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Summary record of the 527th meeting

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INTERNATIONAL LAW COMMISSION

SUMMARY RECORDS OF THE TWELFTH SESSION

Held at the Palais des Nations, Geneva, from 25 April to 1 July 1960

526th MEETING

Monday, 25 April 1960, at 3 p.m.

Chairman: Sir Gerald FITZMAURICE

later: Mr. Luis PADILLA NERVO

Opening of the session

1. The CHAIRMAN declared the twelfth session of the International Law Commission open.

Tribute to the late Mr. Manley O. Hudson

2. The CHAIRMAN said that the world of international law had suffered a grievous loss by the recent death of the eminent American jurist Mr. Manley O. Hudson, a former Chairman of the Commission.

3. At the invitation of the CHAIRMAN, the Commission observed one minute's silence as a tribute to the memory of Mr. Manley O. Hudson.

Election of officers

4. The CHAIRMAN called for nominations for the office of Chairman.

5. Mr. GARCÍA AMADOR proposed Mr. Amado who, in addition to having rendered valuable services to the Commission, came from a country which had made an outstanding contribution to international law in Latin America.

6. Mr. AMADO, though deeply grateful for the honour done him, regretted that his health and age obliged him to decline it.

7. He would nominate instead Mr. Padilla Nervo, whose ability and experience eminently qualified him for the office.

8. Mr. MATINE-DAFTARY seconded that proposal.

Mr. Padilla Nervo was unanimously elected Chairman and took the Chair.

9. The CHAIRMAN, thanking members for having elected him, said that it was a great responsibility to succeed so distinguished a chairman as Sir Gerald Fitzmaurice and, in a sense, to replace the eminent Mr. Amado, whom members had had in mind as their first choice for Chairman. He would endeavour to carry on the work of the Com-

mission in accordance with the tradition laid down by his predecessors.

10. He called for nominations for the office of First Vice-Chairman.

11. Mr. EDMONDS proposed Mr. Yokota.

Mr. Yokota was unanimously elected First Vice-Chairman.

12. The CHAIRMAN called for nominations for the office of Second Vice-Chairman.

13. Mr. AGO proposed Mr. Bartoš, who represented the legal systems of the whole of Europe.

14. Mr. AMADO seconded the proposal.

Mr. Bartoš was unanimously elected Second Vice-Chairman.

15. The CHAIRMAN called for nominations for the office of Rapporteur.

16. Mr. PAL proposed Sir Gerald Fitzmaurice.

17. Mr. AMADO seconded the proposal.

Sir Gerald Fitzmaurice was unanimously elected Rapporteur.

The meeting rose at 3.45 p.m.

527th MEETING

Wednesday, 27 April 1960, at 10.30 a.m.

Chairman: Mr. Luis PADILLA NERVO

Adoption of the agenda (A/CN.4/123)

1. The CHAIRMAN said that he had received a letter from Mr. Verdross stating that, owing to his academic obligations, he would not be able to attend meetings of the Commission until 2 May, but would then be able to attend continuously until 24 June.

2. He asked the Commission to consider its provisional agenda (A/CN.4/123).

3. Mr. ŽOUREK suggested that the Commission consider under item 11 of the agenda (*Other business*) a recommendation that the publication of the indexes to the United Nations *Treaty Series* be accelerated.

It was so agreed.

