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Chairman: Mr. V. OUTRATA (Czechoslovakia).

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

[Item 52]*

1. The CHAIRMAN invited the members of the Committee to continue their discussion of part I of the Report of the International Law Commission.

2. Mr. CASTAÑEDA (Mexico) stated that if the Sixth Committee wished to increase the emoluments of the members of the International Law Commission, it must obviously modify article 13 of the Statute of the Commission, which was based on a rather rigid criterion. That was the proposal of the sponsors of the joint draft resolution (A/C.6/L.128), presented in a form satisfactory to the Mexican delegation. The Sixth Committee could choose between two solutions in the matter of the amount of the emoluments. It could either leave the Fifth Committee to settle the question and decide the amount, without making any precise recommendation to the Fifth Committee; or it could make specific recommendations such as those which appeared in the joint draft resolution of Cuba and Egypt (A/C.6/L.131).

3. If it chose the first solution, the Sixth Committee would incur the serious risk that the Fifth Committee might adopt a position contrary to its own, as had occurred at the fourth session, or might recommend the granting of a *per diem* allowance lower than that advocated by the Sixth Committee. On the other hand, if it adopted the second solution, the Sixth Committee would run the risk of having its decision questioned by the Fifth Committee. The General Assembly would then be placed in the very difficult position of having two of its Committees making conflicting recommendations to it. Moreover, there was the serious question of competence to which the representative of France had referred. In that regard, the Mexican delegation, like the delegation of Iran, considered that the Sixth Committee was not expressly incompetent to deal with that question. Nevertheless, it could not claim to settle a question with financial implications, just as the Fifth Committee could not alone settle a question which,

although it had financial implications, involved factors which were not economic in nature.

4. It was a recognized principle of law that where there was an obligation to pay an undetermined sum, the ability of the debtor to pay and the needs of the creditor should be taken into account in determining the sum. The question under consideration was obviously analogous to that example. Consideration of the first element, the ability of the debtor to pay, lay in the present case within the jurisdiction of the Fifth Committee; it was, however, the responsibility of the Sixth Committee to determine the second element by stressing that the members of the International Law Commission were jurists of world-wide repute who could not be classed with ordinary experts serving the Economic and Social Council.

5. Accordingly, the Mexican delegation supported the proposal of the representative of Chile that all aspects of the question should be studied at a joint meeting of the Fifth and Sixth Committees. The Mexican delegation considered that a mere discussion between the Chairmen of the two Committees would hardly be sufficient.

6. In the matter of the extension of the term of office of the members of the International Law Commission, Mr. Castañeda would vote for the draft resolution presented by the representative of the United Kingdom (A/C.6/L.130) for the reasons explained by that representative. To fix the term of office of the members of the International Law Commission immediately would prejudice decisions which that body might itself take. Moreover, it should not be forgotten that the question was especially urgent because the term of office of the present members of the International Law Commission terminated in 1951. The necessary steps ought therefore to be taken to prevent the interruption of its very important work for that reason.

7. Mr. SPIROPOULOS (Greece) expressed the view that the Sixth Committee was entirely competent to settle the amount of the emoluments of the members of the International Law Commission. That question was actually determined by article 13 of the Statute, which had been drafted by the Sixth Committee itself and which could be changed only by that body.

* Indicates the item number on the General Assembly agenda.

8. Nothing, therefore, prevented the Sixth Committee from specifying in the Statute itself, as the representative of France had suggested, the exact amount of the *per diem* allowance to be paid to members of the International Law Commission. Article 13 of the Statute in no way classed the members of the International Law Commission as experts; it merely calculated the allowance to be paid to them on the basis of the allowance paid to members of committees of experts serving the Economic and Social Council. Obviously, the Sixth Committee could delegate its powers to the Fifth Committee, but it was in no way bound to do so.

9. Some members of the Sixth Committee had cited rule 152 of the rules of procedure in support of the proposal that the question should be referred to the Fifth Committee. The representative of Greece wished, once and for all, to have the meaning of that rule clearly defined. He considered that the first part of that rule referred exclusively to resolutions involving diverse expenditures which were difficult to compute. The establishment of budget estimates relating to an increase in the emoluments of members of the International Law Commission presented no difficulty.

10. The second part of rule 152 of the rules of procedure merely meant that all resolutions involving expenditures must be referred to the Fifth Committee so that it could consider their financial effects on the budget. The words did not mean that a resolution involving expenditures must, to be adopted, necessarily be approved in advance by the Fifth Committee. Had a single resolution of the Assembly or of a Committee, he asked, ever been referred to the Fifth Committee for an opinion on its substance? The First Committee had, without asking the advice of the Fifth Committee, decided to set up a peace observation commission merely because it felt that such a commission was necessary. During the fourth session of the General Assembly, in similar circumstances, it had been decided to convene a Conference on the Declaration of Death of Missing Persons.

