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Chairman: Mr. Gonzalo ORTIZ MARTIN (Costa Rica).

*In the absence of the Chairman, Mr. Rosenne
(Israel), Vice-Chairman, took the Chair.*

AGENDA ITEM 65

Report of the International Law Commission on the work of
its twelfth session (A/4425; A/C.6/L.467, 472) (*con-
tinued*)

1. The CHAIRMAN invited the Committee to resume its consideration of the eight-Power draft resolution (A/C.6/L.467) and the amendments thereto submitted by eleven delegations (A/C.6/L.472).

2. Mr. JEAN-LOUIS (Haiti) said that he had not intervened previously in the discussion on the report of the International Law Commission (A/4425), because, for the most part, that report did not call for immediate comment by the Committee; the draft articles on consular intercourse and immunities were to be re-examined by the International Law Commission, while the draft articles on special missions were to go direct to the United Nations Conference on Diplomatic Intercourse and Immunities to be held at Vienna. The nature of the Commission's report explained in part the paucity of the Committee's agenda, and many of those who had spoken during the considerable debate which the latter fact had occasioned had been inclined to blame the International Law Commission and the Office of Legal Affairs. Some had gone so far as to proclaim the decline of the rule of law in the United Nations. His delegation did not for a moment share that view. It believed, as it had always done, that the United Nations itself constituted a clear affirmation of the existence and progressive development of international law. Nor, in his delegation's view, was the brevity of the Committee's agenda at the present session more than an accident, a passing phenomenon. It was, after all, open to any Member of the United Nations, under rule 13 (e) of the rules of procedure, to propose items for discussion. Under the impact of the new forces everywhere apparent in the world, it was unlikely that fresh ideas about international law would not be forthcoming. Indeed, the representative of Mexico had richly illustrated the possibilities in the list he had offered of topics (665th meeting, para. 13) awaiting codification.

3. In response, however, to the anxieties expressed by many speakers, a number of delegations had submitted a draft resolution (A/C.6/L.467) suggesting the establishment of a special committee to survey the whole field of international law and draw up a new list of topics. While appreciating the motives of the sponsors, his delegation doubted the need to set up a new committee to perform a task which was expressly within the functions of the International Law Commission under the terms of its Statute. Moreover, as the sponsors of the draft were themselves aware, the formation of such a body could give rise to serious difficulties as regards composition, the choice of members, geographical representation and so on. Furthermore, the proposal appeared to have financial implications and ought to be submitted first to the Fifth Committee. The Haitian delegation therefore hoped that the sponsors would amend the text of operative paragraph 1 in such a way as to address the request in it to the International Law Commission; his delegation would then be able to vote for the text as a whole.

4. Mr. SUCHARITKUL (Thailand), introducing the proposed amendments (A/C.6/L.472) to the eight-Power draft resolution on behalf of their sponsors, said that the latter fully appreciated the constructive efforts of the sponsors of the draft resolution. There was certainly a general feeling that some fresh study of the whole field of international law was called for and it was undoubtedly true, as the representative of Mexico had shown (665th meeting, paras. 8 and 9), that new trends had emerged in international law. That was in no way surprising, for law had always been a dynamic and constantly changing thing. It was certainly also the general view that the Sixth Committee should take some positive steps to help bring about a speedier development of international law to meet the current needs of international life. As the draft resolution stood, however, a number of delegations would find it impossible to support it. It was therefore with the idea of saving the draft resolution that the delegations for which he was speaking had submitted their amendments. The principal amendment, the fourth, substituted the International Law Commission for the proposed special committee for the purposes outlined in operative paragraph 1. The representative of Yugoslavia himself, at the 652nd meeting (para. 25), had said that the International Law Commission should scrutinize the present state of international law, and the representative of Poland, at the 656th meeting (para. 6), had urged that the Commission should draw up a new programme of work. That idea had thus not originated with the sponsors of that amendment. It was clearly undesirable to set up a special committee to perform what were in effect the functions of the International Law Commission under articles 16, 17 and 18 of its Statute. In composition, too, the proposed committee could hardly vary from the Commission which, under

General Assembly resolution 174 (II), consisted of "persons of recognized competence in international law and representing as a whole the chief forms of civilization and the basic legal systems of the world". It might be said that the new body would be political rather than technical, consisting of representatives of Governments, but it would still be redundant, for the views of Governments would already have been solicited in writing under operative paragraph 2 of the draft resolution. In any case, the Sixth Committee itself was perfectly capable of doing what it was proposed the special committee should do in that respect, without the delay which the introduction of another body would involve; and all were agreed that the Sixth Committee should have more work.

