

HUNDRED AND SIXTY-FIRST MEETING

Held at Lake Success, New York, on Thursday, 13 October 1949, at 3 p.m.

Chairman: Mr. LACHS (Poland).

Report of the International Law Commission (A/925) (continued)

PART I: GENERAL (continued)

1. The CHAIRMAN invited the Committee to resume the general debate on part I of the report of the International Law Commission (A/925).
2. Sir Hartley SHAWCROSS, (United Kingdom) wished to dispel certain misunderstandings which had arisen in connection with statements he had made at the 159th meeting.
3. Certain representatives, who used a dialectical method which consisted in wrongly ascribing certain opinions to one's opponents in order to be able to demolish them, had alleged that the United Kingdom delegation had wanted to abolish the sovereignty of States. The United Kingdom representative had in fact merely said that, if all States enjoyed absolute and unlimited sovereignty, the world would be plunged into complete anarchy where might would always be right. Mr. Litvinov had admitted in the past that by ratifying any treaty, a State inevitably relinquished part of its sovereignty. That was also Sir Hartley's opinion. Adherence to the Charter, in particular, implied a considerable surrender of sovereignty by the Member States; the same was true of the adherence to all of the rules of international law. The important point, however, was that the amount of sovereignty retained by each State when it adhered to the Charter or to treaties and when it submitted to international law was equal to that of other States in the same position.
4. It had also been alleged that, in the opinion of the United Kingdom delegation, the International Law Commission should have the power to legislate. The representative of the United Kingdom had in fact said exactly the opposite, and he had been careful to draw a distinction between the actual codification of existing law and the legislative function whereby international law developed. The International Law Commission was a body of independent experts when it was codifying existing law; but it could not, any more than the General Assembly itself, establish new regulations unless States were prepared to accept that new law by acceding to appropriate conventions.
5. Turning to the competence of the International Law Commission, Sir Hartley agreed that the wording of paragraph 2 of article 18 of the Statute had not been drafted clearly enough; the very fact, however, that the word "recommendations" was in the plural sufficed to indicate that the International Law Commission should not submit to the General Assembly only one recommendation on whether the codification of a particular topic was necessary or desirable, but also other recommendations containing draft codifications of the topics selected.
6. The Swedish representative had rightly emphasized that a narrow interpretation of that paragraph would render meaningless the following paragraph of the same article. For, if the General Assembly enjoyed the power to impose certain priority topics on the Commission, the latter, *a contrario*, in the absence of any such request, had the right to select the other topics itself.
7. On the whole, it could hardly be asserted that so eminent a body of jurists as the International Law Commission could work only under orders from the Assembly and should confine itself to carrying out those orders, as if they were mere civil servants, without the right to take any initiative regarding the codification of international law.
8. In conclusion, Sir Hartley wished to remark that if anyone wanted to bring about the domination of the world by one State, it certainly was not the United Kingdom, as had been alleged by the Polish representative. The danger was nearer Poland's frontiers than its delegation wished to believe.
9. Mr. GARCÍA AMADOR (Cuba), said that, while associating himself with the delegations which wished to congratulate the International Law Commission on its efforts and above all on the satisfactory results it had already achieved, his delegation wished to make a few remarks on the salient points of part I of the report (A/925).
10. The Cuban delegation believed that the International Law Commission had not exceeded its competence. As a technical organ, it should obviously enjoy a certain technical autonomy in its work and be able to judge whether the codification of a particular topic was necessary or desirable, at the same time naturally abiding by any decision of the General Assembly regarding priority for certain matters.
11. What was open to criticism, however, was the manner in which the question of competence had been presented in the report. The decision reproduced under paragraph 12 had been drafted in somewhat ambitious terms and the wording "without awaiting action by the General Assembly" was not particularly appropriate. In defining its competence, the Commission should merely have followed the perfectly logical and clear order of the three paragraphs of article 18 of its statute; that article clearly recognized the Commission's right to select topics for codification on its own initiative, and to decide whether that codification was necessary or desirable; at the same time the article reserved to the General Assembly the political — and no longer technical — right of requesting that priority should be given to certain topics which some Member States considered particularly urgent. On the whole, however, the Commission's error had been only a

technical one and too much importance should not be attached to such a small detail.

