

## HUNDRED AND SIXTY-EIGHTH MEETING

Held at Lake Success, New York, on Tuesday, 18 October 1949, at 3 p.m.

Chairman: Mr. LACHS (Poland).

### Report of the International Law Commission (A/925) (continued)

#### PART I: GENERAL (concluded)

*Emoluments of members of the International Law Commission (A/C.6/L.30, A/C.6/L.34, A/C.6/L.38, A/C.6/L.41 and A/C.6/L.43) (concluded)*

1. The CHAIRMAN informed the Committee that, since the Drafting Sub-Committee had been able to prepare a text combining the various proposals submitted, the only document before it was the proposed draft resolution contained in document A/C.6/L.43, the text of which follows:

*"The Sixth Committee,*

*"With a view to considering the amendment of article 13 of the Statute of the International Law Commission;*

*"Being sympathetic to the point of view expressed by the Commission in paragraph 42 of its report concerning the emoluments of members of the Commission and of its Rapporteurs;*

*"Requests the Fifth Committee to study the observations of the International Law Commission on this subject, bearing in mind the importance of the work of the Commission, the high qualities of its members and the manner of their election; and*

*"Requests its Chairman to consult with the Chairman of the Fifth Committee with a view to setting up a joint Sub-Committee of the Fifth and Sixth Committees in order to find a formula enabling the General Assembly to take a decision on that part of the report of the International Law Commission which refers to the emoluments of its members and Rapporteurs."*

2. Mr. FITZMAURICE (United Kingdom) wished to make a few remarks on the proposed draft resolution since he had acted in the capacity of informal chairman of the drafting group.

3. After some discussion, a majority of the Drafting Sub-Committee had agreed on the text before the Committee, which combined the Canadian text, (A/C.6/L.34), the Chilean text (A/C.6/L.38) as amended by Guatemala (A/C.6/L.41), and incorporated the considerations regarding Rapporteurs which had originally appeared in the Cuban proposal (A/C.6/L.30).<sup>1</sup>

<sup>1</sup> See the Summary Records of the 167th meeting, paragraph 29 and of the 161st meeting, paragraph 22.

4. The second paragraph of the proposed draft resolution was merely a statement that the Sixth Committee was in sympathy with the view expressed by the International Law Commission in paragraph 42 of its report (A/925).

5. The majority of the Drafting Sub-Committee had supported the text as a whole. The Byelorussian representative had agreed to the first three paragraphs of the text, but had been unable to accept the fourth paragraph. He had felt that it would be sufficient to refer the question to the Fifth Committee, after provision had been made for two or three members of the Sixth Committee, and perhaps the Chairman of the International Law Commission, to attend the meetings of the Fifth Committee when necessary.

6. Mr. MATTAR (Lebanon) supported the Sub-Committee's draft. He felt, however, that the second paragraph would be clearer if the word "the" in the phrase "expressed by the Commission" were replaced by the word "that" and if the phrase "the emoluments of members of the Commission and of its Rapporteurs;" were amended to read "the emoluments of its members and of its Rapporteurs".

7. Mr. ZIAUDDIN (Pakistan) suggested that the phrase "the high qualities" in the third paragraph should be amended to read "the high qualifications".

8. Mr. KHOMUSKO (Byelorussian Soviet Socialist Republic) said that his delegation had been guided by practical considerations in opposing the recommendation to set up a joint sub-committee of the Fifth and Sixth Committees. He saw no need to appoint a special joint body to consider the question in hand; in his view, it would be sufficient merely to refer the question to the Fifth Committee for its consideration. The Byelorussian delegation felt so strongly on the point that it would abstain from voting on the draft resolution.

9. Mr. GARCÍA AMADOR (Cuba) supported the observations of the United Kingdom representative. The Sub-Committee was also of the opinion that the Chairman of the International Law Commission should attend the meetings of the Fifth Committee when the subject was under discussion.

10. Mr. STABELL (Norway) thought that, since the Rapporteurs of the International Law Commission were members of the Commission, it was unnecessary to retain the phrase "and of its Rap-

porteurs" in the second paragraph of the proposed draft resolution. If it was the intention of the Committee to offer higher compensation to the Rapporteurs for their work, however, he thought that a different wording was required.

11. Mr. LIANG (Secretariat) explained that the reference to Rapporteurs in paragraph 42 of the International Law Commission's report (A/925) was meant to designate people engaged in research work between the sessions of the Commission and not the Rapporteurs during sessions of the Commission.

12. Regarding the fourth paragraph of the proposed draft resolution, he understood that the Fifth Committee, because of its very heavy agenda, might not favour the creation of a joint sub-committee unless one was absolutely necessary. If such a joint sub-committee were created, the Fifth Committee would be obliged to suspend its meetings while the sub-committee was in session, which would retard the Fifth Committee's work. Reference had been made<sup>1</sup> to a joint sub-committee of the Fifth and Sixth Committees which was created in 1946. That body had been faced with the very heavy task of determining the salaries of members of the International Court of Justice and of the Registrar. The task now at hand, however, would not demand as much time.

