



Saturday, 28 October 1950, at 10.45 a.m.

Lake Success, New York

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Chairman: Mr. V. OUTRATA (Czechoslovakia).

Report of the International Law Commission on the work of its second session (A/1316) (*continued*)

[Item 52]*

1. The CHAIRMAN proposed to put the various draft resolutions and amendments to the vote in the following order:

(a) The joint draft resolution submitted by the delegations of Cuba, Egypt, France, Iran, the United Kingdom and the United States of America on the question of the emoluments paid to the members of the International Law Commission (A/C.6/L.128), together with the amendments submitted by the Philippines (A/C.6/L.129), Panama (A/C.6/L.134) and Norway (A/C.6/L.136);

(b) The draft resolution submitted by Cuba and Egypt (A/C.6/L.131) fixing the emoluments at thirty-five dollars per day;

(c) The United Kingdom draft resolution (A/C.6/L.130) providing for a general review of the Statute of the International Law Commission, together with the amendments submitted by France (A/C.6/L.133) and the Union of Soviet Socialist Republics (A/C.6/L.135);

(d) The joint draft resolution submitted by the delegations of Cuba, Chile, Egypt, Iran and Turkey (A/C.6/L.132) providing for an extension of the term of office of members of the International Law Commission, together with the Belgian amendment (A/C.6/L.137), which had been submitted since the 228th meeting.

2. Mr. CHAUMONT (France) withdrew his amendment (A/C.6/L.133) to the United Kingdom draft resolution (A/C.6/L.130), since it appeared that a substantial majority of the Committee was prepared to accept the resolution in its existing form. His amendment had been intended simply to clarify the text and he did not in any way object to the substance of the resolution.

3. Mr. KURAL (Turkey) announced that the sponsors of the draft resolution contained in document

A/C.6/L.132 were prepared to accept the Belgian amendment (A/C.6/L.137).

4. Mr. DE LA VEGA (Panama), in reply to a question by Mr. CHAUMONT (France), explained that the purpose of his delegation's amendment (A/C.6/L.134) to the joint draft resolution (A/C.6/L.128) was to emphasize that the members of the International Law Commission had a more arduous task to perform than the experts employed by the United Nations in other fields, in that their task necessitated long sessions of the Commission.

5. Mr. CHAUMONT (France) proposed the deletion of the words "and that it is in the interest of the United Nations to enable the members to do so" from the end of the amendment submitted by Panama; those words appeared to be redundant.

6. Mr. DE LA VEGA (Panama) agreed.

7. The representatives of Cuba, Iran, Egypt, the United Kingdom and the United States of America accepted the amendment submitted by Panama in its amended form, as the fourth paragraph of the preamble to their draft resolution.

8. Mr. ROBERTS (Union of South Africa) requested that a separate vote be taken on the text of that amendment, even though it had been accepted by the sponsors of the joint draft resolution.

9. Mr. WIKBORG (Norway) explained that he had submitted his amendment (A/C.6/L.136) to the joint draft resolution (A/C.6/L.128) in order to make it clear that the members of the International Law Commission should receive the normal *per diem* allowance granted to experts and, in addition, a special yearly allowance to cover the extra work they were called upon to do between sessions.

The Norwegian amendment (A/C.6/L.136) to the joint draft resolution (A/C.6/L.128) was rejected by 16 votes to 13, with 16 abstentions.

The Philippine amendment (A/C.6/L.129) was rejected by 13 votes to 1, with 31 abstentions.

10. The CHAIRMAN put the fourth paragraph of the preamble (originally the amendment submitted by Panama) to the vote separately, as requested by the

* Indicates the item number on the General Assembly agenda.

representative of the Union of South Africa. The paragraph read as follows:

"Considering that the nature and scope of the work of the Commission are such as to require its members to devote considerable time in attendance of the necessarily long sessions of the Commission".

The fourth paragraph of the preamble to the joint draft resolution (A/C.6/L.128) was adopted by 31 votes to 2, with 10 abstentions.

The joint draft resolution as a whole was adopted by 37 votes to 1, with 6 abstentions.

11. The CHAIRMAN asked the representatives of Egypt and Cuba whether they wished to maintain their draft resolution (A/C.6/L.131) fixing the special allowance at thirty-five dollars per day.

12. Mr. SULTAN (Egypt) said that the authors of the draft resolution in question had decided not to withdraw it, since the discussion showed that its adoption would not entail any contravention of rules 152 and 153 of the rules of procedure.

