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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) (continued)

1. Mr. NINCIC (Yugoslavia) said that the many changes which had occurred in the sphere of international relations and in international law during the decade since the establishment of the International Law Commission had called for a new survey of that important field and, more specifically, of the programme and methods of the Commission's work. That need had found adequate expression in General Assembly resolution 1505 (XV), which had not merely emphasized the important role that international law should be expected to play in the world today, but had also indicated the contributions it could make "in strengthening international peace, developing friendly and co-operative relations among the nations, settling disputes by peaceful means and advancing economic and social progress throughout the world". The main trends which had shaped the evolution of international law in the post-war period, and which would undoubtedly affect its future growth, came under several headings.

2. There was first the obvious fact that the entire political structure of the world community had undergone profound changes. The disintegration of the colonial system, the emancipation of most of the formerly dependent peoples and the powerful upsurge of new social forces had led to an increase in both the number and the variety of the subjects of international law and of the interests that went into the making of that law. There had also been new economic trends, in particular the trend towards a growing degree of unity and interdependence in the world economic community. Side by side with that were to be noted the differences in the levels of economic development and the yawning gap between the developed and the under-developed countries of the world. There had also, alas, been the emergence of hostile political and military alignments with marked ideological overtones and a tendency to grow into closed economic systems. All those trends not only ran counter to the deeper trend towards unity, but also thwarted the strivings of many nations towards a fully independent role in world affairs, as well as the development of co-operation among States, thus also impeding the successful growth of international law.

3. On the other side of the balance, there had been the Charter of the United Nations, which not only provided a basis for settling international problems of a political, economic and social nature but also for developing international law. Not only should the existence of the above trends and of their impact on international law be recognized, but there should also be an acknowledgement of the fact that international law, for its part, should act upon those trends in a manner conducive to the strengthening of world peace and of friendly and co-operative relations among nations.

4. Turning to the principles which should, in his opinion, guide future efforts in the field of international law, he emphasized that, first, there was the principle of universality, both in terms of geography and of subject-matter. Geographically speaking, it was necessary to ensure the participation of all States in the creation of international law in order to transform it from a law serving the interests of a restricted group of advanced nations into a law which would both reflect and serve the interests of all nations. That principle acquired added significance at a time when powerful disintegrating trends were at work, seeking to set up particularist regional legal systems which were more exclusive than anything which had been known in the past and which, if permitted to go unchecked, might some day reduce the function of universal international law to that of a more or less mechanical link between separate legal systems. As regards universality with respect to subject-matter, it implied a steady expansion of the scope of international law to fields which had not previously been covered thereby, an expansion which was called for by the general trends in international relations which he had already mentioned.

5. Another set of principles which should govern the further development of international law was that of peaceful and active coexistence among States, irrespective of their political, economic and social systems. Those principles, which were set forth in the Charter, included the principle of equal rights, of non-interference in the internal affairs of other countries, the right of peoples to self-determination, and the prohibition of the use or threat of force in international relations. He could not agree with those authorities who claimed that it was only an illusion that international law could be promoted by the United Nations by efforts towards general and complete disarmament and by assistance to the under-developed countries. In his opinion, the principles of peaceful and active coexistence, as set forth in the Charter, provided the only rational basis for the codification and development of international law at the present time.

6. With respect to the codification and progressive development of international law, the Sixth Committee could certainly take a more hopeful view than had been possible immediately after the Second World

War. It now had on record a number of substantial achievements, such as the Convention on the Prevention and Punishment of the Crime of Genocide of 1948 (General Assembly resolution 260 (III), annex), the 1949 Geneva Conventions on the protection of victims of war,[1] the 1958 Geneva Conventions on the law of the sea[2] and, in 1961, the Vienna Convention on Diplomatic Relations.[3] It was particularly encouraging to note that those achievements had been possible in days of mounting international tension, a fact which should provide an incentive for more persistent and determined efforts in the future. The importance of the codification and progressive development of international law was underlined today by the need for developing a universal international law, among all States, in a world where co-operation necessarily had to take place within the context of profound changes in the political and economic bases of the international order. By helping the various trends to merge and to move towards synthesis, codification and progressive development could make a genuine contribution to greater stability in the community of nations. However, since codification, viewed as a method of ascertaining the existence of international law, might tend to arrest the growth of the relevant rules, it should not be separated from progressive development. If efforts in that field were to keep pace with the changes in international life, it was necessary to place greater emphasis on progressive development than the Commission had thus far found it possible to do. In that connexion, it might be mentioned that the Statute of the Commission (article 18, para. 2) seemed to favour a broad and more flexible approach, because it provided that codification should be undertaken with regard to questions where such codification was "necessary or desirable", which constituted a marked advance on the situation in the days of the League of Nations, when proofs of "feasibility" were required.

