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Chairman: Mr. Gonzalo ORTIZ MARTIN (Costa Rica).

AGENDA ITEM 65

Report of the International Law Commission on the work of its twelfth session (A/4425; A/C.6/L.467 and Rev.1, A/C.6/L.472) (continued)

1. Mr. PEREIRA (Portugal) said he was certain that it was in no way the intention of the sponsors of the eight-Power draft resolution (A/C.6/L.467) to impugn the professional competence of the International Law Commission and paid a tribute to them for their useful initiative, which took account of a fact that had become increasingly evident: that, in view of the decline of the activities of the Sixth Committee and of the role of law in the United Nations, the International Law Commission should seek new topics for codification and should take into account the radical changes which had supervened in international life since the Commission had drawn up its original list of fourteen topics (A/925, para. 16). There was no disagreement, therefore, with regard to the ends to be served by the draft resolution.
2. Disagreement arose only over the most suitable means to achieve those ends. His delegation felt that the International Law Commission, rather than a special committee, should be the body entrusted with the functions enumerated in operative paragraph 1 of the draft resolution; article 18 of its Statute empowered the International Law Commission to revise its agenda, which was, in effect, the question being considered by the Sixth Committee. Moreover, it was not by proliferating the number of legal bodies but by helping the existing ones to function better that more constructive work could be achieved. Finally, the task was a technical one for which a body of experts whose technical competence had never been criticized already existed; there was therefore no need for the establishment of a committee composed of representatives of Governments.
3. His delegation felt that the original wording of the seventh paragraph of the preamble of the draft resolution was preferable to the text proposed in the third of the eleven-Power amendments (A/C.6/L.472), but there was no difference in substance between the two texts.
4. Taking all those factors into account, he would support the eleven-Power amendments.

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5. Mr. PERERA (Ceylon), speaking on a point of order, said he did not understand the point raised by the United Kingdom representative at the 667th meeting (para. 39): the context of the paragraph Mr. Perera had quoted at that meeting (*ibid.*, para. 35) entirely justified his argument that the International Law Commission, in its annual ten-week sessions, was fully absorbed by its codification work, with which it made only slow progress. When he had quoted paragraph 68 (b) of the Commission's report on the work of its tenth session (A/3859)—to the effect that a considerable amount of the Commission's time had been taken up with special tasks referred to it by the Assembly, with the result that its own programme of codification had been delayed—he had merely wished to point out the difficulties facing the International Law Commission. It could very well be that a ten-week session was wholly inadequate for its burden of work; but if the General Assembly had the over-all power to suggest what the International Law Commission should do with the time available to it, the Sixth Committee should assist and guide the Commission in formulating its programme of future work, and that was precisely what the sponsors of the draft resolution were trying to do.

6. There could be no doubt that the progressive development of international law was a matter for the General Assembly and not the International Law Commission, whose special function was codification, and that, on questions relating to such development, the International Law Commission sought guidance from the General Assembly. In that regard, the first of the eleven-Power amendments was based on fact. If the Assembly forsook that duty and confined itself to considering the drafts submitted by the International Law Commission and returning them to that body, the Sixth Committee would be presiding over its own liquidation.

7. The time had now come for the General Assembly to review the question of the progressive development of international law and its codification as the Committee of seventeen members (see resolution 94 (I)) had done in advance of the establishment of the International Law Commission. In that connexion, the early records of the International Law Commission had great relevance to the Sixth Committee's present debate.

8. Mr. ITURRALDE CHINEL (Bolivia) regretted that it had become necessary to take special steps to expand the work of the Sixth Committee, whose present agenda was very meagre, in order to have a fuller programme of work for the sixteenth session. There was an evident need for the International Law Commission to study the whole field of international law with a view to suggesting topics for codification. The draft resolution and the amendments thereto were agreed regarding those aims.

9. With regard to the draft resolution, his delegation felt that some of the suggestions made during the general debate deserved inclusion in the draft. One such was the suggestion made by the Ukrainian representative (665th meeting, para. 20) with regard to the first paragraph of the preamble; another was the suggestion made by the Romanian representative (666th meeting, para. 28) that the seventh paragraph of the preamble should be affirmative rather than hypothetical in character.

