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Summary record of the 36th meeting

Topic:
Other topics

Extract from the Yearbook of the International Law Commission:-
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" Article 11

" Every State has the duty to refrain from recognizing any territorial acquisition by another State acting in violation of article 9."

" This text was derived from article 18 of the Panamanian Draft. Reference was made in the discussions of the Commission to the importance assigned to this principle in connexion with the Japanese invasion of Manchuria in 1931."

99. Mr. KORETSKY was opposed to the reference in the second sentence to the Japanese invasion of Manchuria in 1931. That invasion had not been the only example discussed by the Commission. As had been done in the case of the other articles of the draft declaration, reference should be made only to the Panamanian draft, to international conventions, or the Charter of the United Nations.

It was decided, by 6 votes to 3, to delete the second sentence of that comment.

(l) Source of article 12

100. The text was as follows:

" Article 12

" Every State has the right of individual or collective self-defence against armed attack."

" This text was derived from article 17 of the Panamanian Draft. The language is based upon that employed in Article 51 of the Charter of the United Nations."

That comment was approved without discussion.

(m) Source of article 13

101. The text was as follows:

" Every State has the duty to carry out in good faith its obligations arising from treaties and other sources of international law, and it may not invoke provisions in its constitution or its laws as an excuse for failure to perform this duty."

" This text was derived from articles 11 and 12 of the Panamanian Draft. The phrase 'treaties and other sources of international law' was borrowed from the Preamble of the Charter of the United Nations. The first phrase is a re-statement of the fundamental principle *pacta sunt servanda*. The concluding phrase of this Article reproduces the substance of a well-known pronouncement by the Permanent Court of International Justice.¹

¹ Series A/B, No. 44, p. 24."

102. Mr. KORETSKY was opposed to the reference, in the last sentence, to a decision by the Permanent Court of International Justice.

It was decided by 6 votes to 5, to retain the last sentence.

(n) Source of article 14

103. The text was as follows:

" Article 14

" Every State has the duty to conduct its relations with other States in accordance with international law and with the principle that the sovereignty of each State is subject to the supremacy of international law."

" This text was derived from article 13 of the Panamanian Draft, which in turn was based upon Postulate 3 of 'The International Law of the Future'."

104. The CHAIRMAN suggested that the reference to "The International Law of the Future" might be deleted, as had been done in the case of the comments on articles 4 and 7.

It was so decided.

The meeting rose at 6 p.m.

36th MEETING

Wednesday, 8 June 1949, at 11 a.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. Roberto 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. 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*)

CHAPTER III: DRAFT DECLARATION ON THE RIGHTS AND DUTIES OF STATES (*concluded*)

Paragraph 22

1. The CHAIRMAN placed before the Com-

mission for consideration the following re-draft of paragraph 22 proposed by Mr. Koretsky.¹

"22. In conformity with the resolution of the General Assembly set out in the foregoing paragraph, the Commission took as the basis of its discussions the draft Declaration on the Rights and Duties of States presented by Panama (Doc. A/285) and further took into consideration the draft of the Cuban delegation to the United Nations Conference on International Organization (Doc. 2, b/14 (9), 2 May 1945, *UNCIO Documents*, vol. 3, pp. 493-502) and that of the Ecuadorian delegation to the United Nations (Doc. A/340), as well as the comments and observations upon the Panamanian draft Declaration communicated by Governments of the following States Members of the United Nations upon the dates specified: Canada (12 May 1947, 19 June 1947 and 7 April 1948); Czechoslovakia (11 August 1947); Denmark (22 September 1947); the Dominican Republic (4 June 1947); Ecuador (17 September 1947); El Salvador (28 April 1947); Greece (4 September 1947); India (26 September 1947); Mexico (7 June 1947); The Netherlands (23 June 1947); New Zealand (25 July 1947 and 9 April 1948); The Philippines (19 December 1947 and 27 May 1948); Sweden (30 May 1947 and 26 April 1948); Turkey (14 August 1947); the United Kingdom (1 May 1947 and 27 August 1948); the United States (29 May 1947 and 11 March 1949); and Venezuela (12 September 1947)." ²

