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Summary record of the 79th meeting

Topic:
Other topics

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79th MEETING

Friday, 28 July 1950, at 10 a.m.

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Chairman: Mr. Georges SCELLE.

Rapporteur: Mr. Ricardo J. ALFARO.

Present:

Members: Mr. Gilberto AMADO, Mr. James L. BRIERLY, Mr. Roberto CORDOVA, Mr. J. P. A. FRANÇOIS, Mr. Manley O. HUDSON, Mr. Faris el-KHOURY, Mr. A. E. F. SANDSTRÖM, Mr. Jesús María YEPES.

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

Commission's draft report covering the work of its second session (continued)

PART VI: PROGRESS OF WORK ON TOPICS SELECTED FOR CODIFICATION

CHAPTER III: REGIME OF THE HIGH SEAS
(A/CN.4/R.7/ADD.5)¹ (*concluded*)

Paragraph 10 (paragraph 193 of the "Report")

1. Mr. HUDSON asked whether it was a good idea for the Commission to bind itself to consulting other organizations without knowing what organizations were referred to. He suggested the wording "... consultations may have to be held".²

2. Mr. FRANÇOIS agreed to the alteration.

3. The CHAIRMAN suggested "It was agreed that consultations may have to be held with other organizations, especially technical organizations which deal with...".

It was so decided.

Paragraph 11 (paragraph 194 of the "Report")

4. Mr. HUDSON suggested deleting the word "and" before "with due regard".

¹ Mimeographed document only. Parts of that document that differ from the "Report" are reproduced in footnotes to the summary records. For other parts, see the "Report" in vol. II of the present publication.

² Instead of "It was agreed that consultations should be held with other organizations dealing with the question of the protection of resources of the sea".

*Paragraph 12
(paragraphs 195 and 196 of the "Report")*

5. Mr. HUDSON felt that the words "adopted the principle" in the first line of the paragraph were too categorical. He suggested "took the view".

6. Mr. FRANÇOIS agreed to the alteration.

7. Mr. HUDSON suggested "with regard to their contiguous zones" instead of "with regard to their rights over contiguous zones", in the second paragraph.

Paragraph 13 (paragraph 197 of the "Report")

It was decided to delete the word "preliminary" before the words "exchange of views".

Paragraph 14 (paragraphs 198-201 of the "Report")³

8. Mr. HUDSON said that the continental shelf was not a legal concept but a geological phenomenon. He suggested that the paragraph read: "The Commission recognized the great importance from the economic and social point of view, as well as juridical, of the exploitation of sea bed and subsoil of the continental shelf".³

9. Mr. FRANÇOIS had no objection to the alteration.

10. The CHAIRMAN thought it would be better to express it as follows: "The Commission recognized the great importance of the exploitation of sea bed and subsoil of the continental shelf, from the economic and social, as well as from the juridical point of view".

11. Mr. YEPES felt that the motion was not sufficiently well crystallized. It would be better to say "... the importance of the exploitation from the economic and social point of view, and the importance of establishing a juridical regime".

12. The CHAIRMAN suggested "... the economic

³ Paragraph 14 read as follows:

14. The Commission recognized that the continental shelf is not only a legal concept, but is also highly important from the economic and social points of view. Methods now exist whereby submarine resources may be exploited for the benefit of mankind. Legal concepts likely to impede this development should be removed. One member of the Commission expressed the view that the exploitation of the products of the continental shelf should be an international responsibility. Others considered that there were insurmountable difficulties in the way of internationalization. The Commission adopted the principle that a riparian State might exercise control and jurisdiction over the subsoil and sea bed of submarine areas situated outside its territorial waters with a view to exploring and exploiting the natural resources to be found there. Such control and jurisdiction should not to any considerable extent affect the right to free navigation on the waters above such submarine areas or the right to fish freely in such waters. The area over which such a right of control and jurisdiction may be exercised must be delimited; but it need not necessarily depend on the existence of a continental shelf. The Commission considered that it would be unjust to countries having no continental shelf if the granting of the rights in question were made dependent on the existence of such a shelf, since certain countries which had none might also wish to exploit the sea bed and its subsoil.