11. Obviously, nothing prevented the Sixth Committee from referring the question of the emolument of members of the International Law Commission to the Fifth Committee. That, however, would merely be a delegation of power. The delegation of Greece would have no objection to referring the question to the Fifth Committee if it were convinced that that Committee would apply the same criteria as the Sixth Committee. Everything, however, seemed to indicate that the Fifth Committee would continue to class the members of the International Law Commission with experts and would not comply with the request of the Sixth Committee. Decidedly, the Powers which paid the major part of the expenses of the United Nations should settle whether the question should be left to the discretion of the Fifth Committee.

12. Mr. Spiropoulos himself was of the opinion that from the legal point of view the Sixth Committee ought to decide the matter. Then the Secretary-General would present an estimate of expenditures which would be transmitted to the General Assembly together with the opinion of the Fifth Committee.

13. Mr. GOTTLIEB (Czechoslovakia) first wished to assure the members of the Sixth Committee that

the remarks he was about to make were intended solely to enable the International Law Commission to work under the best possible conditions and to ensure the continuity of its work.

14. The Czechoslovak delegation was gratified that the Sixth Committee did not wish to pursue the suggestion to pay the members of the International Law Commission a yearly salary for the duration of their term or for the period during which they completed a given task. Such a provision would have the effect of establishing a new category of international civil servants, and would be incompatible not only with article 8 of the Statute but also with the legal status of the International Law Commission, which was a subsidiary organ of the General Assembly entrusted with specific functions under paragraph 1 of Article 13 of the Charter.

15. Several representatives had criticized article 13 of the Commission's Statute because it placed the members of the International Law Commission in the same category as members of committees of experts serving the Economic and Social Council. Mr. Gottlieb pointed out that the Second Committee might also claim that the superior competence of some of the economic and financial experts working for the Council also justified a rise in their emoluments. Thus a precedent would be established which might have a substantial effect on the budget of the United Nations.

16. The main reason why the members of the Sixth Committee were suggesting a rise in the emoluments of members of the International Law Commission was to give them a fair reward for their services. During 1950 some members of the Commission had received up to \$9,000 in special fees. The 1951 United Nations budget also provided a sum of \$9,000 to cover the fees of the Chairman and the five Rapporteurs of the Commission. Clearly, therefore, nothing prevented the General Assembly from paying special fees to members of the Commission working on special tasks or undertaking special studies.

17. The Czechoslovak delegation felt that the financial requirements of the members of the International Law Commission could be satisfied without altering article 13 of the Statute. Supplementary expenditures would, of course, have to be approved by the Fifth Committee, but the Sixth Committee was competent to make recommendations on the matter.

18. With regard to the term of office of the members of the International Law Commission, the Czechoslovak delegation did not favour the proposal to extend it from three to five years. Article 10 of the Statute, which provided that members of the Commission should be eligible for re-election, was quite adequate to ensure the continuity of the Commission's work. At the present time, the General Assembly decision that members of the Commission should serve for three years could not be altered. Moreover, everyone expected that those eminent members of the Commission who had been especially outstanding and whose work would not be completed by the coming year, would be re-elected. During the first part of its third session, the General Assembly had re-elected the five members of the International Court of Justice whose terms were expiring

because it had considered their presence valuable to the future activities of the Court.¹

19. In view of the scope of the work undertaken by the International Law Commission, there was no reason to assume that a proposal would not be put forward again to extend the term of office of its members when the five-year period had expired. To extend the term of office of the members of the International Law Commission would alter the basic structure of that body and place it on the same footing as the International Court of Justice. The Court, however, was a permanent body, whereas the International Law Commission was a subsidiary organ of the General Assembly instructed to carry out tasks conferred upon it under paragraph 1 of Article 13 of the Charter. Only the General Assembly could alter its composition, if necessary, and see that it carried out the purposes for which it had been established. Except for the members of the International Court of Justice, the term of office of the members of all other organs of the United Nations was limited to three years.

20. The representative of Czechoslovakia then commented on the proposal to revise the Statute of the International Law Commission. In his view the Commission ought not to revise its own Statute. The General Assembly should decide to what extent the International Law Commission was discharging the functions entrusted to it. That did not prevent the General Assembly from considering any suggestions which the International Law Commission might make in its annual report. Moreover, the Statute could not be changed casually, as any alteration in the Statute would entail a change in the structure of the International Law Commission. The Czechoslovak delegation therefore hoped that the Committee would confine itself to revising article 17 so as to prevent the Commission from being hampered in its work by an excessive number of proposals submitted to it by other organs for consideration.

