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**SIXTH COMMITTEE, 671st
MEETING**

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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.473) (continued)

1. Miss LAURENS (Indonesia) said that she had been impressed by the sincerity with which all delegations were seeking a solution to the problem before the Sixth Committee: the question of finding the most appropriate and useful method of re-examining and revitalizing the role of international law in the light of current developments. One such development, to which her delegation attached particular importance, was the movement for national liberation and economic emancipation which had swept over Africa and Asia and which would continue until the final eradication of the colonial system. The need for a re-examination of the present state of international law had been expressed by most speakers; given such a unanimity of view, the Sixth Committee would surely be able to find an equitable solution.

2. Her delegation welcomed the revised draft resolution (A/C.6/L.467/Rev.1) as a constructive proposal designed to achieve the desired objective. It appeared that the members of the Committee generally concurred on the principles and aims expressed in the draft resolution and disagreed only with regard to the best procedure for achieving them, specifically, whether the special committee proposed in the draft resolution or the International Law Commission would be better suited to survey the whole field of international law and make suggestions with regard to the preparation of a new list of topics for codification and progressive development.

3. Three arguments had been advanced in favour of entrusting that task to the International Law Commission. The first was that, since the International Law Commission was the appropriate and competent body to carry out the task, the establishment of the special committee would merely constitute an intrusion into the duties and the authority of the Commission and imply a lack of confidence in it. Her delegation could not agree with that view. As the sponsors of the draft resolution had said, the special committee would be set up within the framework of the General Assembly, and, under Article 13, paragraph 1 (a), of the Charter, the task of initiating studies and making recommendations for the progressive development of international law

and its codification had been placed in the hands of the General Assembly. The oft-quoted article 18 of the Statute of the International Law Commission showed that it had been the General Assembly itself that had assigned certain tasks to the Commission; and as the Burmese representative had pointed out (666th meeting, para. 10), under article 18, paragraph 3, the General Assembly was empowered to make suggestions to the Commission as to the work it should do, and the Commission was in fact required to give priority to such suggestions. Moreover, while it was true that article 1 gave as the object of the International Law Commission the promotion of the progressive development of international law and its codification, the Statute also distinguished between the Commission's duties and functions with regard to progressive development on the one hand and codification on the other, by dealing with the former in section A of chapter II and with the latter in section B of that chapter. Article 15 clearly defined both terms, but article 18, which had been invoked by those who claimed that the International Law Commission was the appropriate body for the review contemplated, fell under section B and thus referred only to codification and not to progressive development. Progressive development was dealt with in article 16, which spoke only of the right of the General Assembly to take the initiative and make proposals in the field, and in article 17, which set out the procedure to be followed by the Commission in considering proposals and draft conventions submitted by Members and principal organs of the United Nations and by other bodies. Nowhere did the Statute give the power of initiative in progressive development to the International Law Commission. It was therefore clear that the Sixth Committee would not intrude on the duties and authority of the Commission by not entrusting to it the task set out in the draft resolution. Moreover, as the representative of Ceylon had said (667th meeting, para. 37), the progressive development of international law and its codification were not mutually exclusive, except that responsibility for the former had been entrusted to both the International Law Commission and the General Assembly and responsibility for the latter to the Commission alone.

4. The United Kingdom representative (668th meeting, para. 25) had quoted paragraph 17 of the International Law Commission's report on the work of its first session (A/925) to show that the Commission had realized the eventual need for a revision of its list of topics. However, from the latter part of the sentence he had quoted—the part which spoke of “additions or deletions might be made after further study by the Commission or in compliance with the wishes of the General Assembly”—it was clear that the Commission had foreseen that the General Assembly might also have specific recommendations to make in the matter; if so, there could be no reason for construing the establishment of an organ of the General Assembly for that purpose as an intrusion into the work of the Commission or an expression of lack of confidence in it.

