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CONTENTS

Chairman: Mr. César A. QUINTERO (Panama).

AGENDA ITEM 70

Future work in the field of the codification and progressive development of international law (A/4796 and Add.1 to 8; A/C.6/L.491 and Corr.1 and 2) (continued)

1. The CHAIRMAN recalled that the list of speakers had been closed since 29 November 1961. He requested the thirty-five representatives on his list to speak without fail on the date they had indicated. To avoid holding up the debate, he proposed that the name of any delegation whose representative had not spoken on the day specified should be placed at the end of the list, unless another representative agreed to give up his turn. As to the right of reply, he would use the same system as in the plenary meetings of the General Assembly, i.e., representatives wishing to exercise that right would not have priority over speakers on the list, but would be given the floor when there were no more speakers on the list. He then announced that henceforth meetings would begin at the exact time for which they were scheduled. Finally, he asked that next time a draft resolution was introduced to the Committee, the speakers on his list should present their comments at the same time as their general observations and be as brief as possible so that the Committee could finish its work by the end of the second week in December.

2. Mr. CAPOTORTI (Italy) said that, in order to discharge the task provided for in General Assembly resolution 1505 (XV), the Sixth Committee must take as its starting point the question of codification as it arose in reality and, in fact, clarify three essential points: the nature of the codification and progressive development of international law, the role of the International Law Commission in choosing topics for codification and, lastly, the results achieved by the Commission and the stage arrived at in its work.

3. On the first point, he emphasized that codification, which meant the systematization and final statement in a text of a body of rules already generally recognized, could not be the best method for solving new questions or establishing new trends; the proper instrument for that purpose was the treaty. The work of codification, however, which affected the entire international community and was intended to establish generally applicable long-term rules, must not be confused with the stipulations laid down in some treaty which was of interest to one group of States only and dealt with specific matters. The codification of topics not yet ripe for that process must be avoided. It was true that the progressive development of international law was likewise one of the purposes of the United Nations, but, if that development was to be balanced and sound, it must always be based on existing rules, that is to say, as the Statute of the International Law Commission stipulated, it must be "progressive". Moreover, the work so far done by the Commission showed that the aims of codification and progressive development could be realized simultaneously if the existing rules were improved and completed while they were being codified. If the work of codification was to be crowned with success, as Mr. Verdross had said, the subjects chosen must be of universal interest and not highly controversial and already the subject of customary regulation.

4. With reference to the second point, he said that under article 18 of its Statute, it was for the International Law Commission itself to choose subjects for codification. Since the Statute had been adopted by the General Assembly, there was no doubt that such had been the will of the Assembly, which was perfectly justified, since it was a matter of a choice which must rest on technical considerations and, above all, on a due appraisal as to whether or not a subject was ripe for codification. The political importance of that choice could not be denied, but the balance between political and technical considerations was securely established inasmuch as the International Law Commission's choice was subject to approval by the General Assembly, which, in its turn, could make recommendations to that Commission and request it to change its programme. Moreover, members of the International Law Commission acted both as jurists and as political experts, since some of them sat on the Sixth Committee. It would, therefore, be doing the International Law Commission an injustice to suppose that it was guided purely by abstract considerations in choosing topics for codification without taking account of political realities. The system hitherto followed seemed to be logical and satisfactory.

5. As to the third point, the study of two important subjects—the law of treaties and the responsibility of States—had already been undertaken by the International Law Commission, but would have to be carried out thoroughly; that would take time, like all good codification work. One should, therefore, avoid overburdening the Commission. In any case, the list drawn up in 1949 (A/925, para. 16) was far from having been exhausted. In view of its experience and the development of international relations, the International Law Commission would be perfectly capable of deciding which subjects thereafter deserved priority. For its part, his delegation felt, like other delegations, that the question of State succession was of considerable

concern at present and should be given high priority in the future codification work.

