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A/CN.4/SR.479

Summary record of the 479th meeting

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Extract from the Yearbook of the International Law Commission:-
1959 , vol. I

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INTERNATIONAL LAW COMMISSION

SUMMARY RECORDS OF THE ELEVENTH SESSION

Held at the International Labour Office, Geneva, from 20 April to 26 June 1959

479th MEETING

Monday, 20 April 1959, at 3 p.m.

Chairman: Mr. Radhabinod PAL;

later: Sir Gerald FITZMAURICE

Opening of the session

1. The CHAIRMAN declared the eleventh session of the Commission open.

Election of officers

2. The CHAIRMAN called for nominations for the office of Chairman.
3. Mr. SANDSTRÖM proposed Sir Gerald Fitzmaurice, whose valuable services to the Commission were well known.
4. Mr. AMADO seconded the proposal.
5. Mr. ALFARO, Mr. SCELLE, Mr. MATINE-DAFTARY, Mr. BARTOŠ, Mr. TUNKIN, Mr. HSU, Mr. EDMONDS, Mr. YOKOTA and Mr. FRANÇOIS supported the proposal.

Sir Gerald Fitzmaurice was unanimously elected Chairman and took the Chair.

6. The CHAIRMAN paid a tribute to Mr. Pal for the way in which he had presided over the Commission's work at its tenth session. He thanked the members for electing him and said that he would endeavour to carry on the work in accordance with the Commission's traditions.
7. He called for nominations for the office of First Vice-Chairman.
8. Mr. SANDSTRÖM proposed Mr. Hsu.
9. Mr. PAL seconded the proposal.
10. Mr. MATINE-DAFTARY supported the proposal.
11. Mr. TUNKIN observed that the Commission's role was to frame rules of law governing relations between sovereign States; in that capacity, its function as a United Nations organ was to contribute to the maintenance of international peace. It was therefore regrettable that the legal system of the great Chinese people was not represented in the Commission. When he had raised that matter at the previous session, he had been told that the members of the Commission were elected in their personal capacity; he had pointed out, however, that they were nominated by Governments. The situation in which the People's Republic of China was not represented in the United Nations was abnormal and fraught with danger for the whole Organization. In the light of those considerations, he objected to the nomination of Mr. Hsu as First Vice-Chairman.
12. The CHAIRMAN observed that the Commission had to respect the terms of its Statute. All members were elected in their personal capacity, whatever might be the method of nomination, and any member

was eligible for any office. He therefore felt obliged to rule that the nomination of Mr. Hsu for the office of First Vice-Chairman was valid.

13. Mr. BARTOŠ stated that, with all due personal regard for Mr. Hsu, he would be unable, on grounds of principle, to vote for his election. He considered that Mr. Hsu's acceptance of the candidature would not be in the best interest of the Commission. He would, however, respect Mr. Hsu's exercise of the office if he were elected.

14. The CHAIRMAN called upon the Commission to vote on the election of Mr. Hsu.

Mr. Hsu was elected First Vice-Chairman by 11 votes to 1, with 2 abstentions.

15. Mr. HSU thanked the Commission for the honour done to him. While he quite understood the motives of the objection that had been raised to his election, he did not think that the matter should have been referred to in a technical commission. With regard to the representation of Chinese law in the Commission, he observed that that system had been practically abolished by communism on the Chinese mainland. He therefore felt that he was in the best position to represent the system.

16. The CHAIRMAN called for nominations for the office of Second Vice-Chairman.

17. Mr. SANDSTRÖM proposed Mr. Alfaro.

18. Mr. PAL seconded the proposal.

19. Mr. TUNKIN and Mr. YOKOTA supported the proposal.

Mr. Alfaro was unanimously elected Second Vice-Chairman.

20. The CHAIRMAN called for nominations for the office of Rapporteur.

21. Mr. SANDSTRÖM proposed Mr. François.

22. Mr. PAL seconded the proposal.

23. Mr. SCELLE, Mr. AMADO, Mr. BARTOŠ, Mr. EDMONDS and Mr. MATINE-DAFTARY supported the proposal.

Mr. François was unanimously elected Rapporteur.

Adoption of the agenda (A/CN.4/118)

24. The CHAIRMAN suggested that the Commission should first adopt the substance of the provisional agenda (A/CN.4/118), although it might have to discuss the order in which the items would be considered.

The provisional agenda was unanimously adopted.

25. Mr. EL-KHOURI said the Commission would have to decide whether to deal first with item 3 (*Law of treaties*) or with item 4 (*State responsibility*). In his opinion, item 3 did not demand urgent attention, for States freely entered into treaties with each other in conformity with well-established practice. In the

matter of State responsibility, however, the world was waiting eagerly for the Commission's guidance. Furthermore, the Special Rapporteur for item 3 had just been elected Chairman and would probably have to relinquish the Chair while the item was discussed. In view of those considerations, he thought that item 4 should be taken first.

