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Summary record of the 37th meeting

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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.

- Commission has the duty of discussing the choice of topics for codification; in the second stage that of presenting a report to the General Assembly and of making recommendations on the choice of subjects. Only when the General Assembly has approved the choice of subjects, can the Commission proceed to the other stages envisaged in articles 19 to 23 of its Statute. For the Commission to act otherwise would be to ignore the ties which link it to the General Assembly and to disregard its duties towards that body."
5. The Chairman did not recall that any member of the Commission had maintained that it was an autonomous organ enjoying complete liberty.
6. Mr. YEPES remarked that from Mr. Koretsky's text it was not sufficiently clear that that text expressed the opinion of a single member of the Commission.
7. Mr. BRIERLY suggested that the first phrase of that amendment should be changed to read: "Some Members wished to emphasize that the International Law Commission was not. . .", the remainder of Mr. Koretsky's text to stand without change.
8. Mr. KORETSKY pointed out that he had wished to contradict an opinion which he thought had been expressed in the Commission. Mr. Scelle had, in fact, maintained more than once that the Commission was an autonomous body of international jurists, who were not bound by the General Assembly resolutions and whose powers were analogous to those of the International Labour Organization.
9. Mr. SCELLE pointed out that he had not gone so far as to maintain that the Commission was entirely autonomous and independent of the General Assembly. The ties linking and subordinating it to the Assembly were too obvious to be denied. It was the General Assembly which had set up the Commission; it had entrusted it with certain tasks, and it undoubtedly had a watching brief over the Commission's work.
10. What Mr. Scelle had meant was that the members of the Commission were perfectly free to their opinion and that the Commission could, in certain cases, take decisions without referring to the General Assembly. If he had compared the Commission to the ILO, it was because, in his opinion, the Commission, like that Organization, should be entitled to choose, the questions it desired to study, and to prepare on its own account texts on such questions, which expressed the opinion of its members.
11. Mr. KORETSKY stated that in view of Mr. Scelle's explanations, he accepted the change in his amendment proposed by Mr. Brierly.
12. The CHAIRMAN thought that the first phrase of the initial text of paragraph 10 should be retained and that Mr. Koretsky's amendment should be added after it.
13. Mr. HSU supported that suggestion on the understanding that it would be clearly indicated that Mr. Koretsky's amendment expressed only his own opinion and not that of the minority.
14. The CHAIRMAN thought that that result could be obtained if the amendment began with the words: "According to one view", which would be substituted for the phrase "Notwithstanding the view of certain members". The paragraph would therefore be composed of the first sentence of the initial text to which would be added Mr. Koretsky's amendment, thus modified.
15. Mr. KORETSKY was not opposed to indicating that the text expressed his own opinion, since those who had shared his opinion seemed to have changed their mind. He pointed out, however, that in the course of the report, his objections had at times been attributed to some unnamed member of the Commission and at times to himself in name. He thought that a consistent rule should be adopted in that respect.
16. Mr. ALFARO objected that the last draft proposed let it be understood that a second opinion had been maintained to the effect that the Commission was a body enjoying total independence. Now Mr. Scelle's remarks had made it clear that no one had ever expressed that opinion in the Commission. The ambiguity resulting from the present text should therefore be removed.
17. Mr. BRIERLY proposed that the beginning of Mr. Koretsky's amendment should be changed to read: "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. . ."
18. The CHAIRMAN proposed that the Commission should approve Mr. Koretsky's amendment thus modified, and preceded by the first sentence of the initial text.
- It was so decided.*
- NEW DRAFTING OF PARAGRAPH 18: LAWS OF WAR
19. The CHAIRMAN called the Commission's attention to a new text for paragraph 18 on the laws of war, which had been prepared by the Rapporteur on the basis of an amendment proposed by Mr. François.³
20. The new draft text read:
- "The Commission considered whether the laws of war should be selected as a topic for codification. It was suggested that, war having been outlawed, the regulation of its conduct had ceased to be relevant. On the other hand,

³ See A/CN.4/SR.31, para. 68.

the opinion was expressed that although the term 'laws of war' ought to be discarded, a study of the rules governing the use of armed force—legitimate or illegitimate—might be useful. The punishment of war crimes, in accordance with the principles of the Nürnberg Charter and the judgment of the Nürnberg Tribunal would necessitate a clear definition of those crimes and consequently, the establishment of rules which would provide for the case where armed force was used in a criminal manner, especially in view of the obsolescence of The Hague Conventions.

