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Summary record of the 83rd meeting

Topic:
Other topics

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the top of the ladder, death had suddenly claimed him. He personally would not easily forget the loss.

49. He thanked the Commission for the mark of its esteem, which would be greatly appreciated in Brazil.

The meeting rose at 3.30 p.m.

83rd MEETING

Thursday, 17 May 1951, at 10 a.m.

CONTENTS

	Page
Election of officers	4
Programme of work	4
General Assembly resolution 484 (V) of 12 December 1950: Review by the International Law Commission of its Statute with the object of recommending revisions thereof to the General Assembly (item 1 of the agenda)	5
General debate	5

Chairman: Mr. Georges SCELLE;
later Mr. James L. BRIERLY.

Present:

Members: Mr. Ricardo J. ALFARO, Mr. Gilberto AMADO, Mr. Roberto CORDOVA, Mr. J. P. A. FRANÇOIS, Mr. Shuhsi HSU, Mr. A. E. F. SANDSTRÖM, Mr. Jean SPIROPOULOS, 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.

Opening of the meeting

1. The CHAIRMAN thanked the members of the Commission for the temporary arrangements they had made at the previous meeting owing to his absence. He was deeply touched by such kind consideration.

Election of officers

2. The CHAIRMAN reminded the Commission that at the opening of its second session it had decided that all its officers should be changed each year. He asked members to submit nominations for the chairmanship.

3. Mr. AMADO proposed that the Commission should entrust the chairmanship to Mr. James Leslie Brierly whose unchallenged authority in the sphere of international law was recognized by all the members. The Commission had had successively as chairmen Mr. Hudson and Mr. Scelle whose energy and wisdom it had duly appreciated. At a time when the world was concerned with questions of international law and when all eyes were turned on the Commission, it was necessary once again to place the conduct of the debates in the hands of a jurist of eminence, as the Commission would be doing if it adopted his proposal.

4. Mr. ALFARO seconded the nomination of Mr. Brierly.

5. Mr. CORDOVA thought that it was the Commission's desire to elect Mr. Brierly unanimously.

Mr. James Leslie Brierly was unanimously elected Chairman of the Commission.

Mr. Brierly took the chair.

6. The CHAIRMAN said that he was sincerely and deeply sensible of the honour done him by the Commission in making him its Chairman for one year. He was well aware of the responsibilities awaiting him after the example given him by his predecessors, Mr. Hudson and Mr. Scelle, who had distinguished themselves, the one by his driving force and ruthless efficiency, and the other by his golden tongue and gentle manners. He would endeavour to follow their example and to be "*vir fortis in re, suavis in modo*". He congratulated the retiring Chairman on his recovery and hoped that he would in future enjoy the best of health.

7. According to an old tradition, when a new Speaker was elected in the House of Commons, he solemnly presented himself before the King and read an address affirming his loyalty and zeal. The address always ended with these words: "begging your Majesty to put the best construction on all my actions". Finding himself in a similar position, he assured the Commission that any errors he might make would not be due to intentional discourtesy.

8. He asked the members of the Commission to submit nominations for the remaining offices.

9. Mr. ALFARO, seconded by Mr. CORDOVA, proposed the nomination of Mr. Shuhsi Hsu as first Vice-Chairman. He did not doubt that, in view of his profound legal knowledge and the zeal he had displayed in the Commission as a member and in the General Assembly as the Chinese representative, Mr. Hsu would be unanimously elected.

Mr. Shuhsi Hsu was unanimously elected first Vice-Chairman of the Commission.

10. Mr. SPIROPOULOS, seconded by Mr. SANDSTRÖM, paid tribute to the authority of Mr. Jesús María Yepes, and proposed that the Commission appoint him second Vice-Chairman.

Mr. Jesús María Yepes was unanimously elected second Vice-Chairman of the Commission.

11. Mr. SANDSTRÖM, supported by Mr. HSU and Mr. AMADO, emphasized the achievements of Mr. Roberto Córdova as a member of the commission and proposed that he be entrusted with the duties of Rapporteur.

Mr. Roberto Córdova was unanimously elected Rapporteur of the Commission.

Programme of work

12. The CHAIRMAN recalled that, at the previous meeting, the Commission had decided to have a preliminary general discussion on the question of the revision of its Statute (item 1 of the agenda) and then, provided Mr. Scelle agreed, to go on to arbitral procedure (item 5).

