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Summary record of the 82nd meeting

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INTERNATIONAL LAW COMMISSION

SUMMARY RECORDS OF THE THIRD SESSION

82nd MEETING

Wednesday, 16 May 1951, at 3.10 p.m.

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Chairman: Mr. A. E. F. SANDSTRÖM.

Present:

Members: Mr. Ricardo J. ALFARO, Mr. Gilberto AMADÓ, Mr. James L. BRIERLY, Mr. Roberto CÓRDOVA, Mr. J. P. A. FRANÇOIS, Mr. Shuhsi HSU, Mr. Jean SPIROPOULOS, Mr. Jesús María YEPES.

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

Opening of the session

1. In the absence of the Chairman, Mr. Georges Scelle, whose arrival had been delayed, Mr. A. E. F. Sandström, first Vice-Chairman, took the Chair.
2. The CHAIRMAN declared the third session of the International Law Commission open.
3. Welcoming his colleagues, he expressed the hope that their serious deliberations would provide satisfactory solutions to a number of problems.
4. Certain members of the Commission were absent. Sir Benegal Rau had written to say he was unable to attend the opening meeting but hoped to be present from 21 May onwards.
5. Mr. KERNO (Assistant Secretary-General) said that Mr. Faris el Khouri, whom he had seen before leaving New York, had informed him that the incidents which had occurred between Syria and Israel compelled him to remain in New York, where the Security Council was sitting, but that he hoped to join the Commission on 21 May. Mr. Hudson would be sailing on 24 May. He had, however, no news of Mr. Jaroslav Zourek.
6. The CHAIRMAN read out a telegram from Mr. Vladimir Koretsky informing the Commission that the state of his health prevented him from attending the session and requesting that the Secretariat be instructed to send him the documentation and summary records.
7. Mr. YEPES proposed that the Commission reply

to Mr. Koretsky regretting his illness and expressing the hope that he would come and take part in its work as soon as he was well enough.

The proposal was adopted.

Election of officers

8. Mr. CORDOVA suggested that it would be more courteous to wait until Mr. Scelle was present before electing the officers; he accordingly proposed deferring the election until the following day.

9. The CHAIRMAN supported that proposal.

It was so decided.

Adoption of the provisional agenda

10. The CHAIRMAN announced that a provisional agenda, drawn up by the Secretariat (A/CN.4/40) was before the Commission.¹ He thought it would be pref-

¹ Document A/CN.4/40 read as follows:

- " 1. General Assembly resolution 484 (V) of 12 December 1950: Review by the International Law Commission of its Statute with the object of recommending revisions thereof to the General Assembly.
- " 2. Preparation of a draft code of offences against the peace and security of mankind:
(a) Report by Mr. Spiropoulos;
(b) General Assembly resolution 488 (V) of 12 December 1950: Formulation of the Nürnberg principles.
- " 3. General Assembly resolution 378 B (V) of 17 November 1950: Duties of States in the event of the outbreak of hostilities.
- " 4. Law of treaties:
(a) Report by Mr. Brieryly;
(b) General Assembly resolution 478 (V) of 16 November 1950: Reservations to multilateral conventions.
- " 5. Arbitral procedure: report by Mr. Scelle.
- " 6. Régime of the high seas: report by Mr. François.
- " 7. Date and place of the fourth session.
- " 8. Economic and Social Council resolution 319 B III (XI) of 11 August 1950 requesting the International Law Commission to prepare the necessary draft international convention or conventions for the elimination of statelessness.
- " 9. Co-operation with other bodies.
- " 10. General Assembly resolution 494 (V) of 20 November 1950: Development of a 20-year programme for achieving peace through the United Nations.
- " 11. Other General Assembly resolutions relating to the report of the International Law Commission on its second session:
" (a) General Assembly resolution 485 (V) of 12 December 1950: Amendment to article 13 of the Statute of the International Law Commission;
" (b) General Assembly resolution 486 (V) of 12 December 1950: Extension of the term of office of the present members of the International Law Commission;
" (c) General Assembly resolution 487 (V) of 12 December 1950: Ways and means for making the evidence of customary international law more readily available;
" (d) General Assembly resolution 489 (V) of 12 December 1950: International Criminal Jurisdiction."

erable, before taking up the first item on that agenda, to wait until a larger number of members of the Commission were present so as to enable those absent at the moment to express their views.

