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

Summary record of the 4th meeting

Topic:
Programme of work

Extract from the Yearbook of the International Law Commission:-
1949 , **vol. I**

4th MEETING

Monday, 18 April 1949, at 3 p.m.

CONTENTS

Chairman: Mr. Manley O. HUDSON.

Rapporteur: Mr. Gilberto AMADO.

Present:

Members: Mr. Ricardo J. ALFARO, Mr. James L. BRIERLY, Mr. Roberto CÓRDOVA, Mr. J. P. A. FRANÇOIS, Mr. Shuhsi HSU, Mr. Vladimir M. KORETSKY, Sir Benegal N. RAU, Mr. A. E. F. SANDSTRÖM, 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.

Planning for the codification of international law: survey of international law with a view to selecting topics for codification. (Article 18 of the Statute of the International Law Commission) (A/CN.4/1/Rev.1) (*continued*)

(a) INTERPRETATION OF ARTICLE 18, PARAGRAPH 2, OF THE STATUTE OF THE COMMISSION (concluded)

1. The CHAIRMAN recalled that the Commission had decided, at its previous meeting, to reach a conclusion at the current meeting on the interpretation of article 18, paragraph 2, of its Statute. Two texts had been submitted to the Commission at the previous meeting: Mr. Alfaro's interpretation which consisted of two points, and the question formulated by the Chairman. As an affirmative reply to that question would obviously be equivalent to the adoption of paragraph 2 of Mr. Alfaro's text, the Chairman was prepared to retain either of the two texts. With regard to the first paragraph of Mr. Alfaro's interpretation, it appeared to go beyond the scope of the problem, in that it tended to define the Assembly's competence in the matter. It was understood that the decision the Commission was about to take would not be final and could be modified in the future.

2. Mr. ALFARO saw no objection to having his interpretation restricted to the text of paragraph 2. The main advantage of paragraph 1 was that it took into account Mr. Koretsky's point of view, according to which the General Assembly always had the last word.

3. Sir Benegal RAU proposed the following text, which summed up the discussion and stated the conclusions arrived at:

> "The Commission had to determine at the outset its precise functions and powers with respect to the codification of international law and, in that connexion, it had to decide the meaning and implication of article 18, paragraph 2, of the Statute. After careful consideration of the language of the Statute in this and other articles, and of all available material bearing upon its construction, the Commission came to the following conclusions:
>
> "(1) That, if, at any stage, after selecting a particular topic, the Commission considers its codification to be necessary or desirable, the Commission must submit its recommendations to the General Assembly under article 18, paragraph 2;
>
> "(2) But that, in the absence of a decisive directive from the General Assembly not to deal with that topic, and subject always to the priority to be given under article 18, paragraph 3, to a request from the General Assembly to deal with some other topic, the Commission is competent to proceed with the codification of the selected topic in accordance with articles 19 to 23."

4. Mr. HSU preferred the formula of the Chairman to those of Mr. Alfaro and Sir Benegal Rau.

5. Mr. ALFARO explained that paragraph 2 of his interpretation was intended to indicate that, contrary to what happened in the cases provided for in other articles, in the particular case of paragraph 2 of article 18 the Commission was not obliged to wait for the decision of the General Assembly.

6. Mr. SCELLE considered the Chairman's question more satisfactory in that it embraced the whole problem.

7. Mr. KORETSKY pointed out that the text of Sir Benegal Rau, like that of Mr. Alfaro, contradicted the obvious meaning of the Statute, and was an arbitrary modification of a provision which had been approved by the General Assembly. As for the Chairman's question, it could receive only a negative reply, for the same reason.

8. Mr. SANDSTROM explained that, in reality,

paragraph 2 of article 18 could be interpreted in three different ways. According to the first interpretation, the Commission should submit the topics it had chosen to the General Assembly for approval and await the Assembly's reply before beginning codification of the topics. According to the second interpretation, the recommendations envisaged in paragraph 2 of article 18 would be identical with those which accompanied the final text of the draft, once the work of codification was completed. The third interpretation was a kind of compromise between the first two: the topics should be submitted to the General Assembly, but the Commission would have the right to begin the codification without awaiting the Assembly's reply.

9. Mr. SPIROPOULOS, while preferring the text of Sir Benegal Rau, thought that by adopting either of the texts submitted to it, the Commission would clearly establish the fact that its Statute granted it the initiative in the matter of codification. As the Chairman had pointed out, the Commission's decision on that point could be amended in the future. There was therefore no reason to attach undue importance to the choice of the formula.