It is perfectly clear that the extent of the region in question should be delimited. That delimitation—like the delimitation of the regions allocated to the different countries—should be decided later. It must not be possible for States to penetrate into the region attributable to another State for purposes of

and social importance of the exploitation, and the importance of its juridical regime”.

13. Mr. el-KHOURY pointed out that the juridical regime had still to be established.

14. Mr. YEPES suggested in the circumstances “... the juridical regime to which ... will be subject”.

15. Mr. AMADO wondered whether it was necessary to state in the second sentence “for the benefit of mankind”.

16. The CHAIRMAN thought it was. The continental shelf had an importance for mankind in general.

17. Mr. YEPES recalled that President Truman had expressly mentioned “long range world-wide need”.

18. Mr. FRANÇOIS thought it would be better not to mention any particular proclamation.

19. Mr. KERNO (Assistant Secretary-General) remarked that the French text had “*toute l'humanité*”; whereas the English text read “mankind” only.

20. The CHAIRMAN suggested “*au bénéfice de l'humanité*”.

21. Mr. HUDSON suggested that the third sentence read “Legal concepts should not impede its development”.

22. Mr. KERNO (Assistant Secretary-General) pointed out that the spirit of the text was “strictly legal concepts”.

23. Mr. YEPES asked why not use the expression “The juridical regime should facilitate its development”, thus giving the sentence an affirmative form.

24. Mr. HUDSON said that the idea was that “legal concepts should not impede...”. With that idea in mind, the Commission could adopt a constructive attitude. At the present time there were obstacles to be

control and jurisdiction. Moreover, care must be taken not to affect the concept of the high seas to a greater extent than is required by the interests concerned.

In the opinion of the Commission the sea bed and subsoil of submarine areas above referred to are not to be considered as either *res nullius* or *res communis*. The sea bed and subsoil are subject to the exercise, by the littoral States, of a right of control and jurisdiction for the purpose of their exploration and exploitation. That control and jurisdiction are equivalent to sovereignty. On the other hand, there can be no question of a right of sovereignty, or of rights of control and jurisdiction, over the waters covering those parts of the sea bed. Those waters remain under the regime of the high seas. Navigation and fishing rights may be impaired only in so far as is strictly necessary for the exploitation of the sea bed and subsoil. For works and installations established in the waters of the high seas for working the sea bed and subsoil, special security zones might be claimed, but they could not be classed as territorial waters. The Commission considers that protection of the resources of the sea should be subject to general regulations for all the high seas as provided in paragraph (g); it should thus be independent of the concept of the continental shelf.

The majority of the Commission was of the opinion that since the continental shelf is neither *res nullius* nor *res communis* it is subject *ipso jure* to the exercise of control and jurisdiction by the littoral State with a view to present and future exploration of its resources. The concept of a “notional” occupation, therefore, has no *raison d'être*.

The Commission requested the Rapporteur to include in his report to the next session certain concrete proposals based on the principles above set forth.

removed before any progress could be made with the problem.

25. The CHAIRMAN felt that the negative formula had its points. The Commission was delimiting the issue. The sentence might state that “There must be no juridical construction likely to impede this development”.

26. Mr. YEPES suggested the addition of “... rather, it should promote the development”.

27. The CHAIRMAN said that for once he favoured allowing greater latitude to governments. He read out the sentence “One member of the Commission expressed the view that the exploitation of the products of the continental shelf should be an international responsibility”.

28. Mr. HUDSON wondered whether Mr. Hsu, who had put forward that view, wished that wording to be kept.

29. Mr. FRANÇOIS observed that the same view had been expressed in Brussels in 1948 by the International Law Association. He had inserted the sentence as an indication that he had not lost sight of that viewpoint.

30. The CHAIRMAN pointed out that the text of the report referred to a member of the Commission. He thought it would be advisable to replace the word “should” by the word “might”.

