

Document:-
A/CN.4/L.1

Agenda for the 39th Meeting of the Commission - incorporated in A/CN.4/SR.39, footnote 1

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INTERNATIONAL LAW COMMISSION

SUMMARY RECORDS OF THE SECOND SESSION

39th MEETING

Monday, 5 June 1950, at 3 p.m.

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Chairman: Mr. Manley O. HUDSON; later Mr. Georges SCELLE.

Present:

Members: Mr. Gilberto AMADO, Mr. Ricardo J. ALFARO, Mr. James L. BRIERLY, Mr. Roberto CORDOVA, Mr. Shuhsi HSU, Mr. F. el-KHOURY, Mr. Vladimir K. KORETSKY, 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 session

1. The CHAIRMAN briefly welcomed the representatives, and suggested that the Commission add to the Agenda for the present meeting (A/CN.4/L.1)¹ the first two items on the provisional agenda for the session (A/CN.4/21).²

It was so decided.

Proposal by Mr. Koretsky concerning the presence of Mr. Hsu

2. Mr. KORETSKY said that the protest made by the Government of the Chinese People's Republic to the Secretary-General of the United Nations against participation in the work of United Nations organs by representatives of the vestiges of the Kuomintang reactionary clique applied equally to the International Law Commission. He read out articles 3 and 8 of the Commission's Statute.³ All the members of the Commission had been nominated by their governments and should represent a particular legal system, so that all the main legal systems in the world would be repre-

sented in the Commission. Mr. Shuhsi Hsu had been elected following nomination by the former Kuomintang Government which he thus represented, and hence he had clearly ceased to represent the Chinese legal system.

3. He (Mr. Koretsky) supported the demand of the Government of the Chinese People's Republic and called on the Commission to stop Mr. Shuhsi Hsu from taking part in its work and, in accordance with article 11 of its Statute, to elect a representative of the legal system of the Chinese People's Republic. If his proposal were not accepted, he (Mr. Koretsky) would take no further part in the work of the International Law Commission; moreover, any decisions taken by the Commission with the participation of the Kuomintang representative could not be regarded as valid.

4. The CHAIRMAN took note of Mr. Koretsky's remarks. He had carefully studied the question and the precedents, and was ready to give his decision on the point of order. Afterwards, all the members of the Commission would be free to appeal to the Commission against his decision.

5. Mr. HSU argued that the question should not have been raised, since he was not sitting in the capacity of representative of his Government, but as a member elected by the General Assembly. He mentioned incidentally that he had been nominated by the Government of India also.

6. The CHAIRMAN read out his decision as follows: "The members of the Commission were elected in 1948 to serve for three years. They do not represent states or government; instead, they serve in a personal capacity as persons of 'recognized competence in International Law' (article 2 of the Statute). Being a creation of the General Assembly, the Commission is not competent to challenge the latter's application of article 8 of the Statute. Nor can it declare a 'casual vacancy' under article 11 in these circumstances. Mr. Koretsky's proposal is therefore out of order. This decision follows a precedent established by the Advisory Committee on Administrative and Budgetary Questions."

7. Mr. KORETSKY maintained that the Chairman had not given a direct reply to his proposal concerning Mr. Hsu.

8. The CHAIRMAN said he had stated that Mr. Koretsky's proposal was out of order.

9. Mr. KORETSKY replied that he had quoted an article of the Commission's Statute proving that his proposal was in order. He requested the Chairman to submit his proposal in the form in which he himself had submitted it.

10. The CHAIRMAN said that Mr. Koretsky's proposal would not be submitted to the Commission unless one of its members appealed against his decision, in which case that decision would be put to the vote.

¹ The agenda for the meeting read as follows:

"1. Opening of the session
2. Election of officers
3. Adoption of the provisional agenda for the second session (A/CN.4/21)."

² See footnote 4.

³ United Nations publication, Sales No.: 1949.V.5.