5. Criticisms had been levelled at the International Law Commission on the scope of its activities, and it was only fair that it should be given the opportunity to undertake the survey envisaged in the draft resolution, for which, indeed, it was particularly fitted. The sponsors of the amendments believed that the Commission would have ample time to carry out the new study without any delay in its work on consular intercourse and immunities and on State responsibility. In the latter connexion, he noted in passing that some confusion had been introduced in the discussion through the attempt by some delegations to link together the subjects of State responsibility, the treatment of aliens and the rights and duties of States, subjects which were traditionally regarded as separate.

6. The sponsors of the amendments urged the sponsors of the draft resolution to adopt their suggestions and so win unanimous support for it.

7. Mr. KHELIL (Tunisia) did not deny that the Sixth Committee's agenda had contracted alarmingly. He could not, however, agree with a number of speakers as to the reasons for that, and he deplored the introduction of sundry political considerations. While it was true that certain political problems had juridical aspects, the role of jurists was surely to serve not the politicians, whose slaves they would become, but humanity as a whole; they should therefore be independent and free from the claims of nationalist or regionalist ideas. All legal systems were equally valid, and the International Law Commission should seek inspiration from them all, as, indeed, its composition dictated.

8. The sponsors of the eight-Power draft resolution were to be congratulated on their effort to reflect the concern so generally expressed by delegations during the debate on that item; there was certainly room for a reconsideration of the work programme of the International Law Commission—periodic reappraisals were essential to the survival of every institution. What was surprising and disconcerting in the draft resolution, however, was that the recommendation was addressed, not to the International Law Commission itself, but to a special committee to be set up for the purpose. That appeared, to say the least of it, to indicate some lack of confidence in the International Law Commission, whose functions would be duplicated by the new body. He had not heard any arguments in favour of the special committee which dispelled his doubts on that score. The representative of Mexico had advocated its establishment on the grounds that the problems he had listed would be of direct interest mainly to States (665th meeting,

para. 14). Was it to be understood, then, that the problems normally studied by the International Law Commission were not of interest to States? He had also expressed the hope that the new committee would ensure a fair geographical distribution and the representation of all juridical systems (*ibid.*). But article 8 of the Statute of the International Law Commission ensured just that. His delegation could not, therefore, accept that there was any need to set up a special committee; it would be far wiser, in its view, to take advantage of the competence and experience of the International Law Commission. The establishment of a committee would merely complicate and delay the work. It was for those reasons that his delegation had agreed to co-sponsor the draft amendments.

9. The fifth paragraph of the preamble of the draft resolution as it stood merely stated a general truth which had been valid for some years now; the two paragraphs in its replacement, as proposed in the first of the eleven-Power amendments, were more purposeful and logical. The sixth preambular paragraph of the draft resolution was inappropriate in that context and ought to be deleted, as suggested in the second of the amendments. The concluding words of preambular paragraph 7 of the draft resolution were unnecessary, since the very composition of the International Law Commission gave an assurance of the way in which questions would be dealt with; that paragraph should be replaced by the text of the third of the amendments. The fourth amendment was the main one—suggesting the substitution of the International Law Commission for the special committee proposed in operative paragraph 1 of the draft resolution. The sponsors of the draft resolution were not very specific about the composition of the proposed committee; it would, in any case, be small and would therefore have to take account of the suggestions of countries not represented on it. Thus it would have to adopt the procedure followed by the International Law Commission under articles 17 and 19 of its Statute. It would be by far preferable, he believed, to ask the Commission to make a survey and to draw up a list of topics for submission to the Sixth Committee at the Assembly's sixteenth session. Governments represented in the Committee could then express their views. Much time would thus be saved and the competence and responsibility of the International Law Commission duly recognized.