10. The major discrepancy between the texts of the draft resolution and the amendments was whether the organ to be entrusted with the task of surveying the whole field of international law and of making suggestions with regard to the preparation of a new list of topics for codification should be a special committee consisting of representatives of Governments or the International Law Commission. Certain difficulties would arise if the Sixth Committee chose the special committee, and there was as yet no precise indication of its composition or membership. Moreover, since the task to be entrusted to the special committee came within the purview of the International Law Commission, under article 18 of its Statute, the special committee would encroach upon the International Law Commission's field of activity. His delegation was convinced that the sponsors of the draft resolution had no intention of weakening the International Law Commission, but thought that their suggestion was somewhat impractical and that it would be preferable to entrust the task to the abundant experience of the International Law Commission.

11. The International Law Commission had, of course, several topics before it. Its work on consular intercourse and immunities was almost finished, however, and was merely awaiting the comments of Governments. And although the other two outstanding projects—State responsibility and the law of treaties—would require much additional study, the preparation of a new list of topics for codification would not require a profound examination of international law as such; the International Law Commission could fit such a task into its regular session by prolonging its meetings, holding additional meetings or, perhaps, even holding joint meetings with representatives designated by the Sixth Committee.

12. The Commission might consider such topics as the succession of States and Governments (to which he would add the recognition of new Governments); peaceful coexistence; permanent sovereignty over natural resources (which might include the questions of land reform and of the rights and duties of States); outer space; theories regarding the sources of international law; neutrality; a system of consultation (such as the one which was currently in existence in Latin America and had been incorporated in many multilateral treaties); and conciliation. To that list, which had been suggested by the representatives of Mexico, Ceylon, Peru and others, he would add the right of asylum and the legal régime of international lakes and rivers, which latter item Bolivia had proposed at the previous session^{1/} and upon which the Secretary-General would submit a report (see General Assembly resolution 1401 (XIV)). Those matters therefore constituted at least ten points of interest on which the International Law Commission could base

its list of topics and which could be considered in wider perspective by the General Assembly.

13. In view of the closeness of many of the amendments to the text of the draft resolution, he suggested that the sponsors of both texts might meet together in order to draw up a joint revised draft which the Sixth Committee would undoubtedly be able to approve unanimously.

14. Mr. WEEKS (Liberia) said that his country realized that conditions in the world today gave increased importance to international law in the strengthening of international peace. He therefore shared the view that the aim of the sponsors of the draft resolution was the praiseworthy one of affirming that increased importance of the law of nations in the common interest of mankind.

15. Nevertheless, his delegation had serious doubts about the suitability of the proposed special committee for taking up such a task. That body would duplicate the work of the International Law Commission and indeed its terms of reference listed one of the functions expressly given to the International Law Commission under its Statute. He also wondered whether the proposed committee would possess the qualifications required; the International Law Commission, for its part, had been constituted with due regard to the fact that the persons selected should individually possess the qualifications required and that the main forms of civilization and the principal legal systems of the world should be represented. Moreover, the International Law Commission's past performance clearly proved that, because of its experience and efficiency, the objectives of the draft resolution would be best accomplished by entrusting the tasks enumerated in the draft resolution to the Commission itself. For those reasons, his delegation had co-sponsored the amendments.

16. Mr. CORONA (Cuba) observed that it was generally agreed that there was a crisis in international law; no one was blaming the International Law Commission for that; the question was how to overcome it, and to what extent the Sixth Committee could help towards that end. There appeared to be a trend among some delegations to set international law apart as something separate and unconnected with the disturbances and anxieties of the time. They appeared to have forgotten that law was a manifestation of life itself and that, although it had contributed greatly to the forming of peaceful relations between men and peoples, veritable crimes against humanity had been committed in its name. Latin America could provide many examples of that. Treaties, conventions and agreements had been thrust upon it, without its free consent, depriving it of its men, its wealth and even its territory. Happily, however, there was another ever-swelling current in international affairs—a current to which his country belonged—which proclaimed that law, and especially international law, had a lofty task to accomplish at the present time, namely, that of settling the great conflicts and solving the principal problems of the era by creating a universal legislation. Such legislation, if it was to be valid, must begin by recognizing what was important for individuals and for States. There was a crisis in international law at present precisely because the present structure of international law was hopelessly out of date; it protected particular interests and par-

^{1/} Official Records of the General Assembly, Fourteenth Session, Annexes, agenda item 55, documents A/C.6/L.445 and Rev. 1-3.

tical States at the expense of others, as his country was only too well aware.

