

# GENERAL ASSEMBLY

THIRTEENTH SESSION

Official Records

Tuesday, 30 September 1958,  
at 10.45 a.m.

NEW YORK

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Chairman: Mr. Jorge CASTAÑEDA (Mexico).

## AGENDA ITEM 56

Report of the International Law Commission on the  
work of its tenth session (A/3859) (continued)

## CONSIDERATION OF CHAPTER V (continued)

1. Mr. EL-ERIAN (United Arab Republic) said that now that the International Law Commission had completed its tenth year it was indeed right and proper for the General Assembly to appraise its work.

2. The success achieved by the United Nations Conference on the Law of the Sea in producing extensive and elaborate instruments on the subject had been due in a great measure to the work of the International Law Commission, which for eight years had made a thorough study of the régime of the territorial sea, the régime of the high seas, the conservation of the living resources of the high seas and the continental shelf. The Commission had provided the Conference with a precise set of articles which the Conference had adopted, in most cases with only minor changes. The Conference had adopted a unanimous resolution as a tribute to the excellent work of the Commission. In the introduction to his annual report on the work of the Organization to the current session of the General Assembly (A/3844/Add.1), the Secretary-General had stated that the successes of that Conference underlined the constructive role which the International Law Commission could play in the United Nations.

3. The United Arab Republic delegation was gratified to note that the Commission had given serious consideration to the method and progress of its work. He recalled that, when the Sixth Committee had decided at the eleventh session of the General Assembly to recommend an increase in the membership of the Commission, it had been suggested that its work might be facilitated if it were divided into two or more sub-commissions (483rd meeting, para. 4). The Commission had considered that suggestion but had concluded that its adoption would not accelerate its work.

4. His delegation was favourably impressed by the views of the Commission in paragraphs 61 to 66 of its report (A/3859) and in particular its decisions regarding the role of its Drafting Committee.

5. The review of the Commission's work during its first ten sessions (*Ibid.*, paras. 68 and 69) showed that it had completed work on one topic each year, an impressive achievement. The experience of the Commission's two sessions since the increase in its membership had shown that it could continue to work at the same pace.

6. His delegation considered that the International Law Commission should proceed with care. The experience of the United Nations Conference on the Law of the Sea had shown that the eight years spent by the Commission on the codification of that branch of international law had been most useful.

7. Lastly, his delegation was confident that the International Law Commission was well able to decide on the methods best suited to its work.

8. Mr. DZIRASA (Ghana) said that his delegation was in agreement with the International Law Commission's decision (*Ibid.*, para. 62) not to adopt Mr. Zourek's proposal to set up a sub-commission. Such a sub-commission would become a body interposed between the Commission and the General Assembly, since it had been suggested that there should be a constant movement of material between the Assembly and the Commission via the sub-commission. Such a procedure would complicate the work of the Commission unduly.

9. His delegation, however, found it difficult to reconcile the Commission's decision to reject that proposal with its decision (*Ibid.*, para. 64) to adopt the very method of work proposed by Mr. Zourek for the topic of consular intercourse and immunities. His delegation felt that the Commission would thus establish a precedent which was liable to be followed when dealing with other topics.

10. Lastly, his delegation drew attention to the Commission's statement that "Governments had difficulty in furnishing comments, and often it was only a small minority that did so" (*Ibid.*, para. 68 (c)). That was a very serious statement, since the active co-operation and participation of all Governments was vital to the progress of the work. His delegation wanted to know whether the difficulty arose from the limited period of four or five months within which Governments were required to furnish their comments. In view of the importance of the Commission's work to all nations, any indifference on the part of any Government likely to retard the progress of the work should be deplored.

11. Mr. CUEVAS CANCINO (Mexico) said that the International Law Commission's work during its first ten years had proved it to be an excellent instrument for carrying out the purposes set forth in Article 13, paragraph 1, of the Charter.