13. Mr. CHAUMONT (France) regretted that he would be obliged to vote against the draft resolution (A/C.6/L.131) because he did not consider that the Sixth Committee was competent to take a decision on a purely financial question.

14. His delegation was definitely in favour of increasing the emoluments of members of the International Law Commission, as was shown by its vote in favour of the draft resolution (A/C.6/L.128) just adopted, but he did not think that purpose could really be achieved by adopting the purely financial resolution which was now before the Committee.

15. That draft resolution submitted by Cuba and Egypt (A/C.6/L.131) could not be regarded simply as the financial implication of the resolution just adopted, since the sole purpose of that resolution had been to bring about an increase in emoluments, and to attempt to fix an actual figure would definitely be to encroach upon the prerogatives of the Fifth Committee. It would, he felt, be unfortunate to follow such a policy and the purpose could be better achieved if the Sixth Committee, without actually adopting the resolution, were to inform the Fifth Committee of its strong views on the subject.

16. Mr. FITZMAURICE (United Kingdom) and Mr. LESAGE (Canada) said they would also have to vote against the draft resolution submitted by Cuba and Egypt for the reasons given by the representative of France.

17. Mr. SPIROPOULOS (Greece) said he would vote in favour of the draft resolution, since there was nothing in the Charter or the rules of procedure laying down that financial matters were within the exclusive competence of the Fifth Committee. It was true that such questions were generally referred to the Fifth Committee, but that applied only where the other Committee concerned was interested simply in a matter of policy and not in the particular financial implications of that policy. In the case at issue, however, the whole question of emoluments was related to the Statute of the International Law Commission; therefore the Sixth Committee was obviously competent to take a decision.

18. Mr. COHEN (United States of America) did not think that the question was strictly one of competence but rather one of orderly procedure. He was prepared to concur with the opinion of the majority in the matter, but he did not think that the procedure recommended by the representative of Greece should be allowed to constitute a precedent. It was clear that most members of the Committee were in sympathy with the substance of the draft resolution (A/C.6/L.131) but there was some danger that the vote would not reflect their attitude correctly, owing to the procedural difficulties. To put the resolution to the vote in such circumstances would simply create confusion.

19. He suggested, therefore, that, without finally disposing of the item, the Committee should agree as nearly unanimously as possible to recommend to the Fifth Committee that it should fix the special allowance for the members of the International Law Commission at thirty-five dollars per day. If it seemed that the Fifth Committee was unlikely to agree with the suggestion, the Sixth Committee could request a joint meeting of both Committees so that the views of the Sixth Committee could be taken into account fully.

20. Mr. GARCIA AMADOR (Cuba) and Mr. SULTAN (Egypt) agreed to suspension of the vote on their draft resolution and to follow the procedure suggested by the United States representative, reserving the right to demand a vote later should that procedure fail, as was the case the previous year.

21. Mr. ABDOLAH (Iran) expressed himself as still convinced that the adoption of the draft resolution would not in any way involve a violation of rules 152 and 153 of the rules of procedure. Nevertheless, in view of the objections which had been raised, and as it might be in the interest of the International Law Commission to do so, he was prepared to accept the suggestion made by the United States representative.

22. Mr. SPIROPOULOS (Greece) wondered whether it would really be wise for the Committee to follow the procedure suggested by the United States representative. He pointed out that the draft resolution was connected with a revision of the Statute of the International Law Commission, and as such was certainly within the competence of the Sixth Committee. If, however, the Sixth Committee were to refer the matter to the Fifth Committee and were to find its proposal rejected, the Sixth Committee would then be in the very difficult position of having openly to disagree with a decision taken by the Fifth Committee.

23. He felt, therefore, that it would be a tactical error to refer the matter to the Fifth Committee and at the same time to allow the Cuban and Egyptian delegations to re-submit their resolution should the proposal be rejected by the Fifth Committee.

24. The CHAIRMAN stated that if that procedure were adopted, he would send a letter to the President of the General Assembly expressing the wish of the Sixth Committee that the special allowance of the members of the International Law Commission be fixed at thirty-five dollars per day; the wish thus expressed would then be transmitted to the Fifth Committee.

25. Mr. ROBERTS (Union of South Africa) said that if the Committee wished to follow the procedure suggested by the United States representative, the

whole discussion on the substance of the proposal that the special allowance should be fixed at thirty-five dollars per day would have to be re-opened. He personally did not agree that the Committee was unanimously in favour of fixing the emoluments of members of the International Law Commission at that amount.

