

## HUNDRED AND SIXTY-SEVENTH MEETING

*Held at Lake Success, New York, on Tuesday, 18 October 1949, at 11 a.m.*

*Chairman: Mr. LACHS (Poland).*

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

#### **PART I: GENERAL (continued)**

#### *United Kingdom proposal for the reconsideration of the Icelandic draft resolution (A/C.6/L.37)*

1. The CHAIRMAN recalled that, at the 166th meeting, the United Kingdom representative had informed the Committee that his delegation would propose that the draft resolution submitted by the delegation of Iceland (A/C.6/L.37), and adopted<sup>1</sup> by the Committee at the 164th meeting of 15 October 1949, should be reconsidered. He called upon the United Kingdom representative to make his proposal.

2. Mr. FITZMAURICE (United Kingdom) wished to assure the representative of Iceland that his

<sup>1</sup> See the Summary Record of the 164th meeting, paragraph 93.

request for the reconsideration of the Icelandic delegation's draft resolution had been in no way prompted by opposition to it or by a lack of interest in the question of territorial waters. He had been guided solely by a desire to avoid giving the International Law Commission any special directives unless forced to do so by exceptional circumstances, particularly in the case of a question which had been examined by that Commission already.

3. Generally speaking, his delegation considered it inadvisable that a Committee should reverse its decisions. Consequently, it was preferable to submit motions in favour of a re-examination of a proposal already adopted or rejected by a Committee to the General Assembly rather than to the Committee concerned. If, however, the result of a vote on a proposal failed to represent the views of the Committee as a whole, or if the proposal had been put to the vote without having

been first thoroughly discussed, the Committee itself should decide whether or not to reconsider that proposal. Both those conditions applied to the Icelandic proposal.

4. He described briefly the circumstances in which that draft resolution had been adopted. It had been presented orally at the afternoon meeting of 14 October 1949,<sup>1</sup> and written copies were distributed to members of the Committee at the end of the meeting. The resolution had been discussed very briefly, and members of the International Law Commission representing their Governments in the Sixth Committee were not able to state their views on it, and the reasons why the International Law Commission had considered that the question of the régime of territorial waters should not be included in the Commission's list of topics given priority. He recalled that the Chairman had announced that the meeting of 15 October would be devoted to the discussion of the methods and procedures of the General Assembly, so that members of the Committee had been justified in assuming that they would be able to state their views on the Icelandic draft resolution at the meeting of 17 October. Nevertheless, it had been decided at the last moment to continue the discussion of the International Law Commission's report (A/925) at the 164th meeting on 15 October 1949, and a vote had been taken on the Icelandic proposal towards the end of that meeting, when nearly a third of the members had been absent. That proposal had been adopted by 15 votes to 12, with 14 abstentions, that is, by only a quarter of the members of the Committee. Since it had been generally agreed in the Committee that decisions of the International Law Commission could be changed for extremely important reasons only, a resolution to amend the list of topics selected by that Commission to be given priority in codification should only have been adopted by the Sixth Committee by large majority.

5. There were certain topics of international law which had a special interest for each country. Thus, his own attached the utmost importance to the recognition of States and Governments and their succession. He had not submitted proposals to add those topics — which he considered far more important and urgent, and far less controversial, than that of territorial waters — to the list of priorities, because he believed that it rested with the International Law Commission to establish the order in which it wished to undertake its work of codification. His delegation would have liked the Sixth Committee to adopt the same attitude, and that was why it was asking the Committee to re-examine the Icelandic draft resolution.

6. Another strong reason for re-examining that draft resolution was its ambiguity. It was difficult to tell from the resolution whether the General Assembly was to recommend the International Law Commission to codify the question of the régime of territorial waters together with the three topics already retained, or whether it was merely to ask the Commission to enter that question on its list of topics given priority without, however, necessarily placing it fourth on the list. A re-examination of the Icelandic draft resolution would make it possible to clarify the sense of the General Assembly recommendation and thus to spare the International Law Commission a long

debate on interpretation of the text of the resolution.

