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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.6/348, A/C.6/L.351, A/C.6/L.353) (*continued*)

1. The CHAIRMAN said that two draft resolutions, that of the United Kingdom (A/C.6/L.351) and that of the Philippines (A/C.6/L.353), were before the Committee.
2. He had the impression that the preamble of the Philippine draft resolution did not make the purpose of the draft entirely clear. If his impression was correct, the author might specify that the subject matter of the draft was the International Law Commission's recommendation concerning the term of office of its members.
3. Mr. CARPIO (Philippines) replied that the preamble of his draft resolution reproduced the first paragraph of the preamble of the United Kingdom draft resolution. The meaning was entirely clear, for the recommendation made by the Commission in paragraphs 27 and 28 of its report (A/2934) related solely to its members' term of office.
4. The Philippine draft resolution was couched in rather general terms in order to enable delegations to support it without expressing an opinion on the substance of the matter. The International Law Commission itself would have to re-examine the entire subject in the light of the present debate and to consider, for example, whether article 11 of its Statute should likewise be amended.
5. In view of the latitude allowed in rule 132 of the rules of procedure, he requested that his delegation's draft resolution, because of its nature, should be voted upon first, although it was chronologically later than the United Kingdom draft.
6. Mr. SPIROPOULOS (Chairman of the International Law Commission) referred to paragraph 27 of the Commission's report which stated that the proposed amendment of article 10 of its Statute should take effect from 1 January 1957. In the Philippine draft resolution, the Commission was asked to study the matter again. If, at its eleventh session, the General Assembly should elect the Commission's members before having taken a decision on the amendment, the new members

would then be elected under the existing article 10 and their term of office would be three years.

7. Mr. MAURTUA (Peru) also thought that the Philippine draft resolution should be put to the vote first. As the proposed amendment did not command unanimous agreement, that draft seemed to offer a satisfactory compromise. Actually, it did not set aside the United Kingdom proposal, but merely postponed the General Assembly's decision in order to enable the Commission to study the question fully.

8. Mr. BROKENBURR (United States of America) said that, as a general consensus had not emerged, it would be preferable to postpone decision until the following session. In that way Member States and the Commission would have an opportunity of reviewing the entire question in the light of the various suggestions.

9. His delegation would vote for the Philippine draft resolution (A/C.6/L.353), with the thought that the General Assembly should consider the item at the beginning of its next session so as to be able to reach a decision before electing the members of the International Law Commission.

10. Mr. HOLMBACK (Sweden) agreed with the United Kingdom representative and the Chairman of the International Law Commission that the decision should be taken at the present session, as the elections would be held in 1956. His delegation was therefore unable to support the Philippine draft resolution.

11. Mr. VALLAT (United Kingdom) said that the United Kingdom draft resolution (A/C.6/L.351) had been before the Committee for a week. In accordance with the usual procedure, it should be voted upon first, particularly as the Philippine draft resolution was not procedural, but contained a formal request to the Commission. Moreover, the Philippine text seemed to be inconsistent: the preamble spoke of "having regard to the recommendation of the International Law Commission", while under the operative part consideration of that recommendation was to be postponed.

12. If the United Kingdom draft resolution were adopted, the Commission would still be able to consider whether casual vacancies should be filled by the General Assembly. There was no certainty that the General Assembly would be able to give priority at its eleventh session to the question of extending the term of office of the Commission's members, and it was desirable that Governments should know where they stood as soon as possible. His delegation, therefore, felt that its own draft resolution, which dealt with the length of the term of office, should be the first to be voted upon.

13. Mr. SEN (India) agreed with the Chairman that the Philippine draft should perhaps be amended for the sake of clarity, but he wished to comment on the substance of the matter.

14. He said that the International Law Commission's proposal that the term of office should be five years was

not the result of a whim; the Commission had learned from several years' experience that such an extension was necessary for the continuity of its work. There was therefore no point in asking the Commission to study the matter further in the light of the present discussion. It was for the Sixth Committee and the General Assembly to decide whether the extension of the term of office conflicted with the principle of equitable geographical distribution, and they should take that decision now. The Philippine draft resolution might set a dangerous precedent, for technical bodies should not be asked to express opinions on purely political questions.

15. Mr. AMADO (Brazil) said he would vote for the United Kingdom draft resolution, for every effort should be made to ensure the continuity of the International Law Commission's work. To refer the question back to the Commission would be to cast a slur on the competence of its members. As its recommendations regarding the printing of its documents showed, the Commission was keenly aware of its responsibilities towards the General Assembly. Since the Commission felt that a five-year term of office was necessary, it was for the General Assembly to ensure the proper representation of the main legal systems of the world.

16. Mr. JAMIESON (Australia) said that the Committee's resolutions had to be confirmed by the General Assembly. If the question was deferred until the following session, the General Assembly might not be able to take a decision before electing the members of the Commission. The Philippine draft resolution was therefore not procedural, for its adoption might affect the composition of the International Law Commission for several years.

