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Chairman: Mr. Manfred LACHS (Poland).

AGENDA ITEM 50

Report of the International Law Commission on the work of its seventh session (A/2934; A/C.6/L.349, A/C.6/L.350, A/C.6/L.351) (*continued*)

1. The CHAIRMAN pointed out that the Spanish text of the joint draft resolution (A/C.6/L.349) had been altered and hoped that the change [A/C.6/L.349/Corr.1]¹ would help to remove the difficulties raised at the previous meeting.
2. Mr. ESCUDERO (Ecuador) said that he had very carefully followed the explanation of the reasons why the International Law Commission and its Chairman had asked for an amendment to article 12 of the Commission's Statute. The performance of certain tasks, like those of the International Law Commission, required special working conditions and Geneva appeared to be best suited in that respect. Moreover, in view of the other duties of members of the Commission, the annual session should naturally be held during the university vacations.
3. Like many other delegations, the Ecuadorian delegation would vote for the joint draft resolution (A/C.6/L.349). Its approval would merely confirm past practice, since, except on two occasions, the Commission had always met at Geneva. Moreover, the draft provided that it could meet elsewhere if circumstances so required. The statement of financial implications (A/C.6/L.350) provided for additional expenses ranging somewhere between \$18,000 and \$21,000, but that expenditure was necessary if the Commission was to continue its notable work in the most favourable circumstances.
4. Mr. SPIROPOULOS (Chairman of the International Law Commission) wished to explain one of the reasons the Commission had given at the end of paragraph 26 of its report (A/2934), namely, that the transfer of the Commission's seat from New York to Geneva would simplify the work of the United Nations Secretariat. Actually, the Commission could sit at Geneva only between sessions of other bodies and was therefore unable to fix the date or length of its sessions. If article 12 of the Statute was approved in its revised form, the Commission would have greater latitude in

that respect. This question was a very important one, inasmuch as the Commission had to fix the date of its sessions to coincide with the university vacations.

5. Document A/C.6/L.350 contemplated an eight-week session, whereas the International Law Commission had decided on a ten-week session, which appeared to be the minimum period required in view of all the items on its agenda. In connexion with the régime of the high seas, the Commission had spent nearly three weeks on the question of fisheries, which question would have to be debated again at some length at its next session, as soon as Governments had sent in their comments. It had been unable to discuss the question of consular and diplomatic immunities, because it had not had enough time to study the régime of the high seas. The Commission should also examine the law of treaties as soon as possible, for its terms of reference were very clear in that respect, and it had still to consider the question of the responsibility of States. A ten-week session, therefore, seemed to be a minimum.

6. Mr. MIRANDE (Argentina) congratulated the Commission on its excellent report, which marked a step forward towards the codification of international law.

7. The complexity of the Commission's work should not be under-estimated, and its members should be enabled to work in the most favourable conditions possible. For that reason, the Argentine delegation, endorsing the arguments adduced by various delegations and by the Chairman of the International Law Commission, would vote for the draft resolution, especially since the amendment to article 12 of the Statute merely recognized an existing situation. Argentina had always favoured a policy of economy, but, as the Uruguayan representative had said, the importance of the Commission's work justified the additional expense.

8. Mr. CASTANEDA (Mexico) admitted the force of the arguments advanced by the Chairman of the International Law Commission, and would vote for the draft resolution.

9. Moreover, he felt that the Commission's sessions should be extended to ten weeks, in view of the number and complexity of the questions it had to consider. The Commission had received very specific terms of reference from the General Assembly, by which it was required to complete its work in time for the Assembly to consider, in 1956, the régime of the high seas, the régime of the territorial sea and all the related topics. The question of the extent of territorial waters was very intricate in itself, and ten weeks would not be too long a time for the Commission to bring its work to a successful conclusion.

10. Mr. SURJOTJONDRO (Indonesia) congratulated the Commission on its highly scholarly report.

11. The arguments advanced in favour of amending article 12 were sound, especially as the amendment merely confirmed existing practice. The Indonesian

¹ This document is published only in Spanish.

delegation would, therefore, vote for the draft resolution.

12. Mr. VALLAT (United Kingdom) found an inaccuracy in the second paragraph of the preamble of the draft resolution (A/C.6/L.349). The "conditions" referred to were not "general" conditions, but rather specific conditions prevailing at the European Office, which were better suited to the kind of work the members of the Commission had to do.

13. The delegation of the United Kingdom accordingly proposed the deletion of the word "general" from the second paragraph of the preamble.

There being no objection by the sponsors of the draft resolution, it was so decided.

14. The CHAIRMAN put the draft resolution (A/C.6/L.349) proposed by Afghanistan, Netherlands, Panama, Sweden, Syria and Uruguay to the vote.

The draft resolution, as amended, was adopted by 49 votes to none, with 3 abstentions.

