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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, 473) (continued)

1. The CHAIRMAN drew the Committee's attention to the eleven-Power amendments (A/C.6/L.473) to the revised draft resolution (A/C.6/L.467/Rev.1).
2. Mr. SHARP (New Zealand) associated his delegation with the expressions of appreciation that had been made concerning the general aims of the sponsors of the draft resolution; he considered, however, that it would be more appropriate for the proposed survey of the whole field of international law to be carried out by the International Law Commission than by a special committee. His delegation accepted the assurance given by the sponsors that their proposal to establish a special committee implied no disparagement of the work of the International Law Commission; nevertheless, it felt that the establishment of such a committee to perform the function entrusted to the Commission under article 18 of its Statute would have that very effect.
3. If the proposal were adopted, Governments would send written comments for consideration by the special committee, which would reach tentative conclusions and place them before the General Assembly at its next session. The question arose as to how the Assembly's decision would be conveyed to the International Law Commission: if it took the form of a peremptory directive to the Commission, the action would be most discourteous, since the Commission would not have had the opportunity of expressing its views; if, on the other hand, the matter were merely referred to the Commission for consideration or study, the question would once again be projected into the realm of uncertainty.
4. The representative of Afghanistan had said (668th meeting, para. 33) that, since the members of the International Law Commission were appointed in their personal capacity and not as representatives of Governments, the special committee would be better qualified to take account of political considerations. In that connexion, he emphasized that Governments would have the opportunity of expressing their views at the two most crucial stages: when they made their written comments and when the matter was finally adjudicated in the General Assembly. In such circumstances, he

could not understand how the Soviet Union representative could describe the suggestion to draw upon the great experience of the learned members of the International Law Commission as unhelpful.

5. Some of the difficulties he had mentioned might be avoided if the Polish representative's suggestion (669th meeting, para. 31) were adopted, but the New Zealand delegation considered that there was no need to draw both the International Law Commission and the special committee into the matter.

6. Since the subject under discussion came within the ambit of the Sixth Committee's present agenda only by inference and many delegations found it difficult to express their views on a subject to which they had not given detailed study, the special committee would not be in a position to represent the considered views of the Sixth Committee, political or otherwise.

7. For those reasons, his delegation supported the eleven-Power amendments (A/C.6/L.473).

8. With regard to the general aim of the draft resolution, which seemed to be the object of general agreement despite a divergence of views on methods, he recalled that, as Oppenheim had said,^{1/} all the historically important events and facts of international life from the time of Grotius to the present had, on the one hand, given occasion to the manifestation of the existence of a law of nations, and, on the other, had made that law constantly and gradually develop into a more perfect and complete system of legal rules. It was important for the Sixth Committee to maintain a balanced perspective concerning the development of international law. The new topics which had been raised were, of course, all relevant questions, but, in taking them into account at the present time, the Sixth Committee would merely be accelerating the normal process of development which was characteristic of international law, not taking drastic remedial action because international law as a whole had failed. In its efforts to improve international law, the Sixth Committee should do nothing to bring it into disrespect.

9. Mr. SUCHARITKUL (Thailand) congratulated the sponsors of the revised draft resolution on the considerable improvement they had made to the preamble, which the sponsors of the amendments could not accept in its entirety.

10. The new amendments were now restricted to an irreducible minimum of two, the second of which was merely consequential. The issue before the Committee was whether the International Law Commission or a special committee would be the appropriate body to undertake a survey of the whole field of international law and make any necessary suggestions with regard to the preparation of a new list of topics for codification

^{1/} L. Oppenheim, *International Law—A Treatise*, vol. I, Peace, 8th ed., ed. H. Lauterpacht (London-New York-Toronto, Longmans, Green and Co., 1955), pp. 85 and 86.

and progressive development. Without entering into the details of the arguments that had been expressed on each side, the sponsors of the amendments were opposed to the establishment of a special committee for that purpose and believed that the International Law Commission was the only appropriate and competent organ to handle the matter. The debate had been exhaustive and the sponsors of the amendments, after having considered all of the views expressed, had reached the conclusion that their amendments were indispensable. While the representative of Ceylon had said that the establishment of the special committee would cast no discredit on the International Law Commission, the reasons he had given for its establishment had not been flattering to the Commission. No matter how tactfully expressed, the establishment of a special committee would imply discourtesy and lack of confidence with regard to the Commission and would therefore be unnecessary, redundant and futile.