6. A number of delegations had proposed that the Assembly should study, at its seventeenth session, the legal aspects of peaceful coexistence with a view to formulating principles of international law on that subject. He asked whether that work would be entrusted to the Sixth Committee or the International Law Commission. He felt that, while that question lay outside the competence of the Sixth Committee, it did not come under the work of codification. Peaceful coexistence, as it was usually understood, was a political phenomenon which did not lend itself to codification. In its logical and literal sense, it meant States living in peace together in the international community, and the principles which governed it could be identified with the whole system of international law. There was no part of the international law of peace that was not intended to promote friendly relations between States. A principle more closely connected with the contemporary political notion of peaceful coexistence was that of respect for the sovereignty of States, interpreted in a way which appeared to repudiate all forms of co-operation tending to limit national sovereignty. But if international law was to be developed, it was important to encourage all tendencies towards international co-operation which revealed themselves in the establishment of organizations independent of States, not tied to an obsolete notion of national sovereignty. One could not claim to be a progressive person and yet act as a conservative. States must agree to sacrifice part of the prerogatives of sovereignty, above all, when it came to solving international disputes. The international judge was a far greater factor in the progress of international law than the simple continuation of the traditional relations between States and the strengthening of the principle of sovereignty.

7. For all those reasons, his delegation thought that there was no point in including the question of peaceful coexistence, which could only give rise to a purely political discussion, in the agenda of the seventeenth session of the General Assembly. It would be preferable to study the means by which international law would strengthen the peaceful co-operation among States.

8. Mr. PLIMPTON (United States of America) noted that, although the debates in the Sixth Committee continued to reveal certain difference of principle, there were many points on which agreement had been reached. It was widely accepted that certain topics on the work programme of the International Law Commission were appropriately ripe for codification and were of such importance for the avoidance of misunderstandings between States that their study must be completed. Those were the law of treaties, the law of State succession and the law of State responsibility. As the representative of the USSR had said, it was unnecessary to overburden the Commission by recommending that it should give priority to other questions. Most speakers also agreed that the International Law Commission should participate in the selection of its new topics of work. He did not wish to enter into a jurisdictional discussion concerning the competence of the General Assembly and of the International Law Commission, but only to point out that it was not advisable to request the Commission to study topics which it did not believe it could deal with successfully.

9. The limitations of the law-making process had to be recognized. By the law-making process he meant the preparation of texts of statements of international law either in the International Law Commission or in the Sixth Committee. Some grave international tensions that threatened the existence of mankind could be alleviated by establishing rules of international law; others could not be alleviated by that process. It was important, in each particular case, to consider carefully and objectively whether the establishment of legal rules could provide a settlement for the issue under consideration. To ask the International Law Commission or the Sixth Committee to deal with matters they were not competent to settle would have the effect of diverting their efforts from questions on which they could work successfully.

10. The delegation of the United States considered as fallacious the argument of the representative of the USSR (717th meeting) that contemporary international law, in particular the rules made before 1917, was in some way out-moded, retrograde or colonialist. It was unreasonable to suggest that customary international law dated from before 1917 was in no way adequate to meet the needs of the contemporary world. It need only be remembered that many of the rules governing diplomatic relations, which had recently been codified, were established before 1917, that the law of piracy, which also dated from before 1917, hardly bore the imprint of colonialism and that the law of treaties, of which the vitality no longer needed proof, was several centuries old. It was true that, in view of the political situation and the recent world events, international law needed to be brought up to date and to be expanded, but to dwell on the idea of national sovereignty, to the detriment of the idea of international responsibility, was not the way to strengthen international law. The path towards an effective world order lay in an effective international organization. States Members of the United Nations should speak less of their sovereign rights, but rather discharge the sovereign obligations they had accepted.

