



C O N T E N T S

Agenda item 50:

Report of the International Law Commission on the work
of its seventh session (*continued*)..... 13

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.351) (*continued*)**

1. Mr. ROBINSON (Israel) said that, although experience showed that in most cases the special rapporteurs of the International Law Commission were unable to complete their work in three years, it also showed that to extend their term of office to five years would not solve the problem. Under General Assembly resolution 486 (V), the term of office of members of the Commission elected on 3 November 1948 had been extended by two years. Nevertheless, several reports were still in preparation at the end of the five-year period. That meant that a five-year term would not automatically result in the completion of studies undertaken during the period. Moreover, all those who had acted as special rapporteurs in 1953 had been re-elected and had thus been able to continue their work. The elections, therefore, had caused no break in the drafting of the reports. Lastly, in the few cases where a new special rapporteur had been asked to take over a study already begun, that had been done for purely personal reasons and not because his predecessor's term of office had expired.

2. He did not think that the reasons adduced proved that a five-year term of office would ensure greater stability than a term of three years.

3. He was not opposed in principle to the proposed change, but more convincing arguments than those so far put forward would be needed to gain his adherence. He therefore reserved his delegation's position.

4. If the Sixth Committee decided to extend the term of office to five years, article 11 of the Statute of the International Law Commission would also have to be amended, as the co-optation procedure prescribed therein would no longer be justified.

5. Mr. STABELL (Norway) was surprised that several members of the Sixth Committee should have thought the wishes expressed by the International Law Commission (A/2934, para. 27) to be in contradiction with the principle of geographical distribution. Respect for that principle was quite proper and was ensured by article 8 of the Commission's Statute; the proposed

change in article 10 would not affect it. In view of the Commission's special character, the satisfactory progress of its work should always be the paramount consideration. The arguments Mr. Spiropoulos had advanced in that connexion were convincing.

6. Mr. ESCUDERO (Ecuador) noted that there were two trends of opinion. Some representatives, for the reasons stated by the Chairman of the International Law Commission, supported the extension of the term of office which was proposed in the United Kingdom draft resolution (A/C.6/L.351). Others were opposed to it, because they wished to secure a wider geographical representation among the members of the Commission.

7. Nobody would deny the complexity of the Commission's work, but extending the term of office of its members would not give that work any greater continuity. Such an effect would be obtained only if all studies could be commenced in the months immediately following the elections, and that was obviously not possible.

8. Those who held the opposite view based their reasoning on the Commission's Statute, and in particular on article 8, which certainly constituted an argument in favour of maintaining the three-year term of office. Members of the Commission should be experts, but experts were not restricted to just a few countries, and it was desirable to have the various legal systems of the world represented as widely as possible.

9. The Ecuadorian delegation would, therefore, vote against the United Kingdom draft resolution, but it hoped that a compromise solution would be found.

10. Mr. HSU (China) said that he intended to vote for the United Kingdom draft resolution (A/C.6/L.351) for two reasons.

11. First, an extension of the term of office would enable the Commission to organize its work better. Experience seemed to show that a five-year term of office was not enough because of the many questions which the Commission had before it or which were referred to it by the General Assembly. Nevertheless, the proposed change would make better organization possible.

12. Secondly, the Committee should defer to the wishes of the International Law Commission, which had asked for a simple, temporary and, in its view, useful amendment to its Statute. One day, no doubt, the entire Statute would have to be revised and the Commission would have to be made permanent. Although the idea of an international community had made great progress during the past few decades, the same could not be said of the law, and it would eventually be necessary to establish a permanent commission. As that idea was not yet ripe, the Committee should at least adopt the proposed amendment, which would have beneficial effects and, moreover, would not prejudice the principle of rotation.

13. Mr. TREJOS (Costa Rica) was not convinced by the International Law Commission's arguments. On the contrary, he agreed with the Israel representative that the present three-year term of office did not interfere in any way with the work of the special rapporteurs and that the proposed measure would not ensure the continuity of that work.

14. Unless more valid reasons were adduced, his delegation would be unable to support the United Kingdom draft resolution.

15. Mr. EL ERIAN (Egypt) said that he would vote for the draft resolution because, as is pointed out in that draft, the International Law Commission's opinion should be taken into account.

16. Mr. PEREZ PEROZO (Venezuela) was unable to decide between the two trends of thought in the Committee. On the one hand, it was desirable to extend the term of office, particularly because of the time needed by the special rapporteurs for their work. On the other hand, it was necessary to ensure rotation in order to satisfy as many Governments as possible. Although the personal qualifications of the candidates should be the chief criterion, the factor of nationality could not be ignored. Moreover, the disadvantages of a short term of office were offset by the possibility of re-election.