12. Turning to the technical problem of codification, he recalled that, when paragraph 1 a of Article 13 of the Charter had been drafted, Sub-Committee B of Committee 2 of Commission II (795, II/2/B/11) had proposed two texts, one of which had interpreted the term "development" of international law as including the idea of revision. The San Francisco Conference had not adopted that text, but had contented itself with drawing a distinction between development and codification, restricting the sense of the latter term to cover only the consolidation of existing laws. Fortunately, that interpretation had later been expanded. When Article 13 had come into effect, the United Nations organs concerned in its implementation and interpretation had realized that it was unnecessary and unfortunate to give the term "codification" such a limited meaning. That realization had doubtless been due to the generally accepted tradition regarding the codification of domestic laws. Those who drafted domestic codes of law had indeed never confined themselves to consolidating existing laws, but had attempted to fill gaps and, in most cases, had even created new regulations. Thus, development had always played a large part in codification.

13. That broader and more flexible interpretation had prevailed during the codification of inter-American law and had been responsible for the success of that enterprise.

14. For its part, the League of Nations Assembly, when preparing the Hague Codification Conference, had made it clear, in its resolution of 27 September 1927, that the spirit of the codification "should not confine itself to the mere registration of the existing rules, but should aim at adapting them as far as possible to contemporary conditions of international life".¹

15. Finally, it was quite clear from the report of the Committee on the Progressive Development of International Law and its Codification that, while distinguishing between progressive development and actual codification, for practical reasons, the Committee had stated² that the two terms were not mutually exclusive and that the formulation and systematization of the existing law might lead to the conclusion that some new regulation should be suggested for adoption by States.

16. In that respect, his delegation's view was much the same as that expressed by the United Kingdom representative, who had stated that codification could entail the creation of new regulations in order to fill any gaps. It was not surprising that that perfectly reasonable interpretation should come from the representative of a country with a system of common law, which was essentially dynamic and progressive. The interpretation should not, however, be limited to the sphere of common law. Since the legislative process was the chief characteristic of contemporary international law and since one could not legislate without codifying, it should be recognized that codification was a legislative function designed to promote development in the laws of all the countries of the world.

17. Mr. García Amador considered that the International Law Commission had, on the whole,

been wise in its choice of subjects for codification and had paid due attention to the requirements of international life. He regretted, however, that it had not decided to give priority to certain subjects, such as nationality and statelessness, the right of asylum and the recognition of States; those subjects were of vital importance in the existing state of international relations and of particular interest to the Cuban delegation. The question of the recognition of States had, in particular, received close attention from the Inter-American Juridical Committee, which had prepared a draft convention on the subject for the first meeting of the legal experts of the Inter-American Council of Jurists which was to be held shortly at Rio de Janeiro.

18. In that connexion, it was interesting to note that the same Committee had recently prepared a draft resolution and a report on the development of international law, both public and private. Those documents would soon be published by virtue of article 67 of the charter of Bogotá, and would contain ideas on the codification and development of international law similar to those held by the Cuban delegation and to the principles which had guided the International Law Commission in its work.

19. Turning to chapter III of the report (A/925), the representative of Cuba considered that the International Law Commission should in future pay more attention to sub-paragraph (b) than to sub-paragraph (a) of General Assembly resolution 177 (II). The Commission should thus concentrate on preparing a draft code of offences against the peace and security of mankind, a code which should not contain solely the Nürnberg principles but also all the other principles of international law generally accepted in that field.

20. With regard to chapter IV, he regretted that the International Law Commission had not had time to study the desirability and possibility of establishing an international judicial organ for the trial of persons charged with genocide or other crimes over which jurisdiction would be conferred upon that organ by international conventions. Neither had the Commission considered the possibility of establishing a criminal chamber of the International Court of Justice, as it had been requested to do in General Assembly resolution 260 (III), B.

21. The representative of Cuba also hoped that, as soon as possible, the International Law Commission would ensure the co-operation of other national and international specialized agencies concerned with questions of international law and that it would not fail to profit by the terms of article 26 of its Statute. In that respect, it should not have allowed itself, as it did, to be outdistanced by the Inter-American Juridical Committee, which, in article 17 of its yet unpublished draft resolution, provided that the International Commission of American Jurists and its permanent committee should, so far as possible, establish close relations with the International Law Commission for the co-ordination of their respective activities and for the conclusion of agreements on the exchange of both draft and final publications, and should also provide for an exchange of observers and for constant co-operation between the two secretariats. The Inter-American Juridical Committee was thus the first

¹ See League of Nations, *Official Journal*, Special Supplement No. 53, October 1927.

² See document A/331, paragraph 7.

to base its activities on paragraph 4 of article 26 of the Statute of the International Law Commission.