In order to give Mr. Scelle a few days grace before his report was discussed, the Commission might, once the general discussion on the Statute was finished, go on to examine the Report on the Law of Treaties which he himself had submitted (item 4 (a)).

It was so decided.

**General Assembly resolution 484 (V) of 12 December 1950:
Review by the International Law Commission of its
Statute with the object of recommending revisions thereof
to the General Assembly (item 1 of the agenda)**

GENERAL DEBATE

13. Mr. HSU said he had taken part in the work of the Sixth Committee of the General Assembly when it examined the question of possible revision of the Commission's Statute. He had supported the proposal which had led the Sixth Committee to recommend the General Assembly to ask the Commission to review its own Statute. He had felt that it was right that the Commission should be given the privilege and the responsibility of that task. The experience it had acquired as to the way in which the Statute functioned made it incumbent upon the Commission to submit the appropriate recommendations to the General Assembly.

14. Revision of the Statute had been envisaged ever since it was drawn up. At the outset, it was intended to be provisional, as the Chairman would no doubt remember, since, like himself, he had taken part in 1947 in the work of the Committee for the Progressive Development of International Law and its Codification. Hence the time had come to tackle that problem, to decide whether it was advisable to undertake the revision, and what sort of revision should be recommended. Seven distinct suggestions had been put forward during the discussions in the Sixth Committee — six by the United Kingdom delegation, and one by the Yugoslav delegation.

15. The question of the emoluments paid to the members of the Commission had, thanks to the efforts of Mr. Spiropoulos, already been settled by the General Assembly and the matter could be regarded as closed, unless the Commission desired to re-open it.

16. The term of office of the members of the Commission had been provisionally extended from 3 to 5 years. The General Assembly had, however, taken no final decision on that point and it was for the Commission to consider whether five years was the most satisfactory period. That question should not be difficult to settle.

17. The independence of members of the Commission vis à vis the Governments of which they were nationals did not raise any serious problem, since it was already implicitly provided for in the Statute and, in particular, by the two facts that the members of the Commission were not nominated but elected (article 3), and that the General Assembly, before electing members, satisfied itself that the candidates individually possessed the qualifications required and that in the Commission as a whole representation of the main forms of civilization and of the principal legal systems of the world was assured (article 8). There could, however, be no objection

to including in the Statute a more specific reference to the independence of the members of the Commission.

18. The extension of the term of office of members who, on its expiry, had not yet completed certain work on which they were engaged, had been suggested to the Sixth Committee by the Yugoslav delegation. That was a further question for consideration which the Commission should be able to resolve quite easily. To his mind the three following suggestions made to the Sixth Committee were more important: The possibility of the Commission availing itself of the services of rapporteurs who were not members of the Commission invited no serious objections. It seemed to follow logically from the existing Statute and should accordingly be envisaged.

19. During the discussions in the Sixth Committee, the suggestion had also been made that Article 17 of the Statute should be modified. That article gave the Commission the task of carrying out work entrusted to it by various international organs other than the General Assembly. The members of the Commission might perhaps consider that, if the existing methods of work were to be retained, such duties might become somewhat onerous. The solution to be recommended to the General Assembly should not, in any case, be too difficult to find.

20. Finally, it had been suggested that certain members be appointed on a full-time basis. That suggestion would require careful consideration, since it might be thought likely to render the election of members more complicated. As it was, both the personal qualifications required and considerations of geographical distribution had to be taken into account. If a distinction between two categories of members were introduced, their election would become more difficult. He himself doubted the advisability of a suggestion which, if adopted, would tend to split the Commission into two groups.

21. He would, however, like to put a few tentative ideas to the Commission with a view to assisting it in its enquiries.

22. He thought, for instance, that the Secretariat might participate to a greater extent in the Commission's work. The members of the Committee for the Progressive Development of International Law and its Codification had recommended, in 1947, that the members of the International Law Commission be appointed on a full-time basis. Had the General Assembly adopted that solution, problems such as the extension of the term of office of rapporteurs or the revision of Article 17 would not have arisen. If the Commission could ask the Secretariat to take over a larger part of its tasks, it would be spared the necessity of considering whether there was any occasion for some of its members to serve on a full-time basis, and the rapporteurs too might possibly be delighted to see their burden lightened. The Legal Department was the branch of the Secretariat with the smallest staff. If such a task were assigned it, its staff would have to be increased and the Department would benefit. Since the proposal that all the members of the Commission be appointed on a full-time basis had been rejected, the Commission could meet the demands made upon it by means of more extensive collaboration on the part of the Secretariat,

23. The world, which was in the process of unification, was awaiting the codification of the whole field of international law and would not be satisfied with partial results. The law derived from treaties and from custom was vague and full of omissions. International society needed a clear and precise body of law defining the relations of States. The Charter, in a provision introduced at the instance of China (Article 13, paragraph 1 a), recognized the need for such codification. However, at the rate at which the work of the Commission was proceeding at the moment, 25 years might be required for its completion. It was high time that efforts were made to progress more rapidly and, as the members of the Commission did not serve on a full-time basis, the part played by the Secretariat must be increased.

