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**Chairman:** Mr. César A. QUINTERO (Panama).

## AGENDA ITEM 70

**Future work in the field of the codification and progressive  
development of international law (A/4796 and Add.1-8;  
A/C.6/L.491 and Corr.1 and 2) (continued)**

1. Mr. USTOR (Hungary) congratulated Mr. Tunkin on the admirable statement he had made at the 717th meeting in his capacity as representative of the Soviet Union. In that statement, he had outlined the main characteristics of the recent changes in the world situation and in the structure of the international community, as well as their influence on the evolution of international law; he had analysed with insight the various concepts of international law and the increasing influence on that law of the socialist economic and social system practised in the Soviet Union; lastly, he had referred to the interdependence of the foreign policy of States and their attitude towards international law, and had stressed that respect for international law was a prerequisite of that confidence between States without which peace and peaceful coexistence could not exist. That broad and all-embracing statement provided a faithful picture of the views shared by all the socialist countries, including Hungary; consequently, while reaffirming his faith in international law and in the possibility of peaceful coexistence, he would confine himself to dealing with certain technical questions.

2. The Hungarian representative shared the view of previous speakers that the item under consideration by the Sixth Committee was one of the most important that had been on its agenda for the last six years. That item deserved the Committee's closest attention, because it was of interest not only to those who studied public international law and those who applied it in everyday practice, but to all mankind, and a general understanding on the matter must be reached.

3. The task entrusted to the Committee was set out in General Assembly resolution 1505 (XV), which was, as had been said, a landmark in the field of the codification and progressive development of international law and required to be closely scrutinized.

4. The resolution began by referring to the Purposes and Principles of the United Nations and to two resolutions calling upon States to implement those Purposes and Principles and, in particular, to maintain and

promote peaceful and neighbourly relations. Next, the resolution stated that "the conditions prevailing in the world today give increased importance to the role of international law—and its strict and undeviating observance by all Governments". Although seemingly paradoxical, it was a fact that the increasing importance of the role of international law was an infallible sign of the deterioration of the situation in the atomic age in which mankind was now living. That reminder of contemporary conditions revealed a certain anxiety, but in the continuation of the second preambular paragraph it was asserted that international law was a suitable means for "strengthening international peace, developing friendly and co-operative relations among the nations, settling disputes by peaceful means and advancing economic and social progress throughout the world". Therein lay the most important point, and he would revert to it later.

5. The fourth paragraph of the preamble of resolution 1505 (XV) referred again to the United Nations Charter, Article 13, paragraph 1, which required the General Assembly—according to the interpretation given in General Assembly resolution 94 (I)—to encourage "the progressive development of international law and its codification". The fifth preambular paragraph recalled "the extent of the progress made by the International Law Commission" in the matter and, finally, the seventh preambular paragraph pointed to the fact that there were many new trends in the field of international relations which had an impact on the development of international law.

6. Starting from that basis, the conclusions drawn in the resolution could be expressed as follows: having taken stock of the work of the International Law Commission, thought should be given to the future and a decision be made as to whether the programme of codification and progressive development of international law should be revised as regards the list of topics, the order in which they should be studied and the possible adoption of a new approach to the work.

7. An analysis of the essential premises and conclusions of resolution 1505 (XV) clearly revealed two underlying principles which might serve as a guide for the future.

8. The first principle was that the work of codification and progressive development of international law was not a purely scientific and abstract legal undertaking, since its more general purpose was defined as "strengthening international peace, developing friendly and co-operative relations among the nations, settling disputes by peaceful means and advancing economic and social progress throughout the world".

9. The second principle was that the codification and the progressive development of international law were suitable means of promoting such beneficial trends in international relations.

10. Resolution 1505 (XV) recognized the close inter-relationship between the codification and the progressive development of international law on the one hand, and the realities of international relations on the other. Although the only express statement on that point was that "many new trends in the field of international relations have an impact on the development of international law", the text implicitly acknowledged that, conversely, the codification and progressive development of international law might affect international relations and be conducive to fostering international co-operation.

11. The view was held by some that the study of international law by jurists was simply a mental exercise and had no influence on questions of war and peace or on those of economic and social progress; others took the equally negative view that the codification could not exert a material influence on international relations and that customary law had the same binding force as codified law. Resolution 1505 (XV) advanced the contrary view by proclaiming that the codification of international law could contribute to the search for a solution of the problems of mankind.

12. As the International Law Commission had itself admitted in its report covering the work of its eighth session (A/3159, paras. 25 and 26), the codification of international law could hardly be separated from its progressive development, since a modicum of development always entered into the process of codification. It followed that to codify international law was to improve it, for a written rule was more effective and more difficult to infringe than a customary rule, the existence of which might be hard to prove.

13. Account should also be taken of the emergence of new States that wished to participate in the work of codification and were seeking clarification of certain rules which were considered to be rules of international law. It was common knowledge that certain States were unwilling to accept customary rules in the elaboration of which they had had no part, since such rules could endanger their political or economic independence. That attitude was not restricted to the socialist countries or to Asian and African countries. A representative from Latin America had recalled several instances when great industrial Powers had imposed their will on small newly independent States by advancing some rule or other of international law and when the inequality of strength had produced an inequality of rights. In the new future, when the community of States had become universal, it would be necessary to seek out and eliminate from the body of international law rules which were merely obsolete remnants of an outmoded imperialism.