11. He did not propose, in considering the questions whose solution should be sought in the law-making process, to discuss what were "political" and what were "legal" questions. Many important questions had both political and legal elements. What was required was a pragmatic determination whether it was reasonable to hope to solve a particular problem by making legal rules. The law-making process was affected by many factors. For instance, in the case of new law—the progressive development of international law as described in the Statute of the International Law Commission—the willingness of States to accept the final formulation was necessary. That idea had been expressed on many occasions, particularly when the Sixth Committee had considered the Model Rules on Arbitral Procedure in 1958 (A/3859, para. 22); and it should be noted that, even for the study of topics such as the law of the sea, diplomatic relations and consular relations—on which there was already a well-established international practice—conferences of plenipotentiaries had had to be held in order that States might consider the formulations proposed by the Commission, and those formulations had been changed in many instances. That consideration should be borne in mind when certain topics were proposed for codification. Nor should the nature of the International Law Commission be forgotten. It was a legal body and, since its members served in a private capacity, not as representatives of their Governments,

they were not competent to participate in political negotiations.

12. The members of the International Law Commission were qualified to deal only with legal matters, not with matters which had important technical aspects such as the use of outer space or disarmament. Nor should they be asked to study questions which were not of a universal nature and which interested only a minority of States.

13. With regard to the proposals made in connexion with the work programme of the International Law Commission, the delegation of the United States agreed that priority should be given to the codification of the law of treaties, the law of States responsibility and the law of the succession of States and Governments. The Yugoslav representative had suggested (714th meeting, para. 15) that the questions of special missions and of relations between States and international organizations were of more limited scope and that the Commission might study them while continuing its work on the other three subjects. He did not fully share the optimism of the Yugoslav representative regarding the limited scope of those topics, but he recognized the competence of the Commission to decide to study any topics on the work programme, provided that could be done without impeding the Commission's work on the three priority topics.

14. The delegation of the United States thought that the International Law Commission should be asked to review its work programme in the light of the debates of the Sixth Committee. The Committee should not at the present time choose new subjects for codification.

15. The delegation of the United States might wish, at a later stage in the debate, to comment on the new topics suggested in the debate and in the written comments of Governments (A/4796 and Add.1-8) and to propose certain new topics.

16. With regard to the future work programme of the Sixth Committee, he recalled that the Committee, like all Main Committees of the General Assembly, was of a limited competence. Under rule 101 of the rules of procedure of the General Assembly, it was the "Legal Committee". It was true that it was made up of representatives acting on the instructions of their Governments and that it could consider questions which could not be studied successfully in the International Law Commission. Yet, its work should be essentially legal and should not duplicate the work of other organs of the United Nations.

17. With regard to the question of peaceful coexistence, which the delegation of the USSR wanted the Sixth Committee to consider at the seventeenth session, he pointed out that the Political Committees had considered that phrase in discussions proposed by the Soviet Union in 1957[1/] and by Czechoslovakia in 1958,[2/] but had not adopted resolutions containing it. The representative of the USSR had drawn a parallel between peaceful coexistence and what he had called the struggle of peace-loving States to alleviate international tensions, which, he asserted, had begun with the Bolshevik revolution of 1917. The United States delegation felt very sceptical of any political analysis which sought to attribute to a single political system or group of States mankind's age-long striving for peace, which had begun long before that revolution. Communist doctrine, by advocating the violent overthrow of foreign Governments, had first raised the danger that countries with different social systems might be precluded by that fact from living in peace with one another. It was enough to remember the instances of violence within the communist bloc itself at East Berlin in 1953, in Hungary in 1956, and the invasion of the Republic of Korea, in order to place in their true context the remarks which the representative of the USSR had made about peaceful coexistence. The delegation of the United States thus considered that the phrase "peaceful coexistence", as a political slogan, was not suitable for consideration by the Legal Committee.

18. His delegation recognized that the potentialities of the Sixth Committee had not always been fully exploited and it was in favour of drawing up a useful and appropriate work programme for the Committee to include matters which, although not suitable for consideration by the International Law Commission, could nevertheless be effectively dealt with by a body of government representatives competent in international law. His delegation would, for example, welcome the inclusion in the Committe's agenda for the seventeenth session of an item entitled "Consideration of legal aspects of friendly relations and co-operation among States in accordance with the United Nations Charter". The phrase "friendly relations and co-operation among States" was taken from General Assembly resolution 1505 (XV) and, unlike the term "peaceful coexistence", had no adverse political implications. A discussion of that question at the seventeenth session would enhance the Committee's contribution to the work of the United Nations and add to the latter's effectiveness in maintaining peace and justice throughout the world.