15. Mr. JAMIESON (Australia) said that he had abstained from voting because he had not wished to oppose the adoption of a text which most delegations appeared to want. A question of principle was, however, involved; a departure from the accepted rules might create a dangerous precedent for the Organization.

16. The CHAIRMAN asked the Sixth Committee to begin its consideration of the International Law Commission's recommendation that article 10 of its Statute should be amended (A/2934, para. 27).

17. Mr. SPIROPOULOS (Chairman of the International Law Commission) remarked that he was the author of the proposal, the sole purpose of which was to promote the continuity of the Commission's work. The procedure prescribed by the Commission's terms of reference for the consideration of the questions on its agenda required that its work should go forward at a certain pace. At least four or five years were bound to pass from the time when the Commission appointed a special rapporteur for a particular question and the time when, having received and studied Governments' observations, it was in a position to approve a final report and transmit it to the General Assembly.

18. He explained that the present members of the Commission had not intended to extend their own term of office and had proposed that the amendment should take effect from the date when their successors took up their duties.

19. Mr. SEPULVEDA (Chile) did not agree that the term of office of members of the Commission should be extended to five years. The arguments in favour of that proposal could as easily be adduced to support a still further extension of the term of office. He pointed out that the members of the Commission were eligible for re-election, and, if the presence of some of them was required to ensure continuity of work, they could easily be re-elected. It was to be feared that a general extension of the term of office of all members of the Commission would make it difficult for new members to be admitted.

20. Mr. VALLAT (United Kingdom) stated that his delegation had prepared a draft resolution on the subject which would be distributed during the meeting (A/C.6/L.351).

21. He pointed out that the Chilean representative had himself admitted that there were some arguments in favour of the proposed amendment to the Statute. Ex-

perience had clearly shown that three years were not enough for the members of the Commission to complete the work assigned to them, because the procedure the Commission had to follow did not allow it to study the questions brought before it within that period. The idea of continuity of work was valid for all members of the Commission, but was particularly valid for those appointed special rapporteurs. Experience had shown that the most satisfactory term of office would be five years. It would be better for all members to be elected at the same time, as they could then draw up their programme of work together and carry it out as a team. In that way, a team spirit would be created which would be very beneficial to the Commission's work.

22. He emphasized that the Commission's working methods were not comparable with those of the International Court of Justice and hence it was not possible to be guided by the method used in electing members of the Court.

23. He had noted with interest the United States representative's observations and suggestions at the previous meeting, but thought it would be better at present simply to carry out the International Law Commission's recommendation. In that way, the General Assembly would show its confidence in the Commission.

24. Mr. SEN (India) supported the United Kingdom draft resolution.

25. He was of the same opinion as the Chairman of the International Law Commission and the United Kingdom representative, and did not think that the Chilean representative's fears were justified. Continuity of work was of the utmost importance for a body whose main function was to promote the progressive development of international law and its codification. That was why he thought it would be better not to hold elections every two years. The five-year term of office proposed by the Commission seemed better adapted to the tasks with which it was entrusted.

26. He agreed with the United Kingdom representative that it would be better to consider the United States proposal later.

27. Mr. MEMON (Pakistan) pointed out that the tasks assigned to the International Law Commission were usually very complex; they required thorough study and therefore could not be completed quickly. He thought that the General Assembly might decide in favour of the five-year term of office, which he considered a minimum, and would reserve the right to extend it again later if necessary. Moreover, it would be better for all the members of the Commission to be elected at the same time.

28. The Chilean representative's objections did not seem very convincing, since the members of the Commission were elected on the basis of their qualifications as international lawyers and not as representatives of their countries. Furthermore, the possibility of re-election, which the Chilean representative had pointed out, was of necessity subject to various contingencies, such as political considerations.

29. The United States representative's proposal was interesting, but it would be better to postpone consideration of it to a later date.

30. The Pakistan delegation would support the draft resolution before the Committee.

31. Mr. GABRE-EGZY (Ethiopia) observed that paragraph 25 of the International Law Commission's report stated that the Commission had unanimously

decided to recommend an amendment to article 12, but that paragraph 27, dealing with a recommendation to amend article 10, did not mention unanimity. He would like to know what the views of the minority of the Commission had been on that subject.

32. Mr. SPIROPOULOS (Chairman of the International Law Commission) did not recall that there had been any opposition to the second recommendation. The reason for stressing the unanimity of the decision to amend article 12 had probably been merely that during some previous sessions one or two members of the Commission had expressed doubts about the advisability of holding meetings at Geneva.

33. In reply to a question from Mr. JAMIESON (Australia), Mr. SPIROPOULOS (Chairman of the International Law Commission) explained that at its last session the Commission had elected two members under article 11 of its Statute. He himself had recommended the adoption of the co-optation principle when the Statute had been drafted, but felt that the principle would be less essential if the term of office of members were extended to five years, and for that reason it would be useful to consider the United States proposal.