10. U BO GYI (Burma) noted that there was general agreement in the Committee that a survey of the whole field of international law should be made and a new list of topics for codification and progressive development drawn up. Differences of views existed only as to the body which should carry out the survey and draw up the list. A compromise solution was perhaps possible. While it was true that, under article 18, paragraph 1, of its Statute, the International Law Commission was charged with the responsibility for surveying the whole field of international law with a view to selecting topics for codification, under articles 17, paragraph 2 (d) and 18, paragraph 3, the General Assembly was empowered to make suggestions to the Commission as to the work it should do. That was only proper, since the General Assembly was the parent body of the International Law Commission as also of the Sixth Committee. The best solution might therefore be to set up a special committee consisting in equal numbers of Government representatives drawn from the Sixth Com-

mittee and of experts drawn from the International Law Commission, who would together draw up the new list of topics for submission to the General Assembly, which would, of course, take the final decision. If that suggestion proved generally acceptable, he would formally submit an amendment to operative paragraph 1 of the draft resolution. He would suggest that the special committee should be restricted in size, for large committees did not accomplish much, and that, with regard to the qualifications of the members of the Sixth Committee who would serve on it, the principles governing the choice of members of the International Law Commission might be followed so far as was possible. He would, finally, endorse the observation of the representative of Israel (663rd meeting, para. 13) that the Sixth Committee had wider functions than the codification of international law and his suggestion that the sponsors of the draft resolution might enlarge the scope of their draft (*ibid.*).

11. Mr. GUERREIRO (Brazil) said that the United Nations Charter should be viewed as a product of international law and as a synthesis of the principles of that law. Thus, the Charter had incorporated some existing principles of the law of nations and, at the same time, had enunciated new principles which were the outcome of trends previously noticeable in the evolution of that body of rules. On the other hand, the Charter itself, and the circumstances governing its application, had obviously had an impact on general international law. The extent to which the juridical principles governing international life influenced the activities of the United Nations would depend largely on the degree of precision and clarity with which those principles, and their implications, were described and formulated. To give precision to such principles, and to determine their implications for the over-all normative system, was certainly the main objective of the codification and development of international law.

12. While sympathizing with the concern expressed by those delegations who wanted to take new steps to stimulate the development of international law, he wished to point out that the task of choosing areas of international activity that were in need of juridical regulation was fraught with great difficulty. In that connexion, the experience of the International Law Commission at its first session, in 1949, might be worth recalling. On that occasion, the Commission had selected topics by taking votes^{1/} after the general feeling of the members had become apparent in the course of debate. No criteria had been laid down, each member of the Commission acting in accordance with his preferences and views.

13. At the outset of the discussions, Mr. Amado;^{2/} the distinguished Brazilian member of the Commission, recalling that until that time codification had been defined as the systematization of positive law, had raised the question whether the Commission should confine itself to classical topics in its choice of those to be codified or whether it should take into account the new conditions arising out of the signing of the Charter and the creation of the United Nations. However, the members of the Commission had tended

to give preference to topics where extensive State practice and a certain degree of stability would facilitate the preparation of generally acceptable drafts. Since the League of Nations, with a similar approach, had failed in its efforts at codification, it would have been rash for the Commission to have attempted an even harder task, by tackling subjects involving political considerations. In the prevailing circumstances, it was truly remarkable that the Commission had succeeded in preparing drafts on matters which had defied previous attempts at solution, and had incorporated in some of those drafts many proposals *de lege ferenda* which took into account modern trends and needs. The Commission's work, which, by its nature, had to be protracted and painstaking, had been conducted proficiently, thanks to the competence of its members, the collaboration of States and the excellent services rendered by its Secretary and the members of his staff. In that connexion, his delegation wished to dissociate itself emphatically from the criticisms of the Office of Legal Affairs that had been voiced in the Committee.

14. In his delegation's view, a body such as the International Law Commission should not be burdened with the selection of topics involving the development of new law. In such matters, the initiative of Governments was much to be preferred. Nor was it sufficient for Governments individually to select specific topics. The preferences of Governments should be compared, the differences thrashed out at a conference, and a generally agreed list of topics sent to the Commission. Even then, the Commission might be asked just to undertake a study or submit a report; and, of course, it might, on its own initiative, limit itself to presenting a report on the topic referred to it by the Assembly. Furthermore, the Commission would always be free to suggest any change in its programme of work. In view of the Commission's crowded programme, giving it the additional task of reviewing its work and selecting new topics would simply mean that it would have to postpone for at least one year the consideration of other items.

