



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>).....	45

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.355/Rev.1, A/C.6/L.357, A/C.6/L.359) (*continued*)

1. Mr. CANAL RIVAS (Colombia) recalled that although most of the co-sponsors of the thirteen-Power draft resolution (A/C.6/L.359) had welcomed the suggestion he had made at the 451st meeting for the amendment of operative paragraph 1 (b) of this draft, the United Kingdom representative had said that it was unacceptable. For that reason, while reserving his delegation's position in the matter, he withdraw his proposal, which had in any event not been submitted formally.
2. Mr. HOLMBACK (Sweden) stated that his own delegation and the Egyptian delegation wished to amend operative paragraph 2 of the draft resolution (A/C.6/L.355/Rev.1), of which they were joint sponsors, by replacing the words "to give instructions" by the words "to express its views".
3. Mr. CARPIO (Philippines) recalled that in his first statement he had said that, owing to the divergent opinions in the Committee, it would probably be better to defer the question to the eleventh session of the General Assembly. Since then various draft resolutions had been submitted. In view of the efforts made by members of the Committee to reach a compromise, his delegation now felt that a compromise could be worked out.
4. It considered that for budgetary reasons it would be preferable to publish the documents of the International Law Commission in one language only. It was better to start in a small way by publishing the documents in one language which was understood in many parts of the world. He personally would have preferred Spanish but for purely practical reasons he thought that English should be chosen.
5. Operative paragraph 1 (a) of the thirteen-Power draft resolution (A/C.6/L.359) provided that the studies, special reports, principal draft resolutions and amendments presented to the International Law Commission should be published in their original languages. That provision raised very serious objections; instead of appearing in one language understood by a great number of people, the documents would be published in an

unspecified number of languages, at the risk of reducing the value of publication. The joint Egyptian and Swedish draft resolution (A/C.6/L.355/Rev.1), on the other hand, provided that the documents should be published initially in English. That was a much better solution. The only possible objection to the present text was that the phrase "to express its views" was not, perhaps, the most apt. At the same time it was impossible to retain the words "to give instructions", for it was doubtful whether the International Law Commission, a subsidiary organ of the General Assembly, was qualified to give instructions to the Secretary-General. It would be better to use the words "to consult", which would express the same idea in a more acceptable way. The same observation applied to paragraph 3 of the thirteen-Power draft resolution.

6. This delegation would vote in favour of the joint Egyptian and Swedish draft resolution (A/C.6/L.355/Rev.1) as amended, but if the Committee decided in favour of the thirteen-Power draft resolution it would not stand out against the will of the majority.

7. Mr. SURJOTJONDRON (Indonesia) pointed out that the Committee should not disregard the financial implications of the draft resolutions before it, for the General Assembly had to bear in mind the limited resources at its disposal.

8. The question of languages should not be examined solely from the utilitarian point of view: it was of great importance to most Member States. Some of them were evidently prepared to make a sacrifice in the interest of co-operation but that did not mean that they were prepared to make that an irrevocable decision. It had been made clear in the discussions, particularly on the subject of the thirteen-Power draft resolution, that the initial publication of the documents in one language did not mean that it would be impossible to publish them in other languages later on.

9. It was in that spirit that he would support the thirteen-Power draft resolution.

10. Mr. BROKENBURR (United States of America) said that he would be unable to vote in favour of the thirteen-Power draft resolution, for the reasons he had already given. He would abstain, for he wished to reserve his position pending the examination of the question by the Fifth Committee. In any event, his delegation considered that the documents should first be published in English, as proposed in the joint Egyptian and Swedish draft resolution, which it would support.

11. Mr. GABRE EGZY (Ethiopia) said that, while many difficulties had been overcome as a result of the spirit of compromise displayed by the members of the Committee, there were still a number of questions to be settled. It was not yet known exactly which documents were to be published or whether all the summary records, reports and studies were worth publishing. Accordingly, the best course would be to accept the prin-

ciple of publication and to request the Secretary-General or the International Law Commission to study the question and report to the General Assembly at the eleventh session. The present moment, when every effort was being made to economize, was not the time to embark upon expenditures, without a very thorough examination.

