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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, 468, 470) (con-  
tinued)

1. Mr. ROSENBAUM (United States of America) shared the view of the sponsors of the eight-Power draft resolution (A/C.6/L.467) that the Committee should determine whether new topics had arisen which might be susceptible of codification or conducive to the progressive development of international law, whether the list of topics thus far selected for consideration by the International Law Commission should be altered, and whether a different schedule of priorities would be desirable in the consideration of those topics. The Commission had drawn up a provisional list of topics (A/925, para. 16) more than a decade ago, and it had carried out only a limited review in 1958 (A/3859, para. 68). His delegation accordingly welcomed the constructive suggestion made by the sponsors of the draft resolution to increase the Commission's efficiency and vigour and thereby to contribute to the growth of international law and emphasizing its importance within the United Nations. Those aims should be sought in a correspondingly constructive manner, without resort to propaganda.

2. His delegation agreed that the future work of the International Law Commission should be fully reviewed at the sixteenth session of the General Assembly. Indeed, his Government looked forward with interest to the debate and intended to participate actively in it. It was to be hoped that States would submit in writing their considered conclusions as to topics and priorities with respect to the codification and progressive development work of the International Law Commission.

3. However, operative paragraph 1 of the draft resolution, which would establish a special committee as a preparatory body, raised a number of serious problems. Since the special committee would be political rather than technical, it would duplicate the functions which the Sixth Committee would perform at the sixteenth session of the General Assembly. Furthermore, he had been impressed by the argument put forward by the Cuban representative (664th meeting, para. 6) that the establishment of a special committee might delay rather than expedite the review of the Commission's work. And lastly, his delegation feared that the establishment of the special committee might seriously

affect the relationship between the International Law Commission and the General Assembly envisaged in the Commission's Statute. The function of the special committee, as stated in operative paragraph 1 of the draft resolution, would be "to study and survey the whole field of international law and make the necessary suggestions with regard to the preparation of a new list of topics of international law for codification and progressive development, and to report to the General Assembly at its sixteenth session". Article 18, paragraphs 1 and 2, of the Statute of the International Law Commission assigned similar functions to the Commission, in almost identical language. For the General Assembly to establish a committee to perform the functions assigned to the Commission, might be construed by the members of the Commission as expressing a lack of confidence in their willingness and ability to carry out their assigned functions. He realized that the General Assembly had in the past requested the Commission to study certain topics, such as State responsibility and the right of asylum, but those requests had always referred to specific topics and had not required a prior survey of the whole field of international law. Moreover, in most cases, those requests merely involved expediting consideration of topics already listed for study. Again, although the Statute distinguished between codification and progressive development, the distinction had become considerably blurred in practice, and the draft resolution before the Committee necessarily involved both codification and progressive development. In his delegation's view, the debate which the Committee was to hold at the next session of the General Assembly on the work of the International Law Commission would not be aided, and might well be hindered, by preliminary discussion in a special committee, in which some, but not all, political viewpoints would be represented. On the other hand, a preliminary analysis by the Commission itself would contribute to the Legal Committee's discussions during the sixteenth session, for it would reflect that body's technical competence and experience. Accordingly, it was his delegation's considered view that the objectives of the draft resolution would be better accomplished if the functions set forth in operative paragraph 1 were undertaken by the International Law Commission.

4. Mr. YASSEEN (Iraq), speaking as a co-sponsor of the draft resolution, said that no arguments were required to support its fundamental thesis; clearly, the development of law should keep pace with the rapid changes occurring in the social sphere. He wished merely to stress one advantage to be gained from the draft resolution: it would give the General Assembly an established part in determining the work programme of the International Law Commission. Under Article 13, paragraph 1 (a), of the Charter, the General Assembly was responsible for initiating studies and making recommendations to encourage the progressive development of international law and its codification; in

performing those functions, the Assembly had, in the past, instructed the International Law Commission, as its organ in that field, to consider specific topics. But the draft resolution would have the General Assembly plan its work in the legal field in an orderly way, rather than adopt, on the initiative of particular States, occasional recommendations with regard to isolated subjects. Under the present procedure, it was possible for topics proposed by one or two States to secure a priority they did not merit. The survey would be done more effectively and quickly by a special committee, provided that the body was entirely representative; its decisions would, of course, not be final.

5. Mr. CORONA (Cuba) explained that, at the 664th meeting (para. 6), his delegation had merely raised the question whether the establishment of a special committee might not delay the development of international law; it had not taken a position on that point.

