



**C O N T E N T S**

	<i>Page</i>
Agenda item 50: Report of the International Law Commission on the work of its seventh session ( <i>continued</i> ).....	49

*Chairman: Mr. Manfred LACHS (Poland).*

**AGENDA ITEM 50**

**Report of the International Law Commission on  
the work of its seventh session (A/2934, A/C.6/  
L.357 (A/C.6/L.357/Rev.1) (*continued*):**

1. The CHAIRMAN stated that the Sixth Committee had finished considering the question of the publication of the International Law Commission's documents, which was the subject of chapter IV, section V, of the Commission's report (A/2934). He invited the members of the Committee to comment on the other sections of this chapter.
2. Mr. SEPULVEDA (Chile) welcomed the terms of the draft resolution which the Commission had adopted in paragraph 36 of its report and which was calculated to strengthen its ties with those inter-American bodies concerned with the development and codification of international law.
3. As early as 1930, at the First Conference for the Codification of International Law, held at The Hague, the need for co-ordination between the codifying work of the League of Nations and that of the Pan-American Conferences had been recognized in a motion which was adopted, incidentally, on the proposal of a Chilean representative. Similar views had been expressed in resolution LXX of the Seventh International Conference of American States, held at Montevideo in 1933. Authority for the proposed action could be found, on the one hand, in article 61 of the Charter of the Organization of American States, adopted at the Ninth Inter-American Conference at Bogotá in 1948, which provided that the organs of the Organization should establish co-operative relations with the corresponding bodies of the United Nations, and, on the other hand, as far as the Commission itself was concerned, in article 26, paragraph 4, of its Statute, which referred to the advisability of consultation with intergovernmental organizations concerned with the codification of international law—the appropriate organization on the American continent being the Organization of American States. The need for closer contact between bodies concerned with codification had also been recognized by the Inter-American Bar Association, a non-governmental body.
4. It was most important that arrangements should be made for continuing collaboration between the Commis-

sion and the Inter-American Council of Jurists at the secretariat level and for the regular exchange of reports, records and proposals. He did not, however, think that the secretary of each body should attend the meetings of the other in the capacity of an observer. Such an arrangement, quite apart from the fact that it would not enable the secretaries to take part in the debates, was contrary to the recent decision of the Council of the Organization of American States not to be represented at international meetings on the ground that it might at times prove embarrassing for government representatives to have to speak for a regional body as well as their own country. He drew attention to the parallel of collaboration at the secretariat level in economic matters between the Economic Commission for Latin America and the Inter-American Economic and Social Council, which had proved successful. It was hardly necessary to point out that collaboration in legal matters should be a matter of selection and assimilation and never imply precedence of one body over the other.

5. The third meeting of the Inter-American Council of Jurists at Mexico City in January 1956 would provide an opportunity of translating the desire for closer co-operation into practice. Such contacts would enable the United Nations to take due account of regional theory and practice in the drafting of rules that were intended to become universally applicable.

6. Mr. CASTANEDA (Mexico) said that the draft resolution in paragraph 36 of the Commission's report was consistent with the desire of the American States for closer co-operation between the United Nations and inter-American bodies in legal questions. As the Inter-American Council of Jurists would be meeting shortly, he hoped that prompt action would be taken to give effect to the decision.

7. Mr. MIRANDE (Argentina) said that the draft resolution contained in paragraph 36 of the Commission's report was a constructive proposal which would further the achievement of the common aims of the United Nations and the Organization of American States. He agreed with the Chilean representative that such collaboration would contribute to a better understanding of regional theory and practice.

8. Mr. MAURTUA (Peru) said that, while the parallel movements towards codification of international law within the United Nations and on the American continent should not be merged, they should be closely linked. The codification of international law at the regional level had been actively pursued on the American continent for over half a century. The Second International Conference of American States, held at Mexico City in 1901-1902, had considered the possibility of framing a series of international codes, a proposal subsequently abandoned in favour of the more realistic solution of progressive codification. Landmarks in the movement had been the adoption of the Montevideo

Rules in 1927 by the American Institute of International Law, the establishment of a committee of international law experts at the Seventh International Conference of American States held at Montevideo in 1933, and the creation of the Inter-American Council of Jurists (with its Inter-American Juridical Committee) within the framework of the Organization of American States at the Ninth International Conference of American States at Bogotá in 1948. Efforts at codification had met with considerable success on the American continent, as was evidenced by the multilateral conventions prepared by successive Inter-American Conferences.