13. Mr. Liang further pointed out that if the proposed draft resolution were adopted as it was then worded, and if the Fifth Committee did not see fit to agree to the setting up of a joint sub-committee, it would become necessary for the Sixth Committee to find another solution. To avoid that situation, therefore, he suggested that the text of the fourth paragraph might be redrafted to read:

"Requests its Chairman to consult with the Chairman of the Fifth Committee with a view to finding a formula enabling the General Assembly to take a decision on that part of the report of the International Law Commission which refers to the emoluments of its members and Rapporteurs."

14. That would still leave open the possibility of setting up a joint sub-committee.

15. Mr. MELENCIO (Philippines) felt that it was exclusively within the competence of the Fifth Committee to determine the emoluments of the International Law Commission.

16. The CHAIRMAN agreed that, under rule 142 of the rules of procedure, the final recommendation to the General Assembly on questions involving expenditure rested with the Fifth Committee. However, the Sixth Committee could make recommendations to the Fifth Committee.

17. Mr. MELENCIO (Philippines) felt that, in those circumstances, it would be better for the Sixth Committee to make whatever recommendation it deemed advisable and then let the Fifth Committee take a decision on the question.

18. Mr. SHANAHAN (New Zealand) pointed out that the matter in question had been discussed earlier<sup>2</sup> in the Sixth Committee, at which time he had given his delegation's views. In the light of the New Zealand conception of the duties of the International Law Commission, his delegation was opposed to paying salaries to members of

the Commission although, in view of what was stated in the Commission's report, it was in sympathy with the idea of increasing their *per diem* allowance. In that connexion, the title of paragraph 42 of the International Law Commission's report was misleading, inasmuch as the word "emoluments" carried a connotation of salary. As the draft resolution before the Committee also carried an implication of salaries, the New Zealand delegation would be obliged to oppose it.

19. Mr. Shanahan agreed with the Philippine representative that the Fifth Committee should decide the question. That Committee usually invited competent persons to attend its meetings and assist it with various problems. It was to be assumed that it would invite the Chairman of the Sixth Committee, and probably the Chairman of the International Law Commission also, to explain the problem under discussion. The Fifth Committee would thus be able to take a decision with full knowledge of the facts.

20. In conclusion, Mr. Shanahan again stressed the fact that his delegation favoured that any increase should be in the *per diem* allowance of members of the International Law Commission.

21. Mr. KORETSKY (Union of Soviet Socialist Republics) supported the Byelorussian proposal concerning the fourth paragraph of the draft resolution (A/C.6/L.43). That proposal was realistic and in accordance with the Fifth Committee's customary procedure.

22. He could not understand why it was thought necessary to create a joint sub-committee. The issue was not complicated enough to warrant the creation of so important a body. In his view, the drafting group had followed the wrong course in producing a text which might imply that important issues were at stake.

23. Rule 142 of the rules of procedure laid down a procedure which had been followed in the past and which should be adhered to. The members of the International Law Commission would recall that paragraph 42 of the Commission's report (A/925) had been drafted in mild terms and with reservations, and that some of the members had felt that it would be more appropriate if delegations submitted such questions to the General Assembly. Moreover, Mr. Koretsky felt that the drafting group had exceeded its terms of reference by including mention of the Rapporteurs in the proposed draft resolution.

24. Speaking both as the USSR representative and as a member of the International Law Commission, Mr. Koretsky felt that it would be unwise to suggest that members of the Commission were paid consultants. They did not wish to be identified with these persons widely employed in the Secretariat for work it could perform itself.

25. Members of the Commission did not want to receive salaries for their work; they were proud to serve the cause of law by participating in the work of the Commission. The proposal to increase the emoluments of members of the Commission, and of the Rapporteurs in particular, might make it appear that they were only seeking well paid jobs, whereas, the only point they had wished to emphasize was that at times their private means were not sufficient to cover the increased expendi-

<sup>1</sup> See the Summary Record of the 167th meeting, paragraph 11.

<sup>2</sup> See the Summary Record of the 163rd meeting, paragraph 11.

ture they were obliged to assume in carrying out the Commission's work.

26. In the third paragraph of the proposed draft resolution, the Sixth Committee requested the Fifth Committee to study the observations of the International Law Commission on the subject, but Mr. Koretsky wished to stress that the members of the Commission were not begging for increased emoluments. Although it was not clear from the draft resolution, it should be the Sixth Committee which suggested that the present remuneration of members was insufficient. The Sixth Committee should assume the responsibility for a proposal which was, in fact, its own.

27. If the Committee decided to retain the third paragraph, however, the second paragraph of the proposed draft resolution should be deleted. Mr. Koretsky was not clear as to the meaning of the words "Being sympathetic . . ." Although that phrase might be the proper formula, he felt that it was open to criticism.

28. The USSR representative stated that he had agreed to serve on the International Law Commission and did not intend to claim any special consideration for the work he did as a member of that body. He realized that the Drafting Sub-Committee had done its best to prepare an acceptable text, but he felt that the draft before the group might not accurately represent the views of the members of the International Law Commission.

29. Mr. HUDSON (Chairman of the International Law Commission) observed that Mr. Koretsky had spoken apparently as the USSR representative. Mr. Hudson felt, however, that as a member of the International Law Commission, Mr. Koretsky would agree that a large majority of the members of the Commission had emphasized the fact that "it would be in the interest of the work of the Commission" if service on it were made less onerous financially (A/925, paragraph 42).

