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Summary record of the 182nd meeting

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78. Mr. FRANÇOIS drew Mr. Spiropoulos' attention to the fact that the summary records did not normally show how individual members of the Commission voted.

79. The CHAIRMAN pointed out that, if any member particularly wished it to be recorded how he or some other member of the Commission had voted on a question, he could always request a roll-call vote.

80. Mr. ZOUREK said that he also intended to request the insertion of a footnote indicating his attitude. He had therefore been about to ask the same question as Mr. Kozhevnikov. If the Assistant Secretary-General's view was accepted, he was satisfied.

81. On the question of principle, he felt that it would be inadmissible that an individual member of the Commission should not be able to request insertion in the Commission's report of, at the very least, a bare indication that he disagreed with the Commission's decision on a matter of importance. The Commission could always refuse individual requests if it felt that the right was being abused, but it surely could not deprive members of that right altogether.

82. Mr. LAUTERPACHT agreed with Mr. Hudson that members of the Commission should be able to protect themselves against being saddled with responsibility for a text with which they did not agree. He did not see how there could be any possibility of that right being abused, so long as explanations were not permitted.

83. Mr. HSU feared that Mr. el-Khouri's proposal was too restrictive. He agreed with Mr. Lauterpacht that the existing rule, established at the previous session, was sufficient to prevent abuse.

84. Mr. el-Khouri said that his main desire was to avoid weakening the Commission's reports in the eyes of governments and the General Assembly. It was common knowledge to all who read the Commission's reports that its decisions were not necessarily unanimous; that was surely sufficient to give individual members the protection they desired. He did not agree that the rule established at the previous session made abuse impossible.

85. Mr. KOZHEVNIKOV said that he could not support Mr. el-Khouri's proposal, which appeared to be based on a desire to conceal the true facts from public opinion.

Mr. el-Khouri's proposal was rejected by 5 votes to 3, with 1 abstention.

86. The CHAIRMAN noted that the Commission would therefore continue to be bound by the rule it had established at the previous session.

Nationality, including, statelessness (item 6 of the agenda)

87. The CHAIRMAN said that, in pursuance of the Commission's decision to accept Mr. Hudson's

resignation as special rapporteur on nationality, including statelessness, he had drafted the following letter:

"Dear Judge Hudson,

"On the occasion of your resignation from the position of special rapporteur on Nationality including Statelessness, which the Commission accepted on 4 August 1952, may I, on behalf of the Commission, express the most sincere regret that your present state of health should have made such a step necessary.

"As you will recall, the Commission had been most reluctant to lose the benefit of your learning and ability as special rapporteur and had expressed the earnest hope that you would reconsider your position and find it possible, by readjusting your many undertakings, to carry on the task which you had been requested to assume. The Commission accepted your resignation only when you persisted in the desire to be relieved. It has done so with the utmost regret.

"The Commission deeply appreciates the valuable contributions which you have made on the subject of nationality including statelessness and hopes that you will soon be restored to full health.

"With warm regards,

"I am,

"Yours sincerely."

The draft prepared by the Chairman was approved.

The meeting rose at 1.10 p.m.

182nd MEETING

Thursday, 7 August 1952, at 9.45 a.m.

CONTENTS

	<i>Page</i>
Filling of a casual vacancy in the Commission	245
Arbitral procedure (item 2 of the agenda) (<i>resumed from the 181st meeting</i>)	245
Requests by Mr. Zourek and Mr. Kozhevnikov for insertion of footnotes in the Commission's Report to the General Assembly	245
Consideration of the draft report of the Commission covering the work of its fourth session A/CN.4/L.38 and Add. 1 to 5, A/CN.4/L.38/Corr.1, A/CN.4/L.38/Add.2/Corr.1)	248
Chapter I: Introduction	248
Chapter III: Nationality, including statelessness	248
Chapter IV: Régime of the territorial sea	249
Chapter V: Law of treaties	250
Chapter VI: Régime of the high seas	250
Chapter VII: Other decisions	250

Chairman : Mr. Ricardo J. ALFARO

Rapporteur : Mr. Jean SPIROPOULOS.

Present :

Members : Mr. Roberto CORDOVA, Mr. J. P. A. FRANÇOIS, Mr. Shushi HSU, Mr. Manley O. HUDSON, Faris Bey el-KHOURI, Mr. F. I. KOZHEVNIKOV, Mr. H. LAUTERPACHT, Mr. J. M. YEPES, Mr. J. ZOUREK.

