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Summary record of the 184th meeting

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INTERNATIONAL LAW COMMISSION

SUMMARY RECORDS OF THE FIFTH SESSION

184th MEETING

Monday, 1 June 1953, at 3.45 p.m.

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Chairman: Mr. Ricardo J. ALFARO;
later: Mr. J. P. A. FRANÇOIS.

Rapporteur: Mr. H. LAUTERPACHT.

Present:

Members: Mr. Gilberto AMADO, Faris Bey el-KHOURI, Mr. F. I. KOZHEVNIKOV, Mr. Radhabinod PAL, Mr. A. E. F. SANDSTRÖM, Mr. Georges SCELLE, Mr. J. M. YEPES, Mr. Jaroslav ZOUREK.

Secretariat: 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 said that it fell to him, as Chairman of the fourth session of the International Law Commission, to declare open the fifth session and welcome the members.

Election of officers

2. The CHAIRMAN invited the Commission to proceed to the election of its officers for the fifth session.

3. Mr. SCELLE proposed Mr. J. P. A. François as Chairman.

4. Mr. YEPES seconded the proposal.

Mr. J. P. A. François was elected Chairman by acclamation, and took the Chair.

5. The CHAIRMAN expressed his appreciation of the honour which had been done him, and said that he would do his best to fulfil a task which was made the more difficult by the high standards set by his predecessors in the Chair.

6. Furthermore, he was responsible for three reports¹ that were before the Commission. He hoped members

would agree that, when those reports were being considered, the First Vice-Chairman should take the Chair.

7. He invited members to submit nominations for the offices of First Vice-Chairman, Second Vice-Chairman and Rapporteur.

8. Mr. SCELLE proposed Mr. G. Amado as First Vice-Chairman, Mr. F. I. Kozhevnikov as Second Vice-Chairman and Mr. H. Lauterpacht as Rapporteur.

9. Mr. YEPES seconded the proposal.

10. Mr. SANDSTRÖM wholeheartedly supported the nomination of Mr. G. Amado as First Vice-Chairman. The Commission was well aware of his qualities, and had had occasion to appreciate the value of his services as Rapporteur.

Mr. G. Amado was elected First Vice-Chairman by acclamation.

11. Mr. AMADO thanked the Commission for the confidence it had placed in him, which he would do his best to justify.

12. Mr. ZOUREK supported the nomination of Mr. F. I. Kozhevnikov as Second Vice-Chairman. Mr. Kozhevnikov had made positive contributions to the Commission's work at the last session, which had been the first he had attended.

Mr. F. I. Kozhevnikov was elected Second Vice-Chairman by acclamation.

13. Mr. KOZHEVNIKOV expressed his gratitude to the Commission and said that he would endeavour to help it in its tasks, particularly in achieving a progressive development of international law and the codification thereof in accordance with those principles which reflected the aims, purposes and awareness of progressive humanity.

14. Mr. AMADO seconded the nomination of Mr. H. Lauterpacht as General Rapporteur. His election would be particularly auspicious in view of the Commission's heavy agenda.

Mr. H. Lauterpacht was elected General Rapporteur by acclamation.

15. Mr. LAUTERPACHT thanked the Commission, and said that he would serve it to the best of his ability.

Motion by Mr. Kozhevnikov

16. Mr. KOZHEVNIKOV said he wished to make the following statement. Article 8 of the Statute of the International Law Commission laid down that, in the

¹ Documents A/CN.4/60, A/CN.4/61 and A/CN.4/69.

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.²

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).³

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

³ 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).⁴ 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."

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

last session drawn up a four-year programme of conferences (resolution 694 (VII)), the purpose of which was to ensure a better distribution of work between Headquarters and the European Office at Geneva. The International Law Commission had been scheduled to meet in Geneva in 1954, but the General Assembly had recommended that its session should not overlap with that of the Economic and Social Council. Since the latter would be meeting in Geneva in July and August, the International Law Commission would be able to start its sixth session on 15 August and continue until the beginning of October. It was for the Commission to decide whether the present members should take a decision affecting future members. Should the Commission decide on that ground to refrain from taking a decision, the Secretary-General would exercise his discretion in fixing the time and place of the next session.