17. The Venezuelan delegation would abstain from voting on the United Kingdom draft resolution.

18. Mr. NINCIC (Yugoslavia) said that the effects of extending the term of office could not be very great, but he thought that they could not be anything but good. Such a measure would help to maintain the high professional level of the members of the Commission. His Government attached great importance to the principle of geographical distribution, but that principle could be observed even if the term of office were extended to five years.

19. The Yugoslav delegation would support the United Kingdom draft resolution.

20. U MYINT TOON (Burma) considered that the arguments adduced by the Chairman of the International Law Commission fully justified the draft resolution submitted to the Sixth Committee. His delegation, therefore, would vote for it.

21. Mr. CANAL RIVAS (Colombia) thought that the reasons advanced by the Commission were convincing. All legal work called for a certain continuity, and the Colombian delegation would vote for the United Kingdom draft, if it were put to the vote.

22. Nevertheless, the arguments that had been invoked to the contrary undoubtedly had some force, and the various delegations might perhaps agree on a compromise draft and ask the International Law Commission to provide a more detailed statement of the reasons which, in its opinion, justified the extension of the term of office.

23. Mr. HOLMBACK (Sweden) considered that the continuity of the Commission's work would be improved if the term of office were extended to five years. The Israel representative had said that continuity was ensured by the re-election of rapporteurs, but that had not led him to the conclusion that the Sixth Committee should reject the Commission's recommendation.

24. The Swedish delegation would vote for the United Kingdom draft resolution.

25. Mr. SALAMANCA (Bolivia) agreed with the Colombian representative that the question could be deferred to the next session, when the members of the International Law Commission would be elected. Meanwhile, the Commission might submit a more detailed statement; it was an organ responsible to the General Assembly and should take all the comments of the different delegations into account. Since the question was one of amending a statute, the decision should be taken by a very large majority.

26. Before submitting a formal motion to defer the question to the next session, he would like to hear the views of the Chairman of the International Law Commission.

27. Mr. GABRE-EGZY (Ethiopia) said that he would support the United Kingdom draft resolution, but thought that the Sixth Committee should have time to consider the question more thoroughly before taking a decision.

28. Mr. VALLAT (United Kingdom) was surprised at the proposal to defer such an apparently simple recommendation to the next session. Postponement did not seem to be justified, since delegations had had time to study the Commission's report and to form their opinions. Moreover, elections to the International Law Commission would be held at the next session and the General Assembly would have to decide in advance whether the members of the Commission should be elected for three or five years.

29. Mr. SPIROPOULOS (Chairman of the International Law Commission) said that he found it difficult to answer the Bolivian representative, since he was not familiar with the views of all of his colleagues, but his position as Chairman made it incumbent on him to support any recommendation adopted by the Commission.

30. Speaking as representative of GREECE, he admitted that the argument that a three-year term of office was inadequate was not unassailable; there could be no doubt, however, that in the case of the first rapporteurs three years had not been enough. A five-year term of office offered definite advantages: continuity of the work would be better ensured if the Commission were more stable and more reports could be completed, since it was not stipulated that a rapporteur would be re-elected on the expiry of his term of office. The term of office had been arbitrarily set when the Commission's Statute had been drawn up. Since the 1930 experiment had been unsuccessful, it was desirable to exercise caution and to wait and see how the new body would do its work. The time had now come to give it greater stability. A three-year term of office was too short; the members of the Commission met for only two months a year and barely had time to establish contact and begin their work.

31. It should be stressed that the term of office bore no relation to the principle of geographical distribution and that the problem would be the same even if the members of the Commission were elected for nine years, as were the members of the International Court of Justice. It was the duty of the General Assembly to ensure observance of that principle at each election, since the Commission had never thought of extending the term of office of its existing members.

32. Although it therefore seemed quite justifiable to extend the term of office, there were some other questions which required discussion, such as that of filling vacancies which might arise after the elections. The

United States representative had proposed (442nd meeting) that those seats should be filled by the General Assembly. That was an important question on which the International Law Commission might be consulted.

33. Mr. SALAMANCA (Bolivia) noted that the United Kingdom representative was pressing for a vote on the draft resolution and agreed with him that the recommendation was quite simple. There could be no doubt that the International Law Commission should be permanent, for, owing to lack of time, it was obliged to confine itself to a few questions. That ideal could not be achieved in the immediate future, however, and the Bolivian delegation had therefore proposed to adjourn the debate until the Commission could submit a detailed study of the question.

34. He emphasized that the draft resolution should be adopted unanimously, or at least by a very large majority, because the question involved an amendment to the Statute. Since the Chairman of the International Law Commission considered that as many delegations as possible should be heard on the subject, Bolivia would not object to a continuation of the debate and would not move for adjournment for the time being.

35. Mr. MORENO (Panama) was not quite convinced by the arguments advanced in favour of extending the term of office, because that would not ensure any greater continuity in the Commission's work. The arguments to the contrary were quite cogent and the Panamanian delegation was in favour of adjourning the debate. It would be obliged to vote against the United Kingdom draft resolution, if it were put to the vote.

