

GENERAL  
ASSEMBLY

## FIFTH SESSION

## Official Records



Tuesday, 28 November 1950, at 11.10 a.m.

Lake Success, New York

## CONTENTS

	Page
Report of the International Law Commission on the work of its second session (A/1316) (continued) .....	241

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 stated that it was unnecessary to put the revised draft resolution submitted by Canada and the Union of South Africa (A/C.6/L.157/Rev.1) to the vote, in view of the fact that a draft resolution submitted by Cuba, France and Iran (A/C.6/L.151/Rev.1) had been adopted with amendments at the 244th meeting. The Committee therefore had only to take a decision on the composition of the committee provided for in the first paragraph of the operative part of the draft resolution it had adopted; that committee had to prepare one or more preliminary draft conventions and proposals relating to the establishment and the statute of an international criminal court. Two slightly different lists of members had been suggested. He did not think it would be advisable to take a vote by secret ballot, and proposed that the meeting be suspended for a quarter of an hour, to enable the authors of the lists to agree to submit a single list.

2. Mr. GARCIA AMADOR (Cuba) said that, since there were two lists, he would support the Chairman's proposal.

3. Mr. MAURTUA (Peru) did not approve of the principle of pre-established lists, since the Committee's decisions might be influenced thereby. He believed one of the proposed lists did not take into consideration all the tendencies which had been manifested in the International Law Commission. He would therefore prefer a vote by secret ballot. He was surprised, for instance, that Sweden and Panama had not been included in that list, when the Swedish and Panamanian members of the International Law Commission had put forward opposite arguments.

4. Mr. AMADO (Brazil) did not consider that the reason given by Mr. Maúrtua for the inclusion of Sweden and Panama in the list of Committee members was correct. In the International Law Commission, Professor Sandström and Professor Alfaro had merely ex-

pressed their personal views, and not those of Sweden and Panama, respectively.

5. He would not, however, object to the inclusion of Panama and Sweden in the list.

6. Mr. ROBERTS (Union of South Africa) asked that the decision be postponed until the next meeting, so that certain delegations could consult their governments. He also thought it essential that the lists should be distributed to the members of the Committee before a vote was taken.

7. He also wished to have assurance that the expenses of the committee would not be borne by the United Nations, but by the governments represented in that committee. He asked for some explanations in that connexion.

8. Mr. KERNO (Assistant Secretary-General in charge of the Legal Department) said that, as the committee would not be a committee of experts, but would consist of representatives of governments, those governments should remunerate their representatives. That was the practice usually followed in such cases. The United Nations would bear only the expenses of the secretariat, and it was in order to reduce those expenses that it had been suggested to convene the committee at Geneva, since the third session of the International Law Commission would also be held at Geneva.

9. Mr. WASSARD (Denmark) supported the South African representative's proposal to postpone the decision until the next meeting and asked that the lists should be distributed to members of the Committee, in order that representatives might consider them at their leisure. They wished, for example, to include, in the final list, countries whose courts had dealt with the trials of war criminals and which had thus acquired some experience of the subject.

10. The CHAIRMAN proposed to read out the lists that had been submitted to him, if the authors would permit him to do so.

11. Mr. GARCIA AMADOR (Cuba) called for a suspension of the meeting to enable members of the Committee to peruse the lists and to consider whether

\* Indicates the item number on the General Assembly agenda.

the decision should be postponed until a subsequent meeting.

12. Mr. MAURTUA (Peru) agreed that the meeting should be suspended so that a single list could be drawn up. The preparation of that list should be based on certain principles. He wondered whether geographical distribution, the positions taken by various governments in the matter, or the extent to which the various delegations had taken part in the debate had been taken into account when the lists under consideration had been prepared.

13. Mr. CHAUMONT (France) was surprised that the appointment of the members of the committee should give rise to so many difficulties. The principle of geographical distribution had been considered to be perfectly just in appointing the members of many committees similar to the one which was now proposed. He supported the Chairman's suggestion that a single list be drawn up.

14. The CHAIRMAN decided that the meeting should be suspended.

*The meeting was suspended at 11.30 a.m. and was resumed at 12.10 p.m.*

15. The CHAIRMAN stated that it had not proved possible to draw up a single list. The two lists that had been submitted included the names of seventeen countries, eleven of which were identical, and he proposed that the Committee should first vote on those eleven names and then should choose between two lists of six names.

16. Mr. ROBERTS (Union of South Africa) invoked rule 119 of the rules of procedure of the General Assembly, which provided that a proposal had to be introduced in writing not later than the day preceding the vote on the subject. He asked again that the lists should be circulated to members of the Committee.