17. Mr. MEMON (Pakistan) recalled that in its resolution 484 (V) the General Assembly had requested the International Law Commission to review its Statute in the light of experience. The Commission had twice considered the question from every point of view; to refer the question back to it for the third time would be an affront to the competence of its members. The Commission was a technical body; it was for the General Assembly to see to it that the principle of geographical distribution was properly observed. The Commission's sessions were so short that it was barely able to complete its work; to add another item to its agenda would therefore be ill-advised.

18. Postponement until the eleventh session would be useless, for Governments had had ample time in which to study the International Law Commission's report. His delegation would therefore vote for the United Kingdom draft resolution (A/C.6/L.351).

19. Mr. CONTRERAS (Chile) said that his delegation attached great importance to the principle of equitable geographical distribution, laid down in article 8 of the Commission's Statute. The adoption of the United Kingdom draft resolution might infringe that principle.

20. The Philippine draft resolution (A/C.6/L.353) was conciliatory and had the great advantage of taking account of all the comments made during the debate. For those reasons his delegation would vote for the Philippine draft resolution.

21. Mr. ALFONSIN (Uruguay) said that the extension of the term of office of the Commission's members would certainly affect the application of the principle of equitable geographical distribution. The question required further study, and such a study would be made if

the Philippine draft resolution was adopted. The Philippine representative's request that his text should be voted on first should be granted. If the Committee adopted that text, the question would be deferred until the eleventh session of the General Assembly. If the Committee rejected the draft, it could then vote on the United Kingdom draft resolution. The reverse order would be less logical. In fact, if the Committee were asked to vote on the United Kingdom draft resolution first, some delegations, which had not yet been able to form a considered opinion, would be compelled to vote against that text.

22. He therefore supported both the Philippine draft resolution and the request that it should be put to the vote first.

23. Mr. COLLINS (Liberia) said that the General Assembly had full confidence in the International Law Commission and in the competence of its members. Still, it was not certain that extending the term of office of the Commission's members to five years was the best way of ensuring the continuity of the Commission's work. In any case, it was an important decision which should not be taken until all factors had been weighed. The decision ought to be a unanimous one, and that was not possible at present.

24. For those reasons, his delegation would support the Philippine draft resolution.

25. Mr. CARPIO (Philippines) replied to the Indian representative's argument against referring the question back to the International Law Commission, apparently based on the ground that a political decision was involved for which the General Assembly alone was competent. But as he (Mr. Carpio) had mentioned before, other reasons made it advisable to postpone the matter until the next session of the General Assembly. Numerous related problems were involved, such as, for example, the possible amendment of article 11 and the staggered replacement of the Commission's members. Moreover, the question should be studied in its entirety. The Philippine draft resolution merely requested the International Law Commission to submit to the General Assembly such recommendations as it might deem proper. Surely it was not wrong to ask the Commission for its opinion on related questions, in order that the Committee might benefit by the experience of the Commission's members. Besides, it would be most regrettable if an immediate decision allowed the slightest doubt to subsist concerning the intentions of the present members of the International Law Commission. All those considerations were taken into account in the Philippine draft resolution.

26. Mr. TABIBI (Afghanistan) said that most of the members of the Committee had spoken highly of the International Law Commission's work and supported the extension of the term of office of the Commission's members. The United Kingdom draft resolution (A/C.6/L.351) therefore reflected the opinion of the majority. It was obvious that the recommendation to extend the term of office had not been made for the benefit of the present members of the Commission, since the amendment would not take effect until 1957. If certain members were re-elected, the sole reason would be their ability as international jurists. His delegation would support the United Kingdom draft resolution.

27. However, if that draft failed to obtain the required majority, it would not vote against the Philippine draft resolution, in order not to obstruct the wishes of those

who considered that the question should be studied further.

28. Mr. MAURTUA (Peru) hoped that the Philippine draft resolution would be put to the vote first. Under the circumstances, rule 132 of the Assembly's rules of procedure, which was not mandatory in any case, should be overruled by logic. Paragraph 2 of the operative part of the Philippine draft resolution did not conflict with but supplemented the chronologically earlier draft resolution before the Committee. The whole question was not as simple as it might appear at first sight and no decision should be taken that would rule out a fuller study of all the implications. The Sixth Committee should not overlook the principle of equitable geographical distribution. Moreover, it was not certain that the extension of the term of office of the Commission's members would be more conducive to continuity in its work. Continuity was the product, rather, of a well-defined and consistently observed policy concerning the work. The question of the rapporteurs was in fact secondary. As the Commission worked as a body, it should, above all, develop a collective legal conscience by means of sound working principles.

29. The Peruvian delegation considered that the Philippine draft resolution (A/C.6/L.353) should be voted on first, and it would vote for that text.