10. Mr. ALFARO pointed out that the Chairman's formula made the mistake of mentioning article 23 of the Statute, which referred specifically to cases in which the Commission had to wait for the Assembly's reply before proceeding with the work of codification.

11. The CHAIRMAN stated that he was willing to delete that article from the list.

12. Mr. HSU did not think the deletion of that article would be enough, for the allusion to the remaining articles might prevent certain Members from replying to the question in the affirmative.

13. Mr. CORDOVA suggested that the Chairman's question should be amended as follows: " Has the Commission competence to carry out its work of codification without awaiting the General Assembly's decision on the recommendations submitted by the Commission under article 18, paragraph 2? "

14. Mr. HSU objected that th words " work of codification ", which had already been used by Mr. Alfaro, were too vague. He would prefer to retain the Chairman's formula, which stated the question clearly, on condition that the articles it mentioned were limited to those concerning which there was no doubt. It might be that only article 19 was of that nature. The Commission could not disregard the intentions of those who had drawn up the Statute. The preparatory work was an adequate indication that two contradictory tendencies had come to the fore at the time of the drafting of what had since become article 18. Some members, among them the representatives of the United States and China, who had submitted to the Committee on the Progressive Development of International Law and its Codification a joint proposal (A/AC.10/33) which had been one of the chief bases of the discussion, felt that the Commission should possess all the necessary initiative for undertaking its work of codification at once. Other representatives, however, wished to reserve to the General Assembly a right of control over the work of the Commission. Thus, from the report of the Committee on the Progressive Development of International Law and its Codification (A/AC.10/51 and A/331) to the final text of the Statute, with the report of Sub-Committee 2 of the Sixth Committee (A/C.6/193) intervening, such changes had occurred that the powers of the Commission had undoubtedly been reduced considerably as compared with those in the initial draft. Thus it no longer had the power to carry out all the work envisaged in articles 19 to 23 before it received the General Assembly's reply to the recommendations it submitted in accordance with paragraph 2 of article 18. It was for that reason that the Chairman's formula, which was too general, should be modified in that respect.

15. The CHAIRMAN thought that as agreement could not be reached on another formula, it would be better for the Commission to give an affirmative or negative answer to the question he himself had asked, the text of which was the following: " Has the Commission competence to proceed with its work according to the procedure provided in articles 19 to 23, without awaiting the General Assembly's decision on the recommendations submitted by the Commission under article 18, paragraph 2? "

By 10 votes to 3, the Commission replied in the affirmative to that question.

16. Mr. ALFARO stated that he had voted in the affirmative although he did not agree to the reference to article 23, which had been retained in the text of the question. It was obvious that in the case of the recommendations envisaged in that article, the Commission had to await the Assembly's reply before undertaking the work of codification.

17. Mr. KORETSKY explained that he had voted in the negative because of the objections that he had raised earlier to the proposals of Mr. Alfaro and Sir Benegal Rau. In his opinion, the General Assembly might justifiably be surprised at the result of the vote, which was in contradiction to the directives it had given the Commission.

18. Mr. HSU stated that he had not been able to vote in the affirmative, as he would have done had the formula applied to article 19 only.

(b) General plan of codification

19. The CHAIRMAN recalled that, at the suggestion of Mr. Spiropoulos, the Commission

had decided to start considering the second part of the memorandum submitted by the Secretary-General on the survey of international law. In his opinion, the simplest method would be to review rapidly the different questions set out in that part of the memorandum, to delete certain of them and retain others, and thus to establish a preliminary list of suitable topics for codification.

20. Mr. AMADO observed that the Commission had heard various opinions on the method of selecting topics the codification of which appeared necessary or desirable: Mr. Spiropoulos thought that the choice would necessarily be purely subjective, rather than logical, while Mr. Sandström thought it should be subjective but based on practical considerations, upon the relative value of which the Commission would have to decide. Mr. Amado was afraid that such a procedure could only lead to contradictory conclusions, or at best to an undue variety of opinions. In his opinion, it would be better to have an exchange of views on the different criteria which influenced each member of the Commission to select a particular topic. Mr. François, for example, preferred to choose topics the codification of which was easily realizable, in that results could be obtained almost immediately; other members of the Commission, on the other hand, thought that the Commission could begin to study topics the codification of which did not appear to be easily realizable, but seemed necessary or desirable. In view of such a divergency of ideas, it would seem that a general discussion of the second part of the Secretary-General's memorandum (A/CN. 4/1/Rev.1) was necessary so that the Commission could take into account the preferences of its members. Such a discussion would give a general indication of the topics for codification, without any final list having to be established during the current session.

