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Summary record of the 3rd meeting

Topic:
Programme of work

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to that question seemed to have been given by the Chairman whose argument was the only progressive one: the International Law Commission had jurisdiction of its own; its powers had not been delegated to it by the General Assembly.

63. Care must be taken lest excessive timidity and a literal interpretation of texts made the International Law Commission, from its very inception, lose the tremendous influence which it might have on the integration of the United Nations. The Commission was at a turning point in the existence of the United Nations; it must face its responsibilities if it did not wish to retard progress in the organization of international society.

64. Mr. SPIROPOULOS remarked that Mr. Koretsky had been right in pointing out that article 18, paragraph 2 had given rise to lively discussion in Sub-Committee 2 of the Sixth Committee. Two arguments had been put forward, neither of which seemed to have prevailed. There might therefore be some doubt as to the precise meaning of article 18, paragraph 2. The records of the meetings at which the matter had been discussed would have to be examined before the exact wishes of the General Assembly could be ascertained. If the records did not settle the matter, the interpretation which won the support of the majority of the Commission members would have to be adopted.

65. With regard to the relationship of the Commission to the General Assembly, there was no need to ask the Assembly for an interpretation of article 18, paragraph 2. The Commission had been provided with a Statute and it was for the Commission to interpret it. If the General Assembly considered it necessary it could subsequently declare the Statute null and void or modify it.

66. Mr. KERNO (Assistant Secretary-General) recalled that he had stated at the first meeting that the Commission should study its Statute with a view to determining its terms of reference or purview, as Mr. Scelle had suggested. One of the most important questions was the interpretation to be given to article 18, paragraph 2, which dealt with the relationship of the Commission to the General Assembly. That question had been discussed at length in 1947, the main discussion having taken place in Sub-Committee 2 of the Sixth Committee. The records of those discussions were very concise and did not clearly reveal the reasons why the two proposals for making the meaning of the word " recommendation " more precise had been rejected. He stated that the Secretariat would implement Mr. Spiropoulos' suggestion by making the fullest possible search for references enabling the Commission to clear up that extremely important matter.

67. Mr. KORETSKY welcomed the Assistant Secretary-General's assurances. With regard to Mr. Scelle's observations, he remarked that everyone was influenced by his customary activiti.es Mr. Scelle compared the International Law Commission to the General Conference of the ILO and regarded the Commission as a self-governing body. Mr. Koretsky had been a member of General Assembly Commissions and considered the International Law Commission to be a subsidiary organ. He thought his own attitude a more reasonable one than that of Mr. Scelle. Mr. Scelle's idea would have to be rejected, however attractive it might seem. The International Law Commission was not entitled to assume powers which did not belong to it; it merely had to carry out the work assigned to it by the General Assembly in accordance with the latter's directives.

68. He felt that the Chairman was too generous and liberal in his interpretation of the Commission's Statute. There must be no room for sentiment and the text adopted by the General Assembly must be respected to the letter. He pointed out that the work of the Commission consisted not in drafting an imposing number of plans but rather in preparing a limited number of plans which would interest the General Assembly and would thus not run the risk of remaining dead letters.

69. He concluded by requesting the Commission to adopt his interpretation of article 18, paragraph 2, or if that did not seem possible immediately, not to take any decision before studying the additional information which the Secretariat could provide and which might cast light upon that as yet abstruse question.

70. The CHAIRMAN felt that the Commission could adopt Mr. Koretsky's last suggestion. No interpretation would be adopted before the Commission had been able to study all the references which the Secretariat could provide on the matter.

It was so decided.

The meeting rose at 6.00 p.m.

3rd MEETING

Thursday, 14 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. 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

1. The CHAIRMAN invited the Commission to continue the general discussion. During the previous meeting, certain members had expressed the hope that the discussion would, in principle, bear upon questions which had already been raised, so that some of them might be solved without delay. He proceeded to give a brief outline of the main points which had already been discussed; among them was the fourth point raised by Mr. Alfaro on the interpretation of paragraph 2 of article 18. He thought that the discussion might turn upon that important question of interpretation.

2. The Chairman pointed out that, as requested by certain members, the Secretary of the Commission would submit all the additional information he had been able to obtain on the discussions which had taken place in Sub-Committee 2 of the Sixth Committee during the second session of the General Assembly. Mr. François, Rapporteur of the Sub-Committee, would, if necessary, supplement the explanations furnished by the Secretary, or go into greater detail.