Secretariat : Mr. Ivan S. 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).

Filling of a casual vacancy in the Commission

1. The CHAIRMAN said that the Commission had to consider the question of filling the casual vacancy caused by the resignation of Sir Benegal Rau. He had received a communication from the Indian Chargé d'Affaires in Berne, presenting the candidature of Mr. Radhabinod Pal, and asking the Commission to give sympathetic consideration to filling the vacancy at its present session, so that the new member could take part in the Commission's work at its fifth session, instead of postponing any action until the membership of the whole Commission was renewed by the General Assembly. The Indian Chargé d'Affaires in Berne had also enclosed a *curriculum vitae* of Mr. Pal, which he proceeded to read out, copies of which would be made available to the members of the Commission.

2. He believed that the Commission should first decide the question of principle, whether it wished to elect Sir Benegal Rau's successor at the present session.

3. Mr. KOZHEVNIKOV believed that the information which the Chairman had given the Commission enabled it to proceed to the election forthwith.

4. Mr. el-KHOURI agreed. The fact that Sir Benegal Rau had been unable to attend the last three sessions of the Commission made it doubly desirable that a representative of the Indian legal system should attend the fifth session. He supported Mr. Pal's candidature.

5. Mr. FRANÇOIS said that all the information concerning Mr. Pal which had come to his ears encouraged him to support his candidature also.

6. Mr. CORDOVA and Mr. ZOUREK agreed that the Commission should proceed to the election forthwith and said that they too would vote in favour of Mr. Pal.

7. Mr. HUDSON said that, even assuming that his qualifications were outstanding, he doubted whether a new member of the Commission would be able to make a useful contribution at the next session, given the present stage of the Commission's work. For that reason and for reasons of expense, he doubted the necessity of filling the vacancy before the term of office of the present members expired.

8. Mr. el-KHOURI felt that article 10 of the Commission's Statute left it no choice but to fill a casual vacancy, provided it could find a suitable candidate.

9. Mr. KOZHEVNIKOV expressed his entire agreement with Mr. el-KHOURI. He was sure that, if Mr. Pal were elected, he would make a useful contribution to the Commission's work at its next session.

10. Mr. LAUTERPACHT agreed that the Commission now had the necessary facts at its disposal to enable it to proceed to the election forthwith.

11. Mr. YEPES said that Mr. Pal's *curriculum vitae* showed clearly enough that he would make an excellent choice.

12. Mr. HSU moved that the vote be adjourned until the opening of the following meeting, in order to enable members to consider further Mr. Pal's *curriculum vitae*, which he understood was to be distributed to them.

13. Mr. LAUTERPACHT said that he did not think the Commission should refuse any member's request for more time for consideration. He would therefore vote in favour of the motion for adjournment.

The motion for adjournment was adopted by 7 votes to 4.

Arbitral procedure (item 2 of the agenda)

(resumed from the 181st meeting)

REQUESTS BY MR. ZOUREK AND MR. KOZHEVNIKOV FOR INSERTION OF FOOTNOTES IN THE COMMISSION'S REPORT TO THE GENERAL ASSEMBLY

14. Mr. ZOUREK requested that the following footnote be inserted at an appropriate place in the Commission's Report to the General Assembly covering the present session :

"Mr. Zourek said that he had voted against the draft articles on arbitral procedure in their entirety and against the comment because, for reasons which he had explained in the course of the discussion (see in particular the summary records of the 140th, 147th, 149th, 151st and 177th meetings), he could not accept the new concept of arbitration as it emerged from the essential provisions of the draft in question."

15. Mr. LAUTERPACHT and Mr. FRANÇOIS felt that, in order to bring the text proposed by Mr. Zourek into conformity with the rule established at the previous session, the reference to the fact that Mr. Zourek "could not accept the new concept of arbitration as it emerged from the essential provisions of the draft" must be deleted.

16. Mr. HUDSON said that, in his view, the text proposed by Mr. Zourek was in conformity with the rule established at the previous session and should be accepted without change. That rule, however, unduly restricted members of the Commission, and should, he suggested, be reconsidered.