21. In that respect, some objection could be raised to the request made by the Economic and Social Council to the Commission to draft a convention re-stating the principles contained in the recommendation made by the Commission on the Status of Women. In pursuance of article 17 of the Statute, organs other than the General Assembly were authorized only to request the International Law Commission to consider proposals and draft multilateral conventions. In the circumstances, the formal request made by the Economic and Social Council to the Commission to draft a convention as soon as possible violated article 17. Furthermore, if it drafted the convention, the International Law Commission would be exercising a right enjoyed only by the General Assembly. Undoubtedly, the multilateral convention in question would do no more than codify the principles governing nationality, including the nationality of married women. The argument that the question of nationality was already included in the agenda of the International Law Commission might be refuted by pointing out that, under article 18 of the Statute, the General Assembly and not the Economic and Social Council was competent to determine the

priority to be given to items on the Commission's agenda.

22. Finally, the representative of the Soviet Union had already indicated the main functions of the General Assembly under paragraph 2 (d) of article 17 of the Statute relating to the organization of the Commission's work.

23. In conclusion, he asked the Committee, before it voted on the various proposals before it, to think seriously of the possible consequences of amending the Statute of the International Law Commission.

24. Mr. TARAZI (Syria) noted that the Sixth Committee had before it three different proposals, the first being to amend article 13 of the Statute, the second suggesting that the International Law Commission be invited to review its own Statute, and the third suggesting that the emoluments of members of the Commission be increased.

25. His delegation thought that the Sixth Committee might well adopt the draft resolution submitted jointly by Cuba, Egypt, France, Iran, the United Kingdom and the United States of America (A/C.6/L.128) without consulting the Fifth Committee. The draft suggested an amendment to article 13 of the Statute of the International Law Commission, and had no financial implications. On the other hand, any proposal for an increase in the emoluments of members of the International Law Commission must be examined by the Fifth Committee. He saw no need to convene a joint meeting of the Fifth and Sixth Committees. It would be enough for the Sixth Committee to approve a resolution fixing the amount of those emoluments; the Fifth Committee could then transmit a report on the resolution, together with the resolution itself, to the General Assembly, which would take the final decision.

26. His delegation supported the United Kingdom draft resolution (A/C.6/L.130) because it did not provide for immediate revision of the Statute of the International Law Commission but invited that Commission to make recommendations for possible future revision. He thought that the International Law Commission itself was the body best qualified to make such recommendations.

27. Finally, the Syrian delegation would vote for the draft resolution (A/C.6/L.132) to extend the term of office of members of the International Law Commission, in the interests of the Commission's work.

28. Mr. LOBO (Pakistan) said that the general debate on the first part of the report had dealt with three points: the emoluments of members of the International Law Commission, the length of their term of office, and measures to ensure the more efficient functioning of that Commission. Several proposals had been submitted on each of those points.

29. His delegation supported the joint draft resolution of Cuba and Egypt (A/C.6/L.131) fixing the special allowance to be paid to members of the International Law Commission at thirty-five dollars per day. That proposal raised a certain number of technical difficulties which might be overcome in consultation with the competent organs.

¹Official Records of the General Assembly, Third Session, Part I, Plenary Meetings, 152nd and 153rd meetings, pp. 368-372.

30. His delegation also supported the draft resolution submitted by Cuba, Chile, Egypt, Iran and Turkey (A/C.6/L.132) to extend the term of office of the members of the International Law Commission. That question was particularly urgent since the term of office of the present members of the Commission expired in the coming year.

31. Finally, as regards the United Kingdom draft resolution (A/C.6/L.130), he suggested that, in order to remedy the vagueness of which that draft had been accused, the words "particularly articles 10, 13 and 17" should be added after the word "Statute" in the third paragraph. Those articles dealt with the length of the term of office, the emoluments of members of the International Law Commission, and the right of other organs of the United Nations to request that Commission to study particular questions.

32. Mr. BALICKI (Poland) thought, like the Soviet and French representatives, that the United Kingdom draft resolution (A/C.6/L.130) was very vague. His delegation, however, did not approve the French amendment (A/C.6/L.133), which was itself couched in too general terms. There was no point in requesting the International Law Commission to review its Statute with the object of making recommendations concerning its organization, since that body had made no such proposal in its own report. The only articles which had caused any difficulty were articles 10, 13 and 17 of the Statute. His delegation therefore thought that any proposal for reviewing the Statute should refer to specific articles.

33. As regards the length of the term of office of members of the Commission, the delegation of the Soviet Union had already pointed out that there was no need to extend it since, under article 10 of the Statute, members of the International Law Commission were eligible for re-election. It was by no means certain that the Commission would be able to complete examination of all the questions before it within two or three years, and certain delegations might then well ask for a further extension of the term of office. His delegation thought that the continuity of the Commission's work was fully secured by article 10.

34. Mr. MAURTUA (Peru) quoted article 8 of the Statute of the International Law Commission in confirmation of the comments previously made by his delegation on the character of the Commission and its members. The members were elected, not only because of their high individual qualifications, but also to represent "the main forms of civilization and the principal legal systems of the world". Conditions for their election were thus very similar to those for the election of the judges of the International Court of Justice. In fact, the members of the International Law Commission were entirely different from the other experts who were employed by the United Nations.

