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Comments and proposals submitted by Mr. Jaroslav Zourek

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PLANNING OF FUTURE WORK OF THE COMMISSION

[Agenda item 8]

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Comments and proposals submitted by Mr. Jaroslav Zourek

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I

1. The question of the means of speeding up the work of the International Law Commission was first raised in 1950, when the General Assembly of the United Nations, considering that it was of the greatest importance that the work of the International Law Commission should be carried on in the conditions most likely to enable the Commission to achieve rapid and positive results, requested the Commission to review its statute with the object of making recommendations concerning revisions which might appear desirable, in the light of experience, for the promotion of the Commission's work (resolution 484 (V) of 12 December 1950). After discussing this matter at its third session, the International Law Commission recommended that the members of the Commission should devote the whole of their time to its work. The General Assembly did not accept that recommendation, however, and decided, for the time being, not to take any action in the matter until it had acquired further experience of the functioning of the Commission (resolution 600 (VI) of 31 January 1952).

2. At the eleventh session of the General Assembly in 1956, Mr. Holmbäck, the representative of Sweden, stressed the necessity of speeding up the work of the International Law Commission. He pointed out that at its first session, in 1949, the Commission had selected fourteen topics for codification (A/925, para. 16), and that since then it had prepared drafts on only four of those topics: arbitral procedure (A/2456, chap. II), nationality, including statelessness (A/2693, chap. II), the régime of the high seas and the régime of the territorial sea (A/3159, chap. II). He observed that at that rate it would take several decades for the Commission to prepare drafts on all the fourteen topics it had selected, and added that it would be even longer before all those drafts had been accepted by Governments in the form of conventions by due constitutional process.¹

3. The representative of Sweden expressed the view that an increase in the membership of the International Law Commission offered new prospects for organizing the Commission's work. Being of the opinion that all the main forms of civilization and all the principal legal systems could be represented in a body consisting of ten members, he suggested to the Sixth Committee of the General Assembly that in future the International Law Commission should divide itself into two or even more sub-commissions working independently or along parallel lines on different topics. He stressed that ex-

perience in the United Nations had shown that a body composed of more than ten members was too large for the drafting work required of the International Law Commission.²

4. The representative of Sweden also mentioned the possibility of placing some, at least, of the International Law Commission's members on a full-time basis; but he did not think it necessary to enter into that question, as it was not directly relevant to the question of an increase in the Commission's membership.³

5. The Swedish representative's suggestion for speeding up the work of the International Law Commission was supported by a number of delegations including those of the United Kingdom,⁴ Afghanistan,⁵ Ecuador,⁶ the United States of America,⁷ Denmark,⁸ and Haiti.⁹

6. The representative of the United Kingdom suggested that each subject might be dealt with by one of the sections of the Commission at one session and by the full Commission at the following session, and that the sections should be so organized as to reflect the representation of the different legal systems on the full Commission. He expressed the opinion that the International Law Commission might be asked to report on the suggestion.¹⁰ The representative of Austria took the same view.¹¹ However, the Sixth Committee of the General Assembly took no decision on the matter.

7. Other delegations, without referring expressly to the Swedish delegation's suggestion, also thought that an increase in membership would make it possible to speed up the Commission's work. For example, the representative of Egypt expressed the hope that a larger membership would enable the Commission to proceed at an accelerated pace.¹²

8. The report of the Sixth Committee¹³ summarizes the opinions expressed on this subject. It also contains the suggestion that if its membership were increased the

² *Ibid.*, para. 4.

³ *Ibid.*, para. 5.

⁴ *Ibid.*, para. 18.

⁵ *Ibid.*, para. 26.

⁶ *Ibid.*, 484th meeting, para. 13.

⁷ *Ibid.*, para. 17.

⁸ *Ibid.*, para. 30.

⁹ *Ibid.*, 485th meeting, para. 14.

¹⁰ *Ibid.*, 483rd meeting, para. 19.

¹¹ *Ibid.*, para. 31.

¹² *Ibid.*, para. 33.

¹³ *Ibid.*, *Eleventh Session Annexes*, agenda item 59, document A/3427.

¹ *Official Records of the General Assembly, Eleventh Session, Sixth Committee*, 483rd meeting, para. 3.