19. Mr. MUNGUIA NOVOA (Nicaragua) said that any law, if it was to be effective, must take account of realities and seek to achieve justice with due regard for recognized values, since civilization and culture were the result of traditions handed down from generation to generation. It was therefore unrealistic to suppose that the principles established by customary international law could be wiped off the slate and an entirely new system of law created. The contemporary advances of space science would not have been as great if other men had not begun to scan the heavens in ancient times. All culture was tradition, particularly in so far as law was concerned. It was therefore essential to hold on to the advances already made and to deduce from them the standards to be applied to present-day political and social phenomena. The distinguishing characteristic of the present era was the struggle between authority and freedom, as the Nicaraguan jurist Carlos Cuadra Pasos had said. At the national level, every Government sought to safeguard its authority, while the people demanded all their rights. At the international level, certain States sought to impose their will on others, which turned to international organizations and tribunals for help. The law was the bulwark of the peace-loving, civilized peoples, which considered the task of the International Law Commission to be that of seeking a common system of law and codifying international law with a view to achieving a balance between authority and freedom.

20. With regard to the choice of topics to be codified, his delegation felt that the list prepared in 1949 had

1/ Official Records of the General Assembly, Twelfth Session, Annexes, agenda item 66, document A/3802.

2/ Ibid., Thirteenth Session, Annexes, agenda item 61, document A/4044.

reflected the conditions prevailing in the world at that time. Account must now be taken of the sociological and political changes which had occurred since then. His delegation shared the view of the United Kingdom and the United States delegations that topics should be selected which were founded on accepted rules of international law, i.e., on the authority of customary law. Account must also be taken of the sources on which the International Court of Justice based its decisions, namely, treaties, international custom, the general principles of law, jurisprudence and the writings of commentators. The fourteen topics already selected by the International Law Commission should be re-examined and priority given to the most important ones by distinguishing between those which were merely useful and those which were essential; those topics which were more political than juridical in character should be discarded, and consideration should be given to those which had not appeared "essential" in 1949 but were so today.

21. Since the choice of topics was essentially a juridical question, it was logical to leave it to the International Law Commission, particularly since the members of the Commission had all received a thorough legal training and were non-political and, further, since the Commission had a homogeneous character which the General Assembly did not possess. Moreover, the Commission always submitted its drafts to the Assembly for its approval.

22. He recalled that the International Law Commission had already completed the topic entitled "Consular intercourse and immunities". Without discussing the draft articles on consular relations (A/4843, para. 37) in detail, the Nicaraguan delegation would merely express satisfaction with the able manner in which they had been prepared. They constituted a body of rules that truly met the requirements of any law, as they took due account of custom in extending diplomatic immunities to consuls and consular staff, along the lines laid down in the Vienna Convention on Diplomatic Relations.[3/] Nicaragua was particularly interested in the provisions relating to honorary consuls to the appointment of the same person by two or more States as head of a consular post and the appointment of nationals of the receiving State, because small countries sometimes had to employ that category of consuls, and the provisions defining their powers and privileges accorded with the practice followed in the Nicaraguan consular service. Consuls were often the forerunners of diplomatic relations, as it often happened that two or more States entered into consular relations before establishing diplomatic ties. Conversely, when diplomatic relations were severed, the consuls might remain in the receiving country and continue to discharge their functions. It was thus clear from the draft articles that the severance of diplomatic relations did not ipso facto involve the severance of consular relations.

23. His delegation had been glad to note that most of the topics proposed for codification had already been embodied in treaties or conventions by the countries of the Americas. That was true of the right of peoples to self-determination, which had been proclaimed by the Pan-American Scientific Congress in 1908-1909, together with the political independence, equality and fraternity of the American countries and the principle of co-operation between those countries, the treatment of aliens and, particularly, the right of asylum; it could be said of the right of asylum that, although it had already existed in the time of Moses, it had been fully legitimized only by the Spanish-American countries, which, since 1867, had continued to perfect the rules governing it in a series of treaties. His delegation considered the following to be the topics codification of which was urgently needed: the fundamental rights and duties of States, the succession of States and Governments, the recognition of States, the right of asylum, including political asylum, and the law of treaties.