31. Mr. FRANÇOIS and Mr. HUDSON were opposed to that. Mr. Hsu had expressed his feelings quite as definitely as that.

32. Mr. HUDSON thought it would be better to begin the sixth sentence with the words “The Commission took the view”.

33. Mr. ALFARO thought there was a principle involved and that the Commission had adopted it.

34. Mr. HUDSON thought it was merely a directive given to the Special Rapporteur.

35. The CHAIRMAN said that in the French text of the next sentence he would prefer “*dans une mesure notable*” rather than “*dans une mesure importante*”.

36. Mr. ALFARO agreed to the emendation.

37. Mr. BRIERLY thought the word “considerable” should be kept in the English text.

38. Mr. ALFARO suggested “do not... affect”.

39. Mr. HUDSON preferred “should not to any considerable extent affect the exercise of the right...”.

40. Mr. YEPES submitted that it was actual navigation that was referred to.

41. The CHAIRMAN shared the opinion that it would be better to say “affect the exercise of the right”.

42. Mr. HUDSON was for deleting the end of the last sentence of the paragraph, from the words “since certain countries...” The notion was contained in the beginning of the sentence. Obviously it was impossible to exploit the resources of the ocean bed.

43. The CHAIRMAN remarked that it might eventually be possible.

44. Mr. HUDSON thought it would be time to go into the matter when it did become possible, and he suggested “A State having no continental shelf, but very

shallow waters, may exercise the same right". It was the only wording he thought acceptable. Any other would seem ridiculous to an expert.

45. Mr. AMADO said that the question was well reported in the summary records. Mr. Brierly had suggested the wording: "Control and jurisdiction do not depend on the presence of a continental shelf". There had been some discussion as to whether Mr. Córdova's proposal should be adopted. Mr. Brierly had felt that Mr. Córdova was misinformed (See 67th meeting, paras. 53 and 57). Mr. Hudson was right—it was like explaining something that was already perfectly obvious. If the Commission stood by its decision, less categorical formula might be found, or the passage could be deleted.

46. Mr. ALFARO appreciated Mr. Hudson's fears that the sentence would appear ridiculous to experts who were well aware that the ocean bed could not be exploited. Any fears would be allayed if the end of the phrase were eliminated; hence he suggested ending the paragraph after the words "existence of such a shelf".

47. Mr. HUDSON suggested in the previous phrase "must be limited" instead of "must be delimited"—a physical impossibility. The end of the sentence would then run: "but where the depth of the water permits exploitation it does not depend on the existence of a continental shelf".

The Commission approved.

48. Mr. ALFARO said that the idea expressed by Mr. François in the following paragraph referred to cases where two or more States had rights over one and the same continental shelf. It was therefore necessary to determine just how far a State could go.

49. The CHAIRMAN thought that in that paragraph the word "delimited" could be used.

50. Mr. HUDSON suggested deleting the paragraph and substituting Mr. Alfaro's proposal that States should agree on the delimitation of the continental shelf.

51. Mr. FRANÇOIS said he had inserted the paragraph to meet Mr. Alfaro's wishes.

52. Mr. CORDOVA said he would prefer the delimiting to be done by general regulation. He suggested leaving it to the Rapporteur to formulate a principle.

53. Mr. HUDSON felt it was impossible to make a general rule.

54. The CHAIRMAN said the same difficulty arose as in territorial waters, and that the hope of finding a general solution had not been given up.

55. Mr. HUDSON could not see how France, Great Britain, the Netherlands and Panama could control the way in which the United States and Mexico delimited the continental shelf in the Gulf of Mexico.

56. Mr. CORDOVA declared that if delimitation was international the smaller States would have a better sense of security.

57. The CHAIRMAN thought a reference to interstate conventions was called for; it should be indicated too that bilateral conventions were desirable so long as there was no general rule.

58. Mr. CORDOVA suggested that it be left to the Rapporteur to go into the question. Mention might be made of the fact that one member of the Commission would like to see the delimitation carried out by international agreement.

59. Mr. ALFARO said it was impossible to allow a State to penetrate into the region attributable to another State for purposes of control and jurisdiction. He suggested that the text be kept until another formula were found. Where the continental shelf could be occupied by several adjacent States, there should be some system preventing other States from penetrating into it.