21. He had already had occasion to state that in his opinion the Commission should work according to a systematic plan, taking into account certain conditions mentioned in the Secretary-General's memorandum. He attached special importance to the conditions implied in paragraphs 39 and 66 for example, namely, that the work of codification should be animated by the interests and aims of the United Nations. The creation of that Organization called for a particularly thorough study of numerous traditional principles of international law, based on the conception of the complete sovereignty of States in order that they might be brought into harmony with the principles of the Charter. A certain hesitancy had been noticeable on the part of political organs of the United Nations to ask for advisory opinions from the International Court of Justice on the legal aspects of certain situations. The main cause of such hesitancy was the fear that the rules of existing international law would not agree with the aims of the Organization; such a fear must disappear.

22. Among the questions of particular interest to the United Nations must be mentioned that of seeing that the creation or recognition of legal situations was carried out in conformity with the principles of the Charter. In that domain States could not continue to have the liberty of action which they had so far enjoyed. For example, the provisions of the Charter regarding non-self-governing peoples made it imperative for the international effects of a state of hostility or revolution among colonial or oppressed peoples to be studied, since such a state was fundamentally different from the revolt of a national political party. The question of the recognition of international legal situations was dealt with in the Secretary-General's memorandum (pp. 26 onwards) which stated that in spite of political difficulties that question might be a subject for codification.

23. Another important question was that of deciding which subjects came under international law. The Charter emphasized the international rights of subjects other than States, especially those of individuals. That idea did not agree with the classic notions, which must therefore be changed.

24. Mr. AMADO felt that the Commission might well begin its work of codification with those two topics:—subjects of international law and recognition of legal situations, especially as they were on a par with one of the questions referred to it by the General Assembly, that of the rights and duties of States. At the same time, the Commission might contemplate undertaking the codification of subjects which were " realizable ": the law of the sea, the importance of which was emphasized in paragraph 73 of the Secretary-General's Memorandum; the law of war, especially aerial warfare, a subject which might be studied jointly with item 3 (*a*) of the agenda relating to the formulation of the principles of Nürnberg; nationality and other questions of direct interest to the individual, although it seemed preferable to wait until those subjects had been referred to the Commission by the Economic and Social Council.

25. Mr. Amado stated that, taking into account the preferences of other members of the Commission, he had indicated his choice of two topics for codification. The general discussion upon which the Commission had embarked would help it to outline a plan of work in accordance with the terms of the first paragraph of article 18 of its Statute.

26. Mr. KORETSKY pointed out that there were two proposals before the Commission: first, the proposal he himself had submitted, to the effect that a sub-committee should study the question of a plan before the second session of

the Commission; and secondly, the proposal that a sub-committee should study the question during the current session.

27. Mr. SCELLE recalled that it had been agreed at the third meeting to proceed to the study of the second part of the Secretary-General's memorandum, deleting those topics which it did not seem necessary or desirable to codify at that time. The procedure suggested by Mr. Amado did not appear to conform to that which had already been adopted.

28. The CHAIRMAN agreed with Mr. Scelle and proposed that each point mentioned in the second part of the Secretary-General's memorandum should be examined in turn.

29. Mr. SPIROPOULOS thought that it would be better to begin with a general discussion of the second part of the Secretary-General's memorandum, which was divided into nine sections, each dealing with a general question which included several specific subjects. The question was whether it would be preferable to choose general questions or specific subjects included in them.

30. In other words, the Commission should decide whether it proposed simply to codify certain subjects of international law, or whether it intended drafting a code of international law. If the second course was adopted—and there was nothing in the Commission's Statute against it—a plan of codification should first be drawn up; the plan should make a distinction between subjects to be studied at once, and those which should be dealt with only in the more or less distant future. So far the only existing conventions were those on particular topics. It did not seem that the International Law Commission was called upon to duplicate a task already done; its task would seem rather to be the preparation of a general code of rules of international law.

31. He criticized the use of the word *appropriés* in the French text of article 18, paragraph 1, of the Statute as unjustifiable: every topic of international law could and should be codified.

32. Mr. LIANG (Secretary to the Commission) explained the development of article 18 and showed that the word *appropriés* had been used in the French text for drafting reasons only; there was no need to see in it an additional criterion, unless the Commission should decide otherwise.