26. The CHAIRMAN observed that the Commission might find it difficult to decide on the order in which it would take agenda items, because Mr. Žourek, the Special Rapporteur on consular intercourse and immunities, and Mr. García-Amador, the Special Rapporteur on State responsibility, would not arrive at Geneva for about a week.

27. Mr. LIANG, Secretary to the Commission, said that the members of the Commission who had not yet arrived for the session had been in touch with him, indicating their expected date of arrival. Some would arrive at Geneva in the next few days and others in the course of the following week.

28. In particular, he had received a letter from Mr. Žourek indicating that the latter's arrival would be delayed for a few days owing to his duties as *ad hoc* judge of the International Court of Justice in the Israel-Bulgaria case being heard at The Hague. In his letter, Mr. Žourek regretted that his absence would mean that the Commission would have to begin its work with some item other than item 2 (*Consular intercourse and immunities*). Since most of the session would be devoted to that item, he did not think that the Commission would be able to do justice to more than one additional substantive item. Of the two remaining substantive items he felt that preference should be given to item 3 (*Law of treaties*) over item 4 (*State responsibility*).

29. Mr. SANDSTRÖM did not think that the fact that the Chairman was also the Special Rapporteur on the law of treaties would hamper the Commission's discussion of that item. A similar situation had existed when Mr. Scelle, Special Rapporteur on arbitral procedure, had been Chairman. He suggested that the Commission should begin by discussing item 3 (*Law of treaties*).

30. Mr. BARTOŠ agreed. The Commission should not lose time and, in the temporary absence of the Special Rapporteurs on the other substantive items, should take advantage of the presence of Sir Gerald Fitzmaurice.

31. Mr. HSU also supported Mr. Sandström's suggestion.

32. Mr. MATINE-DAFTARY agreed that the Commission might begin its work with item 3. However, he was not happy over the prospect of interrupting the consideration of that item, in order to take up item 2 upon Mr. Žourek's arrival. That difficulty might be avoided by taking up first an item that could be disposed of in a few days, such as item 5 (General Assembly resolution 1289 (XIII) on relations between States and inter-governmental organizations).

33. Mr. LIANG, Secretary to the Commission, said that, while that suggestion was attractive, item 5 appeared on the agenda only for the information of the Commission, since the terms of General Assembly resolution 1289 (XIII) rendered premature any substantive, or even a procedural, discussion at that stage. He cited the operative part of the resolution and suggested that the members of the Commission might wish

to consult the summary records of the discussion which had preceded the adoption of the resolution.

34. Mr. AMADO felt that the Commission, before going into new questions, should lose no time in tackling substantive items which were ready for examination. The subjects covered by items 2 and 3 alone were so vast that the whole of the eleventh session might be consumed by their discussion. He was concerned about the amount of completed work which the Commission would be able to present to the next session of the General Assembly, and accordingly he urged the Commission to begin the examination of item 3 without delay.

35. Mr. MATINE-DAFTARY withdrew his suggestion in view of the explanation given by the Secretary. He had made it only in order to avoid interruption in the consideration of item 3.

36. The CHAIRMAN agreed that the suggestion was ruled out by the terms of General Assembly resolution 1289 (XIII). All the Commission could really do was to take note of the resolution and resolve that, in due course, consideration would be given to the matter. He hoped that the Commission would be able to agree to defer any substantive discussion of the resolution to a later session.

It was agreed that, pending the arrival of Mr. Žourek, the Commission should begin its work with the consideration of item 3 (Law of treaties).

37. The CHAIRMAN observed that, as Special Rapporteur on the law of treaties, he would have to act in a dual capacity during the consideration of that item. He would prefer to vacate the Chair during the discussion, but it was for the Commission to decide on the course of action he should take.

38. Mr. EDMONDS and Mr. AMADO saw no incompatibility between the two functions. On the contrary, they thought that it would be expedient and time-saving to combine them. Sir Gerald Fitzmaurice could give up the Chair if, at any time, he felt that it would be better to do so.

39. The CHAIRMAN said that, if there was no objection, he would remain in the Chair, but would yield it to the First Vice-Chairman if, at any stage of the discussion, he felt that would be the proper course.

40. He suggested that the Commission might begin its consideration of the item with his first report (A/CN.4/101), that relating to the conclusion of treaties.

It was so agreed.

41. Mr. LIANG, Secretary to the Commission, referring to item 1 of the agenda (*Filling of casual vacancy in the Commission*) announced that some nominations had been received and that a few members of the Commission had suggested to him the desirability of not discussing the item at the very beginning of the session.

42. The CHAIRMAN said he was sure that the Commission would agree that there should be a certain delay until all the members had arrived. He suggested that any closed meeting to discuss the filling of the vacancy should be deferred for approximately two weeks.

It was so agreed.

The meeting rose at 4.25 p.m.