7. In their efforts to create a new international law or to develop the existing law, States could no longer restrict themselves to the codification of certain classical topics, but must seek to codify the results of the gradual transformation of international law which had taken place in the last decade and a half. In selecting topics for codification and progressive development, priority should be given to those most likely to contribute to the strengthening of international co-operation, both on a bilateral and a multilateral basis. Much had been said about the need of confining the Commission's activities to purely legal, as distinct from political, subjects and of avoiding what were considered to be controversial political questions. Such an approach was unrealistic. To attempt to divorce international law from the broader political context within which it necessarily had to evolve would, even if it were feasible, prove the surest way to stultify the growth of international law and to deprive it of any real possibility of affecting the course of international affairs. Indeed, the very tendency to insulate international law from politics seemed to reflect an outlook which was itself manifestly political. A further question which had been raised was whether the Commission should restrict itself to the simpler and more limited topics or should venture into some of the broader fields of international law. The answer was surely obvious: if the Commission was to serve a genuinely useful purpose, it should no more fear to tackle the more complex problems than it should try to avoid allegedly controversial political subjects.

8. There was also the question whether the form in which the results of the Commission's work were adopted by the General Assembly should affect the selection of topics for codification. If the decision as to whether or not a topic lent itself to codification was to depend solely on the possibility of a convention being adopted, the goal would be somewhat higher than might appear warranted in certain cases. Articles 16, 17, 20 and 23 of the Commission's Statute provided for a wide range of forms in which the fruits of the Commission's labours in the field of codification and progressive development could be adopted by the General Assembly. It was therefore unnecessary to take that element into account as far as the present task was concerned, particularly since the criterion of "feasibility" was not provided for in the Commission's Statute.

9. Lastly, while codification could not usefully be detached from progressive development, the need for the treatment of given topics by one of those two methods separately should not be entirely dismissed. It was necessary to bear in mind the distinction drawn in the Statute itself, article 15 of which made it clear that the expression "progressive development of international law" was used for convenience, "meaning the preparation of draft conventions on subjects which have not yet been regulated by international law or in regard to which the law has not yet been sufficiently developed in the practice of States". Similarly, the expression "codification of international law" was used for convenience as meaning "the more precise formulation and systematization of rules of international law in fields where there already has been extensive State practice, precedent and doctrine".

10. Turning to the immediate problem confronting the Sixth Committee, namely, the future programme of work of the International Law Commission, he stressed that the decision to review its programme of work did not in any way reflect adversely on the very valuable accomplishments of the Commission in the past. The objective of General Assembly resolution 1505 (XV) was rather to make it possible for the Commission to pursue its endeavours with even greater success under changing world conditions. The resolution had provided the Committee with clearly defined terms of reference: to survey the present state of international law, with a view to ascertaining whether new topics susceptible of codification or conducive to progressive development had arisen, whether priority should be given to any of the topics already included in the Commission's list or whether a broader approach might be called for in the consideration of any of those topics.

11. He would try to indicate, in the light of those terms of reference, some of the topics to which the Commission might now usefully direct its attention. In doing so, he made no pretence to exhaustiveness, and his delegation would give the most careful attention to the proposals that would be put forward in the course of the discussion. The suggestions he would make derived from his Government's general views on the present state of international law and from its understanding of the principles which should guide

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1/ United Nations, Treaty Series, vol. 75.

2/ 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, pp. 132-143.

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

future efforts in the field of the codification and progressive development of international law in general and the work of the International Law Commission in particular.