22. Finally, the Cuban delegation had carefully examined the question of salaries to members of the International Law Commission, as dealt with in paragraph 42 of the report (A/925) and it would put forward an amendment to article 13 of the Statute, the terms of which should serve as a basis for drawing up a more satisfactory text of that article. The Cuban amendment (A/C.6/L.30) called for the addition, to the text of article 13 of the Statute, of the following provisions:

"In addition they shall receive compensation, at a rate to be determined by the Secretary-General, for each day on which they exercise their functions. In determining this compensation the Secretary-General shall take into account that paid to the judges referred to in Article 31, paragraph 2, of the Statute of the International Court of Justice.

"2. The Rapporteurs appointed by the Commission for the purposes prescribed in Articles 16 and 17 of this Statute, or in accordance with Article 19, to carry out any specific work of research when the Commission is not in session shall receive compensation at a rate to be determined by the Secretary-General."

In that connexion, it should be recalled that the Committee on the Progressive Development of International Law and its Codification had decided that members of the International Law Commission should receive a salary proportionate to the dignity and importance of their office.¹

23. Sub-Committee 2 of the Sixth Committee, though in fundamental agreement with that principle, had contended itself, for lack of a definite standard of comparison, with fixing the *per diem* allowance paid to members of the International Law Commission at the rate paid to experts attached to organs of the United Nations (A/C.6/193, paragraph 11). It had not adopted the suggestion of the majority of members of the Committee on the Progressive Development of International Law and its Codification, which had held it to be both desirable and necessary that members of the International Law Commission should devote their entire time to their office. Nevertheless, Sub-Committee 2 had not excluded the possibility of their practising their profession in the interval between sessions.

24. The delegation of Cuba proposed that members of the International Law Commission should receive, over and above their subsistence allowance, a grant for every day on which they carried out their functions. The amount of that grant should be fixed by the Secretary-General on the basis of the emoluments given to the judges mentioned in Article 31, paragraph 2 of the Statute of the International Court of Justice. The proposal also provided for a special allowance to rapporteurs engaged in special research between sessions. In resolution 19 (I), the General Assembly had fixed the emoluments of the judges referred to in Article 31 of the Statute of the International Court of Justice at a sum of 120 florins for every day on which they exercised their functions, plus a daily subsistence allowance of 60 florins. Allowing for currency adjustments, the delegation of Cuba suggested that those allowances should serve as a standard for fixing the

emoluments of members of the International Law Commission.

25. Having put forward those views, his delegation would vote for the adoption of the first part of the International Law Commission's report (A/925), without amendment or reservation.

26. Mr. ABDOL (Iran) associated himself with those delegations which had congratulated the International Law Commission on the task accomplished at its first session, particularly the drawing up of the draft declaration on the rights and duties of States. He hoped that, in the future, the work of the Commission would continue to make for a reign of law and justice in the world.

27. It was impossible to exaggerate the importance of the codification work undertaken by the Commission. Accurate definition of the existing rulings of international law could do much to abolish causes of strife between States and thus to ensure the maintenance of peace and international security. Hence, Mr. Abdol could not share the view of the representative of the Philippines, who thought that there were more important matters to attend to at that juncture than the work of codification.

28. The delegation of Iran approved the method followed by the International Law Commission and its choice of topics to be codified, in particular, that of the three subjects which should be given priority. Since it was a small Power, Iran attached great importance to the loyal fulfilment of obligations resulting from international acts, and hoped that codification in that field would to a great extent assure general respect for treaties.

29. In regard to the question of international criminal jurisdiction, Mr. Abdol recalled that his delegation had been one of the first to propose that that question should be referred to the International Law Commission. He hoped that the latter would soon be able to express an opinion on a problem of such great importance.

30. The delegation of Iran approved the opinion of the United Kingdom representative concerning the international status of the members of the International Law Commission, who did not have to represent their States on the Commission. That followed not only from the nature of the task devolving upon them, but from the text of article 2 of the Statute, which stipulated that they were chosen for their recognized competence in international law, and also from the text of article 8, according to which they should "individually" possess the qualifications required. Lastly, it must not be forgotten that the International Law Commission did not consist of all the Members of the United Nations, and that it should consequently represent the international community as widely as possible.

31. Considering next the question of the competence of the International Law Commission in the matter of codification, which gave rise to such divided opinions, Mr. Abdol pointed out that article 18 was unquestionably somewhat ambiguous. It would be as exaggerated to state that paragraph 2 of that article justified the opinion expressed by the Commission concerning its own competence, as to claim that the International Law Commission had encroached upon the authority of the General Assembly. If the problem were considered from the logical and practical point of view, the conclusion reached would be that the Commission had acted reasonably in taking up its work without any loss of time.

¹ See document A/331, paragraph 5, sub-paragraph (d).