30. Mr. FARTACHE (Iran) agreed that the question of postponement should be put to the vote first.

31. Mr. LOPEZ VILLAMIL (Honduras) said the principle of equitable geographical distribution was an important one. The members of the International Law Commission should, of course, be acknowledged authorities in international law, but that condition would not be any better fulfilled by an extension of their term of office. The debate had revealed some profound differences of opinion. The proposal for holding over the item until the eleventh session of the Assembly in no way meant that the work of the International Law Commission was not appreciated at its proper value. On the contrary, the majority of the members of the Sixth Committee had rightly paid a tribute to the outstanding work done by that body. Nevertheless, the important question at issue required fuller consideration.

32. For that reason his delegation would therefore support the Philippine draft resolution and, if that text were rejected, would vote against the United Kingdom draft resolution.

33. Mr. CASTANEDA (Mexico) said he would vote for the United Kingdom draft resolution. The arguments in favour of postponement had not convinced him. The Philippine draft resolution should not be put to the vote first, and if it were he would vote against it.

34. The CHAIRMAN put to the vote the Philippine representative's proposal that the Committee should vote first on the draft resolution submitted by his delegation (A/C.6/L.353).

The proposal was rejected by 28 votes to 20, with 5 abstentions.

35. The CHAIRMAN put the United Kingdom draft resolution (A/C.6/L.351) to the vote.

The draft resolution was adopted by 33 votes to 11, with 8 abstentions.

36. Mr. SERRANO GARCIA (El Salvador) and Mr. TREJOS (Costa Rica) pointed out that the word "*umente*" in the second paragraph of the preamble of the Spanish text of the United Kingdom draft resolution (A/C.6/L.351) should be replaced by an expression more in keeping with the original.

37. The CHAIRMAN invited debate on the question of the publication of documents of the International Law Commission (A/2934, para. 35).

38. Mr. TAMMES (Netherlands) said that his delegation supported the principle of the publication, for the cogent reasons given in the preamble to the resolution adopted by the International Law Commission (A/2934, para. 35). The Commission's documents were so valuable that they should be readily accessible, so that they could exert their full influence on the development of international law.

39. So far as the form of the publication was concerned, he referred to the recommendations made by the Commission at its second session (A/1316, para. 91), especially those relating to the *Juridical Yearbook*. Those suggestions might be reconsidered in the light of the debate in Committee and of the comments of the Governments of Member States.

40. Mr. HOLMBACK (Sweden) asked the Chairman of the International Law Commission for his views concerning the form which the publication should take. If separate volumes were contemplated, the Sixth Committee could study the question during the current session. If, however, the publication was to be part of a United Nations *Juridical Yearbook*, the preparation of which had not yet been decided upon, consideration of the subject should be postponed.

41. Mr. SPIROPOULOS (Chairman of the International Law Commission) said that the Commission would like to see the principle of publication adopted, but had not expressed an opinion on the exacting details. A separate publication, in the form of a *Yearbook* of the International Law Commission, seemed to be preferable. Such a volume, which would be a more accessible reference work, would be more likely to enhance the prestige of the Commission.

42. Mr. LIANG (Secretary of the Committee) said that, from the beginning, the publication of the Commission's documents had been thought of as something apart from the publication of the United Nations *Juridical Yearbook*. Besides, a large part of the legal documents of the United Nations was already being published, and the value of the documents eventually to be included in the *Yearbook* might not justify the high cost of such a volume.

43. After an exchange of views concerning the financial implications of the various forms of publication by Mr. GABRE-EGZY (Ethiopia), Mr. MEMON (Pakistan), Mr. VALLAT (United Kingdom), Mr. BROKENBURR (United States of America), Mr. ALFONSIN (Uruguay), and the Secretary of the Committee, the CHAIRMAN said that the Secretariat would, as soon as possible, supply fuller particulars concerning all the financial implications of the various forms of publication considered and estimates of the receipts from sales to the public.

44. Mr. SPIROPOULOS (Chairman of the International Law Commission) said that the publication, to be truly useful, should comprise all the documents which had been prepared ever since the Commission had been instituted. The high cost of such a compilation would be justified because it would represent the first systematic codification of international law.

45. Mr. HOLMBACK (Sweden) said that what mattered was that the documents of the Commission were published. They would be consulted mainly by jurists who all knew English; perhaps, therefore, the cost of

publication might be reduced if the documents were published in English only.

46. Mr. NIKOLAYEV (Union of Soviet Socialist Republics) said that, while he would not touch upon the substance of the question for the time being, he was surprised to note that the Secretary-General had not provided in his report (A/C.6/348) for the publica-

tion of the Commission's documents in Russian. He asked that the possibility of publication in Russian should be taken into account in the budgetary estimates.

47. Mr. HSU (China) expressed the same wish with regard to the possible publication of the Commission's documents in Chinese.

The meeting rose at 6.5 p.m.