United Nations" showed a praiseworthy desire to give the declaration a universal character. It should be borne in mind, however, that the declaration had been requested by the General Assembly, which had not specified that it should apply to States which were not Members of the United Nations. He considered therefore that the phrase should also be deleted.

34. He proposed the deletion of the word "basic" in the last part of the phrase in order to avoid the implicit exclusion from the scope of the declaration of certain political rights which it was the duty of States to respect, such as the right of women to vote, which some members of the Commission had suggested was not a basic right—a view which he had always opposed.

35. The CHAIRMAN recalled that the Commission had already voted in favour of the two phrases which Mr. Koretsky wished deleted. He pointed out that the word "basic" was included in the last postulate of the preamble to the draft declaration, logically, therefore, it should be maintained in the body of the report.

36. Mr. SCELLE supported the views expressed by the Chairman; he considered that the decision taken by the Commission on the matter should not be reconsidered. If the Commission decided to delete those phrases he would vote against the draft. He even suggested that the expression "all the sovereign States of the world" should replace the words "all the States of the world",

since it would be more logical than the phrase used in the declaration as it stood, particularly in view of the preceding words.

37. Mr. HSU stated that the word "only" in the last phrase should be deleted, since it had been the intention of the Commission to study, if not all the rights and duties of States, at least the greatest possible number. As at present drafted the last phrase did not reflect accurately the spirit which had prevailed at the time the Commission had taken a decision on that point.

38. He also requested that the expression "fully sovereign States" should be replaced by "sovereign States".

39. Sir Benegal RAU proposed that the last phrase should be replaced by the following: "and that it should formulate certain basic rights and duties of States".

40. The CHAIRMAN put to the vote paragraph 24, as amended, by the proposals of Mr. Hsu, Sir Benegal Rau, Mr. Scelle and himself.

Paragraph 24, as amended, was adopted by 11 votes to one.

*Paragraph 25*⁹

41. The CHAIRMAN read paragraph 25. He suggested that in the first sentence the word "main" should be deleted from the expression "four main rights". He also proposed that in the last sentence the word "organized" should be inserted before the word "incitement". He observed that the order in which the rights and duties were set out was not identical with the order followed in the draft declaration; he suggested that the Rapporteur should make the necessary amendments in that respect to paragraph 25.

42. Mr. SCELLE considered that paragraph 25 was of no value since it only summarized the draft declaration. It thus contained no proposal of substance and its deletion would be in accordance with the Commission's decision to submit a very brief report.

Mr. Scelle's proposal was rejected by 5 votes to one.

43. Mr. KORETSKY pointed out that the last phrase of the paragraph should be re-drafted to make it conform to the provisions of the Charter and of article 6 of the draft declaration.

It was so decided.

⁸ See Report, para. 47.

⁹ See Report, para. 48.

*Paragraph 26*¹⁰

44. The CHAIRMAN considered that the comparative study in paragraph 26 of the draft declaration prepared by the Commission and the draft submitted by Panama would not be necessary if the Panamanian draft were reproduced in the report. In his opinion, it would be in order for it to be deleted, since the purpose of the report was not to tell the General Assembly what had become of the Panamanian draft, but to submit to it the draft prepared by the Commission. The Chairman therefore considered that no difficulty would be caused by the deletion of that paragraph.

¹⁰ Para. 26 read as follows:

"Comparison with the Panamanian Draft"

"26. It will be noted that the Draft Declaration prepared by the Commission retained the substantive provisions of sixteen of the original twenty-four articles of the Draft submitted by Panama.

"Some articles of the Draft submitted by Panama were not retained on the ground that their provisions were substantially covered by other articles of the Draft Declaration prepared by the Commission. Thus, article 1 was omitted because the right of a State to exist and to protect and preserve its existence was implied in the Draft Declaration, particularly in articles 1 and 12 thereof.¹ Similarly, article 9, relating to the respect for the rights of the State by other States, was considered unnecessary because its substance is implied throughout the Draft Declaration, Article 10, dealing with the limitation of the rights of the States, is substantially covered by article 14 of the Draft Declaration. Articles 11 and 12, dealing respectively with the observance of treaties and sanctity of the pledged word, and the discharge of international obligations are combined in a single text in article 13 of the Draft Declaration. Article 24, dealing with the prohibition of pacts incompatible with the discharge of international obligations, is covered also by article 13 of the Draft Declaration.