24. He thought it would be advisable for the Commission to form a clear idea of the purpose of its work. That purpose, in any case, followed clearly from the first paragraph of the preamble to the Statute and from article 1, which stated: "The International Law Commission shall have for its object the promotion of the progressive development of international law and its codification." The Commission should therefore endeavour to be progressive. How indeed could one promote the progressive development of law through research which would remain purely academic? The Commission should not, of course, outstrip the law but it should encourage the current trend of the law. Such an aim was already embodied in the Statute, in particular by the words "promotion" and "progressive", but it would be desirable for it to be expressed more clearly and emphatically, so as to encourage those members who were inclined to be somewhat too conservative to become more venturesome.

25. It would be well, surely, to define more clearly the procedure to be followed in connection with the "progressive development of international law" and "codification", a procedure borrowed from the Harvard draft. Under that procedure, consultation with governments was introduced; but it had not been found successful. Very few governments replied to the questionnaires sent to them. Did the Commission intend to keep that procedure, even though in some ways it was a waste of time? It might, perhaps, have some changes to make in that direction.

26. In conclusion, he made it clear that the views he had put forward should not be regarded as formal proposals.

27. Mr. SPIROPOULOS said that he too had taken part in the discussions in the Sixth Committee on the Commission's Statute. Incidentally, any views exchanged at the moment were only tentative, their object being to help the Commission to define the problems it had to examine.

28. Of the General Assembly's suggestions concerning the Commission's Statute, some were of secondary importance, e.g., the question whether rapporteurs who had not completed their work when their term of office expired should be kept on, or the question whether the Commission should call in experts from outside the number of its members.

29. Some of the questions, on the other hand, were decidedly questions of substance, e.g., that raised by the United Kingdom delegation — the only question in his opinion which called for really thorough study by the Commission. The question was: should the International Law Commission be turned into a Commission to which its members were appointed on a full-time basis? That suggestion had been brought forward by a delegation which, apart from being one of the most important in the United Nations, had opposed such a step three years previously. At that time, the plan submitted to the General Assembly by the Codification Committee provided that the members should serve on a full-time basis. But the United Kingdom representative, Mr. Beckett, had opposed the idea that the work of the Commission's members should go on without interruption, if only on grounds of economy. The United Kingdom delegation had no doubt felt that it was better for the Commission to be a body which sat twice or three times a year. The fact that that same delegation was now in favour of the original plan, and was actually suggesting that it be taken up again, proved not merely that the United Kingdom's internal economy had improved thanks to a praiseworthy effort of national discipline, but more especially that the United Kingdom delegation had come to the conclusion that the results of the Commission's work were not being achieved quickly enough to enable it in the near future to achieve its aim, namely the codification of international law. Without making any reproach to the Commission, the United Kingdom delegation had simply wished to indicate by its proposal that it would like to see the work speeded up.

30. In regard to codification, the Commission had in fact achieved practically nothing. Its third session was now opening, and it had still not produced a definitive draft codification. Neither the question of the rights and duties of States, nor the formulation of the Nürnberg principles, nor the question of an international criminal jurisdiction came properly speaking within the sphere of codification. The three main topics chosen for codification: namely, the law of treaties, arbitration procedure and the regime of the high seas were only in preparation. It would be several years yet before definitive drafts were forthcoming.

31. The United Kingdom delegation must therefore have concluded that the slow pace at which the Commission proceeded was due to its composition, its working methods, and the constitution it had been given. It had therefore called for study of the feasibility of having the members of the Commission working on a full-time basis. The question merited thorough examination; and it was one which could not be solved overnight.

32. It might be argued that, by advocating that measure, certain members of the Commission would appear to be acting in their own personal interests. Actually there was no danger of that, since if the change were decided upon, it would not come about within the next three years, by which time the term of office of the present members would have expired. Moreover, in that matter the general interest must prevail, and possible criticisms

must be ignored, once it was concluded that such a solution would be in the general interest of the International Law Commission's work.