17. Mr. YEPES agreed that Mr. Zourek's proposal was in conformity with the rule established at the previous session.

18. Mr. SPIROPOULOS said that, although he had some sympathy with Mr. Zourek's request, he must point out that the terms in which it was couched were very similar to those of the initial request made by Mr. Hudson at the previous meeting. The outcome of the lengthy discussion on that request had been perfectly clear; Mr. Hudson had felt obliged to replace his proposal by another, confined to the statement that he had voted against the draft as a whole.

19. As he (Mr. Spiropoulos) had stated during that discussion, the difficulties which inevitably arose out of members' requests for the inclusion of footnotes explaining their attitude, together with the constant danger that the practice would be abused, convinced him that in future no such requests should be entertained. Even if a member did not wish to request a roll-call vote, he could always explain his vote, and his explanation would appear in the summary records. The position of individual members was therefore fully safeguarded without any footnotes.

20. Under the rule established at the previous session, Mr. Zourek's proposal would, however, be acceptable if the clause quoted by Mr. Lauterpacht were omitted.

21. Mr. ZOUREK said that, as he had tried to point out at the previous meeting, the least that was required, if the report was to reflect the true facts accurately, was that individual members of the Commission should be permitted to indicate their disagreement with the majority on questions of capital importance and, very briefly, the reasons which they gave for disagreeing. The practice of explaining one's vote was itself open to abuse, and was time-consuming. Moreover, the summary records were not read by all who read the report.

22. Mr. KERNO (Assistant Secretary-General) said that his sole concern was that the Commission should accord the same treatment to all its members. In the circumstances he felt that it must either request Mr. Zourek to amend his proposal in the manner suggested by Mr. Lauterpacht, or, if it accepted Mr. Zourek's proposal as it stood, permit Mr. Hudson to re-introduce his original proposal.

23. Mr. FRANÇOIS thought the Commission had been in general agreement that any new rule, if adopted, should relate to future sessions only. For the present session, therefore, the Commission was bound by the rule established at the previous session.

24. The CHAIRMAN, speaking as a member of the Commission, recalled that the question of footnotes indicating the attitude of individual members had given rise to difficulties ever since the Commission's first session. That alone was an argument against the practice. Moreover, the need for an account of all that led up to the Commission's decisions, including the attitude of individual members, was met by the summary records. There was no possibility of condensing the views of all the individual members in the report itself. Thus the practice of permitting some members to include footnotes containing explanations

of the reasons why they had voted against the Commission's decisions necessarily entailed some unfairness towards others who did not request the inclusion of such footnotes. If members who opposed the Commission's decisions were permitted to explain why they had done so, there seemed no good reason why those who supported them should not be permitted to do the same.

25. A comparison had been drawn with the dissenting opinions permitted under the Statute of the International Court of Justice. There was, however, a great difference between the Commission, which was a technical body, and the International Court of Justice, or any other court of justice, whose decisions affected the rights and positions of the parties to a dispute. The Commission's decisions had no binding force in themselves; they had to be approved by the governments represented in the General Assembly.

26. For all those reasons he had voted in favour of Mr. el-Khouri's proposal that no footnotes indicating the attitude of individual members of the Commission should be permitted in future. That proposal had been rejected, however, and he was agreeable to the Commission continuing to be guided by the rule established at the previous session, which appeared to him to meet fully the legitimate desire of individual members of the Commission for protection against being saddled with responsibility for views with which they did not agree, in that it did not prevent them from referring to the passages in the summary records where their reasons for opposing such texts were stated. As could be seen, however, even that rule appeared to give rise to difficulties. Those difficulties had already arisen in the case of Mr. Zourek's request, and they would arise again in the case of Mr. Kozhevnikov's request, which was for the insertion of the following passage in a footnote to the Commission's report:

"Mr. F. I. Kozhevnikov said that the reason why he had voted against the preliminary draft on arbitral procedure in its entirety was that it was quite inadmissible from the point of view of modern international law, since it was contrary to the fundamental principles of free choice and independence of the parties in drawing up the arbitration procedure and it introduced an unlawful principle concerning the possibility of interference by the International Court of Justice. Hence he had also voted against the comments on the preliminary draft in question."

27. Mr. LAUTERPACHT, speaking on a point of order, submitted that what the Chairman had said as a member of the Commission was itself out of order. The Commission was not at present considering the question of principle. It could only do so if Mr. Hudson, who had suggested that the Commission reconsider the rule established at the previous session, made a formal motion to that effect, and the motion were adopted.

