



Thursday, 24 January 1952, at 11.10 a.m.

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Chairman: Mr. Manfred LACHS (Poland).

Report of the International Law Commission covering the work of its third session (A/1858), including: (b) Review of the Statute of the International Law Commission with the object of recommending revisions thereof to the General Assembly (chapter V) (*concluded*)

[Item 49 (c)]*

1. Mr. ABDON (Iran), Rapporteur, said that following the remarks of the Australian representative at the previous meeting, the English text of operative paragraph 3 of the Venezuelan draft resolution (A/C.6/L.218/Rev.1) adopted at that meeting had been redrafted to read as follows:

"3. *Decides*, for the time being, not to take any action for revision of the said Statute until it has acquired further experience of the functioning of the Commission".

2. Mr. FITZMAURICE (United Kingdom) thought that the words "expresses appreciation" would be better than the word "appreciates" in operative paragraph 2 of the revised Venezuelan resolution, since "appreciates" meant "appraises" or "evaluates".

3. Mr. ABDON (Iran), accepted the United Kingdom representative's suggestion.

Report of the International Law Commission covering the work of its third session (A/1858): chapters VI, VII and VIII

[Item 49]*

4. The CHAIRMAN drew attention to the draft resolution of Iran (A/C.6/L.207), which read as follows:

"The General Assembly

Notes chapters VI, VII and VIII of the report of the International Law Commission covering the work of its third session."

5. Mr. BARTOS (Yugoslavia) was in favour of the Iranian draft resolution. It was customary for every report finally to be the object of a resolution, even if the resolution merely stated that the General Assembly noted the report.

6. Mr. P. D. MOROZOV (Union of Soviet Socialist Republics) was not in favour of the Iranian draft resolution, chiefly on procedural, but also on substantive grounds. From the point of view of substance, it would be premature for the Committee to deal in any way with chapters VI, VII and VIII of the report (A/1858),¹ because they covered matters on which the Commission was still working. From the point of view of procedure, the Committee could not discuss questions which did not appear on the agenda. Item 49 of the General Assembly agenda referred to certain specific parts of the International Law Commission's report and the chapters in question were not among them. No suggestions for additions to the item had been made when the General Assembly adopted it. The word "notes" employed in the draft resolution would imply that the General Assembly had given some consideration to those chapters of the report.

7. Mr. ABDON (Iran) drew the USSR representative's attention to the wording of item 49 of the agenda: "Report of the International Law Commission covering the work of its third session, including: ...". The word "including" implied that the Committee could consider other chapters of the report than chapters II, III and V which were explicitly mentioned, except of

* Indicates the item number on the General Assembly agenda.

¹ See *Official Records of the General Assembly, Sixth Session, Supplement No. 9.*

course chapter IV, on the draft Code of Offences against the Peace and Security of Mankind, consideration of which the General Assembly had deferred to the seventh session. Moreover in paragraph 10 of its report the Commission had stated that it had included chapters VI and VII "for the information of the General Assembly", so that the latter ought to take note of them.

8. The Sixth Committee had at the fifth session adopted a similar resolution to the one before the Committee, which provided a precedent.

9. Mr. MAKTOS (United States of America) associated himself with the Iranian representative's interpretation of the word "including". He would vote for the Iranian draft resolution because "notes" was a neutral word which implied neither approval nor disapproval. Since governments had had sufficient time to consider the report in its entirety, it was appropriate for the General Assembly to adopt a resolution stating that it noted the chapters in question.

10. Mr. ROLING (Netherlands) would vote for the Iranian draft resolution.

11. He pointed out, however, that the Commission's report contained both matters on which the Commission had completed its study and matters on which it was still working. The Committee had so far been considering questions falling in the first category, and had seen fit to suggest changes in codifications the Commission had completed. But the drafting of codifications, a difficult technical task, was unsuited to the Sixth Committee and the General Assembly. The Committee's function was to give directions and criticisms for the guidance of the International Law Commission in the early stages of the Commission's work on a particular question. It should not introduce changes into the Commission's completed work, but merely adopt it, reject it or refer it back to the Commission. He suggested that in the future it might be more advantageous for the Sixth Committee to discuss the Commission's work while it was in the planning stage or in progress.