"Some other articles were not retained on different grounds. Articles 2 and 3 of the Panamanian Draft, dealing with recognition of States, were omitted in view of the controversial nature of the subject-matter, and in view of the decision of the Commission to include the subject of recognition amongst the topics for codification.^{2, 3} With regard to article 8, it was decided that the consideration of the question of diplomatic intervention should be postponed until the Commission should proceed to the codification of this subject.⁴ Article 14, dealing with the national and international scope of the law of nations, was omitted on the ground that its subject-matter did not constitute either a right or a duty of States. Article 20, relating to the co-operation in the pursuit of the aims of the community of States, was not thought necessary since the obligations set forth in the Charter already covered that topic. Finally, article 23, concerning equality of opportunity and interdependence in the economic sphere was omitted since it was deemed that this subject-matter did not entirely fall within the scope and purpose of international law.

¹ Document A/CN.4/SR.25.

² See paragraph 15 (5) of this report.

³ Document A/CN.4/SR.25.

⁴ Document A-CN.4/SR.13, page 15."

45. Mr. ALFARO objected that, since the Commission had decided not to include in the report commentaries showing the origin and history of each article, because of the lack of time, the least that should be done would be to maintain paragraph 26 which was, in a way, a summary of the Commission's discussions on the Panamanian draft, which had been used as the basis for the final draft. Jurists who read the report, and who wished to go further into the comparative study, would themselves refer to the draft submitted by Panama. With regard to other readers, it would be a good thing for them to see the reasons for which certain parts of the original draft had been rejected and others amended.

46. Mr. AMADO (Rapporteur) expressed the opinion that paragraph 26 was necessary for the guidance of the reader, since it showed clearly the reasons which had motivated the votes in the Commission. Had he been informed that the Commission would prefer a very full report, he would have enumerated the tendencies and trends of opinion which had developed in the course of the debate. He had, in fact, prepared all the material necessary for such a report. After careful consideration, and in agreement with those who had assisted him in his work, however, he had drawn up the report in a very concise form, the principle of which could also be justified; he considered therefore that paragraph 26 should not be re-drafted since, as it stood, it gave the minimum of necessary explanations.

47. Mr. KORETSKY was of the opinion that, assuming it was possible to compare such different texts as the draft prepared by the Commission and the draft submitted by Panama, which were more parallel than convergent, the comparative study should be more exact and more complete than appeared from the actual content of paragraph 26. To cite only one example, it was not true that article 1 of the Panamanian draft had been deleted solely because the right to exist was implied by articles 1 and 12 of the Commission's draft. Reference to the summary records of the twenty-fourth and twenty-fifth meetings (A/CN.4/SR 24 and A/CN.4/SR 25), would show that, although the majority had ultimately adopted the Chairman's suggestion, nevertheless some members of the Commission had very clearly expressed the opposing view. In spite of that fact, the report contained no reflection of the political and juridical arguments which had been adduced in favour of maintaining that right in the final draft.

48. He regretted that the Rapporteur had considered it advisable to adopt an exaggeratedly brief form for the report. A summary in a few laconic paragraphs was hardly a faithful reflection of the work of the Commission, whose discussions had lasted more than six weeks. The importance of the document itself, which was to be submitted

to the General Assembly, would have justified a more extensive development of the subject. In any case, paragraph 26 should be completed in the interests of accuracy alone.

49. Mr. CORDOVA considered that the General Assembly would be particularly interested, not so much in the analogical and numerical relationship between the articles of the two drafts, as in the arguments which had been developed in the course of the discussion. Since the Rapporteur had said that he had prepared a statement of those trends of opinion, could he not be asked to submit that material to the Commission, which might use it to expand the report which was unquestionably too brief.

50. Having consulted Mr. AMADO, the CHAIRMAN stated that the Rapporteur would bear in mind as far as possible the remarks which had just been made and would accordingly redraft paragraph 26.¹¹

51. Mr. HSU thought that the explanation given in the last sub-paragraph of paragraph 26 was inadequate, since it stated that a given article of the Panamanian draft had been deleted because the Commission had decided to include the subject among the topics for codification. The article had not, in fact, been deleted for that reason; articles relating to other topics reserved for codification had been included in the draft declaration regardless of that fact. The true reason for the deletion had been the impossibility of drawing up a text acceptable to the majority of the Commission and it had, therefore, decided to formulate only certain rights and duties of States, as was in fact stated in paragraph 24, but without any indication of the criteria upon which the choice had been based.

52. Mr. YEPES requested that the word "interposition" should be substituted for the word "intervention" in the sixth line of the English text of the last sub-paragraph of paragraph 26.

53. Mr. FRANÇOIS suggested that the phrase at the end of the same paragraph, namely: "did not entirely fall within the scope and purpose of international law" should be replaced by the words: "did not fall within the mandate of the Commission".