24. Since it was characteristic of law to confirm existing practice and custom by embodying them in written rules, legislators were given to taking stock before acting. However, in air law, developments were so swift that the law needed wings to keep abreast of them and even to foresee future situations and legal problems. The Secretariat's working paper (A/C.6/L.491, para. 18) contained a section on the law of space, in which the following topics were suggested by Afghanistan, Burma, Ghana and Mexico: legal aspects of outer space, sovereignty in air space and law of space. His delegation considered more appropriate the term "aviation law", which not only covered matters relating to outer space but, as Antonio Ambrosini had pointed out, would also extend to installations and facilities, i.e., vehicles and airfields. Man's ingenuity was daily devising new airships and launching platforms, which called for immediate regulation in conformity with the general principles underlying the law of aviation.

25. Another topic which merited study was the recognition of the international rights of the individual. The United Nations and especially the Third Committee of the General Assembly had considered the draft international Covenants on economic, social and cultural rights and on civil and political rights, but the individual remained paralysed with regard to the exercise of the rights accorded to him by the Covenants. Although a Commission on Human Rights had been set up, the individual could not personally submit complaints to it concerning failure to respect his rights, because he was not an entity under international law. That was unjust, for the individual was a subject of international law by virtue of the fact that he had international rights and duties.

26. With regard to the proposal for the codification of peaceful coexistence presented so brilliantly by the USSR representative (717th meeting, para. 32), he agreed with the representatives of Brazil (721st meeting, paras. 6 and 21) and the United Kingdom (717th meeting, para. 9) that peaceful coexistence was not a topic suited to codification, since it was merely a general notion and a political slogan. To judge by the definition given to it by Mr. Khrushchev, which had been quoted by the United Kingdom representative at the 717th meeting, it was in no sense a juridical matter. If the purpose of peaceful coexistence was to promote peace, respect for the sovereignty of States, the principle of non-intervention, equal rights and the right of peoples to self-determination, as the USSR representative had stated, there was nothing in it that was either new or dangerous. There was no basic disagreement between those who favoured the codification of peaceful coexistence and those who felt that it was not capable of codification, since the principles which it embodied were those which the Western countries and, in particular, the Spanish-

3/ United Nations Conference on Diplomatic Intercourse and Immunities, Official Records, Volume II: Annexes (United Nations publication, Sales No.: 62.X.1).

American countries had always proclaimed. In the view of his delegation, a world which was worthy of the human person as the repository of the eternal values would not exist until peace based on justice prevailed on earth.

27. Mr. CASTAÑEDA (Mexico) recalled that, at the fifteenth session, his delegation had given a detailed statement in the Sixth Committee (665th meeting, paras. 7-14) of its views on the future work of the International Law Commission in the field of the codification and progressive development of international law. It had laid particular stress at that time on the very delicate problem of determining the extent to which the new States were bound by a system of international law which was often foreign to their aspirations and interests and had been created without any contribution by them. It had noted the reticence displayed by those States with regard to a system of law that was essentially European in origin. It had, in addition, suggested certain subjects which the International Law Commission might include in its list of topics.

28. One of the essential changes which would henceforth transform international law was the universality of scope which it was acquiring for the first time in history. As the Netherlands jurist Röling had said in his work International Law in an Expanded World, the scope of international law had been broadened in three successive stages. In the first stage, it had applied only to the Christian nations; in the second, which was comparatively recent origin, it had applied to the so-called "civilized" nations; Article 38, paragraph 1 c, of the Statute of the International Court of Justice had used the specific words "civilized nations". International law had become truly universal in character only with the advent of the Charter, which recognized no other criterion for membership in the United Nations than that a State should be "peace-loving", and primarily because of the liberal manner in which that criterion had been interpreted by the United Nations.