33. Mr. CORDOVA agreed with Mr. Spiropoulos. The International Law Commission was a permanent commission of the General Assembly, and its work would continue after the codification of the first topics it selected, since its task was to promote the progressive development of international law and its codification. A general plan of international law should therefore be established first; only after that had been done should the Commission select the topics it considered " realizable " for immediate codification.

34. The word *appropriés* should not be considered as imposing an additional criterion: it was enough for the codification of a topic to be judged necessary or desirable.

35. Mr. AMADO recalled that up till that time codification had been defined as the systematization of positive law. He wondered whether the Commission should confine itself to classical topics in its choice of those to be codified, namely topics the codification of which had been attempted earlier, or whether it should take into account the new conditions arising out of the signing of the Charter and the creation of the United Nations.

36. Mr. SCELLE thought that the tremendous task before the Commission must force it to the conclusion that it was impossible to draw up a general plan of codification. The only possible solution was to choose a limited number of topics, after having decided whether they would be of a general or specific character. Such a procedure was actuated by an essentially pragmatic and not a scientific conception: the Commission must produce concrete results as soon as possible.

37. He therefore urged the necessity of choosing topics by the elimination of those which the Commission deemed unnecessary or undesirable for codification at that time. The memorandum of the Secretary-General did not contain all the possible topics, but it undoubtedly included all those the codification of which seemed particularly necessary. General subjects should be chosen first, after which it could be decided which were the specific topics on which the Commission might set to work immediately.

38. The preparation of a general treatise of international law would require too much time; moreover, that was not what the General Assembly expected of the Commission. It merely wished to know what were suitable topics for codification, even if they were not " realizable " at the existing time.

39. The CHAIRMAN shared the opinion of Mr. Scelle. There was no need to draw up a general plan, first because that was a long and delicate task and secondly, because a plan would take shape as the Commission's work progressed.

40. Mr. ALFARO agreed with Mr. Scelle that the selection of topics should be started immediately. All the members of the Commission were thoroughly acquainted with the whole field of international law; a new survey by the Commission would therefore be unnecessary. It was sufficient to draw up a list of the topics which covered the whole field of international law and to eliminate from that list topics the codification of which was not necessary or desirable at that time. A small committee could very well accomplish that task and report to the Commission, giving the reasons for its selection of those topics. Such a procedure would comply with the various suggestions submitted during the discussion and,

at the same time, with the first paragraph of article 18 of the Statute.

41. Mr. SPIROPOULOS wished to point out that, in proposing a general discussion of the second part of the Secretary-General's memorandum, he was not contradicting the proposal he had submitted at the third meeting, that that part of the memorandum should be considered subject by subject. It would naturally be advisable, before choosing the topics to be codified immediately, to determine whether the Commission wished to codify the whole of international law. He had therefore raised that question without implying that it was necessary to draw up a general plan. It was obvious that the Commission could codify only certain parts of international law at first, but that need not prevent recognition of the fact that a general plan might be useful for the Commission's future work.

42. Mr. Spiropoulos agreed with Mr. Scelle and Mr. Alfaro that the Commission should submit to the General Assembly plans for the codification of a very limited number of topics; nevertheless, it might at the same time prepare a general plan.

43. Mr. SCELLE noted that the members of the Commission were in agreement to defer the question of the general plan of codification. In that connexion he pointed out that there was no need for a long discussion on the question, since the Commission could adopt any one of the plans that appeared in the various treatises on international law that had been published up to that time.

44. He shared the views of Mr. Alfaro, except with regard to the committee proposed by the latter. The value of such a committee was questionable, since the Commission itself would not be able to avoid a further discussion of the questions dealt with by the committee.

45. Mr. AMADO, speaking as Rapporteur, asked the members of the Commission to specify exactly what they meant by " suitable topics for codification".

46. The CHAIRMAN emphasized the importance of the question the Rapporteur had raised. The point at issue was whether the members of the Commission could agree upon a common criterion which would enable them to decide what subjects of international law could be retained for codification and what others could be rejected. Certain members, among them Mr. Sandström (A/CN.4/SR. 2, para. 47), had already stated what factors, in their opinion, should be borne in mind in selecting topics for codification.