11. If the only purpose of the special committee were to establish a body of representatives of Governments, why could that function not be fulfilled by the Sixth Committee? How was it possible for one Government to represent another Government? His Government, for one, could not accept having its views represented by other Governments or vice versa.

12. In seeking to dispel misapprehensions with regard to the draft resolution, the Yugoslav representative (666th meeting, para. 20) had evoked certain doubts which the revised text confirmed. Operative paragraph 1 made explicit what had been only implicit before.

13. His delegation noted that Afghanistan, alone of the sponsors, had not been proposed for membership in the special committee, and, since the Mexican representative had suggested that the special committee should include the five permanent members of the Security Council, he wondered whether China had intentionally been replaced by India.

14. His delegation attached great importance to the statement made by the Polish representative; the ideas which he had expressed were reflected in the amendments.

15. In conclusion, he felt that the debate had clearly defined the issues involved and had exhausted the arguments on both sides. He therefore moved that the Committee should vote on the matter as soon as possible.

16. Mr. ROSENNE (Israel) recalled that he had said during the general debate (663rd meeting, para. 13) that the time had come for a thorough reappraisal of the status of the codification and progressive development of international law and that, while his delegation had no objection in principle to the establishment of a special committee, a parallel investigation of the same question by the International Law Commission would prove useful. At the previous meeting, the Polish representative had made substantially the same suggestion: namely, that the special committee should investigate the political and general aspects of the matter and the International Law Commission the technical aspects, and that the two bodies should submit their reports to the General Assembly at its sixteenth session. He saw no incompatibility between the approach proposed in the draft resolution and that proposed in the amendments and urged the two sets of sponsors to make every effort to reach full agreement.

17. He recalled that, at the 665th meeting (para. 14), the Mexican representative had said that the following criteria should be used in determining the composition of the special committee: fair geographical distribution; representation of the chief legal systems; and representation of the great Powers. Those criteria had been endorsed by the Afghan representative at the 668th meeting (para. 34). His delegation did not consider, however, that the composition of the special committee proposed in operative paragraph 1 of the revised draft resolution was consistent with those statements. For example, the Middle East was represented by two States, both of which were members of the Arab League and had nationals serving on the International Law Commission. But that region also included States which were not members of the Arab League—such as, for instance, Turkey, Iran, Cyprus, Israel, etc.—and which should be represented on the special committee to comply with the criteria given.

18. In the opinion of his delegation, further consideration ought to be given to the date by which Member States should submit their views or suggestions to the Secretary-General. That date could be profitably postponed from 1 May 1961 to 1 July 1961 because, first, between the present time and 1 May, many Government experts who were qualified in the matters of codification and progressive development were likely to be directly or indirectly occupied with the United Nations Conference on Diplomatic Intercourse and Immunities to be held at Vienna in the spring of 1961, and, secondly, assuming that the special committee would meet only after the International Law Commission had completed the work of its next session, there was no urgency about the submission of the comments of Governments. Governments could, of course, submit their comments earlier if they wished them to be put before the International Law Commission.

19. He hoped that the sponsors would give consideration to those suggestions.

20. Mr. HAREGOT (Ethiopia) said that his delegation believed that law was a manifestation of the dominant social, economic and political forces of a given period: as society changed, so should law; the laws of yesterday should not bind the society of today or that of tomorrow. Specifically, tremendous changes had taken place in the political geography of Asia and Africa since the Second World War; many new States had arisen and were anxious to express their views on the laws and rules which had been established before their advent on the international political scene. All members of the Committee appeared to be agreed that some such reappraisal was necessary. Disagreements subsisted, however, as to the essential nature of the task and as to the body which should perform it. His own delegation's view was that it was a political task and not a technical one to be carried out by individual experts. Those who felt that the task should not be entrusted to any body other than the International Law Commission based their contention on two arguments: the first, that the task lay within the functions of the Commission under article 18 of its Statute and the second, that, to set up a special body, would imply a lack of confidence in the members of the Commission. As to the second argument, his delegation would like to state, as many others had done, that it had full confidence in the members of the International Law Commission, and the first he could rebut with the argument of Article 13, paragraph 1 (a), of the United Nations Charter. The General