"The majority of the Commission declared itself opposed to the study of the problem at the present stage. It was considered that if the Commission, at the very beginning of its work, were to undertake this study, public opinion might interpret its action as showing lack of confidence in the efficiency of the means at the disposal of the United Nations for maintaining peace. This argument was felt to be the stronger because of the decision of the Commission not to retain among the topics for codification that of the 'peaceful settlement of international disputes.'"

21. The Chairman proposed that at the end of the first paragraph the word "obsolescence" should be replaced by "inadequacy".

It was so decided.

22. Mr. KORETSKY suggested deleting the allusion to The Hague Conventions. By taxing them with inadequacy the Commission, which should endeavour to strengthen and re-establish them, would only further undermine their authority and thus complete the work of the fascists, who alone were responsible for their inefficacy and for the discredit into which they had fallen.

23. The CHAIRMAN put to the vote the deletion of the last sentence of the first paragraph of the new text of paragraph 18.

The Commission decided to delete that sentence by 8 votes to one.

24. Mr. KORETSKY proposed the deletion of the words "at the present stage" in the first sentence of the second paragraph, which seemed to indicate that the study of the laws of war had been postponed by the Commission for some time, which would not be exact. Mr. Koretsky also proposed the deletion of the last sentence of the second paragraph.

The CHAIRMAN called for a vote on Mr. Koretsky's two proposals.

The words "at the present stage" were maintained by 6 votes to 4.

The last sentence was deleted by 9 votes to none.

The new text of paragraph 18 as amended was approved.

AMENDMENT SUBMITTED BY MR. KORETSKY
TO PARAGRAPH 40

25. The CHAIRMAN called the Commission's attention to a draft amendment by Mr. Koretsky which proposed the addition of the following text to footnote (1) of paragraph 40:⁴

"Mr. Koretsky considered that the memorandum submitted by the Secretariat could not be accepted as a Commission working document. He felt that, in the first place it did not pay adequate attention to all of the world's legal systems. Many countries, Members of the United Nations, were not mentioned at all. Numerous countries were relegated to the section entitled 'Other countries' in derogatory fashion. Alphabetical order, customary in United Nations practice, was ignored. He further felt that the memorandum disclosed an inadequate knowledge on the part of its compilers of the published sources of international law in many countries. In particular, the compilers evinced utter ignorance of publications appearing in the USSR. Also, the compilers had taken a false position of principle as regards the relative weight of the sources of international law, pushing into the background international treaties—the most important source of all."

26. The CHAIRMAN announced that if the addition proposed by Mr. Koretsky was approved, he would also ask for the inclusion after footnote (1) of a note as follows:

"Mr. Hudson stated that in his view it was not for the Commission to pass judgment on the documents prepared by the Secretariat. Each member of the Commission may have his own view regarding the quality of this particular memorandum; for his part, he felt that it could not possibly be complete because of the magnitude of the task involved. That task was essentially one of finding persons equipped with the necessary technical and linguistic skill. The Division of the Legal Department which acts as Secretariat to the Commission had at one time included a staff member from the Soviet Union, but that particular person had been unable to complete his assignment on this topic. Mr. Koretsky's interesting suggestion that a survey of current treaty law be prepared lies outside the scope of Article 24. Mr. Hudson further referred to the objection that the Memorandum did not deal with the laws of Arab countries and drew attention to the reference to Egyptian law on page 61 thereof."