33. The CHAIRMAN requested the Secretary to set out the topics he had mentioned as items for discussion at a private meeting on administrative questions the following day.

34. Mr. ZOUREK wished to propose the inclusion in the provisional agenda of another item—namely, consideration of means of ensuring that dissenting opinions were recorded in the Commission's report. The question of the presentation of dissenting opinions had long since been solved by the International Court of Justice: in the Commission's case, however, with one or two exceptions, the reports submitted to the General Assembly did not give a complete picture of the various opinions expressed by members. He considered it advisable that a decision should be taken once and for all, in order to eliminate unnecessary discussions in the future, and to facilitate the work of governments and the General Assembly in studying the Commission's reports.

35. He would make a formal proposal in that sense in due course.

36. Mr. YEPES supported Mr. Zourek's suggestion, and added that, as he had consistently maintained at previous sessions, the Commission's report to the General Assembly ought to reflect accurately, faithfully and impartially the course of its debates throughout the session. He regretted to note that, in his opinion, some of the Commission's reports transmitted to the General Assembly, in particular the report covering the work of its third session which contained a chapter on reservations to multilateral conventions, did not fulfil the necessary conditions.⁵

37. Mr. SCALLE also supported the suggestion, adding that the eventual inclusion of that item in the Commission's agenda should not be interpreted as reflecting any lack of confidence in the Rapporteur.

38. Mr. KOZHEVNIKOV also supported the suggestion.

39. Mr. ALFARO said that the Commission had already heard his views about dissenting opinions on previous occasions. He would not oppose Mr. Zourek's suggestion, since it was limited to proposing that that particular item be placed on the agenda. In point of fact, the Commission had recorded its views on the subject by a majority vote, and it might be found expedient to confine the discussion on the present occasion to the kind of dissenting opinions which should be accepted for inclusion in the Commission's final reports. Interpreting the suggestion in that sense, he was prepared to support the inclusion of the proposed item in the agenda.

40. Mr. SANDSTRÖM was also prepared to accept Mr. Zourek's suggestion, although he felt that, since the Commission had already taken a decision on the matter,⁶ it ought really to fall to the newly elected members at the Commission's next session to consider the issue afresh.

41. The CHAIRMAN stated that the consensus of opinion was clearly in favour of the inclusion in the agenda of the item suggested by Mr. Zourek, and invited the latter to put his proposal in writing, together with a statement of the reasons therefor.⁷

42. He would draw the Commission's attention to the fact that it had a very full agenda to dispose of during a ten weeks' session, so that there would barely be time to study new items thoroughly.

43. Mr. LAUTERPACHT drew attention to the fact that the Commission had not yet examined the provisional agenda, which, in his view, should be adopted as soon as possible. He would have some comments to make on the agenda in relation to the preparation of documents by the Secretariat.

44. Mr. LIANG (Secretary to the Commission), replying to a further question from Faris Bey el-KHOURI as to the action taken by the General Assembly on the Commission's report on its fourth session, read out General Assembly resolution 683 (VII) of 6 November 1952 on the Commission's report on the work of its fourth session; it ran as follows:

"The General Assembly,

"Pending its consideration in due course of the questions dealt with in the report of the International Law Commission covering the work of its fourth session;

"Takes note of the report."

45. Faris Bey el-KHOURI assumed that the Commission would take note of that resolution.

⁵ *Official Records of the General Assembly, Sixth Session, Supplement No. 9 (A/1858)*. Also in *Yearbook of the International Law Commission, 1951*, vol. II.

⁶ See *Yearbook of the International Law Commission, 1949*, vol. I, 36th meeting, paras. 14-20, and 37th meeting, paras. 42-59; *Yearbook of the International Law Commission, 1951*, vol. I, 128th meeting, paras. 1-57.

⁷ See *infra*, 195th meeting, para. 1.