60. Mr. CORDOVA pointed out that there were two possibilities—either to leave it to the States concerned to settle the matter, or to draw up international regulations. The exploitation of the subsoil was always an exception to the rule of freedom of the high seas.

61. Mr. HUDSON felt that was not so, since the freedom of the high seas continued to apply.

62. Mr. CORDOVA considered that it was nevertheless an exception; hence the community of nations would be well advised to delimit the rights of States which had a special interest in exploitation. Mankind must have its say. The report said as much at the beginning of paragraph 14 (paragraph 198 of the "Report").

63. Mr. HUDSON suggested "Where two or more neighbouring States are interested in the submarine area of the continental shelf, boundaries must be delimited."

64. Mr. el-KHOURY asked who was to do the delimiting.

65. Mr. CORDOVA replied that the Rapporteur might make suggestions.

66. Mr. FRANÇOIS and Mr. ALFARO accepted Mr. Hudson's proposal.

67. Mr. ALFARO said that the proposal arose out of a paragraph from the International Law Association's conclusions:

II. "Where two or more States border outside their territorial waters on the same continental shelf, control and jurisdiction over its sea-bed and subsoil can be vested in such States by proclamations to the exclusion of all other nations, and such States can by mutual agreement (to the exclusion of all other nations) divide between them such common part of the continental shelf."

That was what he had referred to when he said some system must be found.

68. Mr. KERNO (Assistant Secretary-General) asked whether Mr. Hudson's formula was to replace the paragraph in its entirety. The final sentence was the only one which made any reference to the freedom of the high seas. In the rest of the paragraph it was only referred to by implication.

69. After an exchange of views in which the CHAIRMAN, Mr. ALFARO, Mr. CORDOVA, Mr. FRANÇOIS and Mr. HUDSON took part, *it was decided* that the paragraph in question would comprise Mr. Hud-

son's text followed by the third sentence of the paragraph as given in the draft report.

70. Mr. ALFARO suggested beginning with the words: "The Commission agreed that, where two or more States . . .".

71. The CHAIRMAN and Mr. HUDSON were not in favour of the third sentence in the third sub-paragraph of paragraph 14 ("That control and jurisdiction are equivalent to sovereignty").

72. Mr. HUDSON suggested: "the exercise of navigation and fishing rights" instead of "navigation and fishing rights". He also suggested that the sentence referring to the question earlier in paragraph 14 be deleted to avoid repetition.

73. Mr. SANDSTRÖM wondered whether what was now being said was not different from what had been said elsewhere. It was conceivable that navigation might be so heavy and fishing so important that priority should be given to those interests rather than to exploitation of the sea bed and subsoil.

74. Mr. FRANÇOIS pointed out that that question had not been discussed. Hence, it could not appear in the report.

75. Mr. HUDSON suggested deleting the final sentence of the antepenultimate paragraph, on the grounds that the point was already mentioned in paragraph 10 (paragraph 193 of the "Report").

76. Mr. FRANÇOIS felt that the sentence clinched the idea.

77. Mr. BRIERLY felt that it went too far. It was impossible to conceive of a general code of rules for the protection of the resources of the sea.

78. Mr. FRANÇOIS pointed out that, notwithstanding, proclamations by some of the South American countries spoke of sovereignty in the matter of protection of the resources of the sea in those regions. It might seem strange if the Commission made no mention of it. It would be a good thing to mention protection of the resources of the sea.

79. Mr. HUDSON pointed out that they had already been mentioned.

80. Mr. YEPES thought Mr. Francois was right; the report would be more lucid if the sentence were kept.

81. Mr. CÓRDOVA said the point had already been mentioned in paragraph 10 (paragraph 193 of the "Report").

82. Mr. FRANÇOIS suggested "Protection of the resources of the sea should be independent of the concept of the continental shelf".