34. Mr. NIKOLAEV (Union of Soviet Socialist Republics) also favoured an extension of the term of office of members of the Commission, for the reasons already advanced by various speakers, and he would support the draft resolution to that effect submitted by the United Kingdom delegation. He also considered that a five-year term of office would be the most satisfactory.

35. Mr. AMADO (Brazil) was glad that the speakers who had preceded him had emphasized the sole concern which had inspired the proposed amendment, that of increasing the effectiveness of the International Law Commission's work. That was a consideration which ought to take precedence over all others, in particular over the kind of modesty which at one time had seemed to give pause to certain members of the Commission, who were worried lest they should be accused of trying to prolong their own personal tenure. To make such an accusation would be to ignore the fact that many members of the International Law Commission were making considerable sacrifices in order to take part in a task which was of deep interest to jurists throughout the world, and which greatly enhanced the prestige of the United Nations.

36. Experience had shown that it was essential to preserve continuity in the Commission's work, particularly with regard to the drafting of reports by the special rapporteurs, and the proposed amendment would improve that continuity.

37. Mr. MAURTUA (Peru) shared the fears of the Chilean representative.

38. The proposed measure might result in the perpetuation of a system preferential to certain countries. The arguments put forward during the debate, in particular by the Chairman of the International Law Commission, were not convincing. The Commission's work should not depend on one or more of its members personally; any of the jurists on the Commission should be able to present the views of his colleagues in a report.

39. The proposed extension of the term of office was not a matter of secondary importance: its adoption would be contrary to the principle of geographical distribution, and to the system of rotation implied in article 8 of the Commission's Statute, where it was provided that the representation of the main forms of

civilization and of the principal legal systems of the world should be assured.

40. It went without saying that it was important to encourage continuity in the work, but that could be done by measures affecting the Commission itself and not its members individually. A solution should be adopted which would reconcile the need for continuity and the legitimate aspirations of all Governments.

41. Mr. SALAMANCA (Bolivia) thought it necessary to point out that the proposed amendment extending the term of office would not go into effect until 1 January 1957, the date when the members elected by the General Assembly at its eleventh session would be taking office. It could not, therefore, be alleged that the amendment would perpetuate the existing situation. Even when it had come into force, it would not involve any permanence. It was a measure of limited scope, designed to solve a problem which undeniably existed. Experience had abundantly proved the inadequacy of a three-year term of office: new members of the Commission were obliged to take up questions which had already been discussed by their predecessors.

42. No one would deny that the International Law Commission ought to reflect all trends of thought. But wide representation of this kind was already assured. There was no reason to believe that things would be otherwise if the term of office were extended to five years. The proposed measure would not change the democratic nature of the method of election. The Bolivian delegation would accordingly support the proposed amendment.

43. Mr. TARAZI (Syria) said that the Syrian delegation would endorse all the arguments put forward by the Chairman of the International Law Commission and other representatives, and would support the proposed extension of the term of office.

44. Mr. ALFONSIN (Uruguay) thought that the proposal was logical. It seemed to have been proved that a three-year term of office was inadequate, and it was advisable accordingly to extend it. But it might perhaps be arbitrary to fix the term at five years. Some studies could be completed in less than that time, while others required more. Moreover, it was inevitable that some studies would be undertaken when the members of the Commission had already been in office for some time. An extension of the term of office would not solve the problem in those cases. There was certainly a possibility of re-election, but that was only a possibility and what was needed was a certainty.

45. Consideration might perhaps be given to other methods, particularly that of a partial, staggered change of membership, as the United States representative proposed. That solution would make it possible to ensure complete representation of the main forms of civilization and legal systems.

46. For those reasons, the Uruguayan delegation was not fully satisfied with the draft resolution (A.C.6/L.351) proposed by the United Kingdom.

47. Mr. CARPIO (Philippines) thought that the very useful debate had emphasized the dominant concern of all present, which was to ensure continuity in the work of the International Law Commission. The suggestion put forward by the United States representative, for which the Uruguayan representative had just expressed support, would be very helpful for that purpose.

48. Emphasis had been placed on the need to ensure as wide and varied a representation as possible in the

Commission. It seemed unfortunate that the United Kingdom draft resolution had retained the possibility of re-election, a system which might have the effect of permanently excluding many countries from active participation in the Commission's work. Moreover, if the term of office were changed to five years, the principal argument in favour of the re-election system would disappear.

49. The proposed measure would not take effect until 1 January 1957; it was not, therefore, an urgent matter. It would be advisable to allow delegations some time to study the problem in all its aspects and to get in touch with their Governments. The question might even be adjourned until the next session.

The meeting rose at 1.5 p.m.