12. During the discussions in the Sixth Committee at previous sessions of the General Assembly, some

speakers had urged the speeding-up of the work of the Commission. Experience had shown however that the arduous task of codification and progressive development of international law required a more deliberate approach. It was apparent, for example, that, without the exhaustive work done by the Commission on the codification of the law of the sea, the Conference held at Geneva in 1958 would have found it difficult to carry out its task.

13. His delegation felt that, on the contrary, the Commission should be congratulated on the great progress made.

14. The work of the International Law Commission also compared favourably with that of its predecessor, the Committee of Experts set up by the League of Nations for the progressive codification of international law, the work of which had only produced a convention on nationality and the unsuccessful 1930 Conference at The Hague.

15. In the Americas, agreement on the desirability of codifying international law had been reached as early as 1826 at the Congress of Panama, but a long time elapsed before any positive action was taken.

16. The Commission's endeavours to reconcile the various legal systems was a positive contribution to human progress.

17. His delegation supported the conclusion reached by the International Law Commission that it must take the time necessary to submit satisfactory drafts to the General Assembly. The process was necessarily slow since codification had to follow, not precede, social and political developments. Speed was not important, for undue haste might compel the Commission to do its work all over again.

18. On the proposal of its Latin American members, the Commission had adopted a resolution (A/3859, para. 72) requesting the Secretary-General to authorize the Secretary of the International Law Commission to attend, as an observer for the Commission, the fourth meeting of the Inter-American Council of Jurists to be held in 1959 at Santiago, Chile.

19. The work done in the inter-American system was of particular interest to the International Law Commission. The Second International Conference of American States held at Mexico City in 1902 had adopted a resolution on the codification of public and private international law. The third Conference, held at Rio de Janeiro in 1906, had established an International Commission of Jurists which, with the co-operation of the American Institute of International Law, had laid the foundations for the immense work of codification accomplished at the Sixth Conference held at Havana in 1928. The importance of the work done by the inter-American Conferences had been acknowledged by the Assembly of the League of Nations when it adopted a resolution on 25 September 1931 recommending that the work of codification undertaken by the League should be carried on in concert with that of the conferences of the American States.

20. The Inter-American Juridical Committee, which had been set up during the Second World War, had been entrusted by the twenty-one American States attending the Conference of Chapultepec in 1945 with the duty of acting as a central agency for the codifica-

tion of public international law. Lastly, under article 67 of the charter of the Organization of American States, the main purpose of the Inter-American Council of Jurists was to promote the development and codification of public and private international law. Its functions therefore coincided with those of the International Law Commission, and the Mexican delegation was certain that contacts between the two bodies would be useful.

21. His delegation, for the same reasons, hoped that the Secretary of the Inter-American Council of Jurists would be in a position to attend the next session of the International Law Commission as an observer.

22. Lastly, his delegation was in favour of the co-operation of the International Law Commission with all regional bodies having a similar purpose, and therefore hoped that the Commission would be able to send an observer to the third session of the Asian-African Legal Consultative Committee, a step it had been unable to take at the second session (*Ibid.*, para. 73).

23. U AUNG THA GYAW (Burma) said that, by its very nature, the codification and progressive development of international law involved great difficulties. Not only must the work be of high quality but the Commission had to give adequate representation to the principal legal systems of the world; in those circumstances quick results could not be expected. As the representative of Poland had remarked (551st meeting, para. 10), it was necessary to avoid the danger of petrifying outmoded legal ideas and reviving legal fossils. Mature consideration was essential and justifiable delays were inevitable. The replies of Governments, for example, were often slow in reaching the Commission. His delegation felt, therefore, that the Commission itself was the best judge of how to expedite its own work, and that opinion was amply borne out by the Commission's record of accomplishment during the past ten years as shown in its report (A/3859, footnote 39). His delegation also agreed with the Commission's decision that points of substance should, in future, be referred to its Drafting Committee rather than to sub-commissions especially established for that purpose (*Ibid.*, para. 65). The Commission should, in conclusion, handle its internal affairs in the light of its own experience, although any budgetary problems which it encountered should be the immediate concern of the Sixth Committee.