27. Mr. KORETSKY pointed out that he had made no suggestion and that he had merely stated

⁴ See A/CN.4/SR.35, para. 32-36.

that the study of common law should also include that of its application under existing treaties.

28. Mr. YEPES felt that the insertion of the note proposed by Mr. Koretsky could be approved, on condition that it was accompanied by a brief mention of the opposing opinion expressed by a certain number of members of the Commission.

29. Mr. SPIROPOULOS felt that there was no need to insert in a report the personal opinion of a member of the Commission concerning the value of a simple working document. If the contrary were admitted, it would be necessary to include in the report the opinion of each of the other members who had expressed different views on the point. If the same rule were to be applied to the most insignificant details, the report would finally be burdened with innumerable footnotes of no real interest.

30. The CHAIRMAN put Mr. Koretsky's proposal to the vote.

Mr. Koretsky's proposal was rejected by 7 votes to one.

31. Mr. KORETSKY felt that by taking that decision, the Commission, which had already committed several infractions of its own Statute, had not respected the right of each and every member to have included in the report any opinions he had expressed in the course of the debate and to which he attached a certain importance. In the circumstances, Mr. Koretsky would make use of every means he felt to be appropriate in order to bring his opinion to the knowledge of the public.

32. Mr. KERNO (Assistant Secretary-General) respectfully called the Commission's attention to the fact that the Secretariat's only desire was to service the Commission to the best of its ability, by carrying out purely anonymous work, the standard of which it was always endeavouring to improve and for which, naturally, it expected no praise. As to the memorandum, the Secretariat would take account of all information supplied by members of the Commission in order to complete it by making the necessary addenda or by publishing an entirely new text.

CHAPTER VII

CO-OPERATION WITH OTHER BODIES ⁵

33. The CHAIRMAN presented to the Commission the draft of chapter VII of the report dealing with co-operation with other bodies and proposed the deletion of the word "of" at the beginning of the fourth line in the English text of paragraph 43.

Paragraph 43, as amended, was approved.

34. At the suggestion of Mr. BRIERLY, the CHAIRMAN proposed to replace the word "sub-

mitted" in the first sub-paragraph of paragraph 44 by the word "prepared", to insert a comma before the word "prepared" and to delete the comma after the words "by the Secretary-General".

It was so decided.

35. Mr. KORETSKY pointed out that in that chapter all reference had been omitted to the opinion he had held concerning the interdependence of paragraphs 1 and 2 of article 26 of the Commission's Statute and concerning the need of interpreting paragraph 2 in connexion with the first paragraph which was in his opinion, the decisive factor in the matter.

36. The CHAIRMAN, in compliance with Mr. Koretsky's wishes, proposed the inclusion of a supplementary sub-paragraph after the first sub-paragraph of paragraph 44 reading as follows:

"One member of the Commission was of the opinion that paragraphs 1 and 2 of article 26 of the Statute of the Commission were closely related and that the inclusion of any organization in the list referred to in paragraph 2 would mean that the Commission might wish to consult with such organization. The majority of the Commission, however, decided that paragraphs 1 and 2 were not related and that the list referred to in paragraph 2 was only for the purpose of distribution of documents."

Paragraph 44, as amended, was approved.

CHAPTER VIII. MISCELLANEOUS DECISIONS ⁶

37. The CHAIRMAN invited the Commission to consider chapter VIII which concerned the date and place of the second session, representation at the General Assembly and emoluments for members of the Commission.

38. At the request of Mr. KORETSKY, the CHAIRMAN proposed the deletion of the word "unanimously" in paragraphs 45 and 46 as well as of the words "all of" which appeared before the words "its members" in the second sub-paragraph of paragraph 47.

It was so decided.

39. The CHAIRMAN considered, moreover, that it would be better to replace the word "should" by the word "would" in the English text of paragraph 46.

It was so decided.