3. Mr. LIANG (Secretary to the Commission) stated that it was very difficult for the Secretariat to give satisfaction to members of the Commission who had asked for fuller information than that already given in the Secretary-General's memorandum (A/CN.4/1/Rev.1, footnote to paragraph 106). Summary records of the meetings of sub-committees were not mimeographed and distributed to the delegations for their approval; they were simply typed and kept in the files. Moreover, the summary records were very brief; they merely recorded the decisions taken, without going into details of the discussion which had preceded them. The footnote to paragraph 106 of the Secretary-General's memorandum reproduced in full that part of the summary record which concerned the question at present under discussion. The Secretariat was not in a position to add anything to the footnote to paragraph 106; it could only confirm that two proposals had been put forward in Sub-Committee 2, and that apparently neither of them had found acceptance.

4. Mr. Liang pointed out that the Secretary-General's memorandum drew the Commission's attention to the advisability of a thorough discussion to decide whether the Commission should or should not establish a general plan of work. If the Commission decided to prepare a plan of work, a course which had been advocated by Mr. Alfaro and Mr. Amado among others, the plan would be included in the report to be submitted to the General Assembly. The Assembly would examine the report and decide whether it approved the plan, as a whole or in part. On the other hand, if the Commission felt that such a plan was unnecessary and decided merely to select a limited number of subjects whose immediate study it considered advisable, those subjects would appear in the report to be sent to the General Assembly, and the latter would decide whether the Commission should consider them or whether they should be abandoned.

5. The Secretariat was not in a position to advocate either one or the other of the two possible solutions. It merely pointed out that in both cases the report submitted to the General Assembly would enable the latter to take a decision, which the Commission would have to respect.

6. Mr. FRANÇOIS, speaking as Rapporteur of Sub-Committee 2 of the Sixth Committee,[1] considered that article 18 of the Statute of the Commission had been drawn up in the spirit to which Mr. Koretsky had alluded; that opinion was confirmed in the second paragraph of that part of the report of Sub-Committee 2 to the Sixth Committee (A/C.6/193) which dealt with paragraph 11 of the report of the Committee on the Progressive Development of International Law and its Codification; paragraph 11 had become article 18 of the Statute.

7. A proposal had been submitted to Sub-Committee 2, the object of which was to deprive the International Law Commission of any right of initiative; the French representative, who had been the author of the proposal, had considered that the General Assembly would be more modest in its choice of topics for codification, and would concentrate the work on the most essential points; the proposal had been rejected by 10 votes to 5.

8. Furthermore, certain members of Sub-Committee 2 had wished to give the General Assembly a certain right of control over the work

[1] Second session of the General Assembly.

of the Commission. Mr. François did not consider that that point of view was illogical, or that it signified any lack of confidence in the International Law Commission. It had been said that it was an illogical proposal, since the Commission could not reach a conclusion on the possibility of codification of a given topic until it had studied the question in detail; the League of Nations practice, however, showed that such an opinion was not justified: the League had set up a Committee of Experts to consider what topics seemed "realizable" as a subject for codification; that Committee had reported to the Assembly, which had established a committee of five members to draw up a draft to be submitted as the basis of discussion to the first conference on codification. Such a system was not illogical; it must be borne in mind that the preparation of a draft treaty necessitated the co-operation of Governments, in accordance with the kind of procedure outlined in articles 19 and 21 of the Statute of the International Law Commission. It did not appear that a Commission of experts, appointed as individuals, could have the right to put into operation all the governmental machinery of sixty States, unless those Governments had had an opportunity to make known their views, based, for the greater part, on political considerations.

9. Mr. François concluded that a certain amount of control by the General Assembly was perfectly normal: the Assembly should be able to stop any work which it considered useless or inopportune. If it was opposed to the codification of certain topics, the continuation of such work would serve no practical purpose.

10. Mr. François considered that it was for that reason that Sub-Committee 2 had adopted, by 10 votes to 5, the existing text of article 18. Sub-Committee 2 had rejected the proposal of the United Kingdom representative, to the effect that the Commission should present its recommendations to the General Assembly "in the form of draft articles or otherwise"; such a procedure would, in the majority of cases, have necessitated previous consultation with Governments, which was precisely what it was desired to avoid in that phase of the International Law Commission's work. The proposal of the Australian representative that the paragraph should be amended to read ". . . should present its recommendations to that effect" had been rejected because it had contained no new suggestion and did not make the text of article 18 more explicit.