12. Mr. SPIROPOULOS (Greece) agreed with the Netherlands representative. The suggestion made by the United States representative at the previous meeting, to the effect that if the International Law Commission were made a permanent body the Sixth Committee would have to sit all the year round likewise, was not correct. Article 23, paragraph 1, of the Statute of the Commission, which laid down that the Commission might recommend the General Assembly to take no action, to take note of or adopt the report, to recommend the draft to Members or to convoke a conference to conclude a convention, did not permit of the General Assembly making alterations in drafts submitted by the Commission. Paragraph 2, under which the General Assembly might refer drafts back to the Commission for reconsideration or redrafting, had been shown by experience of the Commission's work to be unfortunate and it might be desirable eventually to amend it. The General Assembly could of course reject outright the Commission's drafts, but with codifications no alteration of detail by the Assembly was possible. In the case of the Greek civil code, the Greek Parliament had discussed the question in general and then requested a Commission to draft a code in the light of the Parliament's discussion; the draft code eventually submitted to the Parliament had had to be adopted or rejected as a whole. A text of codification submitted to the Committee by the International Law Commission stated what that juridical body considered to be the law; it ought not to be altered

by the Committee, and all directions concerning that text should be given beforehand. The Committee could make recommendations to the General Assembly for instructions to the Commission concerning its future work. There was no time for that at the current session, but he hoped that the Commission's future work could be considered at the next session. The First Conference for the Codification of International Law, held at the Hague in 1930, had shown that little could be accomplished in the field by diplomatic conferences, since States would find difficulty in agreeing. Codification should be executed by a body of experts like the Commission, whose texts might gradually be accepted as customary international laws; that represented the best hope in the matter.

13. Mr. VAN GLABBEKE (Belgium) observed that the question under discussion had greatly increased in importance since the Yugoslav representative had made his opening remarks. His delegation reserved its position regarding some of the statements made, for it could not be bound in any way by texts which had not been examined or discussed. The Committee must not give the impression that it had examined parts of the report it had not examined. Though the word "notes" did not normally imply that States would be bound by a resolution, the course the discussion had taken suggested that in the particular case in question they would be bound. Accordingly he would abstain from voting upon the draft resolution.

14. He could not agree with the Greek representative about the principle involved in the analogy with the case of the Greek civil code. The parliament of a State was sovereign and accordingly could discuss a code submitted to it by a Commission, alter parts of it, change the order of chapters and so forth. The same applied to the General Assembly regarding the various paragraphs of reports of the International Law Commission. Nevertheless he agreed with the Netherlands representative that in cases in which the Commission had completed a work of codification, it was desirable for the Committee simply to approve or reject it without discussing the details; advice should be given before such a work was completed.

15. The question had come up at an unfortunate moment. Since the session was drawing to a close, it was impossible to discuss the matters covered by chapters VI, VII and VIII and give general directions to the Commission concerning them. He would greatly have preferred a resolution stating that the General Assembly would take up those matters at the beginning of the seventh session. Failing such a resolution, he felt no action should be taken. In that case the Commission could be requested to discontinue the practice of submitting texts of the type in question and to submit only texts which the Committee could discuss. His delegation had had certain remarks to make on the chapters in question; if the Committee was not to discuss them it would have been better for them not to have been submitted to it at all.

16. Mr. ABDON (Iran) referring to the suggestion made by the Netherlands representative, doubted whether the Assembly was really entitled to give directives to the Commission on the work which had not yet been completed and had been submitted simply for the Assembly's information. There might be some advantage in the method suggested by the Netherlands representative, but it was not provided for in article 23 of the Commission's Statute, and the Assembly was bound to follow

the rules which it had itself laid down for the Commission. At the same time, he had some doubts as to the feasibility of the procedure suggested, since the Sixth Committee would never be able to find time to examine all the points dealt with in the Commission's report. The purpose of the suggestion seemed to be that governments should have an opportunity to comment on the Commission's work, but that was already provided for by article 25 of the Commission's Statute. It therefore seemed unwise and unnecessary to change the Committee's procedure in dealing with the International Law Commission's report.

17. Replying to the representative of Belgium, he said that the expression "notes" had often been used by organs of the United Nations and had never been taken to imply any approval or disapproval. He urged the Belgian representative not to abstain from voting because, if many other delegations followed his example, some doubt might be cast on the meaning of the expression as used by the United Nations in the past. In order to make the meaning perfectly clear, he would be prepared to insert a passage in the report explaining that no approval or disapproval was implied by the expression "notes".