83. Mr. ALFARO felt the sentence should be kept; but the words "as provided in paragraph (g)" might well be deleted.

84. Mr. HUDSON and Mr. BRIERLY accepted Mr. François' formula.

85. The CHAIRMAN did not see the use of the next to the last sub-paragraph.

86. Mr. FRANÇOIS said that Mr. Alfaro had inserted it.

87. Mr. ALFARO had thought the passage should be inserted on the grounds that Mr. Brierly had laid stress on the problem; indeed it had been the central point in the discussion concerning the continental shelf. The Commission had voted on four questions put by Mr. Hudson, based on Mr. Brierly's speech. It had first of all decided that the continental shelf was neither *res nullius* nor *res communis*. It had next voted in favour of the question which was a necessary consequence of its decision that the continental shelf was neither *res nullius* nor *res communis*. The sub-paragraph was important. With regard to the final sentence, surely it figured in Mr. Brierly's report.

88. Mr. HUDSON thought it was a good idea to say "the submarine area, sea bed and subsoil of the continental shelf is subject to the exercise . . .". If the expression *ipso jure* were used, it meant that the Commission regarded the area as belonging to the littoral State, even where that State did not exercise its control and jurisdiction. In such instances it was possible to speak of sovereignty, but there could be no question of exercise if there was none. He would delete the paragraph.

89. The CHAIRMAN recalled that the Commission had already admitted control and jurisdiction. It might perhaps be useful to add that control and jurisdiction were independent of occupation.

90. Mr. FRANÇOIS recalled that the Commission had accepted the proposal by a very slender majority.

91. Mr. HUDSON said that the text voted on at the time was different from the one now before the Commission.

92. Mr. KERNO (Assistant Secretary-General) said that the report now before the Commission was a technical report. But the wording of the passage in question called for modification, since the reader would find it incomprehensible. The Rapporteur had inserted the passage on the grounds that the Commission had voted separately on the four points put forward by Mr. Hudson. But the report already referred in the preceding paragraph to the question of *res nullius* and *res communis*. It was surely unnecessary to repeat it once again. The only point on which explanation seemed necessary was that in the Commission's opinion the exercise of control and jurisdiction was independent of occupation. But all that should be said more simply. The next to the last sub-paragraph might be deleted entirely, and a phrase added after the second sentence of the preceding sub-paragraph, to indicate that the exercise of control and jurisdiction was independent of occupation.

93. Mr. CÓRDOVA, Mr. YEPES, Mr. BRIERLY and Mr. FRANÇOIS agreed.

94. Mr. HUDSON suggested the insertion of the sentence "The exercise of such control and jurisdiction is independent of the notion of occupation".

95. The CHAIRMAN pointed out that if that were done the next to the last sub-paragraph would fall out automatically.

The suggestions were accepted.

96. Mr. HUDSON suggested that in the English text of the final paragraph the word "certain" be deleted,

and that in both English and French versions the word "principles" be replaced by the word "conclusions".

It was so decided.

PART IV: QUESTION OF INTERNATIONAL CRIMINAL JURISDICTION (A/CN.4/R.7/ADD.7)⁴

97. The CHAIRMAN invited the Commission to turn to Part IV of the report, concerning the establishment of an international criminal organ for the trial of persons charged with genocide or other crimes.

Paragraph 4 (paragraph 131 of the "Report")

98. Mr. HUDSON suggested deleting the words stating that Mr. Sandström's opinion was negative.

99. Mr. ALFARO explained that he had drafted the report in deference to the Chairman, who had felt when the Commission discussed the reports submitted by Mr. Sandström and Mr. Alfaro himself, that Mr. Sandström's report should be discussed first as representing the more negative view of the question.

100. The CHAIRMAN replied that the word "negative" did not interpret him properly; and he suggested altering the first sentence of paragraph 4 to stop after the words "of Mr. Sandström", and to replace the word "opinion" by the word "report".

It was so decided.

101. Mr. HUDSON proposed the deletion of the words "or not" in the third line of the English text.

102. The CHAIRMAN suggested that at the end of the last sentence in the English text, "in the first case" should be replaced by "in that case".

It was so decided.

Paragraph 5 (paragraph 132 of the "Report")⁵

103. Mr. HUDSON suggested that in the first and second lines "the... court" should read "a... court", and that in the English text the word "a"

⁴ See footnote 1.