26. Mr. MAURTUA (Peru) saw no reason why the Committee should not vote on the draft resolution. He agreed with the representative of Greece that although the various Committees were specialized there was no water-tight division between them, and no particular function was within the exclusive competence of any Committee.

27. Mr. CABAÑA (Venezuela) did not see why the Fifth Committee should disagree with the recommendations of the Sixth. His delegation, at any rate, would vote the same way in both Committees; therefore it was not really necessary to take a vote in the Sixth Committee.

28. Mr. AMADO (Brazil) was not persuaded that the views of each delegation in the Fifth Committee would necessarily coincide with those expressed by the same delegations in the Sixth Committee, although he hoped that his colleagues would make every effort to achieve that end. His own views on the matter under discussion were substantially the same as those of his government's representative in the Fifth Committee.

29. At the present time, however, the members of the Fifth Committee were not all fully apprised of the Sixth Committee's views on the subject. Moreover, the Fifth Committee still appeared to feel that the members of the International Law Commission were experts as the term was usually understood in the United Nations. For those reasons, he thought that an effort should be made to clarify the situation either by the Chairman or the Rapporteur sending a letter to the President of the General Assembly, or by a joint meeting of the Fifth and Sixth Committees.

30. Mr. MOROZOV (Union of Soviet Socialist Republics) repeated his statement made at the 228th meeting that the matter was more properly within the province of the Fifth Committee.

31. The authors of the joint Cuban-Egyptian draft resolution (A/C.6/L.131) had agreed to suspend the vote on it, which raised another point of procedure. Mr. Morozov considered that under rule 121 of the rules of procedure, this suspension could only be interpreted as a withdrawal of the draft resolution. He recalled that the Committee was thereby disposing of part I of the report of the International Law Commission. How then could it come back to a draft resolution related to that same part? As there was no rule of procedure which said that a proposal could be adjourned *sine die*, he thought the suggestion that the vote should be postponed was inadmissible. The only possible procedure would be either to vote on the proposal or to withdraw it.

32. With regard to the letter which the Chairman proposed to write to the President of the General Assembly, he supported the views just expressed by the representative of the Union of South Africa, and endorsed his proposal that the Committee should vote on

the matter. Any other procedure would lead to great confusion.

33. Mr. COHEN (United States of America) proposed that, in accordance with rule 118 of the rules of procedure, the debate on the item should be adjourned and that the vote on the joint Cuban-Egyptian draft resolution should be postponed until the authors asked for a vote to be taken. Meanwhile, the authors of the proposal could follow the proceedings in the Fifth Committee to ensure that the Sixth Committee's views were put at its disposal.

34. Such a procedure would, in his view, help to achieve the purposes of the draft resolution by avoiding any question as to whether the matter was not more properly within the province of the Fifth Committee. Moreover, that procedure would avoid a narrow vote which would not reflect the true views of the Committee, as some representatives would vote against the draft resolution for procedural reasons whilst agreeing with its substance.

35. The CHAIRMAN pointed out that as the debate on the item had already been closed, rule 118 of the rules of procedure did not apply. He felt, however, that just as the movers of a proposal had the right to withdraw it, so could they also be permitted to ask that the vote on their proposal be suspended. True, there was no explicit provision in the rules of procedure on the matter, but since in such cases the Committee was master of its own procedure, it could, if it wished, decide to suspend the vote on the Cuban-Egyptian draft resolution until it had heard the views of the Fifth Committee.

36. On the point raised by the representative of the Union of South Africa, he said he would ascertain the sense of the Committee on the question whether the special allowance of members of the International Law Commission should be increased to thirty-five dollars a day. A statement of the Committee's opinion could then be included in the covering letter to the President of the General Assembly accompanying the joint draft resolution (A/C.6/L.128), as amended, which had just been adopted.

37. Mr. ROBERTS (Union of South Africa) thought the procedure suggested by the Chairman might re-open the debate. For his part, if the Committee were being asked to decide whether it wished to recommend that the special allowance of members of the International Law Commission should be increased to thirty-five dollars a day, his delegation would vote against such a proposal in both the Fifth and the Sixth Committee. No satisfactory evidence had been produced to show that such an increase was justified or that there were good grounds for granting special consideration to certain United Nations experts and not to others. His delegation felt, moreover, that it was a matter for the Fifth Committee to decide.

38. The question should either be referred to a joint meeting of the two Committees or a delegation from the Sixth Committee should be appointed to represent that body in the Fifth Committee when the question was discussed.

