



CONTENTS

Agenda item 84:

Report of the International Law Commission
on the work of its twentieth session (con-
tinued)

Page

1

Chairman: Mr. K. Krishna RAO (India).

AGENDA ITEM 84

Report of the International Law Commission on the work of its twentieth session (continued) (A/7209 and Corr.2; A/C.6/L.647, A/C.6/L.649 and Add.1, A/C.6/L.651)

1. The CHAIRMAN said that Belgium had withdrawn its amendment (A/C.6/L.650) to draft resolution A/C.6/L.649 and Add.1. The Committee now had before it a new draft resolution sponsored by the delegations of Australia, Austria, Ceylon, Chile, Colombia, Ecuador, El Salvador, Ghana, Guatemala, Haiti, Hungary, India, Mexico, Mongolia, Nigeria, Peru, Romania, the United Kingdom and Yugoslavia (A/C.6/L.651), which was based largely on draft resolution A/C.6/L.649 and Add.1, but contained some changes in the operative part.

2. He wished to point out to the sponsors of the new draft resolution that operative paragraph 8 was inconsistent with the Statute of the International Law Commission. In fact, it was incompatible with it—particularly with article 18, which he proceeded to read out. In order to avoid that contradiction, operative paragraph 8 could be deleted and the following phrase could be inserted after the words "International Law Commission" in operative paragraph 3: "including the preparation of the new survey of the whole field of international law referred to in paragraph 99 of the Commission's report, in accordance with article 18 of its Statute".

3. Mr. SINCLAIR (United Kingdom) said that the sponsors of the draft resolution had not been unaware of the contradiction referred to by the Chairman during their informal consultations. It could, perhaps, be resolved by inserting the following phrase after the words "Secretary-General" in operative paragraph 8: "in consultation with the International Law Commission".

4. Mr. OSTROVSKY (Union of Soviet Socialist Republics) did not see how the additional phrase proposed by the United Kingdom representative would solve the problem of the wording of operative paragraph 8, which, as the Chairman had quite rightly pointed out, was incompatible with the Statute of the International

Law Commission, particularly article 18. It would still be incompatible with article 18, whatever additional phrases were inserted in it.

5. Mr. DADZIE (Ghana) was in favour of the solution proposed by the Chairman. He announced that Morocco and the United Republic of Tanzania now wished to co-sponsor draft resolution A/C.6/L.651. He thought it might be advisable to suspend the meeting, so that the sponsors could consult one another and consider the solutions proposed by the Chairman and the United Kingdom delegation.

6. The CHAIRMAN said that there were still a number of representatives wishing to speak.

7. Mr. YASSEEN (Iraq) agreed with the Chairman that operative paragraph 8 was directly contrary to article 18 of the Statute of the International Law Commission. Surveying the whole field of international law with a view to selecting topics for codification was a statutory responsibility of the International Law Commission, and not of the Secretary-General at all. The Secretary-General could not be asked to undertake preparatory work which was the responsibility of the International Law Commission alone.

8. The insertion of the words "in consultation with the International Law Commission" in operative paragraph 8, as suggested by the United Kingdom representative, would not help matters and would not solve the problem. The only satisfactory solution was that proposed by the Chairman.

9. Mr. SINCLAIR (United Kingdom) said he realized that the question of the International Law Commission's responsibilities was particularly delicate. The sponsors of draft resolution A/C.6/L.651 had based their text on paragraph 99 of the International Law Commission's report, and had wished to include the recommendation to the effect that the Secretary-General should be asked to "prepare a new survey of the whole field of international law on the lines of the memorandum entitled Survey of International Law in relation to the Work of Codification of the International Law Commission". However, in view of the comments which had just been made, his delegation would not press its suggestion.

10. Mr. ROSENSTOCK (United States of America) said that he did not see any very serious contradiction between operative paragraph 8 of draft resolution A/C.6/L.651 and article 18 of the Statute of the International Law Commission, but would nevertheless be glad to support any reasonable compromise formula. He noted with satisfaction that the positions taken by members of the International Law Commission as individuals were not necessarily the same as those which they adopted as representatives under instruc-

tions from their Governments. That was striking evidence of their personal qualities and competence.