9. While the United Nations had not been able to go so far as the Organization of American States towards codifying international law, there were certain matters which were being dealt with on parallel lines by both organizations. The past dispersion of effort obviously should not continue, and for that reason he welcomed the proposal for an active exchange of views, with the understanding that neither the International Law Commission nor the Inter-American Council of Jurists would try to impose their views on each other. On the other hand, he thought that the rather timid arrangement of exchanging observers was unlikely to produce effective collaboration; he regarded it as an acceptable minimum rather than a fully satisfactory solution.

10. Mr. CARPIO (Philippines) said that, as the representative of a country whose civilization, culture and legal system might be said to be a synthesis of East and West, he approved unconditionally of the idea that the Commission should co-operate with an American body of lawyers and hoped that the practice of consultation would gradually spread to all other regions.

11. In conformity with the terms of General Assembly resolution 174 (II), he said that the legal systems born of the merging of civilizations in Asia should be represented in the bodies which were evolving rules of international law.

12. Mr. CARBONNIER (Sweden) recalled that in 1949 the subject of diplomatic intercourse and immunities had first been included by the International Law Commission among the list of subjects selected for codification (A/925, para. 16); it had subsequently been classified as a priority topic by General Assembly resolution 685 (VII). Pursuant to that resolution, the Commission had appointed a Special Rapporteur. His report (A/CN.4/91) had been submitted to the Commission at its seventh session but had not yet been discussed.

13. While it would be premature, at the moment, to discuss the Special Rapporteur's report, the Committee should bear in mind the urgent need of revising the classification of diplomatic agents. The existing classification, dating back to the Congress of Vienna (1815) and the Congress of Aix-la-Chapelle (1818), had been criticized as unrealistic even before the turn of the century. The subject had been analysed in an extensive report submitted in 1927 by a sub-committee of the League of Nations Committee of Experts for the Progressive Codification of International Law. It had then been pointed out that the practice of placing ambassadors in a higher category than ministers had outlived its purpose. The recommendations of that report had, unfortunately, never been put into effect. In view of the growing tendency on the part of States to appoint ambassadors, the old distinction between embassies and legations was no longer justified. The resulting situation caused irritation and inconvenience to a number of

States. The remaining anomalies should therefore be eliminated.

14. The new classification recommended in the Special Rapporteur's report, whereby ambassadors and ministers would be placed in the same category, should be adopted as soon as possible. It was to be hoped the International Law Commission would, at its next session, consider the Special Rapporteur's report and submit to the General Assembly a set of proposals designed to dispose of the classification question. There might, indeed, be some advantage in having that question treated as a wholly separate item.

15. Mr. SPIROPOULOS (Chairman of the International Law Commission) promised that he would bring the Swedish representative's views to the attention of the International Law Commission.

16. Mr. STABELL (Norway) said that the chapters of the International Law Commission's report (A/2934) which dealt with maritime matters were a splendid example of scholarly work. Whatever might be the outcome when those topics came up for discussion at the General Assembly's eleventh session, that work constituted a major contribution to the development of international law.

17. The discussion of those questions would doubtless be prolonged and controversial. He hoped, therefore, that the Commission's report on the work of its eighth session would be available to Governments at the earliest opportunity.

18. Referring to the subject of diplomatic intercourse and immunities, he said that an item deferred from the seventh session would doubtless be discussed without fail at the eighth session. The question of reclassification, mentioned by the Swedish representative, did not involve any legal considerations of special complexity. The existing system of classification had sometimes caused inconvenience and a speedy remedy of the situation would be welcomed by everyone.

19. Mr. LIANG (Secretary of the Committee) said that, although the printed text of the International Law Commission's report was not, as a rule, ready until September, a mimeographed version was available soon after the end of the Commission's session. In 1956, therefore, the report on the work of the Commission's eighth session should be circulated to every Member State well before the end of July.

20. The CHAIRMAN invited further debate on the United States draft resolution (A/C.6/L.357), concerning the question of amendments to the Statute of the International Law Commission, which had been introduced at the last meeting.

21. Mr. BROKENBURR (United States of America) said that after further consideration of the question, his delegation could not agree with the Colombian representative's view, expressed at the previous meeting, that the United States draft resolution was unacceptable because it referred, in the first paragraph of its preamble, to a decision not yet taken by the Assembly. There was no need to amend the draft resolution on that score or to postpone consideration of it. It was perfectly normal practice for the Committee, having recommended a certain course of action to the Assembly, to adopt further proposals in the light of its initial decision. If the Assembly endorsed the proposed amendment of article 10 of the Commission's Statute, the draft resolution submitted by his delegation would prove a useful adjunct to that decision. Should the Assembly reject the amend-

ment, the draft resolution would be pointless and the proposal would be automatically abandoned.