5. The second argument that had been advanced in favour of the International Law Commission was that the special committee would merely duplicate its functions. But the representatives of Mexico, Brazil and others had pointed out that representation in the International Law Commission was on an individual basis, whereas any committee of the General Assembly consisted of representatives of Governments who expressed official views; and such a difference in representation would necessarily result in a difference in approach. As the representative of the United Arab Republic had said (669th meeting, paras. 12 and 14), there were political as well as purely legal considerations which would have to be taken into account in the selection of topics for codification. The political aspects of codification were closely linked with the legal aspects and could not be considered separately from them, but since the selection of topics was not exclusively a technical or legal matter, Governments should be given the opportunity to express their views. It was therefore clear that the appointment of a special committee would not duplicate the functions of the International Law Commission.

6. The third argument against the establishment of a special committee was that it might delay rather than accelerate the achievement of the desired results. But the agenda for the International Law Commission's next session already included the questions of consular intercourse and immunities and State responsibility, and, when it had adopted its draft resolution (A/C.6/L.470), the Sixth Committee had expressed the hope that the work on consular intercourse and immunities would be completed in time for consideration by the Committee at the sixteenth session of the General Assembly. It would therefore be advisable for the Sixth Committee to refrain from further burdening the Commission's agenda, especially with a task which was not quite consistent with its functions and to which it would have to give priority in accordance with article 18, paragraph 3, of its Statute.

7. The objectives of the draft resolution would therefore be best and most appropriately served by not entrusting the task to the International Law Commission. If the body to deal with that question were not the Commission, however, it would have to be the General Assembly itself. The implementation of the proposal to establish a special committee would present many difficulties, such as the problem of its composition, the choice of members, the formula to be used in determining the correct geographical distribution—bearing in mind that too small a committee would not be representative and one too large would duplicate the functions of the Sixth Committee—and the financial implications. While her delegation had no objection in principle to the establishment of the special committee, it had misgivings with regard to its feasibility and the question whether its composition would be acceptable to all. She hoped that the Sixth Committee would once again uphold its tradition of finding, with objectivity and common sense, a compromise satisfactory to all. That was especially necessary in the present case, where there was general agreement on objectives. She understood that the sponsors of the two proposals had now come to agreement on a compromise which might prove generally acceptable. She paid a tribute to the constructive and co-operative spirit they had displayed and expressed her delegation's willingness to co-sponsor their new revised text.^{1/}

8. Mr. USTOR (Hungary) believed that the adoption of the promised new text of the draft resolution would constitute an important step forward in the progressive development of international law and its codification. The road ahead was not always easy: there were inherent difficulties; there was also, at times, deliberate obstruction—it was enough to recall the delay which Lord Robert Cecil's opposition^{2/} had caused when there had been a move in the Assembly of the League of Nations in December 1920 to embark on the codification of international law. It was gratifying to note the general agreement in the Committee on the step now being proposed and the recognition that reappraisals were necessary of the processes both of law-recording and of law-making, to bring them into line with the current facts of international life. That included the methods of the International Law Commission, which had been approved some ten years ago. As to the question of the body which could best undertake such a reappraisal at the present time, his delegation had first been strongly swayed by the argument of article 18 of the Statute of the International Law Commission in favour of that body. The arguments so persuasively put forward on the other side, however, by the representatives of Ceylon, Mexico, the United Arab Republic, Afghanistan and others had appeared to him more weighty. The International Law Commission was in fact so close to the details of the work it was doing that it would be difficult for it to take the broader view. In any case, he felt sure that its members would be only too willing to yield the political aspect of their task to a body composed of representatives of Governments. The late Professor Brierly himself had said, at the second meeting of the Committee on the Progressive Development of International Law and its Codification on 13 May 1947,^{3/} that the task of selecting topics was for political representatives, not for lawyers. His delegation entirely agreed that the selection of topics for codification and the planning of future work in the realm of international law was essentially a political task, and one which should be done either by the Sixth Committee or by a sub-committee of the General Assembly.