47. The survey prepared by the Secretariat did not take in either the fields already covered by existing international conventions, or subjects of private international law (A/CN.4/1/Rev.1, para. 25). In that connexion, he drew the attention of the Commission first to the danger which various jurists had indicated on several occasions of detracting from the authority of customary international law by the codifying of international law by means of conventions (see footnote 32 to paragraph 23 of the Secretary-General's memorandum), and secondly on the danger of trying unsuccessfully to codify certain subjects of international law. He recognized the cogency of Mr. Amado's remarks: the creation of the United Nations had brought about considerable modifications in international law; that fact must obviously be taken into account, but the danger of a premature crystallization of principles which had not received adequate consideration must also be borne in mind as also the danger that codification might impede the development of international law.

48. Mr. AMADO pointed out that the Commission was in no way limited to questions of international law about which there was no controversy. In his opinion, the question to decide was whether the Commission was going to select topics according to their possibility of rapid codification, or if it was going to include all topics for codification in a pre-established plan.

49. Mr. SANDSTROM could see no advantage in a discussion of the common criteria whereby the Commission should be guided in its choice of topics for codification. Criteria varied according to the topics, and the particular circumstances of each case should be taken into account.

50. Mr. SCELLE supported Mr. Sandström's recommendations. Each member of the Commission had his own personal views in regard to the criteria which should be considered in deciding whether the codification of a topic was necessary or desirable. The important thing was to establish the criteria which the Commission, as a whole, wished to adopt. The simplest method would be to undertake an immediate study of the various subjects of inernational law: the criteria would automatically appear in each case.

51. The CHAIRMAN noted that the prodecure suggested by Mr. Scelle appeared acceptable to the majority of the Commission. He therefore proposed examining the second part of the Secretariat's memorandum point by point.

(c) Subjects of international law

52. Mr. SPIROPOULOS thought that that purely theoretical question would not lend itself to codification. Just as the Civil Code did not define the persons who in civil law were subjects of law, so the code of international law, which the Commission was called upon, to some extent, to draw up, should not catalogue subjects of international law.

53. Mr. LIANG (Secretary to the Commission) explained that in the Secretariat's view the codification of subjetcs of international law was not a matter of stating purely and simply that

States, or any particular legal ntity, were subjects of international law; it was a matter of drafting rules on those subjects.

54. Mr. SCELLE was somewhat surprised by Mr. Spiropoulos' remarks. The principal articles of the French Civil Code, for example, were devoted to the question of which legal agents under French law were subjects of law. It was likewise a question of determining which individuals or bodies should be granted legal powers in international law.

55. Mr. SANDSTROM thought that the question was quite suitable for codification, but that it would be better, for the moment, not to retain it.

56. Mr. ALFARO shared Mr. Scelle's views. Ever since the San Francisco Conference, it had been recognized that the individual could be a subject of international law. He stressed that at a time when the world was witnessing the evolution of a conception according to which States alone could be subjects of international law, it was essential that rules on that question should be drawn up.

57. The three points which made up the section entitled " The General Part of International Law ", namely: subjetcs of international law, sources of international law and obligations of international law in relation to the law of the State were suitable subjects for codification.

58. Mr. BRIERLY admitted that the question of subjects of international law could be codified, but he thought that it was not advisable to do so at that time. It was true that certain international organizations, and even individuals, enjoyed international status to a certain extent. Those were still rather vague concepts, however, and, as the Chairman had pointed, out, there was a certain danger in prematurely crystallizing topics which were not yet ready for codification.

59. Mr. CORDOVA supported Mr. Scelle's remarks. The fact that the General Assembly had instructed the Commission to draw up the general principles governing crimes against peace was one more reason for favouring the codification of the question of subjects of international law. The code of international penal law which the Commission was to draw up would apply not only to States but also to individuals who had become subjects of international law.

60. Mr. FRANÇOIS and Mr. HSU shared the view that the question of subjects of international law should be codified, but not in the immediate future.

61. Mr. SCELLE pointed out that the fact that a topic was not ready for codification was not an adequate reason for the process to be deferred. He cited, as an example, a number of topics which the *Code Napoléon* had codified at a time when they had not been ripe for codification.

62. Mr. ALFARO stressed the fact that the important thing at that time was to choose the topics the codification of which seemed desirable or necessary. The question whether those topics were or were not ready for codification should be settled later; that question would undoubtedly arise in connexion with the question of the priorities to be granted to the different topics chosen.

63. Sir Benegal RAU stated that it did not matter very much whether a topic was or was not ready for codification, since the Commission was bound to give priority to the examination of the questions in items 2, 3, and 4 of its agenda.