18. Mr. VAN GLABBEKE (Belgium) said that an explanation of the meaning of the expression should certainly be given in the Committee's report. There was a particular danger of misinterpretation in the case at issue because to note a report was one of the possible courses of action specifically mentioned in article 23 of the Commission's Statute. That course should not be confused with merely noting a report without examination of substance. The General Assembly usually used the term "notes" after having examined a particular document, but in the present instance the Committee had not discussed chapters VI, VII and VIII of the Commission's report at all. If that fact was also mentioned in the Committee's report, he would be prepared to support the draft resolution.

19. Mr. FITZMAURICE (United Kingdom) said that he had never understood the term "notes" as implying any particular stand on the substance of a document. When the International Law Commission took the trouble to inform the Assembly of the progress of its work, he felt that the least the Assembly could do was to note the report.

20. The Netherlands representative had raised an interesting question of principle regarding the procedure to be followed in examining the Commission's report. That point should be examined at a later stage, but could hardly be settled at the current session of the Assembly.

21. Mr. ROLING (Netherlands) explained that he had never intended his suggestion to be put into effect at the current session. Neither had he intended to preclude any discussion on the finished work of the Commission when it came up before the General Assembly. He had simply suggested that the Sixth Committee should hold a general debate on the Commission's work before it was completed, so that the Commission could take into account the views expressed by the members of the Committee. Then, when the work was finally completed, it would be more likely to meet with general approval. The Assembly would naturally discuss the completed work and would either adopt it, reject it or refer it back to the Commission, but there would be no need for detailed discussion on questions of draft-

ing. If that procedure was adopted in future, there would be less likelihood of the Assembly's disagreeing with the Commission's conclusions, as had been the case in connexion with the formulation of the Nürnberg Principles and again at the current session on the question of reservations to multilateral conventions.

22. Mr. CHAUMONT (France), replying to the point raised by the Belgian representative, pointed out that, while the French expression *prendre acte* implied examination of the document and some sort of approval of its contents, the expression *prendre note* did not. However, the text proposed by the Iranian representative was perhaps too vague, since the Commission had not reached the same stage in its work on the subjects described in all three chapters of its report covered by the draft resolution. He suggested that the difficulties mentioned by the Belgian representative might be met if the Iranian draft resolution was amended to read:

"The General Assembly,

"Pending its consideration of the questions dealt with in chapters VI, VII and VIII of the report of the International Law Commission, -

"Notes the progress of the Commission's work on those questions."

23. Mr. ABDOH (Iran) accepted that amendment.

24. Mr. VAN GLABBEKE (Belgium) thanked the French representative for his suggestion and was prepared to support the draft resolution as amended.

25. Mr. LERENA ACEVEDO (Uruguay) said that he would support the amended text, which he considered to be an improvement on the original draft, although in his opinion the expression "notes" could not be interpreted as implying any approval or disapproval.

26. Mr. P. D. MOROZOV (Union of Soviet Socialist Republics) regretted that he could not support the amended text of the draft resolution because, as he had already stated, he did not think the Assembly should adopt any resolutions on questions which were not specifically included in its agenda.

27. Mr. CHAUMONT (France) replied that the report of the International Law Commission as a whole had been submitted to the General Assembly. The Committee had adopted specific decisions on some chapters of the report, and he felt it was an essential formality for the Committee to state definitely that it had not studied the other chapters of the report. It could not simply pass over certain chapters in silence, since the report as a whole had been submitted to it.

28. Mr. CREPAULT (Canada) said that he would support the amended text of the draft resolution. He wished however to record his delegation's reaction to paragraph 91 of the report, which stated that the Commission had decided to hold its fourth session in Geneva. He did not wish to make any objection to that decision or to the Commission's general preference for meeting in Geneva, and he understood the reasons therefor, but as a general rule his delegation felt that the organs of the United Nations should meet in New York, especially as the Headquarters building was now nearing completion.

The Iranian draft resolution (A/C.6/L.207), as amended; was adopted by 34 votes to none, with 5 abstentions.

29. The CHAIRMAN announced that, in order to avoid any possible misunderstanding, the Rapporteur would

include a passage in the report stating explicitly that the Committee had dealt only with chapters II, III and V of the International Law Commission's report.