12. Referring first to the Commission's present programme of work, he said that the importance of State responsibility and the law of treaties, the main topics with which the Commission was now concerned, had repeatedly been emphasized in the Sixth Committee. In the comments of Governments (A/4796 and Add.1-8), there appeared to be a wide-spread feeling that the Commission should continue its work on a priority basis. His Government shared the general desire that the work on those two topics, to which the Commission had devoted considerable time and effort, should now be completed.

13. At its thirteenth session, the Commission had taken an important step in the codification of the law of treaties by providing the new Special Rapporteur with more precise directives (A/4843, para. 39). The terms of reference formerly given to the Special Rapporteur had been somewhat hazy in the absence of a clearly expressed position in the Commission itself. Yugoslavia, for its part, found the views the Commission had now expressed on the subject to be perfectly acceptable, and it hoped that, in the very near future, the Sixth Committee would have before it a complete draft on the law of treaties, which would lead to the conclusion of a convention.

14. As to the question of State responsibility, a broader approach was clearly called for in view of the evolution of the international relations and the international law since the Second World War. It was precisely because the Commission had failed to give adequate consideration to the new trends that it had thus far been unable to achieve more practical and comprehensive results in that important field.

15. The remaining items on the Commission's present agenda—the right of asylum, the régime of territorial waters, the rules governing relations between States and international organizations, and the question of special missions—were more limited in scope. His delegation was confident that the Commission would be able to consider them during the next five years, without any priority treatment being necessary.

16. Of the topics provisionally selected for codification by the Commission at its first session (A/925, para. 16) which had not yet been dealt with, his delegation considered that priority should be given to the questions of the recognition and of the succession of States and Governments. The developments which had occurred in those two fields since 1949, and the novel situations that had arisen in the application of the traditional concepts on those matters, made it highly desirable that the codification of those topics should be undertaken on an up-to-date basis. It was not so much a matter of seeking to find an answer to the classical question of the relationship between the declarative and constitutive theories of recognition, although that matter, too, would have to be treated within the framework of the codification of the general topic. The main point, in his delegation's view, was to ascertain the criteria that had recently governed the recognition of States and Governments and to find out whether certain general rules might be established on that basis. In addition, the legal significance of the admission of a State to membership in the United Nations and in other international organizations, more specifically as regards collective recognition, should be defined. Of no less urgency was the question of the recognition of insurgents and of Governments. The uniformity of practice which could be achieved through the codification of those rules would be of considerable interest from the point of view of establishing more stable relations among States and of facilitating the position of the newly independent States.

17. The question of the succession of States and Governments was perhaps even more urgent, because of the manner in which it affected the material situation of the newly independent States, more especially in terms of their strivings towards full political and economic emancipation. Succession was no longer, as had been the case in the days when most of the classical treatises on international law had been written, solely a question of the problems arising from the transfer of certain parts of the territory of a State or from the disappearance of States as a result of their occupation; today, the question of succession arose mainly as a consequence of the liberation of dependent territories and of the desire to do away with the vestiges of alien rule, particularly in the economic sphere. It was becoming increasingly difficult to apply the rules of traditional international law on State succession, because they not only failed to take into account the right of self-determination but were frequently incompatible with that right. There clearly must be some adjustment in that regard, with primacy being given to the principles of the Charter; otherwise, the very application of the General Assembly resolutions concerning the implementation of the right of self-determination might be jeopardized.

18. Turning next to the new topics that might be included in the Commission's programme of work, his delegation would like to suggest the following: the codification of the principles of peaceful and active coexistence; the codification or progressive development of the rules relating to international trade; and the codification of rules relating to the different forms of economic and technical assistance to the underdeveloped countries.

19. It was on the basis of the principles of peaceful and active coexistence alone that international relations and international law might, in his delegation's view, be expected to contribute to the strengthening of peace and to a growing measure of co-operation among nations, i.e., towards the goals set by the United Nations Charter. Those principles had been laid down in the Charter and had since been reaffirmed in a number of documents, both multilateral and bilateral; they had given rise to various interpretations, and the problem of coexistence had been approached from different angles. Because the legal aspects of coexistence were not always treated in a uniform manner, his delegation considered that the codification of the principles of coexistence would constitute a very substantial contribution to the development of contemporary international law as a legal basis for the peaceful co-operation of all States, irrespective of their internal political and social structures.