28. Mr. HUDSON moved that the Commission reconsider the rule established at the previous session.

29. Mr. el-KHOURI supported the motion, because he

considered that the present practice could result in misleading readers of the report.

30. Mr. KOZHEVNIKOV said that, in view of the Chairman's statement on the question of principle, he considered it essential to restate his own views on that question. He was also concerned at the implications in the statement by Mr. Spiropoulos, whom, as general rapporteur, it would have been reasonable to expect to be in favour of conveying in the report an accurate reflection of what had happened in the Commission rather than of concealing the true facts from public opinion or from governments.

31. The CHAIRMAN put to the vote the motion that the Commission reconsider the rule established at the previous session.

The motion was rejected by 6 votes to 5.

32. Mr. KOZHEVNIKOV recalled that the rule established at the previous session was that the Commission "would no longer accept *detailed* explanations". He did not think there was any disagreement on that point. Neither his proposal nor Mr. Zourek's, nor indeed that which Mr. Hudson had first submitted at the previous meeting, contained detailed explanations.

33. Mr. LAUTERPACHT said that the rule established at the previous session was perfectly clear.¹ It only permitted a reference to the relevant summary records. Even a brief explanation, such as that contained in Mr. Zourek's proposal, could contain a statement which was not acceptable to the majority of the Commission. The majority of the Commission did not agree that the draft articles were based on a new concept of arbitration, they considered that, in its most essential provisions, it was based on the established principles of arbitration.

34. Mr. KOZHEVNIKOV said that another thing which was surely perfectly clear was that the minority should enjoy the elementary right to express their views. Dictatorship of the majority was contrary to the fundamental principles of democracy.

35. Mr. FRANÇOIS felt that the point raised by Mr. Kozhevnikov was irrelevant. If the minority was permitted to explain its views, the majority must be permitted to reply. The minority would then wish to present a rejoinder, and so on *ad infinitum*.

36. Mr. YEPES said that, for the considerations which he had advanced at the previous meeting, as well as at the previous session, he would vote in favour of Mr. Zourek's request. It was a principle of scientific liberty, recognized in all scientific bodies, that an individual member should be permitted to state, as briefly as possible, why he was opposed to the decisions of the majority. The adoption of such a practice by the Commission would enhance, rather than diminish, the

authority of its reports as works of scientific integrity. It could not be claimed that the views of individual members were adequately reflected in the summary records.

37. In reply to Mr. François he would point out that the majority's views were contained in the body of the report. There could be no question of their replying to the views of the minority as expressed in a few brief footnotes.

38. Mr. el-KHOURI said that no one was questioning the right of any member to hold whatever views he wished or to have them expressed in the summary records. A member had no right however, to insist on their inclusion in the report.

39. Mr. KOZHEVNIKOV said that he was in complete disagreement with Mr. el-Khoury. All members of the Commission had a right to express their views in the report, particularly when those views bore on fundamental matters. He was surprised that the right should be disputed in a body of international lawyers.

40. Mr. CORDOVA said that the analogy with the International Court of Justice was misleading for another reason, apart from that given by Mr. Alfaro. The deliberations of the judges of the Court were secret so that, if publication of dissenting opinions were prohibited, the minority would be saddled with the responsibility for the decisions of the majority. The Commission's discussions were not secret and were recorded in the summary records.

41. Some members appeared to have overlooked the fact that the report did not state merely the views of the majority. It often indicated the arguments advanced against a course of action taken by the Commission as well as those advanced in favour of it.

42. In the absence of further comment, the CHAIRMAN put Mr. Zourek's request to the vote, pointing out that the Commission had only to decide whether that request was in accordance with the rule established at the previous session, since that rule was still in force.

Mr. Zourek's request was rejected by 7 votes to 4.

43. Mr. YEPES explained that he had voted in favour of granting Mr. Zourek's request since he believed in scientific liberty. He would vote similarly in favour of inserting the text proposed by Mr. Kozhevnikov, although he believed that the report itself completely refuted all the arguments that text contained. For that very reason its inclusion could not harm the Commission.

44. The CHAIRMAN then put Mr. Kozhevnikov's request to the vote, after repeating the same remarks as he had made with regard to Mr. Zourek's.

Mr. Kozhevnikov's request was rejected by 7 votes to 4.