9. With regard to the text of the draft resolution, he whole-heartedly agreed with the representative of the Ukrainian Soviet Socialist Republic (665th meeting, para. 19) that it should include a paragraph recognizing the need for the strict compliance of States with the generally recognized principles of international law. He also agreed with the representative of the Union of Soviet Socialist Republics (669th meeting, para. 34) that it should include a recommendation that first consideration should be given to the problems of international law directly connected with the maintenance and strengthening of world peace and those connected with the complete elimination of colonialism.

10. Mr. NUÑEZ (Ecuador) said that he was convinced that the sponsors of the draft resolution had not meant to imply any criticism of or lack of confidence in the International Law Commission. The work of that body had been extensively discussed and the Sixth Committee had unanimously acclaimed it when adopting its draft resolution (A/C.6/L.470). There was therefore no possibility that any disparagement of the Commission's work was intended.

^{2/} League of Nations, *The Records of the First Assembly, Plenary Meetings* (Geneva, 1920), 31st meeting, pp. 745 and 746.

^{3/} A/C.10/SR.2.

^{1/} Subsequently circulated as document A/C.6/L.467/Rev.2.

11. There was nevertheless an important legal point about the establishment of the special committee to which he wished to draw attention. Under Article 2 of the Charter, the Organization was based on the principle of the sovereign equality of all its Members. That principle was reflected in other Articles of the Charter, in the Assembly's rules of procedure and in the composition of all its organs. The establishment of a special committee, however, would necessarily imply the inclusion of some Member States and the exclusion of others; and that would mean that the representatives of the latter would be delegating their authority to a body not provided for in the Charter, for neither the Charter nor the Assembly's rules of procedure authorized it to appoint a sub-committee composed of direct representatives of States unless the body so constituted was merely technical or auxiliary in nature.

12. Moreover, under article 1 of the Statute, the purposes of the Commission had been defined as the promotion of the progressive development of international law and its codification in fulfilment of the purposes of Article 13, paragraph 1 a of the Charter. It was therefore the responsibility of the Commission to further both progressive development and codification.

13. Had the sponsors of the two proposals not achieved an agreed solution, he would have preferred to have three to five members of the Sixth Committee meet jointly with the Commission. The new proposal which would shortly be circulated would settle the problem, however, and allay the Committee's misgivings about the amount of work before it at the next session.

14. Mr. CHAMMAS (Lebanon) said that, although law was certainly a manifestation of life, there was always a delay before life's realities were reflected in laws, due to the relative rigidity of the legal structure as compared with the political, economic and social structures of a country. If the gap between the legal structure and political, economic and social realities was permitted to subsist for a long time, the structure would disintegrate. That fact was as certain in the international as in the domestic sphere.

15. He hoped that the compromise solution which apparently had been reached would be along the lines of the Brazilian representative's suggestion (666th meeting, para. 16) that the Sixth Committee debate the substance of the matter at the sixteenth session of the General Assembly.

16. Mr. NINCIC (Yugoslavia) said the debate had demonstrated the existence of general agreement in the Committee that a more vigorous effort should be undertaken within the framework of the United Nations to make international law an effective instrument for peace and to bring it more fully abreast of contemporary world developments. The sponsors had been successful, on the whole, in reflecting that general sentiment in the draft resolution. But because they had felt that, to be fully effective, the draft resolution should have the widest possible support, they had tried to adapt a flexible attitude on all matters that did not involve general principles. His delegation, for one, felt that the question of which body should carry out the survey and selection of topics was merely procedural. Consequently, although the sponsors thought that the idea of creating a special committee had considerable merit, in their quest for unanimity they had agreed to give up the idea of establishing such a committee and to have the matter placed on the agenda of the next

session of the General Assembly. His delegation hoped that the matter would then be broadly discussed by the Sixth Committee. Member States would be asked to submit their views in the meantime, and the sponsors expected that those observations would provide an adequate basis for the Committee's discussions. A revised text embodying the compromise proposal would be circulated shortly. He was very pleased that the proponents of the amendments (A/C.6/L.473), in a laudable spirit of co-operation, had joined in sponsoring the new revised draft resolution, and that other States had also decided to sponsor the new text.

