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**Summary record of the 135th meeting**

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# INTERNATIONAL LAW COMMISSION

## SUMMARY RECORDS OF THE FOURTH SESSION

### 135th MEETING

Wednesday, 4 June 1952, at 4 p.m.

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*Chairman* : Mr. Shuhsi HSU, First Vice-Chairman ;  
later : Mr. Ricardo J. ALFARO.

#### *Present* :

*Members* : Mr. J. P. A. FRANÇOIS, Mr. Manley O. HUDSON, Faris Bey el-KHOURI, Mr A. G. F. SANDSTRÖM, Mr. Georges SCELLE, Mr. J. M. YEPES.

*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).

#### Opening of the session

1-4. The CHAIRMAN said that, in the absence of the Chairman, Mr. Brierly, who had resigned from the Commission, a step that was regretted by all, the honour fell to him, as First Vice-Chairman of the Commission, elected at the third session, to *declare open* the fourth session of the International Law Commission.

#### Election of Officers

5. The CHAIRMAN said that, according to the agenda for the meeting the Commission would now proceed to the election of its officers, who would serve for a term of one year. He recalled that the Commission had decided at its first session that the rules of procedure of the General Assembly relating to the procedure of the latter's committees should apply to the Commission's procedure, and that the Commission should adopt its own rules of procedure when the need arose.<sup>1</sup> Rule 103 of the General Assembly's rules of procedure provided that elections of officers "shall be held by secret ballot". He asked what was the sense of the Commission in that regard.

<sup>1</sup> See *Yearbook of the International Law Commission, 1949. Report to the General Assembly*, para. 5, p. 278.

6. Mr. HUDSON pointed out that the President and the Vice-President of the International Court of Justice were elected by secret ballot, which seemed to him a wise procedure for the Commission to adopt. He accordingly moved that the Commission should, at the present session, abide by rule 103 of the rules of procedure of the General Assembly and elect its officers by secret ballot.

7. Mr. SCELLE supported Mr. Hudson's motion.

*Mr. Hudson's motion was carried.*

*A secret ballot was taken for the election of the Chairman of the Commission.*

*Number of votes cast :* 8

*Number of invalid ballots :* nil

*Required majority :* 5

*Number of votes obtained :*

Mr. Alfaro . . . . . 5

Mr. Sandström . . . . . 2

Mr. François . . . . . 1

*Mr. Alfaro, having secured the required majority, was elected Chairman of the Commission.*

*Mr. Alfaro took the Chair.*

8. The CHAIRMAN expressed his gratitude for the honour done to him. He would do his utmost to ensure that the work of the fourth session of the Commission was as fruitful and effective as possible.

*A secret ballot was taken for the election of the First and Second Vice-Chairman and rapporteur of the Commission.*

*Number of votes cast :* 8

*Number of invalid ballots :* nil

*Required majority :* 5

*Mr. François, having secured 6 votes, was elected First Vice-Chairman of the Commission.*

*Mr. Amado, having secured 7 votes, was elected Second Vice-Chairman of the Commission.*

*Mr. Spiropoulos was unanimously elected rapporteur.*

#### Tribute to the memory of Miss E. Scheltema

9. Mr. YEPES, supported by Mr. HUDSON, considered that it would be appropriate for the Commission to pay tribute to the memory of the late Miss Elizabeth Scheltema, formerly member of the Legal Department of the United Nations Secretariat, who had served the Commission with such signal devotion.

*Mr. Yepes' proposal was adopted, and the Commission stood and observed one minute's silence as a tribute to the memory of Miss E. Scheltema.*

10. Mr. FRANÇOIS, speaking as a countryman of Miss Scheltema, thanked the Commission for its tribute to her. Her death was a heavy loss to the Commission and to the Netherlands, of which country she had been one of the most distinguished women lawyers. He would convey the Commission's condolences to her family.