Ways and means for making the evidence of customary international law more readily available : report of the Secretary-General (A/1934)

[Item 53]*

30. The CHAIRMAN invited comment on the report of the Secretary-General (A/1934) on ways and means for making the evidence for customary international law more readily available.

31. Mr. ROBINSON (Israel) wished to refer to four points: the proposals for a Juridical Yearbook, Legislative Series and *répertoire* of United Nations practice and the position with regard to material relating to the preparatory work on the United Nations Charter.

32. The publication of the Juridical Yearbook had been postponed. He assumed it would be a printed volume and not a mimeographed one, and he had already given his delegation's views on its contents. He felt that the initial production could not take place before 1953; the time available before the seventh session of the General Assembly would be relatively short. He suggested, however, that the necessary preparatory work should be begun forthwith and that, while the supervision of such a publication should be the responsibility of some of the higher legal officials in the Secretariat, a technically and juridically qualified editorial secretary should be engaged at once. Such a decision would have financial implications. Another suggestion, not involving financial implications, would be that an advisory board be established, consisting of persons prepared to undertake work on the Yearbook on a voluntary basis. Those two measures would enable the Secretariat to prepare more detailed information about the first volume of the Yearbook in time for the seventh session of the General Assembly.

33. As to the Legislative Series, the procedure suggested in paragraph 22 of the Secretary-General's report would give rise to many difficulties. For one thing, a collection of the laws of some sixty Member States, and perhaps even of more in the future, would have to be kept up to date. That would entail the sending in of a very large amount of material, only a small part of which would be of interest, and the position would be further complicated in the case of federal States.

34. Consideration had to be given to the question of the library space that such a volume of material would require and to the linguistic difficulties in connexion with the study of such texts, not to mention the large amount of work that would be involved in separating relevant from irrelevant material and the experts that would be needed to ascertain the meaning of particular laws and their relation to previous enactments. Again, it would not always be easy to ascertain what the existing law was. In the circumstances the expense, space and work involved in such a project would hardly justify the results, which, in view of the limited interest of the United Nations in national legislation, must inevitably be insignificant.

35. He wondered whether use could not be made of existing institutes of comparative law, such as the Gal-

gano *Instituto di Studi Legislativi*, the Institutes of Comparative Law in Paris and Toulouse, and the Societies of Comparative Legislation in Paris and London.

36. In all the circumstances, perhaps the best and the least expensive procedure, although not entirely satisfactory, would be to issue questionnaires to governments; in any event, questionnaires would have to be sent in order to ascertain whether the Secretariat's conclusions with regard to the implications of particular laws were correct.

37. Finally, if the procedures suggested by the Secretary-General were pursued, there was a serious risk of duplicating work already done by such bodies as the Carnegie Endowment, which was publishing a collection of the legislation of Member States relating to their membership in the United Nations.

38. He was inclined to question the value of a *répertoire* of United Nations practice with regard to questions of general international law. Statements were made in the General Assembly and its Committees on public international law to reinforce political views, and not always on the basis of the necessary research or of full consideration by governments. Mr. Schiffer's *Répertoire of Questions of General International Law before the League of Nations, 1920-1940*, which had required an enormous amount of work, had been in existence for some twelve years, yet he personally had not come across any reference to that work in extensive reading on legal subjects and it was more a collection of curiosities than a *répertoire* of law. A similar document on the practice of the General Assembly would, he feared, prove of no greater practical value.

39. According to the Secretary-General's report, the present position with regard to the status of the preparatory work on the San Francisco Charter was not satisfactory. While Mr. David Hunter Miller's 600-page volume, *The Drafting of the Covenant*, clearly showed how the various Articles of the League Covenant had been drafted, it was difficult to discern what was relevant in the sixteen volumes on the preparation of the Charter, which moreover were indifferently indexed. In the latter connexion, the Carnegie Endowment for International Peace had compiled an article-by-article index which he had found extremely useful.

40. Other volumes existed in addition to those referred to in paragraph 35 of the Secretary-General's report; Judge Krylov had brought out a publication in two volumes,² which was important for its emphases and patterns and which was not yet widely known. Moreover there were between thirty and thirty-five reports of delegations to the San Francisco Conference which had not yet been systematically examined and indexed. Probably little could be done toward further publication so long as chancelleries remained reluctant to make such material public. The United Nations could not press governments to publish diplomatic correspondence even on the preparation of the Charter.