4. Mr. SANDSTRÖM suggested that item 5 (*Ad hoc diplomacy*) should be placed higher on the agenda, since the General Assembly in resolution 1450 (XIV) had decided that an international conference of plenipotentiaries should be convoked at Vienna not later than the spring of 1961 to consider the question of diplomatic intercourse and immunities. *Ad hoc* diplomacy was undoubtedly linked with the subject matter of the proposed conference.
5. The CHAIRMAN pointed out that the Commission had decided at its eleventh session to place on the provisional agenda of its twelfth session the subject of state responsibility, the law of treaties and *ad hoc* diplomacy, in addition to the item on consular intercourse and immunities, which would be given first priority.¹ The Commission had, however, decided that the order in which the first three items was mentioned did not necessarily indicate that the Commission would discuss them in that order.
6. Mr. PAL observed that the records of the Commission's eleventh session (515th meeting, paragraph 5), indicated that the original idea had been that the topic of *ad hoc* diplomacy should be considered immediately after that of consular intercourse and immunities, so that the reports on those two subjects and on diplomatic intercourse and immunities might be submitted to governments together.
7. Mr. GARCÍA AMADOR said that he could not but agree with Mr. Sandström; at the same time, however, it had also been agreed at the previous session (515th meeting, paragraph 37) that attention should be given to the topic of State responsibility at the twelfth session. The discussion on that topic (for which he was Special Rapporteur) would require at least two weeks. He would have to return for some time to Havana, owing to academic obligations, and would appreciate it if the Commission decided when it would give that subject its attention. He suggested that the Commission might spend the seventh and eighth weeks of its session on the subject, leaving the last week for other business and the preparation of its report. The Commission had had the subject of State responsibility on its agenda for nearly seven years, but final work on it had been deferred for various reasons. Unless a further report on the Commission's discussions were produced, the General Assembly might wonder why the subject was being delayed so long.
8. Sir Gerald FITZMAURICE observed that even if the Commission finished a draft on *ad hoc* diplomacy at the current session, it would have to be referred, in accordance with normal procedure, to the governments for comment and then be completed in the light of those comments. It could not, therefore, be submitted to the General Assembly until after the Vienna conference.
9. Mr. SANDSTRÖM said that he had taken account of that consideration in his report (A/CN.4/129), but, if the Commission discussed the report, perhaps some way could be found of enabling the conference to deal with the topic. A preliminary exchange of views should not take more than one week.
10. Mr. TUNKIN observed that a draft convention on diplomatic intercourse and immunities would be dealt with at the Vienna conference, and *ad hoc* diplomacy was very closely related to that subject. Mr. Sandström was therefore correct. Even if the conference did not discuss *ad hoc* diplomacy, some decision by the Commission might be of use for a future conference. There was every reason, therefore, to take that subject immediately after the item on consular intercourse and immunities. State responsibility and the law of treaties would probably take years to complete and no plenipotentiary conference was likely to be convened in the foreseeable future to deal with those two topics.
11. Mr. AGO suggested a different approach. It would be natural to deal with *ad hoc* diplomacy immediately after consular intercourse and immunities. The Commission would then have dealt with all kinds of privileges and immunities. State responsibility and the law of treaties were of course likewise important and interesting subjects. The Commission had, however, spent some weeks at the previous session dealing with the law of treaties, and might try to complete its consideration of that subject, which would be impossible if the item was placed too low on the agenda. The result might be that it would come up for discussion at a time when the Commission's membership, which was now familiar with the main underlying principles, might have changed. Anyway, the best course would be to begin with consular intercourse and immunities, then undertake a preliminary examination of *ad hoc* diplomacy, and then decide the order of the other items.
12. Mr. YOKOTA agreed with Mr. Tunkin and Mr. Ago that it was very possible that the General Assembly would include the subject of *ad hoc* diplomacy in the agenda of the proposed Vienna conference. The Commission should accordingly discuss it at the current session. The item consular intercourse and immunities would probably take five weeks. *Ad hoc* diplomacy could be disposed of in one week; that would leave four weeks. The Commission might decide later whether it would devote those four weeks to State responsibility or the law of treaties.
13. Mr. GARCÍA AMADOR said that Mr. Ago's argument was logical, but not wholly realistic. It would no doubt have been more logical to discuss the law of treaties, if there had been any hope that the discussion could be completed; the fact was that that subject had been on the agenda for a very long time and did not require to be finished by any particular date. He agreed that the Commission should begin with consular intercourse

¹ Official Records of the General Assembly, Fourteenth Session, Supplement No. 9, para. 43.

and immunities and continue with *ad hoc* diplomacy, in view of the proposed Vienna conference, but the decision on the order of the agenda taken by the Commission at its eleventh session should be maintained, and consequently the seventh and eighth weeks of its session should be devoted to State responsibility.

