

United Nations GENERAL ASSEMBLY

SIXTEENTH SESSION

Official Records



SIXTH COMMITTEE, 716th
MEETING

Monday, 20 November 1961,
at 11.10 a.m.

NEW YORK

CONTENTS

	Page
<i>Agenda item 70:</i>	
<i>Future work in the field of the codification and progressive development of international law (continued)</i>	131

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. Mr. PERERA (Ceylon) said that the Sixth Committee had perhaps reached the most important item on its agenda. It had to decide what would be—and, above all, what should be—the future work of the International Law Commission in the field of the codification and progressive development of international law.

2. Commenting on the basic issues which had been raised in the Sixth Committee in connexion with that item during the fifteenth session of the General Assembly, he recalled that many delegations had expressed anxiety about the situation of international law and had felt the time was ripe for the General Assembly to adopt a resolution on the subject. After a lengthy and sometimes almost acrimonious debate, General Assembly resolution 1505 (XV) had finally been adopted unanimously. It was mainly about that text that he would like to speak.

3. Paragraph 45 of the Sixth Committee's report to the General Assembly at its fifteenth session^{1/} reflected very accurately the view of his delegation and, doubtless, of all those delegations attending the fifteenth session which, from the outset, had favoured the draft which had finally become resolution 1505 (XV). The preamble of that resolution set forth in unequivocal terms the duty of the current session of the Assembly: it must guide the future work of the International Law Commission in the field of the codification and progressive development of international law in the light, firstly, of the many new trends in the field of international relations which had an impact on the development of international law and, secondly, of the need for promoting friendly relations and co-operation among States.

4. At the fifteenth session, several delegations had stressed the increasingly important role of international law as a means of strengthening peace, an idea which had been clearly stated in the second preambular paragraph of resolution 1505 (XV) and brought

out more forcefully by the adoption of the Ukrainian amendment^{2/} to insert the words "and its strict and undeviating observance by all Governments". Many representatives had also spoken of the political problems involved in the preparation of a new list of topics for codification and had felt it preferable to entrust that task to Government representatives and not to experts.^{3/} Obviously, as Mr. Perera himself had already pointed out in the Sixth Committee (658th meeting, para. 17) at the fifteenth session, it was impossible to divorce international law entirely from political developments without being led into a sterile discussion.

5. The States which had taken the initiative in the adoption of resolution 1505 (XV) had maintained from the outset that the progressive development of international law must be primarily the responsibility of the General Assembly. As Mr. Amado had quite rightly pointed out in the International Law Commission, "international law was made by States and not by jurists".^{4/} For that reason, the States, i.e., the General Assembly, must give guidance to the International Law Commission and allow it to decide, at a later stage, whether such and such a topic proposed by the Assembly lent or did not lend itself to codification or the adoption of new regulations.

6. In that connexion, he recalled the provisions of articles 16 and 18 of the Statute of the International Law Commission in which the guiding role of the General Assembly was clearly indicated. The Commission must fulfil its functions, defined in article 15, as part of the general policy laid down by the General Assembly.

7. He also quoted the operative part of General Assembly resolution 94 (I) which provided for the terms of reference of the International Law Commission and which showed just as clearly that the Commission was working for the Assembly and in accordance with its instructions: it was the Assembly which decided the topics to be discussed and which established priorities.

8. It was therefore difficult to understand the punctiliousness of certain representatives who seemed to fear that, by assuming the role of guide legally conferred upon it, the General Assembly was exceeding its powers and at the same time antagonizing the International Law Commission.

9. So far as he could judge from the summary records of the International Law Commission, there was no evidence that the members of that body had adopted such a negative attitude. The only exception was Mr. García Amador's statement, which he would have to deal with later, although he hesitated to do so in

^{2/} *Ibid.*, para. 34.

^{3/} *Ibid.*, para. 47.