11. Mr. YEPES remarked that the same argument might be advanced with regard to all the other items of the agenda.

12. The CHAIRMAN thought it was particularly pertinent in the case of the first item.

13. Mr. AMADO said that there was no reason why the Commission should not follow the provisional agenda but he hardly thought it would be able to complete discussion of the first item in two or three meetings. He saw no objection to postponing study of that item to a later date. He enquired whether the Chairman proposed any changes in the provisional agenda.

14. The CHAIRMAN said that the agenda was subject to modification but he himself had no proposal to make.

15. Mr. KERNO (Assistant Secretary-General) pointed out that the agenda contained two items, the study of which should be completed by the Commission during that session, since the General Assembly had asked it to report on them to its sixth session. The items were: Review by the International Law Commission of its Statute (item 1) and Reservations to multilateral conventions (item 4 (b)). According to unofficial information from the International Court of Justice, the latter would be giving its opinion the following week with regard to reservations to multilateral conventions. The Commission would need to take that factor into consideration when discussing its agenda.

16. Account would also have to be taken of the fact that not all the documents required for the work of the Commission were ready in both working languages, or even in a single working language.

17. Mr. HSU could see no serious objection to postponing the study of item 1, provided the decision were taken, not on the grounds that certain members of the Commission were absent, but because the majority of the members had not been able to attend the last session of the General Assembly and had not had time to study the question. If the Commission decided to postpone the study of item 1, he would suggest that it select a not too distant date, in view of the fact that it had to submit a report on the subject to the General Assembly.

18-20. Mr. LIANG (Secretary to the Commission) explained that the reports that year had been received by the Secretariat barely a month before the opening date of the session, which had been fixed earlier than the previous year.

21. Mr. SPIROPOULOS approved the provisional agenda in principle but agreed with Mr. Kernó that special reasons prevented the Commission from keeping to it strictly.

22. The first item of the provisional agenda was one of the questions which it was necessary for the Commission to examine during that session. The absence of a few members of the Commission should not prevent it from undertaking a preliminary discussion. The majority of its members were not, in fact, fully acquainted with the

situation and it might perhaps be of advantage to begin with a very general discussion to enable them to form an idea of what the question involved. The Commission might therefore hear a few views on the subject, allow itself time for reflection, and then, at some later date, invite certain members to submit proposals and perhaps set up a sub-committee.

23. The item relating to reservations to multilateral conventions was also one of the questions whose study the Commission would need to complete. However, as Mr. Kernó had pointed out, it was advisable to await the opinion of the International Court of Justice on the question.

24. A third point for consideration concerned the draft code of offences against the peace and security of mankind (item 2 of the agenda), but the report on the question had not yet appeared. The matter would therefore have to wait. He had endeavoured to draw up a text suitable for submission to Governments for their observations. The principles enunciated the previous year had been slightly modified in the light of the discussions at the last session, and a few comments had been added. The report therefore contained the text of the principles, some comments and an introduction. It also dealt with the special question of the definition of an aggressor (item 3 of the agenda), which had been referred to the Commission by decision of the Political Committee of the General Assembly, on a proposal of Mr. Vyshinsky. As that question was related to the Code, he had ventured to devote a special study to it, which would constitute the second part of his report.

25. As the report by Mr. François (item 6 of the agenda) had not yet been circulated, the report by Mr. Scelle (A/CN.4/18; item 5 of the agenda) was, in fact, the only one actually before the Commission. He thought it might perhaps be desirable to take up that report after holding a general discussion on the first item of the agenda. That would be only fair, seeing that the previous year the Commission had dealt with Scelle's report last and had not devoted sufficient time to it. The study might perhaps take a week, by which time the documents relating to the other items on the agenda would no doubt be ready.

26. The CHAIRMAN noted that Mr. Spiropoulos was in favour of holding a general discussion on the first item, considering next the report by Mr. Scelle and then passing on to another item on the agenda, leaving till a later date the decision as to when it would resume the study of item 1. The Commission was always free to change the order of the items on its agenda.

27. Mr. AMADO approved of Mr. Spiropoulos' proposal to discuss the report by Mr. Scelle, provided the latter agreed that his report be studied forthwith, as he hoped would be the case. For that reason he felt it desirable that the Commission should not take a decision at that meeting, but should wait until the following one.

28. The CHAIRMAN noted that all the members of the Commission were in favour of beginning with a general discussion of item 1 of the agenda, to be followed by the study of Mr. Scelle's report, if the latter approved

of that procedure, and finally of taking up the other items when the relevant documents were available.

29. Mr. LIANG (Secretary to the Commission) mentioned that the last item on the agenda had been included only for the information of the members of the Commission.

The agenda was adopted.