35. It might be useful to classify United Nations experts, distinguishing between specialists temporarily employed to deal with specific and definite problems and experts engaged in long-range tasks involving complex and varied problems.

36. The members of the International Law Commission would fall into the second category. The Inter-

national Law Commission was a permanent body because of the task of codification entrusted to it; and it was also an advisory body responsible for throwing light on questions which could not be dealt with by the International Court of Justice and which bore on the most general principles of law. The International Law Commission should thus be treated in a way befitting its important duties and the dignity of its members.

37. He could see no incompatibility between the various draft resolutions proposed. The joint draft submitted by Cuba, Egypt, France, Iran, the United Kingdom and the United States of America (A/C.6/L.128) had a purely temporary nature and was designed to meet the immediate needs of the members of the International Law Commission. The United Kingdom draft (A/C.6/L.130) was, on the other hand, a long-term project providing for a thorough study. Either the two drafts should be voted upon separately, or they should be combined. It would have been best to submit a series of recommendations on the Statute of the International Law Commission; but there was now no time, as the debate was nearly over.

38. He suggested, therefore, that the Sixth Committee should proceed to vote on the United Kingdom draft. If that draft were approved, the International Law Commission would proceed to review its Statute. Only if the draft were rejected would the Sixth Committee vote on the joint draft resolution.

39. Mr. KERNO (Assistant Secretary-General in charge of the Legal Department) recalled that at the 227th meeting, the delegations of Egypt and Cuba had been prepared to withdraw their proposal if a more practical means could be found to achieve the same end.

40. With regard to rule 152 of the rules of procedure, he agreed with the interpretation placed upon it by several representatives, particularly those of Iran, Mexico and Greece, which would allow the Sixth Committee to recommend that the General Assembly should adopt the first or the second resolution concerning the emoluments of members of the International Law Commission. A procedure which had frequently been adopted in the past was to arrange joint meetings of two or more Committees in order to reach agreement.

41. Another solution would be to establish a joint sub-committee of the Fifth and Sixth Committees; that had been done in determining the emoluments of the judges of the International Court of Justice. The normal procedure was to submit the draft resolution to the President of the General Assembly, who would transmit it to the Fifth Committee, which would also receive a memorandum on the question from the Secretary-General and an opinion from the Advisory Committee on Administrative and Budgetary Questions.

42. Since all those procedures were in order, it was for the Sixth Committee to choose among them. The question was a tactical one. If the Committee adopted the first draft resolution and rejected the second—in other words, if it did not specify the sum of thirty-five dollars—the Chairman might be asked to state in the letter accompanying the draft resolution that the Committee was in favour of increasing the *per diem* allowance to, for example, thirty-five dollars. The letter might also indicate that the Rapporteur of the Sixth

Committee would be at the disposal of the Fifth Committee for consultation.

43. To sum up, there were three possibilities—to hold a joint meeting of the Sixth and Fifth Committees, to set up a joint sub-committee, or to send an explanatory letter.

44. Mr. ROBINSON (Israel) wished to make a few remarks on two of the questions which arose in connexion with part I of the Report of the International Law Commission.

45. The first question was that of the remuneration of Commission members. The Israel delegation would support the draft resolutions which provided for an increase in that remuneration, as it had done in the previous year, and its representatives in the Fifth and Sixth Committees had received instructions to that effect. He shared the fear of his colleagues that the failure of the previous year would be repeated, and, like them, was anxious to achieve concrete results. He recalled that, at the 227th meeting, the Assistant Secretary-General in charge of the Legal Department had stated that, for fifteen members of the International Law Commission sitting for ninety days, the resolution would entail the expenditure of approximately \$20,000. It should be borne in mind that both the Fifth and the Sixth Committees were composed of representatives of all Member States; in short, the solution did not lie with the Fifth Committee, but with delegations which, if they instructed their representatives in the Sixth Committee to adopt a resolution to the effect stated, should instruct their representatives in the Fifth Committee similarly.

46. The second question was that of extending the term of office of members of the International Law Commission. He did not consider that such an extension would promote the progress of international law. The solution he would propose would be to make no change in the present term of office of members of the Commission but to elect new members for a term of five years. The reasons for his proposal were as follows: in the first place, the first term might be regarded as experience; in the second place, the programme had been drawn up at the first session of the Commission and approved at the fourth session of the General Assembly; the Commission must adhere to that programme. Lastly, if its term of office were extended, the Commission would have to draw up a new programme for a period of two years. It would be preferable for the new members elected in 1951 to draw up a programme for a period of five years.

47. He was sure that the majority of the members of the Commission including the Rapporteurs, would be re-elected and that there was no real danger of having to make a fresh start on work which had already reached an advanced stage.

48. In conclusion, he said that when the draft resolution (A/C.6/L.132) was put to the vote, he would ask for a separate vote on the phrase: "this extension to be applicable to the terms of the members of the Commission elected in 1948".