24. Mr. PECHOTA (Czechoslovakia) paid a tribute to the valuable achievements of the International Law Commission during the first ten years of its existence. The recent United Nations Conference on the Law of the Sea, in particular, represented a successful climax to several years of work by the Commission in that important branch of international law. It had been the largest conference ever held under United Nations auspices, and marked the first time that a sound legal decision had been adopted expressing the views of eighty-six States.

25. The enlargement of the Commission's membership, authorized by the General Assembly at its eleventh session (resolution 1103 (XI)), had not only given it a more representative character but had also raised a number of questions concerning its organization and methods of work. His delegation believed that those questions should be solved by the Commission

itself and not referred to the General Assembly, although the latter was not precluded from discussing them in the Sixth Committee. It approved the Commission's decision (A/3859, para. 60) to allow Governments more time in which to submit comments on first drafts produced by the Commission. The question of the Commission's budgetary and technical resources should also be given due consideration along with other important aspects. Concerning the codification programme outlined in the report, (*Ibid.*, para. 68), he expressed the hope that it would be carried out successfully. In maintaining a consistently high standard of work and in continuing to apply the fundamental principles of contemporary international law, the Commission would make a valuable contribution towards the consolidation of peace and the promotion of friendly co-operation among nations.

26. Lastly, his delegation wished to express its complete confidence in the wisdom and experience of the members of the Commission, who were able to choose the most effective methods of work within the competence given by the statute of the International Law Commission.

27. Mr. EVANS (United Kingdom) extended his Government's congratulations to the International Law Commission and its secretariat on the achievements of its first ten sessions.

28. Speaking with reference to chapter V of the Commission's report, he agreed that the Commission itself should review its method of work from time to time in the light of experience. It seemed quite appropriate for the members of the Sixth Committee, which was responsible for the constitution of the Commission and to which the Commission's reports were submitted, to make such observations as they might consider desirable on that subject. The United Kingdom delegation believed, however, that, in the final analysis, the Commission was the best judge of its own procedures.

29. The proof of the pudding was in the eating. It was natural to judge the Commission on the quantity and quality of the work which it produced, and the record of its achievements, set out in chapter V, part II, of its report, was highly impressive. During its first ten sessions the Commission had produced a very substantial body of work, representing an important contribution to the codification and development of international law.

30. As to the high quality of the Commission's work, there could be no doubt. The success of the United Nations Conference on the Law of the Sea had been largely due to the careful and thorough preparatory work of the Commission and its Special Rapporteur, Professor François. The results achieved at the Conference, which had adopted practically all the seventy articles of the Commission's original draft with very little real modification of substance, seemed to vindicate the Commission's methods of work.

31. He agreed with the Commission's Chairman who had stated (550th meeting, para. 7) that the Commission should proceed with careful deliberation. Quality was more important than mere quantity, and speed was not the sole consideration. The Geneva Conference had shown that it was worthwhile taking time to produce a well thought out piece of work instead of providing

somewhat hastily drafted texts which might require a great deal of amendment before they could be adopted as international conventions. Furthermore, since the element of geographical representation was thoroughly embodied in the Commission's membership, there was a good chance that any well prepared draft adopted by the Commission would be largely acceptable to an international conference. A draft could only be well prepared, however, if sufficient time was given to research and consultation. Codification was always slow work; unless done carefully, it would only result in bad drafts which would be worse than no drafts at all.

32. In the circumstances, the United Kingdom delegation thought that the methods of work followed by the Commission in the past had proved justified, and that it was problematical whether the system of sub-commissions would result in much saving of time. Consequently, the Commission's decision to consider the use of sub-commissions on an *ad hoc* basis, as well as its other conclusions regarding its methods of work, seemed unexceptionable.