39. He would agree to suspend the vote on the joint Cuban-Egyptian draft resolution if the letter to the

President of the General Assembly contained no specific recommendation regarding the increase. If the figure of thirty-five dollars were mentioned, however, that would be tantamount to taking a vote on the Cuban-Egyptian draft resolution.

40. The CHAIRMAN explained, in reply to Mr. BALLARD (Australia), that the letter to the President of the General Assembly would give a complete picture of the Committee's views with regard to the emoluments of the members of the International Law Commission including the results of the votes.

41. He also pointed out in reply to Mr. LESAGE (Canada) that as the Sixth Committee had decided to recommend an increase in those emoluments—as the summary records and the draft resolution it had adopted showed—it could proceed to spell out its view.

42. He would therefore put to the vote the question whether the letter to the President of the General Assembly should contain a sentence to the effect that it was the wish of the majority of the Sixth Committee that the special allowance should be fixed at thirty-five dollars per day.

43. Mr. SULTAN (Egypt) requested that the vote should be taken by roll call.

44. Mr. MOROZOV (Union of Soviet Socialist Republics) felt that the procedure proposed by the Chairman might create a dangerous precedent. In his view, it was not within the competence of the Chair to comment on the Committee's view in a letter such as that proposed. The Committee's opinions were reflected in the resolutions it adopted, in the summary records and the sound recordings of its meetings.

45. He also felt that a vote could not be taken on a proposal which had not been circulated in writing, particularly since the rest of the contents of the letter was unknown. Before the Chairman could ask the Committee to decide, the text of the letter as a whole should be read out.

46. The CHAIRMAN pointed out that it was customary to refer resolutions which might have financial implications to the President of the General Assembly, who then brought them to the Fifth Committee's attention. He merely asked the Committee to tell him, by its vote, whether it authorized him to insert in that otherwise routine communication a sentence stating that in the opinion of the Sixth Committee the emoluments should be fixed at thirty-five dollars a day.

47. Mr. MOROZOV (Union of Soviet Socialist Republics) reiterated his view that the Committee could not be asked to vote on one sentence, which had not yet been drafted, which was based on a withdrawn proposal and which was to be inserted in a letter, the text of which was unknown.

48. He therefore challenged the Chair's ruling that he would take the sense of the Committee in the matter.

49. Mr. CHAUMONT (France) supported the views of the Soviet Union representative. His delegation was in favour of increasing the allowance of members of the International Law Commission to thirty-five dollars per day, but it did not wish to vote on the question until it had seen the text of the letter as a whole.

50. The CHAIRMAN said that under rule 112 an appeal against a ruling of the Chair should be put to

the vote immediately. However, as he had already allowed the representative of France to speak, he would give the same permission to other representatives who had asked to be recognized.

51. Mr. MAURTUA (Peru) endorsed the views of the representative of the Union of South Africa. It would not be wise to draft such a letter to the President of the General Assembly. The majority of the Committee was in favour of increasing the emoluments, but he feared that the procedure proposed by the Chair might unfavourably affect the issue when it came before the Fifth Committee.

52. He therefore urged the authors of the joint Cuban-Egyptian draft resolution to request an immediate vote on their proposal.

53. Mr. ROBERTS (Union of South Africa) supported the Peruvian proposal.

54. Mr. ABDON (Iran) thought the Soviet representative's objections were well founded. The majority of the Committee was agreed on the substance of the matter, but many representatives would prefer not to take a vote until they had seen the text of the letter.

55. He suggested, therefore, that the vote should be postponed until the following meeting when the letter could be circulated.

56. The CHAIRMAN emphasized that such letters were transmitted as a purely routine matter; any representative who had doubts could express them in his vote on the ruling of the Chair.

57. Mr. BARTOS (Yugoslavia) said that, as the Chair's ruling involved both procedural and substantive matters, the Committee should not be asked to vote on a question of procedure in a manner which might prejudice the substance.

58. In reply to Mr. VAN GLABBEKE (Belgium), Mr. KERN (Assistant Secretary-General in charge of the Legal Department) said that since the amended draft resolution which the Committee had just adopted (A/C.6/L.128) contained certain financial implications, the Chairman was compelled, under the rules and precedents of the Organization, to refer the draft resolution to the President of the General Assembly requesting him to transmit it to the Fifth Committee. Such letters were purely routine, and it was not customary to submit them to the Committee before they were forwarded.

59. The authors of the joint Cuban-Egyptian resolution (A/C.6/L.131) had agreed to postpone the vote on their text if the sense of the Committee on the question were included in the covering letter to the President of the General Assembly concerning the draft resolution which had already been adopted (A/C.6/L.128). That was not a routine procedure, however, and it was for that reason that the Chairman was attempting to ascertain the sense of the Committee on that point.