12. His delegation would be unable to support the two draft resolutions before the Committee, for they both seemed to be based on the principle that all the documents should be published. It was true that they invited the Commission to resubmit the question to the General Assembly if it saw fit, but it would surely be better to adopt the solution to which he had just referred. Nevertheless, his delegation would not vote against the two draft resolutions, since it considered that the documents of the International Law Commission must be published.

13. Mr. ALFONSIN (Uruguay) formally proposed that the word "initially" should be added before the words "in English" in operative paragraph 1 (b) of the thirteen-Power draft resolution (A/C.6/L.359). That amendment, which had been suggested by the Colombian representative, would ensure that the summary records of the first seven sessions of the Commission could be published in languages other than English in the future.

14. Mr. QUIJANO (Argentina) felt that the summary records in question should be published in the three working languages of the General Assembly. He therefore supported the Uruguayan representative's proposal.

15. Mr. HSU (China) pointed out that the phrase "to express its views" was scarcely more apt than the phrase "to give instructions" in paragraph 2 of the joint Egyptian and Swedish draft resolution (A/C.6/L.355/Rev.1), for it seemed to question the right of the International Law Commission to take a final decision on the publication of its documents. It would be better at least to add the words "for the guidance of the Secretary-General". The wording should be explicit on that point; only on that condition would he be able to support the draft resolution submitted by Egypt and Sweden.

16. Mr. HOLMBACK (Sweden) thought the amendment unnecessary, since the Secretary-General would undoubtedly take the views of the International Law Commission into account.

17. The CHAIRMAN put to the vote, paragraph by paragraph, the joint Egyptian and Swedish draft resolution (A/C.6/L.355/Rev.1), with the amendment announced by the Swedish representative whereby the words "to give instructions to the Secretary-General" in operative paragraph 2 were replaced by the words "to express its views to the Secretary-General".

Paragraph 1 was rejected by 29 votes to 16, with 5 abstentions.

Paragraph 2, as amended, was rejected by 24 votes to 19, with 7 abstentions.

18. The CHAIRMAN said that there was no need to put the draft resolution as a whole to the vote, since the Committee had rejected the two operative paragraphs.

19. The CHAIRMAN then put to the vote the draft resolution submitted by Afghanistan, Bolivia, Brazil, Chile, Colombia, Costa Rica, Greece, Guatemala, India, Iran, Mexico, the United Kingdom and Venezuela (A/C.6/L.359).

20. He first put to the vote the oral amendment submitted by Uruguay to operative paragraph 1 (b).

The amendment was adopted by 24 votes to 3, with 25 abstentions.

21. The CHAIRMAN then put to the vote, in succession, the three operative paragraphs of the draft resolution.

Paragraph 1, as amended, was adopted by 30 votes to 10, with 12 abstentions.

Paragraph 2 was adopted by 36 votes to 7, with 9 abstentions.

Paragraph 3 was adopted by 42 votes to 1, with 8 abstentions.

22. The CHAIRMAN put to the vote the thirteen-Power draft resolution as a whole (A/C.6/L.359), as amended.

The draft resolution as a whole, as amended, was adopted by 32 votes to 3, with 17 abstentions.

23. Mr. BIHIN (Belgium), explaining his vote on the thirteen-Power draft resolution, thought it inadmissible that the General Assembly should make a purely arbitrary choice of one of the three working languages and thus establish a hierarchy among those languages, which was contrary to the very spirit of the United Nations. His delegation had been obliged to vote against operative paragraph 1 and against the draft resolution as a whole, the adoption of which was an unprecedented decision.

24. Mr. ROBINSON (Israel) said that he had voted in favour of the Uruguayan amendment, which endeavoured to right a flagrant injustice, but he had not found it possible to vote in favour of paragraph 1 of the draft resolution.