49. Mr. SPIROPOULOS (Greece) emphasized that the Sixth Committee had already devoted three meetings to a discussion of part I of the Report of the

International Law Commission, although it was the least important of the six parts of the Report. While he did not wish to introduce a formal motion for the adjournment of the debate under rule 116 of the rules of procedure, he would ask the Committee to conclude its discussion of the subject as early as possible; he suggested that the Chairman should read the list of speakers and declare it closed.

50. He went on to make a few brief comments on the explanations given by the Assistant Secretary-General in charge of the Legal Department. While he found those suggestions interesting, he thought that the Sixth Committee should follow the most straightforward procedure, which was to take a decision on the matter and refer it to the Fifth Committee. It would only be necessary to set up a joint sub-committee in the event of a difference of opinion between the Sixth and the Fifth Committees. He was in full agreement with the remarks of the representative of Israel on that point.

51. In conclusion, he would like an explanation of how the Assistant Secretary-General had arrived at the figure of \$20,000. An increase of ten dollars in the *per diem* allowance for members of the International Law Commission would, it seemed to him, give a total of \$600 per member of the Commission for the sixty days of a session, and an overall total of \$7,800 for the thirteen members composing the Commission.

52. Mr. VAN GLABBEKE (Belgium) said that his delegation would vote for the United Kingdom draft resolution (A/C.6/L.130). The representatives of the Union of Soviet Socialist Republics and Poland had criticized the resolution for its lack of precision. He could not regard that criticism as justified, since in his opinion the merit of the text lay precisely in the fact that it was broad, that it set no time-limit for the review of the Statute, and that it set out general principles.

53. The Sixth Committee's main concern should be to enable the International Law Commission to obtain rapid results. The problem raised by the expiration of the term of office of its members in 1951 thus took on a special importance. The Belgian delegation could not, however, vote for the draft resolution (A/C.6/L.132) since there was no guarantee that whereas a period of three years had not been sufficient to enable the Commission to complete its work, a period of five years would enable it to do so, having regard to the number and complexity of the questions already before it and to the new and urgent questions which would probably be submitted to it.

54. In regard to the amendment of article 13 of the Statute of the International Law Commission, he drew the attention of the Sixth Committee to a point which had not hitherto been raised. That article laid down that travel expenses would be paid by the United Nations, and went on to refer to a special allowance similar to that paid to members of committees of experts serving the Economic and Social Council. The phrase "*per diem* allowance" had been eliminated from all the draft resolutions and replaced by the phrase "special allowance". He would like to know whether the same allowance was referred to.

55. The Belgian delegation regretted that it could not vote for the draft resolution submitted by Cuba and Egypt (A/C.6/L.131) because it considered that to specify a figure would be undesirable. The preferable course would be to indicate the figure during discussion between the Chairmen of the Fifth and the Sixth Committees.

56. The Belgian delegation was also unable to vote for the Philippine amendment (A/C.6/L.129), by which members would receive a special allowance "or" an honorarium in addition to their travel expenses. It was unwise to give a choice between two types of remuneration, since the Fifth Committee would always tend to choose the more economical solution and never the more costly.

57. The best solution seemed to be the one suggested by the Assistant Secretary-General in charge of the Legal Department, namely, that the Sixth Committee should request its Chairman to discuss the question informally with the Chairman of the Fifth Committee so that a second failure could be avoided.

58. Mr. MOROZOV (Union of Soviet Socialist Republics) wished to make a few comments on the United Kingdom draft resolution (A/C.6/L.130). The misgivings he had already expressed in regard to that proposal had increased. The resolution was too broad, would impose too heavy a task on the International Law Commission, and would prevent the Commission from undertaking any other work. There were already nine different draft resolutions on three articles of the Statute alone; that indicated the size of the task which would face the Commission if it were called upon to review the whole of its Statute, as it would have to do if the Committee so decided.

59. No good reason had been given for the complete review of the Statute. The United Kingdom, when asked whether it had in mind any articles other than articles 10, 13 and 17, had replied in the negative.

60. The Soviet delegation would therefore vote against draft resolution A/C.6/L.130.

61. Some delegations had tried to clarify what the International Law Commission was being asked to review. France, for example, in its amendment (A/C.6/L.133) to the United Kingdom draft resolution (A/C.6/L.130) had stated:

"The General Assembly,

Requests the Commission to review its Statute with the object of making recommendations to the sixth regular session of the Assembly concerning the organization of the Commission and especially concerning the methods most likely to ensure the continuity of its work."

62. That text was not sufficiently precise, as it allowed the International Law Commission to go beyond the questions dealt with in the first part of its Statute. If it were considered that that amendment related in substance only to the first part of the Statute entitled "Organization of the International Law Commission", then the review would affect the provisions concerning the term of office. There was no necessity to review that first part, however, having regard to article 10, which enabled the General Assembly to re-elect members of the International Law Commission.