After all, it was not the Charter that was being interpreted, but a statute drawn up by the Assembly itself, which could always impose its own interpretation. Moreover, the question had only academic importance, since the majority of the Sixth Committee seemed to approve the choice of the three topics to which the International Law Commission had decided to give priority.

32. The delegation of Iran would therefore support the French draft resolution (A/C.6/331)¹ congratulating the Commission on the work it had undertaken and on its work still in progress.

33. Moreover, the delegation of Iran approved the principle of the Cuban proposal (A/C.6/L.30). It considered that the current remuneration of the members of the International Law Commission was not proportionate to the importance of their duties and to their qualifications, and that their remuneration should be sufficient to enable them to maintain the status of international experts not appointed by their own Governments.

34. Mr. CHAUMONT (France), wished to make a few remarks on the subject of the only chapter in part I of the report which had given rise to controversy.

35. If the question of the competence of the International Law Commission were considered from the practical aspect, it would be agreed that it was unthinkable, from the point of view of common sense, that a Commission of that kind should meet once a year merely to draw up a list of topics, the codification of which it considered necessary or desirable, and that it should not be allowed to undertake a more thorough study of the selected topics until its choice had been approved by the General Assembly.

36. In the opinion of the French delegation, it was from the legal point of view in particular that the matter must be considered in order to solve the problem. As in the case of a legal text which was not very clear, the intention of the authors of the Statute would have to be ascertained from their preliminary work.

37. Mr. Chaumont read some passages from the summary records of the meetings of Sub-Committee 2 of the Sixth Committee which had prepared the Statute of the International Law Commission. It could be seen from those summary records, prepared by the Secretariat for its archives, that, at the meeting of 16 October 1947, a proposal of the USSR delegation to delete from the Sub-Committee's report paragraph 11, which had subsequently become article 18 of the Statute, had not been adopted, the vote for and against being equal. The representative of the USSR had explained at that meeting that he had proposed that paragraph 11 of the report should be omitted because it imposed upon the International Law Commission a task which did not belong to it, since the General Assembly alone was competent to draw up plans for the work of codification.

38. At the meeting of 24 October 1947, a new text for paragraph 11 was suggested by the French delegation in the same spirit as the proposal of the USSR delegation, because the French Government considered that, in the matter of codification, it was advisable to leave the initiative to the General Assembly and not to the Inter-

national Law Commission. That draft had been rejected by 10 votes to 5 after the representative of Brazil had pointed out that the French proposal was really tantamount to deletion of paragraph 11.

39. Mr. Chaumont thought that the intention of the authors of the Statute in regard to article 18 was evident from the passages of the summary records which he had just read. If any doubt still remained in the minds of the members of the Committee, however, he need only cite the summary record of the meeting of 15 November 1947, which recorded the adoption of a proposal of the representative of Panama to insert in the report of Sub-Committee 2 of the Sixth Committee a paragraph stating that that Sub-Committee had rejected, by 10 votes to 5, a proposal to reserve for the General Assembly, excluding the International Law Commission, the power of initiative in the matter of codification.

40. The French delegation, while it had held views different from those held by the majority of the members of Sub-Committee 2, admitted that the preliminary work on the Statute showed that the intention of its authors had certainly been to grant to the International Law Commission the broadest possible powers of initiative in the matter of codification.

41. Mr. GLASHEEN (Australia), added his tribute to the praise that many delegations had bestowed upon the work of the International Law Commission. Nevertheless, he wished to make a few remarks. The debates had clearly shown that the text of article 18, paragraph 2 of the Statute might lead to controversy. The French representative's explanation of the circumstances had been very interesting, but the fact remained that the International Law Commission had been obliged to implement an ambiguous text.

42. In any case, the Commission had acted wisely in refusing to waste time and in choosing three topics to codify. The Australian delegation approved both the selected topics and the method used. In future, however, the International Law Commission should submit to the General Assembly the list of topics that it had drawn up, indicating the order in which it thought they should be dealt with, and should then await the approval of the General Assembly before proceeding to the codification of those subjects.

43. There could be no doubt that the International Law Commission was the most competent body to decide whether any point of international law had reached the stage at which it should be codified, but certain special considerations, unrelated to law properly so called, might necessitate the postponement of a given topic. Furthermore, it would always be for the General Assembly to decide in the last resort upon the plans drawn up by the International Law Commission. It was therefore advisable for the Commission to obtain the approval of the General Assembly in advance; it would thus gain time, since it would run no risk of undertaking useless work.