54. The CHAIRMAN stated that the Rapporteur would make those two changes in the report.

*Paragraph 27*¹²

55. The CHAIRMAN considered that paragraph 27 should be deleted, since the proposal to include the right of asylum, with which it dealt, had ultimately been rejected by the Commission. If it were retained, however, a similar paragraph should be included relating to each of the propo-

sals which had been made during the discussion and which had not been accepted by the Commission.

56. Further, the Commission had not put aside the draft article on the right to asylum for the reason mentioned in the paragraph but because a dispute in that connexion which had arisen between Colombia and Peru was to be submitted to the International Court of Justice.

57. Mr. YEPES objected to the deletion of the paragraph. The CHAIRMAN put the question to the vote.

The result of the vote was 4 in favour and 4 against; the paragraph was therefore retained.

58. The CHAIRMAN proposed the deletion of the second sentence of the paragraph reading: "After discussion, the Commission provisionally adopted, by 9 votes to 2, the amended text of the proposed article". The sentence was of no value since the article in question had not ultimately been adopted.

59. Mr. ALFARO held the view that the statement was necessary, since it reflected the intentions of the Commission by emphasizing the reason for which the right of asylum had eventually been omitted; namely, because it had been retained as a topic for codification and would be the subject of later consideration.

60. Mr. KORETSKY considered that that purely technical reason, the only one mentioned in the report, had not been the true cause for the postponement of the question. The reason had not, in fact, been decisive in other cases; thus, the duty of a State to carry out in good faith its obligations arising from treaties was included in the draft declaration, regardless of the fact that it, too, was linked with a topic which had been reserved for codification. The reason why the Commission had refused to include the right of asylum in the draft had really been because, for political reasons, it had not wished to consider such a difficult problem of great topical interest upon which agreement in the Commission could not be expected in the circumstances. He agreed with the opinion expressed by the Chairman that paragraph 26 was of no value. Since, however, the Commission had decided to retain it, he requested that it should be expanded by the inclusion of the text of the proposed article and the true reasons why that article had been rejected.

61. The CHAIRMAN reiterated the fact that the question of the right of asylum had been adjourned, not only because it had been retained as a topic for codification, but also, and primarily because that right was the subject of a dispute which was about to be submitted to the International Court of Justice. The latter reason should be mentioned in the report, because it was the only one which offered a plausible justification for the change in the Commission's attitude which, after it had decided to include that right in the

¹¹ See CN.4/SR.36, para. 21.

¹² See Report, para. 23.

draft, had preferred subsequently to postpone consideration of the problem. He felt that it would be sufficient to mention the question of the right of asylum in the paragraph of the report which stated that Mr. Yepes would prepare a working paper on that question.

62. Mr. SCELLE pointed out that the study of the question of the right of asylum had been entrusted to Mr. Yepes who had been asked to draft a working document for submission to the Commission at its next session: a later paragraph of the report would mention that decision of the Commission which was contradictory to the reason for adjournment mentioned by the Chairman.

63. Mr. ALFARO was of the opinion that there was nothing to prevent the inclusion in the report of a review of the facts as they actually had occurred. When the Peruvian delegation had informed the Commission that litigation regarding that right was pending, Mr. Yepes, with the approval of the Commission, had withdrawn his proposal because of the controversial nature of the question.

64. Mr. KERNO (Assistant Secretary-General) pointed out that the Commission could mention in the section of the report dealing with the study on the right of asylum to be made by Mr. Yepes, that a proposal, which, however, had eventually been withdrawn, had been submitted that an article on that question should be inserted in the draft declaration on the rights and duties of States.

65. The CHAIRMAN proposed that the Commission should adopt that solution.

*It was decided by 9 votes to none to transfer the substance of paragraph 27 to a later chapter of the report.*¹³

*Paragraph 28*¹⁴

66. The CHAIRMAN proposed that the word "examined" in the second sentence of paragraph 28, first sub-paragraph should be replaced by the words "was guided by".

It was so decided.

67. The CHAIRMAN suggested the following amendments in the second sub-paragraph of the paragraph: deletion of the words "to be" in front of the word "noted" in lines 8 and 12 of the English text; the phrase "such as had not taken advantage of this opportunity would be enabled to do so" to be replaced by the words "all Members of the United Nations would have another opportunity to do so".

It was so decided.

68. Mr. KORETSKY suggested the deletion of the following words which he felt were unne-

cessary, and which appeared in the first sentence of the second sub-paragraph: "like the study of the question of an international criminal jurisdiction".

