

25 MAY 1961

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Tuesday, 15 November 1960,
at 10.55 a.m.

FIFTEENTH SESSION

Official Records

NEW YORK

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

AGENDA ITEM 65

*Report of the International Law Commission on the work of
its twelfth session (A/4425; A/C.6/L.467 and Rev.1,
A/C.6/L.472) (continued)*

1. Mr. SHIELDS (Ireland) said that his delegation found itself generally in accord with the many delegations that favoured a review of the whole field of international law. It had been eleven years since the International Law Commission had drawn up a list of topics (A/925, para. 16), and a good many of those had been disposed of. The work of progressive development and codification of international law, involving as it did the adjustment and development of the principles of international law to meet the realities and the needs of a changing world in a nuclear age, was a difficult and complex task of monumental magnitude, of no less importance in its own way than the work of the International Court of Justice. Such work had to be of the highest quality; if hurried, it would inevitably be badly done. And the Commission had indeed produced a consistently high standard of work. His delegation agreed, however, that it would be more scientific and satisfactory if a general programme of future work was drawn up, particularly since such systematic programming need not involve any change in the Commission's Statute.

2. As to the question of which body should conduct the survey of international law, he pointed out that it had been said when the original list of topics was being drawn up that the choice of topics was an extremely delicate matter which should be preceded by protracted and serious study. The fact that the Commission had managed to select its original list of topics without unduly prolonged deliberations placed the onus on the proponents of the eight-Power draft resolution (A/C.6/L.467/Rev.1) to prove the need for setting up a committee to do the work. If only by analogy to the principle of the exhaustion of local remedies, the Committee should submit the problem of selection of topics to the Commission.

3. His delegation was not convinced that the survey was so urgent a matter that it had to be completed or even taken up at the Commission's thirteenth session. As the survey would require careful, thorough study, the Commission might prefer to take two or

more sessions to complete the work, and to deal with other items on its agenda at the same time. In his delegation's view, it would have been preferable for the Commission to undertake the survey at its fourteenth session, when the members would be beginning their five-year terms and continuity would be assured. However, as the Committee appeared to favour an early start, his delegation would accept the revised draft resolution, as amended by the eleven-Power proposals (A/C.6/L.472). In his delegation's view, the need for a review of international law should not be linked to the paucity of the Committee's agenda, which, as the Liberian representative had correctly pointed out (661st meeting, para. 8), must be attributed to the Committee's own actions. Lastly, his delegation was convinced of the complete integrity and unswerving impartiality in the performance of their official duties of all the members of the Office of Legal Affairs.

4. Mr. HSU (China) said that in the Statute of the International Law Commission it had been assumed that requests for progressive development would come from the General Assembly, Members of the United Nations and other designated bodies, whereas the Commission had been directed to survey the whole field of international law with a view to selecting topics for codification. The Commission had closely followed the provisions of its Statute: it had complied with requests regarding progressive development and, at the same time, had surveyed the field of international law and had made recommendations to, and obtained approval from, the General Assembly for the codification of fourteen topics. Although only slightly more than half of the topics had been disposed of, the General Assembly, in view of the changed world situation, might properly direct the Commission to make a new survey and to submit new recommendations.

5. The eight-Power draft resolution proposed three changes in the procedure which the General Assembly had established for carrying out its duties under Article 13, paragraph 1 a of the Charter: first, it would create a temporary political body; second, it would authorize that body, rather than the Commission, to survey the field of international law and recommend topics for codification; third, it would authorize that body to recommend topics for progressive development on an organized basis. Since the General Assembly, as a sovereign organ, undoubtedly had the authority to make the proposed changes, the only question before the Committee was whether those changes were advisable. The creation of a political body for the purposes set forth in the draft resolution would raise no objections, provided such a body was needed and could be formed without great difficulty. However, since the Commission had expressly been given full responsibility for the codification of international law, the establishment of such a body to select topics for codification seemed

unnecessary. Indeed, to endow the proposed political body with functions in the matter of codification would make for duplication of effort and might be interpreted as a reflection on the Commission. Therefore, the only function of such a political body would be to recommend topics for progressive development.