64. Mr. SPIROPOULOS, while not wishing to stress his own point of view unduly, drew the Commission's attention to the fact that provisions concerning subjects of international law which did not define the scope of their rights would be of no practical value.

65. Mr. KERNO (Assistant Secretary-General) recalled that under the terms of article 23 of the Statute of the Commission codification could be carried out in four ways. If the Commission thought that a subject of international law was not sufficiently developed to be the subject of the recommendations contemplated in sub-paragraphs (*c*) and (*d*) of that article, it could still apply to that subject the action outlined in sub-paragraphs (*a*) and (*b*) of the same article.

66. The CHAIRMAN noted that there was a difference of opinion in the Commission as to the advisability of placing the question of subjects of international law on the list of topics for codification.

The Chairman concluded that it was preferable for the moment not to place the question on the list of topics for codification.

(d) Sources of international law

67. Mr. BRIERLY considered that from the point of view of clarity the codification of sources of international law would have more disadvantages than advantages.

68. Mr. SPIROPOULOS observed that the question was of no practical interest.

In the absence of any further remarks, the Chairman concluded that the Commission preferred not to place the question of sources of international law on the list of suitable topics for codification.

(e) The obligations of international law in relation to the law of the State

69. The CHAIRMAN pointed out that paragraphs 34, 35 and 36 of the Secretary-General's memorandum referred to the question of incorporating the provisions of international law and of validly concluded treaties in the national law of States. He personally saw no reason why the principles governing relations between two States should be incorporated in the national law of each of those States.

70. The Secretariat's memorandum quoted the advisory opinion of the Permanent Court of International Justice, according to which " in the relations between Powers who are contracting Parties to a treaty, the provisions of municipal law cannot prevail over those of the treaty ". The Court had pronounced the opinion that no State could escape its international obligations by invoking the provisions of its municipal law.

71. Mr. SPIROPOULOS considered that that subject should not be codified for the time being. States could not be forced to amend their Constitutions, for that question was exclusively within their own jurisdiction.

72. Mr. SANDSTROM acknowledged that the subject could be codified but, like Mr. Spiropoulos, he was of the opinion that it should not be done at the moment.

73. The CHAIRMAN recalled that an international convention was not the only means of codifying that topic. The Commission might perhaps limit itself to a statement affirming the priority of international law over the law of States, and leave each State free to determine the way in which it would comply with its international obligations.

74. Mr. BRIERLY pointed out that a declaration of the type suggested by the Chairman would have a certain value, but the Commission must go no further than that. States must be left to decide for themselves how they would comply with it.

75. Mr. ALFARO drew the Commission's attention to the fact that the draft declaration on the rights and duties of States, which was item 2 on the Commission's agenda, contained provisions relating to that question.

The Chairman noted that the Commission seemed to be of the opinion that it would be better to postpone until later the question of the obligations of international law in relation to the law of the State.

(f) Fundamental rights and duties of States

76. The CHAIRMAN said that that question would be examined at the same time as the draft declaration on the rights and duties of States.

The meeting rose at 6 p.m.

5th MEETING

Tuesday, 19 April 1949, at 3 p.m.

CONTENTS

Chairman: Mr. Manley O. HUDSON.
Rapporteur: Mr. Gilberto AMADO.

Present:

Members: Mr. Ricardo J. Alfaro, Mr. James L. Brierly, Mr. Roberto Córdova, Mr. J. P. A. François, Mr. Shuhsi Hsu, Mr. Vladimir M. Koretsky, Sir Benegal N. Rau, Mr. A. E. F. Sandström, Mr. Georges Scelle, Mr. Jean Spiropoulos, Mr. Jesús María Yepes.

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

Planning for the codification of international law: survey of international law with a view to selecting topics for codification. (Article 18 of the Statute of the International Law Commission) (A/CN.4/1/Rev.1) *(continued)*

(a) Recognition of States

1. The CHAIRMAN recalled that at the previous meeting he had pointed out that that subject had several aspects and had often been considered a political rather than a legal question. The recognition of States included the question of the recognition of belligerents, to which Mr. Amado had referred at the previous meeting, as well as that of insurgents. The question of collective recognition was mentioned in paragraph 42 of the Secretary-General's memorandum and observed that the transition from individual action of States to collective recognition would mark a step forward in the development of international law.

2. Mr. YEPES stated that it would be very difficult to solve the question of the recognition