69. The CHAIRMAN put Mr. Koretsky's suggestion to the vote.

It was agreed by 6 votes to 2 delete that phrase.

70. The CHAIRMAN mentioned that in the English text the comma should be placed in front of the word "but".

71. Mr. BRIERLY pointed out that the deletion of that phrase would necessarily entail the deletion of the last sentence of the first sub-paragraph which also mentioned international criminal jurisdiction.

72. Sir Benegal RAU and Mr. ALFARO did not think that the deletion was obligatory.

73. The CHAIRMAN put to the vote Mr. Brierly's suggestion to delete the last sentence of the first sub-paragraph.

The proposal was not adopted, 5 votes being cast in favour and 5 against. The phrase was therefore retained.

74. The CHAIRMAN suggested that the word "immediately" in the second line of the third sub-paragraph of the English text should be transferred to the third line, after the words "General Assembly". Furthermore, commas should be placed before and after the phrase "through the Secretary-General."

It was so decided.

75. The CHAIRMAN asked Mr. Koretsky whether he had any comments to make on the text of the fourth sub-paragraph which summarized his interpretation of the Statute of the Commission on the circulation of drafts to Governments.

76. Mr. KORETSKY would like to make that sub-paragraph more specific by the deletion of the reference to non-governmental organizations which were not mentioned in article 21 of the Statute to which he had referred. For that purpose, he would send the Rapporteur the substance of his intervention on that point as it appeared in the summary record (A/CN.4/SR 25).

77. The CHAIRMAN noted the Rapporteur's agreement to the change requested by Mr. Koretsky and declared the first reading of chapter III of the report closed.

International and National Organizations Concerned with Questions of International Law; Tentative List Prepared by the Secretary-General for the Purpose of Distribution of the Documents of the Commission (A/CN.4/8)

78. The CHAIRMAN submitted to the Commission a list of international and national organizations concerned with questions of international law (A/CN.4/8) prepared by the Secretariat

¹³ Transferred to Chapter II under the heading "The topic of the right of asylum".

¹⁴ See Report, para. 53.

in pursuance of article 26, paragraph 2 of the Statute, and taking into account the provisions of paragraph 3. He explained that the list had been compiled solely with a view to the distribution of the Commission's documents by the Secretariat and not for the purposes of the consultation provided for in the first paragraph of that article.

79. Article 26 dealt separately with the power of the Commission to consult with any international or national organizations, official or non-official, and with the distribution of documents to the various organizations in the same categories, the Secretary-General having been requested to compile a list of those organizations after consultation with the Commission. That distinction was made quite clear in paragraph 3 of the article which specifically stated that organizations which had collaborated with the Nazis and Fascists or with Fascist Spain should be excluded both from consultations and from the list.

80. Mr. KORETSKY was, on the contrary, of the opinion that paragraph 2 could not be considered apart from the context of the article, and that the distribution of documents should not be considered until after the Commission had decided which organizations it might wish to consult.

81. The Statute of the Commission constituted a homogeneous whole, from which neither an article nor a paragraph could be extracted and considered outside of the general structure of the article or the Statute. Thus the second paragraph of article 26 was closely linked to the first paragraph, and the sole purpose of the distribution of documents for which it provided was to supply the organizations which the Commission intended to consult with the necessary documentation so that they could submit their opinion with a full knowledge of all the facts. That was the only purpose which the list prepared by the Secretariat could serve. It would enable the organizations with consultative status to receive the documents which might be of interest to them, namely, those relating to subjects of future consultation. In the interests of economy, and in view of the large number of those organizations, it would be advisable for the Secretariat to send to each only the documentation dealing with its particular field. A military legal academy, for example, should receive only the documents relating to the laws of war, the sole point on which it could be consulted.

82. The CHAIRMAN pointed out that it was for the Secretariat to decide which documents should be distributed to a particular organization. The Commission did not need to concern itself with the financial question involved in that distribution. The purpose of the distribution was not, as Mr. Koretsky thought, to provide the necessary documents for a few exceptional consultative organizations which would receive, of course, very complete files on the questions

under consideration, but to disseminate throughout the legal world the results of the Commission's work as widely as the budget for that purpose would allow, in order to arouse the interest and support of the principal organizations of jurists in the Commission's work.

83. In that respect it was for the latter to clarify its interpretation of article 26 of the Statute and to say whether the first two paragraphs should or should not be considered separately.

The Commission decided by 10 votes to 1, that those two paragraphs were independent of each other and that they dealt with two different questions: consultation with organizations on the one hand, and distribution of documents on the other.

