



Agenda item 55: Report of the International Law Commission on the work of its eleventh session*

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DOCUMENT A/C.6/L.445

Bolivia: draft resolution

*[Original text: Spanish]
[5 October 1959]*

The General Assembly,

Considering the desirability of introducing uniformity and order into the rules applied in practice by States in connexion with the utilization and exploitation of international or inter-State waterways and navigation thereon,

1. Requests the International Law Commission to include the codification of current laws on the utilization and exploitation of international or inter-State waterways and navigation thereon as the next subject in its programme of work;

2. Requests the United Nations Secretariat, in collaboration with the International Law Commission, to undertake the task of compiling, classifying and analysing existing information on practices having the force of law which govern the use of international or inter-State rivers.

DOCUMENT A/C.6/L.445/REV.1

Bolivia: revised draft resolution

*[Original text: Spanish]
[7 October 1959]*

The General Assembly,

Considering the desirability of introducing uniformity and order into the rules applied in practice by States in connexion with the utilization and exploitation of international rivers and navigation thereon,

1. Requests the International Law Commission to study, when it deems opportune to do so, the possibility of codifying current laws on the utilization and exploitation of international rivers;

2. Requests the Secretary-General of the United Nations to undertake, in collaboration with the International Law Commission, the task of compiling, classifying and analysing the available information on this question.

* For the discussion of this item, see Official Records of the General Assembly, Fourteenth Session, Sixth Committee,

601st to 614th meetings; and ibid., Plenary Meetings, 842nd meeting.

DOCUMENT A/C.6/L.445/REV.2

Bolivia: revised draft resolution

*[Original text: English]
[13 October 1959]*

The General Assembly,

Considering that it is desirable to initiate preliminary studies relating to the legal problems in connexion with the utilization and use of international rivers with a view to determining whether the subject is appropriate for codification,

1. Requests the Secretary-General:

(a) To prepare a report containing:

(i) Information provided by Member States regarding their legislation and practice in the matter;

(ii) An analysis of existing bilateral and multilateral treaties;

(iii) An analysis of decisions of international tribunals;

(iv) A survey of studies made or being made by non-governmental organizations concerned with international law;

(b) To include this question in the provisional agenda of the regular session of the General Assembly following circulation of the report to the Member States;

2. Invites Member States to furnish the Secretary-General with the necessary information regarding their relevant treaties, legislation and practice.

DOCUMENT A/4253

Report of the Sixth Committee

*[Original text: English/Russian]
[2 November 1959]*

1. The General Assembly, at its 803rd plenary meeting on 22 September 1959, placed on the agenda of its fourteenth session the item entitled "Report of the International Law Commission on the work of its eleventh session" and referred it to the Sixth Committee.

2. The Committee considered the item from its 601st to 614th meetings held between 24 September and 19 October 1959.

3. At the 601st meeting, the Chairman welcomed, on behalf of the Sixth Committee, Sir Gerald Fitzmaurice, Chairman of the International Law Commission, and invited him to introduce the Commission's report (A/4169). Sir Gerald Fitzmaurice made a statement in the course of the debate and replied to questions put to him by representatives.

4. The report of the Commission was divided into four chapters devoted respectively to the organization of the session, the law of treaties, consular intercourse and immunities, and other decisions of the Commission.

5. In addition, the Sixth Committee considered a request made by the representative of El Salvador that the International Law Commission, as soon as it considers it advisable, undertake the codification of the principles and rules of international law relating to the right of asylum.

6. The Committee also considered a request made by the representative of Bolivia that the International Law Commission include in its programme of work the codification of current laws on the utilization and exploitation of international rivers and that the Secretariat, in collaboration with the Commission, undertake the task of compiling, classifying and analysing the available information on the question.

I. REPORT OF THE INTERNATIONAL LAW COMMISSION

Proposal

7. A draft resolution (A/C.6/L.444 and Add.1 and 2) was submitted by Afghanistan, Bolivia, Ceylon, Cuba, Hungary, Iraq, Japan, Mexico, Pakistan, Panama and Poland whereby the General Assembly would take note of the report of the International Law Commission and express its appreciation of the work done by the Commission.

Debate

8. As the International Law Commission had been unable to complete at its eleventh session the draft on consular intercourse and immunities and that on the law of treaties, its report was this year in the nature of a progress report.

9. Therefore, the representatives who took part in the debate were of the opinion that it would be sufficient to take note of the report without discussing in detail the substantive questions.

10. There were, however, some comments concerning the law of treaties. Some representatives agreed with paragraph 13 of the report, which stated that, since the topic of the law of treaties was subdivided into a number of well-defined branches to a large extent self-contained, there was no reason why the Commission's work on each of them should not be submitted to Governments and to the Assembly, without awaiting the completion of the work on the remaining branches or on the subject as a whole.