6. Mr. CASTAÑEDA (Mexico), reverting briefly to the report of the International Law Commission (A/4425), said that his delegation found the draft articles on consular intercourse and immunities satisfactory for the present and would support them, subject to certain comments to be made at a later stage. It also supported the draft articles on special missions contained in chapter III of the report and approved of their being sent directly to the United Nations Conference on Diplomatic Intercourse and Immunities to be held at Vienna in 1961, for consideration in conjunction with the draft articles on diplomatic intercourse and immunities (A/3859, para. 53), in accordance with the draft resolution submitted by his own delegation and that of Bolivia (A/C.6/L.468) and adopted by the Committee at the previous meeting (A/C.6/L.470). The Commission's commentary on the three draft articles might have been fuller, but it would, he believed, be adequate as a working basis for discussion at the Conference.

7. The International Law Commission had, over the years, done a great deal of praiseworthy work, and its various drafts on the law of the sea, the elimination of statelessness, diplomatic and consular intercourses and immunities and so on, had been both high in quality and appropriate to the current needs of States. All, however, had constituted codification rather than progressive development of international law. Although, at times, the Commission had found it necessary to fill in gaps or to bring its interpretation of ancient rules up to date, its work had consisted mainly of the compilation and systematization of a vast mass of material on the relatively uniform and coherent practice of States in accordance with certain long-established rules.

8. Moreover, as the eight-Power draft resolution (A/C.6/L.467) pointed out, most of the fourteen topics originally selected for codification by the International Law Commission had now been dealt with, either wholly or in part. On the other hand, since the end of the Second World War, important phenomena had occurred in the political, economic and social spheres which could not but have a tremendous impact on contemporary international law. In the first place, what might be called the geography of international law had radically changed. The creation of international law was no longer the prerogative of the countries bearing the cultural heritage of the West but the common task of all the members of the international community. In the second place, whereas, in the past, international

law had been formed by and within a relatively homogeneous international community, that was no longer the case, and new problems necessarily arose in determining the relations between States with diverse political, economic and social systems. Further problems affecting international law arose from the co-existence in the international community of a great number of backward or under-developed States side by side with the advanced and highly industrialized Powers. If prosperity was truly indivisible, the task of extending it to the under-privileged areas was no longer a matter of morality, of mere generosity, but an obligation which must be fulfilled by institutional and juridical means. It was no accident, therefore, that so many speakers had stressed the need to undertake a review, a re-examination of the position of international law for the purposes of its codification and progressive development.

9. It might convincingly be argued that the present was not the most appropriate time for the consolidation and systematization of international law. History had shown that international law had made its greatest advances in the periods following great upheavals, when a new order of things had come into being and gained acceptance, as, for instance, during the last years of the nineteenth century and the early years of the twentieth. The present era, however, was marked by a great divergence of basic conceptions and the questioning of traditional postulates. Indeed, there were few topics at the present time which lent themselves to a genuine codification. That did not mean, however, that international jurists had nothing to do but to systematize the laws created in time past by the common practice of States. They had a creative role as well. It was precisely in such times as the present, when basic concepts were being reviewed and revised, that jurists could and should move in advance of their times. They must endeavour to comprehend the new social and political forces and trends and to canalize them, within a juridical framework, towards their objectives. The international jurists could very often act as a bridge between the established and the new order, for example, in guiding the former colonial and now independent Territories towards their goals by peaceful, legal means. They must, to a large extent, anticipate the needs of their time, and by giving politics the guidance of law, prevent the outbreak of violence. In the matter of outer space, for instance, it was inevitable that the emphasis should fall first on its political and military aspects. But if the jurists could step in and define the legal limits of the problem, proclaiming it as a basic rule that every State had the right freely to use outer space for peaceful purposes and that all should refrain from actions which might hinder the enjoyment of that right by other States, then they might, at the same time, succeed in facilitating the ultimate solution of the political and military problems in that sphere.