45. Mr. KOZHEVNIKOV said that he wished to place on record that the rejection of his request was, in his view, a flagrant denial of a fundamental right belonging

¹ See summary record of the 128th meeting, paras. 32 and 56.

to all members of the Commission and a direct violation of the Commission's Statute.

46. Mr. el-KHOURI said that he had voted against both requests because he was opposed in principle to the inclusion of footnotes indicating the attitude of individual members of the Commission, and because the texts proposed were not in conformity with the rule established at the previous session, which clearly banned any explanations, however brief.

47. Mr. KOZHEVNIKOV said that although the majority of the Commission had rejected the simple request he had made, he hoped they would not also reject a request for inclusion of a footnote reading as follows :

“ Mr. Kozhevnikov said that he had voted against the preliminary draft on arbitral procedure in its entirety and also against the comments.”²

48. Mr. ZOUREK said that rejection of his request, which he had purposely worded merely as an expression of his own personal views, made it impossible for those views to be adequately reflected in the report and thus conflicted with a fundamental principle of scientific liberty. In order that the report should not give an incomplete and entirely inaccurate picture of the true situation, he requested insertion of the following text as a footnote :

“ Mr. Zourek said that he had voted against the draft articles on arbitral procedure in their entirety and against the comment, for reasons which he had explained in the course of the discussion (see in particular the summary records of the 140th, 147th, 149th, 151st and 177th meetings).”³

Mr. Kozhevnikov's and Mr. Zourek's requests were granted unanimously.

Consideration of the draft report of the Commission covering the work of its fourth session A/CN.4/L.38 and Add. 1 to 5, A/CN.4/L.38/Corr. 1, A/CN.4/L.38/Add.2/Corr.1)

49. The CHAIRMAN invited the Commission to consider the draft report on the work of the session (A/CN.4/L.38 and Add.1-5, A/CN.4/L.38/Corr.1, A/CN.4/L.38/Add.2/Corr.1).

CHAPTER I : INTRODUCTION (A/CN.4/L.38 and Corr.1) ⁴

*Paragraph 9 [10] **

50. Mr. KOZHEVNIKOV proposed the deletion of paragraph 9 on the ground that the Commission could not claim to have made progress at the present session.

² Footnote 4 of the “ Report ”.

³ *Ibid.*

⁴ Mimeographed document only. It was incorporated, with drafting changes, in the “ Report ” of the Commission as Chapter I (see vol. II of the present publication). Drafting changes are given in the present summary record.

* The number within brackets refers to the paragraph number in the “ Report ”.

51. Mr. LIANG (Secretary to the Commission) observed that the use of the word “ progress ” in such a context did not imply any evaluation of the work done. However, in order to meet Mr. Kozhevnikov's point, the words “ The progress in ” might be deleted.

52. Mr. KOZHEVNIKOV accepted the Secretary's suggestion.

The Secretary's suggestion was adopted.

Proposal by Mr. el-KhourI for an additional paragraph

53. Mr. el-KHOURI said that chapter I must contain a paragraph stating that the Commission had taken note of General Assembly resolution 601 (VI) concerning the Commission's report on its third session.

54. Mr. SPIROPOULOS supported Mr. el-KhourI's proposal and said that a text in that sense would be submitted to the Commission at its next meeting.

On that understanding chapter I as amended was approved.

CHAPTER III : NATIONALITY, INCLUDING STATELESSNESS (A/CN.4/L.38/Add.2 and Corr.1) ⁵

Paragraph 6 [30]

55. Mr. LAUTERPACHT said that the origin of the suggestion referred to in the third sentence was not clear. He therefore proposed the insertion of the words “ by the special rapporteur ” after the word “ suggested ”.

It was so agreed.

Paragraph 7 [31]

56. Mr. HUDSON proposed the deletion of the second sentence and the consequential deletion of the first word in the third sentence.⁶

Mr. Hudson's amendment was adopted.

57. Mr. LAUTERPACHT said he was uncertain whether the third sentence was accurate, as he did not remember the Commission having decided that one or more draft conventions on the reduction of future statelessness were to be prepared for consideration at the next session.

58. He also wished to take the present opportunity to ask whether the Commission should not, at its next session, consider the possibility of amplifying the scope of its reports which, in their present form, gave a somewhat meagre account of what had taken place.

