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REPORT OF THE INTERNATIONAL LAW COMMISSION
ON THE WORK OF ITS SEVENTH SESSION

Report of the Sixth Committee

Rapporteur: Mr. A.J.P. TAMMES (Netherlands)

1. The General Assembly, at its 530th plenary meeting held on 30 September 1955, decided to place on the agenda of its tenth session the item "Report of the International Law Commission on the work of its seventh session"^{1/} and, at the same meeting, referred the item to the Sixth Committee for consideration.
2. The Sixth Committee considered the item at its 442nd to 454th meetings, held from 11 October to 4 November 1955. The Chairman of the International Law Commission, Mr. Jean Spiropoulos, attended the meetings and made statements in explanation of the Commission's report.
3. In the course of its consideration of the item, the Sixth Committee prepared draft resolutions for adoption by the General Assembly regarding those parts of the report of the Commission which required action on the part of the Assembly, namely, part I of chapter IV containing recommendations to amend articles 12 (place of meetings) and 10 (term of office of members) of the Statute of the International Law Commission, and part V of the same chapter, regarding the publication of documents of the Commission. The Sixth Committee also prepared a draft resolution concerning the question of amending article 11 (filling of casual vacancies) of the Commission's statute, a question which was raised in

^{1/} See Official Records of the General Assembly, Tenth Session, Supplement No. 9, document A/2934.

connexion with the discussion of the present item. The proceedings relating to these subjects are briefly summarized in sections I to IV below. The relevant draft resolutions recommended to the General Assembly by the Sixth Committee are contained in section V.

4. Several representatives also referred to part VI of chapter IV of the Commission's report, dealing with the Commission's co-operation with Inter-American bodies. The resolution on this question adopted by the Commission, the text of which appears in paragraph 36 of its report, met with approval on the part of the representatives who made statements on the subject. It was also emphasized that the measures proposed in the resolution should be considered rather as an acceptable minimum than as a satisfactory solution of the problem.
5. In connexion with the future work of the International Law Commission and, in particular, the topic of diplomatic intercourse and immunities, some representatives recalled the urgent need of revising the classification of diplomatic agents and expressed the hope that the Commission, at its eighth session, could frame a proposal on the topic for transmission to the General Assembly, treating the problem of classification, if need be, as a separate matter.

I

Amendment to article 12 of the Statute of the Commission

6. In paragraph 25 of its report the International Law Commission recommended the General Assembly to amend article 12 of the Commission's Statute to read:

"The Commission shall sit at the European Office of the United Nations at Geneva. The Commission shall, however, have the right to hold meetings at other places after consultation with the Secretary-General."

In support of its proposal the Commission stated that, in the opinion of its members, the European Office afforded the best conditions for their work, that Geneva had an exceptionally well planned law library which highly facilitated their task and that arrangements for the Commission's sessions would be simplified.

7. The Sixth Committee considered the matter at its 442nd and 443rd meetings. A statement (A/C.6/L.350) regarding the financial implications of the proposed amendment was submitted by the Secretary-General.

8. Among the representatives who took part in the discussion of the question, there was almost general agreement that the reasons adduced by the International Law Commission in favour of the proposed amendment were convincing. It was moreover pointed out that the amendment, if adopted by the General Assembly, would merely confirm an already established practice. Some representatives also emphasized that the amendment did not imply the establishment of a permanent seat of the Commission. As amended, article 12 would simply provide that the Commission should meet in Geneva unless it decided otherwise after consultation with the Secretary-General. With regard to the additional cost involved, several representatives expressed the view that the establishment of favourable working conditions for the Commission should prevail over budgetary considerations.

9. Afghanistan, the Netherlands, Panama, Sweden, Syria and Uruguay submitted a draft resolution (A/C.6/L.349) which, after referring in the preamble to the relevant paragraphs of the Commission's report and taking account of "the view expressed by the Commission that general conditions at the European Office of the United Nations are more conducive to efficiency in the kind of work the members of the Commission have to perform", provided, in its operative part, that article 12 of the Statute of the Commission should be amended to read as follows:

"The Commission shall sit at the European Office of the United Nations at Geneva. The Commission shall, however, have the right to hold meetings at other places after consultation with the Secretary-General."