63. The Soviet delegation was consequently unable to accept that amendment.

64. His delegation was also opposed to the joint draft resolution (A/C.6/L.132).

65. On the other hand, he agreed, as he had already stated, with the arguments of the United Kingdom representative regarding article 17. He considered that article unsatisfactory as it obliged the International Law Commission to spend too much time in considering whether or not it should accept tasks conferred upon it by organs other than the General Assembly. For that reason the delegation of the Soviet Union had submitted an amendment (A/C.6/L.135) to the United Kingdom draft resolution dealing only with the last paragraph of that draft resolution and leaving the earlier paragraphs unchanged. The text of that amendment was as follows:

"Requests the International Law Commission to review the terms of article 17 of its Statute with the object of rendering it impossible for any task (proposal, draft multilateral convention) to be assigned to the International Law Commission without a special decision of the General Assembly in each specific case, and to submit to the General Assembly at its sixth regular session recommendations concerning any revisions of the said article of the Commission's Statute which may be necessary."

66. He concluded by asking representatives of all delegations to consider the complicated situation in which the International Law Commission would find itself if the United Kingdom draft requesting the Commission to review the whole of its Statute were adopted.

67. Mr. STAVROPOULOS (Secretary of the Sixth Committee), in reply to the Greek representative, said that the figure mentioned by the Assistant Secretary-General in charge of the Legal Department was correct. It should be borne in mind that there were fifteen members of the International Law Commission; even if only twelve or thirteen members took part in the work of the Commission during a session, budgetary provision would nevertheless have to be made for fifteen members.

68. Mr. WIKBORG (Norway) said that he would deal with the various draft resolutions from the point of view of the importance of the work of the International Law Commission.

69. The Norwegian delegation appreciated the importance of facilitating the work of the International Law Commission. There was no doubt that the programme of work of that Commission could be made heavier by the various special studies which it was asked to undertake. Those special studies must not be allowed to keep it from pursuing the principal task conferred on it by its Statute.

70. The Norwegian delegation therefore warmly accepted the United Kingdom draft resolution (A/C.6/L.130) and would vote for it.

71. With regard to the Soviet amendment (A/C.6/L.135) to the United Kingdom draft resolution, he considered that the ideas in that draft were interesting and might be taken into account in reviewing the Statute of the International Law Commission. The

Norwegian delegation, however, did not think that the review of the Statute could be limited to article 17, as suggested by the Soviet delegation.

72. Furthermore, the Norwegian delegation would vote for any proposal which would provide that one-third of the members of the International Law Commission should be appointed to devote the whole of their time to the work of the Commission. Mr. Wikborg was, in fact, convinced that it would be necessary to take such a step to enable the International Law Commission to finish its work.

73. Finally, the Norwegian delegation would vote for the joint draft resolution submitted by Cuba, Chile, Egypt, Iran and Turkey (A/C.6/L.132) to extend the terms of office of the members of the International Law Commission from three years to five. Such a decision must be taken before the terms of the present members expired, so that the Commission might organize its present and future work with full knowledge of the situation.

74. He then turned to the emoluments of the members of the International Law Commission. His delegation preferred that the members of the Commission should be given a *per diem* allowance in conformity with article 13 of the Statute, and that the members—and not only the Rapporteurs—should also receive an annual sum. Such a solution would take into consideration the special qualifications of the members of the Commission and the nature of their work, and would also make it possible to refrain from making, as between members of the International Law Commission and other experts, a distinction in the matter of *per diem* allowances which were better avoided. The Norwegian delegation had submitted a draft resolution (A/C.6/L.136) to that effect:

“Members of the Commission shall be paid travel expenses and shall receive a *per diem* allowance. In addition, they shall receive a special allowance, the amount of which shall be determined by the General Assembly.”

75. He also agreed with the Belgian representative that the Sixth Committee itself should not determine the amount of the allowance; it should merely state a general principle, leaving it to the Chairmen of the Sixth and the Fifth Committees to consult together as to the procedure to be followed.

76. Mr. FITZMAURICE (United Kingdom) had some comments to present with regard to the various amendments submitted to his delegation's proposal (A/C.6/L.130) to request the International Law Commission to make recommendations for a review of its Statute. The representative of Pakistan had suggested that such a review should be limited to articles 10, 13 and 17; the representative of the Soviet Union to article 17, of the Statute. Having studied those suggestions, Mr. Fitzmaurice regretted that he could not accept them, since he felt that they narrowed down his proposal excessively. Moreover, the French amendment (A/C.6/L.133), which he had been prepared to accept at the 227th meeting, now appeared in its final form to present the same disadvantages as the proposals of the Pakistan and Soviet delegations. Accordingly, he preferred to maintain the text of his proposal as it stood.

77. The Soviet representative had appeared to reproach the delegation of the United Kingdom for not furnishing a sufficient number of arguments in support of its point of view. The United Kingdom representative recalled that his delegation had actually made a very full statement setting forth all its reasons for submitting its draft resolution.