33. The slow rate of progress of the Commission's work was attributable to two separate causes. First of all, the fact that the General Assembly referred to the Commission for consideration various special questions such as that of the definition of the term "aggressor". It was quite right that the General Assembly should consult the Commission. It needed the advice of an independent body with recognized juridical competence. Otherwise, it could either apply to the International Court of Justice and ask for advisory opinions, or set up an *ad hoc* committee, whose members being appointed by their respective governments would not of course inspire the same confidence. Thus the part played by the Commission in that direction was an essential one.

34. The second reason for the slow progress made was the shortness of the Commission's sessions and its procedure. Half of a two months' session had to be devoted to study of special questions so that only a month remained for the work of codification, and for that work the Statute laid down a particularly complex procedure, the main stages of which were the drawing up of a preliminary report, a first and second reading of the report, communication of the report to governments and its return to the Commission for the Commission to produce the final draft. It would take at least five to seven years therefore for the codification of any topic selected by the Commission for codification to mature.

35. The Commission was at the moment engaged in the codification of three topics. The work might perhaps be finished in six years. The commission would then deal with three new topics, and in twelve years would have prepared six drafts. There had been talk of two sessions a year, but that would mean that members of the Commission would be out of their own countries for four or five months a year. He himself, as leading jurist at the Greek Ministry of Foreign Affairs, had the very greatest difficulty in absenting himself from his country in order to take part in the work of the Commission and of the General Assembly.

36. He did not support the suggestion that only some members of the Commission should be appointed on a full-time basis. The difficulty of deciding which those members were to be appeared to him insoluble.

37. He thought that the Charter ought to have provided for the establishment of a major permanent legal Commission similar to those existing in all States, with powers in the legal field comparable to those of the Economic and Social Council in the economic field. It was law which gave the necessary form to all the activities of mankind. Though the establishment of such a Commission would involve some extra expense it would enable a solution to be found for problems of very great importance.

38. Should that reform be effected the Commission would still remain a subsidiary organ of the General

Assembly. Being independent it would not be incorporated in the Secretariat. The codification of international law ought to be the work of the General Assembly, as provided in the Charter (Article 13, paragraph 1 *a*). In that case it would not clash with the Secretariat, but would co-operate with it. The staff attached to the Commission would not form part of the Secretariat. Like the International Court of Justice, the Commission would have an independent structure.

39. If the members of the Commission were to leave their work in their own countries and devote their lives to the task of codification, they must be helped to do so by being accorded equal status with the judges of the International Court of Justice. The Commission carried great weight, on account of its membership. The eminence of its three Chairmen was sufficient indication of that. Matters must therefore be so arranged that people in such important positions could devote themselves wholly to the Commission, without however necessarily having to give up all their other activities. Incompatible posts were forbidden by the Statute of the International Court of Justice, but since the members of the Commission were not judges there was no reason why they should not also be advisers to delegations or University professors. That however was a minor point.

40. He thought that the work of the Commission ought not to be confined to the codification of international law. The Commission could legitimately deal with any questions referred to it by the General Assembly, the three Councils and even, should such a case arise, by certain subsidiary organs — such as for example the preparation of special international conventions. Codification, however, should remain its principal task.

41. If such a reform were carried out there was hope of the Commission being able to submit a draft of a real code of international law. Additional expense would have to be provided for. That, however, was a consideration which did not lie within the province of the Commission. The Commission's sole duty was to advise the General Assembly on means of hastening the codification of public international law. But the financial question did not constitute a serious obstacle. The annual cost of the International Court of Justice was about \$ 400,000. Considering the daily cost of the campaign in Korea, work devoted to peaceful ends might be regarded as worth some financial effort.

42. Since such a reform would probably take a long time to carry out the Commission would have to submit its suggestions to the General Assembly, but it could already begin by appointing a rapporteur who, should those suggestions be accepted, would submit to it a report on the subject at the next session.

43. Mr. HSU said that the idea of enabling members of the Commission to serve on a full-time basis was the one he would be most inclined to support if he thought it likely to be adopted. The idea had been advanced at the outset in a joint proposal to the Codification Committee by the United States of America and China.

44. The reason he had not dealt with the matter in his

statement was that he thought the United Kingdom was not yet prepared to consider such a reform.