20. The main objection raised to the proposal for the codification of the principles of coexistence was the allegedly political nature of the subject—matter to be codified. He could only point out that political elements were necessarily to be found in all the fields which the Commission had broached in the past and which it would be called upon to deal with in the future. It was precisely through codification that the legal aspects of the principles of coexistence would be placed in proper focus. The dispute over the political

nature of the codification of the principles of co-existence did not really arise so much from the political implications of those principles as from their topical significance, which was a further reason why they should be given priority consideration.

21. Turning to the second new topic suggested, the rules governing international trade, he said that the purpose of the codification would not be to cover the technical rules relating to international trade which did not come within the scope of universal international law. On the other hand, in view of the participation in international trade of States with different social and economic systems, the gravity of the needs of the under-developed countries and the necessity of fostering the general growth of international trade, it would be useful for the Commission to examine and codify the general rules governing the commercial relations between States. In the post-war period, significant achievements had already been recorded in the codification of the rules of commercial arbitration. It should now be possible, on the basis of the Havana Charter for an International Trade Organization, of the General Agreement on Tariffs and Trade (GATT) and of various regional and bilateral trade agreements, to establish the rules which should govern the application of the most-favoured-nation clause, the reciprocity in foreign trade, various restrictive measures, the immunity of States and other questions of importance to the normal flow of international trade. In an interesting article in the Columbia Law Review of March 1961, Lazare Kopelmanas had concluded that the law of international commerce had become the law of the vendor, the buyer, the insurer, the banker or the maritime carrier, depending on which party had had the upper hand at the bargaining table during the nineteenth century. His delegation's purpose in proposing the new topic of the rules governing international trade was to encourage the transformation of those rules so that they would also reflect the interests of other parties, namely, of the States with different social systems and of the under-developed countries.

22. While the codification of the rules pertaining to economic and technical assistance to under-developed countries might seem less important than the other topics suggested, his delegation felt that it would be useful, in view of the United Nations activities in that field, if the resolutions, standard agreements and decisions of the United Nations and of the specialized agencies were examined and some legal principles were established. In codifying the legal rules concerning economic and technical assistance, the Commission should not enter into technical questions, but should seek to define, in the light of the general international law, the respective positions of the States and organizations concerned. His delegation was convinced that existing legal standards could provide a basis for establishing some rules which had been reaffirmed many times in the practice of the post-war period. For example, the requirement that no political or other conditions should be attached to the aid extended to the under-developed countries was now a generally recognized legal rule.

23. After the general discussion had been concluded, the Sixth Committee should select the topics already on the International Law Commission's agenda or on its provisional list which should be given priority, and the new topics which should be included in the Commission's programme of work, on a priority basis or otherwise. The Commission might also be asked to study the question of its future programme of work at its fourteenth session, in the light of whatever recommendations the Committee might make, and to report the results of its study to the General Assembly at its seventeenth session. In conclusion, he urged the Committee to make good use of the opportunity it had been given not only to scrutinize the vast field of international law and the many changes that had occurred there but also to translate its findings into practical action.

24. Mr. TABIBI (Afghanistan) observed that the adoption of General Assembly resolution 1505 (XV) had been a fortunate development calculated to revitalize the legal activities of the United Nations, which had declined considerably in recent times. In the early days of the Organization, when the horrors of war had been a vivid memory, the need for strengthening the principle of law as a means of establishing lasting peace had been felt far more keenly. It was his delegation's firm belief that the weakness of the United Nations legal activities was a weakness of the Organization as a whole, because the very foundation of the United Nations was a legal instrument. The Charter, which had been called the law of the United Nations, had lent a new spirit to the traditional principles of international law and, for all its imperfections, was a magnificent achievement of modern times. It was the duty of jurists everywhere to strive for a correct and proper application of its provisions, and particularly of Article 13, paragraph 1 a, and of the basic objectives stated in the Preamble.