Assembly had not abdicated its function under that Article, and it was the task of the Sixth Committee, as a Main Committee of the Assembly, to help the International Law Commission in its work. The choice of further topics for codification would undoubtedly involve political considerations. The decision ought, therefore, to be taken by a body in which the views of Governments were represented. His delegation had doubts, however, about the special committee proposed in the draft resolution. If it consisted of only fifteen members, it might not represent all views, and the very purpose of its establishment would thus be defeated. There would, too, as the representative of Cyprus had pointed out (668th meeting, para. 21), be certain technical difficulties attendant upon the setting up of such a committee, such as the formulation of its rules of procedure. It was his delegation's view, therefore, that the task under consideration could best be performed by the Sixth Committee itself. There had been many complaints about the paucity of the Committee's agenda. What better, then, than to place that item on it?

21. Referring to the original text of the eleven-Power amendments (A/C.6/L.472), he said that his delegation too, like that of Poland, found the proposal to delete the sixth preambular paragraph of the original draft resolution (A/C.6/L.467) incomprehensible. Without it, indeed, he felt that the draft resolution would be almost meaningless.

22. Mr. NINCIC (Yugoslavia) recalled that it had been the original intention of the sponsors of the draft resolution to try to provide an answer to some of the problems raised during the general discussion of that item, to try to instil greater energy and dynamism into the work of the United Nations as a whole and its legal bodies in particular. He had been glad to find such a wide measure of support in the Committee for the basic ideas of the draft resolution. He had hoped, by his earlier statement (666th meeting, para. 20), to dispel certain misapprehensions regarding the proposed committee, but was sorry to learn from the statement just made by the representative of Thailand that he had been unsuccessful. He still felt, however, that the differences subsisting were minor; they pertained to method and not to principle, to procedure and not to substance. The sponsors of the draft had made every effort to meet the sponsors of the amendments, incorporating into the text all the suggestions they had considered consonant with its principal idea. They still hoped to be able to find a formulation which would meet with the approval of all members of the Committee. It would be a pity to push through a decision at the present stage simply to have a decision taken. That was certainly not the intention of the sponsors; they had hoped to secure an agreement which would make it possible to proceed with a job which all considered important. He would simply add that, so far as the composition of the proposed committee was concerned, the sponsors had certainly had no ulterior motives in their choice of members. They had drawn up the list included in the revised text of the draft resolution only after extensive consultations with delegations, and they believed that they had arrived at what would be a well-balanced committee.

23. Mr. KUMA (Ghana) recalled that the sponsors of the draft resolution had acted only because of what had been said by so many delegations during the general debate. It was unworthy, therefore, to impute bad faith to them and it was absurd to suggest that they intended

any slight upon the International Law Commission. It was also erroneous to maintain that there would be a duplication of functions between the new committee and the International Law Commission. Article 13, paragraph 1, of the Charter spoke of the General Assembly's "initiating" studies; article 18 of the Statute of the International Law Commission did not. As the representative of Afghanistan had pointed out, the task in view had two aspects: a technical and a political one. No one would deny that the technical work was the prerogative of the International Law Commission alone. There were political issues involved, however, and the members of the Commission could act only in their capacities as individual experts. There had been instances in the past of their reluctance to take up matters with strong political overtones, such as those of State responsibility and surprise attack. What was intended, then, was that the special committee should complement the work of the International Law Commission by relieving it of essential political decisions.