44. With regard to chapter III of the report (A/925), he associated himself with the remarks made by the Netherlands representative and would like the International Law Commission to take into account, while preparing its draft code, not only the Nürnberg trials, but also the sentences passed by the tribunals in the Far East and by other courts. In that connexion, he was glad

¹ Text reproduced in the summary record of the 160th meeting under paragraph 33.

that the Secretary-General had drawn attention to the procedure followed at the Tokyo Tribunal in the excellent document on the Nürnberg principles (A/CN.4/5).

45. In conclusion, the Australian delegation shared the views of representatives who thought the emoluments of the members of the International Law Commission should be increased. It was true that article 13 of the Statute placed the members of that Commission on the same footing as members of commissions of experts of the Economic and Social Council, but it had to be remembered that the International Law Commission consisted of eminent jurists chosen in their personal capacity, who were appointed in accordance with a method more like that employed in the International Court of Justice than the one accepted in the Economic and Social Council. He thought he was correct in saying that the emoluments received by certain advisors appointed by the United Nations were higher than those paid to members of the International Law Commission. It was for the Fifth Committee to take a decision on that point; and he proposed that the Sixth Committee should refer it to the Fifth Committee with a recommendation.

46. Mr. GÓMEZ ROBLEDÓ (Mexico), was, generally speaking, in favour of part I of the report of the International Law Commission. With regard to the competence of that Commission, the Mexican delegation had nothing to add to the interpretation given by the Commission itself, since it was a matter of urgency that the work should be undertaken, but the ties between that organ and the General Assembly should not be broken. The Mexican delegation approved the list of topics to be codified and the order of priority drawn up by the Commission for the topics selected. That method was the best one, as had been proved by the precedent of the Codification Conference at the Hague and by the valuable contribution of Harvard University's *Research in International Law*. It was important to stress that the selection of topics should not be arbitrary. No topic could be set down for codification until it had reached an adequate degree of development, and that could be determined only after a close study of the laws concerned. He had common law particularly in mind. In any case, progressive development and codification must not be confused.

47. The decision of the International Law Commission to recommend that the General Assembly should revise article 13 of the Statute should be approved, because the distinguished jurists who sat on that Commission should not be placed on the same footing as technicians.

48. The Mexican delegation would vote for the French proposal (A/C.6/331).

49. Mr. OUTRATA (Czechoslovakia), said that he would confine himself to dealing with the question of the competence of the International Law Commission. It was an important question which had to be settled; otherwise, it would certainly arise frequently in the future, thus hampering the work of the Commission. In his opinion, article 18 should be taken literally; in other words, the previous approval of the General Assembly was indispensable for the International Law Commission to be able not only to undertake codification but also to select topics for codification.

50. In any case, there was no reason for haste. Various questions of international law had been awaiting codification for several centuries; there was doubtless no great objection to deferring them for a few more months. The International Law Commission was a technical body of experts, whose work should be closely supervised by the General Assembly at every stage of its development. Several speakers had apparently believed that that technical body was so alien to political questions that it would be legitimate for it not to take any such questions into account. That was another reason why the General Assembly should supervise its activity. That body of experts should not be granted complete freedom to take its own decisions on the topics for codification. If it were given that freedom, there would be the danger that the Commission might select topics which the General Assembly might regard as inexpedient. That would be to render the Commission itself a disservice, for not only would the work of the General Assembly be hampered thereby, but there would also be the danger of the Commission doing unnecessary work. The Czechoslovak delegation proposed that the Sixth Committee should recommend the General Assembly to adhere to a strictly literal interpretation of article 18.

51. Mr. CHAUDHURI (India), thanked the International Law Commission for its report on its work.

52. On the question of its competence, he shared the views of the Commission for which excellent reasons had been advanced. He himself saw yet another in the fact that the Statute (article 15) distinguished between "progressive development" — which, on the national level, was a matter for legislation — and "codification" — namely, registration on the national level, or, to put it in another way, consolidation. Article 16 distinctly provided that the General Assembly reserved the initiative with regard to progressive development and that only at its request would the Commission be authorized to function. With regard to codification, however, article 18 granted the Commission wider powers by instructing it, in paragraph 1, to "survey the whole field of international law with a view to selecting topics for codification," and, in paragraph 2, to submit "recommendations to the General Assembly." That article did not say that such recommendations should deal only with the question of priority. The selection of topics, like the order of priority, were regularly within the competence of the International Law Commission, subject to any different decision which the General Assembly might subsequently take for political reasons.

53. The representative of the United Kingdom had spoken of the independence of the members of the International Law Commission. They were independent, and it was that fact which made their work valuable, because it avoided the influence of political considerations. Furthermore, it must be remembered that the code which they would draw up would not be applicable automatically. The Commission had no power to legislate, any more than had the Assembly. That that might perhaps be the case in the future was his hope; but the world had not yet reached that stage.