10. The representative of the United Kingdom proposed an oral amendment to the second paragraph of the preamble to the effect that the word "general" before the word "conditions" should be deleted. The oral amendment was accepted by the sponsors of the draft resolution.

11. At its 443rd meeting on 12 October 1955, the Committee voted on the draft resolution which was adopted, as amended, by 49 votes to none, with 3 abstentions.

12. The Sixth Committee therefore recommends to the General Assembly the adoption of draft resolution I contained in section V of the present report.

II

Amendment to article 10 of the Statute of the Commission

13. In paragraph 27 of its report the International Law Commission recommended to the General Assembly an amendment to article 10 of the Commission's Statute, providing that members should be elected for a period of five instead of three years. The Commission also proposed that the amendment should take effect on 1 January 1957, when members elected at the eleventh session of the General Assembly would take up their duties. The Commission stated in support of its recommendation that such an extension of the term of office of its members would be beneficial to the continuity of its work, in particular with respect to the preparation and consideration of the reports of the special rapporteurs.

14. The Sixth Committee considered the matter at its 443rd to 446th meetings.

15. A number of representatives expressed themselves in favour of the Commission's proposal, stressing the importance of continuity in the work of a body whose main function was the promotion of the gradual development and codification of international law. It was stated that experience had shown the inadequacy of a three-year term with regard to the completion by the Commission, and in particular by its special rapporteurs, of the tasks devolving upon them within that period. The procedure laid down for the Commission did not, in fact, allow it to complete the study of a subject in three years and new members were therefore obliged to take up questions already discussed by their predecessors. The three-year term had been set more or less tentatively when the Commission's Statute was drawn up. It was now clear that a five-year term would be better suited to the tasks entrusted to it and its rapporteurs.

16. Other representatives opposed the extension of the term of office on the grounds that, in general, the continuity of the work of the Commission did not depend upon the continuity of its membership and that, in cases where such a link could exceptionally be said to exist, the continuity of the Commission's work could be assured by the re-election of some of the members. Concern was expressed by several representatives that the extension of the term of office might prejudice the election of new members to the Commission and, thereby,

the principle of geographical distribution and the representation in the Commission, in accordance with article 8 of the Statute, of the main forms of civilization and of the principal legal systems of the world. It was also argued that the extension from three to five years was arbitrary and that a six-year term might be preferable as it would make it possible to guarantee a certain amount of continuity in the membership by electing a third of the members every second year.

17. The United Kingdom submitted a draft resolution (A/C.6/L.351) which, in its operative part, provided that the General Assembly would:

(1) Decide to amend article 10 of the Statute of the International Law Commission to read as follows:

"The members of the Commission shall be elected for five years. They shall be eligible for re-election";

(2) Decide that the foregoing amendment would take effect on 1 January 1957.

18. Some representatives favoured postponement of the subject to the eleventh session of the General Assembly. The Philippines submitted a draft resolution (A/C.6/L.353) whereby the General Assembly would:

(1) Decide to postpone further consideration of the matter until the eleventh session;

(2) Request the International Law Commission to study the matter further in the light of the discussions in the Sixth Committee during the current session, and to submit such recommendations as it might deem proper for consideration by the Assembly at its eleventh session.

19. At its 446th meeting on 20 October 1955, the Sixth Committee proceeded to vote upon the draft resolutions. The representative of the Philippines proposed that the Committee should vote first on the draft resolution submitted by his delegation (A/C.6/L.353). The proposal was rejected by 28 votes to 20, with 5 abstentions. The draft resolution submitted by the United Kingdom (A/C.6/L.351) was then voted upon and adopted by 33 votes to 11, with 8 abstentions. The adoption of this draft resolution made a vote on the draft resolution submitted by the Philippines unnecessary.

20. The Sixth Committee therefore recommends to the General Assembly the adoption of draft resolution II contained in section V of the present report.