33. Mr. EUSTATHIADES (Greece) associated himself with the tributes paid to the International Law Commission for its achievements during its first ten years. The accomplishments mentioned in the Commission's report (A/3859, para. 68) were indeed imposing, and the whole section dealing with the matter (*Ibid.*, paras. 68 and 69) prompted the question whether the Committee should not consider some celebration, preferably of a scientific character, of the Commission's tenth anniversary. He reserved his delegation's right to speak in greater detail on that subject if the idea was adopted.

34. The work of codification, to which, despite difficulties, The Hague Conferences of 1899 and 1907 had given a degree of continuity—a third conference had been envisaged for 1914, only to be frustrated by the First World War—had been sadly delayed by the failure of the League of Nations to take that organic aspect into account. The United Nations Charter had thus provided the first possibility of carrying out codification as a continuing task, and the possibility of giving it an institutional character had become a reality with the establishment of the International Law Commission, which had dedicated itself to that work systematically.

35. On the occasion of the Commission's tenth anniversary, the Greek delegation felt particularly proud and honoured by the fact that the Commission had counted among its members Professor Spiropoulos, who had deservedly won and retained the confidence of the General Assembly at every successive election until his elevation to the International Court of Justice. The Greek delegation, while aware that the new honour conferred on Professor Spiropoulos by the United Nations was essentially due to his great personal qualities and to his eminence and ability, also saw therein a signal honour to Greece, which, by reason both of its traditional attachment to the law of nations and Professor Spiropoulos' long beneficial participation in the work of the International Law Commission, would continue to show a constant interest in codification.

36. In chapter V of its report, the Commission also discussed the possibility of accelerating its work.



The matter had been exhaustively debated at the eleventh and twelfth sessions of the General Assembly and by the Commission itself as early as its ninth session (see A/3623, para. 29), and two possible solutions had been suggested: either to distribute the work between sub-commissions, which should in any case be representative of the various legal systems, or to increase the membership of the Commission itself. It had subsequently been shown in practice, however, that an increase in membership, even if it did not involve a proportional prolongation of the discussion, might, *ceteris paribus*, tend to slow down the Commission's work. That fact showed that the methods of the Commission's work should be decided by the Commission itself, in the light of experience. As all acquainted with the work of codification well knew, the most important consideration was not speed but quality. In a matter of such importance, therefore, it was important to combine speed with quality, and the Commission had very properly stressed that point (A/3623, para. 29, and A/3859, para. 68). Furthermore, an acceleration of the Commission's work would not in itself speed the rhythm of codification, for the two other stages which had to be completed before a draft text could become an international instrument, namely, the submission of Government comments and the calling of a diplomatic conference, could not be substantially advanced. In any event, since the Commission was clearly aware of the importance of the matter, it should be permitted to proceed with the maximum celerity compatible with the maintenance of quality.

37. With reference to part III of chapter V of the Commission's report, he stressed that co-operation

with other bodies, especially scientific bodies, was of particular importance when such bodies were dealing with topics already under consideration in the Commission. There again, the Commission should be the best judge of the proper action to take in each specific case.

38. Certain points in the report raised issues, not directly connected with the organization itself of the Commission's work, on which the opinions expressed in the Sixth Committee might be helpful. One such issue arose in connexion with paragraph 57 of the report, which referred to the priority to be given to various subjects and the time to be devoted to their discussion. The Commission's decision to examine the question of consular intercourse and immunities immediately after the related subject of diplomatic intercourse and immunities seemed fully justified. The Greek delegation thought, however, that the question of the relative priority of the other subjects due to be considered in 1959, namely the law of treaties and State responsibility, called for a recommendation by the Sixth Committee in favour of the latter. The law of treaties admittedly seemed more ripe for codification. However, if the criterion for determining priority was the usefulness and importance in practice of the codification of any subject, there could be no doubt that international responsibility, a fundamental question of international law, was of paramount interest, and much would be gained by approaching that question with resolve and by devoting all the time necessary to its discussion.

The meeting rose at 12 noon.