11. Others held the view that the law of treaties could only be codified as a whole and that, while various branches of the subject might be dealt with by

the Commission in parts, it would still not be possible for the General Assembly to take final action until the whole text was available.

12. Several representatives expressed their agreement with paragraph 18 of the report, which stated that the Commission had not "at present envisaged its work on the law of treaties as taking the form of one or more international conventions or as taking the form of a treaty, but rather as a code of a general character".

13. Other representatives disagreed with that statement and held the view that the best way for the Commission to present its recommendations was in the form of draft international conventions to be considered in United Nations organs or at international conferences.

14. It was felt, however, that it was too early to recommend a specific method of action because there was not enough information to justify a decision at the present stage.

15. In connexion with that section of the Commission's report devoted to co-operation with other bodies (A/4169, chap. IV, sect. II), some representatives, while expressing their satisfaction that the Commission was represented at the meetings of the Inter-American Council of Jurists, at the same time regretted the Commission's inability to have an observer attend the meetings of the Asian-African Legal Consultative Committee; they expressed the hope that arrangements could be made in the future which would facilitate closer consultation between the two organs.

16. During the debate remarks were made by some representatives concerning the methods of work of the Commission. It was held, *inter alia*, that in order to expedite its work the Commission might appoint assistant rapporteurs to help the rapporteurs in their research, or provide interim associate rapporteurs whenever other duties made it impossible for the regular rapporteurs to complete their assignments. It was also stated that the Commission could be divided into groups which would examine two or more drafts at the same time.

Voting

17. At its 611th meeting, on 13 October 1959, the Sixth Committee unanimously adopted the joint draft resolution (A/C.6/L.444 and Add.1 and 2).

18. The Sixth Committee therefore recommends to the General Assembly the adoption of draft resolution I contained in paragraph 55 of the present report.

II. RIGHT OF ASYLUM

Proposal and amendment

19. A draft resolution was submitted by El Salvador (A/C.6/L.443) whereby the General Assembly would request the International Law Commission, as soon as it considers it advisable, to undertake the codification of the principles and rules of international law relating to the right of asylum.

20. Cuba submitted an amendment (A/C.6/L.447) to the draft resolution of El Salvador in order to replace, in the operative part, the words "as soon as it considers it advisable, to undertake the codification" by the phrase "to give priority to the codification". This amendment was later withdrawn.

Debate

21. In introducing his request to the International Law Commission to codify the principles and rules relating to the right of asylum, the representative of El Salvador pointed out that the importance of the matter had been acknowledged by the Commission, which at its first session had included the right of asylum in its list of topics selected for codification (A/925, para. 16). For lack of time the Commission had not yet had an opportunity to study it. The question had not been ignored by the General Assembly where, at its seventh session, in connexion with the debate on the request to give priority to the codification of diplomatic intercourse and immunities, the representative of Colombia had submitted an amendment asking that priority also be given to the right of asylum.^{1/} This proposal had been defeated on the ground that this constituted a separate topic. In addition, the representative of El Salvador stressed that although the right of asylum, with its twin aspects of territorial asylum and diplomatic asylum, was an ancient institution, accepted and applied in many parts of the world, it had not yet reached adequate uniformity, and that the work of the Commission would have to consist of both codification and progressive development of international law.

22. Most of the representatives who expressed themselves on this subject were in favour of the proposal of El Salvador.

23. However, some representatives were of the opinion that the request lay beyond the scope of the report of the Commission and therefore could not be discussed by the Sixth Committee, because to do so would in fact be equivalent to including a new item in the agenda of the General Assembly.

24. In addition, it was held that the General Assembly should normally avoid disrupting the Commission's programme of work or overburdening it with the study of new questions. A long list might well be made of the subjects which the Commission could profitably discuss; but no new subjects should be proposed for the Commission's consideration, unless they were really of exceptional importance.

25. Other representatives felt that if no priority was requested, the proposal was superfluous, since the right of asylum was already on the list of the topics selected by the International Law Commission for codification.

26. Several representatives, who were in favour of the Salvadorian proposal, pointed out that the question of the right of asylum, especially territorial asylum, had been studied by various United Nations organs, *inter alia*, by the Commission on Human Rights which, on 25 March 1959, adopted a resolution whereby it decided to undertake at its 1960 session the drafting of a declaration on the right of asylum.^{2/} Therefore they were of the opinion that some clarification was needed regarding the respective functions of the Commission on Human Rights and the Economic and Social Council, on the one hand, and the International Law Commission on the other hand. It was even stated that

^{1/} See *Official Records of the General Assembly, Seventh Session, Annexes*, agenda item 58, document A/C.6/L.251.