30. Mr. MELENCIO (Philippines) agreed that some improvement should be made in the emoluments. He suggested, however, that in dealing with the problem the procedure laid down in rule 142 of the rules of procedure should be followed.

31. Mr. CHAUMONT (France) had been impressed by the USSR representative's remarks. He felt that the texts discussed during the 167th meeting had been superior to the proposed draft resolution now before the Committee.

32. He supported the USSR representative's observations concerning the second paragraph. The Sixth Committee was in agreement that the emoluments of the International Law Commission were insufficient. The point to be stressed, however, was not the Committee's sympathy but the fact that the International Law Commission was an extremely important body, that it was essential that the Commission should continue its work, and that for it to continue functioning, some adjustment should be made in the emoluments for service on it.

33. Moreover, the French delegation considered that it would be difficult to accept the draft resolution's last paragraph since it decided on the creation of a joint sub-committee of the Fifth and Sixth Committees before the Fifth Committee had been consulted on the matter.

34. The French delegation therefore proposed that the second and fourth paragraphs of A/C.6/L.43 should be deleted and that the words "and to address its recommendations to the Sixth Committee as soon as possible" should be added at the end of the third paragraph. Mr. Chaumont felt that the Committee could agree on that text since there was general support for an increase in the emoluments of members of the Commission and for the idea that the Fifth Committee could settle the question satisfactorily.

35. The French delegation regretted that the Canadian draft A/C.6/L.34 was no longer before the Committee because the delegation considered that text superior to the one under consideration.

36. Mr. FITZMAURICE (United Kingdom) regretted that the USSR representative found the text derogatory to members of the International Law Commission although, after studying the draft, he himself could find no such implications. There had certainly been no such intention on the part of the Drafting Sub-Committee.

37. With regard to the second paragraph, Mr. Fitzmaurice had felt that, if the draft resolution contained no explanation of the Sixth Committee's views, it might appear that the Sixth Committee would have liked to see an increase in the emoluments, but had not wished to state its views in a positive manner. The Fifth Committee, on the other hand, might prefer, when it considered the question, to have a statement from the Sixth Committee on the importance of the case. That was why he had favoured the inclusion of a paragraph drafted along the lines of the second paragraph. The drafting group had felt that such a text should not be too strongly worded, in order not to prejudice the question for the Fifth Committee.

38. Mr. Fitzmaurice was prepared to consider drafting amendments to the proposed draft resolution. If the second paragraph were deleted, however, the Fifth Committee might say that it had been unaware of the Sixth Committee's views in the matter.

39. He thought that the phrase "and of its Rapporteurs" in the second paragraph might either be deleted, as the representative of Norway had suggested, or that the text could be rephrased to read: "concerning the emoluments of members of the Commission including its Rapporteurs."

40. In answer to the representative of New Zealand, he explained that members of the Commission received a *per diem* allowance while the Commission was in session. In the interval between sessions, however, there was the question of compensation to be paid Rapporteurs. For that reason, the general term "emoluments" had been chosen in order to cover both ideas.

41. He accepted the suggestion of the representative of Pakistan to substitute the word "qualifications" in the English text for the word "qualities".

42. With regard to the fourth paragraph, Mr. Fitzmaurice stated that the drafting group had not been aware of the Fifth Committee's reluctance to appoint a sub-committee. The group would certainly have been influenced by that fact in considering the paragraph. The drafting group had wished to ensure that the views of the Sixth Committee would be properly and fully presented to the Fifth Committee. While it was confident

that the Fifth Committee would inform itself adequately on the question, it had preferred not merely to refer the matter to that body.

43. The financial aspects of the matter unquestionably came within the purview of the Fifth Committee, but members should bear in mind the political considerations involved as well as the general standing of the International Law Commission, which gave special importance to the matter. For that reason, he felt it would be advisable to provide for machinery for joint consideration of the question.

44. In order to meet the objections which had been raised to the fourth paragraph, however, he suggested that the paragraph should be redrafted to read:

“Requests its Chairman to consult with the Chairman of the Fifth Committee with a view to deciding on the best procedure for enabling the views of the Sixth Committee to be made known to the Fifth Committee”.

45. The Philippine representative had pointed to rule 142 of the rules of procedure. Mr. Fitzmaurice, however, was not sure whether that rule was applicable in the case before the Committee. In any case, he felt that only the first sentence of the rule was relevant. The statement that “No resolution involving expenditure shall be recommended by a committee for approval by the General Assembly unless it is accompanied by an estimate of expenditures prepared by the Secretary-General” did not prevent the Sixth Committee from obtaining the preliminary views of the Fifth Committee on the desirability of the proposal and on how it could be carried out. The Secretary-General could then prepare the necessary estimates, and the appropriate resolution for approval by the General Assembly could then be drafted. The Committee did not have before it a draft resolution which should be approved by the General Assembly but was only examining the political and financial aspects of the question.

46. Mr. SPIROPOULOS (Greece) was of the opinion that the question was not important enough to warrant such lengthy consideration on the part of the Sixth Committee. He reminded members that they presented the views of their delegations. Consequently, any decision taken in the Sixth Committee by a delegation would not differ from that delegation's position on the question in another Committee.