25. The solution adopted was in no way satisfactory, for it was contrary to the very purpose of publication. There was no point in translating summary records if the texts round which the discussions centred were published in the original language only. The Sixth Committee had taken a decision without considering all the consequences: the publication of the summary records, which would entail substantial expenditure, would do nothing to make the work of the International Law Commission better known, nor would it help towards an understanding of the texts to which the summary records referred. In the course of the debate he had strongly opposed the publication of the summary records, which represented more than 6,000 pages of text, and had advocated the method adopted by the Harvard Research in International Law, since the Committee should think first and foremost of those who would use the documents.

26. His delegation had been unable to vote in favour of the draft resolution as a whole, since it took no account of facts. Moreover, it ran counter to the intention of its sponsors, for the International Law Commission would find itself faced with a *fait accompli*. Operative paragraphs 1 and 3 were so obviously in contradiction that it seemed impossible that the resolution would ever be put into effect. For that reason his delegation had abstained, in the hope that the Sixth Committee would take a less hasty decision during the eleventh session of the General Assembly.

27. Mr. MEMON (Pakistan) explained he had voted in favour of the joint Egyptian and Swedish draft resolution (A/C.6/L.355/Rev.1), since it took the financial situation more into account and had a better chance of

being accepted by the Fifth Committee. In a spirit of compromise, however, his delegation voted in favour of the thirteen-Power draft resolution (A/C.6/L.359).

28. Mr. MOROZOV (Union of Soviet Socialist Republics) said that he had voted against paragraphs 1 and 2 of the thirteen-Power draft resolution for the reasons which he had explained in detail during the previous meeting, and had abstained in the vote on the draft resolution as a whole. It was regrettable that the Committee had not been able to adopt a more realistic solution. The adopted resolution was not clear, for operative paragraphs 1 and 2 conflicted with paragraph 3, and the Fifth Committee was not likely to confirm a decision whose financial implications were ill-defined.

29. Mr. MAURTUA (Peru) said that he had been able to vote in favour of the thirteen-Power draft resolution (A/C.6/L.359) because of the amendment proposed by Uruguay. He wished to make it clear, however, that that compromise was not to be taken as establishing a precedent or as according to one language a dominant position in relation to others.

30. The CHAIRMAN asked whether the members of the Committee had any comments to make on other sections of chapter IV of the International Law Commission's report (A/2934).

31. He reminded the Committee that it had before it a draft resolution submitted by the United States of America (A/C.6/L.357), which proposed an amendment to the statute of the International Law Commission.

32. Mr. BROKENBURR (United States of America) recalled the statement he had made at the 442nd meeting. His delegation had pointed out that if the term of office of members of the International Law Commission were extended, it would be desirable that the General Assembly itself fill casual vacancies by means of election.

33. The debate upon the question of extending the term of office had revealed sentiment in favour of postponement to consider the questions raised by the extension of terms, and the United States representative had spoken in favour of the Philippine draft resolution (A/C.6/L.353), which had advocated the postponement of the question. Subsequently, however, the United States had voted in favour of the United Kingdom draft resolution (A/C.6/L.351), which had been adopted by the Sixth Committee (446th meeting) and would certainly be approved by the General Assembly. That was why his delegation had deemed it appropriate to submit its draft resolution (A/C.6/L.357), which seemed the logical complement of the resolution adopted by the Sixth Committee concerning the extension of the term of office. When the term of office had been brief, it had been natural for the International Law Commission itself to fill casual vacancies occurring after the election. If the term of office were increased by two years, it would be desirable to have casual vacancies filled by the General Assembly, since the Assembly had established the International Law Commission and regularly elected its members. The draft resolution submitted by the United States took the new situation into account: under article 11, if amended in accordance with the United States proposal, the General Assembly would fill casual vacancies occurring after election and the elected candidate would complete his predecessor's term of office. If a vacancy arose and were not filled before the Commission's next session, the latter would fill it

provisionally, until such time as the General Assembly could itself elect a successor.

34. Mr. MOROZOV (Union of Soviet Socialist Republics) did not propose to discuss the substance of the question for the time being, but he thought that there was a procedural difficulty, in that the amendment to article 11 of the International Law Commission was not on the agenda. The International Law Commission had made a recommendation of very limited scope, whose connexion with the question dealt with in the United States draft resolution was not clear. Moreover, it would create a dangerous precedent if the Statute of the International Law Commission were modified without thorough study and without first consulting the Commission, which would mean confronting it with a *fait accompli*.