11. Mr. OGUNDERE (Nigeria) supported the solution proposed by the Chairman, and hoped that it would be adopted.

12. Sir Kenneth BAILEY (Australia) said that his delegation, a sponsor of draft resolution A/C.6/L.651, did not think that operative paragraph 8 was really inconsistent with the Statute of the International Law Commission. It was quite prepared, however, to accept a text intended to make that clear and therefore supported the amendment proposed by the Chairman. At the same time, it would suggest that in the Chairman's text the words "in accordance with article 18 of its Statute" should be placed after the words "the preparation".

13. The CHAIRMAN said he had no objection to the change proposed by the Australian representative, and hoped it would be acceptable to the other sponsors of the draft resolution.

14. Mr. VEROSTA (Austria) said he accepted the Chairman's amendment, but was not absolutely convinced of the need to keep the words which the Australian representative wished to move to another part of the phrase, since the International Law Commission was free to make recommendations on its own initiative.

15. The CHAIRMAN said that a compromise solution was bound by its very nature to contain certain elements which were not considered necessary by some of the parties concerned.

16. Mr. PRANDLER (Hungary) said that he would prefer the Committee to retain the existing text of operative paragraph 8 of draft resolution A/C.6/L.651. However, his delegation could accept the Chairman's amendment on the understanding that the new wording, which meant that responsibility for the preparation of the proposed survey would remain with the International Law Commission, would not involve any additional expenditure.

17. Mr. STAVROPOULOS (Legal Counsel) said that there had never been any question of the International Law Commission waiving its prerogatives under article 18 of its Statute. Once again, as it had done so often in the past, the Secretariat would prepare a background document on a topic studied by the Commission. The Commission could appoint special rapporteurs, but would probably not do so in the present case.

18. If, in view of the large volume of work which the Codification Division had recently been asked to undertake, the Secretariat was obliged to call on the services of an outside legal expert, some additional expenditure would be involved. As he had mentioned at the 1037th meeting, it would amount to about \$6,000 at the most. If, however, the Division was able to do without the services of an outside expert, that sum need not be spent.

19. Mr. OSTROVSKY (Union of Soviet Socialist Republics) believed that it would be better not to depart from the terms of paragraph 99 of the report of the International Law Commission and not to enter prematurely

into a discussion of the organization and methods of the survey.

20. His delegation regarded the amendment suggested by the Chairman as an excellent formula which took due account of the texts involved. If operative paragraph 3 of draft resolution A/C.6/L.651 was amended as suggested, the International Law Commission could be expected to take the appropriate decisions at its twenty-first session. Since the proposed study was not mentioned in paragraph 100 of the report, it was evidently a part of the Commission's long-term programme. The Commission already had before it a working paper in that connexion, which was contained in the annex to the report. In any case, the Commission's decisions at its twenty-first session would be taken in accordance with article 18 of its Statute. He welcomed the compromise arrived at, which took account of all the views expressed, and he thought it better for the Committee to confine itself to the present draft resolution, with the proposed amendment to operative paragraph 3.

21. Mr. ROSENSTOCK (United States of America) believed that the Committee need not concern itself with considerations such as the International Law Commission's conception of its terms of reference and the organization of the activities of the Secretariat. His delegation, for its part, had no doubt about the meaning of the amendment suggested by the Chairman. With regard to the report, the Chairman of the International Law Commission might be asked to give his opinion if the need arose.

22. Mr. STAVROPOULOS (Legal Counsel) said that he did not find in the amendment suggested by the Chairman the elements which the representative of the Soviet Union saw in it. In his opinion, the International Law Commission's decision referred to in paragraph 99 of its report remained unchanged and the Secretariat was still being requested to prepare the new study mentioned in that paragraph, which would be distinct from the document contained in the annex to the report.

23. Mr. RUDA (Chairman of the International Law Commission), speaking in his personal capacity as a participant in the work of the International Law Commission, said that a reading of paragraph 99 of the Commission's report made it clear that the Commission had in no way evaded its responsibility under article 18 of its Statute by asking the Secretary-General to prepare a new survey of the whole body of international law; the study requested would, in fact, be merely a preliminary survey aimed at making available to the Commission a list of subjects among which it could choose those which, in its opinion, it would be useful to codify. He also wished to stress the fact that only the International Law Commission had the authority to take decisions on the subject.