2. Mr. AMADO (Rapporteur) said that there were several theories concerning the Commission's draft report. Some felt that it should be a reflection of the Commission's activities; others that it should be an exact picture; and others that it should be merely a general account. According to Mr. Koretsky's proposal a different system should be adopted: the report should be an expression of proceedings which had not, in fact, taken place and should merely reflect Mr. Koretsky's own ideas.

3. The Commission had had before it a basic working document (A/CN.4/2) presented by the Secretary-General containing the draft declaration of Panama with historical documents relating to it, and the Commission's work had been based mainly on that document. He did not, therefore, see any advantage in adopting Mr. Koretsky's proposed re-draft, and preferred his original text.

4. Mr. ALFARO said that he would be willing to accept Mr. Koretsky's enumeration provided it included sub-paragraphs (b) and (d) of the Rapporteur's draft ³ which had undergone minor drafting changes and had incorporated paragraph 23.

5. Mr. KORETSKY objected to Mr. Amado's implication that his proposed re-draft was not

strictly in accordance with the facts. It could not be denied that the Cuban and Ecuadorian drafts and the comments of Governments actually existed. Mr. Koretsky felt that if the Commission did not adopt a text along the lines he proposed, a distorted impression of its proceedings would be given. The report should indicate that the Commission had carried out its duty of considering the comments received by Governments and should refer to them in detail.

6. The Rapporteur's draft represented the members of the Commission as technical consultants who based their work on the documents presented by the Secretariat and on nothing else. Mr. Scelle had stated that members were independent jurists and not representatives of their Governments. Mr. Koretsky, however, felt that it was the duty of members to serve their peoples and their Governments by endeavouring to reach an agreed opinion which might be implemented, and that the report should reflect that. He therefore preferred his proposed re-draft which he felt to be more in accordance with the functions of the Commission.

7. The CHAIRMAN pointed out that the Rapporteur's text did refer to the comments of Governments and to other documents before the Commission.

Mr. Koretsky's proposed re-draft of paragraph 22 was rejected by 4 votes to one.

8. Sir Benegal RAU, in view of the fact that General Assembly resolution 178 (II) instructed "the International Law Commission to prepare a draft Declaration on the Rights and Duties of States, taking as a basis of discussion the draft declaration on the rights and duties of States presented by Panama, and taking into consideration other documents and drafts on this subject", suggested that the first sentence of Mr. Koretsky's proposed re-draft down to the word "Panama" should be retained, and that it should be followed by a new sentence such as: "The task of the Commission was facilitated by a memorandum submitted by the Secretary-General which reproduced the various relevant documents."

9. Mr. SCELLE supported that proposal on the grounds that it expressed what Mr. Koretsky had wished to say while it dispensed with the unnecessary enumeration contained in his proposal.

Sir Benegal Rau's proposal was adopted by 5 votes to one.

10. The CHAIRMAN called Sir Benegal Rau's attention to the fact that his amendment omitted the last two sentences of the Rapporteur's text.

11. Sir Benegal RAU stated that he considered those unnecessary.

12. Mr. KORETSKY insisted that it was the Commission's duty to make clear what comments from Governments had been received, and pro-

¹ See A/CN.4/SR.34, para. 15.

² The various drafts and the observations of Governments thereon are collected together in the Memorandum entitled *Preparatory Study concerning a draft Declaration on the Rights and Duties of States* (Doc. A/CN.4/2) submitted by the Secretary-General.

³ See A/CN.4/W.10/Add.1.

posed as an amendment to the text just adopted that a reference to those comments should be added either in the text of paragraph 22 or as a footnote.