15. His delegation would, therefore, prefer the creation of a special committee, as contemplated in the draft resolution. However, the work of the proposed committee would be technically difficult and, perhaps, politically dangerous. Much would depend on the spirit in which States approached the work. Although the special committee would be a political body dealing with matters of policy, its political character should not be so exaggerated as to divert it from its long-range objectives. If States wished to broaden the role of law in their relations with other States and, to that end, to give new impetus to the formulation of law in the United Nations, they would have to agree that law, despite its interrelation with the social and political process, should not be influenced in its formulation by transitory interests or by temporary and isolated phenomena. Law, by its very nature, implied a certain degree of stability. If the proposed committee were forced to dwell on concrete manifestations of immediate political conflicts, it would become a futile instrument of propaganda, and its recommendations would not further the interests of the United Nations. If, on the other hand, States sincerely desired to develop rules of law regulating their behaviour, they should look for those areas where juridical regulation would serve their common, long-range interests better than the free-

^{1/} Yearbook of the International Law Commission, 1949 (United Nations publication, Sales No.: 57.V.1), 7th meeting, paras. 28 and 30.

^{2/} *Ibid.*, 4th meeting, para. 35.

dom of action they enjoyed at present. If States first agreed on such areas of common interest, the Commission would find it easier to deal with matters involving the development of the law.

16. If the proposal for the creation of a special committee should not be approved, or if the problem of the committee's membership should present insurmountable difficulties, his delegation would still prefer to have the Commission excluded from the first phase of the process of selecting new topics. In that case, the following alternative procedure might be followed: Governments could be asked for their opinions; an appropriate item could be included on the provisional agenda of the sixteenth session of the General Assembly; and the Sixth Committee could debate the substance of the question at that session. The Committee might then select and send the suitable topics to the Commission, or it might recommend to the Assembly the creation of a special committee to continue the review; or perhaps the Committee's debates might be so indicative of prevailing tendencies that the Commission could be entrusted with the final selection of topics, without having to choose between politically inspired and other alternatives.

17. Mr. MUSTAFA (Pakistan) said that his delegation also agreed with the sponsors of the draft resolution that there should be a fresh study of the whole field of international law to ascertain whether there were any new topics susceptible of codification or conducive to progressive development. However, a proposal for the formulation of legal norms could be effective only if it was adapted to the objective situation in which it would be applied. There were two aspects to the development of international law: the technical improvement of international law as a legal system, and the international order on which international law had to be based. International law could not contribute to the establishment of peace and justice in international relations unless it dealt with some of those matters which were at present considered by many to lie outside its jurisdiction. It was somewhat unrealistic to attempt to reform the law of nations without any basis for that reform in the international order. The real problem was not the lack of machinery for the study and technical development of law, but the lack of spiritual and moral foundations for an international order to support international law.

18. The machinery for the technical improvement of international law was certainly available. The International Law Commission had been entrusted by the General Assembly with the responsibility for surveying the whole field of international law. If had made a comprehensive survey in 1949 and could do so again if required. The Commission itself had stated that its ultimate objective was the codification of the whole of international law (A/925, para. 14), and that the list of fourteen topics first selected for codification was only provisional (*ibid.*, para. 17). Moreover, in his delegation's opinion, the Commission had produced a very impressive volume of work, in view of the fact that it had held only one brief session yearly.

19. The International Law Commission was a representative body with a wealth of experience and knowledge. Its members were persons of the highest intellectual ability and integrity, and, under article 8 of the Statute, they had been selected to represent

the main forms of civilization and the principal legal systems of the world. Accordingly, his delegation felt that the Commission was the most competent body to perform the functions set forth in operative paragraph 1 of the draft resolution. Furthermore, the Commission had been assigned those functions by its Statute. The creation of a special committee to perform the tasks entrusted to the Commission would lead to duplication of functions and would imply a lack of confidence in the Commission. Indeed, it would be tantamount to an unmerited censure of the Commission, which had discharged its responsibilities well. The establishment of a special committee, or of the body just suggested by the Burmese representative, was neither necessary nor advisable. Moreover, the creation of a new committee would raise innumerable problems regarding its membership, status, scope and authority, and would require the formulation of rules of procedure governing it and defining its relationship to other bodies. The existence of such a committee would tend to confuse the relationship between the General Assembly and the Commission.