17. Mr. WASSARD (Denmark) considered that the preparatory lists were useful, but thought that they should be submitted in writing for the members of the Committee to study, and that the vote should be postponed for two or three days.

18. Mr. GARCIA AMADOR (Cuba) suggested that, if the South African proposal was adopted, the names which were included in both lists should be set down separately from two lists, each containing six names. He asked the Chairman to read the lists that had been submitted to him.

19. Mr. ROBERTS (Union of South Africa) again asked that rule 119 of the rules of procedure of the General Assembly should be applied.

20. The CHAIRMAN pointed out that the rule provided that "Proposals and amendments shall *normally* be introduced in writing" and that the provision was therefore optional.

21. Mr. CHAUMONT (France) drew the South African representative's attention to the fact that a proposal made by the Canadian representative at the preceding meeting had been adopted although it had not been submitted in writing, and that such a procedure was often followed. He appealed to the good will of the South African representative and recalled that the

procedure which he himself favoured had been followed in the appointment of members of highly important organs, such as the Peace Observation Commission. In view of the fact that the question merely involved a preparatory committee, it was strange that certain delegations which had not wished to establish such a committee should now show such great interest in its composition.

22. Mr. DROHOJOWSKI (Poland) stated that some confusion seemed to have arisen. Before the meeting had been suspended, the South African representative had proposed that the debate on the composition of the committee should be postponed until the next meeting. That proposal had not been withdrawn and should have been put to the vote before the discussion had been resumed.

23. Although he reserved his delegation's views on the intrinsic value of such a proposal, he thought that if the South African representative retained his proposal and asked for a vote on it, his request should be met; nevertheless, it would be preferable for the discussion of the question to be postponed, not until the next meeting as the South African representative had suggested, but until a subsequent meeting, since there was no special urgency in taking a decision on the subject.

24. Mr. ROBERTS (Union of South Africa), in reply to the representative of France, stated that he had not wished to show any lack of good will. The French representative had mentioned the only exception provided for in rule 119 of the rules of procedure, to which he himself had also referred. Nevertheless, he had not been satisfied with the procedure followed during the 244th meeting.

25. The matter at issue related neither to an amendment nor to a procedural motion, and rule 119 was absolutely clear in that connexion; its purpose was to protect delegations from being obliged to vote on proposals which they had not had time to consider.

26. Moreover, unlike the representative of France, he thought it perfectly natural that certain delegations, including the South African delegation, which had opposed the establishment of a committee because they had thought it premature, wished to ensure, now that the committee had been set up, that all the necessary measures should be taken to make its work successful.

27. He therefore asked that rule 119 of the rules of procedure should be applied in the proper manner. If that was not done, he would formally submit his motion for the adjournment of the debate, with the slight modification suggested by the Polish representative, which he was prepared to accept.

28. The CHAIRMAN pointed out that various organs of the General Assembly which had been placed in a similar position had not regarded rule 119 of the rules of procedure as an obstacle. In the light of those precedents, he stated that he would put to the vote the motion for adjournment submitted by the representative of the Union of South Africa.

29. Mr. MAKOTOS (United States of America), speaking on a point of order, pointed out that rule 119 of the rules of procedure only applied in cases

where a representative had made a formal proposal. Nevertheless, neither the representative of France nor any other representative had submitted a list to the Committee as a formal proposal. In voting on the South African motion, the Committee would not be establishing a precedent for the application of rule 119 of the rules of procedure to the appointment of members of committees.

30. The CHAIRMAN put to the vote the motion for the adjournment of the debate submitted by the representative of the Union of South Africa.

*The motion was adopted by 19 votes to 13, with 7 abstentions.*

31. Mr. KERNO (Assistant Secretary-General in charge of the Legal Department) pointed out that the work of the fifth session of the General Assembly was coming to an end and that the Committees would therefore have to accelerate their work.

32. In that connexion, he drew attention to paragraph 16 of the report of the International Law Commission (A/1316), which stated that parts V and VI of the report were communicated "for the information of the General Assembly". Thus, in view of the fact that the International Law Commission intended to submit final reports on the subjects referred to in parts V and VI to the General Assembly at a later date, the Sixth Committee need not, perhaps, devote much time to the consideration of those parts of the report.