59. Mr. LIANG (Secretary to the Commission) said that the Commission's annual reports were prepared in

⁵ Mimeographed document only. It was incorporated, with drafting changes, in the “ Report ” of the Commission as Chapter IV (see vol. II of the present publication). Drafting changes are given in the present summary record.

⁶ The second sentence and the first word of the third sentence read as follows : “ It did not present a draft of a convention on this topic, nor did it present any concrete proposals. Instead . . . ”.

their present form not in order to avoid technical difficulties but as a matter of policy. It was felt that unless the Commission had completed its work on a particular topic it should only submit to the General Assembly a very brief account of the progress made, in order to avoid the risk of tentative conclusions being discussed. The Commission's work was of such a character that only its final decisions and drafts ought to be made available to the general public.

60. Mr. SPIROPOULOS considered that that policy should be maintained.

61. Mr. LIANG (Secretary to the Commission) suggested that Mr. Lauterpacht's objections to the third sentence would be met if it were re-drafted to read :

"The Commission took the view that a draft convention on the elimination of statelessness and one or more draft conventions on the reduction of future statelessness should be prepared for consideration at its next session".⁷

62. Mr. LAUTERPACHT said he would accept that text on the understanding that it conformed exactly with the decision taken by the Commission.

63. Mr. el-KHOURI asked that a footnote be appended to the fourth sentence, worded as follows :

"Mr. el-Khoury voted against the directives adopted by the Commission to guide the work of the special rapporteur".⁸

He would not ask for the reasons for his opposition to be given in the footnote since they appeared in the summary records.

64. Mr. KOZHEVNIKOV said he would submit at the next meeting the text of a footnote indicating that he had voted against the decision taken by the Commission concerning the preparation of draft conventions on statelessness.

65. Mr. ZOUREK said that he also wished his opposition to that decision to be recorded.

Paragraph 9 [33]

66. Mr. KERNO (Assistant Secretary-General) supported the deletion of the words "for reasons of health" after the words "to be relieved".

It was so agreed.

67. The CHAIRMAN put to the vote chapter III as amended, and subject to the insertion of footnotes explaining the attitude taken by Mr. el-Khoury, Mr. Kozhevnikov and Mr. Zourek to the Commission's decision on the draft conventions on statelessness.

Chapter III was approved by 7 votes to none with 3 abstentions.

⁷ Instead of "The Commission took the view that a draft convention on elimination of statelessness should be presented to it at its next session, and that one or more draft conventions on the reduction of future statelessness should also be prepared for consideration at its next session".

⁸ See summary record of the 183rd meeting, para. 44.

CHAPTER IV : RÉGIME OF THE TERRITORIAL SEA (A/CN.4/L.38/Add.1)⁹

Paragraph 4 [38]

68. Mr. KOZHEVNIKOV said that paragraph 4 conveyed a somewhat erroneous impression of the way in which the Commission had dealt with the report on the régime of the territorial sea. It seemed to suggest that the Commission had studied certain questions whereas in fact there had been only a preliminary discussion. The Commission had not taken any decisions, but had merely put forward some tentative considerations.

69. Mr. SPIROPOULOS said that, although the Commission did in fact vote on certain points in the report, he would be prepared to meet Mr. Kozhevnikov's point by substituting the word "discussed" for the word "considered" and the words "expressed some tentative views" for the words "took some tentative decisions".

The rapporteur's amendments were adopted.

70. Mr. YEPES proposed the insertion of the words "and the air space above it" after the word "subsoil". Without that addition paragraph 4 would be incomplete.

71. Mr. KOZHEVNIKOV supported Mr. Yepes' amendment.

Mr. Yepes' amendment was adopted.

Paragraph 5 [39]

72. Mr. YEPES proposed the insertion of the words "in view of the fact that it was pre-eminently a technical question" after the words "it was decided".

73. Mr. SPIROPOULOS said that Mr. Yepes' amendment was unnecessary and, furthermore, not altogether accurate, since governments were being asked to furnish information not only on technical matters.

74. Mr. YEPES withdrew his amendment.

75. Mr. ZOUREK proposed the addition of the words "and to furnish any observations they might think fit" at the end of the first sentence in paragraph 5. The intention of the Commission's decision would then be fully explained.

Mr. Zourek's amendment was adopted.

76. Mr. FRANÇOIS proposed the addition of a new sentence at the end of paragraph 5, to read :

"The Secretary-General is asked to provide for the necessary expenditure for any such consultation".