45. Mr. SANDSTRÖM said that he had not attended the General Assembly, but he had read the records of the proceedings in the Sixth Committee, from which he had gathered that the slow progress made by the Commission had aroused some misgiving. But it must not be forgotten that the first session had been devoted to organization and that the two months' session of the previous year had produced substantial results. In addition, the work done by the Commission might be expected to take a long time, just like work on domestic legislation or any other work demanding extensive research.

46. It was meet and proper that the study requested of the Commission should be carried out. The basic problem was the time spent on its work. If the Commission continued to meet for only two or three months every year it would be a very long time before codification projects were produced. Mr. Hsu and Mr. Spiropoulos had said that the ideal solution would be for the members of the Commission to serve on a full-time basis. It might be objected, as it had been objected during the discussion which had preceded the setting up of the Commission, that the members of the Commission should maintain contact with legal activities in their own countries. Account should be taken of that objection, since, if the proposed solution were adopted, such contact would be reduced to a minimum. In addition, the most distinguished personalities might perhaps be prevented from sitting on the Commission because they would be reluctant, for example, to give up their activities or to exile themselves. Although there was perhaps some justification for such arguments, an endeavour should be made to prolong the sessions and to make the work of the Commission the main activity of its members, any outside activities they might have then becoming secondary activities. Those were the lines along which a remedy should be sought for the present situation, since, as Mr. Spiropoulos had said, it would be unfortunate if the Commission were divided into two groups, one serving on a full-time basis and the other assembling merely for the sessions.

47. Among the causes of delay in the Commission's work had been mentioned the special questions referred to it. If the Commission remained in permanent session, the time taken up by the study of such questions would clearly be proportionately less. Conversely, given the short sessions as they then were, the time required for such study was excessive. But even if sessions were to be prolonged, some restriction should be placed on the referral of special questions to the Commission. The question whether the Statute of the Commission should be amended in that respect needed careful study.

48. In other respects, he concurred in the views expressed by Mr. Spiropoulos. If the Commission's sessions were to be longer the requisite conditions for extending them should be provided.

49. Mr. KERNO (Assistant Secretary-General) explained that there were two types of special questions, namely, those laid before the Commission by the General

Assembly itself and those referred to it in accordance with article 17 of its Statute; the latter had been a source of concern to delegations at the Sixth Committee, who had feared that the Commission might be overwhelmed by such questions.

50. All the questions so far dealt with by the Commission, with the exception of the question of the nationality of married women, had been referred to it by the General Assembly.

51. The Commission might recommend the revision of article 17 without mentioning the powers of the General Assembly, or adding a suggestion that the General Assembly should exercise some moderation in referring special questions to the Commission.

52. Mr. SPIROPOULOS recalled that the jurists were regularly consulted by the League of Nations. The General Assembly of the United Nations should be in a position to approach a Law Commission and receive a reply without delay.

52a. So far as concerned the definition of the term "aggressor", for example, when the Political Committee of the General Assembly had wished to obtain the opinion of the highest international legal authority on that very thorny question, it had not applied to the Sixth Committee, the members of which were not all well-known jurists and in which political views counted, but had preferred to consult the International Law Commission direct. That was a very sound precedent. The General Assembly would thereby obtain the opinion of an independent body composed of distinguished jurists.

53. The Commission should assist the General Assembly. There was, of course, the International Court of Justice; but that body was designed to deal with contentious matters rather than to give advisory opinions, and the opinions it did give mainly applied to questions in dispute. The Commission was marked out to assist the General Assembly, which it should not discourage from applying to it and in which the Commission's replies would enjoy great authority.

54. He would not attempt to conceal the danger latent in that procedure. The Commission's authority might be disputed. But had not the advisory opinions of the International Court of Justice also been criticised in the General Assembly?

55. The General Assembly should therefore be encouraged to consult the Commission. That might perhaps have the disadvantage of impeding the work on codification; but, if so, the Commission must become a body sitting permanently.

56. Mr. LIANG (Secretary to the Commission) thought that it was wrong to attach too much importance to the provisions of article 17. Reference had been made to the fears expressed in the Sixth Committee that the International Law Commission might be overwhelmed by the study of questions referred to it from different quarters. Experience showed that, generally speaking, the Commission's work programme had not been overloaded by requests of that type. There had so far been only two: the nationality of married women, which had already been mentioned by Mr. Kerno, and the pre-

paration of the international draft convention or conventions required to solve the problem of statelessness. Both of those problems came within the framework of the Commission's programme of work, since the Commission had listed nationality, including statelessness, among the fourteen subjects provisionally selected for codification.