35. He asked the United States representative to consider whether discussion of his draft resolution might not be postponed and the text transmitted to the International Law Commission for study and opinion, with a view to re-examination at the eleventh session of the Assembly. Such a decision would not prejudice the final fate of the United States proposal and since the next elections for the International Law Commission were to take place in a year's time, the adjournment would not affect any vacancy which might arise in the meantime.

36. Mr. CANAL RIVAS (Colombia), speaking on a point of order, pointed out that the first paragraph of the preamble of the United States draft resolution said that article 10 of the Statute of the International Law Commission had been amended to increase the terms of office of the Members of the Commission from three to five years. That was not strictly correct, since the General Assembly had not yet voted upon the amendment in question. The Committee would, therefore, have to decide whether it could discuss the text in question before the General Assembly had taken a definite decision on the Sixth Committee's draft resolution concerning the extension of the term of office of members of the International Law Commission.

37. Mr. BROKENBURR (United States of America) replied that he would amend the text in such a way that its new form would reflect exactly the existing situation.

38. Mr. MOROZOV (Union of Soviet Socialist Republics) said that he shared the Colombian representative's views. The whole text of the United States draft resolution was based on the idea that the amendment to article 10 of the International Law Commission's Statute had been accepted, which was not the case.

39. He therefore urged that the Committee should not continue its discussion of the draft resolution but should refer it to the International Law Commission.

40. Mr. MEMON (Pakistan) asked the Chairman to give a ruling on the Soviet objection that the amendment of article 11 of the International Law Commission's Statute did not appear on the agenda. He drew attention to the provisions of the rules of procedure that applied to the point at issue, in particular rule 15, which dealt with the inclusion of additional items.

41. Mr. CANAL RIVAS (Colombia), supported by Mr. PEREZ-PEROZO (Venezuela), pointed out that the United States representative's promise to amend the text of his draft resolution did not answer the question he had submitted in the form of a point of order. The point was still before the Committee.

42. The CHAIRMAN thought that as the discussion proceeded the various procedural questions which had been raised might settle themselves, without any need for a formal ruling on his part.

43. Mr. MOROZOV (Union of Soviet Socialist Republics) asked for the meeting to be adjourned, so that delegations would be able to acquaint themselves with the amended text of the United States draft resolution.

44. Mr. VALLAT (United Kingdom) wondered whether rule 124 of the rules of procedure, which concerned reconsideration of proposals, might not be applicable to the United States proposal. The point at issue was an aspect of the question of how long members of the International Law Commission should hold office, and the Sixth Committee had already taken a decision on that question.

45. He thought that the United States draft resolution could simply be transmitted to the International Law Commission for its opinion.

46. Mr. CARPIO (Philippines) considered that the proposal to amend article 11 of the Commission's Statute was a natural consequence of the decision to amend article 10. The two questions were closely linked. The fact that the report of the International Law Commission appeared on the agenda as such, without further particulars, undoubtedly left the Sixth Committee free to study any questions which might arise from the examination of the report.

47. Regarding the text of the United States draft resolution, the best course would probably be to eliminate the preamble.

48. Mr. MEMON (Pakistan) declared that further discussion would be useless until the Chair had ruled on the question of competence that he and other speakers had raised.

49. Mr. BROKENBURR (United States of America), replying to Mr. Morozov, said that he would take his stand on the suggestion that the draft resolution should be referred to the International Law Commission for its opinion when he had heard the observations of other delegations on that point.

50. Regarding the question of competence, he shared the Philippine representative's views. Furthermore, the question was both important and urgent, and there was, moreover, a precedent. In 1950, during the fifth session, the Sixth Committee had proposed, and the General Assembly had decided, that the term of office of members of the International Law Commission then in office should be extended by two years, although the question had not appeared officially on the agenda.

51. Finally, although the International Law Commission had not been officially consulted on the question, there had been an exchange of opinions and there could therefore be no question of a lack of courtesy or of an attempt to force the International Law Commission's hand.

The meeting rose at 5.45 p.m.