25. The general views emerging from the discussions held in the International Law Commission in connexion with General Assembly resolution 1505 (XV) were: that the process of codification was necessarily slow, given the short periods of time available; that the delay in the codification of given topics was due to changes of Special Rapporteurs and that the completion of draft conventions on some topics had only been made possible by the chance re-election of Special Rapporteurs; that it would be useful to prolong the terms of office of members or the duration of sessions; that such far-reaching topics as State responsibility and the law of treaties could not be disposed of in a mere five years; that outside experts should be at the disposal of the Special Rapporteur, or that each topic should be assigned to two Rapporteurs; that the General Assembly was best qualified to deal with the political implications of the choice of topics for codification, although the Commission itself should be left to decide whether a topic was in reality suitable for formulation as a set of legal rules; that the subjects of the law of treaties and of State responsibility should be given priority over other topics; that the General Assembly might be unable to appreciate the technical difficulties inherent in the Commission's work; and finally, that the Commission's work might best be expedited by a thorough preparation of its drafts and that, accordingly, the Special Rapporteurs should know in advance what was expected of them.

26. It was also clear that many members of the Commission considered that priority should be given to the branches of international law most closely connected with the maintenance of peace and security and the development of friendly relations among nations. The Commission had not, however, commented on the fact that the Sixth Committee was the only Committee of the Assembly which relied for its annual discussions and programme of work mainly on material supplied by its functional commission.

27. There were two main aspects which he wished to discuss in connexion with General Assembly resolution 1505 (XV): first, the preparation of a list of new topics and, second, the planning of the Commission's future work. Regarding the first aspect, there appeared to be general agreement that the list of topics selected for codification in 1949 should be revised in the light of subsequent changes in the international life and of the need for codification and progressive development of subjects relating to the maintenance of peace and security. It was indeed an achievement that, of the fourteen topics originally selected, the Commission had completed its consideration of six. Meanwhile, twenty-two topics not included in the original list had been recommended for consideration. Since all were important and required careful examination, it might be advisable if the Chairman of the Sixth Committee could appoint a small working group to select topics for inclusion in a shorter new list to be submitted for the Commission's consideration. The suggestion might also be made that some of the topics which could be more appropriately dealt with in the Sixth Committee might be included in the agenda of future sessions of the General Assembly, so that the preparatory work could be carried out by the Secretariat. However, his delegation fully agreed that the International Law Commission should devote most of its time to the law of treaties, to State responsibility and to State succession. The General Assembly should accordingly convey its views as to the urgency of specific topics. A new approach towards the selection of topics for codification was necessary not only because of the new developments in international law and the need to create a better atmosphere in international relations, but also because the Commission's existing programme was ten years old and because elections to the Commission would shortly be held.

28. As to the organization of the future work, his delegation was in favour of dividing the Commission into two sub-committees which would work simultaneously and report to the Commission in plenary session. The preparatory work on topics selected for codification should be done by the Secretariat or by outside experts, for which the necessary appropriations would have to be made. There should be two Special Rapporteurs for each topic, and the Statute should be amended to provide for an extension of the Rapporteur's term of office if more time was necessary to complete his report. Before assigning a topic to a Special Rapporteur, the Commission should study each topic in advance and give the Rapporteurs clear instructions.

29. He would comment further, at a later stage, on possible topics for codification and on the Commission's methods of work. In conclusion, he would emphasize that, in order to shape a better world, based on law, jurists had a duty to improve and revitalize all the means at their disposal. The International Law Commission and the International Court of Justice must be supported, strengthened and improved by every means. Just as the Second Committee had decided to name the decade of the sixties the "United Nations Decade of Development", so the Sixth Committee should make the sixties a "United Nations Decade of International Law". It might prove a slow and discouraging process, but, as Spinoza had said, "All things excellent are as difficult as they are rare".

30. Mr. TUNKIN (Chairman of the International Law Commission) wished to thank the members of the Sixth Committee for the consideration they had shown to the International Law Commission. It would be the last occasion on which he would be present in his capacity as the Commission's Chairman; however, he would be remaining as a member of the Soviet delegation to the Sixth Committee and would be at the disposal of any representative who had questions to put to him regarding the Commission's work.

31. The CHAIRMAN thanked Mr. Tunkin on behalf of the Committee.

The meeting rose at 12.20 p.m.

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