7. Support of the United Kingdom motion would in no way commit members of the Committee to vote against the Icelandic draft resolution. The adoption of that motion would merely make it possible to reopen debate on the Icelandic proposal, which would enable the Chairman and those of the members of the International Law Commission who were also members of the Sixth Committee to state their views on the proposal and would also permit the representative of Iceland to examine the possibility of amending his draft resolution so as to make it more acceptable to the majority. The delegation of Iceland could, for example, agree simply to propose to the General Assembly to draw the International Law Commission's attention to the close connexion between the question of territorial waters and that of the high seas, and to request it to consider what priority should be given the codification of that topic. Even if the representative of Iceland did not agree to amend his proposal in that way or if the original draft were adopted again, his delegation would be satisfied since the Committee would then have taken its decision in full knowledge of the issues involved and not after hurried discussion.

8. In conclusion, he earnestly appealed to the members of the Committee to vote for a reconsideration of that draft, irrespective of their attitude towards the Icelandic draft resolution.

9. The CHAIRMAN reminded the Committee that, under rule 112 of the rules of procedure, permission to speak against the United Kingdom motion could be afforded to two speakers only.

10. Mr. ANDERSEN (Iceland) said that, after further examination of the question, his delegation was more than ever convinced of the soundness and usefulness of the proposal. In studying the question of the régime of the high seas, the International Law Commission would clearly have to define and delimit the subject. If it did not study the régime of territorial waters at the same time, it would not help to advance the science of international law by stating that the high seas began where territorial waters ended. The régime of the high seas and that of territorial waters were really no more than two aspects of the same question and should be codified at one and the same time.

11. Mr. Andersen admitted that the question of territorial waters gave rise to considerable difficulties, but he pointed out that postponing the study of the question was not the way to solve those difficulties. Moreover, it should not be forgotten that many countries attached the highest importance to the fixing of their rights in the coastal areas bordering their territories.

12. The representative of Iceland reminded the meeting that Mr. Spiropoulos had already pointed out that the study of the three topics set down by the International Law Commission would take considerable time. The terms of reference of that Commission would end with the year 1951, but that in no way implied that its members must have finished the codification of the topics listed for priority study by that time. The list was merely a working programme for the present members of the International Law Commission or their successors. It was only logical to include the question of territorial waters, since it was closely related to that of the high seas.

<sup>1</sup> See the Summary Record of the 163rd meeting, paragraph 19.

13. Mr. Andersen was convinced that the members of the Commission who had voted for his draft resolution had done so in full possession of the facts.

14. Mr. FERRER VIEYRA (Argentina) stated that he was opposed to the United Kingdom proposal.

15. The International Law Commission had been set up for a practical purpose, that of furthering the aims of the United Nations. There was no intention of establishing a kind of academy of international law, but a body primarily devoted to the study of questions referred to it by the General Assembly or which Member States might request the Commission to examine.

16. There were questions of international law which might appear unimportant to some States, whereas they were vital to others. The question of territorial waters was of immense interest to a great many countries. Mr. Ferrer Vieyra recalled that, by two decrees promulgated in 1944, Argentina had proclaimed its sovereignty over the continental shelf and the territorial waters surrounding its coast and that, by a declaration of October 1946, it had reaffirmed that sovereignty, specifying, however, that it had no intention of interfering with freedom of navigation in its territorial waters. Argentina was not the only country which had issued a declaration of the kind; The United States of America had made one of a general nature in September 1945, Mexico had made one in October 1945. All those countries of Latin America which attached importance to the areas bordering their coasts, notably Costa Rica, Peru, Chile and Nicaragua had not been slow to follow suit.

17. The Argentine representative added that, unlike other topics provisionally set down for codification by the International Law Commission, there was no important documentation on territorial waters. There were very few precedents in the matter and that very fact constituted a further reason why the delegation of Argentina would vote against the United Kingdom proposal.

18. Mr. KORETSKY (Union of Soviet Socialist Republics) inquired of the representative of Argentina why he had linked the problem of the continental shelf with that of territorial waters. In point of fact, when the International Law Commission had studied the question of the régime of the high seas, it had stressed the close connexion of the problem with that of the continental shelf and had decided to consider them simultaneously.

19. Mr. FERRER VIEYRA (Argentina) replied that, even if the problem of the continental shelf had arisen in connexion with that of the régime of the high seas, it was none the less an integral part of the general question of territorial waters.

20. Mr. GARCÍA AMADOR (Cuba) pointed out that, to deal with the substance of a question while the discussion of its reopening was under discussion, was contrary to the rules of procedure.