⁵ Paragraph 4 read as follows:

"4. It was decided to consider first the report of Mr. Sandström. At the opening of his exposition, Mr. Sandström raised the question whether the judicial organ mentioned in the resolution was to be created necessarily as an organ of the United Nations, as in that case an amendment of the Charter of the United Nations would be required."

⁶ Paragraph 5 read as follows:

"5. Several members of the Commission held the view that the international criminal court could be created by means of a convention open to the signature of States, members and non-members of the United Nations; that, therefore, such court was not necessarily envisaged as an organ of the United Nations; that Article 7 of the Charter contains a mere enumeration of the principal organs of the United Nations created by the Charter itself; that said article does not amount to a limitation on the possibility of creating new subsidiary organs and that, therefore, the creation of the international judicial organ contemplated by the resolution does not require an amendment of the Charter. It was pointed out, furthermore, that the substantial question before the Commission was whether it was desirable and possible to create an international criminal jurisdiction, and that the problem with which the General Assembly was concerned would be the same whether a judicial organ were set up within the framework of the United Nations or outside the organization."

should be added after the word "such". In lines 6 and 7 he suggested "does not limit" instead of "does not amount to a limitation on"; in line 9, "would", instead of "does" and in line 10, "essential" instead of "substantial".

104. Mr. LIANG (Secretary to the Commission) thought that in the French text (same paragraph) the words "*de fond*" should be replaced by the word "*essentielle*".

It was so decided.

Paragraph (paragraph 133 of the "Report")⁷

105. The CHAIRMAN, Mr. BRIERLY and Mr. HUDSON found the sense of the paragraph obscure.

106. Mr. ALFARO explained that he had tried to render as faithfully as possible Mr. Sandström's argument that he could not conceive how a court could function effectively; that he foresaw too many obstacles in the way of its functioning; and therefore concluded that it was neither possible nor desirable to establish it.

107. Mr. SANDSTRÖM thought the words "concerning the meaning of the two terms" in lines 2 and 3 could be deleted, and that the wording of the paragraph altered accordingly.

108. The CHAIRMAN thought the paragraph might be simplified if the following wording were adopted "On the question of desirability and possibility of establishing an international criminal tribunal, Mr. Sandström stated that he could only consider the problem in a concrete and not an abstract manner; that in his judgment it was impossible to consider separately the questions of desirability and possibility". In the French text he suggested substituting the word "*désirabilité*" for "*opportunité*" and "*souhaitable*" for "*opportun*".

109. Mr. LIANG (Secretary to the Commission) pointed out that General Assembly resolution 260 B (III) used the expression "*s'il est souhaitable*".

The CHAIRMAN's proposals were accepted.

Paragraph 7 (paragraph 134 of the "Report")⁸

110. Mr. BRIERLY suggested replacing "will have"

⁷ Paragraph 6 read as follows:

"6. On the question of desirability and possibility of establishing an international criminal tribunal, Mr. Sandström stated that, concerning the meaning of the two terms, the desirability could only be considered in relation to the judicial organ as it could be envisaged in function; that consequently he could only consider the problem in a concrete, and not in an abstract manner; that in his judgment, it was appreciation of the judicial organ in this light that really mattered, and that it was impossible under such conditions to consider separately the questions of desirability and possibility."

⁸ Paragraph 7 read as follows:

"7. He also stated that the judicial organ envisaged by the General Assembly, whether it be established within or without the framework of the United Nations, would have, especially in the case of important international crimes, the defects he had pointed out in his report. In such cases the judicial organ would be ineffective. According to Mr. Sandström, a judicial organ of such nature as had been envisaged was not desirable unless it was efficient. For these reasons, Mr. Sandström concluded that the establishment of the judicial organ was not desirable."

by "would have" while the CHAIRMAN suggested that the words "either incompetent or" be deleted.

It was so decided.

111. After an exchange of view, *the Commission decided* to replace the words "In his view" by the words "In such cases". It also decided to delete the end of the third sentence of the paragraph "and it was not possible to establish an efficient organ"; and at the beginning of the final sentence, instead of "Under these conditions" to say "For this reason".