47. If that reasoning were accepted, it would be possible to delete the fourth paragraph. Although it would have been helpful to have a joint sub-committee to consider the question, in view of the fact that representatives voted in accordance with instructions they received from their Governments there was no imperative need to set up complicated machinery for joint consideration of the question. Mr. Spiropoulos suggested that a paragraph along the lines of the present second paragraph should be included in the draft resolution. In order to meet the objections raised, he proposed that the phrase “Being sympathetic to” should be replaced by the word “Approving”. If the Committee accepted the first paragraph as proposed by the drafting group, the second paragraph as amended by the Greek delegation, and the third paragraph with the French amendment,<sup>1</sup> Mr. Spiropoulos felt that the Committee would find the text satisfactory.

<sup>1</sup> See paragraph 34 above.

48. Mr. KERNO (Assistant Secretary-General in charge of the Legal Department) stated that the Secretariat had shared the doubts of the United Kingdom on whether rule 142 applied. That question had arisen when the Statute of the International Law Commission had been adopted. The Fifth Committee had not been consulted concerning article 13 of the Statute and that fact had evoked severe criticism. Rule 142 should therefore be observed in its entirety.

49. Mr. GARCÍA AMADOR (Cuba) asked the Secretary of the Committee to give a short history of article 13 of the Statute of the International Law Commission. A thorough knowledge of how it had been drafted might assist the Committee in reaching a decision. Therefore, if the Cuban proposal was acceptable to members of the Committee, Mr. García Amador would urge an explanation by the Secretariat on that point.

50. Mr. LIANG (Secretariat) recalled that the Committee on the Progressive Development of International Law and its Codification, which had worked out the original plan for the International Law Commission, had conceived the Commission as a body working full time. Paragraph 5 (d) of that Committee's report (A/331) had stated that, while all of its members had agreed that the members of the International Law Commission should receive a salary proportionate to the dignity and importance of their office, there had been some difference of opinion as to whether they should be required to render full-time service. The Committee on the Progressive Development of International Law and its Codification had decided, by 9 votes to 5, that such service would be both desirable and necessary. The budget of the Commission was to have included items for the salaries of members.

51. The above-mentioned report had then been submitted to the General Assembly at its second session and had been examined by the Sixth Committee. The latter had referred it to Sub-Committee 2, which had subsequently elaborated the Statute of the Commission. Paragraph 11 of the report (A/C.6/193) of Sub-Committee 2 to the Sixth Committee had stated that the Sub-Committee had agreed that members of the International Law Commission should be paid a *per diem* allowance at the same rate as members of commissions of experts of the Economic and Social Council. Article 13 of the International Law Commission's Statute embodied that recommendation.

52. At first there had been some difference of opinion in the Sub-Committee regarding the amount of the *per diem* allowance. Some members had felt that eminent jurists, who had to put aside their own work in order to attend the sessions of the Committee, should receive a larger allowance than members of commissions of experts of the Economic and Social Council. But it had appeared difficult to fix a definite amount. Another suggestion had been that the members of the International Law Commission should receive a compensation equal to that paid to *ad hoc* judges of the International Court of Justice for each day's service. Finally, article 13 had been adopted, specifying a *per diem* allowance at the same rate as that paid to members of commissions of experts of the Economic and Social Council.

53. The Sub-Committee's proposal for the Statute of the International Law Commission had



been examined by the Sixth Committee on the last day of its work during that session. But article 13 had not received the thorough examination which would have been desirable.

54. Mr. SPIROPOULOS (Greece) felt that the drafting of the text for transmission to the Fifth Committee should not require much discussion inasmuch as the Fifth and Sixth Committees were composed of the same Members and it would be for the individual delegations to inform and instruct their representatives on the Fifth Committee on the question at issue.

55. He therefore thought that the draft resolution as amended by the representative of France and further amended by himself should be acceptable.

56. Mr. CHAUMONT (France) withdrew his amendment for the deletion of the second paragraph in favour of the Greek representative's drafting amendment to that paragraph, which would become a joint French-Greek amendment. He retained, however, his other amendments to the draft resolution.

57. The CHAIRMAN first put to the vote the French-Greek amendment to the second paragraph of the draft resolution (A/C.6/L.43), which would replace the words "Being sympathetic to" by the word "Approving".

*The French-Greek amendment was adopted by 37 votes to 4, with 8 abstentions.*

58. The CHAIRMAN then put to the vote the French amendments for the deletion of the fourth paragraph and the addition, at the end of the third paragraph, of the phrase: "and to address its recommendations to the Sixth Committee as soon as possible".

*The French amendments were adopted by 27 votes to 6, with 13 abstentions.*

59. Mr. FITZMAURICE (United Kingdom), while willing to maintain his proposal in respect of the fourth paragraph, thought that it might no longer be applicable in view of the adoption of the French amendment for the deletion of that paragraph.

60. The CHAIRMAN agreed with the United Kingdom representative. Moreover, it would in any case be necessary for him to consult the Chairman of the Fifth Committee on the matter.