24. Mr. SINCLAIR (United Kingdom) felt that, in view of the International Law Commission's decision mentioned in paragraph 99 of its report, the Committee need not express its views on the methods which the Secretariat should follow in carrying out the task entrusted to it, but should instead confine itself to taking the steps necessary for the implementation of that decision. His delegation therefore regarded the wording suggested by the Chairman as satisfactory.

25. Mr. OSTROVSKY (Union of Soviet Socialist Republics) thanked the Chairman of the International Law Commission for his explanation and said that in his view it was all the more necessary to adopt a new wording of operative paragraph 3 of the draft resolution which made reference to the Commission's Statute, on the understanding that the Commission would be free to determine its own method of work. With regard to the interpretation of documents submitted to the Sixth Committee, its members could not regard the Secretariat's interpretation as authoritative.

26. Mr. STAVROPOULOS (Legal Counsel) wished to make it clear that the Secretariat's only concern was to obtain unambiguous instructions, since its function was to carry out the decisions of the General Assembly. In the present case the only instructions applicable would be those contained in the draft resolution and those contained in paragraph 99 of the International Law Commission's report.

27. Mr. DADZIE (Ghana) said that the sponsors of draft resolution A/C.6/L.651 had worked out a text which was consistent with paragraph 99 of the Commission's report and whose meaning was quite clear. His delegation had no objection, however, to the compromise suggested by the Chairman, if that compromise was acceptable to all the sponsors of the draft resolution.

28. Mr. BEN MESSOUDA (Tunisia) also supported the compromise solution. In addition, he suggested that the form of the draft resolution should be improved by changing the order of the operative paragraphs so that operative paragraph 3 would be followed by operative paragraphs 5 and 7 of the present text and by deleting the word "further" in operative paragraph 9 of the present text.

29. Mr. MYSLIL (Czechoslovakia) welcomed the apparent consensus concerning operative paragraph 8 of the draft resolution. The wording of operative paragraph 5, on the other hand, still left something to be desired; in its present form, the paragraph was inconsistent with paragraphs 103 and 104 of the International Law Commission's report, in which the Commission listed the problems it intended to study but made no mention of the final stage of the codification of international law. Having brought the matter to the General Assembly's attention, the International Law Commission had completed its task, and the appropriate action must now be taken by the General

Assembly. His delegation would therefore be grateful if the sponsors of the draft resolution would reconsider the wording of operative paragraph 5.

30. Mr. RUDA (Chairman of the International Law Commission) said that it was clear from the Commission's report that, after discussing the question of the final stage of the codification of international law in connexion with the memorandum submitted by Mr. Ago, the Commission had not taken and did not intend to take any decision in the matter. Since the question was not one of those listed in paragraphs 103 and 104 of the report, which the Commission intended to consider, it was incorrect to say that the Commission had it under consideration.

31. Mr. ALCIVAR (Ecuador), whose delegation was a sponsor of draft resolution A/C.6/L.651, said that the reason for including operative paragraph 5 was the sponsors' understanding that the International Law Commission had requested the United Nations Institute for Training and Research (UNITAR) to inform it of the results of its study on the same problem. He therefore asked the Chairman of the International Law Commission to enlighten him on that point.

32. Mr. RUDA (Chairman of the International Law Commission) said that, while it was true that some members of the International Law Commission had mentioned during the debate the existence of a UNITAR study, the Commission had never asked UNITAR to inform it of the results of that study. He re-emphasized that the matter was not now before the Commission and, in fact, had never been on its agenda but had merely been taken up in the category of "miscellaneous questions"; for that reason, the Commission had confined itself in its report to mentioning the nature and contents of Mr. Ago's memorandum.

33. Mr. DELEAU (France) thanked Mr. Ruda for furnishing information which made it possible to understand fully the meaning of paragraphs 102, 103 and 104 of the Commission's report. The Commission's attitude was in keeping with the approach of his delegation, which believed that a very thorough study of the problem was necessary, since the principle of State sovereignty would once more be called into question. His delegation therefore requested the sponsors of the draft resolution to bear that in mind when they redrafted operative paragraph 5 of the draft resolution.

The meeting rose at 1 p.m.