13. Mr. ALFARO stated that the paragraph was one of real importance and that the sentences deleted by the adoption of Sir Benegal Rau's amendment warranted inclusion. He approved of the enumeration contained in the report and felt that it would do no harm also to enumerate the Governments which had submitted comments. For that reason he had stated earlier that he would accept Mr. Koretsky's proposed amendment provided sub-paragraphs (b) and (d) of the Rapporteur's draft were retained. The Commission should not appear to be attempting to conceal the comments received from Governments. He therefore proposed the addition of the last two sentences in the Rapporteur's text to the amendment of Sir Benegal Rau which had been adopted.

Mr. Koretsky's proposal for the addition of a reference to the comments submitted by Governments was adopted by 5 votes to 2.

Mr. Alfaro's proposal for the addition of the last two sentences in the Rapporteur's text was adopted by 8 votes to none.

Paragraph 23

14. The CHAIRMAN placed before the Commission the following re-draft of footnotes 3 and 4 to paragraph 23 as proposed by Mr. Koretsky with minor drafting amendments:⁴

*"Re-draft of Footnotes 3 and 4 to Paragraph 23
(Doc. A/CN.4/W.10/Add.1)*

*"Delete: Footnotes 3 and 4
"Substitute: Footnote 3*

³ Document A/CN.4/SR.25. 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 of its many shortcomings including, in particular, (1) the fact that it did not embody such fundamental privileges of the United Nations as the sovereign equality of all the Members thereof and the right of self-determination of peoples; (2) the fact that it did not protect States against interference by international organizations or groups of States in matters falling essentially within their domestic jurisdiction; (3) the fact that it did not set out the very important duty of States to take measures for the maintenance of international peace and security, the prohibition of atomic weapons, and for the general reduction of armaments and armed forces, and that, further, the draft Declaration did not proclaim the duty of States to abstain from participation in aggres-

sive blocs such as the North Atlantic Pact and the Western Union, whose actual aim, despite false professions concerning peace and collective security, was the preparation of new wars; (4) the circumstance that the draft Declaration made no mention of the important duty of States to take measures for the eradication of the last vestiges of fascism and for the prevention of its recrudescence; (5) the circumstance that the draft Declaration ignored the no less important duty of States to ensure full equality as between its citizens, without distinction as to race or nationality, and, equally, to combat racial, national or religious prejudice amongst its population and to prevent the propagation of hatred or disdain based on such prejudice; and (6) the fact that the draft Declaration did not recite the significant duty of States to promote respect for human rights and fundamental freedoms, notably the right to work and to be protected against unemployment, by means of governmental and social measures ensuring useful work for all. Mr. Koretsky added that the draft Declaration, and especially article 14 thereof went even further than the Panamanian Draft in denying the sovereignty of States. In his view the doctrine of the 'super-State' was being resorted to in this fashion by persons or peoples seeking to achieve, or to help others to achieve, world domination. Instead of reinforcing the principles of sovereignty, self-determination, sovereign equality of States, independence, and the freedom of States from dependence upon other States, the draft Declaration, he thought, derogated from the great movements to rid the peoples of the world of the scourges of exploitation and oppression (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 beyond international law at its present stage of development (A/CN.4/SR.25, pages 3, 6)."

15. Mr. SCELLE objected to the redraft on the grounds that the new text, which was some forty lines long, in fact constituted a minority report. The Commission was composed of scholars who had a right to defend their own views, but it had not so far been agreed that they should submit their own opinions with regard to each article of the text. He pointed out that Mr. Hudson had expressed his dissent in a mere three lines. He did not object to Mr. Koretsky's right to express an opinion, but merely to the length at which he had expressed it. Moreover, if Mr. Koretsky's footnote were adopted it might give rise to proposals by other members for the inclusion of a whole series of footnotes.