11. Mr. François wished to draw the attention of the Commission to another point. With regard to the progressive development of international law, the Commission had received no right of initiative: it had only been authorized to study proposals referred to it by the General Assembly, in accordance with article 16 of its Statute, or by Members of the United Nations and its principle organs other than the General Assembly, in accordance with article 17 of the Statute. With regard to codification, the Commission had been granted the right of initiative, but subject to a certain amount of control by the General Assembly. That system hat been prescribed for the Commission; that body was obliged to adopt it, even though it might not correspond exactly with the wishes of its members. Mr. François considered that there was no reason to suppose that the General Assembly would abuse its right of control, or that it would fail to give the recommendations of the Commission all the consideration proper to the opinion of an organ of such high competence in the field of international law.

12. Mr. François summarized his exposition in the statement that in his opinion the Commission did not require the approval of the General Assembly before embarking on the study of a given question; it could even continue that study to a very advanced stage, in order to be able to submit well-founded recommendations to the General Assembly: but it could not consult Governments, nor send them questionnaires, and could not draw up drafts of codifications without first securing the agreeement of the General Assembly.

13. Sir Benegal RAU regretted that the text of article 18 should be so obscure and ambiguous; the Commission must interpret it as logically as possible. The object of the controversy was to determine whether the second paragraph of article 18 meant that the Commission should submit recommendations to the General Assembly before beginning work on codification, and if, moreover, it should await the decision of the General Assembly. There was nothing in article 18 to indicate that such a procedure was imposed on the Commission. A comparison of article 18 with article 17 was enough: according to article 17, paragraph 2, sub-paragraphs (*c*) and (*d*), the Commission should submit a report to the General Assembly and wait until the latter invited the Commission to proceed with its work; article 18, paragraph 2, implied nothing of the sort; indeed, paragraph 3 of the same article might be held to imply precisely the contrary, since it mentioned the priority to be given to any requests of the General Assembly, which would be meaningless if the Commission was always bound to await the General Assembly's decisions.

14. In his opinion, the Commission was competent to undertake the codification of any topic when it appeared necessary or desirable, with the reservation that it would give priority to topics referred to it by the General Assembly. If the Commission judged that any topic was more important or more urgent than those referred to it by the General Assembly, it should address a recommendation to the General Assembly, requesting authorization to grant special priority to that topic; the General Assembly would then decide the question.

15. In conclusion, Sir Benegal thought that the Commission could undertake any work of codification which it judged necessary or desirable, without, however, reaching a final decision until its draft was ready, in accordance with the provisions of article 22. The following procedure seemed to him the obvious one: the Commission should make a preliminary study of the topic, prepare a draft in accordance with the provisions of article 21, take into account the comments submitted by Governments and then decide whether the codification of that topic was necessary or desirable. At that stage it should submit its recommendations to the General Assembly, in simultaneous application of the provisions of article 18, paragraph 2, and article 22.

16. Mr. ALFARO was happy to note that Sir Benegal Rau's conclusions were similar to those which he wished to offer. He felt obliged to point out, however, that the question could be considered from a slightly different angle. The Statute of the Commission provided for four types of recommendations. Those mentioned in article 16, paragraph (*j*) and article 17, paragraph 2, sub-paragraph (*c*), concerned the progressive development of international law; it was explicitly stated that they should be submitted to the Assembly at the conclusion of the Commission's work, which had been undertaken only at the request of the General Assembly, of Members of the United Nations or of principle organs of the Organization; the recommendations mentioned in article 22 and article 23 dealt with the codification of international law; it was equally clear that they were to be submitted to the General Assembly at the conclusion of the Commission's work. With regard to the fourth type of recommendations mentioned in the Statute, in article 18, paragraph 2, it was impossible to determine *a priori* in what circumstances they should be presented to the Assembly, what would be the Assembly's decision and what the effect such a decision would have on the work of the Commission. In those circumstances it could be asked to what extent it was permissible to compare the provisions of article 18 with those of other articles, particularly article 17, as Sir Benegal Rau had done.

17. Mr. Alfaro pointed out that Mr. Koretsky's statements and the explanations given by Mr. François as Rapporteur of Sub-Committee 2, showed that the General Assembly was anxious to have the final decision on the question of the codification of international law. That could not be denied, but the real question was to decide what attitude the Commission should adopt while awaiting the reply of the General Assembly, or in the event of the Assembly not taking a decision. He did not think that the Commission should interrupt the work it had undertaken: on that point he shared the opinion of the Chairman and Mr. Scelle.