11. Mr. KERNO (Assistant Secretary-General) said that it was no exaggeration to state that Miss Scheltema had worked herself to death. Had she been less conscientious and less imbued with a sense of duty she would have been alive still. He had been charged to convey to her family the condolences expressed by the Sixth Committee of the General Assembly, and he had been moved to hear the tribute paid to her by members of the Commission who, having been more closely associated with her, were in an excellent position to appreciate her work.

#### **Adoption of the provisional agenda for the fourth session (A/CN.4/52)**

12. Mr. HUDSON moved that the provisional agenda<sup>2</sup> be adopted, but that the order in which the various items therein should be taken up should be left for determination at a later stage.

*Mr. Hudson's motion was carried.*

13. Mr. HUDSON said that he would like two matters to be considered under the item of the agenda entitled "Other business", the first relating to the summary records of the Commission and the second to the establishment of a standing drafting committee of the Commission.

14. The CHAIRMAN asked Mr. Hudson to give some indication of the nature of his proposal concerning the summary records, so that he (the Chairman) might have some idea as to when the matter should be taken up.

15. Mr. HUDSON said that he had had occasion to ask himself whether lengthy summary records served any purpose, in view of the fact that when the Commission adopted texts it issued a commentary to them. Perhaps nothing more was needed than very brief minutes recording amendments proposed to texts and decisions taken, without details of the discussions that had led up to those actions.

16. The CHAIRMAN said that such a radical measure could not be examined at once, but might be taken up at the next meeting.

<sup>2</sup> The provisional agenda (A/CN.4/52) read as follows:

1. Filling of casual vacancy in the Commission (Article 11 of the Statute).
2. Arbitral procedure.
3. Law of treaties.
4. Régime of the high seas.
5. Régime of territorial waters.
6. Nationality, including statelessness.
7. Date and place of the fifth session.
8. Other business.

17. Mr. LIANG (Secretary to the Commission) said that Mr. Hudson's doubts as to the value of the summary records of the Commission were not shared in all quarters; for example, the Institute of International Law thought so highly of them that it considered that they should be printed.

*It was agreed that Mr. Hudson's proposal concerning summary records should be considered at the next meeting.*

*It was also agreed to add to the agenda, under the item "Other business", Mr. Hudson's second proposal relating to the establishment of a standing drafting committee.*

18. Mr. LIANG (Secretary to the Commission) expressed the hope that the Commission would take up the item relating to the date and place of the fifth session fairly early, so as to allow time for the necessary consultations with Headquarters.

19. It would also be desirable if the item relating to the filling of casual vacancies in the Commission could be taken early, in order to enable the new members to join in the Commission's work as quickly as possible.

20. The Secretariat had placed the item relating to arbitral procedure at the head of the agenda, as it was a subject which had not been taken up at the third session but had been held over for consideration at the present session.

#### **Filling of casual vacancies in the Commission**

21. Mr. HUDSON proposed that the question of the filling of the casual vacancies in the Commission should first be discussed at a private meeting of the members of the Commission.

*It was so agreed.*

22. Mr. KERNO (Assistant Secretary-General) said that on his arrival in Geneva he had received a letter from Mr. Koretsky confirming his telegram of 22 May, the text of which had already been transmitted to all members of the Commission. Mr. Koretsky stated in his letter that the state of his health did not permit him to continue to carry out his duties as a member of the Commission, that he was accordingly submitting his resignation, and that he requested that the Commission be informed accordingly. Mr. Koretsky recommended that the Commission should elect in his place Mr. F. I. Kozhevnikov, Professor of International Law, whose name had been on the list of Soviet Union candidates at the time of the election of the members of the Commission at the third session of the General Assembly in 1948.

23. He (the Assistant Secretary-General) had also received from the Minister of the Soviet Union to Switzerland a list of Mr. Kozhevnikov's principal works in the field of international law, and would make it available to all members.

The meeting rose at 5.5 p.m.