Paragraph 8 (paragraph 135 of the "Report")⁹

112. Mr. HUDSON suggested deleting the first part of the second sentence of the paragraph up to and including "General Assembly".

The proposal was rejected.

113. The CHAIRMAN suggested that the beginning of the second sentence of the paragraph should read "After referring to the three questions...".

The proposal was accepted.

114. Mr. BRIERLY proposed the wording "who disturb international public order" instead of "who disturbed the international public order". He also suggested deleting in the English text the words "as responsible" after "William of Hohenzollern".

It was so decided.

115. Mr. HUDSON said that the word "universal" in the sentence beginning with "Mr. Alfaro adverted to the universal mobilization of public opinion in behalf of an international criminal jurisdiction" on page 4, line 1, was too strong, and might be deleted. In the final sentence of the English text he suggested "were" instead of "was".

It was so decided.

Paragraph 9 (paragraph 136 of the "Report")

116. Mr. CÓRDOVA felt he should state that the whole of the paragraph was a summary of the views of the special rapporteurs rather than a report by the Commission. It would not be essential to retain the paragraph.

117. Mr. AMADO was also of this opinion. The report was not there to advise the Rapporteur, but to state what decisions had been taken by the Commission.

118. Mr. ALFARO explained that on that particular topic there were two rapporteurs with divergent views. He had felt he should give the points of view of both. The conclusions reached by the Commission were given later on in the report.

119. The CHAIRMAN commended the way in which

⁹ The beginning of paragraph 8 read as follows:

"8. Discussion of the report presented by Mr. Alfaro began at the forty-second meeting. After referring to the three questions put to the Commission by the General Assembly, he took up first the point of desirability and stated that if desirable means useful and necessary the creation of an international criminal jurisdiction vested with power to try and punish those persons who disturb international public order was desirable as an effective contribution to the peace and security of the world. In the community of States,..."

Mr. ALFARO had dealt with that part of the report. 120. Mr. HUDSON thought Mr. Alfaro had been wise in explaining the position as he had done. He had given a very clear picture of the discussion. There was no reason why that section of the report should be altered. He would merely like to point out that the last lines of the paragraph were not very clear. He did not think that draft statutes for criminal bodies had been adopted by the League of Nations or United Nations; they had merely been proposed. Hence the last lines might read as follows: "and that seven different draft statutes for international criminal organs had been formulated (A/CN.4/7/Rev.1, pp. 47-147) or submitted to the League of Nations, the United Nations and law associations".¹⁰

121. Mr. ALFARO said that he would redraft the sentence more precisely, bearing in mind the observations just made.

112. Mr. HUDSON would have liked the phrase in the second sentence to read "that the Geneva Convention of 1937 signed by... nations agreed to create an international judicial organ...".

123. Mr. ALFARO asked that the text of the report should not be altered at that point. It was important to state that the nations had agreed to create an international judicial organ. He had not known when drafting his report how many nations had signed the Convention, but the number should be inserted in the final version of the report which would be completed by the Secretariat.

124. The CHAIRMAN suggested deleting the word "international" preceding "terrorism".

It was so decided.

Paragraph 10 (paragraph 137 of the "Report")

125. Mr. BRIERLY suggested that the words "that a tribunal would be unable" be substituted for the words "that it would be unable"; and that the word "only" be inserted before the word "because". He further proposed altering the end of the English text of the paragraph to read "that punishment of aggressors would depend on their being on the losing side, and that no illusory ideas should be encouraged as to the possibility of setting up the organ in question", with corresponding alterations to the French text.

It was so decided.

Paragraph 11 (paragraph 138 of the "Report")

126. Mr. HUDSON suggested deleting the words "and as a matter of fact provision is made in the Charter of the United Nations for coercive action by means of armed force" at the end of the paragraph; and the words "including Mr. Alfaro" after "of the Commission" at the beginning of the paragraph.

¹⁰ In document A/CN.4/R.7/Add.7, that sentence read as follows: "...had been formulated (A/CN.4/7/Rev.1, pages 47 to 147), presented to or adopted by the League of Nations, by the United Nations and by law associations."