III

Question of amending article 11 of the Statute of the Commission

21. At the 452nd meeting of the Sixth Committee the United States of America submitted a draft resolution (A/C.6/L.357), according to which article 11 of the Statute of the International Law Commission would be amended to provide that casual vacancies in its membership would be filled by the General Assembly instead of by the Commission itself. In support of this proposal, the representative of the United States expressed the view that an increase in the length of the terms of office of the Commission's members from three to five years made it desirable that casual vacancies be filled by the General Assembly.
22. In the ensuing discussion several representatives doubted the competence of the Sixth Committee to consider the draft resolution, as the amendment of article 11 of the Commission's Statute was not on the agenda of the Sixth Committee. In the opinion of other representatives, consideration of the draft resolution would amount to reconsideration of a proposal which had already been disposed of by the Committee at its 446th meeting. It was further argued that the International Law Commission should be consulted before any amendment of its Statute was adopted.
23. The United States subsequently submitted a revised text (A/C.6/L.357/Rev.1) of its draft resolution by which the General Assembly would decide to include in the provisional agenda of its eleventh regular session the question of amending article 11 of the Statute of the Commission.
24. Costa Rica submitted an amendment (A/C.6/L.360) to the revised draft resolution. This amendment was later replaced by an amendment jointly submitted by Costa Rica and India (A/C.6/L.363) to insert in the revised draft resolution a new operative paragraph whereby the Assembly would invite the Commission to communicate its opinion about the amendment of article 11 of its Statute.
25. At its 454th meeting on 4 November, the Committee voted on the revised draft resolution and the amendment thereto. The amendment (A/C.6/L.363) was adopted by 44 votes to none, with 10 abstentions. The operative paragraph of the revised draft resolution (A/C.6/L.357/Rev.1) was then adopted by 50 votes to none, with 3 abstentions. The revised draft resolution as a whole, as amended, was adopted by 53 votes to none, with 1 abstention.

26. The Sixth Committee therefore recommends to the General Assembly the adoption of draft resolution III contained in section V of the present report.

IV

Publication of the documents of the International Law Commission

27. At its seventh session, the International Law Commission adopted a resolution concerning the publication of its documents. The resolution, as reproduced in paragraph 35 of the Commission's report reads:

"The International Law Commission,

"Recalling that in its resolution 176 (II) of 21 November 1947 on the teaching of international law, the General Assembly stated that 'one of the most effective means of furthering the development of international law consists in promoting public interest in this subject and using the media of education and publicity to familiarize the peoples with the principles and rules that govern international relations',

"Considering that the Commission is the organ established by the General Assembly for the promotion of the progressive development of international law and its codification, and that it is highly desirable that the records of its proceedings be made easily available both to educational institutions and to the general public,

"Considering that, for various reasons, it has been difficult for interested persons and institutions to acquire the studies, special reports and summary records of the Commission,

"Recalling that the General Assembly, in its resolution 686 (VII) of 5 December 1952, requested the Secretary-General to prepare a report concerning, inter alia, the contents of a Juridical Yearbook as a possible publication of the United Nations,

"1. Requests the Secretary-General, in preparing the above-mentioned report, to take into consideration the possibility of printing the studies, special reports and summary records of the Commission;

"2. Recommends to the General Assembly, in connexion with its consideration of the report of the Commission on the work of its seventh session, to examine the possibilities of printing the studies, special reports and summary records of the Commission, including the possibility of publishing them in the United Nations Juridical Yearbook contemplated in General Assembly resolution 686 (VII)."

28. The Sixth Committee discussed at its 445th to 452nd meetings the question of the publication of the documents of the International Law Commission. During its discussions, the Committee had before it a report (A/C.6/348) of the Secretary-General prepared in pursuance of General Assembly resolution 686 (VII) concerning ways and means for making the evidence of customary international law more readily available. The representative of the Secretary-General provided the Committee with information regarding the financial implications of the various proposals before it.

29. The majority of the representatives taking part in the discussion were agreed that as the question of a Juridical Yearbook of the United Nations referred to in the resolution of the International Law Commission reproduced above was not on the agenda, no decision regarding the publication of such a yearbook could be taken at the present session. The discussion consequently centred on the question of printing the documents of the Commission as a separate publication.