21. He recalled that, at the 166th meeting, he had been the first to ask for the floor when the representative of the United Kingdom announced his intention of asking that the discussion of the Icelandic proposal should be reopened. He had also stated his wish to oppose the motion when the Chairman had referred to article 112 of the rules of procedure earlier in the present meeting. In the circumstances, he thought that his delegation might have been allowed to express its views on

the question, especially since it had openly approved<sup>1</sup> the proposal of Iceland.

22. The CHAIRMAN said that when, at the 166th meeting, the representative of Cuba had asked for the floor, he could not have known that it was with the intention of opposing the request for reopening the discussion under the terms of article 112. He regretted it all the more because he had failed to notice the Cuban representative's indication of his wish to speak in accordance with that article earlier in the meeting.

23. He then put to the vote the United Kingdom motion to reconsider the draft resolution submitted by the delegation of Iceland (A/C.6/L.37).

*There were 21 votes for the motion, 13 against, and 14 abstentions.*

*As the requisite two-thirds majority had not been obtained, the motion of the United Kingdom was not adopted.*

24. Mr. HUDSON (Chairman of the International Law Commission) noted with satisfaction that the discussion arising out of the United Kingdom's motion had enabled the meeting to define the purport of the Icelandic resolution. He was aware of the great respect which the members of the International Law Commission had for the rulings of the Sixth Committee, and he had feared that the resolution in question might have given rise to prolonged discussions on the precise scope of the recommendation contained therein, particularly in the matter of deciding whether it constituted a request within the meaning of paragraph 3 of article 18 of the Commission's Statute.

25. Mr. Hudson therefore took note of the explanation given by the representative of Iceland when he had stated that the question of territorial waters would have priority only after the three topics already selected by the International Law Commission, which had been careful to avoid setting a specific date for its study.

26. Mr. Hudson said that the International Law Commission would gladly add the topic for later study to the list of those to be examined immediately. Those were the three questions referred to the Commission by the General Assembly, the three topics which it had itself chosen and a seventh — the right of political asylum — which did not figure among the topics given priority but which the Commission had begun to study. Mr. Hudson gathered from the recent discussion that the International Law Commission was not called upon to modify its ordinary work programme and that it would examine the question of territorial waters in relation to the régime of the high seas in due course.

27. Mr. GARCÍA AMADOR (Cuba), after recalling that the Cuban delegation had always vigorously upheld the principle of the technical autonomy of the International Law Commission, a principle based on paragraph 2 of article 18 of its Statute, stressed the fact that, by the terms of paragraph 3 of that same article, the Commission's autonomy was nevertheless subject to priority requests by the General Assembly. Without wishing to give one interpretation rather than another to the Chairman's words, Mr. García Amador considered that, if paragraph 3 of article 18 of the Statute were to be strictly interpreted, the conclusion reached would be that, among all the questions

<sup>1</sup> See the Summary Record of the 163rd meeting, paragraph 39.

other than those directly referred to the International Law Commission by the General Assembly, that of territorial waters took first priority. In interpreting the Icelandic resolution, the International Law Commission should therefore be guided by paragraph 3 of article 18 of its Statute.

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

28. The CHAIRMAN asked for the views of the Commission on the recommendation contained in paragraph 42 of the International Law Commission's report (A/925) and the relevant proposals submitted by the delegations of Cuba (A/C.6/L.30), Canada (A/C.6/L.34), Chile (A/C.6/L.38) and Guatemala (A/C.6/L.41).<sup>1</sup>

29. He pointed out that, under the terms of article 142 of the rules of procedure, any proposal involving expenditure should be referred to the Fifth Committee in order that it might consider its implications with respect to the budget estimates of the United Nations.

The texts of the Canadian, Chilean and Guatemalan proposals follow:

*Canadian draft resolution (A/C.6/L.34)*

"The Sixth Committee, with a view to amending article 13 of the Statute of the International Law Commission, requests the Fifth Committee to consider sympathetically the suggestion to increase the emoluments of the members of the Commission as expressed in paragraph 42 of its report (A/925), bearing in mind the importance of the work of the Commission, the high qualities of its members and the manner of their election; and bearing in mind also the general system of remuneration for experts in the service of the United Nations.

"The Sixth Committee requests the Fifth Committee to present its recommendations to the former as soon as possible."

*Chilean draft resolution (A/C.6/L.38)*

"The Sixth Committee

"Recommends its Chairman to consult with the Chairman of the Fifth Committee in order to find a formula enabling both Committees to take a decision on that part of the report of the International Law Commission which refers to emoluments for its members, and to inform the Sixth Committee accordingly."