46. Mr. LIANG (Secretary to the Commission), reverting to the question of the provisional agenda, recalled that at previous sessions the Commission had at an early stage of its work adopted the provisional agenda in so far as its contents were concerned, but without taking a decision on the order of the items listed therein. It was inexpedient to lay down a hard and fast order for the consideration of the items.

47. Answering Mr. Lauterpacht, he stated that the Commission would be able to consider item 1 on arbitral procedure at the beginning of the session, since the documents were nearly ready. The documents for item 4 would be ready the following week.

48. Mr. LAUTERPACHT said he thought it desirable not only to adopt an agenda, but to decide the order in which the items should be taken. He would propose that the Commission should adopt the following order: nationality, including statelessness (item 5); arbitral procedure (item 1), of which subject the Commission should dispose at that session; régime of the high seas, including the question of the continental shelf (item 2); the law of treaties (item 4), which had been on the agenda for some years; draft code of offences against the peace and security of mankind (item 6); régime of the territorial sea (item 3); the question of taking up the subject of diplomatic intercourse and immunities (item 7); and, lastly, the question of dissenting statements raised by Mr. Zourek.

49. Mr. SCELLE said that, in view of the work already done on arbitral procedure and of the suggestions received from governments, some of which, those from the United States, United Kingdom and Netherlands Governments, for example,⁸ were most useful, it should be possible to dispose of that item quickly. He supported the Secretary's proposal that the administrative points mentioned by the latter should be discussed at the next meeting.

50. Mr. AMADO, agreeing with the previous speaker, said that the item on arbitral procedure should certainly be taken early. The subject had already been fully examined, and the Commission should formulate its conclusions as rapidly as possible.

51. After Mr. SANDSTRÖM and Mr. YEPES had signified their agreement with the proposal that the subject of arbitral procedure be taken up with the minimum of delay, Mr. KOZHEVNIKOV observed that the procedural problems the Commission was encountering sprang from the inability of the Secretariat to provide the necessary documents, the lack of which inevitably hindered the Commission's work. Nevertheless, once the documents had been distributed, the order of items on the provisional agenda should not raise any difficulties. As to the immediate programme, he thought that Mr. Zourek's motion should be discussed first, after which the Commission could follow the Secretary's suggestion.

52. The CHAIRMAN said that the next private meeting could be devoted to administrative questions, and that the Commission could consider the question of nationality, including statelessness, on Wednesday, provided Mr. Córdova had arrived. If, however, Mr. Córdova was then still absent, he would suggest that Mr. Zourek's proposal be discussed. The following week should see the documents on arbitral procedure completed, and the Commission would be free to take up that item then.

53. He thought that it would be helpful if the Secretariat, after consultation with him and the special rapporteurs, were to produce a time-table to which the Commission could work.

54. Mr. LAUTERPACHT suggested that, in view of the heavy agenda, it might be advisable to study a few items thoroughly rather than to give only superficial attention to all.

55. The CHAIRMAN observed that, in the last year of the present members' term of office, with the consequent uncertainty about the future, it would be a pity if the Commission were to leave in abeyance subjects upon which it had already worked.

56. He then welcomed Mr. Radhabinod Pal, who had succeeded Sir Benegal Rau as a member of the Commission.

57. Mr. LIANG (Secretary to the Commission) said he had every hope that Mr. Córdova would arrive in Geneva within 48 hours, which would permit a speedy discussion of the subject of nationality, including statelessness.

58. In reply to the Chairman, he said that Mr. Hudson had written expressing his regret at his inability to attend the opening of the session, but stating that, if his recovery was maintained, he hoped to re-join the Commission at the beginning of July.

59. The CHAIRMAN suggested that a telegram be sent to Mr. Hudson expressing the Commission's regret at his absence and its warmest wishes for his speedy restoration to health.

It was so agreed.

The meeting rose at 5.30 p.m.

185th MEETING

Wednesday, 3 June 1953, at 9.45 a.m.

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Chairman: Mr. J. P. A. FRANÇOIS.

Rapporteur: Mr. H. LAUTERPACHT.

⁸ Document A/CN.4/68.