14. Mr. BARTOŠ agreed with Mr. Ago that there were practical reasons for dealing with *ad hoc* diplomacy immediately after consular intercourse and immunities. Mr. Tunkin and Mr. Yokota had argued cogently in favour of that course in view of the proposed Vienna conference. A further reason was that the Commission had decided that the law on *ad hoc* diplomacy should be codified. A basic draft had been provided by Mr. Sandström; if the Commission produced recommendations on that basis, that would not prejudice any final decision. The other items were extremely important too, and the Commission had already settled certain basic principles, but drafting would not be finished during the present Commission's term of office, as the subjects were vast and complicated. Many divergent views had for example been expressed on the subject of state responsibility. There had been more agreement on the subject of the law of treaties, especially since the Commission had enjoyed the benefit of basic reports by a succession of special rapporteurs. The subject of *ad hoc* diplomacy would not require a great deal of time, since the Commission had already laid down certain principles in its draft on diplomatic privileges and immunities, and all that it had to do was to see whether they could be applied to *ad hoc* diplomacy, about which there seemed to be few existing principles of positive law. *Ad hoc* diplomacy was used almost daily, and a solution of the problems involved should be sought as soon as possible. The Commission should therefore decide to take the subject of consular intercourse and immunities first, and *ad hoc* diplomacy, which was organically linked with it, immediately afterwards.

15. The CHAIRMAN noted that all members agreed that the item on consular intercourse and immunities should be taken first and that *ad hoc* diplomacy should be examined immediately afterwards. The Commission might then take a decision on the ensuing items without altering the order suggested at the previous session.

16. Mr. GARCÍA AMADOR agreed.
The agenda (A/CN.4/123) was adopted.

**Filling of casual vacancy in the Commission
(Article II of the Statute) (A/CN.4/127)**

[Agenda item 1]

17. The CHAIRMAN suggested that the Commission hold a private exchange of views on item 1 of the agenda.

It was so agreed.

The meeting rose at 12.10 p.m.

528th MEETING

Thursday, 28 April 1960, at 10.10 a.m.

Chairman: Mr. Luis PADILLA NERVO

**Consular intercourse and immunities
(A/CN.4/131, A/CN.4/L.86)**

[Agenda item 2]

PROVISIONAL DRAFT ARTICLES (A/CN.4/L.86)

1. The CHAIRMAN invited the Commission to begin consideration of item 2 of its agenda, and called upon the Special Rapporteur on Consular Intercourse and Immunities to introduce the provisional draft articles (A/CN.4/L.86).

2. Mr. ŽOUREK, Special Rapporteur, said that when he had prepared his first report,¹ he had not had all the necessary documentation, and had therefore been obliged to defer certain points for later study. The Commission had then adopted the articles on diplomatic intercourse and immunities,² and he had had to re-examine his draft on consular intercourse and immunities in order to concord it as far as possible with the Commission's draft on diplomatic intercourse. Those two factors had caused him to amend and expand his original draft. The Commission had adopted nineteen articles at its eleventh session; the remaining articles were in the 1957 report, and some additional clauses were proposed in his second report (A/CN.4/131). For the Commission's convenience, the whole set of articles had been incorporated in one document (A/CN.4/L.86).³

3. The Commission would have to consider carefully to what extent it should strive after concordance between the corresponding articles of the drafts on diplomatic and on consular intercourse and immunities. The existing international law and the international practice relating to various points should be studied — for example, whereas in practice certain immunities might be admitted both in the case of diplomats and in the case of consuls, the two types of immunity might well differ in extent. Even where the immunity was the same in every respect, the Commission was not bound to follow the language of the draft on

¹ *Yearbook of the International Law Commission, 1957*, vol. II (United Nations publication, Sales No. 1957.V.5, vol. II), pp. 71-103.

² *Ibid.*, 1958, vol. II (United Nations publication, Sales No. 58.V.1, vol. II), pp. 89-105.

³ References to articles 1 to 18 in the present records should be interpreted as references to the text in that document.