PROPOSAL BY MR. SCELLE TO INCLUDE IN THE REPORT AN ACKNOWLEDGEMENT OF THE WORK OF THE SECRETARIAT

40. Mr. SCELLE proposed that a 48th paragraph should be added to the end of the report as follows: "The Commission wished to congratulate the

⁵ See Report, chapter VI.

⁶ See Report, chapter VII.

Legal Department of the Secretariat on its untiring efforts in assisting the Commission and on the valuable working documents which it placed at the disposal of the Commission."

41. Mr. YEPES heartily supported that tribute, but he thought that the place to insert it would be in the summary record of the last meeting and he would not vote in favour of Mr. Scelle's proposal for just that one reason.

Mr. Scelle's proposal was adopted by 7 votes to one.

FOOTNOTES TO PARAGRAPH 23 ⁷

42. The CHAIRMAN submitted to the Commission the text of a footnote which Mr. Yepes asked to have inserted. The footnote was couched in the following terms:

"Mr. Yepes voted for the Declaration as a whole and for each one of its articles; he thought that the Declaration marked a considerable step forward in the evolution of international law. He regretted, however, that the Declaration did not include, were it only in the preamble, a definite statement of the universal and compulsory nature of the international community. Further, Mr. Yepes regretted that the article he had proposed on *jus communicationis* had not been accepted for, in his opinion, it was one of the fundamental precepts of international law and he hoped that principle would ultimately be adopted by the Commission. Furthermore, it was regrettable that the Commission had refused to clarify the concept of state sovereignty by the addition at the end of article 1 of the last sentence, 'It is in this sense that the sovereignty of the State should be understood,' a sentence which had been adopted at first and later deleted by the majority of the Commission."

43. The Chairman thought that a footnote should not express the wishes of one member of the Commission; he therefore suggested to Mr. Yepes that the phrase "and he hoped that the principle would ultimately be adopted by the Commission" should be deleted.

44. Mr. YEPES accepted the suggestion to delete that phrase.

45. The CHAIRMAN placed before the Commission a footnote which Mr. Scelle wished to have included in the report. The footnote read:

"Mr. Scelle voted for the Declaration although he did not find it satisfactory, first because the General Assembly had made its drafting incumbent on the Commission; secondly, because it contained in article 14 the fundamental principle of the supremacy of international law over internal legal systems. He regretted that the

Declaration had not stated the legal obligation which was placed on all Governments to recognize the existence as a State of any political community fulfilling the conditions of Statehood laid down by international law. His greatest regret was that at the end of article 1 on independence, the explanatory sentence 'It is in this sense that States are sovereign' had not been retained. He still believed that sovereignty was nothing other than the sheaf of competences granted to the Governments of States by international law and that those competences should be exercised freely without any external pressure. In his opinion, sovereignty and independence were, in legal terminology, one and the same concept."

46. The Chairman thought that those last two sentences constituted the expression of a personal theory which did not seem absolutely justified in the report.

47. Mr. SCELLE agreed to delete the last two sentences of his statement.

48. Mr. SPIROPOULOS said that every member of the Commission certainly had the right to request the inclusion of a personal statement in the report, but he did not feel it was appropriate for the members of the majority to explain their votes. If Mr. Yepes' and Mr. Scelle's footnotes were accepted, Mr. Spiropoulos would also request the inclusion of a statement explaining that he had voted in favour of the draft Declaration on the Rights and Duties of States although he had been opposed to several articles.

49. The CHAIRMAN thought that the report would be uselessly overburdened if every member wished to include his personal opinion therein. Therefore, although it explained the reasons for which he had voted against the draft Declaration, he asked that the footnote he had had inserted to paragraph 23 should be deleted.

50. Mr. SCELLE said that he would adopt the same attitude as the Chairman, that is to say, that he would not request the inclusion of his footnote if all the members of the Commission would consent to do the same.

51. Mr. CORDOVA pointed out that the members of the minority had a perfect right to explain the reasons for which they had voted against the draft; he did not think, however, that the right should be exercised by the members of the majority.