54. With regard to the question of remuneration, it must not be forgotten that the members

of the Commission rendered inestimable service and accepted personal sacrifices; to demand of them pecuniary sacrifices over and above that would doubtless be asking too much. They should receive a reasonable rate of remuneration; as the representative of Australia had proposed, it would be appropriate to refer the question to the Fifth Committee with a favourable recommendation.

55. The Indian delegation would vote for the French draft resolution (A/C.6/331).

56. Mr. MAKTOŠ (United States of America) associated himself with those who had praised the work of the International Law Commission. In general, he approved of the first part of the report.

57. The United States delegation thought that the majority of the members of the Commission had been right in deciding that the Commission was competent "to proceed . . . without awaiting action by the General Assembly . . ." It had been argued that the Commission had thus contravened the provisions of article 18, paragraph 2. That was not so; firstly, because that view failed to take due account of the preparatory work, and secondly, because it was illogical. In the entire 300 pages of the volume comprising the collected records of the preparatory committee's work, there was not a single word which provided grounds for impugning the opinion expressed by the majority of the International Law Commission on its own competence. The record of the meeting of 27 May 1947 stated¹ that the majority of the members of the Sub-Committee of the Committee on the Progressive Development of International Law and its Codification, with the exception of the USSR representative, had been of the opinion that the International Law Commission ought itself to determine what topics were fit for codification. At the meeting on 29 May 1947, Mr. Donnedieu de Vabres had observed² that there was no doubt that it would be the task of the International Law Commission to select topics which would be suitable for codification. At the meeting of 17 June 1947, Mr. Koretsky had emphasized the need to avoid all misunderstanding and Mr. Jessup had observed that the summary record of the 14th meeting showed that the question whether the International Law Commission should be allowed to select the topics for codification itself had been answered in the affirmative by a large majority.³

58. At the meeting of the International Law Commission on 13 April 1949, Mr. Sandström had stated⁴ that, in order to interpret paragraph 2 of article 18, the proposals made in Sub-Committee 2 of the Sixth Committee to define the term "recommendations" more precisely, must be taken into consideration. However, the proposal of the representative of Australia, who had supported a point of view identical to that of Mr. Koretsky, had been rejected by 7 votes to 5.

59. At the meeting of 13 April 1949, Mr. Brierly had pointed out⁵ that the judgment whether the codification of a topic was necessary or desirable could be made only after a thorough study of the topic, which involved the application of article 19 onwards and led inevitably to the "recommendations" of article 22. Article 18, therefore, could only refer to the same final recommendations.

Article 23 listed the recommendations which the International Law Commission could make to the Assembly, namely, (1) to take no action; (2) to take note of or adopt the report in a resolution; (3) to recommend the draft to Members with a view to the conclusion of a convention; (4) to convene a conference to conclude a convention. There could be no doubt that the term "recommendations", in article 22, referred to the recommendations listed in article 23. Since the term "recommendations" had the same value in article 18 as in article 22, the question was settled, and Mr. Brierly had proved that it was impossible to apply article 18 without applying articles 19, 20, 21, 22 and 23.

60. Finally, he recalled that at the meeting of 14 April 1949, the Chairman of the International Law Commission had stated⁶ that it was evident that the Commission could take a decision on the selection of topics for codification only after a detailed study of those topics.

61. For practical reasons, the International Law Commission had to have freedom of action. He wondered what would happen if the General Assembly assigned no special duty to the Commission. It was hardly conceivable that jurists should convene only to draw up a list of topics, that they should then separate immediately and wait a year before commencing their work, especially when the Commission had been established only for three years.

62. The representative of Norway had stated that, if article 18 authorized the Commission to codify without waiting for the approval of the General Assembly, Governments would incur obligations with regard to topics the selection of which had not been approved by the Assembly. Although he did not disagree with that statement, Mr. Maktoš pointed out that the question was not whether the Assembly could approve or refuse to approve the selection of the Commission; it could certainly do so. The question was whether the Commission could undertake to study topics without waiting for the approval of the Assembly.

63. Mr. BARTOS (Yugoslavia) also congratulated the International Law Commission on the work it had accomplished. Although it had some objections, the Yugoslav delegation was, on the whole, satisfied with the result of the work of the Commission's first session.