*Guatemalan amendment (A/C.6/L.41) to the*

*Chilean draft resolution (A/C.6/L.38)*

"The Sixth Committee,

"Having in mind to amend article 13 of the Statute of the International Law Commission,

"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 both Committees to take a decision on that part of the report of the International Law Commission which refers to emoluments for its members."

30. Mr. HUDSON (Chairman of the International Law Commission) stated that, in his capacity of member and Chairman of the International Law Commission, he had constantly striven to make

the Commission an efficient instrument of the General Assembly. He recalled the lively interest aroused in many countries by the provision in Article 13 a of the Charter that the General Assembly should initiate studies and make recommendations for the purpose of encouraging the progressive development of international law and its codification. He had himself devoted many years to the study of that question, especially between 1924 and 1937, and considered that the interest shown made it essential to take measures for the effective implementation of the provision.

31. The General Assembly could carry out its functions in that field in one of two ways. It could, on the one hand, content itself with having established the International Law Commission, and consider that that organ gave world public opinion sufficient proof of the Assembly's interest in the provisions of Article 13 a. Or, on the other hand, the Assembly could provide such conditions as to allow members of the Commission to devote more time to it and the Chairman of the Commission to demand of it the efforts necessary to carry out such important work. He refused to believe that the General Assembly could have taken the first of those two attitudes.

32. He recalled that thirteen members of the International Law Commission had already devoted from nine to ten weeks to the work of the first session, without taking into account the time they had devoted to research and study. For his own part, he could state that he had devoted half his time to the work of the Commission since its establishment.

33. He wondered how the members of the International Law Commission could be expected to go on devoting a large part of their time to the necessary research, preparation of documents, and attendance at the Commission's meetings without an increase in their emoluments.

34. He considered that it was illogical to put members of the Commission on the same footing as members of the commissions of experts of the Economic and Social Council, as article 13 of the Commission's Statute did. Great as was his respect for the members of the commissions of experts, he felt obliged to point out that they only devoted one or two weeks of their time to the work of the commissions on which they sat. In view of the importance and scope of the International Law Commission's work, it was not sufficient to give its members a *per diem* allowance during the period when they were attending sessions; moreover, that allowance barely enabled them to meet their needs.

35. Finally, he drew attention to the fact that members of the International Law Commission could be compared with two categories of officials, the *ad hoc* judges of the International Court of Justice and members of the proposed administrative tribunal of the United Nations. The former officials received two separate allowances and it was intended that the latter should have much larger emoluments than the allowances of members of the International Law Commission.

36. The International Law Commission did not make any concrete proposal; it confined itself to requesting the General Assembly to review the provisions of article 13 of the Commission's Statute in the light of those considerations.

37. Mr. GARCÍA AMADOR (Cuba) recalled that, in submitting its amendment (A/C.6/L.30) to

<sup>1</sup> For the text of the Cuban proposal, see the Summary Record of the 161st meeting, paragraph 22. The texts of the other three proposals appear under paragraph 29 below.



article 13 of the Statute of the International Law Commission, his delegation had not claimed that it was offering a definitive solution to the problem of the emoluments of members of the Commission, but had merely intended to provide the Sixth Committee with a basis for discussion of the subject. It was certainly the Sixth Committee's duty to decide on the principle of amending article 13, after which only the Fifth Committee could fix the amount of remuneration for members of the International Law Commission in figures.

38. Mr. KHOMOUSKO (Byelorussian Soviet Socialist Republic) stated that, in view of the fact that any decision to increase the emoluments of members of the International Law Commission would of necessity involve further expenditure, and bearing in mind the provisions of rule 143 of the rules of procedure, his delegation considered that the problem should be referred for a substantive decision to the Fifth Committee, which would consider the question from the budgetary point of view, probably simultaneously with the question of the emoluments of experts of the Economic and Social Council. The Byelorussian delegation took that opportunity to request the Chairman of the Sixth Committee to make known to the Chairman of the Fifth Committee the opinions and views expressed on the subject by members of the Sixth Committee.

39. Mr. MAYRAND (Canada) pointed out that his draft resolution (A/C.6/L.34) was based on two essential concepts. First of these was the desire sympathetically to consider the suggestion to increase the emoluments of members of the International Law Commission, bearing in mind the importance of the Commission's work, the high qualities of its members, and the manner of their election. The second concept was the wish to refrain from interfering with the general system of remuneration for experts in the service of the United Nations. In order to conform with the latter concept, the Fifth Committee should be given every possible latitude, and no unduly specific suggestion should be made, such as the Cuban delegation's proposal to put members of the International Law Commission on the same footing as some judges of the International Court of Justice.