29. The new and broader international society had, of course, lost its homogeneity and cohesiveness. It was no longer composed exclusively or mainly of older, more or less industrialized and prosperous States having a common ideology. The system of international law created by the society of "civilized nations" for its own use and in its own image no longer corresponded to the needs of the new international society. That system of law had sought merely to reconcile the liberty of each member with the liberty of the others. It had, in addition, recognized and endorsed a law of domination—a "ruler's law", as Röling called it—in favour of the civilized nations for the purpose of regulating the relations between those civilized States and the non-European world. What might be called colonial law had been institutionalized by the Conference of 1885 on the Congo held at Berlin and had become an integral part of the traditional system of international law. Similarly, the important principle governing the responsibility of States, under which an alien could legally claim rights superior to those of a country's nationals, was, in practice, if not in theory, nothing more than an offshoot of that "ruler's law". Another institution which was characteristic of the classic system of international law and against which the new States were protesting was the unequal or leonine treaty whereby sheikhs, pashas or military chiefs had established protectorates over the peoples they ruled and had granted quasi-perpetual concessions for the exploitation of the natural resources of their countries. The principles of the classic system of law governing injury to foreigners had been applied in Latin America in such a way as to be a veritable scourge and had been an important factor in retarding its development.

30. The new international society, which was comprised mainly of former colonies and of countries in the early stages of development, had different needs and aspirations to which international law must be adapted, and that was why all the rules embodying the inequalities of the old system had to be revised.

31. But it was not enough merely to review and modify that aspect of the law; the need was to supplement international law. Just as the modern State had been obliged to adopt social laws to protect the less favoured groups against the more powerful groups of the population, the international society must in the same way establish rules that would offer the less developed States protection against the stronger States.

32. While, from another point of view, the extremely rapid progress of technology was opening almost unlimited prospects of development to the poorer countries, that trend had thus far done little more than to widen the gulf between the richer and the poorer nations. Just as in modern times all Governments had had to abandon an anachronistic system of laisser-faire in order to participate actively in the economic life of their countries and foster full employment and progress, so modern international society could no longer passively contemplate the backwardness of certain of its members. If there was one saying that had been repeated ad nauseam in the post-war world, it was that prosperity was indivisible. The poverty of one region was felt by all the others. As yet, however, that concept of mutual responsibility had not been embodied in international rules designed to give it legal substance. It might be said that, although the principle of economic co-operation represented one of the most imperious needs of modern times, it had not yet been transferred from the domain of ethics to the domain of law. As the eminent jurist Hauriou, author of the theory of the institution, would perhaps have put it, international economic co-operation was in process of becoming an "institution", but had not yet taken on that character completely. The process of depersonalization, which was the first stage in the creation of an institution, was well advanced. While the idea of co-operative effort was in the air, there did not yet exist what Hauriou had called the "communion of wills" that was necessary to make it an organic system of rules or, in other words, an institution. What would perhaps be the most important chapter of international law in the twentieth century had still to be written.

33. Modern international law could not, in short, be limited to proclaiming the political freedom and territorial integrity of States and to devising methods for the peaceful settlement of disputes. It must be used to create the conditions which would prevent disputes. Those conditions were the elimination of inequalities in the relations between peoples and the disappearance of the rules embodying those inequalities, the codification of the international rules of law which protected the weaker States against the stronger, and the creation of a body of rules likely to stimulate international economic co-operation.

34. Turning next to the question of the criteria to be adopted for determining whether or not a subject

was ripe for codification, he said first of all that the theoretical distinction between codification and progressive development had lost much of its relevance. As was pointed out by the International Law Commission itself in its introduction to the draft articles concerning the law of the sea (A/3159, para. 26), the two things were in practice complementary and, hence, difficult to keep apart.

35. The question whether a subject was ripe for codification was difficult to decide in advance, as shown by the experience of the International Law Commission. Two important matters which had been admirably codified by the Commission, namely, the question of the continental shelf and the question of fishing and the conservation of the living resources of the sea, had originally not been considered amenable to codification and had not been included in the 1949 list of topics.