64. The representative of France had endeavoured to prove, by going back to the preparatory work on the Statute, that the International Law Commission's interpretation of article 18 of its Statute was correct. Mr. Bartos regretted that he could not endorse the conclusions drawn by the representative of France from certain passages of the summary records of Sub-Committee 2 of the Sixth Committee. He wished to point out, in that connexion, that the summary records could not be regarded as decisive and authoritative, since, as the Secretary of the Sixth Committee had stated⁷ they "were not mimeographed and distributed to the delegations for their approval; . . . (they) were very brief; they merely recorded the decisions taken, without going into details of the discussion which had preceded them"

65. Quoting certain passages from the summary record of the third meeting of the International

¹ See document A/AC.10/SR.12, page 2.

² See document A/AC.10/SR.15, page 2.

³ See document A/AC.10/SR.26, page 11.

⁴ See document A/CN.4/SR.2, page 18.

⁵ *Ibid.*, page 13.

⁶ See document A/CN.4/SR.3, page 14.

⁷ *Ibid.*, page 3.

Law Commission, held on 14 April 1949¹, Mr. Bartos stressed that Mr. Liang, the Secretary of the Commission, had stated that there were two conflicting opinions in Sub-Committee 2 concerning paragraph 11 of the report of that Sub-Committee, which had become article 18 of the Statute, and that neither of those opinions had been accepted. He had added that the Secretariat could not support either of the two possible interpretations. Mr. François, who had been the Rapporteur of Sub-Committee 2, had stated at the same meeting that article 18 of the Statute had been drawn up in the spirit mentioned by Mr. Koretsky and that, in his opinion, the International Law Commission did not need the approval of the General Assembly to commence the study of a certain question, that it could even carry such a study to an advanced stage in order to be in a position to submit well substantiated recommendations to the Assembly, but that it could not consult Governments, send questionnaires to them, or draw up codification drafts without the consent of the Assembly.

66. In view of those two statements, the position of the Yugoslav delegation remained unchanged regarding the legal merits of the decision taken by the International Law Commission concerning the scope of its powers. But on the purely practical level, the Yugoslav delegation supported the selection of topics chosen by the International Law Commission for immediate codification and thought that the General Assembly should also approve of that choice. The matter of treaties and also that of arbitral procedure were of primary importance at the moment when certain States had taken upon themselves the right to denounce treaties concluded for a fixed period. Yugoslavia would perhaps have preferred the matter of diplomatic immunity or of the recognition of States and Governments to be given priority for codification, but it accepted the choice of the International Law Commission.

67. Passing to chapter III of the report, Mr. Bartos recalled that the Yugoslav people had been one of the greatest victims of the Second World War and that his delegation had voted unreservedly for resolution 95 (I), by which the General Assembly had approved the principles recognized in the Charter and Judgment of the Nürnberg Tribunal. The Yugoslav Government felt that those principles constituted the positive law of all civilized nations and that they should be formulated as soon as possible as international conventions. He hoped that the International Law Commission would be able to do so during its following session.

68. His delegation had been pleased to note that the International Law Commission had decided it would always be possible to add to the list, prepared by the Secretary-General, of national and international organizations dealing with questions of international law. The Yugoslav delegation had submitted to the Secretariat the names of Yugoslav organizations which it wished to appear in the list.

69. He shared the opinion of those who considered that members of the International Law Commission should receive the same allowances as the judges mentioned in Article 31, paragraph 2, of the Statute of the International Court of

Justice. In his opinion, the Rapporteurs nominated to study particular subjects should receive special compensation. His delegation thought the Sixth Committee might make a general recommendation to that effect to the Fifth Committee, leaving the latter to examine, in accordance with the rules of procedure, the financial implications of the recommendation.

70. In conclusion, he stated that, if it was clearly understood that the International Law Commission's decision on its competence would not constitute a precedent for the future, the Yugoslav delegation would vote for the Canadian proposal (A/C.6/L.31)², the wording of which it preferred to that of the draft resolution submitted by France (A/C.6/331).

71. Mr. MELENCIO (Philippines) paid a tribute to the Chairman and members of the International Law Commission, as he had done at the 159th meeting.

72. He wished to explain his delegation's attitude regarding the matter of the International Law Commission's competence.

73. From article 18 onwards of the Statute, it appeared that the International Law Commission should carry out its functions according to the following procedure: the Commission should first survey the whole field of international law with a view to selecting suitable topics for codification; when it considered that the codification of a particular topic was necessary or desirable, it should submit its recommendations to the General Assembly, then adopt a plan of work appropriate to each case and, finally, prepare codification drafts and its recommendations in accordance with articles 20 to 23 of the Statute. In his opinion, the text of the Statute was perfectly clear: the "recommendations" mentioned in article 18, paragraph 2, were undeniably recommendations on the choice of topics suitable for codification, and the words "to each case" in article 19, paragraph 1, obviously meant "for each topic submitted to the General Assembly and approved by it".