57. It might also be pointed out that under article 17, paragraph 2, of its Statute, the Commission had a certain latitude, of which it had already availed itself.

58. As Mr. Hsu and Mr. Spiropoulos had said, the intention when those provisions were drafted was to set up a Commission sitting permanently, which could therefore have accepted responsibility for studying the questions referred to in article 17. But since the existing Commission only met at sessions, it had to examine its task as a whole and decide whether it would take up the study of such questions.

59. In his view, article 17 might have been incorrectly interpreted, and was not a serious obstacle to the work of the Commission.

60. Mr. SCALLE thought, after hearing the observations of Mr. Spiropoulos, who had really studied every aspect of the problem, that the dilemma facing the Commission was either that it remained broadly as it was, in which case codification would never be achieved or would be achieved only in very slight measure, or that it completed its work on codification, in which case it would have to remain in permanent session. If the latter solution was feasible it should be the only one considered. It must be ascertained whether the United Nations was prepared to review the question and transform the Commission into a truly permanent organ.

61. The 1930 Conference on the Codification of International Law at The Hague, which had to examine three questions, had produced tangible results only on the question of nationality. It had taken three months to do so and its work had been preceded by seventeen months of preparation and consultations with governments. Nevertheless, its achievements had been comparatively slight. He would ask how the International Law Commission could be expected to undertake general discussions and to complete its work satisfactorily with only three months at its disposal. It could not deal thoroughly with any of the subjects studied.

62. A solution might perhaps be found for the Commission which would succeed the present Commission. The members of the Commission could speak quite freely since their term of office would have expired before the reform of the Commission had become a reality.

63. There was, however, an intermediate course which the present Commission might adopt. That was to make wider calls upon the services of the Secretariat, which had already given valuable assistance to the Commission. Would it not be possible to provide the Secretariat with sufficient resources to enable the rapporteurs to apply to it regularly for the study of certain points of detail? The Fifth and Sixth Committees of the General Assembly might perhaps be able to consider such a course. If the

Commission was to sit permanently it would have to be in constant touch with the Secretariat. If it became a body more closely resembling the International Court of Justice or the Economic and Social Council it would have to have a Secretariat of its own and the Legal Department of the United Nations Secretariat would have to keep in constant touch with it. It might perhaps be possible to submit some proposals for the Sixth Committee to examine at the next General Assembly.

64. Article 17, referred to by Mr. Liang, might not have all the faults it was tempting to tax it with, but it did have faults, as also did articles 18 and 19 for example. Those articles acted as a brake on the Commission by prescribing a cumbrous and complicated procedure. He proposed to enquire whether it might not be possible to ask for that procedure to be made more flexible, since it postponed any final solution for four, five or six years. On some points there was no need to request the views of governments. Furthermore it should be possible to consult governments in some more flexible manner, for example by instructing the rapporteur to visit the various Ministries of Foreign Affairs and interview the competent official.

65. Such were the points to which he wished to draw the Commission's attention at that stage.

66. Mr. ALFARO thought that the Commission had two main questions to settle. The first, of which Mr. Spiropoulos had given such a clear account, was whether or not the Commission would be able to perform its difficult task if it continued to work as at present. All his colleagues, he felt, agreed with him that the ideal, theoretically speaking, would be for the Commission to sit permanently, if its tasks were to be successfully completed within a reasonable period. That solution, however, raised financial problems which could only be dealt with by the General Assembly after consultation with the Sixth and Fifth Committees.

67. In the second place the Commission was faced with the particular task of revising its Statute, on the assumption that it would continue to sit as at present. It would be advisable to study concrete proposals for each of the articles which had given rise to comment in the Sixth Committee. For his part, he was prepared to submit a new text of article 17, reserving to the General Assembly the right to refer questions to the Commission.

68. So far, the Commission had considered those two questions in conjunction, but it should treat them separately and devote itself to considering how the main problem of whether the Commission should sit permanently or not was to be presented to the General Assembly. After it had taken a decision on that point and the Rapporteur had heard the different views expressed, the Commission could take up the revision of certain articles of its Statute.

69. The CHAIRMAN emphasised that the discussion was only a provisional one; he thought it desirable that as many members as possible should express their views on the subject.