18. In conclusion, he proposed that article 18, paragraph 2, should be interpreted in the following manner:

1. The General Assembly could take such action as it might deem necessary or advisable on the recommendations of the Commission, and the Commission must abide by the action of the General Assembly.

2. The Commission was not obliged to stop its codification work while awaiting the answer of the Assembly to the recommendations of the Commission relative to the selection of topics considered necessary or desirable for codification.

19. Mr. HSU agreed, on the whole, with Mr. François' conclusions and thought that Mr. Koretsky was correct in considering that confirmation by the General Assembly of the Commission's choice of topics was necessary. On the other hand, he could not agree with Mr. Koretsky on the advisability of consulting Governments before making that selection; such a method would give politics too large a place in the work of the Commission.

20. From a perusal of the text, it appeared that the recommendations referred to in article 18 differed from those provided for in articles 22 and 23: the first concerned the choice of topics; the second referred to drafts to be submitted to the General Assembly. It seemed, therefore, that the correct interpretation of article 18 gave the Commission the obligation to request the General Assembly's approval of the choice of topics before undertaking the real work of their codification. Some members of the Commission considered that interpretation too restrictive and feared that it might hamper the Commission's initiative. Assuredly the work which it was called upon to carry out demanded a great deal of initiative and even audacity on its part; but if the Commission felt that that clause prevented its acting as freely as it might wish in the interests of its work, it was an easy matter to request the General Assembly to modify the clause in a more liberal sense. For the moment, it was only proper to comply with a text the meaning of which had been made sufficiently clear by its authors.

21. Moreover, could it reasonably be feared that, when dealing with the recommendations concerning the choice of topics, the General Assembly would not take the necessary action to enable the Commission to continue its work of codification in the normal way? There was nothing, therefore, to prevent the Commission embarking forthwith upon the survey of the whole field of international law which must precede the choice of topics for codification at the same time as it examined the questions which had been specially referred to it by the General Assembly.

22. Mr. CORDOVA had hoped that the Secretariat would be in a position to supply information which would enable the Commission

to determine with certainty the meaning of article 18, paragraph 2; unfortunately, the explanations of the Secretary of the Commission and those of Mr. François had confirmed the footnote to paragraph 106 of the Secretary-General's memorandum (A/CN.4/1/Rev.1): Sub-Commission 2 had rejected the proposals which had tried to define more specifically the term " recommendations " in article 18.

23. Some members of Sub-Committee 2 had wanted to deprive the International Law Commission of all initiative: their proposals had been rejected; others, on the contrary, had wanted to ascribe almost unlimited initiative to the Commission: their proposals had also been rejected. It was necessary, therefore, to interpret article 18; in so doing, it must not be forgotten that the authors of the Statute had adopted two different points of view with regard to the question of the progressive development of international law and its codification. Articles 16 and 17, concerning progressive development, showed unequivocably that the Commission had no initiative in the choice of topics to be studied. On the other hand article 18, on codification, gave the Commission the power to choose the topics (paragraph 1), but requested the Commission to submit its recommendations to the General Assembly (paragraph 2).

24. Some members of the Commission thought that it had to submit recommendations to the General Assembly after a topic had been chosen, and await the Assembly's approval before undertaking the real work of codification; others, including Mr. Córdova, thought that the Commission was competent to proceed at once with work on any topic which it judged necessary or desirable for codification.

25. A compromise solution had been proposed by Mr. Alfaro, who thought that the Commission should consider the whole field of international law, choose the subjects " realizable " for codification and address recommendations to the General Assembly, while at the same time proceeding with the work of codification. Such a recommendation would then be merely a notification to the General Assembly, which would obviously have the right to stop the Commission's work on certain topics. Mr. Córdova did not oppose the presentation of recommendations in that sense, although they might be of doubtful value, since at each session the General Assembly would receive a report from the Commission, in which the latter would note the work of codification which it deemed necessary or desirable and which it had undertaken.

26. Mr. Córdova concluded by stressing once again the difference which the Statute established between the progressive development of international law on the one hand and its codification on the other; it was because the Commission had almost unlimited powers of initiative in matters of codification that the Statute gave priority to all requests from the General Assembly.

27. Mr. SPIROPOULOS said that the study of the preliminary work of the Statute and the explanations given by Mr. François and Mr. Liang had not enlightened the Commission on the exact significance of the provisions of article 18, paragraph 2. In the circumstances, the Commission itself would have to interpret them.