Commission might divide itself into two or even more sub-commissions working independently or along parallel lines on different topics.¹⁴

II

9. The International Law Commission began to discuss this important question at its ninth session but, not yet having the necessary experience, did not feel able to settle it. Paragraph 29 of its report on the work of its ninth session (A/3623) reads as follows:

"Nevertheless, the Commission is fully conscious of the need for doing everything possible, consistent with the maintenance of quality, to increase the pace and volume of the work, and is ready to adopt any appropriate measures conducive to that end. It proposes to keep the matter under constant review, and to give it renewed consideration at its next session in the light of the experience gained of the working of the Commission with its present membership of twenty-one."

III

10. At the twelfth session of the General Assembly, several delegations again expressed their concern at the progress of the Commission's work, which they thought should be quicker. The delegation of El Salvador, for instance, suggested that preliminary reports of the International Law Commission should be prepared by a sub-commission, and only final reports by the full Commission.¹⁵

11. Mr. Holmbäck, the representative of Sweden, urged that the only remedy for the slowness of the International Law Commission's work was to adopt the suggestion he had made in the Sixth Committee at the eleventh session of the General Assembly (see paras. 2 and 3 above), which had been supported by several delegations.¹⁶ He expressed his disappointment that the Commission's report said nothing about possible ways of correcting the situation.¹⁷

12. Several delegations again supported the suggestion that the International Law Commission should work in sub-commissions. This view was expressed in the Sixth Committee by the delegations of the United Kingdom,¹⁸ India,¹⁹ Afghanistan,²⁰ and the Federation of Malaya.²¹

13. Other delegations, while approving the above-mentioned suggestion in principle, feared that the method might lead to a loss of unity of views (Romania),²² or have other disadvantages (Bulgaria).²³

14. Some delegations also gave expression, in one form or another, to their desire that the methods of work of the International Law Commission should be im-

proved. These included the delegations of Finland,²⁴ Yugoslavia,²⁵ Israel,²⁶ and Czechoslovakia.²⁷

15. The delegation of Israel expressed the view that the International Law Commission was spending too much time on line-by-line discussions of the various drafts. It also suggested that the Commission could be asked to include in the report to be submitted to the thirteenth session of the General Assembly a section dealing with the question of its method of work.

16. Several representatives, on the other hand, opposed the idea of splitting up the International Law Commission into a number of sub-commissions. In their opinion, the Commission should not press on too fast with the work of codification, which by its very nature required a considerable amount of time. That was the view of the Belgian delegation²⁸ and the delegation of the Soviet Union.²⁹

17. The great majority of delegations seemed to agree that the International Law Commission should be left to organize its work according to its needs and experience.

18. In his reply to the Sixth Committee, the Chairman of the International Law Commission urged that the question of organization of the work should be left to the Commission itself; he thought that the Commission would discuss the matter and take any necessary measures at its next session.³⁰

IV

Means of speeding up the work of the International Law Commission

19. As has been shown above, suggestions that the work of the International Law Commission should be speeded up are becoming increasingly frequent in the General Assembly. Moreover, it is in the interests of the Commission's work that the pace should be quickened, for it does not make a good impression if several important questions are postponed from one session to another without being considered, or after being barely touched on in a general discussion.

20. Now the 40 per cent increase in the Commission's membership, made by the General Assembly at its eleventh session, would be bound to lead to a considerable slowing-down of the work if the Commission adhered to its previous methods. For it is clear that the bigger a body is, the more speeches will be made and the longer the work will take.

21. The International Law Commission's work is of a kind that requires a considerable period of preparation, in which to clarify all the aspects of every question, to explain and evaluate the precedents and to give mature consideration to the opinions for and against. Consequently, a time-limit cannot be imposed on speakers, save in exceptional cases. All the members must have an opportunity to explain their points of view. Experience has shown that the Commission cannot achieve satisfactory results unless all the aspects of a question have been sufficiently clarified by discussion.

¹⁴ *Ibid.*, para. 15.

¹⁵ *Ibid.*, *Twelfth Session, Sixth Committee*, 510th meeting, para. 8.

¹⁶ *Ibid.*, paras. 14-16.

¹⁷ *Ibid.*, 513th meeting, para. 43.

¹⁸ *Ibid.*, 511th meeting, para. 13.

¹⁹ *Ibid.*, 510th meeting, para. 29.

²⁰ *Ibid.*, 511th meeting, para. 41.

²¹ *Ibid.*, 512th meeting, para. 29.

²² *Ibid.*, 511th meeting, para. 5.

²³ *Ibid.*, 512th meeting, para. 35.

²⁴ *Ibid.*, 509th meeting, para. 32.