61. He then put to the vote the draft resolution (A/C.6/L.43) as amended and with the drafting changes proposed by the representatives of Pakistan and Lebanon, reading as follows:

*"The Sixth Committee,*

*"With a view to considering the amendment of article 13 of the Statute of the International Law Commission,*

*"Approving the point of view expressed by this Commission in paragraph 42 of its report concerning the emoluments of its members and of Rapporteurs,*

*"Requests the Fifth Committee to study the observations of the International Law Commission on this subject, bearing in mind the importance of the work of the Commission, the high qualifications of its members and the manner of their election; and to address its recommendations to the Sixth Committee as soon as possible."*

*The draft resolution, as amended, was adopted by 40 votes to 1, with 7 abstentions.*

PART II: DRAFT DECLARATION ON RIGHTS AND DUTIES OF STATES (A/C.6/326, A/C.6/330 AND A/C.6/332)

62. Mr. KHOMUSKO (Byelorussian Soviet Socialist Republic), speaking on a point of order, felt that the draft declaration on rights and duties of States (A/925, paragraph 46), presented in violation of articles 16, 21 and 22 of the Statute of the International Law Commission, should not be examined at the current session.

63. Under article 21 of the Commission's Statute, the latter, after considering a draft to be satisfactory, must request the Secretary-General to issue it as a Commission document and to give it the necessary publicity including such explanations and supporting material as the Commission might consider appropriate. The Commission must then submit the draft to Governments for comments. In the light of those comments, the Commission must prepare a new draft for presentation to the General Assembly. That the Commission had not done. While article 21, paragraph 2 of its Statute provided that the Commission should request Governments to submit comments on the document in question within a reasonable time, the comments mentioned in the Commission's report had been made on the Panamanian draft<sup>1</sup> and not on the Commission's draft, which was radically different from the Panamanian draft and was, in fact, a new draft.

64. Furthermore, under General Assembly resolution 178 (II), the Commission had been requested, not to edit the Panamanian text, but to prepare a new draft declaration on the rights and duties of States. Consequently, it was impossible to consider that the comments sent in by Governments on the Panamanian draft were applicable to the Commission's draft.

65. A comparison of the two documents would show that the Commission's draft was more far-reaching than the Panamanian draft. Article 14 of the Commission's draft, for example, represented a greater infringement of the sovereignty of States than did article 13 of the Panamanian text; moreover, article 5 of the Commission's draft spoke of the equality of States in law, while Article 2, paragraph 1 of the Charter spoke of sovereign equality. Thus, the Commission had violated its Statute and the resolutions of the General Assembly. In justification of its action, the Commission had stated in its report (A/925, paragraph 53) that Member Governments would have another opportunity to state their views on the declaration during its consideration by the General Assembly; however that was not "another", but the first, opportunity for Governments to state their views on the Commission's text since the Commission's earlier request for their comments had related to the Panamanian draft.

66. The purpose of article 22 of the Commission's Statute, which stated that the Commission, taking such comments into consideration, should prepare a final draft and present it to the General Assembly together with recommendations, was to enable Governments to participate in the preparatory work on the Commission's draft. The Commission had stated, in the second sub-paragraph of paragraph 53 of its report, that the various articles of its Statute did not apply to the declaration because its preparation had been a special assignment from the General Assembly. Thus it

<sup>1</sup> See document A/CN.4/2, page 35.

had decided upon a different procedure in disregard of its Statute; eminent jurists had begun their work by violating their own laws.

67. The Byelorussian delegation considered that every official organ of the United Nations must act in conformity with the Charter and that organ's own rules of procedure; the International Law Commission, to which no special instructions had been given by the General Assembly, was no exception. However, even the majority of the Commission seemed to have recognized to a certain extent that it had violated its Statute as the third sub-paragraph of paragraph 53 of the report had stated, that the Commission had decided to submit the draft declaration to the General Assembly and to place on record its conclusion that it was for the General Assembly to decide what further course of action should be taken in relation to the draft declaration, and in particular, whether it should be transmitted to Member Governments for comments. By referring the matter to the General Assembly, however, the Commission had further complicated the Assembly's work.

68. In view of those considerations, the Byelorussian delegation felt that the draft declaration on the rights and duties of States should not be considered in the Sixth Committee, and supported the Argentine draft resolution (A/C.6/332) calling for the transmission of the draft declaration to Governments for comments.

69. Mr. COHEN (United States of America), with reference to the motion of the Byelorussian representative, stated that the draft declaration on rights and duties of States could properly be considered by the Sixth Committee under General Assembly resolution 178 (II), and that it would be for the General Assembly and the Sixth Committee to determine how the draft should be dealt with. The draft declaration prepared by the Commission under that resolution of the General Assembly was a most important document, a product of the co-operative efforts of eminent jurists. It had been based on a preliminary draft presented by Panama, first to the San Francisco Conference at which the Charter of the United Nations had been prepared and later to the International Law Commission. The Commission in its work had had the benefit of comments on the Panamanian draft by the Governments of many Member States.

70. The draft declaration quite rightly sought to state, not the traditional rights and duties of States as they had existed prior to the Charter, but certain basic rights and duties of States in the light of new developments of international law and in harmony with the Charter. The draft declaration as drawn up by the Commission purportedly dealt only with some of the basic rights and duties of States. It was, however, more than a codification of traditional law and could be regarded as a constructive and substantial contribution towards the progressive development of international law under the Charter.

71. The first question to be considered was how the document could best be dealt with by the Committee and the Assembly at the current session. Article 13, paragraph 1 a of the Charter explicitly established the dual responsibility of the General Assembly to encourage the progressive development of international law and its codification. The General Assembly accordingly had taken steps to implement that provision and had wisely suggested codification in fields in which international law

had reached a stage of maturity, in which the basic principles had been developed and had long received wide acceptance, and in which legal formulation did not require major political compromises. The International Law Commission had thus selected three subjects for immediate codification.