28. He himself thought that it was for the Commission, and not the General Assembly, to take the initiative in the codification of international law. In practice, the adoption of his interpretation of article 18, paragraph 2, or of the interpretation according to which the Commission had to await the General Assembly's approval before proceeding with the study of the topics which it considered necessary or desirable to codify, would not appreciably change the procedure of the Commission. Whichever interpretation was accepted, once the choice of topics for codification had been made—and all the members were agreed that the Commission had the utmost freedom in that matter—the Commission would have to notify the General Assembly of its choice and then act in accordance with the instructions the Assembly would give it. The recommendations which the Commission had to submit to the General Assembly under article 18, paragraph 2, were merely a transmission to that body of the Commission's decision that a specific topic in international law should be codified. The General Assembly, or more precisely the Sixth Committee, would examine the Commission's report, and it was very unlikely that it would take no decision on it.

29. Mr. SCELLE recalled that according to a general principle of law, which was reproduced in article 36 of the Statute of the International Court of Justice, all organizations were competent to interpret their own powers. Since there was some doubt as to the extent of the Commission's powers, it was for the Commission itself to decide what they were.

30. Mr. KORETSKY said that he viewed with some concern the fact that at the very outset of its session the Commission had devoted two meetings not to item 1 of its agenda, but to a discussion of what might happen at a later stage of its work. Like Mr. Scelle, he thought the Commission was entitled to determine its own powers; but it was obvious that it should do so only in case of doubt. In his opinion there was none. The preparatory work on the Statute and the summary records of the meetings of the Committee that drafted it showed that the text of article 18 was clear and unambiguous. Some members thought that the Commission should have the courage to interpret its own powers in a way that no one could consider too broad; it

was a good thing to be courageous, but the Commission should not, under the pretext of courage, disregard its obligations to the General Assembly.

31. There seemed to be a certain tendency in the Commission to interpret the word " recommendations " in article 18, paragraph 2, as meaning that the Commission need simply notify the General Assembly of its decisions. That word, however, which appeared more than once in the Charter, had a very specific meaning and there was nothing in the preparatory work of the Charter to corroborate such an interpretation.

32. To submit a recommendation to the General Assembly, under the terms of article 18, paragraph 2, was unquestionably the same as submitting the Commission's views and wishes for the Assembly to decide upon, to approve or to give other instructions. He found an added argument upon which to base his theory in Article 13 of the Charter, which laid down that " The General Assembly shall... make recommendations for the purpose of . . . encouraging the progressive development of international law and its codification." The codification of international law came within the General Assembly's competence: it was for Member States to decide whether or not the codification of a specific topic should be undertaken.

33. The question had a political as well as a technical aspect. There was an unfortunate tendency in certain circles to ignore not only the chief organs of the United Nations but the Organization itself. He would on no account wish to be a party to any attempt to ignore that principal organ—the General Assembly. The Commission, like all other organs of the United Nations, should make every effort to reinforce the prestige of the United Nations and not try to diminish it.

34. He understood perfectly the desire of certain members to accomplish, as soon as possible, the Commission's work of codification. The chief consideration that should guide the Commission in its choice of topics, however, was the possibility of achieving their codification. That codification could not be carried out without the consent of the General Assembly. It was therefore useless for the Commission to try to work independently without having first obtained that assent. Since it was the Commission's duty to choose the topics for codification, always bearing in mind the interests of the United Nations as a whole, it must work under the auspices of the General Assembly.

35. Mr. Córdova had emphasized that since according to article 18, paragraph 1, of the Statute the Commission was free to choose topics suitable for codification, it could proceed with its work without awaiting a decision from the General Assembly on the recommendations it made in accordance with paragraph 2 of that article.

36. It should be remembered, however, that the initiative in the matter of codification in no way meant the power to legislate but only to choose topics for codification. Since the Commission was merely a subsidiary organ of the General Assembly, it was only free to propose to the Assembly topics the codification of which it considered necessary or desirable; the Assembly itself would have to decide whether the proposed topics should or should not be codified.

37. In conclusion, he warned the Commission against the danger of exceeding its terms of reference, and asked it to approach its task in a practical manner by proceeding to choose topics for codification without concerning itself with what would happen after it had submitted its recommendations to the General Assembly.

38. Mr. SANDSTROM thought that the question of the interpretation which must be placed on paragraph 2 of article 18 was of such importance that the Commission must deal with it immediately. The word " recommendations " in that paragraph certainly had a meaning; since that meaning was obscure, however, the Commission must interpret it, and in order to do so it must study article 18 in its context, namely, in relation to the articles preceding or following it.