6. In that connexion, he would stress that any proposal designed to speed the progressive development of international law necessarily evoked a sympathetic response from his delegation. His Government had taken the lead in placing the provisions of Article 13 in the Charter and had been among those who advocated the establishment of the Commission; and throughout the years, the Chinese representatives in the Sixth Committee and the Chinese member on the Commission had reaffirmed time-honoured principles, had helped to adapt established principles to novel situations and had urged the adoption of new rules for old problems. Yet, despite its adherence to the principle of progressive development, his delegation had some doubts regarding the advisability of accelerating progressive development by the hasty methods proposed in the draft resolution, particularly in the present cold-war atmosphere. Progressive development, which dealt with subjects which had not yet been regulated by international law or in regard to which the law had not yet been sufficiently developed in the practice of States, was naturally a source of controversy, even when a friendly atmosphere prevailed in international relations. Moreover, even if controversy were avoided, no positive results could be achieved without mutual confidence among States, since the development of international law was dependent on the consent of all sovereign nations. In that connexion, he recalled that the General Assembly had had to suspend its efforts to define aggression and to establish an international criminal court and had to put aside the draft Code on Offences against the Peace and Security of Mankind.

7. He wished to draw the Committee's attention to the fact that, from a procedural point of view, it would have been better to introduce a new agenda item, under rule 15 of the rules of procedure, rather than to consider the draft resolution in the present somewhat inappropriate context.

8. His delegation hoped that the sponsors of the draft resolution would adopt the eleven-Power amendments; thus amended, the draft resolution would be free of any intimation of discourtesy to the Commission, and would attain its objectives without raising the problems attendant on the creation of a political committee. In any event, little was likely to be accomplished in the field of the progressive development of international law without a real thaw in the cold war.

9. Mr. EL-ERIAN (United Arab Republic), referring to the important constitutional questions which had been raised concerning the relation of the International Law Commission to the General Assembly and the Commission's competence and independence, recalled that his delegation had always supported the independence of the Commission. In the 1958 Committee debates on the review of the Commission's work undertaken during its first ten sessions, his delegation had consistently said that the Commission should determine its own working procedure. However, the question before the Committee referred,

not to the Commission's procedure and independence, but to surveying the field of international law and adjusting activities in the legal field of the new economic, social and political developments which had taken place within the community of nations during the last ten years.

10. At its first session, the Commission had stated that the list of topics selected was only provisional and that additions or deletions might be made after further study by the Commission or in compliance with the wishes of the General Assembly (A/925, para. 17). The General Assembly had, in fact, expressed its wishes on several occasions. Thus, by resolution 685 (VII), the Assembly had requested the Commission to give priority to the codification of the law on diplomatic intercourse and immunities, and had on several occasions directed the Commission in its treatment of the law of the sea. Indeed, the co-operation given by the General Assembly had made it possible for the Commission to codify successfully the whole of that area of international law. The progress made in that subject showed that advances could be made in codification even in the present political atmosphere.

11. He had given those examples to illustrate the kind of relationship that existed between the General Assembly and the International Law Commission. The United States representative had correctly cited article 18 of the Commission's Statute to show that the Commission was responsible for surveying the whole field of international law with a view to selecting topics for codification, having in mind existing drafts, whether governmental or not; that article appeared in section B of chapter II, which was entitled "Codification of international law". In section A of that chapter, entitled "Progressive development of international law", article 16 set forth the procedure to be followed when the General Assembly referred a proposal for the progressive development of international law to the Commission. Therefore, when it defined the functions of the International Law Commission in chapter II, the Statute itself made a distinction between progressive development and codification. Moreover, in defining the General Assembly's functions with regard to the affirmation of international law, Article 13 of the Charter dealt with the matter in terms of "promoting international co-operation in the political field and encouraging the progressive development of international law and its codification". Thus, the relationship between codification and progressive development on the one hand and political co-operation on the other was obvious, and the political aspect of codification and progressive development could not be ignored.

12. The codification of international law thus had both a technical aspect—which was incontrovertibly within the jurisdiction of the International Law Commission, whose independence in that regard had always been upheld by his delegation—and a political aspect. Having regard to that fact, it could hardly be maintained that the Sixth Committee would be bypassing the International Law Commission in establishing a special committee to advise it on the political aspect of the work.