24. As to the objection to the delegation of power to the representatives of a few Governments, which the representative of Thailand had raised, he did not think that point very valid; after all, the International Law Commission itself consisted of only twenty-one members and that appeared to give no one any anxiety. He saw no reason, therefore, why the sponsors of the amendments should not rally to the support of the draft resolution as it stood. They had, in effect, given it their backing by offering amendments to its preamble; had they not been interested in its contents, they would no doubt have rejected it *in toto*. The representatives of Israel and Ethiopia had raised certain objections to the proposed membership of the special committee. He would remind members that in the original text that part of the draft resolution had been left blank. It had been only after considerable consultations with delegations that the sponsors had inserted the names of fifteen countries. Nor did they consider the list final; they were ready to hear alternative suggestions, for they were anxious to secure general agreement on an action which was designed to advance international law. They had, so far as possible, borne in mind the criteria enunciated by the representative of Mexico (665th meeting, para. 14), but it was difficult to comply with all of them simultaneously. Moreover, they had had to bear it in mind that a large committee would be unworkable.

25. He appealed to all delegations to give the draft resolution their full support.

26. Mr. MANOTAS WILCHES (Colombia) said that the debate had effectively demonstrated general agreement in the Committee on two points: the paucity of the Committee's agenda and the need to give more attention to problems of contemporary international law. Thus, the debate had helped the Committee to reach unanimous agreement on the theoretical aspects of the problem. The only remaining question was a practical one—whether the Committee should entrust the work of selecting topics to the International Law Commission or to a special committee. His delegation, for its part, insisted on the necessity of continuing to entrust that task to the Commission. There were no practical reasons that would justify the duplication of functions which would result from the creation of a special committee, and, at the same time, there were basic considerations which would make the creation of such a committee inadvisable. Better results could be ob-

tained by using existing institutions to do the work without undue haste. The Committee would do well to avoid that multiplication of official organs which often prevented work from being done. Moreover, the Sixth Committee should consider its own position: by creating a special committee to perform the tasks set forth in the draft resolution, it would be renouncing its own role in the codification and development of international law. Accordingly, he asked the members of the Committee to vote for the eleven-Power amendments (A/C.6/L.473) to the revised draft resolution (A/C.6/L.467/Rev.1).

27. Mr. GUERREIRO (Brazil) recalled that the representative of Israel had expressed the hope that the sponsors of the draft resolution and the proponents of the amendments would meet together and try to arrive at a text which would be generally acceptable to the whole Committee. The Ethiopian representative suggested an alternative solution, which should also be considered. He was convinced that many delegations shared the desire not to have the matter put to a vote until every effort had been made to reach an agreed solution. Indeed, it was essential for the Committee to agree on the method to be used for the selection of topics for codification and progressive development, since those States which objected to a method adopted only by a small majority might not co-operate in the execution of the substantive work.

28. Mr. PERERA (Ceylon) explained that, in determining the membership of the special committee, the sponsors of the draft resolution had taken into account various factors, including the need for creating a committee of practicable size. The sponsors did not, of course, insist on a committee of fifteen; the committee

might be able to work effectively with as many as twenty-five members. As for the suggestion by the Thai representative that Afghanistan had been excluded from membership on the special committee, he could only state, on instructions from his Government, that Ceylon would be happy to stand down in favour of any other country.

29. In dealing with the many controversial items which had come before them in the past, the members of the Sixth Committee had always attempted to find a compromise solution. If the Committee should adopt the proposed amendments by steam-roller tactics, the purposes both of the original proposal and of the amendments would be frustrated, for it was not a formal victory that mattered. Having reached agreement on the preambular paragraphs of the revised draft resolution, the Committee should now seek to find a generally acceptable text for operative paragraph 1. The composition of the special committee undoubtedly raised difficult problems, and several suggestions made by earlier speakers might well be taken into consideration. He urged the Committee to heed the plea of the Brazilian representative for a reconciliation of views.

30. The CHAIRMAN said that there appeared to be fundamental differences of opinion in the Committee on two questions: the creation of the special committee, and the composition of the committee. He hoped that the sponsors of the revised draft resolution and the proponents of the amendments would make a concerted effort to reach agreement on those points.

The meeting rose at 12.35 p.m.