39. For his part, he favoured the widest possible interpretation of the Commission's powers. He recognized that the discussions in Sub-Committee 2 of the Sixth Committee could give rise to doubts regarding that interpretation, but he emphasized that the votes taken were the decisive factors which must be borne in mind. The result of those votes proved that Sub-Committee 2 had not reached any conclusion regarding the exact meaning of the word " recommendations ". It lay, therefore, with the Commission itself to determine that meaning, in the light of the other provisions of the Statute.

40. It could not be said that by placing a wide interpretation on its powers the Commission was ignoring a principal organ of the United Nations or in any way impeding its work for peace: the Commission's task depended in the last resort on the General Assembly, and it was obvious that if the Assembly did not approve the Commission's interpretation of paragraph 2 of article 18 of the Statute, it would not fail to say so when it examined the Commission's report.

41. The CHAIRMAN thought that when a Commission was organizing its work it was quite in order for it to devote attention to defining the extent of its competence. The fact that there was some doubt as to the exact extent of the Commission's powers was amply proved by the divergence of the views expressed during the discussion. When totally divergent opinions were expressed at an international conference, agreement could only be reached on a text which, while not entirely satisfactory to anyone, was

acceptable in that it was capable of various intepretations. That was exactly what had happened in Sub-Committee 2 regarding paragraph 2 of article 18.

42. According to the terms of paragraph 1 of article 18, the Commission was to survey the whole field of international law with a view to selecting topics for codification. The meaning of that paragraph was clear: the Commission's task was to select topics for codification. In his opinion, the French text of paragraph 2 was more satisfactory than the English. After having selected topics for codification, the Commission had to decide which of those topics it deemed necessary or desirable for codification. It was obvious that it could only take such a decision after having made a detailed study of those topics. The recommendation which the Commission would then have to submit to the General Assembly would simply be the transmission to the Assembly of the Commission's decision, with a statement of the reasons which had determined it. For his part, he did not see what other recommendation the Commission could make to the General Assembly.

43. Certain members of the Commission had shown that the application of the procedure provided for in articles 19 to 23 of the Statute would impose a heavy burden on Governments and that such a course should not be taken before the approval of the General Assembly had been obtained. Reviewing those articles, he noted that Governments would, if necessary, be called upon to supply, not only all the documentation on the topics of international law in which the Commission was interested but also their comments on the Commission's plans for codification. He recognized that the Commission must act with prudence in that field and only appeal to Governments when the need really made itself felt.

44. The procedure adopted by the League of Nations, to which Mr. François had referred, could not serve as a precedent, since the sole task of the Committee of Experts of the League of Nations had been to draw up a list of the topics which should subsequently be codified by a conference specially convened for that purpose by the Assembly. The International Law Commission, on the other hand, had been instructed not only to select topics for codification, but also to proceed with their codification. It was by no means his intention to ask the Commission to proceed with its work, disregarding the United Nations or the General Assembly. The Commission would report regularly to the General Assembly; it would keep it fully informed of the progress of its work and it would always be open to the Assembly to ask the Commission to cease dealing with such and such a topic, or to turn its attention to some specific question. Nor could it be maintained that by adopting the widest possible intepretation of paragraph 2 of article 18 the Commission was going beyond its terms of reference. It was only choosing the procedure which would allow it to work as rapidly and efficiently as possible. If the General Assembly did not accept that interpretation, it could intervene.

45. Summing up the debate, he asked the Commission to decide whether it wished to deal immediately with the question of the interpretation of paragraph 2 of article 18, as Mr. Sandström had proposed, or whether it preferred for the moment to postpone a decision on that interpretation, as Mr. Koretsky had suggested. If Mr. Sandström's proposal was accepted, the Commission would have either to decide on Mr. Alfaro's two-fold interpretation, or to reply, either immediately or after a prior investigation carried out by a sub-committee established for the purpose, to the following question:

> " Has the Commission competence to proceed under articles 19 to 23 without awaiting action by the General Assembly on recommendations made by the Commission under article 18, paragraph 2 ? "

46. Mr. ALFARO thought, as did Mr. Sandström, that the Commission should arrive at a definite decision on that point of the interpretation of its Statute. Although it ranked fourth among the questions raised by Mr. Alfaro, that point had in fact, after Mr. Koretsky's speech, been the subject of a discussion which had been so complete that it could not be closed except by a concrete solution, of whatever nature that might be.