16. Mr. CORDOVA stated that Mr. Koretsky had the right to express his own views and to make that expression of whatever length he desired. He felt, however, that the draft report itself did not set out sufficiently clearly on what grounds the majority had approved the various articles of the draft Declaration and he thought that the Commission should perhaps remedy that situation.

The insertion of Mr. Koretsky's proposed footnote 3 was adopted by 7 votes to 3.

17. In view of the decision taken by the Commission, Mr. ALFARO emphasized that every member had the right to introduce footnotes

⁴ *Ibid.*, para. 29.

explaining why he had voted for or against certain articles.

18. The CHAIRMAN observed that in this connexion there was a difference between votes on the draft Declaration as a whole and votes on specific articles. He was prepared to agree to the deletion of the final paragraph of the footnote to paragraph 23 expressing his views.

19. Mr. SCELLE stated that at the next reading he would submit a footnote explaining his vote on the draft Declaration.

20. Mr. SPIROPOULOS considered that those who had voted against the draft Declaration should have the right to expound their reasons for doing so. He agreed with Mr. Scelle that Mr. Koretsky's footnote to paragraph 23 was too long, but explained that he had voted for its insertion in the report because the views expressed therein were those of a whole group of States, and it was important that they should appear in the draft Declaration in order that the General Assembly should have a clear idea what those views were.

Paragraph 26

21. The CHAIRMAN asked the Commission to consider the Rapporteur's proposed redraft of paragraph 26.⁵

"Observations concerning the Draft Declaration"

"26. It will be noted that each of the fourteen Articles of the Commission's Draft was derived from an article in the Panamanian Draft. Some of the twenty-four Articles of the latter were not retained; some were combined with other articles, some were found to be unnecessary because their substance was contained in other articles. Two of the articles in the Panamanian Draft which were not retained precipitated a lengthy discussion which it may be useful to review.

"The Commission concluded that no useful purpose would be served by an effort to define the term 'State', though this course had been suggested by the Government of the United Kingdom. In the Commission's draft, the term 'State' is used in the sense commonly accepted in international practice. Nor did the Commission think that it was called upon to set forth in this Draft the qualifications to be possessed by a community in order that it may become a State. These conclusions, which emerged from protracted discussion, greatly facilitated the task of the Commission.

"It was proposed that the Draft should be introduced by an Article providing that 'Each State has the right to exist and to preserve its existence.' This was urged as a mainspring for other rights to be declared, and its importance was thought to be underscored because the right had been denied and trampled upon by the Axis Powers in the last war. On

the other hand, certain members of the Commission deemed it to be tautological to say that an existing State has the right to exist; that right is in a sense a postulate or a presupposition underlying the whole Draft. They also thought it superfluous to declare the right of a State to preserve its existence in view of articles in the Draft concerning self-defense and non-intervention by other States. What seemed at one time to be a deadlock in the voting on this question was resolved by the view that no article should be retained unless it commanded a substantial majority in its favour."

22. Sir Benegal RAU asked that the words "the Government of the United Kingdom" in the first sentence of sub-paragraph 2 should be replaced by "the Governments of the United Kingdom and of India".

23. At the suggestion of Mr. FRANÇOIS, Mr. AMADO (Rapporteur) agreed to the deletion of the last sentence of sub-paragraph 2, and at the suggestion of Mr. KORETSKY, to the deletion of the last sentence of sub-paragraph 3.

24. At the suggestion of Mr. CORDOVA, he further agreed to replace the words "certain members of the Commission", in sub-paragraph 3, by "a majority of the members of the Commission".

Paragraph 26 was adopted subject to the above amendments.