52. Mr. ALFARO remarked that Mr. Koretsky's footnote went far beyond the explanations which were usually given to justify a vote; that statement was really an exposition of a theory of international law. Paragraph 23 did not explain the motives which had impelled the majority to adopt the draft Declaration in its present form; if members of the minority had the right to explain their reasons for voting against the draft Declaration, it was logical that the members of the

⁷ See paras. 67-83.

majority should be able to explain the reasons for which they had approved that draft.

53. The CHAIRMAN said that the footnotes to paragraph 23 which Mr. Yepes and Mr. Scelle had asked to have included should appear in the report.

54. Mr. SPIROPOULOS therefore requested the inclusion of the following footnote: "Mr. Spiropoulos voted in favour of the Declaration though he did not agree with some of its articles."

55. Mr. ALFARO also requested the inclusion of the following footnote:

"Mr. Alfaro voted for the Declaration in general, and despite any minor defects that it might contain in the opinion of individual members, because it reflects the noble advances made by international law and because it states sound principles that command the respect of a preponderant majority of the scientific and popular opinion of the world, and have been accepted by the majority of nations."

56. The CHAIRMAN suggested that all the statements, those of the minority as well as those of the majority, should be annexed to the report and not inserted in the footnote to paragraph 23.

57. Mr. KORETSKY opposed that suggestion. He recalled that the Commission had already taken a decision concerning the footnotes inserted at the request of members of the minority; there could be no question of altering that decision. Mr. Koretsky realized that all of the members of the Commission had the right to have their opinion given in the report, but he maintained that basically all statements should appear as a footnote to paragraph 23.

58. Mr. Koretsky felt that all of the members of the minority had a perfect right to explain the reasons for their position as lengthily as they wished; that was indispensable to enable readers of the report to understand the objections of principle which had governed the actions of certain members of the Commission. The criticisms which Mr. Koretsky wished to see included in the report referred to the draft Declaration as a whole and to the interpretation to be given to the Commission's work: those criticisms were doubtless not appreciated by all of the members of the Commission, but that could not justify their suppression and their inclusion merely as an annex.

59. The CHAIRMAN said that all of the statements which members had requested to have inserted would appear as footnotes to paragraph 23, with the exception of his own which was withdrawn.

TITLE OF THE REPORT

60. The CHAIRMAN stated that three titles had been suggested; namely:

1. Report to the General Assembly on the Work of the First Session;

2. Report to the General Assembly on the First Session;

3. First report to the General Assembly.

After a short discussion, it was decided to leave the selection of the title of the report to the Rapporteur.

FORM OF THE REPORT

61. Mr. KORETSKY pointed out that the draft Declaration on the Rights and Duties of States was only one chapter of the draft report; nevertheless, that matter would be listed as a separate item on the agenda of the forthcoming session of the General Assembly. It therefore would seem that the draft Declaration should be a separate document; the Commission would thus make it clear that the General Assembly was seized of two different items: first, the report on the work of the Commission; secondly, the draft Declaration on the Rights and Duties of States.

62. The CHAIRMAN recalled that it had been decided to present the text of the draft Declaration as a special document. That paper would thus make it possible to inscribe the draft Declaration on the Rights and Duties of States as a separate item on the agenda of the General Assembly.

63. Mr. KERNO (Assistant Secretary-General) suggested that the report of the Commission's work as a whole should confine itself to mentioning that the draft Declaration on the Rights and Duties of States was the subject of a special report, which would be drafted from Chapter III of the present draft report.

64. Mr. SPIROPOULOS thought that it would be better to present only one report, without devoting a special report to the draft Declaration.

65. After a brief discussion, the CHAIRMAN proposed that the Commission's report should be divided into two parts: the first relating to the Commission's work as a whole, and the second to be devoted to the draft Declaration on the Rights and Duties of States.

It was so decided.