Mr. François' amendment was adopted.

Chapter IV as amended was approved unanimously.

⁹ Mimeographed document only. It was incorporated, with drafting changes, in the "Report" as Chapter IV (see vol. II of the present publication). Drafting changes are given in the present summary record.

CHAPTER V : LAW OF TREATIES (A/CN.4/L.38/Add.5)¹⁰
Paragraph 2 [48]

77. Mr. KOZHEVNIKOV considered that the draft to be presented by the new special rapporteur on the law of treaties would have to be a preliminary draft, not a final draft as was stated in paragraph 2.

78. Mr. LIANG (Secretary to the Commission) pointed out that the second sentence was partly a quotation from paragraph 75 of the Commission's report on its third session (A/1858).

79. Mr. KOZHEVNIKOV said that, in the light of the Secretary's explanation, he would not make a formal proposal, but must maintain his view that it was inappropriate to speak of a final draft at the present stage.

Paragraph 3 [49]

80. Mr. HUDSON suggested the deletion of the words "for reasons of health" before the word "resigned".

It was so agreed.

Chapter V, as amended, was approved by 9 votes to none, with 1 abstention.

CHAPTER VI : RÉGIME OF THE HIGH SEAS
 (A/CN.4/L.38/Add.4)¹¹

81. Mr. HUDSON proposed that the subject matter of chapters V and VI be transposed so that the régime of the high seas might be dealt with immediately after the régime of the territorial sea, which was a related subject.

It was so agreed.

Paragraph 5 [45]

82. Mr. LIANG, Secretary to the Commission, suggested that it was undesirable to indicate that the Commission had deferred consideration of the report on the régime of the high seas owing to lack of time.

It was agreed to delete the words "owing to the lack of time at its disposal".

83. Mr. KOZHEVNIKOV proposed the deletion of the second sentence. He failed to understand why any special mention should be made of the International Convention for the Unification of Certain Rules relative to Penal Jurisdiction in Matters of Collision on the High Seas and other Risks of Navigation.

84. Mr. FRANÇOIS said that that reference, which could be omitted, had only been made in order to indicate that the Commission was aware of the significance of the Convention.

85. Mr. SPIROPOULOS said that the request mentioned in the second sentence formed part of the Commission's decision. It need not be retained, however,

since other more important decisions had not been referred to in the draft report.

86. Mr. KOZHEVNIKOV said that his proposal had been prompted by that very consideration. Furthermore, the decision in question had been taken in a somewhat cursory manner after very brief discussion.

87. Mr. SPIROPOULOS said he would be prepared to withdraw the second sentence of paragraph 5.

88. Mr. el-KHOURI pointed out that deletion of the second sentence might convey the unfortunate impression that the Commission had given no instructions to the special rapporteur for proceeding with his work on the régime of the high seas.

Mr. Kozhevnikov's proposal for the deletion of the second sentence was adopted by 6 votes to 3, with 2 abstentions.

Chapter VI as amended was approved by 8 votes to none, with 1 abstention.

CHAPTER VII : OTHER DECISIONS
 (A/CN.4/L.38/Add.3)¹²

Paragraph 3 [55]

89. Mr. el-KHOURI said he did not recall the Commission having taken any definite decision regarding the duration of the fifth session.

90. Mr. LIANG (Secretary to the Commission) said that in earlier years the Commission had decided in favour of sessions of twelve weeks, but the previous year the Advisory Committee on Administrative and Budgetary Questions had reduced the period to ten weeks.

91. Mr. SPIROPOULOS formally proposed that the fifth session last for twelve weeks.

92. Mr. el-KHOURI seconded the proposal.

Mr. Spiropoulos' proposal was adopted.

93. Mr. KOZHEVNIKOV asked that chapter VII be put to the vote paragraph by paragraph.

Paragraph 1 (52) was approved by 9 votes to 1, with 1 abstention.

Paragraph 2 (54) was approved by 8 votes to none, with 3 abstentions.

Paragraph 3 (55) was approved by 9 votes to none, with 2 abstentions.

Chapter VII as a whole was approved by 9 votes to none, with 2 abstentions.¹³

The meeting rose at 1.5 p.m.

¹² *Ibid.* Chapter VII.

¹³ See summary record of the 183rd meeting, para. 57.

¹⁰ *Ibid.* Chapter VI.

¹¹ *Ibid.* Chapter V.