22. Since, however, the time did not appear to be ripe for an amendment of article 11 of the Commission's Statute, he wished to offer a revised draft (A/C.6/L.357/Rev.1), the object of which was simply to place the question of amending that article on the provisional agenda of the Assembly's eleventh session.

23. Mr. VALLAT (United Kingdom) hoped that the revised draft resolution would successfully dispose of the procedural objections which had been raised and that it would receive the general support of the Committee.

24. Mr. WINKLER (Czechoslovakia) said that the revised draft resolution (A/C.6/L.357/Rev.1) largely disposed of the procedural difficulties raised by the original United States text. Nevertheless, the suggestion that the question of amending article 11 of the Commission's Statute should be included in the provisional agenda of the General Assembly's eleventh session was not wholly satisfactory. Before deciding to amend the statute of any United Nations organ, it was necessary and proper to request that organ to state its views. That was especially true in the case of the International Law Commission, which enjoyed great prestige and was the body best qualified to judge whether an amendment was necessary. The idea of amending the Commission's Statute without first hearing the Commission's views seemed to indicate a somewhat unwarranted lack of respect.

25. Whereas the Commission had expressly recommended an amendment to article 10 of its Statute, it had made no reference whatsoever to article 11. If the General Assembly wished to consider the question, it should first request the Commission's comments.

26. Mr. TREJOS (Costa Rica) said that as a proposal for extending the term of office of the Commission's members had been adopted in Committee, the question of amending article 11 of the Statute clearly had to be considered. He consequently approved of the general purport of the revised draft resolution (A/C.6/L.357/Rev.1).

27. Strictly speaking, nothing prevented the Committee from recommending an amendment without first hearing the Commission's views. As a matter of courtesy, however, its views should certainly be requested, especially as they would doubtless be of interest. The United States delegation might perhaps be prepared to amend its revised draft resolution by inserting a middle paragraph inviting the Commission to communicate its views concerning the filling of casual vacancies in its membership. An amendment to that effect should meet the Czechoslovak representative's objections.

28. Mr. MIRAS (Turkey) said that the United States proposal was a logical consequence of the Committee's earlier decision regarding the terms of office of the Commission's members. Article 11 of the Statute had originally been drafted in the belief that a casual vacancy would remain unfilled for only a relatively short time. Since the members would henceforth be elected for five years, article 11 should be reconsidered.

29. Mr. HSU (China) also supported the revised United States draft. The filling of casual vacancies on the Commission now involved certain political considerations and was no longer a purely administrative

question. The wording of article 11 of the Statute consequently required revision.

30. Although it was not absolutely essential for the Committee to request the International Law Commission's views on the question, he would willingly support any amendment suggesting such a procedure.

31. Mr. CARPIO (Philippines) said that the assumption underlying the preamble to the United States revised draft resolution (A/C.6/L.357/Rev.1) was patently that the recommended amendment of article 10 of the Commission's Statute would be approved by the Assembly. If that assumption proved wrong, the United States draft would lose its *raison d'être*.

32. He suggested that the preamble should be reworded so as to refer to paragraphs 27 and 28 of the International Law Commission's report (A/2934). The resolution could then go on to recommend, on the basis of those paragraphs, that the question of amending article 11 of the Commission's Statute should be included in the provisional agenda of the eleventh regular session of the General Assembly.

33. If redrafted on those lines, the United States text would still have some meaning even if the proposed amendment to article 10 were not approved by the General Assembly. Moreover, the suggested alteration would also meet to some extent the objection put forward by the Czechoslovak representative, for the suggested examination of the question of amending article 11 would then appear as a consequence of the amendment of article 10—an amendment which had been suggested by the International Law Commission itself.

34. Lastly, he agreed with the Costa Rican representative that the Commission itself should be consulted.

35. Mr. SALAMANCA (Bolivia) said many members of the International Law Commission, including himself, thought that article 11 of the Commission's Statute should be amended so that the Commission would not in the future have to choose new members by co-optation to fill casual vacancies. For that reason, his delegation had been in full agreement with the original United States draft resolution (A/C.6/L.357).

36. The revised United States draft resolution (A/C.6/L.357/Rev.1) merely asked that the question of amending that article should be placed on the provisional agenda of the eleventh session of the General Assembly. But that question could be placed on the provisional agenda of the eleventh session at the request of any delegation, whether the United States revised draft were adopted or not.

37. The International Law Commission, for its part, was always free to consider the question of the possible amendment of article 11 of its Statute and to make suggestions to the General Assembly. Consequently, it seemed hardly necessary expressly, to invite the International Law Commission to give its opinion to the General Assembly on that question.