70. He himself had not been convinced by the arguments for permanent session, for there were insurmountable

difficulties connected with the expenditure involved and the composition of the Commission. It would in fact be very difficult to get persons of the highest eminence to sit on the Commission if they had to serve on a full-time basis.

71. He thought that they should reject the proposal to divide the Commission into two groups, one of which would serve on a full-time basis. It was undesirable from every point of view to have two classes of members. If the Commission did not sit permanently, it must do its best and be very modest in the changes it proposed. It was too early to be discouraged by the progress so far made in the Commission's work. As Mr. Sandström had said, the first session had been devoted to organization and during the second session results had been obtained and submitted to the General Assembly. Moreover, it could not be over-emphasised that if the Commission's work was to be carried out with proper care, it was found to be slow.

72. He thought that the best method was to examine each article separately and see what improvements could be made.

73. It was clear that the existing procedure was too complicated, particularly that laid down in articles 17, 18 and 19. There were too many provisions requiring consultation with governments. He did not wish such consultation to be abandoned, but it was clear that the provisions requiring that governments should be asked for their comments involved considerable delay in the Commission's work. They were a source of embarrassment to governments and produced hardly any results. For instance, the requests addressed by the Commission to governments in pursuance of article 19, paragraph 2, would make it almost essential for the latter to set up special departments to prepare the replies.

74. With regard to the term of office, he thought that five years would be suitable. Three years was clearly too short a period, as the General Assembly had virtually admitted when it had extended the term of the present members.

75. Mr. YEPES agreed with Mr. Spiropoulos. He was in favour of the Commission's sitting permanently, but he thought that the question had not been presented in the proper manner. The Commission must be considered as an entity, regardless of its existing composition, and consideration given to the question to whether or not it was advisable to have a Commission in permanent session, responsible exclusively for the codification of international law. He thought that if codification was to be carried out, the Commission should sit permanently since otherwise the work could not be done. Several of the objections raised to the Commission's sitting permanently were based on its existing composition and on the circumstance that a number of its members also had other duties to perform. What was needed however was to constitute a Commission whose members would in future serve on a full-time basis. The main objection to the idea of permanent session would then be automatically demolished since it would be specified in the Statute that membership of the Commission was incompatible with certain functions, and, in particular, with any

government office. The question had already arisen in connection with the International Court of Justice and such a solution had been adopted.

76. The Commission had been asked to recommend revisions of its Statute. It should simplify the procedure which it laid down. The effect of article 17, was in fact, to make its work almost impossible and it would be desirable, in particular, to amend paragraph 2, subparagraph *b*, of that article to read:

“The Commission, if it deems necessary, shall circulate a questionnaire . . .”

As the text stood, it threatened to prolong the work of the Commission indefinitely.

77. Mr. SPIROPOULOS thought that the latter was a question of detail. In his remarks at the beginning of the discussion, he had chiefly considered what was, in his opinion, the main question. The United Kingdom delegation, in suggesting that the Commission should consider whether it would not be desirable for its members to be appointed on a full-time basis, had clearly had a radical change in mind. So far, it was not any provision in its Statute which had prevented the Commission making more rapid progress in its work. When the question of the order in which to deal with the problem of codification had been raised, Mr. Koretsky had maintained that it was for the General Assembly to fix the order. The Commission had been of the opposite opinion and the General Assembly had endorsed its view. That interpretation had tended to assist the work of the Commission. He wondered which provision of the Statute might have prevented the Commission making more rapid progress with its work.

78. So far as codification was concerned, certain governments had submitted replies on the question to which Mr. François had devoted a report. Even had there been no replies, the work would not have gone forward any more swiftly. Mr. François had submitted a fresh report to the Commission. It was not the Statute which should be blamed but the lack of time. The Statute could be interpreted *intra legem* or *contra legem*, at will. What was important was the problem of organization. The matter of the Statute was a question of detail. The factor which hampered the Commission was the fact that it sat for only two months each year. That being so, it would clearly serve no purpose at all to amend the Statute. To remedy the evil, the Commission would have to seek out its cause, and that was shortage of time.

79. To take his own report as an example, he had the previous year submitted a text which had been discussed. If the Commission had been an organ sitting permanently, within a month it would have produced a new text which would have been submitted to governments for their examination. It was a wise precaution, as a matter of fact, to submit texts to governments in order not to assume full responsibility for them, since if the observations of governments were not taken into account, there was always the danger that the General Assembly would comment on the work of the Commission in the same way as it had done in connection with the Nürnberg principles.