72. The draft declaration on the rights and duties of States fell into a different category. It dealt with matters in respect to which the law was in a state of flux and growth, and where the underlying principles governing the development of law were themselves in the course of development.

73. The Charter had had a profound impact, not only on the traditional rights and duties of States but also on legal thought regarding those rights and duties, as revealed in the draft declaration of the International Law Commission. The declaration was significant evidence of the encouragement that the General Assembly had given to the progressive development of international law.

74. But the community of nations had lived under the Charter only a few years, too short a time to permit a full and definitive assessment of the impact of the Charter upon the rights and duties of States. At that stage, little more than a tentative exploration of some of the paths along which international law would advance in a better integrated world was possible. To attempt more might slow down, rather than advance, the progressive development of international law as an instrument of peace and progress.

75. For example, the proposals submitted by Yugoslavia (A/C.6/326) contained some principles not mentioned in the draft declaration and expanded other principles covered therein. The United States delegation doubted whether the Sixth Committee at that time was in a position to take a final decision on all the important matters covered in the Yugoslav proposals. For that very reason, his delegation would not wish to have the Committee take final action on the Commission's draft declaration, which would prevent the submission in the future of other proposals or suggestions to further the progressive development of international law in that field.

76. Of course, it was not his country's desire to limit the general discussion on those or other proposals which might be submitted. It considered, however, that any attempt at a final evaluation of varied, overlapping and possible conflicting proposals should be avoided.

77. States were prepared to accept the draft declaration on their rights and duties as a valuable source of law and as an important guide to its progressive development. But if an effort was made to commit them hastily or irrevocably, morally or legally, to propositions having serious political implications, they might well hesitate to commit themselves save through the traditional process of conventions ratified in accordance with their constitutional practices.

78. His Government would have great difficulty in determining with exactitude what parts of the declaration were law at the time and what parts were or were not in the process of becoming law. That difficulty was probably shared by other Governments.

79. For instance, the formulation of the principle of self-defence in article 12 of the declara-

tion was very good as a partial statement, but would, if construed as a complete statement of the right of self-defence, be open to grave objection. His Government would hesitate at that time to commit itself to the view that the right of individual or collective self-defence could under no possible circumstances be invoked except after actual armed attack.

80. It must also be recognized that self-defence included measures other than the extreme sanction of the use of armed force against an aggressor. Surely a State victim of aggression was entitled to employ measures of self-defence short of that.

81. Members of the United Nations should bear in mind that the inability of the Security Council to take effective measures to defeat aggression in a particular case, because a permanent member had exercised its privileged vote to prevent Council action, did not nullify the principles of the United Nations set forth in Article 2 of the Charter or the right of the Member States to act in defence of those principles. The substantive law of the Charter was not set at naught by the failure of particular machinery or procedures to operate as intended. The Members of the United Nations were not bound to impotence and resignation in the face of an aggressor whenever particular Charter procedures broke down. Under such circumstances, the General Assembly or individual States had a constructive role to play in defence of the purposes and principles of the United Nations.

82. Further experience and more complete understanding of the Charter as a living organism was necessary before a definitive statement of the Charter's effect on the basic right of self-defence could be attempted.

83. Similarly, article 6 of the draft declaration, which formulated duties with respect to human rights, must be regarded as an extremely important pioneering effort in a field receiving simultaneous study by other competent bodies within the framework of the United Nations. In Articles 55 and 56 of the Charter, the Members of the United Nations had solemnly committed themselves to take joint and separate action in co-operation with the Organization to promote universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion. That commitment would have a profound and continuing influence on the development of international law in the field of human rights. Because of the vigorously continuing growth of the law in that field, it was the view of the United States that the wide range of procedural and substantive questions raised by the human rights provisions of the Charter could not be settled at the time by reference to a single brief and simple formula.

84. Similar problems raised by other articles could not be solved by the Sixth Committee or the Assembly attempting to tinker with the work of the eminent jurists of the International Law Commission. The law in that field being admittedly in a state of flux and growth, it would be unfortunate to subject the work of the jurists to political appraisal and compromise at that time. It was not likely that the Assembly could improve on the jurists' work, taken as a whole. To seek in each article, or in new or alternative proposals, to distinguish existing law from what was in the pro-

cess of becoming law, or to attempt to find a common denominator for the expression of necessarily unsettled views, both on what was accepted law and on what should become law under the Charter, would yield the lowest common denominator of what was and what should become law.

85. It was the suggestion of the United States delegation, therefore, that the Assembly should allow the work of the International Law Commission on the declaration to stand on its own merits. It was most appropriate for the Assembly to take note of the declaration and commend it as a constructive contribution towards the progressive development of international law. It would avoid the necessity of determining what was law and what was a guide to its future development, and would allay the fear of many delegations to give final and definitive authority to principles the full implications of which might give rise to doubts and controversies which could not and should not be hastily resolved with incomplete understanding of their significance.