14. If the principles underlying General Assembly resolution 1505 (XV) were accepted and if it was admitted that the future work in the field of the codification and progressive development of international law could also be fruitful in other fields besides the legal one, it would become necessary to forgo the desire to codify all international law within a few decades, since, bearing in mind the Statute of the International Law Commission and the limited time at its disposal, it would take generations to complete the task. He endorsed the views expressed by the International Law Commission in its report covering the work of its tenth session (A/3859 and Corr.1, para. 68 (c)) to the effect that speed was not necessarily the most important consideration and that, in the course of the years, what would matter was the

quality of the work. It would be unrealistic to draw up a long list of new topics for codification. The Committee should be content with planning the programme of work of the International Law Commission for the five or ten years to come. The Commission should first conclude the study of two topics: the law of treaties and State responsibility. He would consider the former at a later stage when he dealt with chapter III of the International Law Commission's report covering the work of its thirteenth session (A/4843). With reference to the second topic, he would merely recall the statement which he had made at the 654th meeting of the Sixth Committee at the fifteenth session of the General Assembly. He reserved the right to make observations on any other topic the codification of which might be formally proposed.

15. There was one topic, however, which seemed to his delegation to be of the utmost importance: that of peaceful coexistence. If the Committee wished to act in the spirit of General Assembly resolution 1505 (XV) and if it considered that international law, particularly when it was improved and codified, was likely to promote peace and friendship among peoples and to ensure economic and social progress in the world, the question of peaceful coexistence should be placed on its agenda and, subsequently, on that of the International Law Commission.

16. It was not, as had been suggested, an abstract or too general a topic. Besides, preliminary work thereon had already been done by the International Association of Democratic Lawyers and the International Law Association. The latter had dealt with the legal aspects, of peaceful coexistence at three of its conferences: at Dubrovnik in 1956, New York in 1958 and Hamburg in 1960. The reports of those conferences provided a detailed picture of the discussions that had taken place. Moreover, the topic was abundantly documented as could be seen from the bibliography annexed to the report of the International Law Association covering the work of its forty-ninth conference.

17. Nevertheless, the exact meaning to be given to the concept of peaceful coexistence of States with different social and economic systems still had to be defined. Several definitions had already been advanced, as for instance that given by Mrs. Bastid in the February 1955 issue of the French publication *Politique étrangère*.

18. It could not be denied that peaceful coexistence constituted the paramount problem of the modern world. The matter clearly had its legal aspects and it was, therefore, natural that they should be dealt with, discussed and, if possible, codified. That was doubtless a more difficult task than the codification of purely technical topics, but United Nations legal organs could not shirk their duty which was to contribute to the settlement of the major problems of mankind.

19. Turning to chapter III of the report of the International Law Commission (A/4843), he drew particular attention to paragraph 39 (i). The Commission's decision to prepare draft articles on the law of treaties designed to serve as a basis for a convention would seem to him to be important for two reasons: firstly, because it concerned one of the main items on the agenda of the Sixth Committee and, secondly, because it touched upon a fundamental problem which had repeatedly been discussed both inside and outside the United Nations.

20. He recalled that, in its report covering the work of its eleventh session (A/4169, para. 18), the International Law Commission had stated that it had not "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". The reasons for and alleged advantages of that conception "as they appeared to the Special Rapporteur" were set out in the same paragraph. Those reasons which were not new were based on the dangers that might arise if newly concluded multilateral conventions incorporated rules which were already part of customary international law.

21. That reluctance and even fear of undertaking obligations in the form of multilateral treaties had a long history which went back to the time of the League of Nations. He quoted as an example the French Government's resistance to the attempts made to codify customary international law, as illustrated by the French Government's observations on that subject submitted to the League of Nations in 1931.<sup>1/</sup> No doubt, that was not the earliest manifestation of an argument which had since been repeated on numerous occasions.

22. He would refrain from quoting more examples of that attitude and from analysing its underlying reasons, particularly since there were welcome signs of its gradual disappearance. After the conclusion of the four great conventions on the law of the sea—the essential purpose of at least two of which was to codify international practice—the States which, in the past, had defended the thesis which he had just criticized could no longer maintain their opposition, particularly with regard to the codification of the law concerning diplomatic relations. At the United Nations Conference on Diplomatic Intercourse and Immunities held at Vienna in 1961, the last State which had formerly been

<sup>1/</sup> League of Nations, Official Journal, 12th Year, No. 9 (September 1931), p. 1767.

opposed to the conclusion of a convention on that topic (see A/3859 and Corr.1, annex, section 20) had publicly announced that it was abandoning its position.

23. With regard to the law of treaties, Sir Gerald Fitzmaurice, at that time Special Rapporteur, had stated at the eleventh session of the International Law Commission that it would seem "inappropriate that a code on the law of treaties should itself take the form of a treaty" (A/4169, para. 18). Commenting on that observation in the Sixth Committee during the fourteenth session (602nd meeting, para. 11), his delegation had asked whether it would not seem paradoxical to abandon the form of a convention at the very moment when the principles of treaty-making were going to be adopted. His delegation had, therefore, noted with great satisfaction that the International Law Commission had now changed its position. The records of its thirteenth session showed that the great majority of the members now adhered to the view that, whenever possible, the Commission should attempt to present its texts in the form of draft conventions.

24. The Hungarian delegation thought that the Sixth Committee should give support to that view in its decision on the future work in the field of the codification and progressive development of international law. Without altogether excluding the possibility of resorting to the other means provided for in the Statute of the International Law Commission, it would be advisable to draft conventions for the purpose not only of the progressive development of international law but also of its pure codification, if such a thing indeed existed at all. The reasons were obvious. Law was there to be applied and, as Mr. Roger Fisher had said so well in his interesting article in the April 1961 issue of the Harvard Law Review, the purpose of codification was to bring law to bear on Governments. Codification should, therefore, take the form which could fulfil that task most effectively.

The meeting rose at 11.50 a.m.