¹¹ It read as follows: "That punishment of aggressors depends on the alternative that they be on the losing or the winning side, and that no illusory ideas should be entertained as to the possibility..."

Paragraph 11 was accepted with the alterations suggested by Mr. Hudson.

Paragraph 12 (paragraph 139 of the "Report")

127. Mr. HUDSON felt that paragraph 12 was out of place, as it gave Mr. Alfaro's opinion.

128. Mr. ALFARO replied that the paragraph expressed not only his own views but those of other members of the Commission. Hence he suggested keeping the paragraph, and altering the beginning to read "It was pointed out by some members . . ." instead of "by Mr. Alfaro". The words "Finally Mr. Alfaro stated his view that" in line 4 would be deleted, the sentence to begin "Even if it were found that . . .".

The paragraph was accepted with the above alterations.

Paragraph 13 (paragraph 140 of the "Report")

129. Mr. BRIERLY suggested that the word "thorough" at the beginning of the English text of the paragraph be replaced by the word "extended".

It was so decided.

Paragraphs 14 - 17
(paragraphs 141 - 144 of the "Report")

130. Paragraph 14 was accepted with a slight alteration to the English text, the word "it" in the first line being deleted.

131. Paragraph 15 was accepted with a slight alteration to the English text, the word "necessitated" to read "would necessitate".

Paragraphs 16 and 17 were accepted without modification.¹²

Paragraph 18 (paragraph 145 of the "Report")¹³

132. Mr. HUDSON pointed out that the decision quoted in the paragraph had been taken to cater for the opinions expressed during the discussion, but it was not advisable to reproduce the text in the report. The paragraph might read: "After an exchange of opinions on the problem, the Commission decided that the establishment of a Criminal Chamber of the International Court of Justice was possible by amendment of the Court's Statute, but it did not recommend it."

¹² However, the text read as follows:

"16. Mr. Alfaro stated in his report that with this proviso the creation of such a Criminal Chamber was possible. At the opening of the discussion of this part of his report he stated that such a view did not mean that he favoured the creation of a Criminal Chamber of the International Court of Justice.
"17. Mr. Sandström stated his agreement with views expressed by some members of the Commission against the creation of a Criminal Chamber of the International Court of Justice."

¹³ Paragraph 18 read as follows:

"18. After an exchange of opinions on different aspects of the problem the following decision was taken:

"In making the foregoing answers to the question which the Commission was invited to study, the Commission has paid attention to the possibility of establishing a Criminal Chamber of the International Court of Justice. That course is possible by amendment of the Court's Statute, but the Commission does not recommend it."

133. Mr. ALFARO accepted the text as an improvement on his own. But it must be remembered that the Commission had been invited to study the question. Hence the text of the paragraph should surely state that it had taken the decision in compliance with the request. He would try to combine Mr. Hudson's proposal and his own for the final report.

Mr. Alfaro's proposal was accepted.

The meeting rose at 1 p.m.

80th MEETING

Friday, 28 July 1950, at 3.30 p.m.

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Chairman: Mr. Georges SCALLE.

Rapporteur: Mr. Ricardo J. ALFARO.

Present:

Members: Mr. Gilberto AMADO, Mr. James L. BRIERLY, Mr. Roberto CORDOVA, Mr. J. P. A. FRANÇOIS, Mr. Manley O. HUDSON, Mr. Faris el-KHOURY, Mr. A. E. F. SANDSTRÖM, Mr. Jesús María YEPES.

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

Commission's draft report covering the work of its second session (*continued*)

PART VI: PROGRESS OF WORK ON TOPICS SELECTED FOR CODIFICATION (*concluded*)

CHAPTER II: ARBITRAL PROCEDURE

(A/CN.4/R.7/ADD.6)¹

Paragraph 1 (paragraphs 165 - 166 of the "Report")

1. Mr. HUDSON wondered whether it was necessary in the first paragraph to say "a discussion of the first three of these paragraphs".

¹ Mimeographed document only. Parts of that document that differ from the "Report" are reproduced in footnotes to the summary records. For other parts, see the "Report" in vol. II of the present publication.