78. Furthermore, he did not feel that the United Kingdom draft resolution would, if adopted, increase the work of the International Law Commission, as Mr. Morozov feared it would. It was precisely in order to avoid such difficulties that his delegation had suggested that the International Law Commission should itself study the question of review, since it had experience of the application of the Statute. Mr. Fitzmaurice also had good reason to believe that various members of the International Law Commission would be happy to undertake a review of the Statute. He was convinced that the Commission could complete the task in a very short time, and that the time devoted to it would be well spent.

79. Mr. HSU (China) supported the draft resolution submitted by the United Kingdom, but not from any doubt that the present Statute of the International Law Commission could ensure the continuity of the Commission's work. The Commission had, in fact, been established to work in continuity; and moreover there was every reason to believe that some of the present members would be chosen again at the next elections. In his opinion, the prolongation of the Commission's present term of office for another two years, was urgently needed to permit the Commission to complete the work which it had been forced to interrupt in order to carry out other special tasks entrusted to it.

80. The chief reason why the Chinese delegation favoured adoption of the United Kingdom proposal was that the proposal envisaged a general review of the Statute of the International Law Commission (in which respect it was preferable to the Soviet amendment, which called for too limited a review). Such a general review must be undertaken sooner or later, and the Commission itself was the body best qualified to make recommendations on the subject. In point of fact, the present Statute had been drawn up experimentally; and, apart from the duration of the terms of reference and the allowances to be paid to members, many other questions called for discussion in connexion with a review of the Statute. Examples were the distinction between the progressive development of international law and its codification; the question whether governments should be consulted before the Commission undertook the study of a given question, or during the course of such study; and the frequency of meetings.

81. In short, since a review of the Statute was necessary, it might well be made at once; and for that reason he recommended the adoption of the United Kingdom draft resolution.

82. Mr. ROBERTS (Union of South Africa) felt that the debate had brought out many highly interesting points of view, in particular, the opinion of the representative of the Soviet Union that special work should be rewarded by special remuneration, and the suggestion that a certain number of the members of the International Law Commission should devote their whole

time to the work of the Commission. Mr. Roberts also supported the proposal that the Commission should be instructed to review its own Statute.

83. Nevertheless, he felt that it would be premature to request the International Law Commission to make recommendations for a review of its Statute. The Statute was still in the experimental stage, and the Sixth Committee should allow more time to pass before undertaking a task for which it was not yet properly equipped. For that reason, he would vote against all the draft resolutions before the Committee. Nevertheless, it was clear that the discussions which had taken place in the Sixth Committee had been most useful and would undoubtedly aid the International Law Commission in preparing its recommendations when it should be in a position to do so.

84. The South African delegation thought, under the circumstances, that only one matter called for a resolution, namely paragraph 21 of the report. Mr. Roberts could not support any draft resolution fixing the exact amount of the allowance, since he felt that to do so was essentially a matter for the Fifth Committee. The Sixth Committee did not possess the information which would enable it to come to a decision. He would prefer that the Committee should limit itself to adopting a resolution recommending the amendment of article 13 of the Statute and enabling the Fifth Committee to increase the emoluments in question. Since the joint draft resolution (A/C.6/L.128) would have that effect, he would vote in favour of it.

85. Mr. COHEN (United States of America) said he would vote for the United Kingdom draft resolution, which he thought very satisfactorily drafted and likely to produce the desired changes.

86. The question of the term of office of the members of the International Law Commission would be more easily settled when the Sixth Committee was in possession of the Commission's report on amendments to its Statute; however, in order to facilitate immediately the work of the Commission, he would agree to the term of office of the present members being increased from three years to five.

87. The United States delegation considered that the allowances paid to the members of the International Law Commission were inadequate. He was in favour of a sum of thirty-five dollars a day, and he did not believe that rule 152 of the rules of procedure debarred the Sixth Committee from making a recommendation in that sense, which would then be communicated to the Fifth Committee. The most logical procedure, however, would be to ask the Fifth Committee to voice the views of the Sixth Committee, and the United States delegation would agree to the Sixth Committee taking upon itself the initiative of such a recommendation to the General Assembly only by way of exception, and without creating a precedent.

88. Mr. BUSTAMANTE (Ecuador) explained his delegation's views on the various draft resolutions and amendments. His delegation attached great importance to the work of the International Law Commission, and was ready to give support to any practical proposal likely to facilitate it.

89. With regard to the emoluments of the members of the International Law Commission, the members of the Sixth Committee appeared to agree that they should be increased; difficulties arose only in connexion with the procedure to be adopted. The delegation of Ecuador, for its part, considered that the Sixth Committee was fully entitled to recommend to the General Assembly that article 13 of the Statute should be revised; as the representatives of Iran and Greece had pointed out, rule 152 in no way debarred the Committee from so doing. Moreover, the eminence of the members of the International Law Commission must be borne in mind.

90. For those reasons, the delegation of Ecuador supported the joint draft resolution submitted by Cuba, Egypt, France, Iran, the United Kingdom and the United States of America (A./C.6/L.128).