13. There were also certain practical considerations militating in favour of the establishment of a special committee. For example, at its next session, the International Law Commission would be mainly oc-

cupied in preparing the final text of its draft on consular intercourse and immunities; but it was necessary for the General Assembly to take action on the over-all problem without further delay.

14. All the members of the Committee were agreed on the need for a review of the work of the International Law Commission, of the Sixth Committee and all other legal bodies of the United Nations. While the International Law Commission had produced much valuable work during the past ten years, it had now exhausted many of its topics. The question now was whether priority should be accorded to its remaining topics, or to the new topics the emergence of which had been universally recognized. That question should be decided by the special committee, since the General Assembly had nearly always directed the International Law Commission in the matter of priorities. In proposing the establishment of a special committee, his delegation had had no intention of attempting to by-pass or impair the competence and independence of the International Law Commission; it merely desired that careful consideration should be given to a question the political aspects of which could not be denied; their technical aspects could be referred to the International Law Commission at any stage.

15. He appreciated the efforts of the delegations which had submitted amendments to the draft resolution. As the Afghan representative had said (668th meeting, para. 35), the sponsors of the draft resolution were willing to take account of any changes made to their text that did not impair its principal objective: to establish a special committee consisting of representatives of Governments to study the matter and report to the General Assembly, which could then refer specific aspects of the questions raised to the International Law Commission or to other bodies.

16. Mr. CASTAÑEDA (Mexico) said that he had little to add to the explanations of the revised text of the draft resolution that had already been given by the Afghan (*ibid.*) and United Arab Republic representatives.

17. The sponsors had redrafted the first paragraph of the preamble of the original draft resolution (A/C.6/L.467), to take account of the suggestion made by various delegations. They had added the phrase "and in advancing economic and social progress throughout the world" to the second paragraph in accordance with the suggestion made by the Peruvian representative (661st meeting, para. 40). In doing so, they had had in mind those countries which were most in need of such progress, the underdeveloped countries, but had refrained from stating so specifically in order not to restrict the scope of the draft resolution.

18. The Ukrainian representative (665th meeting, para. 19), supported by the Romanian representative (666th meeting, para. 27), had suggested that a new paragraph should be added to the draft resolution recognizing that strict compliance by States with the generally recognized principles of international law was an essential condition for the maintenance and strengthening of international peace. While no delegation could disagree with that statement, it lacked a close connexion with the rest of the draft resolution, which dealt, not with respect for, but the creation of, international law and an improvement in its function. Moreover, the statement might be interpreted in a

specific political context and give rise to certain objections. The suggestion had therefore not been included but, if it were proposed as an amendment, the sponsors would, of course, vote on it individually as they saw fit.

19. The seventh paragraph of the preamble of the revised draft incorporated the suggestion made by the Peruvian representative (667th meeting, para. 33), and the eighth paragraph (i.e., the seventh paragraph of the original text) had been redrafted in a more affirmative way in accordance with the suggestion made by the Romanian representative (666th meeting, para. 27). The sponsors had been unable to accept another suggestion made by that representative (*ibid.*, para. 28) that all the work of the International Law Commission should be tackled on a broader basis, since their position was that a broader approach was desirable only for certain topics.

20. While the third of the amendments (A/C.6/L.472) offered to the seventh preambular paragraph of the original draft resolution was similar in wording, it omitted an essential idea: namely, that the topics should be selected, not on a purely factual basis, but in consequence of a broader study to be undertaken by the special committee. They had thus been unable to accept that amendment.

21. The sponsors had accepted the United Kingdom's cogent argument (668th meeting, para. 28) for replacing the word "peaceful" by "friendly" in the eighth paragraph of their original draft resolution and had incorporated that change in the ninth paragraph of the revised text.