Paragraph 27

25. The redraft proposed by the Rapporteur read as follows:

"27. Another proposed article would have provided that 'Each State had the right to have its existence recognized by other States.' The supporters of this proposal took the view that even before its recognition by other States, a State has certain rights in international law; and they urged that when another State on an appraisal made in good faith considers that a political entity has fulfilled the requirements of statehood, it has a duty to recognize that political entity as a State. It was appreciated, however, that in the absence of an international authority with competence to effect collective recognition, each State would retain some freedom of appraisal until recognition had been effected by the great majority of States. On the other hand, certain members of the Commission thought that the proposed article would go beyond generally accepted international law in so far as it applied to new-born States; and that in so far as it related to already established States the article would serve no useful purpose. The Commission concluded that the whole matter of recognition was too delicate and too fraught with political implications to be dealt with in a brief paragraph of this Draft Declaration, and it noted that the topic is one of

⁵ *Ibid.*, para. 54.

the fourteen topics the codification of which has been deemed by the Commission to be necessary or desirable."

26. Mr. KORETSKY said that paragraph 27 as redrafted by the Rapporteur appeared to contemplate some kind of central organ that would deal with the problem of collective recognition. He did not think the proposed text accurately reflected the Commission's ideas. It was true that it had been said that, when the United Nations admitted a State, that might be assumed to mean collective recognition. The third sentence of the paragraph was misleading and should be deleted. Mr. Briery and other members had pointed out that the problem of recognition was political rather than legal, and discussion of it by the Commission was otiose until it had been settled elsewhere.

27. Mr. ALFARO opposed the deletion of the sentence. It was a complement to the previous one, and merely stated a fact. The unity of the whole conception would be destroyed if it were deleted.

28. The CHAIRMAN asked the Commission to vote on the deletion of the sentence.

The Commission decided to retain the third sentence by 6 votes to 2.

29. Mr. AMADO (Rapporteur) proposed the following text: "The supporters of the proposal considered the question of recognition as of primary importance. They expressed the view that when a State considers that a political entity has fulfilled the requirements of Statehood it has a duty to recognize in good faith this political entity as a State. In the absence of an organ of the international community with the power to decide on the recognition of States, the State granting recognition would retain wide freedom of action, inasmuch as it would be the sole judge of the fulfilment of the conditions of Statehood by the entity seeking recognition."

30. The CHAIRMAN proposed to connect the first and second sentences in the Rapporteur's first redraft by a semi-colon and to replace the phrase: "it was appreciated" by the words: "they appreciated"; furthermore, to replace the words "certain members" in the next sentence by the words: "a majority of the members".

The paragraph thus amended was adopted.

Paragraph 28

31. The redraft proposed by the Rapporteur read as follows:

"28. In conclusion, it will be observed that the rights and duties set forth in the Commission's Draft are formulated in general terms, without restriction or exception, as befits a declaration of basic rights and duties. The articles of the Draft enunciate general principles of international law, the extent and the

modalities of the application of which are to be determined by more precise rules. Article 14 of the Commission's Draft is a recognition of this fact. It is, indeed, a global provision which dominates the whole Draft, and in the view of the Commission it appropriately serves as a key to other provisions of the Draft in proclaiming 'the supremacy of international law'."

32. Mr. KORETSKY considered that the second part of paragraph 28 in the Rapporteur's redraft, beginning with the words: "Article 14 of the Commission's draft. . ." should be either deleted or brought into accordance with the facts. Those sentences as they stood implied the destruction of sovereignty and jeopardized the whole Declaration, since it related article 14 to all the other articles, and if that were done the majority of the General Assembly would presumably vote against it.

33. The CHAIRMAN pointed out that the phrase "the supremacy of international law" was quoted from article 14; he felt that it was a perfectly suitable ending to the part of the report in question.

34. Mr. AMADO (Rapporteur) observed that he had voted in favour of Mr. Koretsky's footnote in the hope and belief that the majority of the Commission had the right to express its point of view as set forth in paragraph 28. Mr. Koretsky's objections were already expressed at length in the note which the Commission had decided to incorporate in the report.

35. Mr. CORDOVA was against the whole paragraph. Although he was in favour of emphasizing the principles embodied in article 14, he felt that the first sentence weakened the Commission's proposals.