10. As to the thirty to forty States which had arisen since the end of the First World War, it was necessary to ask to what extent they ought to be bound by rules of international law which they had not helped to create and which very often ran counter to their interests. From a formal legal point of view, the answer was very simple: when a State acceded to the international community, it automatically undertook to conform to its rules and institutions. The substance of the problem was much more complex and difficult, however. If numerous rules of international law did not have the

active support of a large sector of the international community, the entire machinery for the peaceful solution of disputes would be without foundation. That applied in particular to the question of State responsibility; disputes under that head probably formed the major proportion of all disputes of a legal nature between States. Yet, the rules at present in force in that sphere had been formed not merely without the participation of the small States but in fact in opposition to them. They reflected the unequal relations which existed during the nineteenth and early twentieth centuries between the capital-investing, usually industrialized countries, on the one hand, and the underdeveloped, capital-importing countries, exporters of raw materials, on the other. It was not altogether surprising, therefore, that the countries which had been the passive objects of such laws at the time of their creation should now be rebelling against their application. The rebellion was at times direct, as when peoples seeking the recognition of their international personality were compelled to resort to violence to overcome an age-long protectorship; that was a situation sanctioned by international law, but the relevant rules were now obsolete. At other times, the rebellion was indirect, as when new States opposed the establishment of compulsory arbitration or resisted the compulsory jurisdiction of the International Court of Justice.

11. The Committee would recall the chilly reception given by the General Assembly to the International Law Commission's draft on arbitral procedure (A/3859, para. 22). It might, at first sight, seem surprising that those countries most in need of the protection of law—the new, the poor, the weak—were precisely those which had opposed that draft. Since the use of force was denied them, it might have been thought, they would have been the first to welcome compulsory arbitration. They had opposed it because acceptance would have meant that they were prepared to agree to the application of the substantive rules of international law in force at the present time, and those rules, as had already been seen, had been formulated without regard to them and very often in opposition to their interests. There was also the fact that little more than twenty of the newer States had accepted the compulsory jurisdiction of the International Court of Justice. That was due, not to any lack of confidence in the Court itself, nor to a failure in juridical appreciation, but, once again, to the conviction that the body of laws applied by the Court belonged to another age and reflected other interests. The members of the Sixth Committee might be reminded in that connexion of the fisheries dispute between Iceland and the United Kingdom: the latter had proposed that the matter should be submitted for judgment to the International Court of Justice; Iceland, on the other hand, rejecting the jurisdiction of the Court, had fought in the United Nations and at international conferences for the establishment of a new juridical standard which would support its case, for, although most countries today in effect accepted the principle of a twelve-mile limit to territorial waters, the Court would undoubtedly have applied the old rule of a much narrower limit. A similar situation prevailed in the case of the dispute between the United Kingdom and Guatemala concerning the territory of Belize: the United Kingdom wanted the matter decided by the International Court of Justice in accordance with the rules of international law; Guatemala wanted the Court to decide the case, not in accordance with international law, but ex aequo et bono.

12. Those examples eloquently illustrated the dilemma obtaining in international law today. The solution was obvious: it was not to reproach the new countries with their lack of juridical sense, but to permit them to participate in the process of creation of international law. If new international rules were devised which were not merely juridical but truly just, the new States would be more and more inclined to accept their application voluntarily. The International Law Commission could play a vital part in the revision of numerous rules of international law and the creation of new ones.

13. Turning to the eight-Power draft resolution, he wished to suggest a tentative list of topics which might profitably be considered by the International Law Commission. The whole subject of the succession of States and Governments, which, in the past, had not had much practical importance, had acquired new interest because of the establishment of some thirty new States in recent years. It might be useful to codify the existing rules governing the succession of States and Governments, and to determine whether or not they were adequate to meet the new conditions. It might also be worth-while to consider the rules governing the union or federation of two or more States, which were likely to occur more often in the future. Another topic which should be considered was the coexistence of States with different social, economic and political systems. The economic and financial relations between countries with centrally planned economies and other countries raised many new problems worthy of study. While the political aspects of coexistence themselves were not wholly independent of international law, the Commission would, of course, consider the legal repercussions of coexistence, and not coexistence itself. Other topics which might be considered were permanent sovereignty over natural resources and some international aspects of land reform. It was not yet clear whether those topics should be dealt with individually or within the framework of some broader subject, such as State responsibility. A study of the legal aspects of outer space could also be started, even though no agreement had been reached on disarmament or on the military aspects of the problem; indeed, such a study might facilitate the settlement of the relevant political and legal issues. Lastly, the theory of the sources of international law should be revised to take into account numerous resolutions and decisions produced by a vast array of international organizations. The topics he had suggested were certainly not ready for codification, which was the Commission's main task. However, he hoped that, in those cases, the Commission might perform the more modest function of surveying the topics and proposing some fundamental rules or principles as a general guide for States and international organizations. Such action would not require a change in the functions of the Commission, but merely a change in emphasis, a more flexible interpretation of the Commission's functions by the General Assembly and the Committee. No revision of the Statute of the Commission would be required.