^{2/} See *Official Records of the Economic and Social Council, Twenty-eighth Session, Supplement No. 8, chap. III, para. 74.*

the International Law Commission could not undertake a codification of the subject before the results of the study by the Commission on Human Rights were available.

27. Other representatives thought that the matter might be dealt with in relation to the question of diplomatic intercourse and immunities, of which the right of diplomatic asylum was a part. It was pointed out, however, that this would leave out the problem of territorial asylum.

28. In the view of some representatives it was important to consider whether the subject of the right of asylum could be codified and to what extent such codification could endanger the very existence of the institution.

29. Some representatives insisted that diplomatic asylum was an institution developed almost exclusively in Latin American countries; they felt that it would be inadvisable to codify in universal terms rules which were of a purely regional character.

30. Others rejected that argument and pointed out that diplomatic asylum was a recognized institution outside the Latin American region.

Voting

31. At its 612th meeting on 14 October 1959, the Sixth Committee adopted the draft resolution submitted by El Salvador (A/C.6/L.443) by a roll-call vote of 63 votes to 1, with 12 abstentions, as follows:

In favour: Afghanistan, Argentina, Austria, Belgium, Bolivia, Brazil, Burma, Canada, Ceylon, Chile, China, Colombia, Costa Rica, Cuba, Denmark, Ecuador, El Salvador, Ethiopia, Federation of Malaya, Finland, France, Ghana, Greece, Guatemala, Haiti, Honduras, Iceland, India, Indonesia, Iran, Iraq, Ireland, Israel, Italy, Japan, Jordan, Lebanon, Liberia, Netherlands, New Zealand, Nicaragua, Norway, Pakistan, Panama, Paraguay, Peru, Philippines, Portugal, Saudi Arabia, Spain, Sudan, Sweden, Thailand, Tunisia, Turkey, Union of South Africa, United Arab Republic, United Kingdom of Great Britain and Northern Ireland, United States of America, Uruguay, Venezuela, Yemen, Yugoslavia.

Against: Dominican Republic.

Abstaining: Albania, Australia, Bulgaria, Byelorussian Soviet Socialist Republic, Cambodia, Czechoslovakia, Hungary, Mexico, Poland, Romania, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics.

32. The Sixth Committee therefore recommends to the General Assembly the adoption of draft resolution II contained in paragraph 55 of the present report.

III. INTERNATIONAL RIVERS

Proposals and amendments

33. Bolivia submitted a draft resolution (A/C.6/L.445) whereby the Assembly would: (1) request the International Law Commission to include the codification of current laws on the utilization and exploitation of international waterways and navigation thereon, as the next subject in its programme of work; and (2) instruct the Secretariat, in collaboration with the Commission, to compile, classify and analyse existing

information on practices having the force of law which govern the use of international rivers.

34. A revised text (A/C.6/L.445/Rev.1) was later submitted by Bolivia. In this revised text, operative paragraph 1, *inter alia*, was reworded so that the International Law Commission would be requested to study, when it deemed it opportune to do so, the possibility of codifying current laws on the utilization and exploitation of international rivers.

35. Bolivia later submitted another revised text (A/C.6/L.445/Rev.2), operative paragraph 1 of which requested the Secretary-General:

(a) To prepare a report on the legal problems relating to the utilization and use of international rivers and containing:

(i) Information provided by Member States regarding their legislation and practice in the matter;

(ii) An analysis of existing bilateral and multilateral treaties;

(iii) An analysis of decisions of international tribunals;

(iv) A survey of studies made or being made by non-governmental organizations concerned with international law;

(b) To include the question of the legal problems relating to the utilization of international rivers in the provisional agenda of the regular session of the General Assembly following the circulation of the report to the Member States.

36. Operative paragraph 2 asked Member States to furnish the Secretary-General with the necessary information regarding their relevant treaties, legislation and practice.

37. A third revised text (A/C.6/L.445/Rev.3) was finally submitted by Bolivia. In the operative paragraph of this text the word "analysis" was replaced by the word "summary" and the words "including arbitral awards" were added after "decisions of international tribunals". Sub-paragraph (b) of operative paragraph 1 and operative paragraph 2 were deleted.

38. Belgium submitted amendments (A/C.6/L.446) to the original Bolivian draft resolution (A/C.6/L.445) in order to introduce some drafting changes in the preamble and to replace the operative part by the following:

"Requests the International Law Commission to include in its programme of work, at such time as it considers it suitable, a study of the possible codification of those rules;

"Requests the Secretary-General of the United Nations, in collaboration with the International Law Commission, to undertake the task of compiling, classifying and analysing existing information on this matter."

39. These amendments were later withdrawn.

Debate

40. In submitting his proposal relating to the legal problems raised by the utilization of international rivers, the representative of Bolivia recalled that half the world's arable land remained unworked for