30. As regards the principle of publishing these documents, there was general agreement that they should be printed. In the opinion of some representatives, the Sixth Committee should limit itself to embodying this generally accepted principle in a resolution, referring the matter to the General Assembly for further consideration at its eleventh session. In the meantime, the details of publication and the financial implications could be better explored than had hitherto been possible. Other representatives stressed the need for immediate publication of the Commission's documents, which were of great importance for the study of international law; some of them were now out of stock and should again be made available.

31. As to the kind of documents to be published, some representatives expressed the opinion that all the Commission's documents should be printed as there was no sound criterion for classifying them with respect to their importance. On the other hand it was submitted that some selection was necessary and that this task could best be entrusted to the Commission itself, which should give the necessary instructions on the subject to the Secretary-General.

32. Almost general agreement developed that the documents relating to previous sessions of the Commission should be included in the publication plan.

Understanding of the Commission's work would thus be greatly promoted.

33. Different opinions were expressed regarding the question of the languages in which the documents should be printed. The question was discussed with reference to information provided by the Secretariat on the estimated cost of printing in English, French and Spanish. For reasons of economy, some representatives suggested that the documents should be printed in English only. Others felt that publication in English only would benefit too small a number of those interested in the Commission's documents and that publication in Spanish was, therefore, necessary. It was also submitted that the French language was so important a vehicle of legal thought that the documents should also be published in French. In the end a compromise solution gained considerable support: the future documents of the Commission would be published in English, French and Spanish, while, as regards documents pertaining to the Commission's previous sessions, studies, special reports, principal draft resolutions and amendments would be printed in their original language; summary records would be printed initially in English only.

34. Egypt and Sweden submitted a draft resolution (A/C.6/L.355), later replaced, (A/C.6/L.355/Rev.1) by which the General Assembly would:

(1) Request the Secretary-General to print and publish, initially in English, the studies, special reports and summary records of the International Law Commission beginning with its first session;

(2) Invite the Commission to give instructions to the Secretary-General with respect to the selection and editing of the documents to be printed and, if necessary in the opinion of the Commission, to resubmit to the General Assembly the question of the printing of its documents.

The sponsors subsequently amended paragraph 2 of the operative part by replacing the words "give instructions" by "express its views".

35. Draft resolutions were also submitted by Belgium, Bolivia, Brazil, Chile, Costa Rica, El Salvador, Greece, Guatemala, Iran, Mexico and Peru (A/C.6/L.356) and by Afghanistan, India and Venezuela (A/C.6/L.358). These were subsequently

withdrawn in favour of a joint draft resolution presented by Afghanistan, Bolivia, Brazil, Chile, Colombia, Costa Rica, Greece, Guatemala, India, Iran, Mexico, the United Kingdom and Venezuela (A/C.6/L.359) by which the General Assembly would:

(1) Request the Secretary-General to arrange as soon as possible for the printing of the following documents relating to the first seven sessions of the Commission:

(a) The studies, special reports, principal draft resolutions and amendments presented to the Commission in their original languages; and

(b) Its summary records in English;

(2) Request the Secretary-General also to arrange for the printing each year, in English, French and Spanish, of the documents mentioned in the preceding paragraph relating to future sessions of the Commission.

(3) Invite the Commission to give instructions to the Secretary-General with respect to the selection and editing of the documents to be printed and, if necessary in the opinion of the Commission, to resubmit to the General Assembly the question of the printing of its documents.

36. The representative of Uruguay orally proposed an amendment to operative paragraph 1 (b) of the joint draft resolution (A/C.6/L.359) to insert the word "initially" before the words "in English".

37. At its 452nd meeting on 2 November, the Sixth Committee proceeded to vote on the proposals before it. The Committee voted first, in parts, on the revised draft resolution submitted by Egypt and Sweden (A/C.6/L.355/Rev.1), as further amended by its sponsors (see paragraph 34 above). Operative paragraph 1 was rejected by 29 votes to 16, with 5 abstentions, the operative paragraph 2 by 24 votes to 19, with 7 abstentions. In view of the rejection of both the operative paragraphs, the draft resolution was considered as having been rejected as a whole.