17. The draft resolution before the Committee was a praiseworthy attempt to overcome the crisis. As the representatives of Ceylon and Mexico had indicated, it in no way reflected on the International Law Commission, nor did it depart from the rules and regulations of the United Nations. It was a fact that the requisite urgency had not been given to the study of the important problems of the time; it was to solve them, after all, that delegations were here. The first among them was the securing of peace. Others, of almost equal importance, were the questions of State responsibility, the definition of aggression, neutrality, the principles of respect for the sovereignty and self-determination of peoples, the right of under-developed countries to industrialize and to use their natural wealth and resources, outer space, and so on. Those were the problems to which international jurists must address themselves.

18. The sponsors of the draft resolution had felt that the best way would be to set up a special committee. His delegation's only concern on seeing the proposal had been that that procedure might cause delay. It was quite certain that the sponsors had no intention of stripping the International Law Commission of its functions nor of violating that body's Statute. What mattered was to do something specific, something useful, to revitalize international law and to do it soon. The proposal in the eleven-Power amendments, it seemed to him, would entail even greater delay. Moreover, its main suggestion was in fact not an amendment to the draft resolution, but an entirely new proposal, one which was radically different and would not commend itself to all as the way out of the present crisis. A possible solution might have been to call on the International Law Commission to take up certain specific topics, on the understanding that it should also bear the over-all problem in mind. Failing that, however, it would be better to set up the special committee envisaged in the draft resolution. It should be a small committee consisting of representatives of some seven to nine countries, juridical and not political, but truly representative of the different trends and systems of the time. Its task should be not to oppose but to harmonize them, in an endeavour to secure the prerequisite to all treaties and agreements—peace.

19. Mr. JACOVIDES (Cyprus) expressed his delegation's gratitude to those members of the Committee who had welcomed it, and promised them its sincere co-operation in every effort to strengthen international law and to further the aims of the United Nations.

20. His delegation was in general sympathy with the sentiments which had prompted the sponsors of the draft resolution. It would indeed be unfortunate if law did not keep pace with developments in other spheres. As the representative of Mexico had said (665th meeting, para. 8) recent developments in the political, economic and social spheres had had a tremendous impact on contemporary international law, and, as the representatives both of Mexico (*ibid.*) and of Yugoslavia (652nd meeting, para. 25) had pointed out, international law-making could no longer be the prerogative of a few countries but must be shared equally by all members of the international community. He wished particularly to support the sug-

gestion of the representative of Mexico (665th meeting, para. 13) that an effort might be made towards the codification and progressive development of the existing rules governing the succession of States and Governments. His delegation viewed with some apprehension, however, the suggestion that new States need not be bound by rules of international law which they had not helped to create and which ran counter to their interests. National interests could not be allowed more weight than international legal obligations, and it was to be hoped that a compromise might be found along the lines suggested by the Mexican representative himself.

21. As to the draft resolution, his delegation believed, after serious consideration, that it should be adopted subject to the principal of the eleven-Power amendments. While not agreeing with those who felt that the proposal to set up a special committee cast a reflection on the International Law Commission—he was convinced that the Commission had the full confidence of the Sixth Committee—he felt that the wisest course would be to refer the matter to the International Law Commission itself. That would immediately obviate certain difficulties such as those of the actual membership of the committee, its rules of procedure, its place of meeting, and so on. Moreover, his delegation seriously doubted whether the task in question could more effectively be performed by a body which would be essentially political in nature. Although it would have more weight, since its members would reflect the views of Governments, it would suffer the grave disadvantage that its members might be tempted to make political capital out of matters which ought to remain primarily legal. It would then no doubt be impossible to reach agreement, and the aim of enlarging the scope and effectiveness of international law would not be served. The political element would not be eliminated entirely by reference of the matter to the International Law Commission, since the final decision would rest with the Sixth Committee at the sixteenth session of the General Assembly, but it would be introduced later in the proceedings when there was already something solid to work on. In the absence of a compromise formula, therefore, his delegation would vote for the fourth of the amendments to the main proposal contained in operative paragraph 1 of the draft resolution.