36. Mr. SPIROPOULOS accepted the first part of the paragraph in principle, but shared Mr. Koretsky's views with regard to the last two sentences. To speak of "the supremacy of international law" was to ignore reality. He had voted against article 14, and he was surprised that the Commission should have inserted such a concept in the Declaration.

37. Mr. SCELLE did not think any jurist could deny that international law was the source of the competence of all Governments; that was the evidence of facts and of history, unless it was claimed that international law had no other source than the fluctuating arbitrary will of Governments, which would be the negation of all international law.

38. Mr. AMADO (Rapporteur) also disagreed with Mr. Spiropoulos' views. The Commission's task was to codify the international law of the future. Those who, like Mr. Koretsky, denied the almost universally recognized and proclaimed principle of the supremacy of international law had a right to their point of view, which was the logical conclusion of the views of their Govern-

ments. He could not understand, however, how Mr. Spiropoulos could express the same views.

39. Mr. SPIROPOULOS had wondered ever since article 14 was drafted why the notion of the supremacy of international law, which was a purely Teutonic theory, had to be incorporated in the draft declaration. Of course, when rules existed, they were binding by the very fact of their existence as rules. German theorists, however, had erected, on the basis of that obvious fact, a theory of the supremacy of international law. That conception was purely academic and irrelevant to the Declaration. He was in complete agreement with Mr. Koretsky on that point: the use of the term "the supremacy of international law" would lead to confusion. Oppositions between international law and internal law were arbitrary and unimportant; what was important was that a rule was binding upon those who accepted it.

The Commission decided, by 9 votes to 2, to retain the last two sentences of paragraph 28.

40. Mr. CORDOVA would not press for the deletion of the first two sentences.

41. The CHAIRMAN then called the attention of the Commission to the following redraft by Mr. Koretsky of the last sentence of paragraph 28 in the original draft report (A/CN.4/W.10/Add.1):

"Mr. Vladimir M. Koretsky dissented from this view, expressing the opinion that articles 16 and 21 of the Statute of the Commission required the publication of any draft prepared by the Commission, together with such explanations and supporting material as the Commission might consider appropriate, and the circulation thereof to Governments with a request for observations to be made within a reasonable time, before the final submission of any document to the General Assembly."

In the absence of any objections, the redraft was adopted.

42. Mr. HSU directed attention to the wording of the second sentence of the commentary on article 6 of the draft declaration contained in the Rapporteur's redraft of paragraph 23 (A/CN.4/SR.35, para. 90). He proposed that the words "inspired by" should replace the words: "based upon", and that, at the end of the sentence, the words: "and the Universal Declaration of Human Rights" should be added.

43. Mr. CORDOVA opposed the suggested change to "inspired by" on the grounds that it would mean putting into the draft what was already in the Charter. The Charter did not specify that the treatment of all persons under the jurisdiction of a given State with due respect for human rights and fundamental freedoms, without distinction as to race, sex, language or religion, was a duty. The Commission was proposing that that should become a duty.

44. The CHAIRMAN put Mr. Hsu's proposed substitution of the words: "inspired by" for the words: "based upon" to the vote.

The amendment was adopted by 5 votes to 4.

45. Mr. ALFARO suggested the use of a wording more in keeping with the facts and proposed the substitution of the phrase: "follows the language of" for the words: "is inspired by" in the phrase that had just been considered.

That amendment was adopted by 5 votes to 2.

46. Mr. HSU objected that his two amendments formed really one whole and that his proposed addition of the phrase "and the Universal Declaration of Human Rights" would be meaningless if his phrase "inspired by" were replaced by the words: "follows the language of", as the latter referred to specific Articles and paragraphs of the Charter.

47. The CHAIRMAN read the paragraph in full with both amendments as originally proposed by Mr. Hsu, and put it to the vote.

The paragraph, as amended, was adopted by 7 votes to none.