22. Operative paragraph 1 posed the main problem before the Committee: whether the work referred to was to be undertaken by the proposed special committee or by the International Law Commission. As the representative of the United Arab Republic had just said, the codification of international law had both a technical and political aspect. The sponsors therefore considered it important that Governments should take a stand on the topics which should be codified, since that question had strong political implications. Even if the task of selection were entrusted to the International Law Commission, the General Assembly would still have the final word; that being so, there could be no objection to a special committee of the Assembly, with a membership similar in composition to that of the International Law Commission, undertaking that task.

23. The appointment of such a committee could not be interpreted as indicating discourtesy to or lack of confidence in the International Law Commission, since the Commission consisted of individual jurists and did not necessarily reflect the will of Governments. Moreover, the sponsors included several countries whose nationals were members of the International Law Commission.

24. Although the United Kingdom representative had correctly stated (*ibid.*, paras. 24 and 25) that, under article 18 of its Statute, the responsibility for surveying the whole field of international law with a view to selecting topics for codification lay with the International Law Commission, that article did not confer such responsibility on the Commission exclusively. For example, the General Assembly had, in the past, assigned priorities to some of the topics studied by the International Law Commission and had, on several

occasions, asked the Commission to study certain specific topics, such as the questions of reservations to multilateral conventions and the definition of aggression.

25. There were also practical reasons for the establishment of a special committee. The Commission would be obliged to devote its full time at its next session to the questions of consular intercourse and immunities and State responsibility. While, as the United Kingdom representative had said, at its first session, the Commission had needed no more than six meetings to establish its list of topics, at that time it had had before it two excellent reports, one prepared by the Committee on the Progressive Development of International Law and its Codification,^{1/} which had devoted six weeks to the question, and the other by the Secretary-General.^{2/} The situation was now different, since the Commission would have no preparatory documents before it and might require a whole session, if not more, to work out such a list.

26. The sponsors had no hidden political motive in submitting their draft resolution; they merely felt that the time had come for a review of the whole field of international law and the study of new topics susceptible of codification. They were glad to see that all delegations were in agreement on that need and that disagreement arose only as to methods.

27. In conclusion, he stressed that, in order to have the task carried out successfully, all States would have not only to co-operate, but would have to give their active co-operation. As he had pointed out earlier (665th meeting, para. 10), in the past, small States had had little to say in the creation of international law; it was now necessary for all States, the small as well as the great, to participate in its formulation.

28. The sponsors would continue to attempt to reconcile the various points of view in an effort to reach general agreement.

29. Mr. LACHS (Poland) said that the question to be asked about the draft resolution was how far it offered a solution to the problems raised during the general discussion—a discussion which had ranged widely from the work of the International Law Commission to the legal activities of the United Nations as a whole and the function of law in the world today. The discussion had been constructive and useful and had shown the deep interest of members of the Committee in the vital problems of the time. It had served, for example, to contribute to a better understanding of the important provisions of Article 101 of the Charter. The draft resolution dealt with one of the problems which had been raised—that of giving new impetus to the work of codifying and progressively developing international law—although it did not fail to take account of other elements. The second preambular paragraph of the revised text, stressing the increased importance of the role of international law in strengthening international peace, was a valuable one, but it might usefully be augmented by the addition of a paragraph along the lines suggested by

the Ukrainian representative (*ibid.*, para. 19). The seventh preambular paragraph was also important. It was clearly borne out by the facts, as the representatives of Ceylon, Mexico, Indonesia, India, Ghana and Afghanistan had averred.

30. The new developments called for adequate action not only in the codifying but also in the creation of international law. In that connexion, he would like to recall the remarks made by the representative of Portugal (659th meeting, para. 1), who had attributed the decline of the rule of law in the United Nations to the distortion of legal terms for political purposes and had seen a conflict between proper legal interpretation and political interests. Yet, he had himself admitted that greater changes had taken place in the world in a shorter time than ever before. That, of course, was the whole point. Interpretation was not a mere mechanical function, as the representative of Portugal seemed to wish to make it; it was the essential process of adapting laws to the new conditions of life as they came into being. Many authorities from various schools of international law could be quoted in support of that view. The United Nations Charter was but one document; it was wrong, simply because the purposes and principles of the Organization were set forth at the beginning of it, to make it a rigid framework for any analysis. In fact, it required continuous adaptation to the changing needs of law. Thus, as regards the sixth preambular paragraph of the original draft resolution, he could see no reason for its deletion, as proposed in the second of the amendments (A/C.6/L.472), particularly as some of the sponsors—the representatives of Thailand and Tunisia in particular—had spoken in terms echoing those of that preambular paragraph. The eighth preambular paragraph, it seemed to him, was couched in too tentative a language. It had been made abundantly clear during the course of discussion that there were indeed "new topics susceptible of codification" and "conducive to progressive development"; indeed, the draft resolution had just said as much in the preceding paragraph; there was therefore no need for the note of uncertainty. Similarly, there was no point in asking "whether a broader approach" might be called for; there could be no doubt about the answer. The new dimensions of international life necessitated it: nations which had formerly been on the periphery of history had now moved into its centre; and science had become an active factor in the economic and political life of nations, creating new legal problems, both national and international.