86. In suggesting that course, the United States delegation did not intend to neglect the work of the Commission. It wanted to keep the declaration alive and intact and avoid its mutilation by hasty political compromises. The General Assembly should not only consider the declaration as a notable contribution toward the progressive development of law, but should commend it to the continuing consideration and study of Member States, of international tribunals, and of jurists of all nations as a source of law, and as a guide to its progressive development.

87. The term "source of law" had been used in the sense of article 38, paragraph 1, d, of the Statute of the International Court of Justice namely, a subsidiary means for the determination of rules of law.

88. It would be a great mistake to underestimate the great impact that the declaration would have upon the progress of international law if the declaration was allowed to stand on its intrinsic merit. It would be a mistake to underestimate the prestige and standing that would be ascribed to that work of the International Law Commission of the United Nations as a great collaborative effort of eminent jurists of internationally recognized competence. It was no accident that so much of the outstanding and pioneering work in international law had come from the writings of independent jurists. Grotius, Vattel and Bynkershoek had made their great and lasting contributions to the progressive development of international law because they had been able to write with relative freedom from the necessity of fashioning their thoughts and their words to obtain immediate political acceptance. In the light of those considerations he submitted the United States draft resolution (A/C.6/330) to the Sixth Committee.

89. Mr. GARCÍA AMADOR (Cuba) wished to know whether the question under consideration was procedural or one of substance.

90. The CHAIRMAN explained that the point raised by the Byelorussian representative was that the draft declaration had been presented to the General Assembly in violation of the Commission's Statute and should therefore not be considered by the General Assembly. It was a point of procedure and should have precedence over the question of substance since it raised the question



whether or not the draft declaration should be discussed by the Sixth Committee.

91. Mr. GARCÍA AMADOR (Cuba) said that, in that case, he would confine his remarks to the Byelorussian representative's procedural motion and the procedural aspects of the United States representative's speech.

92. With respect to the Byelorussian motion, and the Byelorussian representative's statement that the International Law Commission had violated its own Statute, the Cuban delegation approved without any reservation whatsoever the position taken by the majority of twelve of the thirteen members attending the first session of the Commission, after a long debate; that position was clearly explained in paragraph 53 of the Commission's report (A/925). The Commission had been instructed by resolution 178 (II) of the General Assembly to prepare a draft declaration on the rights and duties of States. In deciding upon a special procedure to deal with that special assignment, the Commission had not violated articles 16 and 21 of its Statute, since those articles referred to work initiated by the Commission itself and not to projects carried out under the express instructions of the General Assembly.

93. With respect to the United States proposal (A/C.6/330) to which the United States representative had referred, Mr. García Amador said that his delegation had a number of objections to offer.

94. The first paragraph of that proposal stated that the rights and duties of States under international law had been profoundly "affected" by the Charter of the United Nations; he took issue with that statement. The Charter had "recognized" certain accepted principles of international law, but nothing in it affected or had been intended to affect the rights and duties of States under that law.

95. The third paragraph of the United States proposal referred to the difficulties of formulating basic rights and duties of States in the light of new developments of international law and of determining with accuracy and certainty what was international law and what was or was not in the course of becoming international law. The Cuban delegation did not think that it was possible, at any moment in history, to determine such matters with accuracy and certainty. The United States delegation had not, however, raised that problem in connexion with the Convention on the Prevention and Punishment of the Crime of Genocide, although the debate on that occasion had centred on new subject-matter and had led to the adoption, not of a mere declaration, but of an international convention. The United States had voted, without reservation, both for the convention on genocide and for the Universal Declaration of Human Rights, which also contained much new subject-matter.

96. The representative of Cuba also took exception to the fifth paragraph of the United States proposal, in accordance with which the General Assembly would merely note the draft declaration and express its appreciation of the Commission's work. "Appreciation" was hardly the appropriate word for the General Assembly to use in evaluating the effort and the positive results of the International Law Commission; the word contained a note of condescension which should be avoided. The word "notes", however, was far more objec-

tionable. To do no more than to note — in other words, to acknowledge receipt of — the draft declaration would frustrate the letter and spirit of resolution 178 (II), which had instructed the Commission to prepare a draft declaration on the assumption that that declaration would one day be approved by the General Assembly.

97. With respect to the sixth paragraph of the United States proposal, he observed that the Commission itself had had doubts whether its work on the draft declaration fell into the category of progressive development or codification of international law. That question had been raised with respect to nearly every article of the draft declaration but was not, however, one for the General Assembly to answer. As all the principles contained in the draft declaration were to be found either in the Charter or in various international conventions, the General Assembly could simply recognize that what the Commission had done was to give articulate form to principles of positive law.

98. The Cuban representative reserved the right to speak on the substance of the draft declaration at a later stage.

99. Mr. KRAJEWSKI (Poland) said that the Commission, on the grounds that the Panamanian draft had already been transmitted to Member Governments with a request for comments and that the preparation of the draft declaration constituted a special assignment from the General Assembly, had decided to abandon the procedure prescribed in its Statute and to submit the draft declaration to the General Assembly immediately, without obtaining and taking into account comments by Governments.

100. He questioned the propriety of the Committee's dealing with the draft declaration at the current session, since the item had been placed on the General Assembly's agenda in violation of articles 16 and 21 of the Commission's Statute.