33. Mr. BARTOS (Yugoslavia) did not think that the members of the Sixth Committee could be held responsible in any way for the fact that the Committee's work would have to be accelerated in order to finish in time. The rate of the Committee's work had been relatively slow, and it would be advisable for the Order of the Day Section of the Secretariat to convene the members of the Sixth Committee, by telephone if necessary, whenever a conference room was available, as had been done in the case of other Committees, such as the Fourth Committee.

34. Mr. KERNO (Assistant Secretary-General in charge of the Legal Department) pointed out that the convening of meetings depended not only on the number of available conference rooms, but also on the staff to provide the necessary services. He recalled that the convening of extraordinary meetings of the Sixth Committee had given rise to many protests from delegations.

35. Mr. MOROZOV (Union of Soviet Socialist Republics) considered that the sudden convening of meetings was inconvenient for delegations and might disorganize the Committee's work.

36. He did not share the Assistant Secretary-General's view that the Committee should accelerate its work in view of the short time at its disposal; he thought that the Committee would complete its work in good time.

37. Nevertheless, he agreed with the Assistant Secretary-General on the manner in which the Committee should deal with parts V and VI of the report of the International Law Commission. Paragraphs 15 and 16 of that report clearly implied that the International Law Commission did not expect the Sixth Committee to consider parts V and VI, which dealt with matters that

had not been studied sufficiently. He did not think that those parts should have been included in the report.

38. Moreover, the members of the Sixth Committee would probably be unable to take decision on parts V and VI of the report, and it was therefore inadvisable to waste time which could be devoted to the consideration of many other questions. The Sixth Committee should not even take note of parts V and VI, since that would indicate that it had studied them. By following such a procedure, the Sixth Committee could ensure the completion of its work in good time.

39. Mr. ROLING (Netherlands) recognized that on pages 2 and 3 of its report (A/1316), the International Law Commission had made a distinction between the parts of the report submitted to the General Assembly for consideration and those presented for information, as indicated in the first place in paragraph 14, and in the second in paragraphs 15 and 16. That being so, it would in fact be possible to avoid entering into a discussion of parts V and VI.

40. Nevertheless, as certain representatives had stressed that the General Assembly should not reconsider work already done by the International Law Commission in the field of the codification of international law, it seemed logical to present observations on parts V and VI before the Commission had communicated its final reports upon them. In his opinion, the Commission had included parts V and VI in its report with a view to enabling the Sixth Committee to present observations which would be taken into account by the Commission in drafting its final reports.

41. He pointed out that his government's opinion was expressed in its reply to the International Law Commission's questionnaire to all governments, but that the Sixth Committee discussions might enable the Commission to learn the opinions of other governments.

42. Mr. BARTOS (Yugoslavia) pointed out that there had been a misunderstanding: he had not meant to suggest that members of the Committee should be called suddenly by telephone an hour or two in advance of the meeting, but that they should be notified the day before.

43. Concerning parts V and VI of the International Law Commission's report, it should be noted that the Commission had submitted them to the General Assembly for information, with a view to receiving its comments. That was the normal procedure for preliminary reports. Moreover, the summary records of the Commission's meetings showed that, in the course of its discussions, the Commission had decided what were the points regarding those questions on which it wished to receive the observations of the General Assembly and governments, and which should therefore be included in its report.

44. The Yugoslav Government would, of course, inform the International Law Commission, through the Secretariat, of its comments on those questions, but the Sixth Committee's discussions might reveal new elements which would be of use to the International Law Commission in proceeding with its work.

45. In conclusion, he therefore proposed that the Committee should formulate its observations on parts



V and VI of the report or should at least take note of those parts.

46. Mr. AMADO (Brazil) said his delegation considered the position of the Soviet Union representative in this matter to be the most logical one. In any case, it was the attitude which the International Law Commission had expected when it included parts V and VI in its report. At Geneva, the Commission had discussed whether it should inform the General Assembly of the progress of its work on the four points dealt with in those parts of its report or whether it should not mention them at all. If, at its last meeting, it had decided to adopt the first alternative, it had done so to bring out the importance of the work already done by the Commission in that field and the considerable time it had devoted to it. The questions were in fact very important and complex. That was true of the drafting of the code of offences against the peace and security of mankind, the law of treaties, arbitral procedure and especially the regime of the high seas. Regarding the last, new problems such as that of the continental shelf, with its important political implications, were added to the theoretical difficulties.

47. Some members of the International Law Commission—of whom he was one—had opposed the inclusion of those questions in the report, but they had bowed to the majority opinion, solely with a view to informing the General Assembly of the work already done.

48. In those circumstances, the attitude the Sixth Committee should adopt was that suggested by the USSR representative. If the question was put to the vote, the Brazilian delegation would vote in accordance with the view of the Soviet representative.