36. Mr. MAURTUA (Peru) said that in principle he was in favour of adjourning the debate. Some of the arguments adduced against the United Kingdom proposal had not been refuted. Although the reasons advanced by the International Law Commission were sound, it must not be forgotten that the special rapporteurs were obliged to follow the Commission's instructions and that the question thus lost some of its importance.

37. The principle of equitable geographical distribution could not be disregarded. It was an established principle and valid for all United Nations commissions. The members of the International Law Commission were experts, but the interests of States had to be borne in mind, particularly since the United Nations was contemplating the admission of new Members, and those Members should not be excluded indefinitely from the Commission. It would be dangerous to establish a precedent which might have the effect of extending all terms of office. The International Law Commission must not become a closed body, and for that reason his delegation opposed the continuance in office of the rapporteurs, a practice which had in no way improved the quality of the work and which was detrimental to the principle of wide representation.

38. The Peruvian delegation would vote against the United Kingdom draft resolution if a vote was taken.

39. Mr. SCOTT (New Zealand) supported the United Kingdom draft resolution, which would improve the continuity of the Commission's work.

40. His delegation did not at present wish to comment on the other suggestions made during the discussion, but was prepared to study them if they were submitted as formal proposals. A decision on the Commission's recommendation should be reached during the present session.

41. Mr. MEMON (Pakistan) thought that the opponents of the draft resolution had exaggerated the importance of the principle of geographical distribution. A comparison of articles 2 and 8 of the Commission's Statute showed that only the first was mandatory; the members of the Commission, a highly specialized technical body, should above all possess recognized qualifications in international law.

42. Mr. SURJOTJONDRO (Indonesia) felt that a distinction must be made between the continuity of the Commission's work and the continuity of its membership. Obviously, continuity of work was desirable; but it was not so obvious that extension of the term of office was a *sine qua non* of that continuity, which could probably be ensured in other ways. The United States representative's suggestion, for example, deserved careful study.

43. The Indonesian delegation felt that it would be better if the Committee reached a decision only after a thorough study of all the opinions expressed during the discussion.

44. Mr. ALFONSIN (Uruguay) felt that many questions had not been considered carefully enough. If, for example, it was necessary to extend the term of office of members of the Commission, was it necessary to extend it for a period of five or six years? Should only some of the members be elected at one time or should they all be elected at the same time? Lastly, was the Commission to be a permanent body? All those questions were closely interrelated and it would be well for the Commission itself to study the problem as a whole.

45. The Uruguayan delegation would support any proposal to refer the question to the International Law Commission. However, if no such proposal was made or adopted, his delegation would vote against the United Kingdom draft resolution.

46. Mr. MIRANDE (Argentina) emphasized the importance of continuity in the work of the International Law Commission. It was, of course, a sound argument to say that changes of rapporteurs might be detrimental to that continuity which should mark the Commission's proceedings. That was a point in favour of extending the term of office, but by the same argument it could also be proved that a five-year term of office would not solve the problem entirely. Some delegations, particularly that of Uruguay, had very pertinently remarked that the Commission did not necessarily begin work on a topic within the first year of its members' term of office, the inference being that it was untenable to argue that an extension of the term of office would ensure continuity in the Commission's work. On the other hand, much had been said about the important principle of geographical distribution, which was in keeping with the spirit of the Commission's Statute. International law was evolving unceasingly and it was not easy to separate it from politics. Accordingly, it would be necessary to ensure the continuity of the Commission's work and also to devise a compromise solution sufficiently conciliatory to enable the different legal systems now existing in the world to be represented on the Commission. It might be advisable to postpone consideration of the item; although that was not a desirable practice in principle, it would be so in that particular case.

47. In any event, the question should be studied more thoroughly, so that the Committee could reach a decision by a large majority, which was no doubt the desire of the International Law Commission itself.

48. Mr. SEN (India) felt that there was no conflict between the principle of geographical distribution and the principle of continuity of work. An extension of the term of office would in no way prevent the General Assembly from taking the first of those principles into account when elections were held.

49. Mr. ROBINSON (Israel) pointed out that at least two more questions connected with article 10 required examination, namely, the replacement of a member in the event of a vacancy arising after elections had been held (article 11) and "the representation of the principal legal systems" (article 8). The draft resolution before the Committee (A/C.6/L.351) concerned

only article 10 and made no provision for articles 8 and 11.

50. The Committee was far from unanimity. Rather than reaching a decision by a small majority, the Committee should seek a satisfactory solution which could be adopted by a larger majority. He therefore proposed the adjournment of the debate.

51. Mr. MAURTUA (Peru) and Mr. TABIBI (Afghanistan) supported the proposal.

It was so decided.

The meeting rose at 12.45 p.m.