20. Mr. NINCIC (Yugoslavia), after assuring the Committee that the various suggestions made in debate and privately would be given careful consideration by the sponsors of the draft resolution, said that he would try to dispel certain misapprehensions which had arisen concerning that proposal. The draft resolution reflected the consensus of opinion in the Committee that a more vigorous effort should be made by the United Nations and its legal organs to make a greater contribution to the codification and development of international law. The sponsors had not had any preconceived idea as to how that objective should be accomplished, and had considered several alternatives before arriving at the present text. There seemed to be general agreement that the General Assembly should, at the sixteenth session, discuss the matter and make certain suggestions to the International Law Commission. Disagreement had arisen only on a secondary point, the method of accomplishing the preparatory work which would make it possible for the Assembly to take up the matter at that session. The sponsors had thought it best and, indeed, customary to ask States to make suggestions and to establish a committee to analyse those suggestions and to perform the necessary preparatory work. He failed to see how anybody could read into that proposal an intention to disparage the work of the Commission or to create a body which would duplicate its functions. It was simply inappropriate to require the Commission to do the spadework for the General Assembly; the more usual practice was to establish a special body for that purpose. Moreover, as the Brazilian representative had just said, the Committee should not ask the Commission to put aside its crowded programme of work in order to take up the problem of review. Nor was there any basis to the fears which had been expressed that the proposed procedure would introduce extraneous political considerations into the legal work of the United Nations. But the Committee's work could not be divorced from long-range political trends, which had to be taken into account in any consideration of the development of international law.

21. Mr. LUTEM (Turkey) congratulated the sponsors of the draft resolution on their constructive and timely suggestions concerning the review and re-

appraisal of the work of the International Law Commission. In the more than ten years that had elapsed since the Commission had undertaken the survey of the whole field of international law, it had studied certain topics and the drafts and recommendations it had submitted had been warmly commended by the Sixth Committee and the General Assembly.

22. Most delegations, expressing concern with regard to the small number of items on the Sixth Committee's agenda, had suggested that certain new topics, such as the need for comprehensive legal study of the problem of outer space, should be considered. That suggestion should present no difficulty. The International Law Commission would doubtless be willing to consider such topics, since it had stated in its first report that its list of topics was only provisional and that additions or deletions might be made after further study or in deference to the wishes of the General Assembly. There also seemed to be a general consensus in the Sixth Committee that the International Law Commission should be asked to review its list in order to ascertain whether new topics susceptible of codification or suitable for the progressive development of international law had arisen, whether any of the existing topics should be amended and whether a new order of priority should be proposed for their consideration. In that connexion, there seemed to be no doubt regarding the power of the International Law Commission to initiate the necessary action. Article 18 of its Statute empowered it to study the whole field of international law; it could, moreover, proceed with its work in accordance with the procedure laid down in articles 19 to 23 without awaiting the General Assembly's decision on the recommendations it submitted under article 18, paragraph 2.

23. He recalled that, in the field of the progressive development of international law, the General Assembly had also vested the initiative in the Members of the United Nations: article 17, paragraph 1, of the International Law Commission's Statute provided that the Commission should consider proposals and draft conventions submitted by Member States. Operative paragraph 2 of the draft resolution was in consonance with that provision and he would therefore support it.

24. With regard to operative paragraph 1, his delegation was doubtful about the possible effectiveness of the proposed special committee and had misgivings about its composition. It believed that the International Law Commission was a more suitable body to be entrusted with the tasks enumerated in that paragraph and that it was more qualified and experienced to deal with actual problems of international law. It would therefore support the fourth of the amendments to that paragraph of which his delegation was a co-sponsor.