²⁵ *Ibid.*, 511th meeting, para. 53.

²⁶ *Ibid.*, 512th meeting, para. 11.

²⁷ *Ibid.*, para. 20.

²⁸ *Ibid.*, 510th meeting, para. 19.

²⁹ *Ibid.*, 511th meeting, para. 29.

³⁰ *Ibid.*, 513th meeting, para. 38.

22. Since the Commission has in the past—at its fifth and seventh sessions—rejected the proposal that its members should have the right to attach dissenting opinions to any decision by the Commission on draft rules of international law (A/2456, para. 163; A/2934, paras. 37 and 38), there are only three ways of avoiding the disadvantages referred to in the foregoing paragraphs:

(a) To hold two meetings a day. Save in exceptional cases, this solution should be avoided, as the work on which the International Law Commission is engaged requires time for study and reflexion. Furthermore, the members of the Commission have to devote a considerable amount of time to studying new documents; the special rapporteurs, and the Commission's general rapporteur, have to do a large amount of work outside normal working hours; and lastly, the drafting committee is at work during the greater part of the session and must meet in the afternoon when the full Commission is not sitting.

(b) To increase the length of the sessions. Since the membership of the Commission has been increased by 40 per cent, the duration of the sessions would have to be increased in roughly the same proportion in order to do the same amount of work. This solution would be unacceptable to most of the members, for whom a prolonged absence from home means making a sacrifice. It would be still less acceptable to the General Assembly, which, if it were proposed, would probably recommend the Commission to sit twice a year or to change its methods of work.

(c) To find another way of organizing the work, which would enable the Commission to make quicker progress without its being necessary to increase the length of the sessions or the number of meetings.

23. The suggestion that the International Law Commission should be split up into two or more sub-commissions working on different subjects along parallel lines does not provide an adequate solution. If that suggestion were accepted, the Commission would cease to exist as a single organ and would be replaced by two or more sub-commissions working independently. Unity of views would not be assured and the sub-commissions might reach conflicting results. Moreover, such a reform would be contrary to the Commission's present statute.

24. Nevertheless, the idea of referring details to smaller, but sufficiently representative, working parties for discussion should be adopted. Since it first began its work, the International Law Commission has made use of a drafting committee. In recent years, that body has often been given tasks beyond the competence of a mere drafting committee. After a discussion in plenary meeting, it has been asked to seek solutions and prepare texts for the full Commission. This procedure has proved extremely useful and has greatly helped to speed up the work. Consideration should be given to

the possibility of generalizing and extending it, with a view to making it one of the International Law Commission's normal methods of work.

25. It has sometimes been objected that nothing can be gained by such a procedure, because the whole discussion would start again when the sub-commission's draft came before the full Commission. But if the sub-commission is elected on a sufficiently representative basis and includes representatives of the world's principal legal systems—which is quite possible with the Commission's present membership—it is unlikely that this fear will be realized. Moreover, the objection has been largely belied by the facts. At its ninth session, the Commission referred a number of articles to the drafting committee after discussion in plenary meeting, without voting on them, and the drafting committee's proposals were approved by the full Commission without difficulty.

26. With a view to speeding up the work of the International Law Commission, while keeping it on a high scientific level, the following changes in the Commission's organization and methods of work might be considered in the light of past experience:

(a) In the absence of a contrary decision by the Commission, any draft prepared by the special rapporteurs would be the subject of a general discussion in plenary meeting.

(b) When the general discussion was concluded, the Commission would review the articles of the draft and the amendments submitted by members, so that they could have an opportunity of presenting their views. Votes would not be taken at that stage of the work unless the circumstances made it necessary to take a vote on a question of principle in order to simplify and facilitate the work.

(c) After this preliminary discussion, the draft would be referred to a sub-commission so constituted as to include representatives of all the world's principal legal systems. The sub-commission, of which the special rapporteur would automatically be a member, should not consist of more than ten members.

(d) The sub-commission would fully discuss the special rapporteur's proposals and the amendments thereto, and would prepare draft articles for the full Commission. In view of the importance of this work for the Commission itself, for the governments of States Members of the United Nations and for academic circles, the meetings of the sub-commissions would be conducted in the same way as plenary meetings, i.e., with simultaneous interpretation and summary records.

(e) The drafts prepared by the sub-commissions would be submitted to the full Commission for possible discussion and adoption.

(f) The Commission would always be entitled to reserve a particularly important or urgent draft for discussion in plenary meeting only.