60. Mr. LESAGE (Canada) proposed that the meeting should be suspended for ten minutes to enable the representatives to discuss the problem informally.

61. Mr. CHAUMONT (France) supported the Canadian proposal. If a vote were taken on the ruling of the Chair, he feared that certain delegations might

be obliged to vote against what they really desired regarding the emoluments of the members of the International Law Commission.

The Canadian proposal was adopted.

The meeting was suspended at 12.35 p.m. and was resumed at 12.55 p.m.

62. Mr. ABDOH (Iran) said that, after consulting the other delegations, his delegation wished to propose the following text of a *vœu*: "The Sixth Committee expressed the desire that the special allowance provided for in the draft resolution adopted by it on 28 October 1950 should be thirty-five dollars per day".

63. The letter from the Chairman to the President of the General Assembly would then be a purely routine communication concerning the draft resolution (A/C.6/L.128) as amended by Panama, which had been adopted and the letter would enclose as an annex this *vœu*. This, together with the records of the Committee's discussions, should give the Fifth Committee a clear idea of the Sixth Committee's views on the matter, and he hoped that it would be acceptable.

64. The CHAIRMAN said that, in view of the new proposal, he would withdraw his earlier ruling which the representative of the Soviet Union had challenged.

65. In accordance with the Egyptian representative's request he would put the *vœu* proposed by Iran to a roll-call vote.

A vote was taken by roll call.

Afghanistan, having been drawn by lot by the Chairman, voted first.

In favour: Argentina, Belgium, Brazil, Burma, Chile, China, Colombia, Cuba, Denmark, Dominican Republic, Ecuador, Egypt, France, Guatemala, Iran, Iraq, Mexico, Norway, Pakistan, Panama, Peru, Saudi Arabia, Syria, Thailand, Turkey, United Kingdom of Great Britain and Northern Ireland, United States of America, Uruguay, Venezuela, Yemen, Yugoslavia.

Against: Australia, Byelorussian Soviet Socialist Republic, Czechoslovakia, New Zealand, Poland, Ukrainian Soviet Socialist Republic, Union of South Africa, Union of Soviet Socialist Republics.

Abstaining: Canada, Indonesia, Netherlands, Philippines, Sweden.

*The *vœu* was approved by 31 votes to 8, with 5 abstentions.*

66. Mr. PAZHAWAK (Afghanistan), Mr. SPIROPOULOS (Greece) and Mr. PATHAK (India), as

they had not been present during the roll-call vote, asked to be considered as voting in favour of the *vœu* proposed by the Iranian representative.

67. The CHAIRMAN put to the vote the United Kingdom draft resolution (A/C.6/L.130) and the Soviet Union amendment to it (A/C.6/L.135).

The Soviet Union amendment to the United Kingdom draft resolution was rejected by 26 votes to 6, with 10 abstentions.

68. Mr. LESAGE (Canada) stated that he would vote in favour of the draft resolution for the reasons set forth at the 228th meeting by the representative of China.

The United Kingdom draft resolution was adopted by 36 votes to 7, with 2 abstentions.

69. Mr. GARCIA AMADOR (Cuba), as one of the sponsors of the joint draft resolution (A/C.6/L.132), stated that he also accepted the Belgian amendment (A/C.6/L.137), but wondered whether the Belgian representative would not agree to the deletion of the words "by way of exception", since the special emphasis laid on the fact that the present decision was an exception might be interpreted as an indication of the undesirability of any future extension of the term of office of members of the International Law Commission, which would be contrary to the purpose of the amendment.

70. Mr. VAN GLABBEKE (Belgium) said that the purpose of his amendment was to make clear that the extension of the term of office was in the present case being proposed as an exceptional measure, applicable only to the present members of the International Law Commission. There had been no intention on his part to preclude future extensions, and he was therefore prepared to accept the deletion proposed by Cuba.

71. The CHAIRMAN put to the vote the joint draft resolution (A/C.6/L.132) as a whole with the amended Belgian amendment which had been accepted by the authors of the joint draft resolution.

The joint draft resolution as amended was adopted by 37 votes to 8, with 2 abstentions.

72. Mr. SULTAN (Egypt), noting that the Committee had completed consideration of part I of the International Law Commission's report, moved adjournment.

The motion for adjournment was adopted.

The meeting rose at 1.15 p.m.