25. Although his delegation fully agreed that law and politics were linked, it thought that it was essential to establish a dividing line between the two to facilitate agreement. The International Law Commission had, in the past, been reluctant to deal with politico-legal matters, and the fact that it had restricted itself to unifying existing rules and tendencies deserved the Sixth Committee's gratitude. Moreover, the awareness of the members of the International Law Commission of their moral responsibility to the United Nations made them better suited than anyone else to

consider, study and report on every relevant and concrete proposal.

26. Mr. GLASER (Romania) noted the general dissatisfaction with the paucity of the Sixth Committee's agenda; not only were the items few, but even the most substantial one, the report of the International Law Commission on the work of its twelfth session, gave little scope for discussion pending the receipt of comments by Governments. He therefore welcomed the efforts made by the sponsors of the draft resolution to remedy that unsatisfactory state of affairs.

27. He endorsed the two suggestions made by the Ukrainian representative (665th meeting, paras. 19 and 20) with regard to the draft resolution. His delegation would have no difficulty in accepting the second of the amendments proposed by the eleven Powers (A/C.6/L.472). The third amendment, however, repeated the conditional clauses employed in the seventh paragraph of the preamble of the draft resolution to which it related, speaking of ascertaining "whether new topics ... have arisen, whether alteration should be made ..., and whether a new order or priority should be proposed ...", although there could be no doubt about the answer. The world had changed much since the Commission had selected the fourteen original topics: socialism had become a world system rather than a strictly national one; thirty States had been liberated from colonialism; and man had embarked on the conquest of the cosmos. Those changes should be reflected in the Sixth Committee's work. The representatives of Mexico (665th meeting, para. 13) and Ceylon (658th meeting, para. 19) had each suggested new topics. There could be no doubt of the usefulness, and even the necessity, of considering those questions. He therefore suggested that the seventh preambular paragraph of the draft resolution should be couched in a more affirmative form.

28. His delegation rejected the technical approach suggested by the United States delegation (665th meeting) and felt that it was time that the importance and urgency of a topic should determine the priority assigned to it. The Committee should not lose itself in small technicalities; rather, it should try to see to it that the development of international law contributed to solve the great and urgent problems facing the world at the present time. The question of approach was paramount and could decide the success or failure of any endeavour. He therefore endorsed the idea expressed in the seventh paragraph of the preamble of the draft resolution that a broader approach was called for in the consideration of any of the new topics to be selected. For example, the International Law Commission had thus far approached the question of State responsibility from the narrow point of view of compensation payable to aliens for expropriated property; but, apart from the important points raised by the question of State responsibility involving infringements of contemporary international law, it had also neglected the point of view of States which, in the interests of their people, were inspired by the principle "restore at least a part of what you have taken away". The Commission should take all points of view into consideration and not restrict itself to a single concept. Whether the special committee or the International Law Commission would in the end be entrusted with the tasks enumerated in operative paragraph 1 of the draft resolution, the approach should be as wide as

possible: no point of view accepted in any part of the world should escape the reviewing body's scrutiny.

29. Mr. ASSELIN (Canada) said that, while his delegation did not oppose the idea which had motivated the sponsors of the draft resolution, it had co-sponsored the amendments because of its juridical reservations with regard to the approach suggested for reviewing the work of the International Law Commission. The establishment of a special committee did not appear to be the best way of attaining the end sought. The special committee would duplicate the work of the International Law Commission, which was logically the body which should review the list of topics it had itself drawn up more than ten years ago, bring that list up to date and report to the General Assembly in accordance with the usual procedure. The establishment of a new organ would also undermine the very structure of the International Law Commission because, if the new committee were given the task of listing topics for codification, it

would seem that the International Law Commission was being censured; and that, surely, was not the intention of the sponsors of the draft resolution.

30. According to the amendments, it would be the Sixth Committee itself which would give the International Law Commission practical suggestions that might help it in its work, as it had often done in the past. The distinguished jurists on the International Law Commission, whose competence was universally recognized, would be requested to study and prepare a list of topics for codification and submit it at the Assembly's sixteenth session, at which time the Sixth Committee would give it its full attention. In that way, all countries, and not the relatively few countries necessarily envisaged in the draft resolution, would have the opportunity of reviewing all the possible new topics on the basis of political criteria.

The meeting rose at 5.55 p.m.