101. The draft declaration dealt with so many weighty problems that it would be virtually impossible for the Committee to give it appropriate consideration in the short time at its disposal; yet, the issue was too important for a hasty decision. Moreover, only seventeen Governments had commented on the Panamanian draft; and it should not be forgotten that the draft differed basically from the draft declaration as elaborated by the Commission. It could, therefore, not be said — as the Commission said in its report (A/925, paragraph 53) — that all Governments had had ample opportunity to express their general views on the subject-matter. The fact was that no Government had done so because the Commission's draft declaration had not been submitted to any Government.

102. Under article 16, paragraph *h* of its Statute, the Commission should have invited Governments to submit comments on the draft declaration within a reasonable time. That was all the more necessary because the draft declaration was a most important document which each Government should have an adequate opportunity to study and analyse and upon which to state its views.

103. Mr. Krajewski therefore formally moved that, in accordance with articles 16 and 21 of the Commission's Statute, the draft declaration should be referred to Governments for comments and observations, and that it should not be discussed



by the Sixth Committee in the absence of those comments and observations.

104. The CHAIRMAN requested representatives to confine their remarks to the Polish representative's procedural motion.

105. Mr. FITZMAURICE (United Kingdom), speaking on a point of order, said that since the United States proposal (A/C.6/330), submitted earlier, was also before the Committee, and since the Polish motion, to the effect that the draft declaration should be transmitted to Governments for their comments, was also of a substantive character, all of the possible courses of action with respect to the draft declaration should be discussed at the same time.

106. The CHAIRMAN replied that, in his judgment, priority should be given to the Polish representative's motion because that motion was that the draft declaration should not be discussed by the Committee on the grounds that it had been placed on the agenda of the General Assembly in violation of articles 16 and 21 of the Commission's Statute. Thus, the motion raised a preliminary question which had to be settled first.

107. Mr. COHEN (United States of America) endorsed the remarks of the United Kingdom representative. If the draft declaration was before the Committee, no one motion with respect to it should be given priority; the debate would be unduly limited and distorted if the representatives were not permitted to discuss the relative merits of competing proposals. The Polish motion did not greatly differ from the Argentine draft resolution (A/C.6/332). Priority could not be given to it unless the Polish representative raised a point of order to the effect that the draft declaration was not properly before the Committee. As the item had been approved by the General Committee and the General Assembly and assigned to the Sixth Committee, however, it seemed too late to raise that question.

108. Mr. SPIROPOULOS (Greece) agreed that it was too late to raise the question, in view of the fact that a debate on the substance of the question had already been begun. He pointed out that the Committee had decided to deal separately with the two parts of the International Law Commission's report (A/925). After a general debate on part I, the Committee had dealt with specific proposals submitted by delegations. The same procedure should be followed with respect to part II of the report. To do otherwise would amount to reconsideration, which under rule 112 of the rules of procedure would require a two-thirds majority vote.

109. Mr. GARCÍA AMADOR (Cuba) and Mr. CHIARI (Panama) agreed with the representatives of the United Kingdom, the United States and Greece.

110. The CHAIRMAN remarked that no formal decision had been taken to hold a general debate on the report of the International Law Commission.

111. Mr. FERRER VIEYRA (Argentina), speaking on a point of order, pointed out the distinction

between his delegation's draft resolution (A/C.6/332) and the Polish delegation's motion. That distinction lay in the fact that the latter excluded preliminary debate, while the Argentine draft resolution envisaged a full general debate at the current session, following which not only the draft declaration but all the documentation relating thereto produced during the current session would be transmitted to Governments of Member States.

112. Mr. KORETSKY (Union of Soviet Socialist Republics) recalled that the Committee had spent nearly three weeks on the revision of the General Assembly's rules of procedure designed to save time and to enable the General Assembly and the Main Committees to deal with items which had been adequately prepared. There had been a general feeling that the General Assembly should not waste its efforts on unnecessary debate but should take concrete action in the most expeditious manner possible.

113. He was therefore somewhat surprised at the purport of the Argentine draft resolution. The Argentine delegation agreed that comments by Governments must be obtained before definite action could be taken with respect to the draft declaration; yet it wished the General Assembly to expend time and effort on a debate which could not possibly lead to any results. The USSR delegation was fully prepared, if such a debate were held, to state its views. He wished to stress the fact, however, that no practical results could be expected from the discussion of a document which had not reached the final stage of preparation.

114. The United States representative had plainly indicated that he wanted the draft declaration to become merely a "source of law" — in other words, a document that might upon occasion be cursorily consulted by a few jurists. If the Committee wanted the draft declaration to be a document of greater positive value than that, it must wait for the comments of the Governments of Member States.

115. In that connexion Mr. Koretsky pointed out that, while a few Governments had sent in their comments on the Panamanian draft, none had been given the opportunity to comment on the draft declaration produced by the International Law Commission. Yet the two documents were basically different. Whereas the Panamanian draft made only slight inroads on the principle of sovereignty of States, the Commission's draft destroyed it altogether. It was therefore indispensable to obtain the views of the various Governments on that draft. He agreed with the Byelorussian and Polish representatives that the procedure prescribed in the Commission's Statute must be followed. Consequently, he urged the Committee to adopt the Polish representative's motion.

116. The CHAIRMAN explained that, in his opinion, the Polish motion should be disposed of before any other proposal because it raised a point of order relating entirely to procedure and did not touch upon the substance of the question.

The meeting rose at 6 p.m.