38. The oral amendment proposed by Uruguay to the thirteen-Power joint draft resolution (A/C.6/L.359) was adopted by 24 votes to 3, with 25 abstentions. The Committee thereafter voted, in parts, on the joint draft resolution as follows:

(a) Operative paragraph 1, as amended, was adopted by 30 votes to 10, with 12 abstentions.

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

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

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

39. The Sixth Committee therefore recommends to the General Assembly the adoption of draft resolution IV contained in section V of the present report.

V

Recommendations of the Sixth Committee

40. The Sixth Committee recommends to the General Assembly the adoption of the following four draft resolutions:

I

PLACE OF MEETING OF THE INTERNATIONAL LAW COMMISSION: AMENDMENT
TO ARTICLE 12 OF THE STATUTE OF THE COMMISSION

The General Assembly,

Having regard to paragraphs 25 and 26 of the report^{1/} of the International Law Commission on the work of its seventh session,

Taking account of the view of the Commission that conditions at the European Office of the United Nations are more conducive to efficiency in the kind of work the members of the Commission have to perform,

Decides to amend article 12 of the Statute of the International Law Commission to read as follows:

"The Commission shall sit at the European Office of the United Nations at Geneva. The Commission shall, however, have the right to hold meetings at other places after consultation with the Secretary-General."

^{1/} See Official Records of the General Assembly, Tenth Session, Supplement No. 9, document A/2934.

II

TERM OF OFFICE OF MEMBERS OF THE INTERNATIONAL LAW COMMISSION:
AMENDMENT TO ARTICLE 10 OF THE STATUTE OF THE COMMISSION

The General Assembly,

Having regard to paragraphs 27 and 28 of the report^{1/} of the International Law Commission on the work of its seventh session,

Taking account of the view of the Commission that a change in the term of office of its members from three to five years would be beneficial to the continuity of its work,

1. Decides to amend article 10 of the Statute of the International Law Commission to read as follows:

"The members of the Commission shall be elected for five years. They shall be eligible for re-election.";

2. Decides that the foregoing amendment shall take effect as from 1 January 1957.

III

QUESTION OF AMENDING ARTICLE 11 OF THE STATUTE OF THE INTERNATIONAL
LAW COMMISSION RELATING TO THE FILLING OF CASUAL VACANCIES IN THE
MEMBERSHIP OF THE COMMISSION

The General Assembly,

Having regard to the fact that article 10 of the Statute of the International Law Commission has been amended to increase the term of office of the members of the Commission from three to five years,

1. Invites the International Law Commission to communicate its opinion concerning the amendment of article 11 of the Statute of the Commission as regards the filling of casual vacancies in its membership;

2. Decides to include in the provisional agenda of the eleventh session of the General Assembly the question of amending article 11 of the Statute of the International Law Commission.

^{1/} See Official Records of the General Assembly, Tenth Session, Supplement No. 9, document A/2934.

IV

PUBLICATION OF THE DOCUMENTS OF THE INTERNATIONAL LAW COMMISSION

The General Assembly,

Recalling the terms of its resolution 176 (II) of 21 November 1947,

Considering paragraph 35 of the report^{1/} of the International Law Commission on the work of its seventh session and the report of the Secretary-General (A/C.6/348) prepared in pursuance of General Assembly resolution 686 (VII) of 5 December 1952 concerning ways and means for making the evidence of customary international law more readily available,

1. Requests the Secretary-General to arrange as soon as possible for the printing of the following documents relating to the first seven sessions of the International Law Commission:

(a) The studies, special reports, principal draft resolutions and amendments presented to the Commission, in their original languages;

(b) The summary records of the Commission, initially in English;

2. Requests the Secretary-General also to arrange for the printing each year, in English, French and Spanish, of the documents mentioned in the preceding paragraph relating to future sessions of the Commission;

3. Invites the International Law Commission to give instructions to the Secretary-General with respect to the selection and editing of the documents to be printed and, if necessary in its opinion, to resubmit to the General Assembly the question of the printing of the documents of the Commission.

^{1/} See Official Records of the General Assembly, Tenth Session, Supplement No. 9, document A/2934.