49. Mr. CHAUMONT (France) shared the USSR representative's point of view. He was persuaded, as the Brazilian representative had just said, that there was no possible doubt on the point at issue. The method the Sixth Committee should adopt was stated first of all in paragraph 16 of the International Law Commission's report and in its statute. According to paragraph 16, the Commission, in accordance with the provisions of its statute, would in due course report to the General Assembly on the subjects concerned. The provisions of the statute in the matter were identical, both as regards work on the progressive development of international law and the codification of international law.

50. Regarding the progressive development of international law, article 16 of the statute sets forth the entire procedure to be followed by the Commission; the submission of the text of its work to the General Assembly was the last stage in that procedure. With regard to the codification of international law, article 22 provided that the Commission should not submit a draft to the General Assembly until it had prepared the final text of the draft together with an explanatory report, after consultation with governments.

51. Moreover, politically speaking, the moment was unsuitable, as those questions had been communicated to governments for their opinion, so that discussion of them by the Sixth Committee at the present stage would serve no useful purpose.

52. He therefore asked the Committee merely to take

note of parts V and VI of the International Law Commission's report.

53. Mr. TARAZI (Syria) also shared the view of the Soviet Union representative. Parts V and VI had been submitted to the Sixth Committee in accordance with the statute of the International Law Commission. He wondered whether in fact the Soviet representative had not submitted a motion for the closure of the debate, in accordance with rule 116 of the rules of procedure.

54. In that case, Mr. Tarazi would support the motion, and would ask for a vote upon it, in application of rules 112, 116 and 118 of the rules of procedure.

55. Mr. MAKTO (United States of America) wished to know whether the Syrian representative had merely given an interpretation of the USSR representative's proposal or had himself presented a motion. He pointed out that it was impossible to pronounce the closure of a debate which had not yet begun and that some representatives would certainly wish to speak on the questions dealt with in parts V and VI of the International Law Commission's report. He himself would have some observations to make.

56. Mr. TARAZI (Syria) explained that he would support the Soviet representative's proposal if his intention had been to present a formal motion. The Soviet proposal had already received the support of the representatives of France and Brazil. Before deciding, he would like the representative of the Soviet Union to make his position clear to the Committee.

57. Mr. BARTOS (Yugoslavia), referring to the remarks made by the French representative, pointed out that the latter had cited article 16 of the statute of the International Law Commission, but not article 17. Under article 17 (c) the Commission might—if it deemed it desirable before submitting its recommendations to the General Assembly—make an interim report. Article 17 (d) stated that, in that event the procedure outlined in article 16 should apply, if the General Assembly invited the Commission to proceed with its work on a proposal. Therefore, as the International Law Commission had presented an interim report, the General Assembly should consider it.

58. The CHAIRMAN, referring to the question of closure of the debate, asked the USSR representative to explain his position. If his intention had been to present a formal motion for closure, under rule 116 of the rules of procedure other speakers could not be allowed to speak, as two speakers had already opposed closure.

59. Mr. MOROZOV (Union of Soviet Socialist Republics) thought he should have presented his proposal at the beginning of the discussion on parts V and VI of the Commission's report, as he considered any discussion of those parts unnecessary.

60. However, he had not formally moved the closure of the debate, his intention being to invite the Committee to consider whether or not it was necessary to open discussion on those questions. He shared the Syrian representative's point of view and supported it. Several delegations had in fact stated that they had not intended to examine the substance of the ques-

tions and it was therefore useless to embark on a discussion of them when several items on the agenda must still be dealt with.

61. The CHAIRMAN pointed out that some definite procedure must be adopted, as the Syrian representative was ready to support the Soviet Union representative if he presented a formal motion for closure of the debate, whereas the USSR representative himself had expressed support of the Syrian representative.

62. Mr. MOROZOV (Union of Soviet Socialist Republics) stated that, in the circumstances, he formally proposed the closure of the debate on parts V and VI of the International Law Commission's report.

63. The CHAIRMAN put the proposal to the vote,

in accordance with rule 116 of the rules of procedure, two speakers having spoken against closure.

*The motion for the closure of the debate on parts V and VI of the report of the International Law Commission was adopted by 26 votes to 7, with 6 abstentions.*

64. The CHAIRMAN informed the Committee that in order to complete consideration of the International Law Commission's report, it only remained for it to determine the composition of the committee of seventeen, the establishment of which had already been decided. A document containing the two lists he had mentioned would be distributed.

The meeting rose at 1 p.m.