31. Turning to the substance of the draft resolution—the proposal to set up a special committee—he recalled that he had himself, in his earlier statement (656th meeting, para. 6), suggested that the International Law Commission might prepare a new plan of work for discussion at the sixteenth session of the General Assembly. He was grateful to those representatives who had endorsed that suggestion. It did not mean, however, that another proposal might not be equally acceptable. Indeed, a committee of the kind proposed, properly constituted, comprising highly qualified representatives of all the legal systems of the world, could be very helpful. He accepted the assurance of the sponsors of the draft resolution that it was not their intention to trespass on the province of the International Law Commission, but thought that the two methods could perhaps be combined: the International Law Commission might be

^{1/} Official Records of the General Assembly, Second Session, Sixth Committee, summary records of meetings, annexes (annex 1).

^{2/} Survey of international law in relation to the work of codification of the International Law Commission (United Nations publication, Sales No.: 48.V.1(1)).

requested to present its views; they in turn might be discussed by the proposed committee and its report could serve as the basis for the final consideration of the matter by the Sixth Committee at the sixteenth session.

32. Given some amendment to strengthen the draft resolution, therefore, he found it entirely acceptable and wondered at the hesitancy shown by a number of delegations. Law must follow life and international law must be restored to its rightful role in the whole structure of the United Nations. The draft resolution offered a means of beginning to achieve that end.

33. Mr. PEREIRA (Portugal), referring to the remarks of the representative of Poland, said that in speaking, in his earlier intervention (659th meeting, paras. 1-4), of the distortion of the provisions of the Charter for political purposes, he had been thinking of specific instances affecting his own country. The objective interpretation of the Charter was perfectly proper, but not the deliberate twisting of its terms to suit sectional political ends.

34. Mr. MOROZOV (Union of Soviet Socialist Republics) said that the Sixth Committee had been witnessing a struggle of the old to prevent the advent of the new. The new had not yet won, but the old was being forced to give way step by step. At the beginning of the session, a small group of delegations had attempted to maintain that, in the legal sphere, all was well and nothing need be done. The majority view, unequivocally favouring a new approach to legal matters in the United Nations, had forced them to retreat from that position. They had now sought refuge in their second line of defence and were

attempting to defeat the proposal for new action by organizational means. He did not think that they would succeed. He agreed with the representative of Poland that the new committee, if properly constituted, that was to say, truly representative of all the main legal systems and groups of countries, could make a valuable contribution to the development of international law. He did not agree with those who suggested that the proposal to set up a committee showed any lack of respect for or confidence in the International Law Commission. No one had cast any blame on the Commission; on the contrary, many delegations had praised its efforts, and it was a fact that, although naturally not perfect, its work had been of concrete value. With regard to the draft resolution in general, he associated himself with the criticisms expressed by the representative of Poland. He failed to understand the objections of the representative of Mexico to including in the text some reference to the importance of the strict compliance by all States and Governments with the generally recognized principles of international law. He would urge the sponsors still to consider the Ukrainian delegation's suggestion for an insertion in that respect. They might also consider adding to operative paragraph 1 an instruction to the committee to give special consideration to those problems of international law which were directly connected with the maintenance and strengthening of world peace and with the elimination of colonialism and all its consequences. Such an addition would, he was sure, win the support of many delegations.

The meeting rose at 1 p.m.