FOOTNOTE TO THE PARAGRAPH ENTITLED: "REQUEST TO GOVERNMENTS FOR DATA"

66. The CHAIRMAN noted that Mr. Koretsky had requested the inclusion of a footnote to the paragraph headed: "Request to Governments for data."⁸ That footnote read as follows:

"Mr. Koretsky opposed this decision on the ground that the Commission, pursuant to articles 18 and 19 of its Statute, is empowered to address requests to Governments only after approval

⁸ See A/CN.4/SR.35, para. 60.

by the General Assembly of the Commission's recommendations as to the topics selected." *That insertion was accepted.*

FURTHER CONSIDERATION OF THE QUESTION
OF FOOTNOTES TO PARAGRAPH 23⁹

67. Mr. BRIERLY said that after meeting with so me of his colleagues, he thought it advisable to appeal to the members of the majority who had requested the inclusion of footnotes to paragraph 23.

68. The Declaration on the Rights and Duties of States should have as great moral authority and prestige as possible. The draft had been adopted by 11 votes to 2; it was regrettable that it had not been adopted unanimously, but it seemed that it would have more weight in the eyes of the General Assembly if the members of the majority would agree to omit the remarks they had offered from the report.

69. Mr. Brierly then asked the members of the majority who had requested the inclusion of footnotes to paragraph 23 to consider whether, by so doing, they were not prejudicing the draft Declaration.

70. The CHAIRMAN warmly supported Mr. Brierly's appeal and recalled that he had withdrawn his own note to paragraph 23; he thought that too many comments could only weaken the prestige and authority of the draft Declaration.

71. Mr. CORDOVA also supported Mr. Brierly's appeal. He pointed out that all of the members of the majority had had occasion to criticize certain articles of the draft, but he did not think that was an adequate reason for adding remarks to the report which might give the General Assembly the impression that the Commission was not entirely satisfied with the draft it was submitting. Mr. Córdova hoped that his colleagues would heed the appeal which had been made to them.

72. Mr. AMADO thanked Mr. Brierly for the efforts he was making in the interests of the draft Declaration. The Commission had accomplished much worthwhile work after continuous effort and many compromises; it would be regrettable to let the General Assembly believe that the members of the Commission were not entirely satisfied with their work; the General Assembly might thus be led to show less interest in completing the work undertaken by the Commission.

73. Mr. SPIROPOULOS recalled that he had only requested the inclusion of his remarks because the Commission had decided to accept those of Mr. Yepes and Mr. Scelle. For his part he had always been of the opinion that the members of the majority should not insert comments in the

report. Mr. Spiropoulos said that he was quite prepared to withdraw his request.

74. Mr. SCELLE thought that when an appeal was made to sentiment or to courtesy, there was the risk of favouring those who were strong enough and obstinate enough to maintain their position. All of the members of the majority who had requested the inclusion of remarks would certainly respond to Mr. Brierly's appeal, thus permitting Mr. Koretsky to be only one to offer his opinion and to submit, in consequence, a true minority report.

75. Mr. Scelle recalled that Mr. Koretsky had stated that he would inform public opinion, otherwise than through the Commission's report, of those of his remarks which could not appear in the report; Mr. Scelle reserved the rights to follow the same procedure and to make known to public opinion the criticisms which he might have to make with regard to the draft Declaration.

76. Mr. Scelle withdrew his request for the inclusion of a footnote to paragraph 23.

77. Mr. ALFARO thought that in all fairness, the members of the majority should have the same opportunity to explain their vote as that enjoyed by the members of the minority. Mr. Alfaro could not, however, ignore Mr. Brierly's appeal and he withdrew his request for the inclusion of a footnote to paragraph 23.

78. Mr. YEPES said that his only desire had always been to contribute to the preparation of as perfect a draft Declaration as possible. It was with that aim in mind that he had presented amendments and that he had objected to certain parts of the report. In the interests of the prestige of the Commission and of its work, Mr. Yepes adopted the same attitude as Mr. Spiropoulos, Mr. Scelle and Mr. Alfaro.