41. There was a tendency to consider that documentation on the preparatory work of the Charter could have little value unless it was complete. Yet even if it was complete, its value would not be very great for the interpretation of the Charter, in view, first, of opinions of the International Court of Justice concerning

² Krylov, S. B.: *Materials on the History of the Organization of the United Nations*, Academy of Sciences of the USSR, Institute of Law; Moscow, 1949.

the interpretative value of "*travaux préparatoires*"³ and secondly, of the recent tendency to depart from certain of the original intentions of the authors of the Charter. The importance of that preparatory work should not be exaggerated and nothing more should be done than to collate material from delegations' reports and await publication of such diplomatic correspondence by governments.

42. Mr. FITZMAURICE (United Kingdom) recalled the prominent part taken by his delegation on the subject under consideration at the fifth session of the General Assembly. Two points to which it attached particular importance were the *Juridical Yearbook* and the *répertoire* of United Nations practice. A juridical yearbook was much needed and would serve a useful purpose, particularly in covering legal developments all over the world. If it was impossible to appropriate additional funds for the publication of a yearbook, such a publication should be taken care of under existing appropriations for United Nations publications. The Committee might even recommend that a certain financial priority be given to that work over other publications already provided for, many of which, even in the legal field, might be regarded as of no greater, and perhaps lesser, importance.

43. He noted the Secretary-General's emphasis on the magnitude of the task of compiling a *répertoire* of United Nations practice with regard to questions of international law, and felt that it was most desirable that at least the more important aspects of that practice should be made public. He had in mind particularly that of the Security Council, an analysis of whose practice would be of immense value to all Member States. The similar project involving material relating to the interpretation of the Charter should also be approved. Again, a volume on questions of general international law discussed by the Assembly at its first five sessions would be of value. If at all possible, financial provision should be made for such an undertaking. Equally useful would be the publication of the legal opinions of the Secretariat, many of which had been found to be of the greatest value.

44. On the question of the publication of digests of diplomatic correspondence and of other materials relating to international law, he observed that the United Kingdom had followed the practice of publishing such diplomatic correspondence as might be of general interest in the form of blue books or white papers. While his Government would not wish to enter into any specific commitment in that respect, it approved the adoption of such procedure by governments, wherever possible.

He doubted the value of the proposal with regard to the use of questionnaires on such matters to governments. Governments would not object to questionnaires relating to specific topics under consideration by particular organs, but would be reluctant to commit themselves on paper where no specific objective was involved. On the other hand, the attention of governments could be drawn to the value of publishing such material wherever possible.

45. His delegation could not agree to the Israel suggestion (A/1934, annex, paragraph 7) for the conclusion of a multilateral international convention for the exchange of official publications. It felt that governments would be unwilling to commit themselves in that way. After all, official publications could almost invariably be bought. Again, the conclusion of an international multilateral convention would entail the establishment of a specific section responsible therefor in each government and he doubted whether all the trouble and expense involved would be justified. Lastly, he had no objection to the adoption of the recommendation requesting Member States to place certain documentation at the disposal of the Secretary-General, to which reference was made in paragraph 22 of the report. Without committing his Government, he believed it would be willing to furnish such material, provided the United Nations Secretariat undertook the task of selecting the documents relating to international law from the national legislation thus furnished.

46. With regard to the Secretary-General's suggestion in paragraph 28 of his report, it would be noted that two or three publications were available in the United Kingdom, forming a nearly complete set of treaty texts covering treaties between the United Kingdom and other countries, and treaties between foreign countries were included in some of those publications.

47. Mr. KERNO (Assistant Secretary-General in charge of the Legal Department) observed that the report contained several possibilities, ideas and suggestions and that the Secretary-General would be grateful if speakers would, in the course of discussion, take positions with regard to them and the Committee would give him clear guidance, whether positive or negative, in each case.

48. Publication of a juridical yearbook would require a special appropriation of funds which could not be obtained for 1952. If the Committee concluded that a yearbook should be published, and its recommendation to that effect was approved by the General Assembly, the Secretary-General would include the item in his budget estimates for 1953.

³ *Competence of Assembly regarding admission to the United Nations, Advisory Opinion: I. C. J. Reports, 1950, page 18.*

The meeting rose at 1.5 p.m.