36. In the case of the continental shelf, the initiative had been provided by the will of States, as expressed through the General Assembly, and in the case of the fisheries régime, by the International Technical Conference on the Conservation of the Living Resources of the Sea held in Rome in 1955. In neither of those cases had it been possible to rely on a general practice, on a uniform doctrine or a body of treaties, and it was generally admitted that, in the two cases, the idea of progressive development had taken precedence over mere codification of the pre-existing law. None the less, the Convention on the Continental Shelf[4] and the Convention on Fishing and Conservation of the Living Resources of the High Seas[5] had been adopted at the Geneva Conference almost unanimously. Neither of those important Conventions would have been adopted if two of the principles recommended by the United Kingdom (717th meeting) had been applied, namely, the first, that progressive development must be based on rules already known and accepted and, the second, that the International Law Commission must not concern itself with highly controversial questions.

37. On the other hand, a situation exactly the opposite of that just described had occurred several years ago when the International Law Commission, acting on the initiative of the General Assembly, had embarked on the codification of certain aspects of international criminal law. The Assembly had considered an arduously compiled draft code of offences against the peace and security of mankind (A/1858, para. 59) and a revised draft statute for an international criminal court (A/2645, annex). After several years and the expenditure of much effort, the decision had been taken to abandon that project.

38. The difficulty of foreseeing the fate of any attempts at codification was thus apparent and, in his delegation's opinion, the only valid criterion for deciding whether to undertake the codification of a subject was the more or less urgent need at any given moment for a body of rules on that subject.

39. As the Mexican delegation had stated during the fifteenth session, a judicious way of approaching the problem would be to consider giving the International Law Commission a somewhat more modest task in respect of certain topics; the Commission would, so to speak, prepare the ground, make a systematic study of a problem and possibly propose certain guidelines or basic principles for States and international organizations, or prepare what could be the groundwork for later studies. The General Assembly would then have to decide whether the prospects of success were good enough to warrant having the Commission continue its work. That procedure would not require any modification in the Commission's Statute; it would merely imply a different orientation of its activities. But it would provide the Assembly and the Commission itself with a firmer basis for deciding whether or not a topic was amenable to codification.

40. Referring to the revised list of topics for the International Law Commission suggested by the Government of Mexico in its written observations (A/4796/Add.1, section 10), he pointed out that, since the question of permanent sovereignty over natural resources and, to some extent, that of the international consequences of land reform were already being studied by other United Nations organs, there was no need to have the Commission deal with them.

41. With regard to the codification of the principles of peaceful coexistence, it was his opinion that that topic, because of its essentially political character, was not suitable for codification by a technical body composed of experts. Moreover, what that term was customarily used to designate amounted in reality to five principles governing the relations between States.

42. In that connexion, he drew attention to what might be called a Latin American argument in view of the efforts the Latin American Countries had made to obtain acceptance for it: the argument concering the necessity of drawing up a set of rules concerning the rights and duties of States. At the United Nations Conference on International Organization at San Francisco in 1945, the Mexican Government had proposed that a statement of those rights and duties should form an annex to the Charter. The Latin American countries had always believed that the absence of a chapter devoted to that question was one of the serious drawbacks of the Charter. Article 2 of the Charter dealt primarily with the principles applicable to the activities of the United Nations, but contained only a few isolated principles governing the relations between States, such as compliance with international obligations, the peaceful settlement of disputes and the outlawing of the threat or use of force. While Article 1 did refer to the principles of the equality of States and of the self-determination of peoples, the formulation in the Charter of the principles governing the relations between States could, on the whole, be regarded as incomplete. Moreover, a mere enumeration of those principles was not sufficient. Precise juridical rules should be established to govern the subjective rights and duties of States.

43. The countries of the American continent had devoted a special chapter to the question in the Charter of the Organization of American States (OAS); it was probably the most up-to-date and satisfactory text on the subject. Few undertakings would be as useful as the drafting of a similar declaration adapted to the needs of the international community.