91. As regards the amount of the allowance, the delegation of Ecuador would have been inclined to support the draft resolution of Cuba and Egypt (A/C.6/L.131); but, in view of the proposal just made by the Assistant Secretary-General in charge of the Legal Department, his delegation believed that it might be preferable to choose one of the solutions he had suggested.

92. The amendments (A/C.6/L.129 and A/C.6/L.134) submitted to the joint draft resolution (A/C.6/L.128) did not appear to him satisfactory, and unless their authors adduced convincing arguments, the delegation of Ecuador would be unable to support them.

93. As regards the question of the extension of the term of office of the members of the International Law Commission, his delegation recognized that it would be difficult to complete the important work taken in hand by the present members before their period of office had expired; but he shared the view that that situation might recur on the expiry of the supplementary period of two years. As certain of the suggestions made by various representatives in the course of the discussion had hinted, this question might be reconsidered and fresh proposals might be submitted, and he reserved the right to explain his position when the occasion arose. At the present stage of the discussion, the delegation of Ecuador wished to point out that under article 10 of the Statute, the General Assembly could always re-elect members of the International Law Commission who had initiated important projects; and that being so, it was not necessary to extend the term of office of such members. The Yugoslav representative's proposal to have recourse to the solution offered by the last sentence of article 13, paragraph 3, of the Statute of the International Court of Justice was a useful one, and a system of staggered elections might also be considered.

94. With regard to the question of the review of the Commission's Statute, he supported the United Kingdom draft resolution (A/C.6/L.130). He did not share the fears of a number of representatives that it would be overburdening the International Law Commission's already heavy programme of work to assign the study of this question to them; it would not, he believed, take the Commission long to submit concrete recommendations likely to improve its organization. If, moreover, the Sixth Committee took a decision on the question of emoluments and the term of office of the members, the International Law Commission would not

need to consider these questions when reviewing its Statute.

95. Mr. MEJIA PALACIO (Colombia) pointed out an error of translation in the Spanish text of document A/C.6/L.135: in the penultimate line of the operative part, the words "of that Statute" should be replaced by the words "of that article".

96. The delegation of Colombia supported the United Kingdom draft resolution (A/C.6/L.130); for the International Law Commission was clearly best qualified to detect the defects in its Statute and remedy them, and it would be wrong to restrict the scope of the study which the Commission would be requested to make.

97. He would also vote in favour of the draft resolution (A/C.6/L.132), which called for the term of office of the present members to be extended from three years to five.

98. He would likewise vote for the draft resolution (A/C.6/L.128), which provided for increasing the emoluments of members of the Commission, and for the draft resolution (A/C.6/L.131), which was its logical corollary. In conclusion, he considered that it was for the Sixth Committee to recommend the amount of the allowance; he believed that, as the representative of Israel had remarked, the delegations represented in the Sixth Committee would adopt the same attitude in the Fifth Committee and in the General Assembly.

99. Mr. PETREN (Sweden) asked why the question of the regime of territorial waters had not yet been studied, as recommended in General Assembly resolution 374 (IV). That question was of great importance to his country, and while he would not make any formal proposal, his delegation hoped that the International Law Commission would begin a study of it at the earliest possible date.

100. The delegation of Sweden was in favour of a substantial increase in the emoluments of members of the International Law Commission, and would support the joint draft resolution (A/C.6/L.128), with the

amendment submitted by Norway (A/C.6/L.136). In that connexion, however, he believed that the text of the amendment should be clarified so as to provide clearly for two allowances, that is, an allowance covering general expenses and allowance for work done.

101. The delegation of Sweden would also vote for the United Kingdom draft resolution (A/C.6/L.130).

102. Mr. INGLES (Philippines), replying to the representative of Belgium, said that his delegation's amendment (A/C.6/L.129) to the joint draft resolution (A/C.6/L.128) was intended to leave it to the General Assembly to decide the cases in which the members of the International Law Commission should receive either a daily allowance or an honorarium, each case being separately studied. In coming to a decision, the Assembly could take into account the special tasks assigned to certain members of the Commission, the time they were required to devote to those tasks, and so on.

103. Mr. SPIROPOULOS (Greece), replying to the representative of Sweden, explained that the International Law Commission had not appointed a Rapporteur to study the question of the regime of territorial waters because it had not believed that he would be able to complete a report on so difficult a subject before the expiry of his term of office.

104. Mr. PETREN (Sweden) thanked the representative of Greece for his explanation.

105. The CHAIRMAN proposed that the Sixth Committee should proceed to vote on certain of the draft resolutions submitted to it.

106. Mr. CAÑAS FLORES (Chile), supported by Mr. SPIROPOULOS (Greece), was of the opinion that all those draft resolutions and amendments should be voted on; but as it was already late, he proposed that the meeting should adjourn.

It was so decided.

The meeting rose at 6 p.m.