80. The evil was therefore that the Commission did not have enough time to do its work. If, for financial reasons, it was not possible to act on the United Kingdom proposal, the situation would have to be accepted, but the Commission should not waste its time in the belief that the situation could be successfully remedied by amending the articles of the Statute.

81. Mr. SANDSTRÖM drew attention to the fact that the object of General Assembly resolution 484 (V) was to have the work of the Commission expedited. The primary question, therefore, was the time at the latter's disposal and that fact should be clearly brought out in the report to the General Assembly. The other questions, such as the revision of the Statute and the collaboration of the Secretariat, were of secondary importance.

82. Mr. SCALLE agreed with Mr. Spiropoulos that, so far, the Statute had not really hampered the work of the Commission. The Statute was, however, like a constitution, and there were countries in which the constitution had to be changed because it did not work. He did not think that Mr. Spiropoulos had meant to imply that the Commission should not recommend any revisions of the Statute. When all the members of the Commission had expressed their opinion, they could, as Mr. Alfara had proposed, then discuss the Statute article by article and suggest appropriate amendments.

83. Mr. CORDOVA thought that in order to achieve a real codification of international law it was necessary to set up a body sitting permanently. That was, in his opinion, the main question. Budgetary considerations should not, however, be overlooked. No person could devote his whole time to the work of a body of that nature unless he received emoluments of such magnitude that it would be difficult to obtain them from the budget of the United Nations. Furthermore, in order to have a body performing really effective work, the General Assembly would perhaps be compelled to abandon the idea of equitable geographical distribution and take into consideration individual qualifications only. In a word, the Commission needed to know what the States Members had had in mind when they had set up the Commission. Had they been thinking in terms of technical work, or had they wished to have an expression of the legal ideas accepted in the world? If they desired the latter, the Commission should include persons with experience of international relations and representing all parts of the world. Such a system required a budget as large as that of the International Court of Justice. It would be impossible to obtain the desired end in any other way. The members of the Commission had other duties in their own countries and could not abandon them in order to devote themselves to the work of the Commission on a full-time basis, unless they received appropriate emoluments.

84. He hoped that the Commission would be able to find a solution. Perhaps the best thing would be to increase the staff of the Secretariat so that it could include enough experts to do the preparatory work of the Commission. In that way, the latter would always

have at its disposal documents of the kind it had had before it at its first session. It might perhaps also be possible to make the sessions longer. He doubted whether it would be possible to arrange for the Commission to be in permanent session.

85. Mr. HSU said that he had declared himself in favour of the Commission sitting permanently but would not press the point. However, since objections had been raised to the idea of a permanent session, he would endeavour to reply to them. It had been said that it was very difficult to obtain the services of highly qualified persons. That was not the real difficulty. Everything depended on the inducement offered to such persons to sit on the Commission. Anyone's services could be obtained for a sufficiently high salary.

86. Mr. KERNO (Assistant Secretary-General) agreed with Mr. Spiropoulos that the Statute had not hitherto greatly retarded the work of the Commission, but it was nevertheless true that certain articles might prove an encumbrance in the future.

87. In the case of several of the matters so far studied, the Commission had decided that, since they involved special tasks outside the general work of codification, the procedure laid down in the Statute need not necessarily be applied. But in the case of matters really coming within the scope of codification, it would be otherwise. For instance the Commission now had before it Mr. Brierly's second report on treaties (A/CN.4/43), which it had decided to begin discussing at the next meeting. If it approved the articles proposed, that would be codification work to which it must apply the procedure laid down in articles 21-22, etc., which constituted a veritable strait-jacket and the Commission would, for the first time, become aware that its Statute required simplification. It would therefore be advisable to review the articles of the Statute and to see what amendments should be submitted to the General Assembly.

88. The CHAIRMAN announced that the general discussion on the first item of the agenda was provisionally closed but would be resumed when the remaining members of the Commission had arrived.¹

The meeting rose at 12.50 p.m.

¹ See summary record of the 96th meeting, para. 110.

84th MEETING

Friday, 18 May 1951, at 10 a.m.

CONTENTS

	<i>Page</i>
Law of treaties: report by Mr. James L. Brierly (item 4 (a) of the agenda) (A/CN.4/43)	12
Article 1	12
Article 2	
Paragraph (1)	17

Chairman: Mr. James L. BRIERLY,
followed by Mr. Shushi HSU

Rapporteur: Mr. Roberto CORDOVA