22. Mr. BUCETA (Argentina) recognized that it was the common aim of the sponsors of the draft resolution and those of the amendments to overcome the stagnation in the work of the Sixth Committee and bring it abreast with the important developments of the time. He entirely agreed with the representative of Mexico that rapid economic and social changes in the past fifteen years necessitated a full review of international law, for international law should reflect current phenomena. That was essentially a legal task, however, and if it were to be done properly, it must be left to the International Law Commission. The Commission had made great progress in the codification of international law, in accordance with the directives in its Statute, and was likely to achieve even better results in the future. It was for those reasons that his delegation had become a co-sponsor of the amendments.

23. Mr. VALLAT (United Kingdom) thanked the representative of Ceylon for the explanation he had given.

24. The Committee appeared to be generally agreed that the intent of the draft resolution was a worthy one. As to its main proposal, that in operative paragraph 1, he recalled that the procedure for the suggestion of topics for codification and progressive development were laid down in articles 16 and 18 of the Statute of the International Law Commission. While progressive development and codification were to some extent distinct, they had tended to become blurred; that was only natural, for the progressive development of international law could only be of value if it were based on and linked with codification—rooted in laws established, known and understood. The draft resolution dealt with both aspects, but, with regard to codification, its language derived directly from article 18 of the Statute of the International Law Commission. To disregard the International Law Commission, therefore, would be to show a lack of courtesy, respect and confidence. It would also be unwise, because, ultimately, the work resulting from the selection of new topics would have to be done by the Commission. It would surely be advisable, therefore, to take advantage of the experience of the Commission in proceeding with the task envisaged in the draft resolution. The preparation of a programme of work was, "par excellence", a job for the Commission. It was an entirely different matter from the suggestion of a single subject or of special priorities, which could be and had been done by the General Assembly.

25. It had been suggested that the draft resolution now before the Committee followed the precedent set by General Assembly resolution 94 (I), which had set up a special committee to look into the question of the progressive development of international law and its codification. A reference to the resolution itself, however, would show that there was in fact no parallel, for the earlier committee had been directed to study methods and machinery and not actual topics. Furthermore, as could be seen from the report of the Committee on the Progressive Development of International Law and its Codification^{2/} then set up, that body had referred hardly at all to the subject of topics for codification, and its Sub-Committee 2, on the question of a plan of work for the then proposed international law commission, had decided that "that task would be much better left to the Commission itself".^{3/} That decision had been reflected in the Statute of the International Law Commission, and the Commission, in its report on its first session, had "recognized that the codification of international law and, more immediately, the selection of topics for codification, constituted one of the Commission's main functions" (A/925, para. 7). Accordingly, the Commission had considered a list of twenty-five topics from which it had selected fourteen for codification, three of them to be given priority. It was also to be noted that the Commission had stated that the list of fourteen topics was "only provisional and that additions or deletions might be made after further study by the Commission or in compliance with the wishes of the General Assembly" (*ibid.*, para. 17). Thus, in the Commission's own view, the question of topics for codification had been one which should be looked at again. It was clearly the general view that now was the time for that to be done. He did not think

that it need take a great deal of time, nor need it seriously dislocate the work of the Commission at its next session; the Commission had spent some six meetings in all on the question at its first session, only a little over four of those actually on the matter of topics for codification and priorities.

26. The setting up of a special committee, on the other hand, would create peculiar difficulties, as other representatives had pointed out, and, in any case, if the draft resolution remained in its present form, it would be unacceptable to many delegations. The proposal, contained in the fourth of the amendments to operative paragraph 1 of the draft resolution, to bring the International Law Commission clearly into the picture, could not but have beneficial effects. There would then be a proper balance in the procedure: the views of Governments would first be obtained in writing, in accordance with operative paragraph 2 of the draft resolution; the International Law Commission would then consider the matter against the background of its past experience, taking those views of Governments into account; and finally, the Sixth Committee and the General Assembly, representing the views of the Governments of all States Members of the United Nations, would have an opportunity of debating the matter fully at the Assembly's sixteenth session and of reaching appropriate conclusions.