^{4/} *Yearbook of the International Law Commission, 1961, vol. I* (United Nations publication, Sales No.: 61.V.1, Vol. I), 615th meeting, para. 40,

^{1/} *Official Records of the General Assembly, Fifteenth Session, Annexes* (vol. II), agenda item 65, document A/4605.

Mr. García Amador's absence. Apparently, the other members had been quite satisfied with the discussions which had taken place in the Sixth Committee during the fifteenth session of the General Assembly. The same constructive attitude of collaboration with the Sixth Committee was reflected in paragraph 41 of the International Law Commission's report (A/4843) and rightly so, because one of the Sixth Committee's functions was to serve as a link between the International Law Commission, the General Assembly and the Office of Legal Affairs.

10. At the thirteenth session of the International Law Commission, Mr. Sandström, referring to the second preambular paragraph of General Assembly resolution 1505 (XV), had asked what branches of international law had been suggested as tending to strengthen international peace.^{5/} In reply, the Secretary of the Commission had enumerated a large number of topics, explaining that the list was not exhaustive.^{6/} He probably had in mind that new topics could still emerge during the debate in the General Assembly as had been the case before.

11. There had followed Mr. García Amador's outburst questioning the precise role of the Sixth Committee. Mr. García Amador had stated: "...it was the more regrettable that the resolution had been so closely associated with one of the most aggressive and demagogic propaganda campaigns in the history of the United Nations. It was quite obvious to anyone who had heard the discussions in the Sixth Committee or who had read the summary records and the Committee's report to the plenary that a group of countries which had never been concerned with the development and codification of international law but had customarily opposed them, had suddenly tried to pose as the champion of the progressive development of international law and as the defender of its principles. It was the same group of countries which repeatedly and consistently subordinated the validity of international law to the principle of national sovereignty and had opposed and continued to oppose compulsory arbitration."^{7/}

12. Ceylon, which had co-sponsored the draft resolution^{8/} which was adopted by the General Assembly as resolution 1505 (XV), belonged to the group of countries referred to by Mr. García Amador, and Mr. Perera felt that such a statement was out of place. At the fifteenth session, his delegation had criticized some of the shortcomings of the International Law Commission—which was not infallible—and he felt that the members of the Sixth Committee were perfectly entitled to express their opinions on the codification and progressive development of international law.

13. Moreover, several members of the International Law Commission had endorsed the view expressed by the Ceylonese and many other delegations. No member of the International Law Commission had ever objected to the atmosphere of the Sixth Committee's debates or to the ideas which it had expressed, nor denied the General Assembly the right to make known its opinion on the subject. The International Law Commission was a body responsible for formulating the contemporary international law in the light of decisions made by the General Assembly; in ad-

dition, it was the only permanent United Nations juridical body. Furthermore, in the International Law Commission it had been stated that "the General Assembly was best qualified to deal with the political implications of the choice of topics for codification".^{9/}

14. It should also be remembered that new States had taken part in 1960, and were taking part in 1961, in the debates of the Sixth Committee, and they had to be given the opportunity of acquainting themselves with the work on the subject.

15. A passage from a statement made in 1947 by Mr. Brierly, Rapporteur of the Committee on the Progressive Development of International Law and its Codification might also be quoted. Speaking of the codification of international law, he had said: "As soon as you set out to do this, you discover that the existing law is often uncertain, that, for one reason or another, there are gaps in it which are not covered. If you were to disregard these uncertainties and these gaps and simply include in your code rules of existing law which are absolutely certain and clear, the work would have little value. Hence, the codifier, if he is competent for his work, will make suggestions of his own;..." He had also recognized that, "in any work of codification, the codifier inevitably has to fill in gaps in, and amend, the law in the light of new developments."^{10/}

16. The Sixth Committee had not relinquished those rights in favour of the International Law Commission, but neither could the Commission be regarded as a mere servant of the Sixth Committee. The members of the International Law Commission were not shut up in an ivory tower; it was important that they should learn, through the Sixth Committee and the General Assembly, the realities underlying the Commission's work.