79. The CHAIRMAN was happy to note that the four members of the majority who had requested the inclusion of footnotes to paragraph 23 had responded to Mr. Brierly's appeal. Their decision could not but contribute to the prestige and authority of the draft Declaration and of the Commission's report.

80. The Chairman pointed out that his footnote to paragraph 23, which he had withdrawn, explained that he had opposed the draft Declaration only on account of the provisions of article 6; after reflection, the Chairman thought that the draft Declaration and the report would gain in authority if his footnote were maintained in company with that of the other member of the Commission who had voted against the draft Declaration. Consequently, the Chairman requested that his footnote should be retained.

It was so decided.

81. Mr. YEPES suggested that the Chairman should change his attitude towards the draft Declaration as a whole; he might state that he

⁹ See *Supra*, paras. 42-59.

favoured the draft Declaration while making certain formal reservations with regard to article 6. Mr. Yepes thought that such a measure would facilitate the Chairman's task when he represented the Commission in the General Assembly.

82. Mr. SPIROPOULOS supported Mr. Yepes' suggestion.

83. The CHAIRMAN thought that the inclusion of his footnote to paragraph 23 was sufficient indication of what his attitude towards the draft Declaration had been; it was therefore pointless for him to reconsider his vote on the draft Declaration.

Use of working languages

84. Mr. YEPES recalled that throughout the session he had spoken in French. He had done so in order to render homage to the French language, which had long been pre-eminently the diplomatic language, and also in order to expedite the Commission's work because the use of Spanish would have required a supplementary translation.

85. Mr. Yepes emphasized that that fact should not create a precedent; the Spanish language was a working language of the General Assembly and on that subject he reserved all his rights and those of the representatives of his country in the General Assembly.

The meeting rose at 5.30 p.m.

38th MEETING

Thursday, 9 June 1949, at 3.45 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 Legal Department; Mr. LIANG, Director of the Division for the Development and Codification of International Law, Secretary to the Commission.

Adoption of the Report to the General Assembly on the Work of the First Session

1. The CHAIRMAN invited the members of the Commission to discuss and approve the draft report to the General Assembly (A/CN.4/W.10/Rev.1).

2. Mr. KORETSKY recalled that when the Commission established the order of priority in which topics chosen for codification should be studied, Mr. Yepes had stressed the importance of the question of nationality and of statelessness. The last sentence of paragraph 19¹ of the report should therefore be amended and the words "and statelessness" inserted after "the question of nationality".

It was so decided.

3. Mr. KORETSKY pointed out that some confusion might be caused by placing the comments on the various articles of the draft declaration on rights and duties of States immediately after the articles themselves. In certain cases such comments might appear to be a second paragraph of the article. He felt that that shortcoming should be corrected.

4. After a brief exchange of views between the CHAIRMAN, Mr. ALFARO and Mr. KORETSKY, the CHAIRMAN said that the Secretariat would ensure that comments were presented in such a manner as to prevent any possible confusion.

5. Mr. KORETSKY said that a uniform procedure should be maintained both as to the way in which the names of members were mentioned in the report as well as to the way in which his opinion, which differed from that expressed by the majority, had been recorded. He had no objection to his name being mentioned, but insisted that it be mentioned everywhere.

6. After a brief discussion in which Mr. SPIROPOULOS, Mr. KORETSKY, the CHAIRMAN and the RAPPORTEUR took part, the Commission decided to adopt the practice followed by all United Nations Commissions, with the exception of the Main Committees of the General Assembly, and not to mention the Rapporteur's name at the beginning of the report.

7. The CHAIRMAN then put to the vote the draft report as a whole.

The draft report, under the title "Report to the General Assembly of the work of the first session" was adopted by 11 votes to one.

Closing Speeches

8. Mr. SCELLE felt that it should be his privilege, because of his age, to be the first to express his warmest thanks to the Chairman and to the officers of the Commission.

¹ Corresponds to para. 19 of the *Report*.