44. On the initiative of Panama, the International Law Commission, at its first session, had prepared a Declaration on the Rights and Duties of States (A/925, para. 46) which contained not only the five principles of peaceful coexistence to which he had already referred, but many others. He summarized

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4/ United Nations Conference on the Law of the Sea, Official Records, Volume II: Plenary Meetings (United Nations publication, Sales No.: 58.V.4, Vol. II), annexes, p. 142.

5/ Ibid., p. 139.

the content of the fourteen articles included in that draft. Developments in the past fifteen years might make it necessary to adapt that draft Declaration to the new conditions prevailing today. It might also be better, instead of formulating those rights and duties in specific terms, to state a number of juridical rules from which the rights and duties of States could be derived. He recalled that, at the sixth session, the General Assembly, in its resolution 596 (VI), had decided to postpone consideration of the draft Declaration until a sufficient number of States had transmitted their comments and suggestions. Unfortunately, all the big Powers appeared to have considered that it was not in their interest to draft a code of international behaviour which would define their rights and duties. Admittedly, the draft was far from perfect, and the Mexican delegation, for one, had serious reservations respecting it; but the main thing was to have the opportunity to amend and improve it, or even to prepare another draft. That opportunity had been denied the small and medium-sized Powers, which were precisely those to which such rules were most important. Only four countries—Bolivia, Chile, Mexico and Yugoslavia—had voted in 1951 against burying the draft Declaration.[6/] What was necessary now was not to resurrect the draft, but rather to consider a new statement of the relevant principles in the light of prevailing circumstances. The old draft, together with other more important documents such as chapter III of the Charter of OAS, might usefully serve as a guide in that project. Although it was not making a formal proposal, the Mexican delegation believed that it would be appropriate to draw the attention of the International Law Commission to that important problem. The jurist W. Friedmann wrote in his book Law in a Changing Society that contemporary international law was more like a collection of scattered fragments than an integrated body of rules governing the conduct of States in their relations with one another. A convention along the lines he had suggested would contribute greatly towards unifying and integrating the whole process of codification of international law.

45. So far as the future work of the International Law Commission was concerned, the Mexican delegation shared the view of many other delegations that priority should be given to two important topics on which work had not been completed: the responsibility of States and the law of treaties. The scope of the first topic should be enlarged: in addition to the question of injury to aliens, which was only one aspect of the problem, the Commission should undertake a thorough study of the general principles relating to the international responsibility of States.

46. With regard to the topics on the 1949 list which had not been considered, the Mexican Government believed, for the reasons given in its observations that the question of the succession of States should be studied in due course. Another topic might be the recognition of States and Governments, on which Colombia had made some very interesting observations (A/4796, section 3). He then referred to the observations of his Government on the three other topics which it had suggested for codification, namely, outer space, sources of international law and certain corollaries of the principle of non-intervention. In conclusion, he pointed out that, in view of its importance at the present time, the last of those topics should be considered as soon as possible.

47. Mr. TABIBI (Afghanistan), referring to the remarks made by the Chairman at the opening of the meeting, said that he was sorry he had been unable to have his name put on the list of speakers at the proper time. He wished to know whether he could be allowed to speak immediately after the presentation of the draft resolution which the Chairman had mentioned.

48. In view of the excellence and pertinence of the statements made during the debate on the future work of the International Law Commission, it might be appropriate to consider having summary records prepared in extenso on that agenda item. It might also be useful to compile those statements in a single volume and publish them, in order to facilitate the work of the International Law Commission and other interested bodies.

49. The CHAIRMAN repeated that the list of speakers had been closed since 29 November 1961, but that representatives could speak when the general debate had been concluded. The Secretariat would consider the suggestion concerning summary records in extenso and would inform the Committee of its views.

The meeting rose at 5.50 p.m.

6/ See Official Records of the General Assembly, Sixth Session, Annexes, agenda item 48, document A/1982, para. 23.

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