47. Mr. SPIROPOULOS recalled that, without sharing Mr. Koretsky's dramatic view of the subject, he had already expressed an opinion similar to his on the inadvisability of settling purely theoretical problems of procedure at that time. The decision concerning those problems could easily be postponed until later, in the first place because it would be of no immediate usefulness, and, secondly, because any solution adopted *a priori* might prove to be inappropriate when put into actual practice. There were more urgent tasks demanding the attention of the Commission, and it should turn its attention to those without delay.

48. The CHAIRMAN asked the Commission to decide whether, in accordance with the suggestion of some of its members, it declined to take a decision at that time on the interpretation of paragraph 2 of article 18 of its Statute.

A vote was taken.

The proposal was not adopted having obtained only 5 votes.

The Commission decided, by 7 votes, that it would adopt a definite position on the matter of interpretation at the following meeting.

(b) CHOICE OF THE METHOD TO BE FOLLOWED IN THE SELECTION OF TOPICS FOR CODIFICATION

49. The CHAIRMAN suggested that the Commission should study the first of the other three questions which Mr. Alfaro had proposed for consideration, namely, the method whereby the topics for codification were to be selected.

50. Mr. KORETSKY wished to know what was to be the general plan of the Commission's work on the first item of the agenda, which called for a survey of international law with a view to selecting the topics for codification. In his opinion, it was not advisable to take up any subject at random and begin to study it as an experiment. The choice of topics for codification was an extremely delicate matter which required thorough consideration and which must therefore be preceded by long scientific research, at the national and international level, in order to obtain an accurate record of the existing status of international law, as the Institute of International Law had recommended in the resolution which was quoted in footnote 21 to the memorandum submitted by the Secretary General (A/CN.4/1/Rev.1). In view of the importance of such research, it did not seem that the Commission could consider selecting the topics for codification during that session, which could be devoted only to the preparation and organization of the Commission's work on that subject. In order to enable the Commission to take up the choice of topics for codification at the following session, Mr. Koretsky proposed that the Rapporteur should be asked to make a thorough study of existing conventions and treaties and of statute law, with the aid if necessary of two or three members appointed by the Chairman or by the Commission, and in collaboration with the appropriate division of the Secretariat, with a view to selecting a certain number of questions which would be likely to interest all the Member States of the United Nations. He might even make inquiries, through the Secretary-General, concerning the views and preferences of Governments on the subject, without Governments being obliged to reply. Since the first efforts of the League of Nations to codify international law, which had taken place in an atmosphere of hostility towards the popular democracies which were then in the process of organization, many events had taken place and the situation had so changed that many topics for codification which had seemed essential at that time, such as the control of territorial waters and that of nationality, would doubtless have to give place to other questions which had become of primary importance from the point of view of the maintenance of peace in an international community based on the equality of all States, absolute respect for their sovereignty and the exclusion of any intervention in affairs which fell within their domestic jurisdiction.

51. The question of codification must therefore be completely reconsidered, for it could be solved only by the peaceful co-operation of all forms of civilization, without distinction as to colour, and of all political systems of whatever shade of opinion. It would be advisable, therefore, to include among the members called upon to assist the Rapporteur representatives of various juridical systems, so that the work which they would accomplish together would not be too unilateral. Once the result of that work, in the form of a detailed memorandum containing a list of the topics suitable for codification, had been placed before the Commission, the latter would proceed at its following session to the consideration and criticism of the paper. The questionnaire for the Governments could then be prepared; it would not be sent to them until it had been approved by the General Assembly.

52. The adoption of that method, which would postpone the selection of topics until the following session, would enable the Commission to save much time, which it could devote to the study of the questions that had been specially referred to it by the General Assembly, and to the other items on the agenda. It could thus take up, among other things, the consideration of the Panamanian draft resolution on the rights and duties of States (A/285), which Mr. Alfaro seemed anxious about and the discussion of which, even if it were limited to fundamental principles, would be of long duration, as far as could be judged from the debates on the subject which had taken place on two different occasions in the General Assembly.

53. The CHAIRMAN remarked that Mr. Koretsky's proposal would, in fact, result in postponing the study of the first item to the next session, and in devoting the current session to the remainder of the agenda. At the preceding meeting, however, the Commission had decided to begin by discussing item 1 of the agenda; unless it reconsidered that it would have to adhere to it. Mr. Koretsky's proposal was similar to that made by Mr. Alfaro at the previous meeting to establish a sub-committe as the best means of carrying out the study indicated in article 18, paragraph 1 of the Statute. Such a sub-commission would apparently have to confine itself to forming a considered judgment based on the Secretariat memorandim and to drawing up a list of the topics for study. However that might be, the Commission could naturally opt for either solution.

