

Document:-  
**A/CN.4/62**

**Provisional Agenda**

Topic:  
**Other topics**

Extract from the Yearbook of the International Law Commission:-  
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Commission as a whole, representation of the main forms of civilization and of the principal legal systems of the world should be assured. One of the main forms of civilization and one of the principal legal systems of the world were represented by the People's Republic of China, which was not, however, represented in the Commission. The presence therein of a representative of the Kuomintang must necessarily provoke surprise and protest. He would therefore formally move that Mr. Hsu be excluded from the Commission, and that in accordance with article 11, a representative of the People's Republic of China be invited to fill the vacancy in order that the provisions of article 8 might be fully implemented.

17. The CHAIRMAN recalled that a similar motion had been submitted to the Commission on an earlier occasion, when it had been ruled out of order. The Commission was not competent to exclude a member on the basis of article 8. Its members did not represent their countries, but had been elected in their personal capacity for a period of three years, subsequently prolonged by a further two years.

18. Unless Mr. Kozhevnikov was prepared to withdraw his motion, he would have to follow the precedent set by the Chairman of the Commission at its second session, and rule the motion out of order.<sup>2</sup>

19. Mr. KOZHEVNIKOV was unable to agree with the Chairman's interpretation, and maintained his motion.

20. Mr. Lauterpacht supported the Chairman's interpretation, and considered that the motion should be ruled out of order.

21. The CHAIRMAN ruled Mr. Kozhevnikov's motion out of order.

22. Mr. KOZHEVNIKOV challenged the Chairman's ruling on the ground that a Kuomintang man could not represent the legal system of China.

23. Mr. ALFARO and Mr. SANDSTRÖM requested that a vote be taken by show of hands on the challenge to the Chairman's ruling.

24. A vote having been taken by show of hands, *the Chairman's ruling was upheld by 7 votes to 2.*

#### Consideration of the provisional agenda for the fifth session (A/CN.4/62)

25. The CHAIRMAN invited the Secretary to the Commission to make a statement on the documents available in relation to each item of the provisional agenda (A/CN.4/62).<sup>3</sup>

<sup>2</sup> See *Yearbook of the International Law Commission, 1950*, vol. I, 39th meeting, paras. 2-20.

<sup>3</sup> Document A/CN.4/62 read as follows:

"1. Arbitral procedure.

"2. Régime of the high seas.

"3. Régime of the territorial sea.

26. Mr. LIANG (Secretary to the Commission) said that all documents were available both in English and in French for item 5 (nationality, including statelessness). The documents relating to items 2 and 3 (régime of the high seas and régime of the territorial sea respectively) were nearly complete. Several days must elapse before the report on item 4 (law of treaties) was available in French.

27. If the Commission felt that the order in which the items of the agenda were taken should be based on the availability of documents, he would suggest that a start be made with item 5.

28. Faris Bey el-KHOURI considered that, before starting on its agenda, the Commission should take cognizance of the action and decisions taken by the General Assembly on the Commission's report on its fourth session (A/2163).<sup>4</sup> He noted that the relevant General Assembly resolution had not been included in the documents distributed to members.

29. Mr. LIANG (Secretary to the Commission) replied that the General Assembly had not discussed the Commission's report on its fourth session, since it mainly consisted of a draft on arbitral procedure which was being circulated to governments for their comment, while the rest was merely a progress report. The General Assembly had discussed certain items arising out of the Commission's report on previous sessions, such as the question of an international criminal court and the question of defining aggression.

30. The CHAIRMAN, noting the Secretary's suggestion that the Commission begin with item 5, pointed out that the special rapporteur for that item, Mr. Córdova, had not yet arrived. He was expected to reach Geneva in two or three days' time.

31. Mr. LIANG (Secretary to the Commission) suggested that the Commission might devote its next meeting to certain administrative matters. The present session was the last that the Commission would hold with its existing membership. The question arose of the date of termination of the offices of the members and special rapporteurs. Should they cease work at the end of 1953 or continue until the opening of the sixth session?

32. Furthermore, the Commission would have to examine the situation with regard to the date and place of its sixth session. The General Assembly had at its

"4. Law of treaties.

"5. Nationality, including statelessness.

"6. Draft code of offences against the peace and security of mankind.

"7. Request of the General Assembly concerning the codification of the topic 'diplomatic intercourse and immunities'.

"8. Date and place of the sixth session.

"9. Other business."

<sup>4</sup> *Official Records of the General Assembly, Seventh Session, Supplement No. 9 (A/2163)*. Also in *Yearbook of the International Law Commission, 1952*, vol. II.