14. His delegation felt that, because it was of direct interest to States, the task of review and selection of topics should be entrusted to a committee of representatives of States, rather than to the International Law Commission, the members of which did not directly represent their Governments. The following criteria should be used in determining the composition of the special committee: fair geographical distribu-

tion, representation of the chief legal systems, and representation of the great Powers. His delegation also thought that a paragraph should be added to the text of the draft resolution recommending that States appoint as their representatives to the special committee persons with special legal qualifications.

15. Mr. TAMMES (Netherlands) thought that the Sixth Committee should discuss the suggestions made by the Yugoslav representative (652nd meeting, paras. 25 and 26) with regard to the future work of the International Law Commission only after it had received the Commission's comments thereon.

16. He regretted that the draft resolution contained no reference to the International Law Commission as the proper body to advise the General Assembly regarding topics where it considered codification advisable or necessary. Under article 18 of its Statute, the Commission was required to survey the whole field of international law with a view to selecting topics for codification; and although the list of topics it had originally selected was now almost exhausted, it still had before it codification projects which would take several years to complete. The Commission could therefore again survey the whole field of international law, as it had done at its first session with conspicuous success. It was uniquely qualified to do so, and its advice would be invaluable, since it was now at its peak of experience and efficiency. The matter was not urgent, however, and the Commission should not be interrupted in its work.

17. It was not essential that the discussion of the existing state of international law should take place at the General Assembly's sixteenth session. The Yugoslav representative had, admittedly, suggested (*ibid.*, para. 27) that the Commission might report to the Assembly at its sixteenth or seventeenth sessions, and only when that report was available would the Sixth Committee be in a proper position to decide how to organize its consideration of such a controversial and comprehensive subject. But there was no need to take a decision at the present time, especially since Governments usually studied questions of international law very slowly and carefully. And if the Sixth Committee was to recommend the establishment of a special committee, as envisaged in operative paragraph 1 of the draft resolution, serious thought would have to be given to its size and composition, both of which would have a bearing on the usefulness of its work.

18. He appreciated the sponsors' efforts to bring new trends in international law before the Sixth Committee, but urged them not to press their proposal for a special committee at the current session.

19. Mr. NEDBAILO (Ukrainian Soviet Socialist Republic) observed that the draft resolution conformed to the general spirit of the discussion in the Committee on the role of international law; that did not mean, however, that it could not be improved. For example, the second paragraph of the preamble did not sufficiently emphasize the role of international law in international

affairs. Many delegations had drawn attention to the fact that international law could fulfil its role in the world today only if States strictly complied with its precepts and rules; his delegation would therefore suggest that the draft resolution should include a recognition of the fact 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. That idea could be embodied in an existing paragraph of the preamble or could form a new paragraph which would read: "Recognizing that the strict and undeviating compliance by all Governments with the generally recognized precepts and rules of international law is an indispensable condition for the maintenance and strengthening of peace throughout the world,".

20. The first paragraph of the preamble gave the false impression that the only purpose of the United Nations was to settle international disputes; the paragraph should therefore contain a reference to Article 1 of the Charter, in which all the purposes of the United Nations were defined, or state explicitly that it referred to only one of the Organization's purposes.

21. He would comment on the other points raised in the draft resolution at a later stage.

22. Mr. NISHIBORI (Japan) said that, while his delegation appreciated the concern about the paucity of the Committee's agenda which had prompted the sponsors of the draft resolution to put their text forward as a possible remedy, it was not convinced that the draft would provide an adequate solution.

23. The terms of reference of the proposed special committee exactly coincided with the terms of reference of the International Law Commission, as set out in General Assembly resolution 174 (II). Again, although no specific proposals had been made with regard to the composition of the special committee, it seemed that the desirable qualifications for members would be very similar to those set forth in article 8 of the Commission's Statute, which provided not only that the members of the Commission should have the required qualifications, but also that the Commission should represent the main forms of civilization and the principal legal systems of the world. Lastly, the Sixth Committee had, at the preceding meeting, expressed its appreciation for the excellent work accomplished by the International Law Commission by its unanimous adoption of a draft resolution (A/C.6/L.470); the proposed committee would only duplicate and infringe on the Commission's work.

24. The purposes of the eight-Power draft resolution could thus be more appropriately and effectively accomplished by entrusting the tasks enumerated in operative paragraph 1 to the International Law Commission.

The meeting rose at 5.5 p.m.