30. Mr. CORDOVA asked whether the Commission would arrange its programme on the same lines as last year.

31. The CHAIRMAN recalled that, at its previous session, the Commission had met in the mornings, keeping the afternoons free for studying the issues raised, and that it had not met on Saturdays.

32. Mr. CORDOVA pointed out that on Mondays the Commission had met in the afternoon.

33. Mr. AMADO thought the timetable of meetings at the previous session was satisfactory.

34. Mr. KERNO (Assistant Secretary-General) suggested that the Commission should not take a final decision about Saturdays, since it might be found necessary to work on Saturday mornings. Obviously some time must be allowed for reflection, but it might be possible occasionally to meet on Saturdays too.

35. Mr. CORDOVA wondered whether interpreters were necessary. If so he would speak in Spanish, but if all the members could manage without interpretation he was prepared to make a concession and not to use his own language.

36. The CHAIRMAN said that some of the members did not understand French sufficiently well, so that it was desirable not to do without interpretation altogether.

37. With regard to the question raised by Mr. Kerno, he would like to explain that, when the Commission adopted its timetable the previous year, it had not considered that it was excluding the possibility of meeting on Saturday mornings; at the same time it was desirable to have a day free to study the problems to be discussed.

38. Mr. KERNO (Assistant Secretary-General) thought that as at the next meeting the Commission would be starting the general exchange of views on the question of revision of its Statute, it might be well to recall how the Sixth Committee had arrived at the recommendation which became General Assembly resolution 484 (V).

39. Without going into details, a few pointers might be useful. The United Kingdom delegation had drawn attention to Article 17 of the Commission's Statute, under which Members of the United Nations, the principal organs of the United Nations other than the General Assembly, specialized agencies and other inter-governmental bodies, could bring specific questions before the Commission. The United Kingdom delegation had felt that such a provision was perhaps putting an unduly heavy burden on the Commission and ran the risk of diverting it from its main task. Hence it had suggested that the Commission study the possibility of revising the article.

40. The Soviet Union delegation had approved the idea of revision of Article 17.

41. The United Kingdom delegation had then observed that the financial arrangements adopted might be improved so as to enable the members of the Commission to give more time to the Commission's work. It had also suggested that the term of office of the members of the Commission be extended. The General Assembly had already taken a step in that direction, but only in respect of the initial period. It would be well to consider whether the Commission wished to propose an extension of its members' term of office for later periods. Lastly, the members of the Commission should be entirely independent of governments. That was essential.

42. It had also been suggested that a proportion of the members of the Commission, possibly up to one-third, should give their full time to the Commission's work, and that the Commission might employ jurists from *outside the circle of its members as rapporteurs or expert advisers.*

43. The Yugoslav delegation had suggested inserting in the Statute a provision similar to that in Article 13, paragraph 3, of the Statute of the International Court of Justice, with a view to ensuring the continuity of the Commission's work, and particularly of the work of the rapporteurs.

44. The CHAIRMAN added that fuller details about those suggestions could be found in the summary records of the meetings of the Sixth Committee and of the General Assembly.

Tribute to the memory of Jose Philadelpho de Barsas Azevedo

45. Mr. CORDOVA felt it appropriate that the Commission should pay tribute to the memory of Mr. Azevedo, a member of the International Court of Justice, who had just died. He proposed that the Commission telegraph its condolences to the Court and to the family of the deceased.

46. Mr. YEPES wholeheartedly supported Mr. Córdova's proposal. Mr. Azevedo's death was a great loss to international law.

The Commission adopted Mr. Córdova's proposal and decided to stand and observe one minute's silence as a tribute to Mr. Azevedo's memory.

47. Mr. AMADO was deeply touched by the tribute paid by the Commission to Mr. Azevedo's memory.

48. He had known Azevedo as a young teacher of philosophy in Rio de Janeiro. He was a man endowed with every gift that nature could bestow. He had been the youngest professor of law at the Faculty in Rio, after brilliant success at a public examination. During the political disturbances he had been appointed Mayor of the City of Rio. At the Supreme Court he had done magnificent work. There too he had been the youngest Judge. As a barrister he had been extremely successful. He had lived surrounded by a happy family in the enjoyment of the considerable wealth acquired by dint of his own efforts. He had been elected to the International Court of Justice in the train of men like Epitacio Pessoa and Ruy de Barbosa, and now when he had reached

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

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

The meeting rose at 3.30 p.m.

83rd MEETING

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

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

Present:

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

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

Opening of the meeting

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

Election of officers

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

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

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

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

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

Mr. Brierly took the chair.

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

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

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

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

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

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

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

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

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

Programme of work

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