17. Mr. Jennings had very rightly said^{11/} that it was necessary to promote the development of international law in new fields where there were few or no rules and that the needs of contemporary international society could not be met merely by reaffirming existing rules, but that more radical methods of law-making were needed.

18. Similarly, the judges of the International Court of Justice had often called the attention of politicians and States to the need for adapting the rules of law to the new trends in international life resulting from changes which had taken place and for establishing principles in fields where none existed. It was a question of resolving the eternal dilemma between maintaining the stability of the rules of law and the need to allow for their evolution. The codification of international law implied a process which could not be limited to maintaining the *status quo*. Juridical disputes should be settled in accordance with international law, as prescribed in Articles 36, paragraph 3, and 94, paragraph 2, of the Charter, and it was precisely the close relationship between political factors and international law which underlined the importance of the codification and progressive development of that law for future international relations.

^{5/}Yearbook of the International Law Commission, 1961, vol. I (United Nations publication, Sales No.: 61.V.1, Vol. I), 615th meeting, para. 22.

^{10/}Survey of International Law in Relation to the Work of Codification of the International Law Commission (United Nations publication, Sales No.: 48.V.1 (1)), pp. 3 and 4.

^{11/}R. Y. Jennings, "The progressive development of international law and its codification", *The British Year Book of International Law*, 1947 (London-New York-Toronto, Oxford University Press), p. 309.

^{5/}Ibid., 614th meeting, para. 46.

^{6/}Ibid., para. 47.

^{7/}Ibid., para. 51.

^{8/}Official Records of the General Assembly, Fifteenth Session, Annexes (vol. II), agenda item 65, document A/C.6/L.467/Rev.2.

Multilateral treaties were the best source of international law, and all the United Nations resolutions could be regarded as such. The Sixth Committee was examining the future work of the International Law Commission because the final ruling on the matter lay with the General Assembly.

19. The working paper prepared by the Secretariat (A/C.6/L.491 and Corr.1 and 2), which contained an analysis of the replies of Governments concerning the future work of the International Law Commission, showed the way of thinking of the different States, which were trying to bring their domestic legislation and international law into line. The delegation of Ceylon considered that the Sixth Committee, when choosing new topics for codification, should be guided by the desirability of establishing a balance between law and politics. It therefore felt that priority should be given to the codification of the principles of peaceful coexistence. Indeed, the essential purpose of international law was to regulate relations between States. Peaceful coexistence was a historic reality upon which peace depended. If all States accepted it in principle, there would be no more war. The Buddha had said long ago that the only victory was the one in which both antagonists were victors. In 1955, the States assembled at the Conference of Asian and African countries at Bandung had reaffirmed their faith in peaceful coexistence. That, too, was the "raison d'être" of the United Nations, as set forth in the Charter. Acceptance of that principle led quite naturally to the duty of negotiating, as the best method

of safeguarding peace, in accordance with the Charter. Lastly, peaceful coexistence, in the broadest sense of the term, embraced neutrality, not only in time of war but also in time of peace. Furthermore, such great jurists as Lauterpacht, Lachs and Tunkin had gone into the question of peaceful coexistence. For all those reasons, the Ceylonese delegation believed that the codification of that topic should be given priority. He reserved the right to return to the subject later. Finally, the Sixth Committee also had to make it clear whether it had the right to propose topics for codification. It had to clarify its position "vis-à-vis" the International Law Commission in order to dispel any misunderstanding, which could only lead to unnecessary and protracted debates and slow down the codification and progressive development of international law. Since many new States had joined the Organization, it was the duty of the General Assembly to act as their guide. Its responsibility must be measured in terms of what was necessary for the new Member States. The Assembly had thus to choose for codification topics which concerned the peaceful coexistence of all countries in the world. The work of the International Law Commission should not therefore be guided by purely legal considerations; account must also be taken of the political changes which were taking place in the world. It was therefore necessary to ensure that the new composition of the International Law Commission reflected new ideas as well as the wisdom of its older members.

The meeting rose at 12.30 p.m.