17. Mr. TABIBI (Afghanistan) said that the sponsors of the amendments had attempted to express in a practical proposal the general feeling of the Committee that more effort should be made to strengthen international law. At the 670th meeting (para. 10), the representative of Thailand had opposed the creation of a special committee. However, special sub-committees were in the tradition of the Sixth Committee: he wished to remind the representative of Thailand that, when Prince Wan Waithayakon had been the Chairman of the Sixth Committee, he had favoured the establishment of such committees. As the present expanded membership of the United Nations made full committee work even more difficult, the Sixth Committee should not hesitate to establish special committees whenever necessary.

18. It was not in the tradition of the Sixth Committee to enter into heated arguments on matters of procedure. Accordingly, the sponsors had put forward a new text which should be generally acceptable. He hoped that, following the precedent set by the First Committee in connexion with the resolution on general and complete disarmament (General Assembly resolution 1378 (XIV)), all delegations would join in co-sponsoring the revised draft resolution.

19. Mr. PERERA (Ceylon) was glad to find that the sponsors of the original draft resolution had now been joined by the sponsors of the amendments and certain other delegations in sponsoring the compromise text which would shortly be before the Committee. The Chairman had made a vital contribution to that happy outcome. As the representatives of Yugoslavia and Afghanistan had already stated, the sponsors of the original draft had given up the idea of a special committee, since it appeared to be a bone of contention with some delegations. In finding a way out of the difficulty, they had, at the same time, found a means of preserving the stature and authority of the Sixth Committee, to which much reference had been made in the course of discussion. Various suggestions had already been made as to the subjects which might be placed on the agenda of the Sixth Committee at the next session. The new draft would suggest another item, "Future work in the field of the codification and progressive development of international law".

20. In co-sponsoring the new draft, his delegation had of course been guided by an awareness of the need to ensure the progressive development of the law of nations. It had also borne in mind the need for recognition of the fact that States ought to obey international law when it existed, and that even without means of enforcement such international law existed when it was established by practice. In general, all members of the world community must regard themselves as bound by treaties, conventions and other forms of law established in the past, even without their participation.

Otherwise, there would be continuous retrogression in international law.

21. His delegation earnestly hoped that the Committee would be able to adopt the new text of the draft resolution unanimously.

22. Mr. MOLINA LANDAETA (Venezuela) said that his delegation had become a sponsor of the compromise draft-resolution for obvious reasons. It had hoped and still hoped that a unanimous decision on the present issue might be secured. It had wished, with the other sponsors, to save the central idea of the original draft, namely, that something should be done to reinvigorate international law at the present time and to ensure its further development and codification. That did not mean that his delegation in any way repudiated the original endeavour. The sponsors had acted entirely in good faith, their sole purpose being to achieve the goal of making a constructive contribution to the progress of international law. He still believed that the proposal to set up a special committee had been a sound one, but, at the same time, felt that the Sixth Committee itself could usefully go into the matter at the next session. He hoped that all members of the Committee would endorse the new draft.

23. Mr. SUCHARITKUL (Thailand) expressed the appreciation of the sponsors of the amendments for the constructive efforts made by the sponsors of the draft

resolution to find a formula which would win general acceptance. His delegation still believed that it would not have been right to set up a special committee to perform a task which was specifically within the functions of the International Law Commission, although it would not object to the creation of a special committee or sub-committee to undertake the study of a special subject or topic not previously assigned to an existing body. Thailand and the co-sponsors of the amendments had been glad to be able to accept the invitation to sponsor the new draft in response to the appeal of the Chairman for an effort at conciliation. The present solution was perhaps not the best, but it was acceptable, and he hoped that the Committee as a whole would support it.

24. Mr. CHAMMAS (Lebanon) said that his delegation too would be very happy to join the sponsors of the new draft, for it represented a truly realistic approach to the situation. It was the task of the Committee to do all in its power to narrow the gap between international relations as they existed in fact and those relations as they were envisaged in international law. He was sure that the new effort would help international law to play its proper part in the preservation and strengthening of peace.

The meeting rose at 12.40 p.m.