54. Mr. CORDOVA, recalling an interesting observation made by Mr. Spiropoulos, was of the opinion that the sub-committee could also be entrusted with the study of the criteria to be used in the choice of topics for codification.

55. Mr. ALFARO explained that it was not his intention that the sub-committee should be asked to give an opinion on the Secretariat memorandum, concerning which every member of the Commission had already formed an opinion. His proposal was directly related to the first item on the agenda, which envisaged first the organization of the work of codifying international law—which was what the Commission was doing—and then the study of international law with a view to selecting appropriate topics for codification, which was the type of work that should be allocated to a sub-committee.

56. Consequently, Mr. Alfaro submitted the following draft resolution to the Commission:

"Be it resolved:

"1. A Sub-Committee is established for the purpose of reporting to the Commission on the action it must take and the procedure it must follow in pursuance of paragraph 1 of article 18 of the Statute of the Commission.

"2. The Sub-Committee shall be composed of the following members:

". . .

"3. For the discharge of the functions entrusted to the Sub-Committee, it shall:

"(*a*) After a survey of the field of international law, effected in the extent and manner that the Sub-Committee itself may determine, formulate a list of those subjects which constitute the whole domain of international law:

"(*b*) Formulate a list of those topics the codification of which is considered necessary or desirable;

"(*c*) Formulate the recommendations that must be made to the General Assembly pursuant to paragraph 2 of article 18 of the Statute, with regard to the necessity or desirability of codifying the topics listed as above stated."

57. That draft resolution referred both to item 1 of the agenda and to article 18 of the Statute, of which it would, in fact, be the application. It would not be advisable to digress from those terms of reference in order to express purely academic judgments concerning the value of a document. The Commission should avoid any procedure which might hinder the logical development of its work. Its task was to codify universal law; it need follow no other directives than the Charter, its own Statute, and its agenda.

58. The CHAIRMAN observed that the task of the sub-committee, as just defined, seemed almost as onerous as that which Mr. Koretsky would like to give to the rapporteur.

59. Mr. AMADO asked that that task should not exceed the normal working capacity of those who would have to perform it.

60. Mr. SPIROPOULOS agreed in principle with the method suggested by Mr. Alfaro, which he understood in the following manner. There was, of course, no question of asking the sub-committee to make a thorough survey of the whole field of international law. That survey had already been made a number of times, and the Commission could well base its work on the Secretariat memorandum, which, although not perfect, did not deserve the criticisms it had received. Instead of doing the work again, which might take a great deal of time, the Commission should be satisfied to use the second part of that memorandum. It would hold a general discussion on the different topics dealt with in the memorandum, determine which were the most important and decide whether it was necessary or desirable to proceed to their codification. The sub-committee would then make a report containing a summary of the general opinion of the members of the Commission as expressed in the course of that discussion.

61. The CHAIRMAN thought that the suggestion of Mr. Spiropoulos that the second part of the Secretariat memorandum should be discussed immediately was wise. That would preclude a study of the whole domain of international law, which Mr. Alfaro appeared to advocate as well as Mr. Koretsky, and which would prevent the Commission from reaching a solution concerning item 1 of the agenda in the course of the current session. The Chairman, however, reminded the Commission that if it adopted the preliminary procedure proposed by Mr. Spiropoulos, it would have to take into account the suggestion of Mr. François, which aimed at adding the law of war to the proposed topics for codification.

62. Mr. ALFARO pointed out that the way he envisaged the sub-committee's task corresponded exactly to the suggestions made by Mr. Spiropoulos. In his opinion, the five members of the sub-committee, taking the Secretariat document as the basis of their work, and relying on their own knowledge of international law, would be able in a very short time to draw up the two lists and the draft recommendations which would constitute the starting point of the Commission's debate on that item of the agenda. If, however, the Commission preferred to do the preparatory work itself in plenary session, Mr. Alfaro was prepared to withdraw his proposal for the establishment of a sub-committee for that purpose.

63. The CHAIRMAN was of the opinion that to set up a sub-committee would be premature as long as the Commission had not itself expressed some general opinions on the subject, which could serve as directives to the proposed sub-committee.

The meeting rose at 6 p.m.