48. Mr. HSU proposed the addition of a new paragraph dealing with the article he had proposed, stating that it was the duty of States involved in military action to be guided by humanitarian principles. The paragraph was worded as follows:

"After the draft declaration was completed, Mr. Shuhsi Hsu proposed the addition of an article on the duty of States to condition military necessity by the principle of humanity in the employment of armed forces, legitimate or illegitimate. Some members objected, holding that no reference to warfare should find a place in such a Declaration. As the proposal was made late in the session, the Commission was, however, unable to give it as exhaustive a discussion as its importance warranted."

49. Sir Benegal RAU observed that the article which Mr. Hsu had proposed and which the Commission had rejected had been restricted to the field of self-defence and United Nations enforcement action. The new paragraph which Mr. Hsu proposed for insertion in the report referred to any military action. If it was to be inserted at all, it should describe the proposed article more accurately.

50. Mr. HSU felt, on the contrary, that his meaning when proposing the article in question, had been accurately stated.

51. Mr. SPIROPOULOS proposed the acceptance of Mr. Hsu's addendum as a footnote.

52. The CHAIRMAN wondered whether the proposal should be accepted as a paragraph in the report.

53. Mr. ALFARO favoured the inclusion of the paragraph proposed by Mr. Hsu, but agreed with Sir Benegal Rau that the wording did not conform

exactly to the article as proposed by Mr. Hsu. That should be remedied.

54. The CHAIRMAN put Mr. Hsu's proposed additional paragraph to the vote.

The proposal was adopted by 6 votes to 5.

55. To meet an objection of Mr. KORETSKY, who considered that the last sentence was not accurate, Mr. HSU agreed that the last sentence of the adopted paragraph should be deleted.

In the absence of any objection, the sentence was deleted.

The meeting rose at 12.50 p.m.

37th MEETING

Wednesday, 8 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. Roberto 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 (*continued*)

AMENDMENT SUBMITTED BY MR. ALFARO TO PARAGRAPH 22 OF THE DRAFT REPORT

1. The CHAIRMAN invited the Commission to reconsider paragraph 22, to which Mr. Alfaro wished to make an addition.

2. Mr. ALFARO thought that the text of paragraph 22, as modified at the previous meeting,¹ had been reduced to such a point that that part of the report did not give an exact idea of the documentation which had been available to and utilized by the Commission. It was in order to make good that deficiency and to ensure that the report would convey as accurate a picture as possible of the work of the Commission and of the conditions in which it had been accomplished, that Mr. Alfaro proposed the insertion, after the text of paragraph 22 which had been previously approved, of a paragraph conceived in the following terms:

"The work of the Commission was facilitated by a memorandum submitted by the Secretary-General containing a detailed analysis of the United Nations discussions on the draft, and reproducing the texts of treaties and conventions, resolutions, declarations and projects emanating from inter-governmental bodies, declarations prepared by non-governmental organizations and scientific institutions and statements by jurists and publicists."

3. The CHAIRMAN put Mr. Alfaro's proposal to the vote.

The Commission approved, by 11 votes to none, the addition to paragraph 22 of the paragraph proposed by Mr. Alfaro.

AMENDMENT SUBMITTED BY MR. KORETSKY TO PARAGRAPH 10²

4. The CHAIRMAN submitted to the Commission Mr. Koretsky's proposal to replace paragraph 10 of the draft report, by the following text:

"According to one view, inasmuch as the International Law Commission is not an autonomous organ enjoying complete liberty, but is merely a subsidiary organ of the General Assembly, it exists to carry out certain tasks which have been entrusted to it by the General Assembly and any task it undertakes must be sanctioned by the latter. In so doing it must adhere strictly to its Statute, which lays down a procedure for the different stages of the work of codification. During the first stage, the

¹ See A/CN.4/SR.36, paras. 8-13.

² See A/CN.4/SR.31, paras. 12-28.