84. The CHAIRMAN proposed that the Commission should examine the list of organizations which had been prepared by the Secretariat primarily in accordance with the information furnished by Member Governments and by the Government of Switzerland, in reply to the Secretary-General's letter of 30 April 1948, in which he had requested those Governments to obtain for him the names of national and international organizations in their respective territories which were concerned with international law.

85. Mr. KORETSKY regretted that the Secretariat had been satisfied to list the international organizations without supplying specific information on them. As a result the Commission was not in a position to determine whether some of those organizations did not come under the exclusion clause in article 26, paragraph 3 of the Statute, or whether others really had as the primary purpose of their activity the study of international law. The Secretariat was nevertheless in possession of detailed information on each one of those organizations, particularly on those which enjoyed consultative status granted by the Economic and Social Council, since the list prepared for the Council by the Secretary-General was accompanied by basic information in that respect. For that reason Mr. Koretsky would like the representative of the Secretary-General to explain to the Commission whether all that information had been taken when the list under consideration had been prepared and, in particular, whether the organizations which were included therein were free of all ties and had severed all connexions with Franco Spain.

86. Mr. KERNO (Assistant Secretary-General) pointed out first of all that, in compiling its list, the Secretariat had worked on the principle that it should be used only for the distribution of documents and, consequently, it would in no way prejudge the choice of organizations which the Commission might eventually decide to consult, in accordance with article 26, paragraph 1.

87. In the last analysis, the inclusion of an organization on that list would have little effect,

since the latter would not acquire any other right from the fact than that of receiving, officially and free of charge, certain documents of the Commission. Anyone could, however, obtain those documents by buying them at booksellers who were agents for United Nations publications. Inclusion in the list could, therefore, in no case confer consultative status of any kind on the organizations listed therein.

88. For that reason the Secretariat had not thought it vitally necessary to add to the list of organizations detailed information regarding each one of them. But it had studied very carefully the list in question. In particular it had taken into account the list of organizations granted consultative status by the Economic and Social Council (E/C.2/87) and the most recent decisions of the Council. With regard to relations with Franco Spain, it had, for example, excluded from the list the International Bar Association which had only been granted consultative status by the Economic and Social Council subject to the exclusion of its Spanish affiliates and to which the Council had refused that status as such exclusion had not been effected by a certain date. The Secretariat had also used the list submitted by the Secretary-General in 1947 to the Commission on the Progressive Development of International Law and its Codification, which had not formulated any objections with regard to the organizations included in that list. With regard to the International Institute for the Unification of Private Law, the headquarters of which was in Rome, the Secretariat had thought that the close co-operation of that Institute with the Economic Commission for Europe was sufficient proof that it could not be presumed to have collaborated with the Fascists.

89. The Secretariat had thus taken all the necessary precautions and, so far as was possible, had verified all data. If, however, the accuracy of its information were found to be defective on some points, it would take advantage of any comments of members of the Commission to alter the list which had been submitted to them.

90. Part B of the list had been compiled solely from the replies of Governments which, it must be admitted, were not very uniform, certain Governments having supplied a list of most of their universities, others having confined themselves to indicating one or two official institutions. It should be borne in mind, however, that, in principle, the national organizations enumerated in that part of the list were not to receive the Commission's documents unless the Commission itself decided to extend distribution to them. The Secretariat would be glad to receive any additions to the list which members of the Commission might wish to make.

91. The CHAIRMAN suggested that members of the Commission should notify the Assistant

Secretary-General directly of any omissions which they would like to see rectified, and of all additions or deletions which they thought should be made, it being understood that the Secretariat as a result, would alter the list without prejudice to any changes which might subsequently be proposed.

The meeting rose at 6 p.m.

35th MEETING

Tuesday, 7 June 1949, at 3 p.m.

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Chairman: Mr. Manley O. HUDSON

Rapporteur: Mr. Gilberto AMADO

Present:

Members: Mr. Ricardo J. ALFARO, Mr. James L. BRIERLY, Mr. CORDOVA, Mr. J. P. A. FRANÇOIS, Mr. Shuhsi HSU, Mr. Vladimir M. KORETSKY, Sir Benegal RAU, Mr. Georges SCELLE, Mr. Jean SPIROPOULOS, Mr. Jesús María YEPES.

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

Draft Report to the General Assembly on the Work of the First Session (A/CN.4/W.10, A/CN.4/W.10/Add.1 and Add.2) (*resumed*)

1. The CHAIRMAN opened the discussion on chapters IV, V and VI of the draft report to the General Assembly.