38. Mr. CORTINA (Cuba) recalled the procedural difficulties which had arisen at the previous meeting and expressed the opinion that the revised draft resolution (A/C.6/L.357/Rev.1) went a long way towards solving those difficulties. Having decided to recommend to the General Assembly the amendment of article 10 of the Commission's Statute, the Sixth Committee would be acting quite logically in proposing the study of the related question of amending article 11. Should the Gen-

eral Assembly not amend article 10 of the Statute, it would of course not consider the proposal concerning article 11.

39. The preamble to the United States revised draft resolution had to be retained, because it showed that that proposal depended on the amendment to article 10.

40. With regard to the operative part of the draft resolution, he agreed with the views expressed by the Costa Rican and Czechoslovak delegations on the propriety of requesting the opinion of the International Law Commission.

41. Mr. SPIROPOULOS (Chairman of the International Law Commission) said that when the Statute had first been drafted he himself had sponsored article 11, because he had felt that a Commission whose members were elected for a term of only three years might not be able to wait until the General Assembly had filled any casual vacancies occurring after the election. But now that it had been agreed to extend that term to five years, it was desirable to reconsider article 11. The Commission had not considered the possible repercussions of an extension of the term of office, but it was greatly concerned about the procedure for filling casual vacancies occurring after elections. The Commission had had seven years' experience of that problem and several members (including himself) took the view that casual vacancies should be filled, not by the Commission, but by the General Assembly.

42. He agreed with the Bolivian representative that whatever action the Sixth Committee took on the United States revised draft resolution (A/C.6/L.357/Rev.1), it would still be necessary for a delegation to propose that the question of amending article 11 should be placed on the provisional agenda of the eleventh session. Even then, the General Assembly would still be free to decide whether to place the item on its agenda or not.

43. With regard to the suggestion that the Commission itself should be consulted on the question of amending article 11, he said that as Chairman of the Commission he might undertake to draw its members' attention to the discussion in the Sixth Committee. The Commission would then decide whether it wished to state its position formally on the question. It was conceivable that the Commission might be reluctant to express a specific opinion on so delicate a matter.

44. Mr. SEPULVEDA (Chile) supported the United States revised draft resolution (A/C.6/L.357/Rev.1). In view of the remarks of the Chairman of the International Law Commission, he felt that the revised draft could well be adopted as it stood.

45. Mr. NIKOLAYEV (Union of Soviet Socialist Republics) said it was generally agreed that the normal procedure would be to consult the International Law Commission on the question of amending article 11 of its Statute. In the case of the amendment of article 10 of the Statute the Commission had first expressed its views, and he saw no reason for departing from the

normal procedure in connexion with the suggested amendment of article 11.

46. Mr. AMADO (Brazil) agreed that the International Law Commission should be consulted on the question of amending article 11 of its Statute, for such an amendment might have the effect of depriving the Commission of one of its prerogatives.

47. He felt sure that many of its members would be glad to see the Commission relieved of the responsibility for filling casual vacancies.

48. Mr. SPIROPOULOS (Chairman of the International Law Commission) said that whatever might be the outcome of the discussion, he would still fulfil his promise to draw the Commission's attention to the debate in the Sixth Committee on the question of amending article 11 and invite the Commission to study the question and, if it saw fit, to communicate its views to the General Assembly thereon.

49. Mr. BROKENBURR (United States of America) said his delegation, after due consideration of the arguments put forward in support of the suggestion that the International Law Commission should be invited to express its views on the question of amending article 11 of its Statute, had come to the conclusion that it would be inadvisable to put the Commission under the obligation of giving such an opinion. It would be derogatory to the Commission's prestige to compel it to express an opinion on that question. It had been suggested that it would be discourteous to amend article 11 without consulting the Commission, but it would be even more discourteous to compel it to express an opinion on such a delicate matter. The Commission had given its views on the question of the extension of term of office of its members to five years; but it would be quite another matter to ask its members to say whether they wished to be relieved of the responsibility of choosing new members by co-optation in case of casual vacancies.

50. The United States delegation could not accept the Philippine representative's suggested amendment of the preamble to the United States revised draft resolution (A/C.6/L.357/Rev.1). The possibility that the General Assembly might perhaps not adopt the proposed amendment to article 10 of the Statute was a very remote one. Should the Assembly nevertheless decide not to amend article 10, then, in that hypothetical case, the statement in the preamble to the revised draft would, of course, no longer be accurate and the question of amending article 11 would *ipso facto* no longer have any relevance. Consequently, there was no reason why the preamble should be modified.

51. The United States revised draft resolution (A/C.6/L.357/Rev.1) was a compromise. A compromise implied concessions by all the parties holding conflicting views. The United States delegation had gone as far as it could and was not prepared to accept any change in the text of its revised draft resolution.

The meeting rose at 1.20 p.m.