40. Mr. GARCÍA BAUER (Guatemala) stated that his proposal (A/C.6/L.41) to set up a joint sub-committee of the Fifth and Sixth Committees to solve the problem was merely a repetition of a procedure adopted by the Sixth Committee on 28 January 1946<sup>1</sup>, when the question of deciding the emoluments of judges of the International Court of Justice had been considered. Such a sub-committee would be in a position to settle the question rapidly, from both the juridical and the budgetary points of view.

41. Mr. DROGUETT (Chile) explained that his draft resolution (A/C.6/L.38) was intended merely as a preliminary procedure, in accordance with the provisions of rule 142 of the rules of procedure, which provided for consultation between the Chairmen of the Fifth and Sixth Committees, in order to solve a problem on which unanimous agreement seemed to have been reached in the Sixth Committee.

42. Mr. FITZMAURICE (United Kingdom) pointed out that all the members of the Commit-

tee seemed to approve the contents of paragraph 42 of the International Law Commission's report (A/925). The only question was that of the manner in which the problem should be submitted to the Fifth Committee, whose approval was indispensable to a valid decision to increase the emoluments of members of the International Law Commission.

43. He thought that the Fifth Committee was prepared to consider an increase in the emoluments of members of the International Law Commission sympathetically, provided that that Committee was not bound by an unduly specific recommendation from the Sixth Committee and had a choice of methods for achieving that purpose. That was why it did not seem that the Cuban draft resolution (A/C.6/L.30) could be maintained, although its intentions were praiseworthy. The choice therefore lay between the Canadian, Chilean and Guatemalan proposals. The Guatemalan amendment which contemplated the establishment of a joint sub-committee, in which the views of the Sixth Committee might be suitably expressed, seemed preferable to the Chilean proposal. Nevertheless, it would be advisable to include in that text the parts of the Canadian proposal which gave justification for differentiating between the members of the International Law Commission and experts of the Economic and Social Council.

44. He therefore proposed that those two proposals should be amalgamated in a single text. The first part would follow the first paragraph of the Canadian proposal, in which the words "amending article 13 of the Statute" would be replaced by the words "considering an amendment to the Statute", and the word "sympathetically" by the words "and study"; the second part would consist of the second paragraph of the Guatemalan proposal, in which the words "enabling both Committees" would be replaced by the words "enabling the General Assembly" and the last sentence of which would be amended as follows: "in accordance with paragraph 42 of the report of the International Law Commission".

45. Mr. WENDELEN (Belgium) suggested that the authors of proposals on the question should meet with the United Kingdom representative to draw up a joint proposal.

46. Mr. GARCÍA AMADOR (Cuba) supported the Belgian representative's suggestion.

47. Mr. DUYNSTEE (Netherlands) thought that a decision should first be reached to delete article 13 of the International Law Commission's Statute, which presented an obstacle to any reasonable solution of the question by the Fifth Committee.

48. The CHAIRMAN pointed out that article 13 could not be deleted unless another text, which would have to be approved by the General Assembly, were substituted for it. The Sixth Committee could take no final decision in the matter because any increase in expenditure had first to be considered by the Fifth Committee. If the Sixth Committee were itself to settle the question immediately, therefore, its draft resolution might subsequently be referred back for amendment if it did not meet with the Fifth Committee's approval. It was therefore preferable to recommend that the Fifth Committee should consider the

<sup>1</sup> See *Official Records of the first part of the first session of the General Assembly, Sixth Committee*, page 17.

financial aspects of the problem, and not to take any final decision until that Committee's opinion had been obtained.

49. Mr. STABELL (Norway) and Mr. GARCÍA BAUER (Guatemala) approved, in principle, of a meeting between the authors of proposals and the United Kingdom representative, with a view to drawing up a joint formula satisfactory to all the delegations.

50. The CHAIRMAN proposed that consultations for that purpose should be held between the representatives of Cuba, Canada, Chile and Guatemala, who had all made proposals, and the representatives of the United Kingdom and the Byelorussian SSR, who had made suggestions on the same question.

*It was so decided.*

The meeting rose at 12.40 p.m.