27. It might help to bring out that effect more clearly if certain consequential amendments were made to operative paragraphs 2 and 3 of the draft resolution. It might, for example, be desirable to secure the written comments of Governments somewhat earlier than 1 May 1961, perhaps, 1 March 1961, so that they might be before the members of the International Law Commission in good time. He did not think that that need cause any great difficulty, for Governments had already had during the present session an opportunity to consider the question of new topics. He would suggest, too, that operative paragraph 2 should be amplified by the addition, at the end, of the words: "and requests the Secretary-General to make the views and suggestions received by him available to the members of the International Law Commission and to the Governments of Member States". In order further to clarify the effect of the draft resolution, and taking into account the fourth of the amendments to operative paragraph 1, operative paragraph 3 might read: "Decides to place the report of the International Law Commission on this matter on the provisional agenda of the sixteenth session of the General Assembly".

28. With regard to the preamble of the draft resolution, he agreed with a number of delegations who had objected to the first paragraph that it was too narrow, and thought that it would be best, as the representative of Greece had suggested (667th meeting, para. 14), to replace the words "the purpose" by the words "one of the purposes". It might be advisable to bring the language of the second preambular paragraph into line with that of the Charter, by amending the third and fourth lines to read: "in developing friendly relations and co-operation among nations and in the pacific settlement of disputes as provided in the Charter of the United Nations,". In the eighth preambular paragraph, it would perhaps be better to say "friendly" rather than "peaceful" relations, for it could be said that a state of peace existed; what

^{2/} *Ibid.*, Second Session, Sixth Committee, Summary Records of Meetings, Annexes (annex 1).

^{3/} *Ibid.*, Annexes (annex 1j).

was required was to go further than that. There remained the fifth preambular paragraph, which, he submitted, did not render a fair statement of the situation. The Commission had not by any means exhausted the twenty-five topics it had first considered, nor, in his delegation's view, had it anywhere near exhausted the selected list of fourteen topics. There were really only six topics which it had dealt with wholly or in part, numbers 5, 6, 7, 11, 12 and 14 of the list contained in paragraph 16 of the Commission's report on its first session (A/925). Topics numbers 9, 10 and 13 had been touched on, but not disposed of. That left topics numbers 1, 2, 3, 4 and 8 untouched. In the light of those facts, he would suggest that the first of the eleven-Power amendments, in substitution for the fifth preambular paragraph of the draft resolution, more accurately reflected the situation and should be adopted.

29. Mr. CHORFI (Morocco) pointed out that the Committee, which had spent a good deal of time considering the report of the International Law Commission (A/4425) and discussing which body should be entrusted with the task of surveying the field of international law and selecting topics for codification and progressive development, could instead have taken an immediate initiative and chosen a list of topics for the General Assembly to recommend to the International Law Commission. The Sixth Committee was responsible for determining and guiding the International Law Commission's work; and a number of suitable topics for codification had already been put forward, particularly by the representatives of Mexico (665th meeting, para. 13) and Cuba (see para. 17 above). Furthermore, his delegation thought that the Sixth Committee should try to affirm, in the legal sphere, the declaration on the granting of independence to colonial countries and peoples which was item 87 on the General Assembly's agenda. The jurists of the world should condemn all forms of colonialism.

30. Despite its preference for immediate action by the Sixth Committee, his delegation would, in the present situation, support the eight-Power draft resolution. It shared the view of the sponsors of that draft resolution that the task of selecting topics for codification should be entrusted to a special committee. In its view, the International Law Commission should remain an a-political body, and the selection of topics for codification was a wholly political task. The special committee should include representatives of the East, the West and the uncommitted nations; it was essential for jurists to take into account the differing views of all those countries. Moreover, the question of priorities should also be submitted to the special committee rather than to the International Law Commission. Since the ultimate objective was to draft texts likely to be accepted by all States, the list of topics and the priorities should not be drawn up in disregard of the interests of some Powers. He wished to associate himself with the Bolivian representative (see para. 9 above) in supporting the Romanian representative's suggestion (666th meeting, para. 28) for the rewording of the seventh preambular paragraph of the draft resolution.