74. His delegation did not deny that the International Law Commission was the body which should in the first instance choose topics suitable for codification, and did not doubt that the General Assembly would approve the Commission's choice. His delegation considered, however, that the Commission, in accordance with its Statute, should have limited itself to submitting a list of topics to the Assembly, allowing the latter to decide which it wished codified first. If the Commission had followed that procedure, no delay would have occurred. During the current session, the General Assembly would have chosen, from the topics suggested by the International Law Commission, those which should be codified immediately; and the members of the Commission might have begun work as soon as the session ended.

75. The delegation of the Philippines attached particular importance to the matter, for it felt that important questions of principle were at stake. It must be known: (1) whether, as a result of the International Law Commission's interpretation of article 18 of its Statute, the General Assembly might be deprived of powers it had

¹ See document A/CN.4/SR.3, page 3.

² Text reproduced in the Summary Record of the 162nd meeting under paragraph 6.

wished to reserve to itself in the choice of the subjects which should be codified first; (2) whether the General Assembly had meant to authorize the Commission to continue to choose, on its own initiative, a series of topics the codification of which it considered necessary or desirable; (3) whether the Sixth Committee should accept an interpretation which was at variance with the very terms of the Statute. His delegation considered that the answer to each of those three questions should be in the negative and that the words which had been used by the authors of the Statute should be given their meaning; it was unnecessary to go back to their preparatory work to find out the intentions of the authors, for there was no ambiguity. It would indeed be regrettable if the Sixth Committee were to be the first to sanction an interpretation of the Statute which contradicted the meaning of the terms used, and were to disregard the powers which the General Assembly had wished to reserve to itself.

76. There was another reason for the rejection of the International Law Commission's interpretation of article 18 of its Statute. In an international organization like the United Nations, which was a forum where many States of different languages presented their frequently divergent or opposite views in order to achieve better mutual understanding, the literal value of words was of exceptional importance. The interpretation of article 18 of the Statute should therefore be based on the literal meaning of the words, to obviate any attempt at a wishful interpretation of United Nations documents, the intrinsic meaning of which should be respected.

77. Mr. TRUJILLO (Ecuador), retracing the course of the discussion, pointed out that there were two divergent interpretations of the competence of the International Law Commission. Some representatives considered that the Commission could proceed with the study of the topics it had chosen without waiting for the General Assembly's approval, while others contended that it could not. Despite the force of the arguments put forward by the Philippine representative in support of the latter point of view, Mr. Trujillo thought that both substance and form were somewhat ambiguous, and that the Commission had been right in solving the difficulty as it had.

78. The standpoint of the Yugoslav representative was in itself contradictory; after having expressed the opinion that the International Law

Commission was not competent to take the decision it had taken, he had then endorsed the decision. Mr. Bartos had also wanted the prompt codification of the principles of the Judgment of the Nürnberg Tribunal. Mr. Trujillo thought that one could not be too careful; often one had only to be defeated to be considered guilty, since it was those with might on their side who laid down the principles.

79. As for the question of competence, the point of view of those supporting the International Law Commission's decision was preferable, since it was a legal principle that a rule should always be interpreted to allow of its maximum effectiveness. The delegation of Ecuador would therefore support the French proposal (A/C.6/331).

80. Passing on to chapter II of the report, Mr. Trujillo was prepared to approve the topics chosen, although he would have preferred a different choice.

81. With regard to chapter III, the attitude of the delegation of Ecuador was one of great reserve. It was quite obvious that major war criminals as the nazis and fascists must be punished. But the law must not be left entirely in the hands of the conquerors. Sanctions excluding capital punishment, unknown in most American countries — to be applied to crimes against peace and humanity — must be codified and laid down, but the codification must be carried out in accordance with truly humane legal principles.

82. With regard to chapter IV, he thought that, should it prove impossible to establish a criminal chamber of the International Court of Justice, it would be contrary to the Court's Statute to arraign individuals before the Court itself, since the latter's competence extended to States alone. It was to be hoped that the International Law Commission would find some way of setting up a special tribunal.

83. The delegation of Ecuador endorsed the list of organs invited to co-operate with the International Law Commission, but proposed that the Commission should also enter into relations with law faculties throughout the world, which were active in the field of international law.

84. His delegation also approved the proposal to increase the emoluments of members of the Commission, whom it thanked for the quality of the work already accomplished.

The meeting rose at 6 p.m.