31. Mr. TABIBI (Afghanistan) felt that the debate had been useful, because it had shown how concerned jurists felt about the lessening role of international law and the decline in the activities of the Sixth Com-

mittee. In the early years of the United Nations, when the need for creating a legal order had been felt more strongly, the Sixth Committee had performed useful work in giving legal advice and in creating an understanding of the importance of international law. The gradual decline in the status of the law of nations, in relation to politics, had not benefited the United Nations or the rule of law as a whole. It was therefore encouraging to find general agreement among the members of the Committee on the need for the revitalization of the role of international law in the United Nations. As the Polish representative had said (656th meeting, para. 2), the Charter was unquestionably an instrument of international law. Moreover, it had given a new spirit to the law of nations as a whole, and jurists would not be faithful to their profession if they followed the lead of politicians and agreed to surrender the priceless tool of legal science to others.

32. His delegation was a co-sponsor of the draft resolution, which reflected the Committee's feeling concerning the need for revitalization. The draft resolution had been the result of lengthy consultations among the sponsors and other experienced members of the Committee. He could not agree with the objections raised by some representatives to the effect that the special committee would duplicate or assume the functions of the International Law Commission. Under Article 13, paragraph 1 a, of the Charter, the General Assembly could at any time and on any occasion undertake to select topics for codification or progressive development. In creating a special committee for that purpose, the Sixth Committee would merely help the General Assembly to perform its duty under the Charter. The International Law Commission itself had been established on the proposal of a special committee, and it had repeatedly acknowledged the authority of the General Assembly by asking its advice before embarking on codification projects. Moreover, in resolution 174 (II), establishing the International Law Commission, the General Assembly had referred to the methods of securing the co-operation of the several organs of the United Nations in the task entrusted to it by Article 13, paragraph 1 a, of the Charter.

33. The proposal to create a special committee could not be considered a reflection on the competence of the members of the International Law Commission, in view of the fact that nationals of several countries sponsoring the draft resolution were serving on the Commission. The proposed special committee would merely supplement the work of the Commission, which had to deal with a crowded agenda in a limited time. It would also give some representation to the seventeen new African States, which would not be represented on the International Law Commission until the terms of the present members had expired in 1962. Lastly, whereas the members of the Commission served as individual experts, the members of the special committee would represent their Governments and could observe the practical value of international law.

34. The opponents of the draft resolution were mainly concerned about the composition of the special committee; they feared that the views of one group of countries would be heard more frequently than those of others. Those fears, however, should have been dispelled by the Mexican representative (665th meet-

ing, para. 14), who had set forth clearly the criteria which would guide the Sixth Committee in determining the membership of the special committee. Moreover, the Committee had, in past years, successfully established many committees and sub-committees; it had also decided the present composition of the International Law Commission itself by a gentleman's agreement.

35. The sponsors of the draft resolution, after careful consideration of all the suggestions advanced in the debate, had decided to adopt some of them. Thus, the first preambular paragraph had been redrafted, in line with the suggestions made by the representatives of Peru, Greece and the Ukrainian Soviet Socialist Republic, to read: "Bearing in mind the purposes and principles of the United Nations" (A/C.6/L.467/Rev.1). A phrase concerning advancement of

economic and social progress throughout the world had been added to the second preambular paragraph, along the lines suggested by the Peruvian representative (661st meeting, para. 40). The fifth preambular paragraph had also been reworded to meet the United Kingdom representative's argument that the text did not accurately reflect the actual state of the Commission's programme. The sponsors had therefore decided to adopt the second paragraph of the first of the eleven-Power amendments. And, as the Peruvian representative had suggested (667th meeting, para. 33), the words "have had" in the sixth preambular paragraph had been replaced by "have". Lastly, operative paragraphs 2 and 3 had been made more specific by drafting amendments.

The meeting rose at 1.15 p.m.